

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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4:11 pm, Sep 30, 2024

In the Matter of:

Tradition SEF LLC,

Respondent.

CFTC Docket No. 24-41

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6b OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that between at least May 2018 through December 2023 (“System Safeguards Relevant Period”), Tradition SEF LLC (“TSEF” or “Respondent”) violated Section 5h(f)(14) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 7b-3(f)(14), and Commission Regulations (“Regulations”) 37.1400 and 37.1401(a)(1), (a)(3), (b), (c), (h), and (l); 17 C.F.R. §§ 37.1400, 37.1401(a)(1), (a)(3), (b), (c), (h), (l) (2023). The Commission also has reason to believe that between at least September 2022 to December 2022 (“Reporting Relevant Period”), TSEF violated Section 5h(f)(10)(A)(ii) of the Act, 7 U.S.C. § 7b-3(f)(10)(A)(ii), and Regulations 1.31(d), 37.5(a), 37.1000(a)(2), and 37.1401(g); 17 C.F.R. §§ 1.31(d), 37.5(a), 37.1000(a)(2), 37.1401(g) (2023). 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. TSEF admits the facts set forth in Section II below, acknowledges that its conduct violated the Act and its Regulations, consents to the entry of this Order Instituting Proceedings Pursuant to Section 6b of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.¹

¹ Respondent agrees to the use of the findings of fact and conclusions of law 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, including but not limited to, a proceeding in bankruptcy or receivership, 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

II. FINDINGS

The Commission finds the following:

A. SUMMARY

TSEF is a Swap Execution Facility (“SEF”). As a SEF, TSEF must comply with SEF Core Principle 14, which imposes, among other things, requirements relating to the reliability, security, and adequacy of its system safeguards. *See* Section 5h(f)(14) of the Act, 7 U.S.C. § 7b-3(f)(14), and Regulations 37.1400 and 37.1401, 17 C.F.R. §§ 37.1400, 37.1401 (2023).

“Adequate system safeguards and timely notice to the Commission regarding the status of those safeguards are crucial to mitigation of potential systemic risks.” Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33476, 33582 (June 4, 2013). Additionally, a

SEF that has system safeguard policies and procedures in place, including the timely remediation of vulnerabilities and deficiencies in light of appropriate risk analysis, will promote overall market confidence and could lead to greater market efficiency, competitiveness, and perceptions of financial integrity. Safeguarding the reliability, security, and capacity of . . . SEF . . . computer systems is essential to mitigation of systemic risk for the nation’s financial sector as a whole.

System Safeguards Testing Requirements, 81 Fed. Reg. 64272, 64308 (Sept. 19, 2016).

During the System Safeguards Relevant Period, TSEF failed to comply with certain aspects of Section 5h(f)(14) of the Act and Regulations 37.1400 and 37.1401, which require SEFs to establish and maintain adequate system safeguards. Among other things, TSEF failed to adequately brief its Board of Directors on testing and assessment results, periodically test its business continuity-disaster recovery (“BCDR”) plan, and have an adequate enterprise risk management program in that it lacked certain finalized policies to address operational and third-party risk.

As a SEF, TSEF is also required to comply with certain reporting requirements, which among other things, requires SEFs to respond “promptly” to information requests from the CFTC’s Division of Market Oversight (“DMO”). *See* Section 5h(f)(10) of the Act, 7 U.S.C. § 7b-3(f)(10), and Regulations 1.31(d), 37.5(a), 37.1000(a)(2), and 37.1401(g), 17 C.F.R. §§ 1.31(d), 37.5(a), 37.1000(a)(2), 37.1401(g) (2023). On August 4, 2022, DMO initiated a routine System Safeguards Exam (“SSE”) of TSEF and issued a final report on March 28, 2023. During that exam, TSEF repeatedly failed to produce in a timely fashion certain of the documents and information DMO requested. As a result, during the Reporting Relevant Period,

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

TSEF violated Section 5h(f)(10) of the Act and Regulations 1.31(d), 37.5(a), 37.1000(a)(2), and 37.1401(g).

B. RESPONDENT

Tradition SEF, LLC, f/k/a Tradition SEF, Inc., is a Delaware limited liability company with its principal place of business in New York, NY. TSEF has been a registered SEF since January 22, 2016. TSEF is a wholly-owned subsidiary of Tradition America Holdings, Inc.

