

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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3:30 pm, Sep 26, 2022

In the Matter of:

Asset Risk Management, LLC,

Respondent.

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) **CFTC Docket No. 22-36**
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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 September 2017 to the present (“Relevant Period”), Asset Risk Management, LLC (“Respondent”) violated Section 5h(a)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 7b-3(a)(1), and Commission Regulation (“Regulation”) 37.3(a)(1), 17 C.F.R. § 37.3(a)(1) (2021). 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 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, 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 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.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Respondent operated an unregistered swap execution facility (“SEF”) that provided clients the ability to execute swaps by accepting bids and offers made by multiple participants on a trading system or platform in various swap tenors and volumes.

B. RESPONDENT(S)

Asset Risk Management, LLC (“ARM”) is a limited liability company organized under the laws of Delaware in 2011 with a U.S. headquarters in Houston, Texas. ARM has been registered with the Commission as a Commodity Trading Advisor since 2013.

C. FACTS

ARM is a Commodity Trading Advisor that specializes in advising oil and natural gas producers. During the Relevant Period, to assist its clients in mitigating commodity price risks in the energy distribution, transportation, and commercial industries, ARM often recommended that clients execute swap transactions in which the underlying commodity was natural gas, natural gas liquids, or crude oil. The types of swaps commonly recommended by ARM included fixed-for-float energy swaps, locational basis swaps, calendar spreads, trade differentials, quality differentials, options, and swaptions.

ARM marketed its services through face-to-face meetings with clients and potential clients. When onboarding clients, ARM provided a list of potential swap counterparties with whom ARM had a relationship. If a client expressed interest, ARM would also introduce clients to counterparties so they could enter into enabling agreements, such as an International Swaps and Derivatives Association master agreement (“ISDA”), to allow them to enter into swap transactions with each other.

From time to time during the Relevant Period, ARM provided additional services to clients to facilitate, negotiate, and ultimately execute swaps with counterparties. In a typical swap transaction, ARM received a request for swap pricing from a client and then submitted the pricing request (and sometimes other terms) to counterparties with whom the relevant client had in place an ISDA agreement. In certain circumstances, a client would ask that ARM obtain pricing from a specific potential counterparty. In other circumstances, ARM would approach multiple or all counterparties with whom the client has an ISDA in place. After potential swap counterparties responded to ARM with a proposed price, ARM would take one of two steps. If the client had provided ARM with the authority to do so, ARM would approve or reject a price based on the client’s pre-approved threshold, including by communicating “done” via chat or email, thus executing the swaps. ARM would then separately confirm the swap execution with the client. Alternatively, if ARM did not have authority to execute the swap on behalf of the client, ARM would typically join the client on a phone call with the relevant counterparty, during which ARM’s client would agree to the terms.

As of Spring 2022, ARM provided facilitated swap transactions for approximately 70 clients and worked with 20 to 30 swap counterparties. In all these communications with clients and counterparties, ARM’s personnel used various means of interstate commerce including instant messaging, phone, and email.

III. LEGAL DISCUSSION

A. Section 5h(a)(1) of the Act and Regulation 37.3 Require SEF Registration

Section 5h(a)(1) of the Act prohibits any person from operating a “facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market [“DCM”]” 7 U.S.C. § 7b-3(a)(1). Regulation 37.3(a)(1) similarly requires any “person operating a facility that offers a trading system or platform in which more than one market participant has the ability to execute or trade swaps with more than one other market participant on the system or platform” to register as a SEF or DCM. 17 C.F.R. § 37.3(a)(1) (2021). Section 1a(47) of the Act defines “swap” to include energy swaps, which were products that clients of ARM could transact. 7 U.S.C. § 1a(47)(A)(iii). Whether a particular entity falls within the scope of 5h(a)(1) depends on all of the relevant facts and circumstances of the entity’s operation.²

B. The SEF Registration Requirement Applies to Multiple-to-Multiple Platforms

Section 1a(50) of the Act, 7 U.S.C. § 1a(50), defines a SEF as:

[A] trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

(A) Facilitates the execution of swaps between persons; and (B) is not a designated contract market.

