

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

2012 SEP 11 11:53:00
OFFICE OF THE
SECRETARY
COMMODITY FUTURES TRADING COMMISSION

In the Matter of)
) CFTC Docket No: 12-32
)
Infinity Futures LLC,)
) **ORDER INSTITUTING PROCEEDINGS,**
) **PURSUANT TO SECTIONS 6(c) AND 6(d)**
) **OF THE COMMODITY EXCHANGE**
) **ACT, MAKING FINDINGS AND**
Respondent.) **IMPOSING REMEDIAL SANCTIONS**
)
)

I.

The Commodity Futures Trading Commission (“Commission” or “CFTC”) has reason to believe that from approximately July 2009 to September 2010 (the “Relevant Period”) Infinity Futures LLC (“Infinity” or “Respondent”), a registered introducing broker (“IB”), violated Commission Regulation (“Regulation”) 166.3, 17 C.F.R. § 166.3 (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Infinity engaged in the violations set forth herein, and to determine whether any order shall be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Infinity has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying the findings or conclusions herein, Infinity 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.¹

¹ Infinity 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 Infinity 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 a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Infinity 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, Infinity failed to diligently supervise its officers', employees' and agents' handling of accounts in the name of Bentley Equities, LLC ("Bentley"), and at least fourteen (14) individual client accounts that were opened at the direction of Christopher Hales ("Hales") ("Hales client accounts"). Specifically, Infinity's officers, employees and agents ignored warning signs that Hales and another individual named Eric Richardson ("Richardson") were depositing third party customer funds in a proprietary trading account in Bentley's name and that Hales was holding himself out to the public as a commodity trading advisor ("CTA") and trading individual client accounts without registering with the Commission or obtaining a power of attorney, as required. Additionally, Infinity did not have an adequate system of supervision in place. Infinity's compliance manual was outdated, no written policies or procedures were provided to its associated persons ("AP"), and Infinity did not follow or enforce its compliance procedures. Infinity also did not adequately train its employees, officers and agents regarding detection of suspicious account activity and prevention of fraud.

B. RESPONDENT

Infinity Futures LLC is a Delaware limited liability company with its principal place of business at 111 West Jackson Boulevard, Suite 2010, Chicago, Illinois 60604. Infinity has been registered with the Commission as an IB since November 10, 1995 and has been listed as a forex firm with the National Futures Association ("NFA") since October 7, 2010.

C. FACTS

1. **The Commission Brought Fraud Actions Against Bentley, Hales And Richardson; Hales Was Also Prosecuted Criminally**

On May 2, 2012, the CFTC filed a complaint against Hales, Richardson and Bentley, none of which was registered with the Commission as required, alleging that Hales and Richardson fraudulently solicited and accepted at least \$1,001,642.93 from at least twenty-eight (28) pool participants for the purpose of trading futures in a commodity pool account in the name of Bentley, and that Hales solicited and accepted \$109,000 from three clients for the purpose of trading individual managed accounts. Of this \$1,110,642.93, Hales and Richardson misappropriated at least \$557,000 for their personal use and another \$71,000 to make payments to existing participants and clients in the manner of a Ponzi scheme. In addition, the CFTC complaint alleged that Hales solicited \$1,233,875 from at least fourteen (14) clients who directly funded their individual accounts, seven of whom also invested in the Bentley account, to open and fund individual accounts at a registered FCM through Infinity at Hales' direction that Hales would manage. Hales traded at least six of these accounts without obtaining a power of attorney as required. Hales, Richardson and Bentley lost approximately \$482,190.05 trading the Bentley account, and the Hales client accounts that Hales traded lost approximately \$814,429.88. *CFTC v. Hales et al.*, 2:12-cv-00415 (C.D. UT, May 2, 2012).

Following a guilty plea, on November 2, 2011, Hales was sentenced to 90 months incarceration and ordered to pay \$12,719,236 in criminal restitution in connection with mortgage fraud and the investment fraud described above. *USA v. Christopher D. Hales*, 2:10-cr-00183 (C.D. UT, Mar. 10, 2010).

Due to Infinity's inadequate supervisory system and failure to diligently supervise its employees, officers and agents it did not detect Hales', Richardson's and Bentley's fraudulent scheme for more than a year.

2. Infinity Failed to Supervise Diligently the Handling of the Bentley Account and The Hales Client Accounts by Its Officers, Employees, and Agents

Hales and Richardson opened the Bentley account in July 2009. In opening the account, they executed and submitted a customer account application to Infinity and the FCM carrying the account. Richardson represented in the application that "no one else has a financial interest in, guarantee or control over the [Bentley] account." In email correspondence between Infinity and Richardson around the time that the Bentley account was opened, an Infinity AP asked Richardson to clarify the source of the funds in the Bentley account, the division of ownership of Bentley and the reason why Bentley was formed. Richardson responded that the source of the funds was "Bentley equities own firm capital," that he and Hales each owned 50% of the company and that it was formed to provide investment services and consultation to other investment entities.

