

**UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION**

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9:38 am, Sep 09, 2014

In the Matter of:

Zulutrade, Inc.,

Respondent.

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) **CFTC Docket No. 14-24**
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c) AND 6(d) OF
THE COMMODITY EXCHANGE ACT AND MAKING FINDINGS AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about October 2010 to at least October 2013 (the ‘Relevant Period’), Zulutrade, Inc. (“Respondent”), a registered introducing broker (“IB”), violated Commission Regulation 166.3, 17 C.F.R. §166.3 (2013). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether Respondent engaged in the violations as set forth herein and to determine whether any order shall be issued imposing remedial sanctions.

II.

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

The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") administers and enforces economic and trade sanctions against targeted foreign countries and others based on U.S. foreign policy and national security goals. U.S. persons and entities are generally prohibited from doing business with persons and entities from OFAC targeted countries. Respondent adopted a procedure to screen potential accountholders for persons or entities from OFAC targeted countries. However, from October 2010 to at least October 2013, Respondent failed to follow that procedure. Respondent therefore failed to adequately supervise activities relating to its business as a Commission registrant in violation of Commission Regulation 166.3.

B. Respondent

Zulutrade Inc. is located at Akti Kondili 14, Piraeus 18545 Greece. Zulutrade has been registered with the Commission as an IB since October 11, 2010. Zulutrade is also registered with the Commission as a commodity trading advisor.

C. Facts

Respondent's Anti-Money Laundering Program includes a specific procedure for OFAC screening of its customers. The procedure states that if a customer is located in a targeted country identified by OFAC, Respondent's Compliance Officer needs to review OFAC's sanctioning documents or contact OFAC to determine the breadth of the restrictions. The procedure provides "in the alternative" that Respondent may delegate implementation to third party service providers or agents. The procedure also says that if implementation is delegated, "Zulutrade shall have a written agreement with the other entity outlining the other entity's responsibilities, and shall actively monitor the delegation to assure that the procedures are being conducted in an effective manner."

However, Respondent did not follow its procedure for OFAC screening. Specifically, Respondent relied entirely upon third parties to implement its procedures but Respondent did not have written agreements with all such third parties and OFAC screening was not performed. Consequently, from October 2010 to at least October 2013, Respondent introduced 400 accounts for customers from countries identified in the OFAC sanctions program (primarily from Iran, Sudan and Syria). Respondent realized approximately \$80,000 in profits from trading in these improperly opened accounts.

Respondent has now made changes to insure that its OFAC screening procedures are performed on every account it introduces.

IV.

LEGAL DISCUSSION

Regulation 166.3, 17 C.F.R. § 166.3 (2012), 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); *In re Paragon Futures Ass'n*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992) (“The focus of any proceeding to determine whether Rule 166.3 has been violated will be on whether [a] review [has] occurred and, if it did, whether it was diligent”); *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). 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. *In re Paragon Futures*, ¶ 25,266 at 38,850; *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, Respondent had a procedure in place that required it to perform OFAC screening on its accounts or obtain written agreements from third parties that the third party was performing OFAC screening on the accounts Respondent introduced. Respondent did not follow this procedure and as a result accounts were introduced for

accountholders that came from OFAC targeted countries. Respondent's failure to follow its procedures was a failure to adequately supervise activities related to its business as a Commission registrant and a violation of Commission Regulation 166.3, 17 C.F.R. §166.3 (2013). *See Crothers v. CFTC*, 33 F.3d 405, 411 (4th Cir. 1994) (*aff'g* 166.3 violation against associated person who failed to follow futures commission merchant's "internal control procedures in connection with the opening of" a futures account).

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that during the Relevant Period, Respondent failed to adequately supervise activities related to its business as a Commission registrant in violation of Commission Regulation 166.3, 17 C.F.R. §166.3 (2013).

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 the 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 (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 (2012), 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, 857-68 (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 upon 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; and
- 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 Commission Regulation 166.3, 17 C.F.R. § 166.3 (2013);
 2. orders Respondent to cease and desist from violating Commission Regulation 166.3, 17 C.F.R. § 166.3 (2013);
 3. orders Respondent to pay a civil monetary penalty in the amount of one hundred and fifty thousand dollars (\$150,000) plus post-judgment interest; and
 4. orders Respondent and its successors and assigns to comply with the undertakings consented to in its Offer and as set forth below in Section 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 Commission Regulation 166.3.
- B. Civil Monetary Penalty: Respondent shall pay a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000), plus post-judgment interest, within ten (10) days of the date of the entry of this Order (the "CMP Obligation"). Should Respondent not satisfy its CMP Obligation within ten (10) days of the date of entry of this Order, 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. Respondent shall pay this penalty 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 by other than electronic funds transfer, 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 by electronic funds transfer is chosen, 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 penalty with a cover letter that identifies 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: 1) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, DC 20581, 2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address, and 3) Regional Counsel, Commodity Futures Trading Commission, Chicago Regional Office, 525 West Monroe, 11th Floor, Chicago, IL. 60661. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if this amount is not paid in full within fifteen (15) days of the due date, Respondent shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the penalty, with interest thereon to the date of the payment, has been made.

C. Respondent and its successors and assigns shall comply with the following undertaking set forth in its Offer:

1. Disgorgement: Respondent shall pay disgorgement in the amount of eighty thousand dollars (\$80,000), plus post-judgment interest, within ten (10) days of the date of the entry of this Order (the "Disgorgement Obligation"). Should Respondent not satisfy its Disgorgement Obligation within ten (10) days of the date of entry of this Order, 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. Respondent shall pay this disgorgement 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 by other than electronic funds transfer, 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 by electronic funds transfer is chosen, 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 penalty with a cover letter that identifies 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: 1) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, DC 20581, 2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address, and 3) Regional Counsel, Commodity Futures Trading Commission, Chicago Regional Office, 525 West Monroe, 11th Floor, Chicago, IL. 60661. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if this amount is not paid in full within fifteen (15) days of the due date, Respondent shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the disgorgement, with interest thereon to the date of the payment, has been made.

2. 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.

3. 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.
4. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent's CMP Obligation and/or Disgorgement 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.
5. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation and Disgorgement 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 on this date.

By the Commission



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

Dated: September 9, 2014