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UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of: )  
)  
)  
Angus Partners, LLC, D/B/A ) CFTC Docket No. 16-36  
Angus Energy, )  
)  
Respondent. )

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 (“Commission” or “CFTC”) has reason to believe that Angus Partners, LLC, D/B/A Angus Energy (“Angus” or “Respondent”), violated Section 4m of the Commodity Exchange Act (the “Act”) and Commission Regulations (“Regulations”) 4.31 and 4.34. 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 (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.<sup>1</sup>

<sup>1</sup> 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 the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the

### III.

The Commission finds the following:

#### A. Summary

Since at least October 2012 (the “Relevant Period”), Angus Energy has acted as an unregistered Commodity Trading Advisor (“CTA”) by, for compensation or profit, engaging in the business of advising clients as to the value of or the advisability of trading in commodity option and swap contracts and held itself out generally to the public as a CTA. Moreover, during the Relevant Period, Angus failed to make required disclosures, including certain conflicts of interest and fees.

#### B. Respondent

**Angus Partners, LLC**, is a Florida limited liability company, D/B/A Angus Energy, headquartered in Fort Lauderdale, Florida. Angus has never been registered as a CTA.

#### C. Facts

##### 1. Angus Acted as a CTA while Unregistered

From at least October 2012, Angus, using the mails or any means or instrumentality of interstate commerce, engaged in the business of advising clients as to the value or advisability of trading in over-the-counter (“OTC”) commodity options and swaps, for compensation or profit, without being registered as a CTA. Angus’s clients are retailers of heating oil, natural gas, and other fuel products. Angus advised clients on the development and implementation of fuel hedging programs to mitigate the clients’ exposure to price movements in the fuel oil markets. These hedging programs entailed the clients purchasing and selling OTC commodity option and swap contracts. Throughout the Relevant Period, more than 15 clients received advice from Angus as to the value or the advisability of trading in OTC commodity options and swaps.

Angus marketed itself as an expert in helping its clients devise optimal hedging strategies, uniquely tailored to each client’s business. Its marketing materials, including its website, gave clients the clear impression that Angus would act in its clients’ best interest. Pursuant to the consulting agreement that Angus entered into with many clients, Angus undertook to act as a general advisor and consultant in matters related to the development and implementation of hedging strategies, among other things.

Angus’s commodity trading advice was not solely incidental to its business.

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findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

## 2. Angus Failed to Disclose Conflicts of Interest and Fees

Angus acted as the counterparty to the very option and swap contracts into which it advised its clients to enter. Yet, Angus provided its clients with little transparency in this regard. First, it did not clearly disclose to its clients that it was the counterparty to their trades. Although Angus clients were provided a transaction confirmation for each option or swap transaction they entered into with Angus, it was not clear to certain clients that Angus was the counterparty to such trades. At least several assumed, incorrectly, that Angus was a “broker” or “facilitator” of the trades. They did not know who was on the other side of the transactions. Second, Angus did not disclose that a markup – effectively, a transaction fee - was embedded in the premium price the clients paid to Angus for the options transactions and that Angus retained the markup.

The vast majority of transactions between Angus and its clients worked as follows: When a client expressed interest in purchasing a particular option or swap, Angus would get a quote for an offsetting option or swap, with the same parameters, from a third-party dealer (“Third-Party Dealer”). Angus did not disclose to its clients the Third-Party Dealer’s quote, or even the existence of the Third-Party Dealer. Rather, it simply quoted its clients a price that was higher than the price at which the Third-Party Dealer was willing to sell the same contract to Angus.<sup>2</sup> If the client accepted Angus’s price, Angus would purchase the contract from the Third-Party Dealer at the lower price and sell a second, identical contract to its client at the higher, marked-up price. Because Angus entered into two offsetting contracts, it took on no price risk. Angus profited in the amount of the difference between the price it was charged by the Third-Party Dealer and the price it charged its clients. Angus typically charged its clients a premium that was approximately five cents per unit<sup>3</sup> higher than the premium the Third-Party Dealer charged Angus. For some customers, the mark-up exceeded ten cents per unit.

