

III.

The Commission finds the following:

A. SUMMARY

This is a trade practice action featuring a floor broker's failure to comply with applicable record-keeping and audit trail rules at virtually every stage of accepting and executing customers' commodity futures orders, and the belated creation of trading records containing fictitious information that were submitted for clearing.

Respondent Kent Woods ("Woods") was a long time registered floor broker in the soybean crush market at the Chicago Board of Trade ("CBOT") and in recent years also was a registered associated person ("AP") and principal of Futures International, Inc. ("FI"), an introducing broker ("IB"). As part of his regular practice, Woods communicated with his customers before the trading day about the soybean market and their general trading interests. However, he habitually failed to obtain or record order instructions from his customers that specified the precise commodity interest to be purchased or sold and the exact amount of the commodity interest to be purchased or sold on their behalf, as required by Regulations 1.35 and 166.2. Because Woods did not possess a power of attorney over his customers' accounts, his exercise of discretion over their accounts in placing and executing trades was unauthorized under the Regulations, even in the absence of customer complaints.

In addition, Woods and FI staff also routinely failed to record order information on order tickets immediately upon receipt of order instructions from FI's customers, and instead documented the order instructions and "fill" information after execution. Woods and FI staff then created an audit trail for those orders by using "pre-timestamped" floor order tickets to document the trades. FI staff prepared these "pre-timestamped" order tickets by timestamping blank floor order tickets throughout the trading session. Then, once Woods identified which accounts were to receive trades, sometimes hours after execution, FI staff used one of these pre-timestamped tickets so that it appeared as if Woods (or someone at his direction) had prepared an order ticket upon Woods' receipt of a customer order earlier in the trading day. The order tickets bearing the false timestamps were subsequently submitted for keypunching and clearing, and when transmitted to the CBOT the false data constituted a false report to an exchange, in violation of Section 9(a)(4) of the Act.

Woods' failure to comply with applicable record-keeping and audit trail rules also included his failure to maintain full and complete records of instant messages that he used to conduct his business, in violation of Section 4g of the Act and Regulations 1.31 and 1.35. Woods' inability to produce complete records hindered the CFTC's ability to investigate violations of the Act and Regulations.

Finally, Woods also directly and indirectly failed to diligently supervise the FI employees who helped execute and/or document his orders, in violation of Regulation 166.3.

B. RESPONDENT

Respondent **Kent Woods** is the former Chief Executive Officer (“CEO”) of FI, and resides in Chicago, Illinois. Woods was registered with the Commission as a Floor Broker from October 1990 to September 2013, and at all relevant times was a member of the CBOT. He founded FI, a registered IB, with two other individuals in approximately 2004 and left the company in February 2013. In approximately 2009, a Houston-based company purchased a 60% interest in FI, but Woods has maintained in excess of 10% ownership of the company at all times relevant. During his tenure at FI, Woods ran the soybean “crush” group, including by overseeing the day to day operations and supervising employees in that group. Woods was registered with the Commission as an AP of FI from November 2004 until February 2013, when he left the company and withdrew his registration. He has also been registered as an AP of a Commodity Trading Advisor (“CTA”) since March 2011, and has been that CTA’s Principal since February 2011. In October 2013, Woods filed for bankruptcy protection in the United States Bankruptcy Court for the Northern District of Illinois pursuant to Chapter 11 of the U.S. Bankruptcy Code. Woods currently works for an IB (that is also a registered CPO and CTA) and has been a registered AP of that IB since June 2014.

C. FACTS

Unauthorized Trading

In the absence of a written power of attorney, a floor broker has no discretion to place trades for commercial customers without their consent and instruction as to the specific contract the customer wanted to trade, the quantity the customer wanted to trade, and the price at which the customer wanted to trade. Woods did not have a power of attorney over his and FI’s customers’ accounts. Nonetheless, Woods often made such trading decisions on behalf of his and FI’s commercial customers and executed (or directed execution of) trades without first having received order instructions that specified the contract month that the customer wanted to trade and/or the amount of the commodity interest to be purchased.

In at least twenty instances during the relevant period when Woods (or FI staff at Woods’ direction) had placed a trade without first creating a record identifying the account to receive it, Woods instructed FI staff to “hold” the trade (thus refrain from turning in the trade for clearing) while he sought customer confirmation. On at least four occasions, Woods solicited but could not find a customer willing to accept an executed trade, and directed FI staff to assign the residual trade to his personal account or the FI error account.

Recordkeeping Deficiencies

Floor brokers such as Woods are subject to Commission and CBOT rules and regulations governing trading practices in the CBOT soybean complex. For example, under Regulation 1.35(a-1), floor brokers are required to record customer orders “immediately” upon receipt of the order. The required written record must include the customer’s account number and the date and time the order was received, to the nearest minute.