A trading system or platform meets the multiple-to-multiple prong of the SEF definition³ if multiple participants have the “*ability to execute or trade swaps*” with multiple participants. *Id.* (emphasis added). Thus, a trading system or platform may be required to register as a SEF even where: (i) multiple participants cannot simultaneously request, make, or accept bids and offers from multiple participants; or (ii) multiple participants can initiate a one-to-many communication. *See* Staff Advisory on Swap Execution Facility Registration Requirement, CFTC Letter No. 21-19 (Sept. 29, 2021) (“2021 Staff Advisory”). For example, a one-to-many system or platform on which the sponsoring entity is the counterparty to all swap contracts

² *See* Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33482 (June 4, 2013) (“2013 Final Rule”).

³ The portion of the SEF statutory definition that states “in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system” is commonly referred to as the “multiple-to-multiple prong.”

executed through the system or platform, and thus the provision of liquidity is limited to a single liquidity provider (*i.e.*, the sponsoring entity), does not provide the ability for participants to conduct multiple-to-multiple execution or trading. 2013 Final Rule at 33482. In contrast, a one-to-many system or platform like a request for quote (“RFQ”) system—where a single requestor initiates for each transaction a one-to-many communication by submitting an RFQ to multiple participants—will satisfy the multiple-to-multiple prong if more than one participant is able to submit an RFQ on the platform. *Id.* at 33497–98; 2021 Staff Advisory.

During the Relevant Period, ARM facilitated, negotiated, and executed swaps between and among approximately 70 clients and a group of 20 to 30 swap counterparties. ARM’s services included: (i) obtaining requests for swap pricing from clients; (ii) transmitting those requests to multiple swap counterparties; (iii) where authorized, approving or rejecting counterparty pricing, including by communicating “done,” thus executing the swaps; and (iv) subsequently confirming the swap execution with the client. In certain cases, after obtaining pricing requests from clients and pricing offers from counterparties, ARM also joined the client and counterparty on a phone call during which they agreed to the terms. In all these communications with clients and counterparties, ARM’s personnel used various means of interstate commerce including instant messaging, phone, and email.⁴

C. ARM Violated Section 5h(a)(1) of the Act and Regulation 37.3

During the Relevant Period, ARM operated a multiple-to-multiple trading system or platform designed to facilitate the execution of swaps. However, ARM did not register the platform as a SEF or DCM. Accordingly, ARM violated Section 5h(a)(1) of the Act and Regulation 37.3(a)(1).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, the Respondent violated Section 5h(a)(1) of the Act, 7 U.S.C. § 7b-3(a)(1), and Regulation 37.3(a)(1), 17 C.F.R. § 37.3(a)(1) (2021).

V. OFFER OF SETTLEMENT

Respondent has submitted an Offer in which it, 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;

⁴ Section 1a(50) of the Act; *see also* 2013 Final Rule at 33501–02 (noting that a SEF may for purposes of execution and communication use ‘any means of interstate commerce,’ including, but not limited to, the mail, internet, email, telephone, instant messaging, squawk box, or some combination thereof).

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, 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 (2021), 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, 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
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 5h(a)(1) of the Act, 7 U.S.C. § 7b-3(a)(1), and Regulation 37.3(a)(1), 17 C.F.R. § 37.3(a)(1) (2021);
2. Orders Respondent to cease and desist from violating Section 5h(a)(1) of the Act and Regulation 37.3(a)(1);
3. Orders Respondent to pay a civil monetary penalty in the amount of two-hundred thousand dollars (\$200,000), plus post-judgment interest; and

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 5h(a)(1) of the Act, 7 U.S.C. § 7b-3(a)(1), and Regulation 37.3(a)(1), 17 C.F.R. § 37.3(a)(1) (2021).
- B. Respondent shall pay a civil monetary penalty in the amount of two-hundred thousand dollars (\$200,000) (“CMP Obligation”), within ten 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 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-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Tonia King 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.

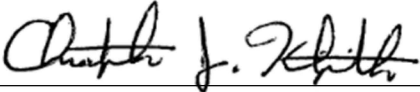
- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
 1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or 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 the Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.

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 26, 2022