C. FACTS

1. TSEF’s Failure to Comply with Systems Safeguards Requirements

During the System Safeguards Relevant Period, TSEF failed to comply with certain aspects of the system safeguards requirements contained in Section 5h(f)(14) of the Act and Regulations 37.1400 and 37.1401, including by (1) failing to adequately brief the Board of Directors on certain testing and assessment results; (2) failing to periodically test its BCDR program; and (3) failing to have an adequate enterprise risk management (“ERM”) program, as it lacked certain finalized policies to address operational and third-party risk.

Between February 2018 and May 2022, TSEF failed to adequately brief its Board of Directors with reports on the results of testing and assessments required by Regulation 37.1401. Specifically, TSEF did not adequately brief the Board on the results of certain BCDR, technical risk, and penetration testing and assessments. Although TSEF management provided some test results to individual Directors, Board meeting minutes do not indicate that TSEF presented the Board with results of all required testing and assessments.

At times between May 2018 and October 2023, TSEF failed to maintain an adequate BCDR program. Specifically, TSEF did not conduct regular, periodic testing and review of its BCDR capabilities.

Additionally, during the System Safeguard Relevant Period, TSEF failed to have an adequate ERM program. TSEF’s ERM program lacked maturity and did not demonstrate a sufficiently integrated approach to risk management. In particular, TSEF lacked certain finalized, written policies that adequately addressed operational or third-party risk or defined organizational risk tolerance and appetite

2. TSEF’s Failure to Produce Records in a Timely Fashion During the SSE

On August 4, 2022, in connection with a routine SSE of TSEF, DMO requested that TSEF produce certain, routine categories of documents and information related to TSEF’s compliance with the system safeguards requirements of the Act and Regulations. Despite being granted multiple extensions of time, TSEF failed to produce certain of the requested records in a timely fashion. TSEF also failed to produce all requested records by the time of DMO’s interviews of TSEF personnel in November 2022. In fact, TSEF did not fully comply with the records request until after the completion of the SSE.

III. LEGAL DISCUSSION

A. TSEF's Failure to Maintain an Adequate Program of Risk Analysis and Oversight in Violation of Section 5h(f)(14) of the Act and Regulation 37.1400

Section 5h(f)(14) of the Act, 7 U.S.C. § 7b-3(f)(14), provides that a SEF shall:

(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that—(i) are reliable and secure; and (ii) have adequate scalable capacity; [and]

....

(C) periodically conduct tests to verify that the backup resources of the swap execution facility are sufficient to ensure continued—(i) order processing and trade matching; (ii) price reporting; (iii) market surveillance; and (iv) maintenance of a comprehensive and accurate audit trail.

As a condition to registration, SEFs must also comply with Regulation 37.1400, 17 C.F.R. § 37.1400 (2023), which contains identical requirements to Section 5h(f)(14) of the Act.

As set forth above, Respondent failed to establish and maintain an adequate program of risk analysis and oversight to identify and minimize sources of operational risk, and failed to periodically conduct tests to verify that its backup resources were sufficient. By this conduct, TSEF violated Section 5h(f)(14) of the Act and Regulation 37.1400.

B. TSEF's Failure to Adequately Brief the Board of Directors in Violation of Regulation 37.1401(I)

Regulation 37.1401(I), 17 C.F.R. § 37.1401(I) (2023), provides that “[b]oth the senior management and the Board of Directors of a swap execution facility shall receive and review reports setting forth the results of the testing and assessment required by this section.” As set forth above, TSEF failed to provide its Board of Directors with reports setting forth the results of certain BCDR, technical risk, and penetration testing and assessments, which are required by Regulation 37.1401. By this conduct, TSEF violated Regulation 37.1401(I).