From at least 2009, Woods failed to properly record customer orders immediately upon receipt. For example, Woods received a number of customer orders over the telephone from his office, prior to the opening of the CBOT trading floor. Woods frequently did not complete an office order documenting the order instructions and the time at which he received an order. Instead, FI staff prepared and timestamped floor order tickets at some later time. Because the timestamps on the order tickets were not applied at the time the customer orders were received or executed, they would not necessarily reflect the actual time at which Woods received or executed the orders.

Woods also often failed to prepare a record upon receipt of orders he received during trading hours. Instead, it was Woods' common practice to record the order (or to rely on FI staff to do so) only after it was executed, or "filled," such that the order and fill information were placed on the floor order at the same time.

To facially comply with the exchange's audit trail requirements, the receipt time on FI's floor orders could not conflict with other timing information collected and maintained by the CBOT for the order, such as pit execution time and order-out times. FI personnel thus prepared pre-timestamped floor order tickets on a daily basis by time-stamping blank floor order tickets in time brackets throughout the trading session. FI personnel then selected a pre-timestamped floor order ticket from this inventory reflecting a time that appeared consistent with the order's actual execution time, regardless of when Woods actually received the order and/or when the order was executed. The pre-timestamped and belatedly prepared floor order tickets were submitted to FI's clearing firm for keypunching, and the data was thereafter transmitted to the CBOT.

Missing Records

Among other things, Regulations 1.31 and 1.35 require floor brokers to maintain full and complete records relating to transactions involving commodity futures and options for a period of five years. Woods communicated electronically via instant messages regarding FI's business, including but not limited to transactions involving commodity futures and options, as of at least 2009 and continuing throughout the relevant period. However, Woods could not produce full and complete records of his instant messages at the CFTC's request.

Woods' failure to produce complete instant messages hindered the Commission's ability to fully investigate whether his acts constituted violations of the Act and Regulations.

Lack of Supervision

In addition to his duties as a Principal and CEO of FI, as a registered AP with supervisory duties, Woods was responsible for diligently supervising the handling of commodity interest accounts carried, operated, advised or introduced by FI relating to its business as a Commission registrant. However, prior to at least September 2012, FI had no written policies or procedures governing its trading or floor operations, including order intake, preparation of order tickets, handling error trades, trade execution, priority of customer orders and recordkeeping. Prior to at least September 2012, Woods did not explain any policies or procedures compliant with the Act and Regulations or provide adequate training to employees under his supervision regarding order intake, preparation of order tickets, handling error trades, trade execution, priority of customer

orders and recordkeeping, despite the fact that Woods and FI often hired employees with no or little prior industry or trading experience.

Woods also did not act diligently to oversee the activities of FI personnel under his supervision, nor did he act to ensure that employees under his supervision complied with the Act and Regulations. Woods also failed to ensure that anyone else at FI, including the company's Compliance Officer, supervised FI's practices with respect to floor operations, including oversight of the trading desk and floor.

IV.

LEGAL DISCUSSION

A. Submission of False Documents to a Board of Trade

Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2012), prohibits:

Any person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, or futures association designed or registered under this Act acting in furtherance of its official duties under this Act.

Woods, through personnel acting on his behalf, violated Section 9(a)(4), 7 U.S.C. § 13(a)(4) (2012), by willfully submitting order tickets with false information for keypunching. Woods and other FI personnel knew that the false information reflected on FI's floor order tickets would thereafter be transmitted to CBOT. *Cf. CFTC v. Whitney*, 2012 WL 219463 at *4 (S.D.N.Y. May 22, 2012) (consent order holding defendant liable for knowingly submitting invalid account numbers to clearing firm for allocating trades).

B. Failure to Maintain Required Books and Records

Section 4g(a) of the Act, 7 U.S.C. § 6g(a) (2012), provides that every person registered as a futures commission merchant, IB, floor broker, or floor trader shall keep books and records pertaining to transactions and positions of their customers and commodities for future delivery, and shall make such records available for inspection by the Commission. In relevant part, as implemented pursuant to this authority, Regulation 1.31(a), 17 C.F.R. § 1.31(a) (2013), requires that all books and records required to be kept by the Act or by the Regulations shall be kept for a period of five years from the date thereof, "be readily accessible during the first 2 years of the 5-year period[.]" and be subject to inspection by any representative of the Commission.

Regulation 1.35(a), 17 C.F.R. § 1.35(a) (2013), requires members of contract markets to:

keep full, complete, and systematic records, together with all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity futures ... in accordance with the requirements of § 1.31 ... Included among such records shall be all orders (filled, unfilled, or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, data and memoranda, which have been prepared in the course of its business of dealing in commodity futures ...

