UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:	)	
CHS Hedging, LLC,	)	
Respondent.	)	**CFTC Docket No. 23-05**

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

I. INTRODUCTION

The Commodity Futures Trading Commission ("Commission") has reason to believe that during the period January 2017 through December 2020 ("Relevant Period"), CHS Hedging, LLC ("CHS Hedging"), violated the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1–26, and Commission Regulations ("Regulations"), 17 C.F.R. pts. 1–190 (2021), promulgated thereunder, including Section 4g(a) of the Act, 7 U.S.C. § 6g(a), and Regulations 1.11(c)(1), (d), and (e)(4); 1.31(b)(4) and (d)(3)(ii); 1.73(a)(1) and (2); 42.2, and 166.3, 17 C.F.R. §§ 1.11(c)(1), (d), (e)(4); 1.31(b)(4), (d)(3)(ii); 1.73(a)(1), (2); 42.2; 166.3 (2021).

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 violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

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 acknowledge service of this Order.[1]

[1] Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the period starting January 2017 through December 2020, CHS Hedging failed to implement an adequate anti-money laundering ("AML") program, particularly as applied to a futures and options trading account controlled by Customer A, and failed to implement risk-based limits concerning trading by Customer A. CHS Hedging also failed to comply with its recordkeeping obligations, and committed other supervisory failures concerning the handling of commodity interest accounts carried by CHS Hedging, and other activities of its partners, officers, employees, and agents relating to its business as a futures commission merchant ("FCM").

Customer A owned and controlled Ranching Company and other related businesses. From 2016 through the end of the Relevant Period, Customer A used Ranching Company to misappropriate more than $230 million from Agribusiness Company, one of Ranching Company's customers. Customer A used some of the money he misappropriated from Agribusiness Company to meet margin calls generated by speculative trading in Ranching Company's account at CHS Hedging. During the Relevant Period, Customer made net margin payments[2] of more than $147 million to CHS Hedging.

Throughout the Relevant Period, CHS Hedging had requested and obtained financial statements for Customer A and his businesses reflecting no cash or cash equivalents, substantially no short-term assets in excess of liabilities, negative or break-even cash flow, and drawn-down credit lines. CHS Hedging nonetheless continued to accept margin payments from Customer A without adequately investigating the source of Customer A's funds. Some of these margin payments exceeded the entire net annual operating income of Customer A's businesses. Customer A met all margin calls.

Customer A's speculative trading losses were facilitated by CHS Hedging's failure to impose appropriate trading limits on his account. The trading limits CHS Hedging imposed on Customer A's account were inconsistent with Customer A's financial resources and business needs, i.e., hedging. Moreover, the limits were effectively disabled for part of the Relevant Period and were not always enforced. Customer A frequently exceeded his limits, only at times to have them raised by CHS Hedging, which allowed Customer A to continue his speculative trading and sustain more losses. CHS Hedging provided Customer A with direct market access, but intentionally circumvented automatic pre-trade order screening on his account which allowed Customer A to routinely exceed trading limits.

CHS Hedging's failures to adequately investigate the source of the funds Customer A used to satisfy his margin obligations, coupled with its failure to maintain reasonable procedures

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consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

[2] In this context, "net margin payments" refers to the total amount of margin payments made by Customer A, less withdrawals, thereby reflecting Customer A's cash position vis a vis CHS Hedging.

or controls governing its AML program, including its obligations to comply with certain provisions of the Bank Secrecy Act ("BSA") and regulations promulgated by the Treasury, violate Regulation 42.2, 17 C.F.R. § 42.2 (2021).

CHS Hedging's failure to impose or enforce risk-based limits or effective pre-trade controls on Customer A's account during the Relevant Period violated Regulations 1.11(c)(1), (d), and (e)(4), and 1.73(a)(1) and (2), 17 C.F.R. §§ 1.11(c)(1), (d), (e)(4), 1.73(a)(1), (2) (2021).

