



UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Summit Energy Services, Inc.,

Respondent.

CFTC Docket No. 15 - 12

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”) has reason to believe that from in or about October 2012 to September 25, 2014 (the “Relevant Period”), Summit Energy Services, Inc. (“Summit Energy” or “Respondent”) violated Section 4m(1) of the Commodity Exchange Act, as amended (the “Act”). 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, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, as Amended, 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 findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

### III.

The Commission finds the following:

#### A. SUMMARY

During the Relevant Period, Summit Energy acted as an unregistered Commodity Trading Advisor (“CTA”) by, for compensation or profit, engaging in the business of advising more than fifteen clients as to the value of or the advisability of trading in natural gas swaps and natural gas commodity futures contracts and held itself out generally to the public as a CTA.

#### B. RESPONDENT

Respondent **Summit Energy Services, Inc.** is a Delaware corporation based in Louisville, Kentucky. During the Relevant Period, Summit Energy was not registered with the Commission in any capacity.<sup>2</sup>

#### C. FACTS

During the Relevant Period, Summit Energy, using the mails or any means or instrumentality of interstate commerce, engaged in the business of advising its clients as to the value of or the advisability of trading in over-the-counter (“OTC”) natural gas swaps and natural gas commodity futures, for compensation or profit, without being registered. Most of Summit Energy’s clients were commercial entities that purchase physical natural gas and electricity as part of their energy needs. Summit Energy provided its clients with advice concerning physical natural gas and electricity transactions. Throughout the Relevant Period, more than 15 clients received advice from Summit Energy as to the value of or the advisability of trading in natural gas OTC swaps and futures for hedging purposes. With respect to some of its clients, Summit Energy also acted as a broker in OTC natural gas swaps trades.

Through its website and public brochures, Summit Energy publicly offered prospective clients “risk management” services which included advising its clients as to the value of or the advisability of trading in natural gas swaps and futures. Summit Energy’s commodity trading advice was part of, and not solely incidental to, its business.

### IV.

#### LEGAL DISCUSSION

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, *inter alia*, futures or swaps. Pursuant to Section 1a(38) of the Act, the term “person” imports the plural or singular, and includes individuals, associations, partnerships, corporations, and trusts. Section 4m(1) of the Act requires a person who is

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<sup>2</sup> Since September 26, 2014, Summit Energy has been registered with the Commission as a CTA.

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 Summit Energy 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 OTC natural gas swaps and futures. In addition, Summit Energy held itself out publicly as a CTA by offering to others its risk management services, including commodity trading advice concerning natural gas futures and OTC swaps, through its website and sales brochures. In addition, Summit Energy was not exempt from registration as a CTA under any provision of the Act or Commission Regulations.

## V.

### FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Summit Energy violated Section 4m(1) of the Act.

## VI.

### OFFER OF SETTLEMENT

Respondent has submitted the 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 violations 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 (2006) and 28 U.S.C. § 2412 (2006), 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 (2011), 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;
  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 One Hundred Forty Thousand dollars (\$140,000), plus post-judgment interest; and
  4. orders Respondent 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 the Offer.

## VII.

### ORDER

#### **Accordingly, IT IS HEREBY ORDERED THAT:**

- A. Respondent and its parents, affiliates, subsidiaries, successors and assigns shall cease and desist from violating Section 4m(1) of the Act (2013).
- B. Respondent shall pay a civil monetary penalty in the amount of One Hundred Forty Thousand dollars (\$140,000) within ten (10) days of the date of entry of this Order (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 (2006). 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:

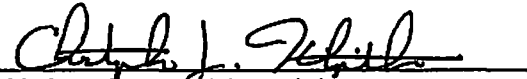
Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables --- AMZ 340  
E-mail Box: 9-AMC-AMZ-AR-CFTC  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
(405) 954-7262 office  
(405) 954-1620 fax  
nikki.gibson@faa.gov

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. 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 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.
- D. **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 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.

**The provisions of this Order shall be effective as of this date.**

By the Commission.

A handwritten signature in cursive script, appearing to read "Christopher J. Kirkpatrick", is written over a horizontal line.

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

Dated: January 16, 2015