

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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9:31 am, Sep 27, 2016

In the Matter of:

**Advanced Trading Workshop,
Inc.,**

Respondent.

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) **CFTC Docket No. 16-31**
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

I.

The Commodity Futures Trading Commission (the “Commission”) has reason to believe that from in or around August 2012 to at least June 2013 (the “Relevant Period”), Advanced Trading Workshop, Inc. (“ATW” or “Respondent”) violated Sections 4k(3), 4m(1), and 4o(1)(A) and (B), and 6(c)(1) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 6k(3), 6m(1), 6o(1)(A) and (B) and 9(c)(1) (2012), and Commission Regulation 180.1, 17 C.F.R. § 180.1 (2015). 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.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement, which the Commission has determined to accept (the “Offer”). Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.¹

¹ Respondent consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce

III.

The Commission finds the following:

A. SUMMARY

During the Relevant Period, ATW solicited members of the public to purchase access to ATW's "Real Time Trade Room" (referred to herein as the "Room"), which ATW described on its website as an online forum in which ATW's clients could learn to trade futures contracts by observing an individual who was touted as a professional trader (referred to herein as "Trader"), as he traded. During the Relevant Period, ATW did not solicit potential Room clients directly, but rather contracted with a third-party telemarketer to solicit prospective clients (ATW's third-party marketer is referred to herein as "ATW's Marketer"). ATW made false and misleading statements to clients and prospective clients (collectively, "Clients") by touting Trader's experience as a professional trader and by stating that Trader traded futures contracts "live" in the Room. ATW received at least \$470,000 from Clients in connection with the fraud.

In addition, ATW solicited Clients to open managed trading accounts over which Trader maintained trading authority. However, neither ATW nor Trader were registered with the Commission as a Commodity Trading Advisor ("CTA") or Associated Person ("AP") thereof.

B. RESPONDENT

Advanced Trading Workshop, Inc. is a Delaware corporation, which changed its name in or around November 2013 to Sniper Scalping, Inc. During the Relevant Period, ATW was located in Jamesville, New York. ATW has never been registered with the Commission in any capacity.

C. FACTS

1. **ATW's "Real Time Trade Room"**

During the Relevant Period, ATW solicited members of the public to purchase access to ATW's "Real Time Trade Room." The Room was described on ATW's website as an online forum in which ATW's clients could learn to trade futures contracts by "look[ing] over the shoulder of a very experienced professional trader [*i.e.*, Trader] to see how it is done." ATW did not solicit Room Clients directly, but rather utilized ATW's Marketer to do so. Clients generally paid a one-time fee ranging from approximately \$4,995 to \$7,500 for six months of access to ATW's Room (as well as access to ATW videos and other training materials purporting to teach Clients how to trade futures contracts), after which Clients would have the opportunity to purchase month-to-month access to the Room.

the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

ATW's Room was marketed as a way for Clients to learn how to trade futures contracts by observing Trader as he traded. While ostensibly trading futures contracts in the Room, Trader provided information concerning market conditions that signaled when one should purchase or sell futures contracts. According to ATW promotional materials, Trader would "analyze the market" in the Room and "identify key trading opportunities." Trader further stated in ATW promotional material that:

Throughout the trading day, I may be making comments. I may even make statements like well, for those of you who would like to take a more aggressive entry you might consider a trade here or there, or a buy stop, a buy limit, or you might want to do this or that...Now I do that because there's traders in the Room with varying degrees of risk aversion, the size of their account will vary widely, some traders have more risk tolerance than others...so during the day, you may hear and probably will hear, comments like that.

ATW stated on its website that Trader had been a "full time professional trader" since 1985. ATW stated in a promotional video that Trader was a "master trader," that Trader was "at the absolute pinnacle of his profession," that Trader was "at the absolute top of this trading game not just in our country but in the world," that Trader was "a fantastic talent," and that Trader was "an unbelievable trader, incredibly successful, high-level trader." However, ATW, by and through its principal, did not know what Trader's trading performance had been. In that video, ATW also claimed that Trader traded futures contracts "live" in the Room and that "you'll actually see him physically enter the trade order...you'll see that order get filled and then you'll see the order either go on to be a winner or to be a loser, so all that is going to be happening right before your eyes, pretty cool."

