

UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:
Walsh Trading, Inc.

:
: **CFTC Docket No. 09-09**
:
: **ORDER INSTITUTING PROCEEDINGS**
: **PURSUANT TO SECTIONS 6(c) AND 6(d)**
: **OF THE COMMODITY EXCHANGE ACT**
Respondent : **AND MAKING FINDINGS AND**
: **IMPOSING REMEDIAL SANCTIONS**

I.

The Commodity Futures Trading Commission (the "Commission") has reason to believe that Walsh Trading, Inc. ("Walsh"), a registered introducing broker ("IB"), has violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2008). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether Walsh engaged in the violations set forth herein, and to determine whether an order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of this administrative proceeding, Walsh has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings and conclusions herein, Walsh 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 Walsh consents to the entry of this Order, 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 Walsh does not consent to the use of the Offer, or the findings or conclusions consented to in this Order, 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 Walsh consent to the use of the Offer or this Order, or the findings or conclusions consented to in the Offer or this Order, by any other party in any other proceeding.

III.

The Commission finds the following:

A. Summary

From at least March 2006 to April 2008 (the “relevant period”) Walsh failed to diligently supervise an employee’s handling of certain accounts managed by an unregistered commodity trading advisor (“CTA”), and lacked procedures to detect unauthorized trading of these customer accounts. Accordingly, Walsh violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2008).

B. Respondent

Walsh Trading, Inc. (NFA No. 0276316) is an Illinois corporation with its principal place of business located at 222 S Riverside Plaza, Suite 900, Chicago, Illinois 60606, and branch offices in Arkansas and other locations. Walsh has been registered as an IB since 1997.

C. Facts

During the relevant period, an associated person (“AP”) of Walsh, who managed Walsh’s Arkansas branch office (the “Walsh AP”), solicited customers for an unregistered CTA (the “unregistered CTA”) and introduced those customer to a registered futures commission merchant (“FCM”). During this time, the Walsh AP placed orders for at least five customer accounts at the unregistered CTA’s direction. None of these accounts contained a power of attorney (“POA”) or a letter of direction authorizing the unregistered CTA, Walsh AP, or anyone other than the customers to trade or manage their accounts.

In order to obtain customers, the unregistered CTA and Walsh AP made presentations to groups of farmers. For example, the unregistered CTA delivered a presentation at the County Agent’s offices in Jennings, Louisiana that approximately 30 farmers attended. The unregistered CTA was accompanied to this presentation by the Walsh AP, who introduced him to the farmers. The Walsh AP was identified as the person who would open the accounts that the unregistered CTA would then manage.

Specifically, at this meeting, the unregistered CTA gave a presentation to the assembled farmers about his consulting business and the various risk management hedging services he could provide. The unregistered CTA held himself out to those in attendance as someone who would help the farmers manage their hedging strategies with the Walsh AP, who could open FCM accounts for them. The Walsh AP subsequently introduced customers’ accounts on behalf of Walsh to registered FCM MF Global Inc. (“MF Global”). Ultimately, the unregistered CTA managed at least five customers’ accounts that were introduced to MF Global by the Walsh AP. All of these customer accounts were opened and carried as non-discretionary accounts, and none of the accounts contained a POA or a letter of direction. Accordingly, at no time during the relevant period was the unregistered CTA authorized to trade the accounts.

Walsh failed to establish and to implement a system for overseeing its APs', employees' and agents' sales solicitations and maintenance of customer accounts that are traded by third parties through its APs. In sworn testimony before the Commission, the principals of Walsh testified that they were unaware of the Walsh AP's and unregistered CTA's activities, which had taken place over a two year period. They also testified that they had never visited Walsh's Arkansas branch office and never audited that branch. The Walsh principals further testified that Walsh had no policy regarding review of new business or visiting and auditing its branch offices.

Despite the relatively small size of Walsh, none of the five accounts were properly reviewed by Walsh to determine how they were solicited and whether they were to be traded as discretionary or non-discretionary accounts. This initial failure to supervise was compounded by a continued failure to diligently monitor the Walsh AP's handling of customers' accounts. Walsh did not have adequate procedures to discover, deter and/or terminate the wrongful conduct. The lack of any supervisory procedures and adequate oversight of the Walsh AP's branch office enabled unauthorized trading by the unregistered CTA to continue undetected for a period of two years.

D. Legal Discussion

Commission Regulation 166.3 requires that every Commission registrant (except APs who have no supervisory duties) diligently supervise the handling by its partners, employees and agents of all of its commodity interest accounts and activities relating to its business as a registrant. In order to prove a violation of Commission Regulation 166.3, it must be demonstrated that either: (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 Paragon Futures Assoc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992); *Bunch v. First Commodity Corp. of Boston*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,352 at 39,168-69 (CFTC Aug. 5, 1992).

