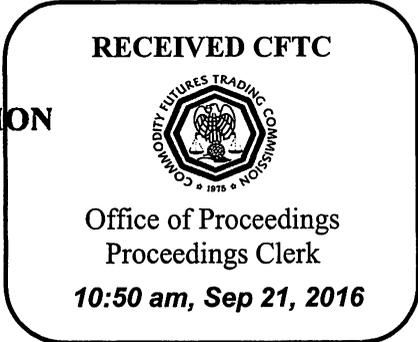


**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**



\_\_\_\_\_ )  
**In the Matter of:** )  
 )  
**Advantage Futures LLC, Joseph** )  
**Guinan & William Steele** ) **CFTC Docket No. 16-29**  
 )  
**Respondent.** )  
\_\_\_\_\_ )

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO**  
**SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, MAKING**  
**FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that beginning in or about November 2011 to at least August 2015 (the “Relevant Period”), Advantage Futures LLC (“Advantage”) violated Section 6(c)(2) of the Commodity Exchange Act, 7 U.S.C. § 9(2) (2012) and Commission Regulations (“Regulations”) 1.11(c), (e), 1.73(a), and 166.3, 17 C.F.R. §§ 1.11(c), (e), 1.73(a), and 166.3 (2015); that Joseph Guinan (“Guinan”) violated Regulation 166.3, 17 C.F.R. § 166.3 (2015); and that William Steele (“Steele”) violated Regulation 1.11(e)(4), 17 C.F.R. § 1.11(e)(4) (2015). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Advantage, Guinan and Steele (collectively, “Respondents”) engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

**II.**

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.<sup>1</sup>

<sup>1</sup> Respondents consent to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondents do not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other

### III.

The Commission finds the following:

#### A. SUMMARY

During the relevant period, Advantage, a futures commission merchant (“FCM”) registered with the Commission, and its Chief Executive Officer Joseph Guinan, failed to diligently supervise the handling of certain commodity interest accounts, despite being on notice from three exchanges about what they characterized as unlawful trading in several futures contracts by one of Advantage’s customers. Advantage also had deficient risk management and credit risk practices for which its Chief Risk Officer, Respondent Steele, was responsible. Advantage further knowingly made inaccurate statements to the Commission through the submissions of its required risk manuals and Annual Chief Compliance Officer’s Report that represented that certain policies and procedures were in place and followed when they were not.

Three exchanges independently notified Advantage that they had observed the same Advantage customer engaging in a problematic pattern of trading in several contract markets, consistent with spoofing and/or manipulative or deceptive trading<sup>2</sup>. Advantage did not promptly or thoroughly investigate the identified trading activity, although Advantage eventually did not allow the customer to continue trading the particular futures contracts identified by the exchanges. In addition, despite knowing that the customer employed the same strategy in all contract markets in which he traded, Advantage did not otherwise increase scrutiny over or further inquire about the customer’s trading in other markets. As a result, the customer continued to engage in the suspect trading activities.

Second, Advantage failed to follow its risk management and credit risk policies. This included Advantage’s Risk Management Program (“RMP”) and its implementation of the pre-trade limits it applied to customers. Rather than adhere to the policies set forth in the RMP, Advantage:

- Set position and order size limits for multiple contract markets without aggregating the limits for all traders in a firm and across all contract markets;
- Extended position and order size limits to customers without duly considering risks posed by the customers’ ability to fully use them;

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proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

<sup>2</sup> Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012), prohibits any person from engaging in trading or conduct on a registered entity that is of the character of or commonly known to the trade as “spoofing.” Section 6(c)(1) of the Act, 7 U.S.C. § 9(c)(1) (2012) and CFTC Regulation 180.1, 17 C.F.R. § 180.1 (2015) prohibit any person from employing, or attempting to use or employ any manipulative device, scheme, or artifice in connection with commodity futures.

- Did not assign limits in line with leverage ratio(s) that its policies deemed appropriate;
- Did not provide additional scrutiny for customers using a front end system that did not have the margin correlation capability enabled (such that the limits would be automatically correlated to account balance and margin requirements); and
- Did not always tie limits to the entity's liquid assets (like its account balance, or assets that an FCM could justifiably rely upon).

