

UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

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CFTC Docket No. 10-2151

IN THE MATTER OF)
)

Triland USA Inc.,)
)

Respondent.)

)

**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 Triland USA Inc. (“Triland”), a registered futures commission merchant (“FCM”), has violated Commission Regulations (“Regulations”) 1.12(h), 30.7(a), 30.7(c)(2), and 166.3, 17 C.F.R. §§ 1.12(h), 30.7(a), 30.7(c)(2), and 166.3 (2010). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether Triland engaged in the violations as 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, Triland 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, Triland 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 Triland consents to the entry of this Order and 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 Triland 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 Triland 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

In late December 2008, a private investment firm informed Triland that it had a hedge fund client interested in trading IntercontinentalExchange Europe (“ICE”) products that settled in EUROS. The hedge fund, which was located in the United States, became Triland’s customer. Regulation 30.1(c) defines a foreign futures or options customer as any person located in the United States who trades foreign futures or foreign options. Accordingly, Triland’s customer’s transactions were governed by Part 30 (“Foreign Futures and Foreign Options Transactions”) of the Regulations. Regulation 30.7(a) requires, *inter alia*, that an FCM maintain in a separate account (a “secured account” or “30.7 account”) at a depository bank an amount at least sufficient to cover or satisfy its obligations to its foreign futures and options customers. Triland, however, mistakenly believed the customer was an offshore fund and failed to open a secured account. Instead, Triland opened an unsecured account. In January 2009, Triland learned that it should have opened a secured account and commenced taking steps to open the account. A secured account was not opened until February 2009. However, prior to opening the secured account, Triland accepted the customer’s funds in the non-secured account. Moreover, despite the fact that the secured account was opened on February 6, 2009, Triland did not transfer the customer’s funds to the secured account until March 24, 2009. In addition, a second foreign futures and options customer transferred funds to the non-secured account in early February 2009, and Triland failed to transfer that customer’s funds to the secured account until March 24, 2009. As a result, Triland failed to maintain in a secured account an amount sufficient to cover or satisfy its obligations to its foreign futures and options customers, in violation of Regulation 30.7(a).

In addition, Triland failed to obtain an acknowledgement from the depository bank acknowledging that the secured account held customer funds that were being held in accordance with the Regulations until April 2009, in violation of Regulation 30.7(c)(2). Triland also failed to provide immediate telephonic and written notice to the Commission and Triland’s designated self regulatory organization (“DSRO”), the CME Group, Inc. (“CME”), when it knew or should have known that the amount of funds set aside were below the required secured amount, in violation of Regulation 1.12(h).

At the time of these events, Triland did not have procedures in place to: ensure that the proper type of bank account was opened; the customers’ funds were promptly transferred to the 30.7 account; ensure that an acknowledgement was obtained from the depository bank acknowledging that the account held customer funds that were being held in accordance with the Regulations; and allow it to determine it had a deficiency in its secured amount that required notice to the Commission and the CME. Triland thereby failed to supervise diligently the handling of secured accounts and failed to have sufficient policies and procedures designed to detect and deter the violations of the Regulations found herein, in violation of Regulation 166.3.

B. Respondent

Triland USA Inc. is located at 655 Third Avenue, New York, New York 19917. Triland has been continuously registered with the Commission since 1991.

C. Facts

In December 2008, a private investment firm informed Triland it wanted to trade ICE products that settled in EUROS for a hedge fund client that operated both onshore and offshore funds. To accommodate this request, Triland was required to open a foreign currency bank account for the hedge fund. Triland understood that the hedge fund account holder was to be an offshore fund and therefore believed it was a non-U.S. customer. Accordingly, on December 30, 2008, Triland opened a non-secured account to hold the customer funds.

The private investment firm subsequently informed Triland that the account was for an onshore fund. Triland then realized that the hedge fund was a foreign futures or foreign options customer within the meaning of Regulation 30.1(c),² and that the account holder's funds needed to be in an account that complied with Regulation 30.7 – commonly known as a secured or 30.7 account.

On January 13, 2009, Triland advised its bank that the non-secured account Triland had opened had to be re-designated as a secured account. Triland advised the bank that the change was urgent because the customer would begin trading the next week. The bank explained that the re-designation could not be accomplished by simply changing the name on the account and advised Triland that it would have to open a new account and submit new account forms. Later that day, Triland made a formal written request to the bank to open a secured account and asked to be notified when the account was opened. Triland subsequently forwarded the new customer account papers. The bank did not open the account until February 6, 2009. In the meantime, on January 20, 2009, the hedge fund transferred approximately \$1.2 million into the house account and commenced trading.