CHS Hedging failed during portions of the Relevant Period to maintain certain required records, in violation of Section 4g(a) of the Act, 7 U.S.C. § 6g, and Regulation 1.31(b)(4), 17 C.F.R. § 1.3(b)(4) (2021), and, during the course of the Commission's investigation, failed to produce certain required records promptly, or in the format requested by Commission staff, in violation of Section 4g of the Act and Regulation 1.31(d)(3)(ii), 17 C.F.R. § 1.31(d)(3) (2021).

All of the foregoing conduct constitutes a failure by CHS Hedging to diligently supervise its accounts, in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2021).

B. RESPONDENTS

CHS Hedging, LLC is a registered FCM headquartered in Inver Grove Heights, Minnesota.

C. FACTS

1. Customer A's Trading and Margin Payments

Customer A was a principal of Ranching Company, whose primary business was procuring and grazing cattle. As part of this business, Customer A hedged commodity risk by trading in Ranching Company's commodity futures and options trading accounts at CHS Hedging. Customer A also engaged in speculative trading in those accounts. During the period January 2017 through December 2020, Customer A made net margin payments to CHS Hedging totaling approximately $147 million. These payments were made to margin losses arising, in part, from speculative trading by Customer A in live and feeder cattle futures and options contracts traded on the Chicago Mercantile Exchange ("CME").

Customer A's account agreement stated his trading would be limited to hedging transactions. Moreover, CHS Hedging's Risk Management Policy limited speculative trading to a certain threshold of total customer volume, which Customer A's trading often exceeded. The members of CHS Hedging's Risk Management Unit ("RMU"), including the firm's Risk Manager, Chief Financial Officer (who was also the firm's Chief Risk Officer), and Chief Compliance Officer (who was also the firm's designated AML Officer), knew that Customer A at times engaged in speculative trading and allowed him to do so. The RMU members never understood or sought to sufficiently understand the strategy or purpose behind Customer A's speculative trading.

Customer A's speculative trading at times generated margin calls of between $5 million and $8 million. Customer A always met the calls. As early as November 2017, the RMU members questioned where Customer A got the funds to make these margin payments. To try

and answer this question, the RMU obtained financial statements provided by Customer A for himself and his businesses, including Ranching Company. The statements, which covered the period 2014 through April 2017, reflected no cash or cash equivalents, mostly negative operating income, short-term liabilities in excess of assets, drawn-down credit lines, break-even cash flow, and millions of dollars' worth of checks in excess of deposits. Since the start of 2017, Customer A had made approximately $42 million in net margin payments to CHS Hedging.

Members of the RMU held a call in December 2017 to ask Customer A where he got the funds for his margin payments. On the call, Customer A failed to provide a satisfactory explanation for the source of his funds. CHS Hedging did not take sufficient action after the call. No further inquiry into the sources of Customer A's funds was made by the RMU or anyone else at CHS Hedging. Customer A continued to regularly make seven-figure daily margin payments to cover losses from his speculative trading.

In April 2019, the RMU members received updated financial statements for Customer A and his businesses. The statements, which covered 2017 and 2018, continued to reflect substantially no cash or cash equivalents and negative or negligible income from operations. Certain of the statements failed to reflect Customer A's net margin payments to CHS Hedging, which by April 2019 exceeded $88 million since the start of the Relevant Period.[3] No one at CHS Hedging noticed this omission. CHS Hedging continued to allow Customer A to engage in speculative trading and make seven-figure margin payments without adequately intervening. Customer A did not fail to make any margin payments.

2. Limits on Customer A's Trading

CHS Hedging's Risk Management Policy required that all customer accounts be subject to automated pre-trade risk ("PTR") limits. CHS Hedging's Risk Management Policy specified that "no client can exceed [its] pre-execution risk limits."