As a result, Advantage's implementation of its RMP did not adequately address, and Advantage's pre-trade limits were not based on, the risks existent at the FCM.

In addition to its RMP manual, Advantage also prepared a Credit and Risk Policies and Procedures manual ("Risk Manual"), but it did not follow those procedures either. Guinan and Steele knew that the two manuals did not reflect Advantage's actual policies and practices, but Advantage nonetheless submitted those manuals to the CFTC. Advantage also submitted its Chief Compliance Officer's Annual Report ("CCO Report") to the CFTC, which inaccurately represented that its compliance program and policies and procedures were "effective" and "sufficient." Guinan certified the CCO Report as being accurate and complete. The misstatements and omissions in Advantage's RMP and Risk manuals and CCO Report were material. The Commission relies upon an FCM's manuals and CCO reports to meet its oversight obligations and to assess FCM's compliance with required risk management programs.

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In accepting Advantage's Offer, the Commission recognizes Respondents' cooperation during the investigation of this matter and efforts to implement remedial measures to redress the deficiencies with its supervisory system, internal controls, and risk management program. Advantage has allocated substantial resources to its risk department, including hiring three additional risk department personnel, a risk department consultant tasked with updating Advantage's RMP, procuring an automated surveillance system to help monitor its customers' trading activity more efficiently, and it has initiated efforts to procure a license for real-time margin software to enhance the ability of risk department personnel to better monitor the margin exposure of clients on a real-time basis.

## **B. RESPONDENTS**

**Advantage Futures, LLC** is a Delaware limited liability company formed in January 2003 with a primary business address at 231 S. LaSalle St., Ste. 1400, Chicago, Illinois 60604. Advantage has been registered as an FCM since March 5, 2003. Advantage has been actively soliciting business from the high frequency trading and high volume trading community and those customers compose a significant portion of Advantage's business.

**Joseph Guinan** is a resident of River Forest, Illinois and has served as Advantage's Chief Executive Officer and majority owner since Advantage commenced business operations. Among other general and operational duties, Guinan oversees all departments at Advantage, including compliance and risk, and is the final decision-maker for the company. Guinan has

been registered through Advantage as an associated person and listed as a principal since May 28, 2003, and as a Branch Manager since April 26, 2012.

**William Steele** is a resident of Vernon Hills, Illinois and served as Advantage's Chief Risk Officer from its inception until 2016. Steele reported to Guinan and was primarily responsible for overseeing the risk department at Advantage during the relevant period. Steele had also been registered as an associated person and listed as a principal with Advantage from July 18, 2003, until May 2016.

## **C. FACTS**

### **1. Advantage's Response to Several Notices From Exchanges of Problematic Trading By Its Customer**

Between June 2012 and April 2013, three different Exchanges, through their respective market regulation staff, contacted Advantage with concerns about trading activity they observed involving one customer account carried by Advantage. The three Exchanges separately identified similar suspicious patterns of the account's trading in the Brent Crude financial futures contract, the Continuous Assisted Quotation index (CAC40), and the CBOE Volatility Index (VIX) contract. All three Exchanges told Advantage that they were concerned that the suspicious trading may constitute disorderly trading, spoofing and/or manipulative behavior, including by creating a false impression in the markets as a result of entering and quickly cancelling large orders.

Advantage failed to adequately respond to the Exchange inquiries and did not conduct a meaningful inquiry into the suspicious trading. For example, Advantage did not investigate the trading details provided by the Exchanges, nor did anyone at Advantage speak with the trader about the trading activity in question.

The Exchanges questioned the account holder's continued access to the contracts at issue and in a couple of instances told Advantage that it would be held responsible if the account holder's suspicious activity continued and was deemed spoofing or manipulation by the Exchanges' enforcement departments. Only then did Advantage disable the account holder's access to the Brent crude, CAC40, and VIX contracts. However, the account holder continued to trade in other markets, and Advantage did nothing on a day-to-day basis to increase monitoring or oversight of his trading or to control his access to other products, despite knowing that he employed the same strategy across all markets.

