

**UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION**

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2:19 pm, Sep 14, 2018

In the Matter of:

Mobius Risk Group LLC,

Respondent.

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) **CFTC Docket No. 18-28**
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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 of 2012 to August 15, 2018 (“Relevant Period”), Mobius Risk Group LLC (“Mobius”) violated Section 4m(1) of the Commodity Exchange Act, as amended (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 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:

SUMMARY

During the Relevant Period, Mobius violated of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), by making use of the mails or means or instrumentality of interstate commerce in connection with its business as a Commodity Trading Advisor (“CTA”). Mobius was required to register as a CTA because it held itself out generally to the public as a CTA. In addition, Mobius was required to register as a CTA because, during the course of the preceding twelve months, it furnished commodity trading advice to more than fifteen persons.

* * * * *

In accepting the Offer, the Commission recognizes Mobius’ substantial cooperation with the Division of Enforcement’s (the “Division”) investigation of this matter. The Commission notes that Mobius’ substantial cooperation is being recognized in the form of a substantially reduced civil monetary penalty.

RESPONDENT

Mobius Risk Group LLC is a Texas limited liability company with its principal place of business in Houston, Texas. During the Relevant Period, Mobius was not registered with the Commission in any capacity.²

FACTS

Mobius is an independent energy risk advisory firm providing market guidance to producers, consumers, and capital market participants. During the Relevant Period, Mobius provided some of its clients with advice and recommendations concerning physical commodity trading. Mobius also provided certain clients with advice, reports, and/or analyses concerning the value of or the advisability of trading in over-the-counter (“OTC”) swaps and commodity options in oil, natural gas, and liquefied natural gas. For example, Mobius provided several clients with trading or hedging strategies which included OTC swaps and/or commodity options for reducing the client’s energy risks. Each client signed an agreement with Mobius for varying levels of services, some of which related to financial risk management. Mobius’ swaps and commodity options advisory services are part of its regular business. Clients paid a flat fee for Mobius’ technology and reporting, advisory services pertaining to physical and/or financial commodity trading, or a combination thereof.

From at least October of 2012³ to August 15, 2018, Mobius made use of the mails or means or instrumentality of interstate commerce, such as emails, telephone and the Internet, to

² Since August 16, 2018, Mobius has been registered with the Commission as a CTA.

³ A definition of the term “swap” became effective on October 12, 2012. Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap

conduct its business as a CTA. Mobius held itself out generally to the public as a CTA through, *inter alia*, its public website by offering risk management services to eligible contract participants on financial commodities such as oil, natural gas, interest rates, and foreign exchange, among other commodities. The services that Mobius publicly offered included: (a) customized risk strategy development; (b) risk strategy management; (c) market analysis and monitoring; (d) market forecasting; and (e) trade execution (as agent). These various services include advice concerning OTC swaps and commodity options. In addition, during the course of the preceding twelve months, Mobius furnished commodity trading advice to more than fifteen persons. Such advisory services were not solely incidental to Mobius' business.

III. LEGAL DISCUSSION

The Act's registration requirements for commodity professionals are a 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. 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) (2012), 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 1a(12)(A)(ii) of the Act further defines a CTA as any person who for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to in clause (i). The definition of a swap under Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (2012), became effective in October 2012. Pursuant to Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012), the term "person" imports the plural or singular, and includes individuals, associates, partnerships, corporations, and trusts. Certain persons are excluded from the definition of CTA, such as banks, trust companies or publishers of print or electronic media, but none of those categories apply to Mobius. *See* Section 1a(12)(B) of the Act, 7 U.S.C. § 1a(12)(B) (2012).

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. The Commission has applied the CTA registration

Recordkeeping, 77 Fed. Reg. 48207 (Aug. 13, 2012), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2012-18003a.pdf>.

requirements to entities that provide risk management and swaps trading advice to energy producers and consumers under similar circumstances as Mobius. *See, e.g., In re Summit Energy Services Inc.*, CFTC No. 15-12, 2015 WL 1508453 (Jan. 16, 2015) (consent order) (unregistered CTA offering advice on OTC swaps and commodity futures to commercial energy producers and consumers); *In re Angus Partners, LLC*, CFTC No. 16-36, 2016 WL 5682202 (Sept. 29, 2016) (consent order) (unregistered CTA offering trading advice on OTC swaps and commodity options to oil/natural gas retailers). Moreover, the registration requirement is not subject to a “state of mind” limitation of liability. *CFTC v. Wilson*, 19 F. Supp. 3d 352, 360 (D. Mass. 2014), *aff’d*, 812 F.3d 98 (1st Cir. 2016).

Mobius acted as a CTA because, for compensation or profit, it engaged in the business of advising others as to the value of or advisability in trading OTC swaps and commodity options, and as part of its regular business issued analyses and reports regarding OTC swaps and commodity options. *See* Section 1a(12)(A)(i), (ii) of the Act. Mobius was required to register as a CTA under Section 4m(1) of the Act because it made use of the mails or means or instrumentality of interstate commerce, such as emails, the telephone, and the Internet, in connection with its business as a CTA. Mobius was required to register as a CTA because it held itself out generally to the public as a CTA. In addition, Mobius was required to be registered because, during the course of the preceding twelve months, it furnished commodity trading advice to more than 15 persons. Mobius’ swaps and commodity options trading advice was not solely incidental to Mobius’ business. Thus, Mobius violated Section 4m(1) of the Act by acting as an unregistered CTA.

IV. FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Mobius violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), by acting as an unregistered CTA.

V. OFFER OF SETTLEMENT

Respondent has submitted the 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;
- 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 Regulations, 17 C.F.R. pt. 148 (2018), 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, §§ 201-53, 110 Stat. 847, 857-74 (codified as amended in 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;
- 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 seventy-five thousand dollars (\$75,000), 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 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 seventy-five thousand dollars (\$75,000) (“CMP Obligation”), within ten (10) days of the date of this Order. If the CMP Obligation is not paid in full within ten (10) 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:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
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.

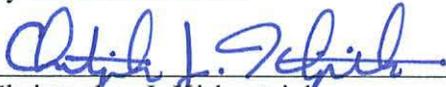
- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
 - 1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action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

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 14, 2018