Throughout the Relevant Period, CHS Hedging provided Customer A (and other customers) with direct market access through a customer-facing software system.[4] CHS Hedging's software system was configured to automatically reject any order that, if filled, would result in the customer exceeding his or her PTR limit.

At the start of the Relevant Period, Customer A was supposed to have a PTR limit of 3,000 contracts (net long or short, all months, futures equivalent) in live or feeder cattle futures or options. Due to a "keying error," however, the PTR limit on Customer A's account was set too high. As a result, Customer A was able to—and regularly did—exceed his putative 3,000-contract PTR limit by as much as 4,000 contracts, for a total position of more than 7,000 contracts net short.

CHS Hedging eventually discovered the error, but, starting in November 2017, raised Customer A's PTR limit to 6,500 contracts (net long or short, all months, futures equivalent) in

[3] These margin payments should have been reflected in Customer A's cash flow or income statements.

[4] In July 2019, CHS Hedging started clearing customer trades in live and feeder cattle futures and options. Before that, the trades were cleared through a different FCM.

live or feeder cattle futures or options. The limit was equivalent to the size of Customer A's position at the time CHS Hedging discovered the keying error, and was not determined by reference to Customer A's financial resources or the business needs of Ranching Company, i.e., hedging.

In June 2018, CHS Hedging determined that Customer A would no longer be subject to a PTR limit based on a particular number of contracts like all the other customers. Instead, CHS Hedging determined that he would be subject to a trading limit based on a mathematical formula developed by a risk consultant hired by CHS Hedging to advise the RMU. Under that formula, Customer A was limited to a position with a value equal to the lesser of: (a) 2.5 times Customer A's beginning-of-day net liquidating value[5]; or (b) a position that, in the event of a two-limit move down[6], would generate a loss of no more than $35 million. There is no record explaining the basis for this formula, i.e., how it took into account Customer A's resources or hedging needs.

CHS Hedging's customer-facing software system could not automatically calculate or enforce Customer A's new formula-based limit.[7] The system was hard-coded, however, to require an automated PTR limit. Therefore, CHS Hedging set the automated PTR limit in Customer A's account so high as to be meaningless. The new formula-based limit allowed Customer A to maintain even larger speculative positions and incur even larger margin calls than before.[8]

As high as the new formula-based limit was, Customer A frequently exceeded it. CHS Hedging failed to adequately enforce the limit, or impose any consequence upon Customer A for exceeding it. To the contrary, CHS Hedging sought to further accommodate Customer A by increasing the formula-based limit from $35 million to $37 million, and later $39 million.

3. CHS Hedging's Compliance and AML Programs

Throughout the Relevant Period, CHS Hedging had a written AML policy that required the investigation and reporting of suspicious transactions. The policy defined "suspicious transactions" to include transactions that "lack a reasonable economic basis or recognizable strategy based on what Firm knows about the customer," or that CHS Hedging, "suspects or has reason to suspect involves illegally derived funds." CHS Hedging otherwise lacked written

[5] "Beginning-of-day net liquidating value" is the liquidation value of an accountholder's account at the beginning of a trading session.

[6] A "limit move down" refers to the maximum amount by which a contract can decline in value before the exchange temporarily halts trading in that contract.

[7] In order to determine how much risk Customer A was taking on, CHS Hedging had its risk manager calculate the value of Customer A's position and advise Customer A if he was over, which Customer A often was.

[8] Customer A's largest margin call in 2017 was $5.9 million. His largest margin call after the imposition of the formula-based limit was $9.4 million.

procedures setting forth how the AML policy should be implemented—i.e., how such transactions should be detected, investigated, or reported.[9]

In 2017, CHS Hedging received the results of an annual independent compliance audit by Auditor A. In the results, Auditor A advised CHS Hedging that it should rely less on manual processes and invest in automated processes. Auditor A also suggested that CHS Hedging improve its written policies and procedures. CHS Hedging failed to Act on Auditor A's recommendations.