### **2. Risk Management Program**

As of July 2014, Advantage, as an FCM, was required by Commission Rule to establish and enforce a system of risk management policies and procedures, *i.e.*, the RMP, including establishing risk tolerance limits, review of those limits and process for exceptions, and supervision requirements. 17 C.F.R. § 1.11 (2014). The RMP is required to take into account the risks applicable to the FCM, including credit, liquidity, operational, account market, capital, etc. *Id.*

To comply with Regulation 1.11, Steele spearheaded the creation of Advantage's RMP manual setting forth the FCM's system of risk management policies and procedures. The RMP manual was completed in July 2014. While the written policies and procedures in the RMP appeared to comply with Regulation 1.11, Advantage did not follow the RMP policies and procedures relating to the role of the Credit Committee, the use of risk ratings, the account opening process, and review and implementation of risk tolerance limits. For example, Advantage's RMP manual described its review of risk tolerance limits – quarterly by senior management (which includes Steele) and annually by the governing body (Guinan), but the pre-trade risk limits were not reviewed and approved in accordance with that schedule. The pre-trade risk control limits were not assigned, reviewed, or modified consistently among the risk department personnel pursuant to Advantage's policies, nor did those limits adequately factor in the risks resulting from high volume day trader customers.

Steele had responsibility for oversight of the RMP for the risk department, yet he did not implement a supervisory system reasonably designed to ensure that the policies and procedures for that department were understood and diligently followed by risk department employees.

### **3. Risk-Based Limits**

As of October 1, 2012, Regulation 1.73(a)(1) requires FCMs to “[e]stablish risk-based limits in the proprietary account and in each customer account based on position size, order, margin requirements, or similar factors.” Advantage established pre-trade limits for its customers, but those limits were not established and modified in accordance with Advantage's policies, nor did they adequately factor in the risks that any individual customer's trading activities presented to Advantage. Moreover, Steele and Guinan did not adequately advise the risk department of the process and requirements for setting pre-trade limits such that they would be risk-based.

Advantage identified two pre-trade limits that it used as “risk-based”: (1) the pre-execution risk controls available through the Chicago Mercantile Exchange (“CME”); and (2) maximum position size (“position limits”).<sup>3</sup> The CME's Globex Credit Control (“GCC”) is a front-end risk management service that allows an FCM to set pre-execution credit control limits on futures and options. The GCC limits factor in working orders as well as executed transactions (positions) as part of the credit controls and automatically disable a customer's access to Globex traded CME products if those limits are breached. During the relevant period, however, GCC limits were set by an Advantage employee who did not use them as a risk-based tool. Instead, that employee set the GCC limits to ensure that customers would not approach the limit and be precluded from further trading. Contrary to Advantage's own policy, GCC limits were thus not commensurate with Advantage's customers' assets, nor were they viewed in the aggregate across entities or all of Advantage's customers to serve as check on the aggregate potential exposure to

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<sup>3</sup> Advantage did utilize the maximum order size control for its customers' activity, but those were not treated or considered risk-based in accordance with its policies. For example, Advantage employees acknowledged that they did not set, monitor, and modify the maximum order sizes based on risk-based considerations and requirements set forth in their manuals. The max order sizes were really just used as a way to handle “fat finger” errors.

the FCM. In addition, the GCC limits only accounted for activity on CME markets and Advantage did not assess the GCC limits in conjunction with its customers' activity in other markets.

Thus in practice, Advantage exclusively relied upon position limits as its risk-based pre-trade control limits for its customers, including day trader customers that did not generally hold positions overnight. Using only position limits for such day trader customers is an inadequate risk-based control method, especially when Advantage established, oversaw, and modified those limits in contravention of their policies. For example, Advantage did not assign limits in line with leverage ratio(s) that its policies deemed appropriate. Similarly, Advantage's policies required assessment of the client's financial wherewithal (among other things) when establishing pre-trade position limits, yet Advantage did not aggregate position limits across all contract markets for an individual account or across a firm to determine whether its client could afford those positions. Also, a front-end trading platform used by certain Advantage customers offered a margin capability functionality such that the customer's position limits would be automatically correlated to an account balance and margin requirements. Advantage's RPM and Risk Manual required Advantage to increase scrutiny over customer accounts or modify limits in real time to account for fluctuations in a customer's available assets if the margin capability functionality was not enabled for a customer's account. Advantage chose not to enable that functionality for a front-end trading platform used by certain customers, including some of its day trader customers, without otherwise increasing scrutiny or modifying limits in real time as required by its policies.