In addition, in early February 2009, the same private investment firm opened an account with Triland for a second, unrelated, onshore hedge fund client that intended to trade ICE products that settled in EUROS. On February 5, 2009, this second fund transferred approximately \$5.7 million to the non-secured account. However, despite the fact that the secured account was opened on February 6, 2009, Triland failed to transfer the customer's funds to the secured account until March 24, 2009. As a consequence, Triland's secured amount was deficient from January 20, 2009 until at least March 6, 2009.³

² With certain exceptions not applicable here, Regulation 30.1 defines a "foreign futures or options customer" as any person located in the United States who trades in foreign futures or options.

³ Triland had sufficient excess secured funds from March 6 to March 24 to avoid a deficiency.

Regulation 30.7(c)(2) requires that an FCM obtain and retain an acknowledgment from the depository institution that the depository was informed that the money, securities, or property in a secured account are held for or on behalf of foreign futures and options customers and are being held in accordance with the Regulations. Triland failed to obtain an acknowledgment until April 3, 2009.

In May 2009, the CME, in its capacity as Triland's DSRO, began an audit of Triland. In the course of the audit, the CME noted that Triland's secured capital computations for January and February 2009 erroneously included the funds in the house account. The CME advised Triland that it would have to re-compute its secured amounts and give the Commission notice of the resulting deficiencies in its secured funds.⁴

On July 2, 2009, Triland sent a letter to the Commission's Division of Clearing and Intermediary Oversight to report that Triland had been under-secured for the period January 20, 2009 to March 6, 2009.

D. Legal Discussion

1. Failure to Maintain Secured Amount

Triland violated Regulation 30.7(a) by failing to maintain in a separate account money, securities and property in an amount sufficient to cover its obligations to foreign futures and options customers from January 20, 2009, to at least March 6, 2009. Triland failed to open the bank account as a 30.7 account, accepted customer funds into the account, and then failed to promptly transfer the customers' funds to the secured account once the secured account was finally opened. As a result, the funds were not properly secured, and Triland's secured amount was deficient from January 20 to at least March 6, 2009.

2. Triland Failed to Obtain an Acknowledgement

Triland violated Regulation 30.7(c)(2) by failing to obtain a satisfactory acknowledgment from the depository institution until April 3, 2009. Triland opened the 30.7 account on February 6, 2009, and did not obtain an acknowledgment until April 3, 2009. Thus, for nearly two months it maintained the 30.7 account without an acknowledgment from the depository. Accordingly, Triland violated Regulation 30.7(c)(2) continuously from February 6, 2009 until April 3, 2009.

3. Triland Failed to Provide Notice of the Deficiency in its Secured Amount

Regulation 1.12(h) provides in part that whenever an FCM knows or should know that the total amount of funds set aside for foreign futures and options customers is less than the amount required, the registrant must report such deficiency to the Commission and the FCM's

⁴ Regulation 1.12(h) requires, *inter alia*, that an FCM provide immediate telephonic and written notice to the Commission and the FCM's DSRO when it knows or should know that the amount of funds set aside are below the required secured amount.

DSRO immediately by telephonic notice and confirm such notice immediately in writing by facsimile notice. Triland should have known that the funds in the house account were not secured and should have been able to determine its amount secured for foreign futures and options customers excluding the funds in the house account were less than the amount required. Triland was under secured from January 20, 2009 through at least March 6, 2009. However, Triland did not provide the Commission with written notice of the deficiency until July 2, 2009. Accordingly, Triland violated Regulation 1.12(h) continuously from January 20, 2009 through July 2, 2009.

4. Triland Failed to Supervise Diligently the Activities Relating to its Business as a Registrant

Regulation 166.3 requires each Commission registrant, except associated persons with no supervisory duties, to supervise diligently all activities of its employees relating to its business as a registrant. Compliance with Regulation 166.3 requires that the registrant have adequate supervisory procedures and that it follow those procedures. *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 (CFTC Aug. 5, 1992). Triland did not have procedures in place to: ensure that the proper type of bank account was opened; the customers' funds were promptly transferred to the secured account; ensure that an acknowledgement was obtained from the depository bank acknowledging that the account held funds on behalf of foreign futures and foreign options customers and that the funds were being held in accordance with the Regulations; and allow it to determine it had a deficiency in its secured amount that required notice to the Commission and the CME. Accordingly, Triland failed to supervise diligently the handling by its employees of matters relating to its secured accounts. Based upon these supervisory failures, Triland failed to have an adequate supervisory system and procedures in place designed to both detect and deter the violations of the Commissions' Regulations found herein, in violation of Regulation 166.3.