In 2019, CHS Hedging retained a specialized AML auditor, Auditor B.[10] After performing the audit, Auditor B advised CHS Hedging that it should cease relying on the "type" of customers it services, or the length of customer relationships to detect, investigate and report suspicious transactions that might constitute money laundering violations. Auditor B advised CHS Hedging that this was a "hot topic with regulators," and that the regulators would likely not accept these as controls. CHS Hedging failed to act on Auditor B's recommendations.

CHS Hedging failed to provide its CCO/AML Officer with sufficient resources to discharge her duties. The CCO/AML Officer asked her superiors numerous times for resources, including, e.g., a "compliance analyst," and various software products, but her requests were either not granted or not granted in a timely manner.

4. CHS Hedging's Production and Record-Keeping

At the start of the CFTC's investigation, Division of Enforcement Staff requested certain documents from CHS Hedging required to be produced under Section 4g of the Act, 7 U.S.C. § 6g. CHS Hedging failed to promptly respond to Staff's request for, *inter alia*, pre-trade communications[11] with Customer A. CHS Hedging took more than nine months to produce the pre-trade communications.

CHS Hedging also failed to provide the requested documents in the format requested by Staff. CHS Hedging produced many of the documents in low-fidelity, black-and-white images, rather than as native files, as requested by Staff.

CHS Hedging failed to maintain pre-September 2019 communications between Customer A and one of its salespersons, Salesperson A. The missing communications included more than two years of potential pre-trade communications. Rather than apprise Staff of this failure, CHS Hedging simply produced messages from Salesperson A's phone, the earliest of which, dated

[9] CHS Hedging's only procedure—an unwritten one—was to ensure that any deposits or withdrawals were made by the account's authorized controller.

[10] CHS Hedging's AML policy requires annual testing, i.e., auditing, of its AML controls, as mandated by Treasury Regulation 1026.210(b)(2), 31 C.F.R. § 1026.210(b)(2) (2021) (requiring FCMs to implement and enforce policies which requiring independent testimony of anti-money laundering controls). Auditor B was retained pursuant to this requirement.

[11] Pre-trade communications are "all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest . . . whether transmitted by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media." Regulation 1.35, 17 C.F.R. § 1.35(a)(1)(iii) (2021).

September 17, 2019, said: "I've got a new phone. Waiting on password to enable recorded text number." Only after being questioned by Staff did CHS Hedging confirm that the messages were not retained.[12]

III. LEGAL DISCUSSION

A. Respondent Failed to Implement an Adequate AML Program, in Violation of Regulation 42.2

Regulation 42.2, 17 C.F.R. § 42.2 (2021), requires that every FCM comply with the applicable provisions of the Bank Secrecy Act[13] and the regulations promulgated thereunder by the Department of the Treasury, 31 C.F.R., Chapter X (2021). One such regulation, Treasury Regulation 1026.210, 31 C.F.R. § 1026.210 (2021), sets forth AML program requirements for FCMs. The requirements include, in relevant part, that an FCM implement and maintain a written AML program. *Id*.

As part of that program, an FCM must establish and implement policies, procedures, and internal controls reasonably designed to prevent the financial institution from being used for money laundering. Treasury Regulation 1026.210(b)(1). An FCM must also establish and maintain risk-based procedures for conducting ongoing customer due diligence, which include, *inter alia*, "understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile;" and "[c]onducting ongoing monitoring to identify and report suspicious transactions …." Treasury Regulation 1026.210(b)(5). The reporting of such suspicious transactions may be accomplished by filing a SAR with FinCEN, a bureau of the U.S. Department of Treasury, as described in Treasury Regulation 1026.320, 31 C.F.R. § 1026.320 (2021).

CHS Hedging lacked policies or procedures reasonably designed to prevent money-laundering. CHS Hedging's AML policy was inadequate and, and CHS Hedging had no procedures to explain how it should be implemented.