Advantage's risk department also did not follow consistent approaches to review and modify those limits and Guinan and/or Steele did not always provide the risk department with all of the information that would be necessary to assess the propriety of adjusting a customer's limits to ensure they remained risk based. For example, when customers made intra-day requests to modify position limits, Advantage's risk department staff only informally "eye-balled" the requests before making the adjustments as quickly as possible. This was not consistent with undertaking a risk-based review, and deviated from Advantage's written policies. In addition, Advantage did not inform all of the members of the risk department that a portion of the funds in one of its customer's accounts were on loan from an affiliate of the FCM and should not be considered for purposes of establishing position limits. Similarly, Advantage allowed its employees to rely upon customer funds that had been wired out and/or historical profits when assigning new limits without even inquiring if those funds remained available.

#### **4. Inaccurate Manuals and Annual Report Submitted to CFTC**

Commission Regulation 1.15(a)(ii) requires FCMs to file its written policies and procedures with the CFTC. Advantage submitted the Risk Manual to the CFTC's Division of Swap Dealer and Intermediary Oversight ("DSIO") pursuant to Regulation 1.15 in November 2013; it submitted the RMP manual to DSIO pursuant to Regulations 1.11 and 1.15 in July 2014 and an updated version in May 2015.

As with the RMP manual discussed above, Advantage's Risk Manual also contained policies and procedures that Advantage did not follow. In brief, the manuals misrepresented the FCM's account opening process, the role of the Credit Committee, evaluation of risk tolerance limits, use of risk ratings, actions taken when a customer's front end had no margin capabilities,

annual reviews of customer accounts, whether information gathered during account opening was updated or reevaluated, the scope of stress testing, and certain monthly reporting related to the Risk Department. Guinan and Steele both knew that the RMP manual and Risk Manual did not accurately reflect the firm's practices at the times that the documents were submitted to the CFTC.<sup>4</sup>

Also, Advantage submitted its annual CCO Report dated March 26, 2015 to DSIO pursuant to Regulation 3.3. The CCO Report represented that the FCM's compliance program and policies and procedures (including the ones referenced here) "were effective" and "sufficient" after a review by the relevant departments. Guinan certified that the information in the CCO Report was accurate and complete, despite knowing that the RMP manual and Risk Manual did not accurately reflect the FCM's actual practices.

The Commission relies on the accuracy of an FCM's policies and procedures manuals to assess the FCM's compliance with Regulation 1.11 and to determine the scope selected for further review. Similarly, DSIO relies upon the CCO Report to assess an FCM's compliance with Regulation 3.3. The misstatements and omissions in Advantage's RMP and Risk manuals and CCO Report were material, and as set forth above, Guinan and Steele knew that these policies were not being followed and they should have appreciated the importance of the information at the time the documents were submitted to the CFTC.

#### IV.

### LEGAL DISCUSSION

#### A. Failure to Supervise

Advantage and Guinan failed to diligently supervise the handling of commodity interest accounts which resulted in lax oversight of its customer's trading activity and ineffective risk management practices in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2015). That Regulation requires:

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or other persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees, and agents (or other persons occupying a similar status or performing a similar function) relating to its business as a registrant.

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<sup>4</sup> Advantage also submitted both manuals to the CFTC's Division of Clearing & Risk ("DCR") in September 2014. DCR oversees derivatives clearing organizations (DCOs), the clearing of swaps, futures, and options on futures, and market participants that may pose risk to the clearing process. In this instance, DCR requested and used the procedures as part of its limited scope audit review to assess Advantage's compliance with Regulation 1.73.

A violation under Regulation 166.3 is an independent violation for which no underlying violation of the Act or regulations is necessary. See *In re Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,744 (CFTC Dec. 10, 1997).