Since Angus bore no price risk in these transactions, the mark-up it charged to its clients was essentially a transaction fee. Angus did not disclose the existence or the amount of this fee to its clients. Had Angus disclosed it, its clients might have negotiated with Angus for a better price.

## IV.

### LEGAL DISCUSSION

#### A. Angus Violated Section 4m(1) of the Act

Section 1a(12)(i) of the Act defines a 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 or swaps. Pursuant to Section 1a(38) of the Act, the term “person” imports the plural or

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<sup>2</sup> For option contracts, this meant quoting the clients a higher premium. For swaps, this meant offering the contract to the client at a less advantageous strike price.

<sup>3</sup> For heating-oil-based contracts, the unit was gallons. For natural-gas-based contracts, the unit was dekatherms.

singular, and includes individuals, associates, partnerships, corporations, and trusts. Section 4m(1) of the Act requires a person who is acting as a CTA and makes use of the mails or any means or instrumentality of interstate commerce in connection with the person's business as such CTA to register with the Commission unless the person provides such commodity 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.

During the Relevant Period, Angus acted as a CTA by engaging, for compensation or profit, in the business of advising clients as to the value or advisability of trading in OTC commodity options and swaps. In addition, Angus held itself out publicly as a CTA by offering to others its hedging services, including commodity trading advice concerning commodity options and swaps, through its website and sales brochures. In addition, Angus was not exempt from registration as a CTA under any provision of the Act or Commission Regulations.

**B. Angus Violated Commission Regulations 4.31 and 4.34**

Pursuant to Regulation 4.31, CTAs are required to provide prospective clients with a Disclosure Document. 17 C.F.R. § 4.31. That Disclosure Document is required to contain, among other things, certain information set forth in Regulation 4.34. *Id.* Regulation 4.34(i) requires that the Disclosure Document must include "a complete description of each fee which the commodity trading advisor will charge the client. Wherever possible, the trading advisor must specify the dollar amount of each such fee" or explain how the fee will be calculated. 17 C.F.R. § 4.34(i). Regulation 4.34(j) requires that the Disclosure Document also contain a full description of any actual or potential conflicts of interest. 17 C.F.R. § 4.34(j)

Angus did not provide its clients with a Disclosure Document. The documentation that Angus did provide to its clients did not disclose the amount, or even the existence, of the markups that, as described above, effectively served as transaction fees retained by Angus. Moreover, no document articulated the conflict between, on the one hand, Angus advising its clients on the merits of entering into commodity option and swap transactions and, on the other hand, Angus's *undisclosed* financial interest in those very same transactions. Most importantly, Angus's undisclosed financial interest – the markup -- was at the clients' expense. By failing to disclose these facts, Angus violated Regulations 4.31 and 4.34.

**V.**

**FINDINGS OF VIOLATION**

Based on the foregoing, the Commission finds that, since at least October 2012, Angus Partners, LLC has violated Section 4m(1) of the Act, 7 U.S.C. § 4m(1), and Commission Regulations 4.31 and 4.34, 17 C.F.R. §§ 4.31, 4.34 (2015).

## VI.

### OFFER OF SETTLEMENT

Respondent has submitted an Offer in which it, 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 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 Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2015), 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, §§ 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 violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1), and Commission Regulations 4.31 and 4.34, 17 C.F.R. §§ 4.31, 4.34;

2. orders Respondent to cease and desist from violating Section 4m(1) of the Act, 7 U.S.C. § 6m(1), and Commission Regulations 4.31 and 4.34, 17 C.F.R. §§ 4.31, 4.34;
3. orders Respondent to pay a civil monetary penalty in the amount of two hundred fifty thousand dollars (\$250,000) within thirty (30) 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 VII of this Order.

Upon consideration, the Commission has determined to accept Respondent's Offer.

## VII.

### 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), and Commission Regulations 4.31 and 4.34, 17 C.F.R. §§ 4.31, 4.34.
- B. Respondent shall pay a civil monetary penalty of two hundred fifty thousand dollars (\$250,000) within thirty (30) days of the date of entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid in full within thirty (30) days of the date of entry of this Order, then post-judgement 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 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, nor 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. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent's CMP Obligation shall not be deemed a waiver of their 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 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.



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

Dated: September 29, 2016