

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

IN THE MATTER OF:

TILLAGE COMMODITIES, LLC

RESPONDENT.

RECEIVED CFTC



Office of Proceedings
Proceedings Clerk

10:00 am Sep 28, 2017

CFTC DOCKET NO. 17 – 27

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe Tillage Commodities, LLC (“Respondent”) violated Commission Regulation (“Regulation”) 166.3, 17 C.F.R. § 166.3 (2017). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violation set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent 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, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledges service of this 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

From at least March 3, 2016 through March 24, 2016 (“Relevant Period”), Respondent, a registered commodity pool operator (“CPO”), failed to supervise diligently its fund administrator’s operation of the commodity pool’s bank account containing participants’ funds (“pool bank account”).² Respondent also failed to ensure that certain aspects of its compliance and supervision programs comported with its obligations to supervise diligently the handling by its partners, officers, employees, and agents of all activities relating to its business as a Commission registrant. These failures—which delayed detection of an ongoing fraud, resulting in a \$5.9 million loss of pool participants’ funds, or 64% of the pool’s total capital—were in violation of Commission Regulation 166.3, 17 C.F.R. § 166.3 (2017).

B. RESPONDENT

Tillage Commodities, LLC has been registered as a CPO with the Commission since 2013. Its principal office is located in Stamford, Connecticut.

C. FACTS

Respondent used a third-party fund administrator to provide administrative services, which included operating the pool bank account; processing and disbursing customer redemptions and/or withdrawals; and maintaining books and records. Pursuant to the agreement with the fund administrator, Tillage Commodities Management, LLC³ was required to “designate a member of [its] Management to oversee the record-keeping and administrative services provided by [the fund administrator]” and “review and approve all reports, analyses and books and records resulting from the aforementioned services.” During the Relevant Period, Respondent kept a majority of pool participants’ funds in the pool bank account as opposed to the pool’s trading account.

During the Relevant Period, over the course of twenty-one days, the fund administrator received seven fraudulent requests to transfer funds from the pool bank account, five of which were successfully processed. These unauthorized transfers to two purported private technology companies in Hong Kong ranged in amount from \$200,000 to \$3 million. These requests were made by an unknown party who spoofed Respondent’s managing member’s email address and sent requests that imitated, in some respects, Respondent’s typical transfer requests.

² Respondent operates the commodity pool Tillage Commodities Fund, LP. The referenced bank account was held in the name of the commodity pool.

³ Tillage Commodities Management, LLC, the investment manager of Respondent’s commodity pool, is the signatory to the agreement with Respondent’s fund administrator.

Although only the fund administrator had the right to make withdrawals from the pool bank account, Respondent did not have any procedures in place to monitor the fund administrator's operation of this account. Instead, during the period when the fraud occurred, Tillage only reviewed the pool bank account's balance once during the month to verify its calculation of the pool's net asset value. Respondent also did not have any system in place to alert it when transactions cleared from the account. Furthermore, while Respondent could review the activity in the account on the bank's website, from January 7, 2016 to March 24, 2016, Respondent failed to do so. The inadequacy of Respondent's supervision of its agent regarding wire transfers and the operation of the pool bank account, and its policies and systems, are evidenced by the fact that Respondent only became aware of the multiple fraudulent transfers on March 24, 2016 when the fund administrator notified Respondent of the seventh suspicious wire transfer request. These failures delayed detection of the ongoing fraud, which resulted in a \$5.9 million loss of pool participants' funds, or 64% of the pool's total capital.⁴

IV.

LEGAL DISCUSSION

Regulation 166.3, 17 C.F.R. § 166.3 (2017), requires that every Commission registrant⁵ "diligently supervise the handling by its partners, officers, employees and agents" of all activities relating to its business as a registrant. *See In re FCStone, LLC*, CFTC No. 15-21, 2015 WL 2066891, at *2 (May 1, 2015) (consent order). Regulation 166.3 imposes upon a registrant an affirmative duty to supervise its employees and agents diligently by establishing, implementing and executing an adequate supervisory structure and compliance program. *In re Vision Financial Markets*, CFTC No. 13-36, 2013 WL 5376144, at *2 (Sept. 24, 2013) (consent order). For a registrant to fulfill its duties under Regulation 166.3, it must both design an adequate program of supervision and ensure that the program is followed. *In re GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at *17-19 (Aug. 11, 1992), *aff'd sub nom. Moneison v. CFTC*, 996 F.2d 852 (7th Cir. 1993).