A violation of Regulation 166.3 is demonstrated by showing either that: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *In re Murlas Commodities*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,485 at 43,161 (CFTC Sept. 1, 1995); *In re GNP Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,219 (CFTC Aug. 11, 1992) (providing that, even if an adequate supervisory system is in place, Regulation 166.3 can still be violated if the supervisory system is not diligently administered), *aff'd sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993); *Samson Refining Co. v. Drexel Burnham Lambert, Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,596 at 36,566 (CFTC Feb. 16 1990) (noting that, under Regulation 166.3, an FCM has a "duty to develop procedures for the detection and deterrence of possible wrongdoing by its agents") (internal quotation omitted). "A showing that the registrant lacks an adequate supervisory system can be sufficient" to establish a breach of duty under Regulation 166.3. *In re Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,744 (CFTC Dec. 10, 1997). Evidence of violations that "should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly" is probative of a failure to supervise. *CFTC v. Sidoti*, 178 F.3d 1132, 1137 (11th Cir. 1999) (defendant was liable for failure to supervise because he "knew of specific instances of misconduct, yet failed to take reasonable steps to correct the problems").

During the relevant period, Advantage, Guinan, and Steele were registered with the Commission and Guinan and Steele had supervisory duties at Advantage. Guinan, individually and as a control person of Advantage, violated Regulation 166.3, 17 C.F.R. § 166.3 (2015), in that he, among other things: (i) failed to ensure that Advantage diligently inquired and responded to exchange inquiries concerning its customer's trading activity; (ii) failed to ensure that Advantage established written policies and procedures for the Risk Department that accurately reflected the company's practices; (iii) failed to ensure that the Risk Department followed Advantage's procedures related to risk management and pre-trade risk limits; and (iv) did not implement adequate procedures and/or diligently supervise Advantage employees to ensure compliance with the Act and Regulations. Advantage violated Regulation 166.3, 17 C.F.R. § 166.3 (2015), through the acts of Guinan and Steele, who also failed to diligently oversee the Risk Department and the Risk Management Program to ensure compliance with the Act and Regulations.

## **B. Failure to Comply with the Risk Management Program Requirements**

Regulation 1.11 was promulgated by the Commission to enhance customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for FCMs. Regulation 1.11(c)(1) sets forth requirements for each FCM that carries customer funds to "establish, maintain, and enforce a system of risk management policies and procedures designed to monitor and manage the risks associated with the activities of the futures commission merchant as such." 17 C.F.R. § 1.11(c) (2015). Regulation 1.11 "necessarily applies to any risks generated by the FCM's

customers' trading activities." *See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations; Final Rule*, 78 Fed. Reg. 68,506, 68,518 (Nov. 14, 2013). Regulation 1.11(c) further requires FCMs to memorialize such written policies and procedures in a "Risk Management Program". 17 C.F.R. § 1.11(c)(2). The RMP is intended to allow the Commission and the FCM's DSRO to monitor the status of risk management practices among FCMs.

The components of the RMP are described in Regulation 1.11(e), which includes a non-exclusive list of elements that must be included, such as the identification of risks to the FCMs, risk tolerance limits addressing those risks (including the underlying methodology), requirements for review of the risk tolerance limits, and procedures to detect breaches of risk tolerance limits. *See id.* at § 1.11(e)(1). Regulation 1.11(e) further specifies that the RMP must include automated controls "reasonably designed to prevent the placing of erroneous orders, including those that exceed pre-set capital, credit, or volume thresholds." *Id.* at § 1.11(e)(3),(4). The RMP must include a "supervisory system that is reasonably designed to ensure that the policies and procedures required by this section are diligently followed." *Id.* at § 1.11(e)(4).

Regulation 1.11 went into effect July 2014. *See* 78 Fed. Reg. at 68,577. From July 2014, Advantage, through employees acting on its behalf, violated Regulation 1.11(c), (e), 17 C.F.R. § 1.11(c), (e) (2015), by failing to prepare RMP policies and procedures that accurately reflected the FCM's practices, including the role of the Credit Committee, risk ratings, the establishment and review of risk tolerance limits, and procedures to detect breaches of risk tolerance limits. From July 2014, Steele, as a control person of Advantage, violated Regulation 1.11(e)(4), 17 C.F.R. § 1.11(e)(4) (2015), by failing to establish and implement a supervisory system that was reasonably designed to ensure the RMP policies and procedures were diligently followed.