A failure to retain and promptly produce such records for inspection to Commission staff constitutes a violation of Section 4g and Regulations 1.31 and 1.35. *See In re GNP Commodities, Inc.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,211 (CFTC Aug. 11, 1992), *aff'd sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993) (FCM violated Section 4g and Regulations 1.31 and 1.35 by failing to retain office orders and carbons that were the subject of a Division investigation). As explained by the Commission in holding an FCM liable for failing to maintain microfilm or hard copies of three forms of reports used in a commodity futures trading program operated by the FCM and marketed by a guaranteed IB of the FCM:

The requirements of Regulations 1.31 and 1.35 are straightforward. Regulation 1.35(a) required [the FCM] to keep complete and systematic records, “together with all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity futures, commodity options...” Further, the rule required [the FCM] to maintain copies of “*all* other records data and memoranda ... prepared in the course of its business...” *Id.* (emphasis added). Regulation 1.31 requires records to be kept either in hard copy or microfilm form. The trade sequence reports clearly relate to [the FCM’s] business of dealing in commodity futures and were kept in the course of [the FCM’s] business. Failure to maintain them thus violates Regulations 1.31 and 1.35(a).

In re JCC, Inc., [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,080 at 41,580 (CFTC May 12, 1994), *aff'd sub nom. JCC, Inc. v. CFTC*, 63 F.3d 1557 (11th Cir. 1995).

During the relevant period, Woods, as a registered floor broker, violated Section 4g of the Act and Regulations 1.31 and 1.35(a) by failing to maintain for the requisite period full, complete, and systematic records of all instant messages relating to his business of dealing in commodity futures.

C. Failure to Prepare Written Records of Futures Transactions

As set forth above, Regulation 1.35(a), 17 C.F.R. § 1.35(a) (2013), requires members of contract markets, including floor brokers, to retain and produce for inspection all original source documents on which trade information is originally recorded, whether or not such documents must be prepared pursuant to the rules or Regulations of either the Commission or the contract market.

Regulation 1.35(a-1), 17 C.F.R. § 1.31(a-1) (2013), requires that members of a contract market must immediately record customers' and option customers' orders immediately upon receipt by preparing a written record of the order, including the account identification, and the date and time the order is received.

During the relevant period, Woods, as a registered floor broker, failed to prepare written records of orders upon receipt in compliance with Regulation 1.35. Instead, FI personnel documented orders later in the trading day, at times after execution, and often using pre-timestamped floor order tickets. Accordingly, Woods violated Regulation 1.35.

D. Unauthorized Trading

Regulation 166.2, 17 C.F.R. § 166.2 (2013), prohibits any AP of an IB, directly or indirectly, to effect a transaction on behalf of a customer without first obtaining from the customer or the person designated to control the account: (1) "[t]he precise commodity interest to be purchased or sold; and (2) [t]he exact amount of the commodity interest to be purchased or sold[.]" Thus, "a liability analysis under Commission Rule 166.2 focuses on two issues: (1) whether there was a written power of attorney in effect at the time of the transaction at issue and, if not, (2) whether the transaction was specifically authorized by the customer in advance of its execution." *Kacem v. Castle Commodities Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,058 at 45,031 (CFTC May 20, 1997), quoting *In re Heitschmidt*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,263 at 42,204 (CFTC Nov. 9, 1994); *Wolken v. Refco, Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,509 at 36,188 (CFTC July 18, 1989). Under Rule 166.2, a customer's oral grant of general discretion to an account executive is irrelevant to the analysis of liability, because the rule renders such oral agreements void. *Id.* The customer's post-transaction conduct is equally irrelevant to an analysis of liability, because a transaction cannot be specifically authorized unless the customer selects the type of transaction (purchase or sale), the commodity interest, and the exact amount of the commodity interest, in *advance* of the transaction. *Heitschmidt*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,263 at 42,204. Similarly, in *In re Paragon Futures Association*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC April 1, 1992), the Commission noted that "oral authorization which is not specific does not satisfy the requirements of Commission Rule 166.2."

During the relevant period, Woods violated Regulation 166.2 in that Woods placed orders for customers without a power of attorney and without obtaining specific information from FI customers about the quantity and/or the precise commodity interest to be purchased or sold for or on their behalf.

E. Failure to Supervise

Regulation 166.3, 17 C.F.R. § 166.3 (2013), requires:

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or other persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees, and agents (or other persons occupying a similar status or performing a similar function) relating to its business as a registrant.