A violation of Regulation 166.3 is an independent violation for which no underlying violation is necessary. *FCStone*, 2015 WL 2066891, at *7; *In re FCStone LLC*, CFTC No. 13-24, 2013 WL 2368539, at *17 (May 29, 2013) (consent order); *In re Forex Capital Mkts. LLC*, CFTC No. 12-01, 2011 WL 4689390, at *3 (Oct. 3, 2011) (consent order); *In re First National Trading Corp.*, CFTC No. 92-17, 1994 WL 378010, at *10 (July 20, 1994) (citing *In re Paragon Futures Ass'n*, CFTC No. 88-18, 1992 WL 74261 (Apr. 1, 1992)). Consequently, a violation of Regulation 166.3 is demonstrated by showing either that: (1) the registrant's supervisory system

⁴ A majority of the funds held by the pool were attributable to a single participant, who is also the managing member of the Respondent. Notably, following discovery of the fraud, Respondent communicated with the pool participants immediately and offered them the option to redeem, in full or in part, their balance in the pool prior to the fraud. Most participants have received a full redemption; however, a few participants have opted not to redeem.

⁵ An exception to this obligation exists for associated persons who do not have not supervisory duties.

was generally inadequate, or (2) the registrant failed to perform its supervisory duties diligently. *FCStone*, 2015 WL 2066891, at *3 (citing *In re Murlas Commodities*, CFTC No. 85-29, 1995 WL 523563 (Sept. 1, 1995)); *Paragon*, 1992 WL 74261, at *14 (concluding that 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’”); *GNP Commodities*, 1992 WL 201158, at *19 (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).

While the absence of a written policy or formal training on every issue does not constitute a failure to supervise, Regulation 166.3 explicitly requires all registered CPOs to diligently supervise all activities of its officers, employees, and agents relating to its business as a CPO. Under Regulation 166.3, a registrant has a “duty to develop procedures for the ‘detection and deterrence of [CEA violations] by its agents.’” *Samson Refining Co. v. Drexel Burnham Lambert, Inc.*, CFTC No. 82-R448, 1990 WL 282783, at *11 (Feb. 16, 1990). A registrant’s failure to develop proper procedures for the detection of wrongdoing can evidence the lack of an adequate supervisory system. See *CFTC v. Sidoti*, 178 F.3d 1132 (11th Cir. 1999); *In re Open E Cry*, CFTC No. 12-24, 2012 WL 10259805, at *6 (June 7, 2012) (consent order). Whether a registrant has met its supervisory duties is a fact-intensive determination. See, e.g., *GNP Commodities*, 1992 WL 201158, at *17.

A CPO may delegate the performance of certain services to a fund administrator, including those services delegated by the Respondent in this case. In contracting with an agent to perform these services, however, a CPO cannot abdicate its responsibilities under Regulation 166.3 and must diligently supervise the agent’s handling of all activities relating to the CPO’s business as a Commission registrant. The protection of pool participants’ funds must be of paramount concern for a CPO. Consequently, the management and oversight by a CPO of its pool’s bank account, which is comprised of pool participants’ funds, squarely falls within the scope of Regulation 166.3. Here, Respondent’s failure to diligently supervise its fund administrator’s operation of the pool bank account, resulting in a significant loss of participants’ funds, constitutes a violation of Regulation 166.3. Further, Respondent also failed to develop and implement policies and procedures reasonably designed to detect unauthorized or fraudulent withdrawals of pool participants’ funds from the pool bank account. These failures are evidenced by the fact that for twenty-one days, Respondent was unaware of the five large withdrawals of funds from the pool bank account and only became aware of such withdrawals upon notification from its fund administrator.

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Regulation 166.3, 17 C.F.R. § 166.3 (2017).

VI.

OFFER OF SETTLEMENT

Respondent has submitted the 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 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 (2012) and 28 U.S.C. § 2412 (2012), 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 (2017), 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 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 Regulation 166.3, 17 C.F.R. § 166.3 (2017);

2. Orders Respondent to cease and desist from violating Regulation 166.3;
3. Orders Respondent to pay one hundred fifty thousand dollars (\$150,000), plus post-judgment interest; and
4. Orders Respondent and its successors and assigns to comply with the conditions 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 Regulation 166.3, 17 C.F.R. § 166.3 (2017).
- B. Respondent shall pay a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000) (“CMP Obligation”), plus post-judgment interest. 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 (2012).

Respondent shall pay the CMP Obligation within ten (10) days of the date of entry of the Order 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
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

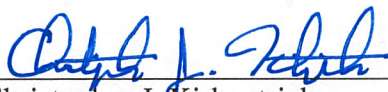
If payment is to be made by electronic funds transfer, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies 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 and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. 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.
 2. 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.
 3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of their 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.
 4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Consent 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 as of this date.

By the Commission.



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

Dated: September 28, 2017