E. Respondent's Remedial Efforts and Cooperation

Triland has undertaken significant remedial measures to prevent further violations of the Regulations. Among the steps undertaken, it has hired an outside consultant to perform a comprehensive review of the company's practices and procedures. It is in the process of hiring additional senior management. To assure compliance going forward, it has retained an outside consultant to conduct reviews of Triland annually for the next three years. Triland has also fully cooperated with the Commission's investigation.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Triland violated Regulations 1.12(h), 30.7(a), 30.7(c)(2), and 166.3, 17 C.F.R. §§ 1.12(h), 30.7(a), 30.7(c)(2) and 166.3 (2010).

V.

OFFER OF SETTLEMENT

Triland has submitted an Offer of Settlement in which it acknowledges service of the Order and admits the jurisdiction of the Commission with respect to the matters set forth in the Order and waives (1) the service and filing of a complaint and notice of a hearing; (2) a hearing and all post-hearing procedures, (3) judicial review by any court, (4) any objection to the participation by any member of the Commission's staff in the Commission's consideration of the Offer; (5) 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; (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 Regulations, 17 C.F.R. §§ 148.1-30 (2010); and (7) 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.

Triland stipulates that the record basis upon which this Order is entered shall consist solely of the findings in this Order to which Triland has consented to in the Offer. Triland consents to the entry of this Order, which: (1) makes findings by the Commission that Triland violated Commission Regulations 1.12(h), 30.7(a), 30.7(c)(2), and 166.3, 17 C.F.R. §§ 1.12(h), 30.7(a), 30.7(c)(2) and 166.3 (2010); (2) orders Triland to cease and desist from violating Regulations 1.12(h), 30.7(a), 30.7(c)(2) and 166.3, 17 C.F.R. §§ 1.12(h), 30.7(a), 30.7(c)(2) and 166.3 (2010); (3) orders Triland to pay a civil monetary penalty in an amount of \$725,000 (Seven Hundred Twenty-Five Thousand Dollars), plus post-judgment interest, within ten (10) days of the date of the entry of this Order; and (4) orders Triland and its successors and assigns to comply the undertaking consented to in its Offer and set forth below in Section VI of this Order.

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

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Triland shall cease and desist from violating Regulations 1.12(h), 30.7(a), 30.7(c)(2), and 166.3, 17 C.F.R. §§ 1.12(h), 30.7(a), 30.7(c)(2) and 166.3 (2010).
- B. Triland shall pay a civil monetary penalty in the amount of seven hundred twenty-five thousand dollars (\$725,000), plus post-judgment interest, within ten (10) days of the date of the entry of this Order. Post judgment interest shall accrue beginning eleven days after 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. Triland 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: Marie Bateman AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-6569

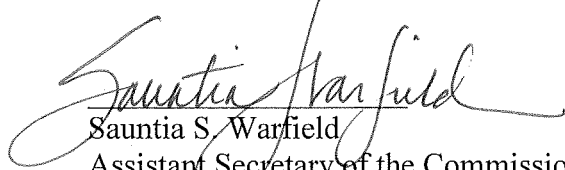
If payment by electronic funds transfer is chosen, Triland shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Triland shall accompany payment of the penalty with a cover letter that identifies Triland and the name and docket number of this proceeding. Triland 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) (2006), if this amount is not paid in full within fifteen (15) days of the due date, Triland 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. Triland and its successors and assigns shall comply with the following undertaking set forth in its Offer: Neither Triland nor any of its successors, assigns, nor their agents or employees under their authority or control, shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order, or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision shall affect Triland's (i) testimonial obligations; or (ii) right to take

legal positions in other proceedings to which the Commission is not a party. Triland and its successors and assigns shall take all steps necessary to assure that all of their agents and employees under their authority or 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 cursive script, appearing to read "Sauntia S. Warfield".

Sauntia S. Warfield
Assistant Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 30, 2010