Under Commission Regulation 166.3, a registrant has a "duty to develop procedures for the detection and deterrence of possible wrongdoing by its agents." *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) (quoting *Lobb v. J.T. McKerr & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,568 at 36,444 (CFTC Dec. 14, 1989)). Thus, "a showing that the registrant lacks an adequate supervisory system [standing alone] 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). The lack of an adequate supervisory system can be established by showing that the registrant failed to develop proper procedures for the detection of wrongdoing. *CFTC v. Trinity Fin. Group Inc.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,179 at 45,635 *aff'd in relevant part, vacated in part and remanded sub nom. Sidoti v. CFTC*, 178 F.3d 1132 (11th Cir. 1999) (respondent failed to establish and maintain meaningful procedures for deterring and detecting fraud by their employees, and knew of specific incidents of misconduct but failed to take reasonable steps to correct the problems in violation of Commission Regulation 166.3).

As described above, Walsh failed to implement, follow and monitor appropriate supervisory procedures and failed to diligently supervise its employees' sales solicitations and maintenance of customer accounts that are traded by third parties through its APs and therefore violated Commission Regulation 166.3.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Walsh violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2008).

V.

OFFER OF SETTLEMENT

Walsh has submitted an Offer in which it acknowledges service of this Order and admits the jurisdiction of the Commission with respect to the matters set forth in this Order and waives: 1) the service and filing 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 consideration of the Offer; 6) any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act, 1996 HR 3136, Pub. L. 104-121, §§ 231-232, 110 Stat. 862 (1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (2008), relating to, or arising from, this proceeding; 7) any and all claims that it may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and/or part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2008), relating to, or arising from this proceeding; and 8) any claim 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.

Walsh stipulates that the record basis on which this Order is entered consists of this Order and the findings in this Order consented to in its Offer. Walsh consents to the Commission's issuance of this Order, which makes findings as set forth herein and orders that Walsh: 1) cease and desist from violating Commission Regulation 166.3, 17 C.F.R. § 166.3 (2007); 2) pay a civil monetary penalty in the amount of \$50,000; and 3) comply with its undertakings as set forth in the Offer and incorporated in this Order.

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

VI.

ORDER

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

- A. Walsh shall cease and desist from violating Commission Regulation 166.3, 17 C.F.R. § 166.3 (2008);
- B. Walsh shall pay a civil monetary penalty in the amount of fifty thousand dollars (\$50,000) within ten (10) days of the date of the entry of this Order. Walsh shall pay its civil monetary penalty by making 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: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone 405-954-6569

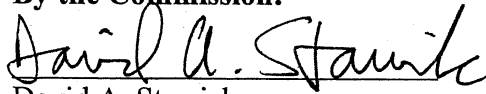
If payment by electronic transfer is chosen, Walsh shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Walsh shall accompany payment of the penalty with a cover letter that identifies Walsh and the name and docket number of this proceeding. Walsh shall simultaneously transmit copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. §9a(2) (2006), if this amount is not paid in full within fifteen (15) days of the due date, Walsh 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; and

- C. Walsh and its successors and assigns shall comply with the following undertakings set forth in its Offer:
 - 1) Walsh shall develop, monitor, and enforce a supervisory system for overseeing its APs', employees' and agents' sales solicitations and maintenance of customer accounts that are traded by third parties through Walsh APs, to determine, document, and monitor:

- a. the status of any person trading on behalf of another person or entity, including, but not limited to, all registration records and any and all Notice(s) of Exemption; such information shall be maintained in a readily accessible medium and promptly retrievable to determine whether any trade is being properly entered by the third party on behalf of the account holder; and
 - b. whether the third party has discretion to trade an account holder's account, the scope of discretion, and the presence of proper documentation in Walsh's records of such authorization; such information shall be maintained in a readily accessible medium and promptly retrievable to determine whether any trade is being properly entered by the third party on behalf of the account holder;
- 2) Walsh shall incorporate such systems described in Section VI.C.1, above, into Walsh's compliance structure and include them in Walsh's compliance manual; further, initial and ongoing training shall be given to all Walsh APs, compliance staff, and other employees and agents in the order solicitation, receipt, execution and recordation processes concerning these systems;
- 3) In addition to such readily accessible systems, Walsh must maintain and review on a sufficient basis, as part of its recordkeeping responsibilities, a hard copy of all registration information, including any and all Notice(s) of Exemption, Letters of Direction and POAs, with account numbers clearly noted thereon, and organized by the identity of the persons or entities who control such accounts;
- 4) All Walsh APs, compliance staff, and other employees and agents in the order solicitation, receipt, execution and recordation processes, shall receive initial and, at least, annual training and copies of all National Futures Association Interpretative Notices and other directives; and
- 5) Neither Walsh, nor any of its successors, assigns, employees, agents, attorneys or representatives 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 Walsh's (i) testimonial obligations; or (ii) right to take appropriate legal positions in other proceedings to which the Commission is not a party. Walsh and its successors and assigns shall undertake all steps necessary to ensure that all of its employees, agents, attorneys or representatives under its authority and/or actual or constructive control understand and comply with this undertaking.

The provisions of this Order shall be effective on this date.

By the Commission:

A handwritten signature in black ink that reads "David A. Stawick". The signature is written in a cursive style with a horizontal line underneath the name.

David A. Stawick

Secretary of the Commission

Commodity Futures Trading Commission

Dated: March 11, 2009