ATW's statements about Trader's experience and success as a professional trader and statements about Trader's trading "live" in the Room were false because Trader never placed any funds at risk in the Room and thus never actually earned any trading profit at all. Rather, Trader only engaged in hypothetical or simulated trading in the Room, meaning that no orders were placed or exposed to the market, and no orders were ever actually executed. Simulated trading is materially different than actual trading because simulated trading does not involve the actual execution of any trades, and therefore may under- or over-compensate for the impact of certain market factors such as the lack of liquidity. Moreover, because simulated trading does not involve actual trade execution, purported performance results from simulated trading necessarily fail to reflect slippage costs, *i.e.*, the difference in price at the time the order is placed versus the time the order is filled. ATW's statements about Trader being a successful trader were false for the additional reason that what little trading Trader had done in his own trading account had not been profitable.

Moreover, ATW either knew that its statements concerning Trader's experience and success trading futures contracts "live" in the Room were false or misleading or acted with reckless disregard as to the truth or falsity of those statements.

2. Broker Assist Program

In addition to soliciting Clients to purchase access to the Room, ATW and Trader also solicited Room Clients to participate in a managed account program pursuant to which Trader had authority to manage Clients' futures trading accounts for a monthly fee. Under this arrangement, which ATW and Trader termed the "Broker Assist Program," Clients opened a futures trading account with a broker specified by ATW and Trader, and Clients granted Trader authority to place trades in their accounts. In exchange, Clients agreed to pay a monthly fee based on the amount of money they deposited into their trading accounts. Neither ATW nor Trader were registered in any capacity during the Relevant Period.

IV.

LEGAL DISCUSSION

A. Respondent Failed to Register and Remained Associated with an Unregistered AP

Section 1a(12)(i) of the Act, 7 U.S.C. § 1a(12)(i), defines a Commodity Trading Advisor ("CTA") as any 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, among other things, futures contracts. Pursuant to Section 1a(38) of the Act, 7 U.S.C. § 1a(38), the term "person" includes individuals, associations, partnerships, corporations, and trusts. Section 4m(1) of the Act, 7 U.S.C. § 6m(1), requires a CTA, which makes use of the mails or any means or instrumentality of interstate commerce in connection with the person's business as a CTA, to register with the Commission unless the person provides such trading advice to fewer than fifteen persons in the preceding twelve months and does not hold itself out generally to the public as a CTA. Section 4k(3) of the Act, 7 U.S.C. § 6k(3), makes it unlawful for a CTA to permit an unregistered Associated Person ("AP") to become or remain associated with the CTA in any such capacity if the CTA knew or should have known that the person was not so registered.

During the Relevant Period, ATW provided information concerning market conditions that signaled when one should purchase or sell futures contracts and as such acted as a CTA by engaging, for compensation or profit, in the business of advising its Clients as to the value of, or the advisability of trading in, futures contracts. *See Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors*, 61 Fed. Reg. 42146, 42151 (Aug. 14, 1996) ("[O]ne who advises others concerning the value of using futures generally, without providing specific trading recommendations, nonetheless is providing commodity trading advice."). ATW also acted as a CTA by entering into arrangements with Clients to manage their trading accounts pursuant to the Broker Assist Program. ATW was not exempt from registration under any provision of the Act or Commission Regulations. In addition, Trader solicited ATW's Clients to participate in ATW's Broker Assist Program. Neither ATW nor Trader were registered with the Commission in any capacity during the Relevant Period. Consequently, ATW violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1), in that it failed to register as a CTA. In addition, ATW violated Section 4k(3) of the Act, 7 U.S.C. § 6k(3), by permitting Trader to be associated with ATW as an AP, without being registered as such.

B. Respondent Committed Fraud

Section 4o(1) of the Act, 7 U.S.C. § 6o(1), provides that it shall be unlawful for a CTA, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly to employ any device, scheme, or artifice to defraud any client or prospective client or to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. While violations of Section 4o(1)(A) of the Act require proof of scienter, which includes knowing or reckless conduct, violations of Section 4o(1)(B) of the Act do not. *See In re Slusser*, Comm. Fut. L. Rep. (CCH) ¶ 27,701 (CFTC July 19, 1999), *aff'd in relevant part*, *Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000); *CFTC v. Equity Fin. Grp.*, 537 F. Supp. 2d 677, 699 (D.N.J. 2008); *Commodity Trend Serv. v. CFTC*, 233 F.3d 981, 993 (7th Cir. 2000); *see also Do v. Lind-Waldock & Co.*, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) 25,516 at 43,321 (CFTC Sept. 27, 1995) (providing that a reckless act is one where there is so little care that it is difficult to believe the actor was not aware of what he was doing).

