

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Mitchell failed to register as a commodity trading advisor (“CTA”) despite holding himself out as a CTA and furnishing commodity trading advice to more than fifteen persons in violation of Section 4m(l) of the Act, 7 U.S.C. § 6m(l) (2018).

B. RESPONDENT

Respondent is Michigan resident and was previously registered with the Commission as an Associated Person (“AP”). Mitchell also was an associate member and held principal status at the National Futures Association (“NFA”). Mitchell is not currently registered with the Commission in any capacity.

C. FACTS

During the Relevant Period, Mitchell, using the mails or any means or instrumentality of interstate commerce, engaged in the business of directing client commodity trading accounts at a registered futures commission merchant. Mitchell held himself out to friends and acquaintances as an experienced and licensed commodities trader and helped clients to establish their own commodity trading accounts.

In a recorded telephone call with an introducing broker (“IB”), Mitchell explained that in order to avoid registering as a CTA, he used two friends’ names for powers of attorney on customer accounts. Although the customer account documents would have these friends’ names on them as authorized traders and not Mitchell’s, Mitchell explained he would actually be handling all communications, directing the trading, and working with the clients. Mitchell explained that he had been using this scheme for some time at a different IB, and he wanted to be up-front before bringing over his business to this IB’s firm. At the time of the call, Mitchell was subject to a temporary two-year bar from NFA associate membership and a two-year bar from holding principal status.² During the Relevant Period, Mitchell directed the commodity futures trading, generally e-mini futures contracts, in over twenty client accounts and was not registered as a CTA.

III. LEGAL DISCUSSION

The Act’s registration requirements for commodity professionals are the cornerstone of the regulatory framework enacted by Congress to protect the public. “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.

² *In the Matter of Ethan Mitchell, LLC and Brian Mitchell*, Case No. 17-BCC-07, (Nat’l Futures Ass’n Nov. 9, 2017).

1977), *cert. denied*, 438 U.S. 905 (1978)). Failure to register with the Commission is a serious offense, and not a mere technical violation of the Act. *See British Am. Commodity Options Corp.*, 560 F.2d at 139-40; *see also CFTC v. Hall*, 49 F. Supp. 3d 444 (M.D.N.C. 2014) (failure to register as CTA, together with disclosure violations, supported lifetime trading ban and \$210,000 civil monetary penalty), *aff'd*, 632 F. App'x. 111 (4th Cir. 2015).

Section 1a(12)(A)(i) of the Act, 7 U.S.C. § 1a(12)(i) (2018), defines a CTA as a person who for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media as to the value of or advisability of trading in, *inter alia*, commodity futures, commodity options, swaps, and retail forex transactions. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), requires CTAs, who use the mails or any means or instrumentality of interstate commerce in their business as a CTA, to register with the Commission unless the CTA, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and does not hold himself out generally to the public as a CTA, and other exclusions not relevant here.

During the Relevant Period, Mitchell acted as a CTA because, for compensation or profit, he engaged in the business of advising others as to the value of or advisability of trading commodity futures contracts. Mitchell was required to register as a CTA under Section 4m(1) of the Act because he made use of the mails or means or instrumentality of interstate commerce, such as emails and text messages, in connection with his business as a CTA. Mitchell was required to register as a CTA because he held himself out generally to the public as a CTA. In addition, Mitchell was required to be registered because, during the course of the preceding twelve months, he furnished commodity trading advice to more than 15 persons. Mitchell was aware he needed to be registered as a CTA and created the scheme described above to avoid registration because he was subject to a registration ban. Further, Mitchell's commodity futures trading advice was not solely incidental to his business; it was the sole purpose. Thus, Mitchell violated Section 4m(1) of the Act by acting as an unregistered CTA.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2018).

V. OFFER OF SETTLEMENT

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

- A. Acknowledges 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 he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018), and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2020), relating to, or arising from, this proceeding; and
 7. Any and all claims that he 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.
 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, including this Order;
- 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; and
- 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(l) of the Act, 7 U.S.C. § 6m(1)(2018);
 2. Orders Respondent to cease and desist from violating Section 4m(l) of the Act, 7 U.S.C. § 6m(1)(2018);
 3. Orders that Respondent be prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018)), for a period of three years after the date of entry of this Order, and all registered entities shall refuse him trading privileges during that period;
 4. Orders Respondent to pay a civil monetary penalty in the amount of one-hundred fifty thousand dollars (\$150,000), plus any post-judgment interest; and
 5. Orders Respondent and his 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(l) of the Act, 7 U.S.C. § 6m(l) (2018).
- B. Respondent shall pay a civil monetary penalty in the amount of one-hundred fifty thousand dollars (\$150,000) (“CMP Obligation”) within thirty days of the date of the entry of this Order. If the CMP Obligation is not paid in full within thirty 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 (2018).

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
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne 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 is prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018)), for a period of three years after the date of entry of this Order, and all registered entities shall refuse him trading privileges during that period;

D. Respondent and his successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. **Public Statements:** Respondent agrees that neither he nor any of his successors and assigns, agents or employees under his 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 his successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents and/or employees under his 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 his 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. For a period of three years after the date of entry of this Order, Respondent agrees that he shall not, directly or indirectly:
 - a. Enter into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2020)), for his own personal account or for any account in which he has a direct or indirect interest;
 - b. Have any commodity interests traded on his behalf;
 - c. Control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
 - d. Solicit, receive or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
 - e. Apply for registration or claim exemption from registration with the Commission in any capacity, and engage in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2020); and
 - f. Act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2020)), agent or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(38) (2018)),

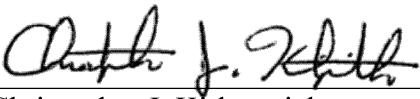
registered, exempted from registration or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9) (2020).

4. Change of Address/Phone: Until such time as Respondent satisfies in full his CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten calendar days of the change.
5. Until such time as Respondent satisfies in full his 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
Legal Division
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
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 22, 2021