

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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11:09 am, Sep 05, 2017

In the Matter of:

W Resources, LLC,

Respondent.

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) **CFTC Docket No. 17-24**
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

I.

INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about October 2013 to the present (the “Relevant Period”), W Resources, LLC (“W Resources” or “Respondent”), violated Section 4m(1) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6m(1) (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ Respondent consents to the use of these findings and conclusions in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof.

Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a

II.
FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, W Resources operated W North Fund LLC, W North Fund II LLP, and W North Fund III LLP (the “W North Funds”) as commodity pools, without being registered as a commodity pool operator (“CPO”). Accordingly, W Resources’ failure to be registered as a CPO during the Relevant Period violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

B. RESPONDENT

W Resources, LLC is a Texas limited liability company located in Dallas, Texas. During the Relevant Period, W Resources was the CPO of the W North Funds. W Resources has never been registered as a CPO, has never notified the National Futures Association that it is exempt from registration, and never sought no-action relief from the Commission.

C. FACTS

During the Relevant Period, W Resources operated the W North Funds to purchase oil and gas assets and to hedge the exposure related to certain of those oil assets with the purchase of commodity interests. Specifically, making use of the wires and mails, W Resources solicited, accepted and/or received funds from investors on behalf of the W North Funds to purchase oil and gas assets, including non-operated working interests in oil drilling wells, and to trade commodity options to hedge its resulting financial exposure.

In order to hedge the W North Funds’ financial exposure related to anticipated future oil production volumes realized from the drilling wells, W Resources engaged in the business of trading commodity interests. Namely, W Resources traded crude oil options on futures contracts on the New York Mercantile Exchange.

W Resources is therefore acting as a CPO as defined by Section 1a(11) of the Act, 7 U.S.C. § 1a(11) (2012). Because W Resources is not registered with the Commission as a CPO and because it has made use of the mails or any means or instrumentality of interstate commerce in connection with its business, it is in violation of Section 4m(1) of the Act.

party, other than a: statutory disqualification proceeding; proceeding in bankruptcy, or receivership; or proceeding to enforce the terms of this Order.

Also, Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

III.

LEGAL DISCUSSION

A. W Resources Violated Section 4m(1) of the Act

In 1974, Congress amended the Act to establish “a more ‘comprehensive regulatory structure to oversee the volatile and esoteric futures trading complex.’” *CFTC v. Schor*, 478 U.S. 833, 836 (1986) (quoting H.R. Rep. No. 93-975, at 1 (1974)). “Registration is the kingpin in ...[the Commission’s] statutory machinery, giving the Commission the information about participants in commodity trading which it so vitally requires to carry out its other statutory functions of monitoring and enforcing the Act.” *Flaxman v. CFTC*, 697 F.2d 782, 787 (7th Cir. 1983) (quoting *CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 139-40 (2d Cir. 1977)).

Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), makes it unlawful for a person to act as a CPO, and use the mails or any instrumentality of interstate commerce in connection with one’s business as a CPO, without being registered with the Commission as such, subject to certain exceptions and exemptions. The registration requirement does not contain a “state of mind” limitation to liability. *CFTC v. Wilson*, 19 F. Supp. 3d 352, 360 (D. Mass. 2014), *aff’d*, 812 F.3d 98 (1st Cir. 2016). “While fraud or misconduct may also be violations of the Act . . . violations of § 6m alone are sufficient” to warrant relief. *British Am. Commodity Options Corp.*, 560 F.2d at 142.

As set forth above, W Resources used the mails or any instrumentality of interstate commerce in connection with its operation of the W North Funds as a commodity pool from approximately October 2013 to the present, without being registered as a CPO and thus violated Section 4m(1) of the Act.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, W Resources violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

V.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;

- B. Admits 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. Waives:
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 it 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. pt. 148 (2017), relating to, or arising from, this proceeding;
 7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-74 (codified as amended in scattered sections of 5 U.S.C. and 15 U.S.C.), 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. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondent violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012);
 2. Orders Respondent to cease and desist from violating Section 4m(1) of the Act;
 3. Orders Respondent to pay a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000), plus post-judgment interest, within thirty (30) days of the date of entry of this Order; and
 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

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

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).
- B. Respondent shall pay a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000) (“CMP Obligation”), plus post-judgment interest, within thirty (30) days of the date of the 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).

Respondent 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, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent 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.

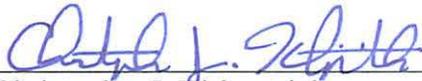
- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
 1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or

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 Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

2. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its 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.
3. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.
4. Undertakings: Respondent will undertake to carry to expiration any position in commodity interests existing on the date of this Order, and will not transact in any other commodity interests, until and unless it registers with the Commission, notifies the National Futures Association of an applicable exemption from registration, or otherwise seeks and receives no-action relief from the Commission.

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

By the Commission.



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

Dated: September 5, 2017