### **C. Failure to Establish Risk Based Limits**

Regulation 1.73 sets forth risk management requirements that apply to clearing members that are FCMs, which are designed to help avoid systemic risk and secure the financial integrity of the markets and the clearing system. Specifically, Regulation 1.73(a)(1) requires clearing member FCMs to, among other things, "[e]stablish risk-based limits in the proprietary account and in each customer account based on position size, order size, margin requirements, or similar factors." 17 C.F.R. § 1.73(a)(1) (2015). "The regulation was intentionally drafted in a non-prescriptive manner" to allow flexibility and innovation. *Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management; Final Rule*, 77 Fed. Reg. 21278, 21290 (Apr. 9, 2012). What matters is that the FCM adopts procedures and technology appropriate to its business model and customer base such that the limits in place are risk based for that firm's activities. *See id.* Regulation 1.73 went into effect on October 1, 2012.

Advantage established pre-trade limits for its customers, but those limits were not risk based because they were not established and modified in accordance with Advantage's policies nor did they adequately consider the risks that its customers' trading activities presented to Advantage. Accordingly, Advantage violated Regulation 1.73(a)(1), 17 C.F.R. § 1.73(a)(1) (2015).

**D. Submission of False Documents to the Commission**

Section 6(c)(2) of the Act makes it unlawful:

for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the Commission under this Act, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

7 U.S.C. § 9(2) (2012). Knowingly submitting documents that contain false or misleading material statements of fact to the Commission constitutes a violation of Section 6(c)(2).

To comply with Regulations 1.11 and 3.3 and in response to a request as part of a limited scope review, Advantage submitted its RMP manual, Risk Manual and CCO Report to the Commission on multiple occasions between November 2013 and May 2015. In each instance, Guinan and Steele knew that the documents did not accurately represent Advantage's actual practices. Specifically, the manuals and CCO Report misrepresented the actual account opening process, the role of the Credit Committee, evaluation of risk tolerance limits, use of risk ratings, actions taken when a customer's front end had no margin capabilities, annual reviews of customer accounts, whether information gathered during account opening was updated or reevaluated, scope of stress testing, and the efficacy of the RMP.

These misstatements and omissions are material. The Commission relies upon the accuracy of an FCM's RMP manual, Risk Manual and CCO Report to assess compliance with Regulations 1.11 and 3.3, and to determine the scope of surveillance. The submission to the Commission of manuals and CCO report that did not reflect Advantage's actual practices was misleading and undermined the Commission's efforts to assure compliance with the Act and Regulations and mitigate risk in the clearing process. Accordingly, Advantage violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012).

**E. Vicarious Liability**

Guinan controlled Advantage, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Advantage's acts in violation of the Act and Regulations; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Guinan is liable for Advantage's violations of Regulation 166.3, 17 C.F.R. § 166.3 (2014).

During the relevant period, Steele controlled Advantage, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Advantage's acts in violation of the Act and Regulations; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Steele is liable for Advantage's violations of Regulation 1.11(e)(4), 17 C.F.R. § 1.11(e)(4) (2015).

The foregoing acts, omissions, and failures of Advantage's employees occurred within the scope of their employment, office, or agency with Advantage; therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. §2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2015), Advantage is liable for those acts, omissions, and failures in violation of Sections 6(c)(2) of the Commodity Exchange Act, 7 U.S.C. § 9(2) (2012) and Regulations 1.11(c), (e), 1.73(a), and 166.3, 17 C.F.R. §§ 1.11(c), (e), 1.73(a), and 166.3 (2015).

## V.

### FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Advantage violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012), and Regulations 1.11(e), 1.73(a), and 166.3, 17 C.F.R. §§ 1.11(e), 1.73(a), and 166.3 (2015); Guinan violated Regulation 166.3, 17 C.F.R. § 166.3 (2015); and Steele violated Regulation 1.11(e)(4), 17 C.F.R. § 1.11(e)(4) (2015).