In December 2009, four Infinity APs with responsibility for the Bentley account met to discuss their concerns about frequent and numerous cash deposits in that account while the account was continually losing money. One of the APs informed Infinity's management about the group's collective concerns, and management instructed the APs to send the account holders a few questions about the source of funds and the trading activity in the account. Infinity sent an email to Hales and Richardson on December 21, 2009, inquiring about the source of funds in the Bentley account and why Hales and Richardson had made 24 cash deposits into the account within 5 months especially since the account was continually losing money. Hales responded that the source of the funds in the Bentley account was from Hales', Richardson's and Bentley's other business ventures, including some personal funds, and that although the account had suffered consistent losses they continued to deposit funds into the account because they were confident that their trading would improve. Infinity did not request any confirmation or substantiation of these statements from Hales, Richardson or Bentley. The Bentley account remained active and at least one of the four APs said that he assumed Hales' response was "satisfactory . . . because we didn't stop trading with them"

3. Infinity Ignored Numerous Warning Signs of Questionable Activity and Illegal Conduct

Infinity's compliance procedures impose upon Infinity and its employees, officers and agents a continuing duty to "know their customer," *i.e.*, to obtain information about Infinity's customer's identity, background, investment objectives, source of income, assets and other relevant information especially when certain warning signs are present, like frequent wires in and

out of an account, transactions that lack business sense, or where the customer has difficulty explaining the nature of his business. Infinity failed to comply with this continuing duty by ignoring numerous warning signs that Hales and Richardson were depositing third party customer funds into the Bentley account, and that Hales was holding himself out to the public as a CTA and trading individual client accounts without obtaining powers of attorney or registering as a CTA, as required. Some of the warning signs or “red flags” include:

- Four telephone calls from at least two customers in February, July and August 2010 to the Infinity AP with primary responsibility for the Bentley account and Hales client accounts (“Relationship AP”) in which the customers explained that the customers had given Hales funds for deposit into the Bentley account with the understanding that Hales would deposit their funds into a commodity pool account in the name of Bentley at a registered FCM and trade the account on their behalf;
- Telephone calls to Infinity’s Relationship AP from at least four customers stating or strongly suggesting that Hales was trading their personal trading accounts at a registered FCM without a power of attorney or any other authorization as required;
- A telephone call to Infinity’s Relationship AP from at least one customer stating that he had given Hales money to fund his individual trading account and inquiring whether the account had been funded;
- Hales and Richardson making thirty separate deposits into the Bentley account throughout the Relevant Period while the account was continually losing money; and
- Infinity accepting Richardson’s email that the funds in the Bentley account were “Bentley equities own firm capital” without further inquiry while a corporate proprietary account that Hales traded at the same FCM as the Bentley account and that was introduced by Infinity was closed because it received third party funds.

Despite these red flags, Infinity’s employees failed to adequately inquire into the source of funds in the Bentley account or whether Hales was trading individual client accounts without a power of attorney or registration with the Commission as a CTA as required. Instead, for example, Infinity’s Relationship AP simply informed some of the customers that they should not be giving Hales or Richardson money to trade in the Bentley account or that Hales should not be trading their accounts without questioning Hales or Richardson or informing Infinity’s compliance officer or other management personnel at Infinity. Further, in violation of Infinity’s compliance procedures, at no time during the Relevant Period did Infinity contact any regulatory authorities or law enforcement officials about Hales, Richardson or Bentley. The accounts remained active and Hales continued to trade them.

4. Infinity Had an Inadequate System of Supervision

Infinity's compliance department lacked the proper compliance procedures and oversight to ensure that their APs would identify and appropriately communicate the suspicious activity in the Bentley account and the Hales client accounts to their compliance officer, who, according to their compliance procedures, is responsible for "the gathering of relevant information, analysis of information and suspicious activity, employee training and the investigation of suspicious activity[,] . . . and must be immediately notified in the event of any potential issues." Infinity's compliance officer claimed to have no knowledge of any concerns or questionable activity related to the Bentley account or the Hales client accounts until after Hales was arrested in September 2010.

Additionally, during the Relevant Period, Infinity's compliance manual was outdated and contained inaccurate information, and Infinity has no record of ever providing the compliance manual to Infinity's Relationship AP or any other APs that had any responsibility for the Bentley account and the Hales client accounts. Infinity's Relationship AP did not recall receiving or consulting any compliance manual while employed with Infinity from October 2005 to November 2011, and was not aware that Infinity had any written compliance policies or procedures. In addition, Infinity's APs received no compliance training beyond a one hour annual online course. Instead, Infinity improperly relied upon its APs being hired "pre-trained" by former employers and hoped that its APs would ask questions of a supervisor if and when potential issues arose.