C. TSEF's Failure to Maintain an Adequate Business Continuity-Disaster Recovery Program in Violation of Regulation 37.1401(a)(3), (c), and (h)

Regulation 37.1401(a)(3) 17 C.F.R. § 1401(a)(3) (2023), provides that “[a] swap execution facility’s program of risk analysis and oversight with respect to its operations and automated systems shall address . . . [b]usiness continuity-disaster recovery planning and resources.” This includes, but is not limited to:

Regular, periodic testing and review of business continuity-disaster recovery capabilities, the controls and capabilities described in paragraph (c), (d), (j), and (k) of this section; and any other elements of business continuity-disaster recovery

planning and resources included in generally accepted best practices.

Id.

Regulation § 37.1401(c), 17 C.F.R. § 37.1401(c) (2023), provides that a SEF “shall update its business continuity-disaster recovery plan and emergency procedures at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually.”

Regulation 37.1401(h), 17 C.F.R. § 37.1401(h) (2023), provides that a SEF “shall conduct regular, periodic, objective testing and review of its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity. It shall also conduct regular, periodic testing and review of its business continuity-disaster recovery capabilities.”

As set forth above, TSEF did not appropriately conduct regular, periodic testing and review of its BCDR capabilities. By this conduct, TSEF violated Regulation 37.1401(a)(3), (c) and (h).

D. TSEF’s Failure to Maintain an Adequate Enterprise Risk Management and Governance Program in Violation of Regulation 37.1401(a)(1) and (b)

Regulation 37.1401(a)(1), 17 C.F.R. § 1401(a)(1) (2023), provides that “[a] swap execution facility’s program of risk analysis and oversight with respect to its operations and automated systems shall address . . . [e]nterprise risk management and governance.” This includes, but is not limited to:

Assessment, mitigation, and monitoring of security and technology risk; security and technology capital planning and investment; board of directors and management oversight of technology and security; information technology audit and controls assessments; remediation of deficiencies; and any other elements of enterprise risk management and governance included in generally accepted best practices.

Id.

Regulation 37.1401(b), 17 C.F.R. § 37.1401(b) (2023), provides that, “[i]n addressing the categories of risk analysis and oversight [described in § 37.1401(a)], a swap execution facility shall follow generally accepted standards and best practices with respect to the development, operation, reliability, security, and capacity of automated systems.”

As set forth above, during the System Safeguards Relevant Period, TSEF did not have certain finalized, written policies that adequately addressed operational or third-party risk or that defined organizational risk tolerance and appetite. Accordingly, TSEF did not maintain an adequate ERM program consistent with generally accepted standards and best practices. By this conduct, TSEF violated Regulation 37.1401(a)(1) and (b).

E. TSEF’s Failure to Produce Promptly the Documents and Information DMO Requested During the SSE

Section 5h(f)(10)(A)(ii) of the Act, 7 U.S.C. § 7b-3(f)(10)(A)(ii), requires SEFs to “report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under [the] Act.” As a condition to registration, SEFs must also comply with Regulation 37.1000(a)(2), 17 C.F.R. § 37.1000(a)(2) (2023), which contains identical requirements to Section 5h(f)(1)(A)(ii) of the Act.

Regulation 1.31(d), 17 C.F.R. § 1.31(d) (2023), requires all Commission-registrants to produce regulatory records “promptly” upon request of a Commission representative.

Regulation 37.5(a), 17 C.F.R. § 37.5(a) (2023), provides that “[u]pon the Commission’s request, a swap execution facility shall file with the Commission a written demonstration, containing supporting data, information related to its business as a swap execution facility in the form and manner and within the time period as the Commission specifies in its request.”

Regulation 37.1401(g), 17 C.F.R. § 37.1401(g) (2023), requires a SEF to provide to the Commission certain system safeguards-related books and records, including any books and records requested by Commission staff in connection with Commission oversight of system safeguards, “promptly upon the request of any Commission representative.”

As set forth above, TSEF failed to provide promptly or within the time period specified by DMO the documents and information DMO requested during a routine SSE of TSEF. By this conduct, TSEF violated Section 5h(f)(10)(A)(ii) of the Act and Regulations 1.31(d), 37.5(a), 37.1000(a)(2), and 37.1401(g).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Reporting Relevant Period and System Safeguards Relevant Period, as applicable, TSEF violated Section 5h(f)(10)(A)(ii) and (14) of the Act, 7 U.S.C. § 7b-3(f)(10)(A)(ii), (14); and Regulations 1.31(d), 37.5(a), 37.1000(a)(2), 37.1400, and 37.1401(a)(1), (a)(3), (b), (c), (g), (h), and (I); 17 C.F.R. §§ 1.31(d), 37.5(a), 37.1000(a)(2), 37.1400, 37.1401(a)(1), (a)(3), (b), (c), (g), (h), (I) (2023).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it knowingly and voluntarily:

- A. Consents to the resolution of this matter in an administrative proceeding;
- B. Acknowledges service of this Order;
- C. Admits the facts described in Section II and acknowledges that its conduct violated the Act and Regulations.

