

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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12:56 pm, Sep 01, 2020

In the Matter of

ESOM
a/k/a ESO MM LLC,

Respondent.

CFTC Docket No. **20-49**

**COMPLAINT AND NOTICE OF HEARING PURSUANT TO SECTION 6(d) OF THE
COMMODITY EXCHANGE ACT**

The Commodity Futures Trading Commission (“Commission”) has received information from its staff that tends to show, and the Commission’s Division of Enforcement (“Division”) alleges that:

**I.
SUMMARY**

1. Until February 2020 or later (the “relevant time”), ESOM (“Respondent”), which claimed to be the trade name for an entity named ESO MM LLC, operated a website with a URL address of www.esomfx.com (the “website”). On the website, Respondent claimed that it provided a trading platform for digital assets with margin accounts in a variety of assets, including precious metals, energy, and digital assets. Respondent further claimed that National Futures Association (NFA) regulations governed it, and prominently displayed on its website an NFA ID alongside the text “National Futures Association regulation—NFA” thus attempting to create a false perception of legitimacy in connection with soliciting customers. However, in truth, ESOM marketed itself by using the NFA ID of another unrelated entity that is registered. Accordingly, Respondent violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2018), and Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2019).

**II.
RESPONDENT**

2. ESOM is the trade name of an entity calling itself ESO MM LLC and claimed to be a registered licensed corporation of the Hong Kong Securities and Futures Commission. ESOM does not identify any physical address that it uses for its business, but represented on the website that the email address support@esomfx.com may be used in connection with its business.

**III.
FACTS**

3. On the website, Respondent claimed that it “mainly acts as a global commodity futures option and financial futures option product, and connects to the International Futures Exchange to provide futures commodity trading services to customers, including Hong Kong HKEX, Singapore SGX, Japan TOCOM, US CME, London LME, US ICE, Euro EUREX and Shanghai.”

4. ESOM displayed the text “National Futures Association regulation-NFA: 0466859” and the name “ESO MM LLC” next to its logo and name at the top of pages on its website.

5. In fact, this NFA ID is associated with a commodity pool operator registered with the Commission that does not operate ESOM or the esomfx.com website and is not being charged with any wrongdoing in this Complaint against Respondent.

**IV.
VIOLATIONS OF THE ACT AND COMMISSION REGULATIONS
(SECTION 6(c)(1) OF THE ACT AND COMMISSION REGULATION 180.1(a))**

6. Paragraphs 1 through 5 are realleged and incorporated herein by reference.

7. Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2018), makes it unlawful for any person, directly or indirectly, to “use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after [July 21, 2010, the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act]”

8. Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2019), in part, makes it unlawful “for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly: (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; [or] (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person”

9. Respondent violated Section 6(c)(1) of the Act and Commission Regulation 180.1(a) by intentionally or recklessly making false claims in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity of being regulated by NFA.

V.

By reason of the forgoing allegations, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute a public administrative proceeding to determine whether the allegations set forth in Part I, II, III, and IV above are true,

and if so, whether an appropriate order should be entered in accordance with Section 6(d) of the Act, 7 U.S.C. § 13b (2018), imposing the following sanctions:

A. Directing Respondent to cease and desist from violating the provisions of the Act and regulations set forth herein.

VI.

Upon consideration of the information received from its staff and of the allegations of the Division of Enforcement contained in paragraphs 1 through 9 above, the Commission finds and determines that:

(A) the issues framed by paragraphs 1 through 9 of the pleadings of this matter are clear, narrow and capable of speedy resolution;

(B) Respondent is alleged to have intentionally or recklessly made false or misleading statements regarding being regulated by the NFA in violation of Section 6(c)(1) of the Act and Section 180.1(a) of the Regulations;

(C) the public is entitled to be protected against persons who intentionally or recklessly make false and misleading statements in violation of the Act and the Regulations;

(D) Respondent and the public are entitled to a prompt decision on the question of whether Respondent intentionally or recklessly is making false or misleading statements; and

(E) this proceeding shall be conducted before a Presiding Officer other than an Administrative Law Judge.

WHEREAS the Commission has determined that no party to this proceeding will be prejudiced and that the ends of justice will be served by the adoption of expedited procedures in this matter, IT IS HEREBY ORDERED that a public hearing on the allegations contained in paragraphs 1 through 9 of this Complaint be held for the purpose of taking evidence on the question set forth in Section V above.