CHS Hedging had few internal controls to prevent money laundering by customers. When suggestions were made on how to improve its controls, CHS Hedging did not fully implement them. Two separate auditors advised CHS Hedging to implement more automated systems and rely less on customer relationships. CHS Hedging did not fully follow their advice.

CHS Hedging failed to conduct ongoing due diligence with respect to Customer A's account or to understand the nature and purpose of its relationship with Customer A. CHS Hedging knew that Customer A was a rancher and that his account opening agreement provided that he would limit his trading to hedging transactions. Nonetheless, CHS Hedging allowed Customer A to also engage in speculative trading—trading that bore no relationship to Customer

[12] CHS Hedging later explained that the communications were lost because its employee failed to back up his old phone.

[13] The "Bank Secrecy Act," refers to the Currency and Foreign Transactions Reporting Act, its amendments, and the other statutes relating to the subject matter thereof, codified at 12 U.S.C. §§ 1829b, 1951–1959, 18 U.S.C. §§ 1956–1957, 1960, and 31 U.S.C. §§ 5311–5314, 5316–5332.

A's business needs. CHS Hedging personnel failed to adequately investigate or understand the strategy behind Customer A's speculative trading.

CHS Hedging likewise failed to conduct adequate diligence with respect to the source of Customer A's margin payments, which totaled $147 million on a net basis during the Relevant Period. These payments greatly exceeded Customer A's financial resources. CHS Hedging personnel wondered early in the Relevant Period where Customer A got the money to make his margin payments, and failed to adequately investigate or obtain a reasonable explanation.

CHS failed to monitor, identify, or report suspicious transactions in Customer A's account. The facts known to CHS Hedging demonstrated that Customer A had access to an eight-figure annual revenue stream seemingly unaccounted-for in Customer A's financial statements. CHS Hedging should have investigated and reported Customer A's margin payments to the authorities. CHS Hedging did not do this.

CHS Hedging's failures constitute violations of Regulation 42.2. *See A&A Trading, Inc*., CFTC No. 20-77, 2020 WL 5876726, at *3–4 (Sept. 30, 2020) (consent order) (finding violations of Regulations 42.2, and 166.3 where respondent IB lacked adequate AML program and failed to file SAR in the face of suspicious behavior); *Interactive Brokers LLC*, CFTC No. 20-25, 2020 WL 4734993, at *3–4, *8–9 (Aug. 10, 2020) (consent order) (finding violations of Regulations 42.2 and 166.3 where respondent FCM lacked adequate AML program and failed to file SAR when a customer's deposits exceeded her declared income or assets, and where customer showed "lack of regard for the profitability of her trades").

B. Respondent Failed to Implement its Risk Management Program, in Violation of Regulations 1.11(c)(1), (d), and (e)(4)

Regulation 1.11(c)(1), 17 C.F.R. § 1.11(c)(1) (2021), requires that each FCM establish, maintain, and enforce a risk management program consisting of risk management policies and procedures designed to monitor and manage the risks associated with the activities of the FCM. Regulation 1.11(d), 17 C.F.R. § 1.11(d) (2021), requires that each FCM establish a risk management unit with, *inter alia*, sufficient financial, operational, and other resources to carry out the risk management program. Regulation 1.11(e)(4), 17 C.F.R. § 1.11(e)(4) (2021), requires that an FCM's risk management program include a supervisory system reasonably designed to ensure that the FCM's policies and procedures are diligently followed.

CHS Hedging failed to enforce its risk management program with respect to Customer A's account. For other customers, CHS Hedging enforced its risk management program through the use of automated PTR limits. For Customer A, these automated limits were effectively disabled and replaced with a mathematical formula developed by CHS Hedging's risk consultant. Customer A at times exceeded even these formula-based limits. However, rather than curtail Customer A's trading, CHS Hedging instead increased Customer A's limits.