As discussed above in Section IV.A., ATW was a CTA. During the Relevant Period, ATW violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B), by knowingly or recklessly making false and misleading statements to Clients about Trader’s experience and success trading futures contracts and by falsely stating to Clients that Trader traded futures contracts “live” in the Room.

Section 6(c)(1) of the Act, 7 U.S.C. § 9(c)(1), provides, among other things, that it shall be unlawful for any person “to employ ... in connection with any 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 [Commission rules and regulations].” Regulation 180.1(a), 17 C.F.R. § 180.1(a), in relevant part, makes it unlawful for any person:

in connection with any ... 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; (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....

ATW made false and misleading statements to Clients concerning Trader’s experience and supposed success trading futures contracts and false and misleading statements that Trader traded futures contracts “live” in the Room. These Clients were solicited to purchase access to the Room and also to open managed futures accounts pursuant to ATW’s Broker Assist Program. Consequently, ATW knowingly or recklessly made untrue or misleading statements of material facts, or omitted to state material facts necessary in order to make the statements made not untrue or misleading, to Clients in connection with contracts of sale for future delivery. Accordingly, ATW violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(c)(1), and Commission Regulation 180.1, 17 C.F.R. § 180.1.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, ATW violated Sections 4k(3), 4m(1), 4o(1)(A) and (B), and 6(c)(1) of the Act, 7 U.S.C. §§ 6k(3), 6m(1), 6o(1)(A) and (B), and 9(c)(1), and Commission Regulation 180.1, 17 C.F.R. § 180.1.

VI.

OFFER OF SETTLEMENT

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

- A. Acknowledges receipt of 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 they 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 Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2014), relating to, or arising from, this proceeding;
 - 7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), 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;
- 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 ATW violated Sections 4k(3), 4m(1), 4o(1)(A) and (B), and 6(c)(1) of the Act, 7 U.S.C. §§ 6k(3), 6m(1), 6o(1)(A) and (B) and 9(c)(1), and Commission Regulation 180.1, 17 C.F.R. § 180.1;
 2. Orders Respondent ATW to cease and desist from violating Sections 4k(3), 4m(1), 4o(1)(A) and (B), and 6(c)(1) of the Act, 7 U.S.C. §§ 6k(3), 6m(1), 6o(1)(A) and (B) and 9(c)(1), and Commission Regulation 180.1, 17 C.F.R. § 180.1;
 3. Orders Respondent ATW to pay a civil monetary penalty in the amount of four hundred seventy thousand Dollars (\$470,000), plus post-judgment interest;
 4. Orders that Respondent be permanently 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) (2012)), and all registered entities shall refuse it trading privileges; and
 5. 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 VII of this Order, including Respondent ATW's agreement to pay disgorgement in the amount of four hundred seventy thousand Dollars (\$470,000), plus post-judgment interest.

Upon consideration, the Commission has determined to accept the Offers.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent ATW and its successors and assigns shall cease and desist from violating Sections 4k(3), 4m(1), 4o(1)(A) and (B), and 6(c)(1) of the Act, 7 U.S.C. §§ 6k(3), 6m(1), 6o(1)(A) and (B) and 9(c)(1), and Commission Regulation 180.1, 17 C.F.R. § 180.1.
- B. Respondent ATW shall pay a civil monetary penalty in the amount of four hundred seventy thousand Dollars (\$470,000), plus post-judgment interest (this obligation is referred to as a the "CMP Obligation"). 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:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Nikki Gibson 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 permanently 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) (2012)), and all registered entities shall refuse it trading privileges; and
- D. Respondent ATW 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 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. Respondent agrees that it shall never, directly or indirectly:
- a. enter into any transactions involving commodity interests” (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2014)) for Respondent’s own personal accounts or for any accounts in which Respondent has a direct or indirect interest;
 - b. have any commodity interests traded on Respondent’s 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) (2014); and/or
 - f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012) registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014).
- E. Respondent ATW agrees to pay disgorgement in the amount of four hundred seventy thousand Dollars (\$470,000), plus post-judgment interest (this obligation is referred to as the “Disgorgement Obligation”). Post-judgment interest shall accrue on the Disgorgement 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 Disgorgement 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:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.


Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the Disgorgement 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.

- F. Cooperation with the Commission: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.
- G. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's Disgorgement Obligation or 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.
- H. Change of Address/Phone: Until such time as Respondent satisfies in full its Disgorgement Obligation and CMP Obligation as set forth in this Consent 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 27, 2016