IT IS FURTHER ORDERED that in order to expedite this matter, pursuant to the Commission's Rule of Practice under the Act ("Rules") 10.3(b), 17 C.F.R. § 10.3(b) (2019), the Commission is waiving the following rules: (i) Rule 10.12(a)(2)(v), third sentence, and (a)(3), 17 C.F.R. § 10.12(a)(2)(v), third sentence, and (a)(3) (2019); (ii) Rule 10.22(b), 17 C.F.R. § 10.22(b)(second sentence); and (iii) Rule 10.92(a)(first sentence), 17 C.F.R. § 10.92(a)(first sentence), and implementing the following rules:

Rule regarding service by fax or email. Service by email shall be permitted to the email addresses as follows: (a) for the Division of Enforcement, service by email shall be permitted to the email address ktomer@cftc.gov or doakland@cftc.gov; (b) for Respondent, service by email shall be permitted to the email addresses used by Respondent to conduct business as reflected in the website at URL esomfx.com, including but not limited to support@esomfx.com; and (c) for both parties, service by fax or email shall be permitted to any number or address that Respondent identifies to the other party as the preferred number or address. All documents served by email must be in PDF or other non-alterable form.

Rule regarding service of the complaint and notice of hearing. Service by the Proceedings Clerk may be made in person, by confirmed telegraphic notice, by registered mail or certified mail, addressed to the last known business or residence address of the person to be served or the address of his duly authorized agent for service, by fax to any number identified by Respondent, or by email to any email address used by Respondent to conduct business as reflected in the website at the URL address esomfx.com, including but not limited to support@esomfx.com. If none of the methods result in delivery of the complaint and notice of hearing, the Division may apply to the Presiding Officer for an order directing service by publishing the complaint in a newspaper or periodical likely to be accessible by Respondent, or if

no such periodical is identifiable, by publishing the complaint and notice of hearing in the Federal Register and on the Commission's website.

Rule regarding shortened procedures. In lieu of a full oral hearing, the Presiding Officer shall order a shortened procedure as to the submission of direct evidence unless a party otherwise moves and the Presiding Officer finds that a shortened procedure will not adequately protect the rights of the parties and the public interest.

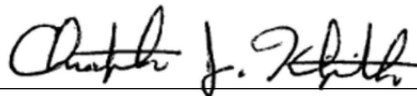
IT IS FURTHER ORDERED that, pursuant to Rule 10.8, 17 C.F.R. § 10.8 (2019), this proceeding shall be conducted before the Commission Judgment Officer, as the Presiding Officer, and all provisions of the Rules or of Part 3 of the Commission Regulations that refer to and grant authority to or impose obligations upon an Administrative Law Judge shall be read as referring to and granting authority to and imposing obligations upon the Commission Judgment Officer as the designated Presiding Officer;

IT IS FURTHER ORDERED that a public hearing for the purpose of taking evidence on the allegations set forth in Sections I to IV above be held before the Presiding Officer in accordance with the Rules, 17 C.F.R. §§ 10.1-10.107 (2019), except as where specifically ordered herein or by the Presiding Officer pursuant to the Rules, at a time and place to set as provided by Section 10.61 or 10.92 of the Rules, 17 C.F.R. §§ 10.61, 10.92 (2019), and that all post hearing procedures shall be conducted pursuant to Section 10.81 through 10.107 of the Rules, 17 C.F.R. §§ 10.81-10.107 (2019).

IT IS FURTHER ORDERED that the Respondent shall serve and file an Answer to the allegations made against such respondent in paragraphs 1 through 9 of this complaint within twenty (20) days after service, pursuant to Section 10.23 of the Rules, 17 C.F.R. § 10.23 (2019), and pursuant to Section 10.12(a) of the Rules, 17 C.F.R. § 10.12(a) (2019), and shall

serve two copies of such Answer and any documents filed in this proceeding upon David Oakland, Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, New York 10005, doakland@cftc.gov. If the respondent fails to file the required Answer or fails to appear at a hearing after being duly notified, such party shall be deemed in default and the proceeding may be determined against the respondent upon consideration of the Complaint, the allegations of which may be deemed true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served on respondent personally or by registered or certified mail, pursuant to Section 10.22 of the Commission Rule, 17 C.F.R. § 10.22 (2019), or by fax or e-mail or other means as ordered herein. In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the investigative or prosecutorial function in this or any factually related proceedings will be permitted to participate or advise in the decision upon this matter except as witness or counsel in proceedings held pursuant to notice.



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

Dated: September 1, 2020