CHS Hedging failed to provide the RMU with the sufficient resources to effectively discharge its risk-management duties. CHS' system of supervision failed to reasonably ensure that the risk management program was diligently followed.

CHS Hedging thereby violated Regulations 1.11(c)(1), (d), and (e)(4). *See Advantage Futures LLC*, CFTC No. 16-29, 2016 WL 5582341, at *3 (Sept. 21, 2016) (consent order) (finding violation of Regulation 1.11 where FCM failed to review or enforce pre-trade risk controls).

C. Respondent Failed to Establish Risk-Based Limits or Automated Screening in Customer A's Account, in Violation of Regulations 1.73(a)(1) and (2)

Regulation 1.73, 17 C.F.R. § 1.73 (2021), imposes risk management requirements for an FCM which is a clearing member of a derivatives clearing organization. Regulation 1.73(a)(1) requires that each clearing FCM establish risk-based limits in each customer account based on position size, order size, margin requirements, or similar factors. If a clearing FCM provides electronic market access to customers, the FCM must, under Regulation 1.73(a)(2), use automated means to screen orders for compliance with the customer's risk-based limits.

In July 2019, CHS Hedging became a clearing member of the CME for live and feeder cattle futures and options contracts. As such, CHS Hedging was, from July 2019 through the end of the Relevant Period, subject to Regulation 1.73.

CHS Hedging failed to establish adequate risk-based limits for Customer A's account. The formula-based limits on Customer A's account were not tailored to Customer A's financial resources or business needs. Moreover, the limits were effectively disabled for part of the Relevant Period and Customer A at times exceeded them without consequence.

CHS Hedging provided direct market access to Customer A via its customer-facing software system. CHS Hedging did not, however, use automated means to screen Customer A's orders for compliance with position limits. Although such functionality was available, CHS Hedging effectively disabled it for Customer A, first as the result of an error, and later intentionally to allow Customer A to trade up to his formula-based limit, i.e., the $35 million or 2.5 times beginning-of-day net liquidating value limit created in June 2018.

CHS Hedging thus violated Regulations 1.73(a)(1) and (2). *See Advantage*, 2016 WL 5582341, at *4–5 (finding violations of 1.73 where FCM set limits "not commensurate" with customer assets).

D. Respondent Failed to Maintain Pre-Trade Communications in Violation of Section 4g of the Act and Regulation 1.31(b)(4), and Failed to Produce Documents Promptly and in the Form Requested by Commission Staff in Violation of Regulation 1.31(d)(3)(ii)

Section 4g(a) of the Act, 7 U.S.C. § 6g(a), provides, in relevant part, that every registered FCM shall keep books and records pertaining to the FCM's customers' transactions and positions in commodities for future delivery on any board of trade in such form and manner, and for such period, as may be required by the Commission. The books and records required to be kept include, *inter alia*, all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest, referred to collectively as "pre-trade communications." Regulation 1.35, 17 C.F.R. § 1.35(a)(3) (2021). Regulation 1.31(b), 17 C.F.R. § 1.31(b) (2021),

requires an FCM to keep pre-trade communications, including electronic pre-trade communications, for a period of no less than five years from their creation.[14]

Regulation 1.31(d)(3)(ii), 17 C.F.R. § 1.31(d)(3)(ii) (2021), requires that an FCM produce records, e.g., electronic pre-trade communications, upon request by Commission staff. *See also* Section 4g(a) of the Act, (requiring that an FCM keep its books and records open to inspection by a representative of the Commission). Regulation 1.31(d)(3)(ii) requires that an FCM do so "promptly," and "in the form and medium" requested by Commission staff. Commission staff has "broad discretion" as to what constitutes a prompt production, taking into account the relevant circumstances. Recordkeeping, 64 Fed. Reg. 28735, 28738–28739 (May 27, 1999) (notice of final rules).