## VI.

### OFFER OF SETTLEMENT

Respondents have submitted an Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waive:
  - 1. The filing and service of a complaint and notice of hearing;
  - 2. A hearing;
  - 3. All post-hearing procedures;
  - 4. Judicial review by any court;
  - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
  - 6. Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2015), relating to, or arising from, this proceeding;

7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
  8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Advantage violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2014), and Regulations 1.11(c), (e), 1.73(a), and 166.3, 17 C.F.R. §§ 1.11(c), (e), 1.73(a), and 166.3 (2014); Guinan violated Regulation 166.3, 17 C.F.R. § 166.3 (2015); and Steele violated Regulation 1.11(e)(4), 17 C.F.R. § 1.11(e)(4) (2015).
  2. Orders:
    - a. Advantage to cease and desist from violating Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012), and Regulations 1.11(c), (e), 1.73(a), and 166.3, 17 C.F.R. §§ 1.11(c), (e), 1.73(a), and 166.3 (2015);
    - b. Guinan to cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2015); and
    - c. Steele to cease and desist from violating Regulation 1.11(e)(4), 17 C.F.R. § 1.11(e)(4) (2015).
  3. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of \$1,500,000, plus post-judgment interest;
  4. Orders Respondents and Advantage's successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

**VII.**  
**ORDER**

**Accordingly, IT IS HEREBY ORDERED THAT:**

- A. Advantage shall cease and desist from violating Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012), and Regulations 1.11(c), (e), 1.73(a), and 166.3, 17 C.F.R. §§ 1.11(c), (e), 1.73(a), and 166.3 (2015).
- B. Guinan shall cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2015).
- C. Steele shall cease and desist from violating Regulation 1.11(e)(4), 17 C.F.R. § 1.11(e)(4) (2015).
- D. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of one million and five hundred thousand dollars (\$1,500,000) (“CMP Obligation”), plus post judgment interest, within thirty (30) days of the date of entry of this Order. If the CMP Obligation is not paid in full within thirty (30) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondents shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables  
DOT/FAA/MMAC/AMZ-341  
CFTC/CPSC/SEC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
(405) 954-7262 office  
(405) 954-1620 fax  
nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondents and the name and docket number of this proceeding. The paying Respondents shall simultaneously transmit copies of the cover letter and

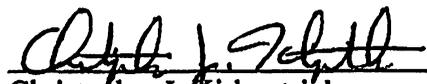
the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- E. Respondents and Advantage's successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements**: Respondents agree that neither they nor any of Advantage's successors or assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and Advantage's successors and assigns shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
  2. **Cooperation with the Commission**: Respondents shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto. As part of such cooperation, Respondents agree to: (1) respond promptly, completely, and truthfully to any inquiries or requests for information or assistance; (2) authenticate documents; and (3) testify completely and truthfully.
  3. Advantage will immediately undertake to implement strengthened procedures related to its Risk Management Program and Risk Department to prevent and detect violations of the Act and Regulations. Within thirty (30) days of the effective date of this Order, Advantage will hire a qualified third party ("Consultant") that is not unacceptable to the Commission and who is knowledgeable of the Act and Regulations, possesses strong risk management and internal control expertise, and has previously provided similar services to FCMs. The Consultant shall review and assess Advantage's policies, procedures, operations, and manuals, and make recommendations regarding "best practices" in Advantage's control processes and procedures, supervision and compliance programs to prevent future violations of the Act and Regulations, and assist Advantage in reviewing and updating its current procedures as necessary to fully comply with the Act and Regulations. Within ninety (90) days thereafter, the Consultant will submit to Commission staff the procedures it has recommended at that time and Advantage will submit an affidavit that the procedures have been implemented. The Consultant shall conduct an audit of Advantage in accordance with AICPA SSAE 16 and include testing to ensure such operations and procedures are operating as designed one hundred and eighty (180) days after the effective date of this Order and the Consultant shall provide a copy of its report to Commission staff.

- F. **Partial Satisfaction:** Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
- G. **Change of Address/Phone:** Until such time as Respondents satisfy in full their CMP Obligation as set forth in this Consent Order, Respondents shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

**The provisions of this Order shall be effective as of this date.**

By the Commission.



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Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: September 21, 2016