- D. 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;
- E. Waives:
1. The filing and service of a complaint and notice of hearing;
 2. A hearing;
 3. All post-hearing procedures;
 4. Any and all rights or defenses that it has or might have for the matter to be adjudicated in a federal district court in the first instance, including any associated right to a jury trial;
 5. Judicial review by any court;
 6. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 7. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2023), relating to, or arising from, this proceeding;
 8. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 9. 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, including this Order;
- F. Agrees for purposes of the waiver of any and all rights under the Equal Access to Justice Act specified in Paragraph E.7 above, that it is not the prevailing party in this action;
- G. 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; and
- H. 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 5h(f)(10)(A)(ii) and (14) of the Act, 7 U.S.C. § 7b-3(f)(10)(A)(ii), (14); and Regulations 1.31(d), 37.5(a), 37.1000(a)(2), 37.1400, and 37.1401(a)(1), (a)(3),

(b), (c), (g), (h), and (I); 17 C.F.R. §§ 1.31(d), 37.5(a), 37.1000(a)(2), 37.1400, 37.1401(a)(1), (a)(3), (b), (c), (g), (h), (I);

2. Orders Respondent to cease and desist from violating Section 5h(f)(10)(A)(ii) and (14) of the Act; and Regulations 1.31(d), 37.5(a), 37.1000(a)(2), 37.1400, and 37.1401(a)(1), (a)(3), (b), (c), (g), (h), and (I);
3. Orders Respondent to pay a civil monetary penalty in the amount of eight hundred seventy-five thousand dollars (\$875,000), plus any post-judgment interest within ten (10) 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 and its successors and assigns, shall cease and desist from violating Section 5h(f)(10)(A)(ii) and (14) of the Act, 7 U.S.C. § 7b-3(f)(10)(A)(ii), (14); and Regulations 1.31(d), 37.5(a), 37.1000(a)(2), 37.1400, and 37.1401(a)(1), (a)(3), (b), (c), (g), (h), and (I); 17 C.F.R. §§ 1.31(d), 37.5(a), 37.1000(a)(2), 37.1400, 37.1401(a)(1), (a)(3), (b), (c), (g), (h), (I) (2023).
- B. Respondent shall pay a civil monetary penalty in the amount of eight hundred seventy-five thousand dollars (\$875,000) (“CMP Obligation”), within ten (10) days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the unpaid portion of 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.

Respondent shall pay the CMP Obligation and any post-judgment interest 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:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-amz-ar-cftc@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact the Federal Aviation Administration at the above email 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 Respondent and the name and docket number of this proceeding. 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.
 2. **Compliance:** 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.
 3. **Cooperation, in General:** Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.
 4. **Remediation:** Respondent represents and agrees that it has already undertaken corrective actions to resolve the items identified in the SSE Report and continues to do so in coordination with DMO, including related to the specific system safeguards violations at issue in the Order. To the extent it has not already done so, Respondent shall complete those remedial measures by no later than six (6) months from the date of the Order.
 5. **Certification:** Respondent's Chief Executive Officer and Chief Compliance Officer shall certify, in writing, that TSEF, to the best of its knowledge based upon reasonable inquiry, has complied with the remediation referenced above. The certification shall identify the remediation, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. Staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to the Directors of the

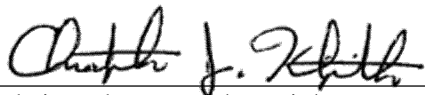
Division of Enforcement and the Division of Market Oversight no later than thirty (30) days from the date of TSEF's completion of all remedial measures.

6. 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.
7. 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.
8. Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondent's debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy, or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

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 30, 2024