CHS Hedging failed to maintain pre-trade communications between Customer A and Salesperson A for the required five-year period. More than two years' worth of these communications were lost, according to CHS, because of a failure to back-up the electronic data on Salesperson A's phone. This failure constitutes a violation of Section 4g(a) of the Act and Regulation 1.31(b)(4). *See Rosenthal Collins Group,* LLC, CFTC No. 12-18, 2012 WL 1242406, at *4 (Apr. 12, 2012) (consent order) (imposing sanctions for production failures).

CHS Hedging took more than nine months to complete its production of pre-trade communications with Customer A during the Relevant Period. This was not prompt under the circumstances. Because the communications with Customer A were electronic, they should have been readily accessible to CHS Hedging. *See* Regulation 1.31(b)(4) (requiring that electronic records be "readily accessible"). When the pre-trade communications were eventually produced, they were produced primarily as low-resolution, black-and-white image files, rather than in their native format as requested by Commission staff. CHS Hedging thereby violated Regulation 1.31(d)(3)(ii).

E. Respondent Failed to Diligently Supervise Customer A's Account in Violation of Regulation 166.3

Regulation 166.3, 17 C.F.R. § 166.3 (2021), provides that each Commission registrant, including each FCM, must "diligently supervise" the handling by its officers, employees, or agents of all commodity interest accounts carried by the registrant, as well as all other activities of the registrant's officers, employees, or agents relating to its business as a registrant.

Diligent supervision means setting up and implementing, i.e., actually following, a program reasonably designed to ensure compliance with relevant provisions of the Act and Regulations. *See Interactive Brokers*, 2020 WL 4734993, at *8–9 (FCM failed to create sufficient polies and procedures to monitor, document, or report suspicious transactions; failed to comply with existing policies regarding investigation of customer account activity); *Advantage*, 2016 WL 5582341, at *7 (FCM violated Regulation 166.3 by failing to implement its risk

[14] *See also* Regulations 1.31(a), 17 C.F.R. § 1.31(a) (defining "regulatory records" to include all books and records requited to be maintained; defining "electronic regulatory records" to mean all regulatory records other than those exclusively created or maintained on paper); 1.31(b)(3) (requiring all regulatory records, subject to certain exceptions not relevant here, to be retained for period of at least five years); and 1.31(b)(4) (applying retention period to corresponding categories of electronic regulatory records).

management policies); *Morgan Stanley Smith Barney, LLC*, CFTC No. 14-25, 2014 WL 4658496, at *4 (Sept. 15, 2014) (consent order) (FCM violated Regulation 166.3 by failing to follow its own compliance procedures regarding suspicious activity).

This program should include policies and procedures reasonably designed to detect, investigate, and report suspicious transactions, or "red flags" indicative of potential fraud. *See Interactive Brokers*, 2020 WL 4734993, at *8–9; *Gain Capital Group, LLC*, CFTC No. 20-70, 2020 WL 5876729, at *4 (Sept. 29, 2020) (consent order) ("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."); *Rosenthal Collins*, 2012 WL 1242406, at *3 (FCM failed to diligently supervise account run by Ponzi-schemer where FCM failed to request updated financial information in the face of large deposits, and where customer was indifferent to commissions or P&L in account).

As set forth in greater detail above, CHS Hedging failed to diligently discharge its supervisory obligations with respect to its handling of Customer A's account. CHS Hedging failed to: diligently investigate suspicious activity in Customer A's account; implement or enforce an adequate AML program, including identifying and reporting suspicious activity in Customer A's account; and diligently implement or enforce its risk management program, or impose risk-based limits, automated or otherwise, with respect to Customer A's account. These failures were continuous throughout the Relevant Period. CHS Hedging thus violated Regulation 166.3.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the period January 2017 through December 2020, CHS Hedging violated Section 4g(a) of the Act, 7 U.S.C. § 6g(a), and Regulations 1.11(c)(1), (d), and (e)(4); 1.31(b)(4) and (d)(3)(ii); 1.73(a)(1) and (2); 42.2; and 166.3, 17 C.F.R. §§ 1.11(c)(1), (d), (e)(4); 1.31(b)(4), (d)(3)(ii); 1.73(a)(1), (2); 42.2; 166.3 (2021).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