IV. LEGAL DISCUSSION

A. Infinity Failed to Supervise Diligently Its Officers, Employees, and Agents Responsible for Handling the Bentley Account and the Hales Client Accounts

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, Infinity employed an inadequate supervisory system in violation of Regulation 166.3. Specifically, Infinity failed to develop proper procedures for the detection of wrongdoing, failed to provide adequate training of its employees, and failed to diligently supervise its employees’ handling of the Bentley account and the Hales client accounts.

Moreover, during the Relevant Period, Infinity failed to perform its supervisory duties diligently in violation of Regulation 166.3. For example, the Bentley account received thirty deposits during a fourteen month period and customers made numerous telephone calls to Infinity’s Relationship AP indicating that Hales and Richardson were depositing third party funds into the Bentley account and that Hales was trading individual client accounts without the required powers of attorney or CTA registration. However, other than asking about the source of the funds and the trading activity in the Bentley account in two emails to Hales, Richardson and Bentley in July and December 2009 respectively, Infinity did not question Hales or Richardson about the Bentley account and the Hales client accounts or request updated information from them even though the questionable activity and red flags continued through August 2010. Accordingly, Infinity failed to take steps necessary to ensure that Infinity “knew” its customer. Further, Infinity’s Relationship AP never reported the numerous telephone calls from concerned customers regarding their investments with Hales, Richardson and Bentley and their understanding that their funds were being deposited into a Bentley pool account or that Hales was trading their individual accounts. Finally, Infinity never contacted any regulatory authorities or law enforcement officials about Hales, Richardson or Bentley.

V. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that during the Relevant Period Infinity violated Regulation 166.3, 17 C.F.R. § 166.3 (2012).

VI. OFFER OF SETTLEMENT

Infinity 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. Waive(s):
 - 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, 857-868 (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 Infinity 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 Infinity violated Regulation 166.3, 17 C.F.R. § 166.3 (2012);

2. Orders Infinity to cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2012);
3. Orders Infinity to pay a civil monetary penalty in the amount of three hundred thousand dollars (\$300,000) plus post-judgment interest;
4. Orders Infinity and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and 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. Infinity shall cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2012);
- B. Infinity shall pay a civil monetary penalty in the amount of three hundred thousand dollars (\$300,000) ("CMP Obligation"). Post-judgment interest shall accrue on its 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 the Order pursuant to 28 U.S.C. § 1961 (2006). Infinity shall pay the CMP Obligation 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 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) 954-5644

If payment is to be made by electronic funds transfer, Infinity shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Infinity shall accompany payment of the CMP Obligation with a cover letter that identifies Infinity and the name and docket number of this proceeding. Infinity shall simultaneously transmit copies of the cover letter and the form of payment to: (1) Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; and

C. Infinity and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

- 1. Public Statements:** Infinity agrees that neither Infinity 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 Infinity's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Infinity and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and employees under its authority and/or control understand and comply with this agreement.

- 2. Disgorgement:** Infinity agrees to pay disgorgement in the amount of forty thousand dollars (\$40,000) ("Disgorgement Obligation"). Infinity shall pay the Disgorgement 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) 954-5644

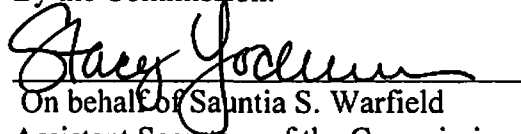
If payment is to be made by electronic funds transfer, Infinity shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Infinity shall accompany payment of Disgorgement Obligation with a cover letter that identifies Infinity and the name and docket number of this proceeding. Infinity shall simultaneously transmit copies of the cover letter and the form of payment to: (1) Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

- 3.** Infinity will immediately undertake to implement strengthened compliance procedures designed to detect and prevent fraudulent activity and other violations of the Act and Regulations. Within thirty (30) days of the effective date of this Order, Infinity will hire an outside compliance consulting firm ("Compliance Consultant"), that is acceptable to Commission staff, who shall review and assess

its operations, and make recommendations regarding “best practices” in its supervision and compliance programs to prevent future violations of the Act and Regulations, and assist Infinity in reviewing and updating its current compliance procedures as necessary in order to fully comply with the Act and the Commission’s Regulations. Within ninety (90) days thereafter, the Compliance Consultant will submit to Commission staff the compliance procedures they have recommended at that time and Infinity will submit an affidavit that the compliance procedures have been implemented. The Compliance Consultant shall conduct an audit of Infinity six months after the effective date of this Order to ensure that it is following the newly implemented compliance procedures, and the Compliance Consultant shall provide a copy of its audit report to Commission staff. The compliance procedures referenced in this undertaking shall include, without limitation, annual training for APs regarding how to identify questionable activity in customer accounts, and the appropriate steps to take when questionable activity is detected.

4. **Partial Satisfaction:** Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent’s Disgorgement Obligation or 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.
5. **Change of Address/Phone:** Until such time as Infinity satisfies in full its Disgorgement Obligation and CMP Obligation as set forth in this Order, Infinity 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.

By the Commission.



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

Dated: September 21, 2012