A violation under Regulation 166.3 is an independent violation for which no underlying violation is necessary. See *In re Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,744 (CFTC Dec. 10, 1997).

A violation of Regulation 166.3 is demonstrated by showing either that: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *In re Murlas Commodities*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,485 at 43,161 (CFTC Sept. 1, 1995); *In re GNP Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,219 (CFTC Aug. 11, 1992) (providing that, even if an adequate supervisory system is in place, Regulation 166.3 can still be violated if the supervisory system is not diligently administered), *aff'd sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993); *Samson Refining Co. v. Drexel Burnham Lambert, Inc.* [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,596 at 36,566 (CFTC Feb. 16 1990) (noting that, under Regulation 166.3, an FCM has a "duty to develop procedures for the detection and deterrence of possible wrongdoing by its agents") (internal quotation omitted). "A showing that the registrant lacks an adequate supervisory system can be sufficient" to establish a breach of duty under Regulation 166.3. *In re Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,744 (CFTC Dec. 10, 1997). Evidence of violations that "should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly" is probative of a failure to supervise. *CFTC v. Sidoti*, 178 F.3d 1132, 1137 (11th Cir. 1999) (defendant was liable for failure to supervise because he "knew of specific instances of misconduct, yet failed to take reasonable steps to correct the problems").

During the relevant period, Woods was registered with the Commission and Woods had supervisory duties at FI. Woods violated Regulation 166.3, 17 C.F.R. § 166.3 (2013), in that he, among other things: (i) failed to ensure that FI established written policies and procedures governing trading floor operations until at least September 2012; (ii) did not provide formal training to FI employees despite hiring some individuals with no industry experience; and (iii) did not implement adequate procedures and/or diligently supervise FI employees to ensure compliance with the Act and Regulations.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Kent Woods violated Sections 4g and 9(a)(4) of the Act, 7 U.S.C. §§ 6g, 13(a)(4) (2012), and Regulations 1.31, 1.35, 166.2, and 166.3, 17 C.F.R. §§ 1.31, 1.35, 166.2, 166.3 (2013).

VI.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which he:

- 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 he 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 (2013), relating to, or arising from, this proceeding;
 - 7. any and all claims that he 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 Sections 4g and 9(a)(4) of the Act, 7 U.S.C. §§6g, 13(a)(4) (2012), and Regulations 1.31, 1.35, 166.2, and 166.3, 17 C.F.R. §§ 1.31, 1.35, 166.2, 166.3 (2013);
 2. orders Respondent to cease and desist from violating Sections 4g and 9(a)(4) of the Act, 7 U.S.C. §§6g, 13(a)(4) (2012), and Regulations 1.31, 1.35, 166.2, and 166.3, 17 C.F.R. §§ 1.31, 1.35, 166.2, 166.3 (2013);
 3. orders Respondent to pay a civil monetary penalty in the amount of \$200,000, plus post-judgment interest. Respondent's civil monetary penalty shall be paid in accordance with any orders entered in his bankruptcy proceeding, *In re Kent Allen Woods*, 13-B-39194 (Bankr. N.D. Ill. 2014);
 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 shall cease and desist from violating Sections 4g and 9(a)(4) of the Act, 7 U.S.C. §§6g, 13(a)(4) (2012), and Regulations 1.31, 1.35, 166.2, and 166.3, 17 C.F.R. §§ 1.31, 1.35, 166.2, 166.3 (2013);
- B. Respondent shall pay a civil monetary penalty in the amount of two hundred thousand dollars (\$200,000) (the "CMP Obligation"). Respondent's CMP Obligation shall be paid in accordance with any orders in his bankruptcy proceeding, *In re Kent Allen Woods*, 13-B-39194 (Bankr. N.D. Ill. Oct. 4, 2013). 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
Telephone: (405) 954-7262

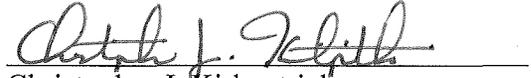
If payment is to be made by electronic funds transfer, Respondent(s) shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies 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 shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither he nor any of his agents or employees under his 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 shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.
- D. 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. As part of such cooperation, Respondent agrees to, among other things: 1) respond promptly, completely, and truthfully to any inquiries or requests for information or assistance; 2) authenticate documents; and 3) testify completely and truthfully.
- E. Respondent agrees to place or execute all non-electronic orders only through his employer's floor desk for a period of two years from the effective date of this Order.
- F. 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 his 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.

- G. Change of Address/Phone: Until such time as Respondent satisfies in full his CMP Obligation as set forth in this Consent Order, Respondent shall provide written notice to the Commission by certified mail of any change to his 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: October 8, 2014