A. Acknowledges 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 they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2021), relating to, or arising from, this proceeding;

7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), 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, including this Order;

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 Section 4g(a) of the Act, 7 U.S.C. § 6g(a), and Regulations 1.11(c)(1), (d), and (e)(4); 1.31(b)(4) and (d)(3)(ii); 1.73(a)(1) and (2); 42.2; and 166.3, 17 C.F.R. §§ 1.11(c)(1), (d), (e)(4); 1.31(b)(4), (d)(3)(ii); 1.73(a)(1), (2); 42.2; 166.3 (2021);

2. Orders Respondent to cease and desist from violating Section 4g(a) of the Act and Regulations 1.11(c)(1), (d), and (e)(4); 1.31(b)(4) and (d)(3)(ii); 1.73(a)(1) and (2); 42.2; and 166.3;

3. Orders Respondent to pay a civil monetary penalty in the amount of six million, five hundred thousand dollars ($6,500,000), plus any post-judgment interest within thirty days of the date of entry of this Order;

4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order;

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondent CHS Hedging, and its successors and assigns, shall cease and desist from violating Section 4g(a) of the Act, 7 U.S.C. § 6g(a), and Regulations 1.11(c)(1), (d), and (e)(4); 1.31(b)(4) and (d)(3)(ii); 1.73(a)(1) and (2); 42.2; and 166.3, 17 C.F.R. §§ 1.11(c)(1), (d), (e)(4); 1.31(b)(4), (d)(3)(ii); 1.73(a)(1), (2); 42.2; 166.3 (2021).

2. Respondent shall pay a civil monetary penalty in the amount of six million, five hundred thousand dollars ($6,500,000), within thirty days of the date of the entry of this Order. If the CMP Obligation is not paid in full within thirty days of the date of entry of this Order, then 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 the CMP Obligation and any post-judgment interest 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:

   MMAC/ESC/AMK326
   Commodity Futures Trading Commission
   6500 S. MacArthur Blvd.
   HQ Room 266
   Oklahoma City, OK 73169
   9-AMC-AR-CFTC@faa.gov

   If payment is to be made by electronic funds transfer, Respondent shall contact Tonia King 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. 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.

3. 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 their 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 comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under its authority or control understand and comply with this agreement.

2. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's respective CMP Obligations 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.

3. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP 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 calendar days of the change.

4. Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondent's debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the address below:

   Secretary of the Commission
   Office of General Counsel
   Commodity Futures Trading Commission
   Three Lafayette Centre
   1155 21st Street NW
   Washington DC, 20581

5. Remediation:

   a. Implement policies and procedures to monitor and report suspicious transactions in customer accounts; such policies and procedures shall set forth in detail the steps for investigating and reporting such transactions, as well as know-your-customer procedures requiring updated financial statements for customers whose trading or margin payments depart from a pre-established pattern, or which are inconsistent with the customer's business purposes or previously disclosed financial resources;

   b. Implement policies and procedures to establish risk-based customer trading limits consistent with Regulations 1.11(c)(1), (d), and (e)(4), 17 C.F.R. § 11.1(c), (d), (e)(4); such policies and procedures shall set forth specific, objective factors to be considered by CHS Hedging in establishing such limits,

including, e.g., the business purposes of the customer's trading and the customer's financial resources;

c. Implement policies and procedures consistent with Regulations 1.73(a)(1) and (2), 17 C.F.R. § 1.73(a)(1), (2) that provide for the automated monitoring and enforcement of customer trading limits;

d. Conduct enhanced annual training for all employees on the following topics: AML; risk assessment and monitoring of customer trading; and record-keeping and production.

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

By the Commission.

Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: December 19, 2022