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CFTC Orders INTL FCStone Financial Inc. and FCStone Merchant Services LLC to Pay Penalty for Unlawful Exchange for Related Position Transactions

INTL FCStone Financial had inadequate supervisory systems and controls to detect and deter the unlawful conduct

Washington, DC – The Commodity Futures Trading Commission (CFTC) today issued an order filing and settling charges against **FCStone Merchant Services LLC** (FCStone Merchant) for entering into multiple noncompetitive trades and against **INTL FCStone Financial Inc.** (FCStone Financial), a registered Futures Commission Merchant based in Chicago, Illinois, for reporting non-bona fide prices to the Chicago Mercantile Exchange (CME) between December 2013 and March 2014. The CFTC Order also finds that FCStone Financial failed to have an adequate supervisory system in place with regard to the execution, handling, and reporting of exchange for related position transactions (EFRPs).

The CFTC Order requires FCStone Financial and FCStone Merchant, jointly and severally, to pay a $280,000 civil monetary penalty, to comply with certain undertakings regarding their respective practices regarding EFRPs, and to cease and desist from further violations of the Commodity Exchange Act (CEA) and CFTC Regulations, as charged.

The commodity futures trading laws generally require that futures trades be executed on a futures exchange. However, the laws allow for exceptions to that requirement, such as when the futures trade is part of an EFRP, which is where parties exchange futures contracts for a related cash or over-the-counter (OTC) derivative position, such as an option or a swap, in accordance with exchange requirements. As long as the legal requirements are met, parties are permitted to execute EFRPs away from an exchange, but then must report their EFRPs to an exchange after execution. However, failure to follow the legal requirements results in such trading being fictitious.

The CFTC Order finds that on numerous occasions between December 2013 and March 2014, FCStone Merchant entered into multiple exchange of futures for physical transactions (EFPs)—one type of EFRP—with a counterparty whereby Canadian Dollar (CAD) futures were exchanged for physical canola seed, and FCStone Financial reported these trades to the CME as exchange for EFRPs. However, the CFTC Order states that those EFPs were invalid because CAD futures and canola seed are not sufficiently related as required by exchange rules. According to the CFTC Order, because the futures trades were executed noncompetitively and not in accordance with exchange rules governing EFRPs, they constituted “fictitious sales” and resulted in the reporting of non-bona fide prices in violation of the CEA and CFTC Regulations.

The CFTC Order also finds that FCStone Financial failed to have adequate compliance controls to identify trades improperly designated as EFRPs. According to the CFTC Order, FCStone Financial failed to determine that the EFPs at issue had the necessary corresponding and related cash or OTC derivative position required for EFRPs. The CFTC Order also finds that FCStone Financial failed to ensure that the EFPs at issue were documented properly. Finally, FCStone Financial failed to ensure that its employees involved in the execution, handling, and processing of EFRPs understood the requirements for executing, handing, and processing valid EFRPs.

CFTC Division of Enforcement staff members responsible for this action are Amanda Burks, Michelle Bougas, James H. Holl, III, and Rick Glaser.

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