

charged in the information. Judgment was entered and Beacon Rock was sentenced on May 8, 2008.

These facts constitute grounds for statutory disqualification of Beacon Rock's registrations under Sections 8a(2)(D) and 8a(2)(E) of the Act, 7 U.S.C. §§ 12a(2)(D) and 12a(2)(E) (2006), pursuant to which Beacon Rock is subject to having its registrations as a CPO and CTA conditioned, suspended, restricted or revoked.

B. RESPONDENT

Beacon Rock Capital, LLC, was a hedge fund organized in the state of Oregon that maintained its principal place of business at 121 SW Morrison Street, Portland, Oregon 97204. Beacon Rock has been continuously registered with the Commission as a CPO and a CTA pursuant to Sections 4m and 4n of the Act, 7 U.S.C. §§ 6m and 6n, since November 13, 2002. Beacon Rock was also registered as an investment adviser with the Securities and Exchange Commission.

C. FACTS

Beacon Rock and Gerbasio were charged in a one-count Superseding Information filed in the Eastern District of Pennsylvania alleging securities fraud in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78j(b) 78ff, and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5.¹ Beacon Rock pled guilty to the Superseding Information on April 4, 2007. The plea agreement states that from around December 1999 to in or about November 2003 Beacon Rock and Gerbasio, along with others, engaged in a scheme to defraud mutual funds and their shareholders in connection with the short-term trading of mutual funds. Beacon Rock and Gerbasio received, and/or were aware of, numerous warnings from mutual fund companies that such market timing² was unwanted and potentially harmful to mutual fund shareholders, and that the mutual funds would not permit such trades.

¹ The information also charged Beacon Rock and Gerbasio pursuant to 18 U.S.C. § 2 as principals for aiding and abetting securities fraud.

² Market timing is a mutual fund trading strategy that involves short-term purchases and sales of mutual fund shares. A market timing strategy generally attempts to take advantage of perceived inaccuracies in mutual fund share prices, which are typically calculated only once per day. Mutual funds typically calculate their share price – or per share net asset value ("NAV") – as of the time of the close of markets in the United States. This calculation is performed using the most current market prices for the securities held by the mutual funds. However, because foreign securities markets typically close several hours before markets in the United States, the prices of international securities held by a mutual fund are frequently "stale," that is, several hours old, by the time the NAV calculation occurs. Based on events that have transpired during this time lag, an investor, employing a market timing strategy, may conclude that the NAV of such a fund understates or overstates the current value of the fund's securities, and engage in short-term trading to take advantage of this perceived disparity. Most mutual funds do not permit such trades because they tend to have an adverse impact on shareholders by potentially diluting the value of a fund's shares, increasing the volatility of a fund's values and increasing transaction costs. Mutual funds frequently employ policies and procedures that are designed to detect and prevent market timing activity, and expressly or implicitly reserve the right in their prospectuses to reject market timing transactions.

Nevertheless, to execute trades in contravention of the restrictions that mutual funds placed on such trading, Gerbasio, and others at his direction, engaged in a number of deceptive and fraudulent practices designed to conceal the identity of Beacon Rock and the nature of its trading activity. Beacon Rock was aware that Gerbasio and others were engaged in deceptive acts on its behalf. These practices included: (1) creating and using multiple account numbers and other identifiers; (2) structuring mutual fund purchases to remain under certain perceived thresholds; (3) opening additional accounts with at least one other clearing firm; and (4) misrepresenting Beacon Rock's trading strategy when confronted by the mutual funds. Beacon Rock, Gerbasio, and others engaged in this fraudulent scheme knowing that, absent such deceptive conduct, many mutual funds would refuse to accept Beacon Rock's trades, and they would not earn the millions of dollars in profits and fees that they ultimately earned. Through this scheme, Beacon Rock made in excess of 26,000 market timing trades, resulting in approximately \$2.4 million in net trading profits.

In addition to pleading guilty to the securities fraud, Beacon Rock forfeited \$475,905 pursuant to Title 28, U.S.C. § 2461(c) and Title 18, U.S.C. § 981(a)(1)(C). On May 8, 2008, the Court sentenced Beacon Rock to three years of probation and ordered Beacon Rock to pay a fine of \$600,000.

D. LEGAL DISCUSSION

Beacon Rock's registrations are subject to statutory disqualification under the Act. Section 8a(2)(D) of the Act, in relevant part,³ authorizes the Commission to revoke the registration of any person that has been convicted of a felony that: involves any transactions concerning a security; arises out of the conduct of the business of a securities broker, investment adviser or investment company; or involves fraud. 7 U.S.C. § 12a(2)(D) *See, e.g., Cox v. CFTC*, 138 F.3d 268, 272 (7th Cir. 1998); *In re Goossen* [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,418 at 33,174 (CFTC December 30, 1986); *In re Akar* [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,927 at 31,708 (CFTC Feb. 24, 1986).

³ Section 8a(2)(D) provides in full that the Commission may take registration action:

if such person has been convicted within ten years preceding the filing of the application for registration or any time thereafter of any felony that (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery, or any activity subject to Commission regulation under section 4c or 19 of this Act, or concerning a security, (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing, (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (iv) involves the violation of section 152, 1001, 1341, 1342, 1343, 1503, 1623, 1961, 1962, or 2314, or chapter 25, 47, 95, or 96 of title 18, United States Code, or section 7201 or 7206 of the Internal Revenue Code of 1986.

Furthermore, Section 8a(2)(E) of the Act, in relevant part,⁴ authorizes the Commission to revoke the registration of any person that has been found in a proceeding brought by a Federal agency to have violated any provision of the Exchange Act where such violation involves fraud. 7 U.S.C. § 12a(2)(E).

As discussed above, Beacon Rock pled guilty to a felony involving securities fraud in violation of 15 U.S.C. §§ 78j(b), 78ff, and 17 C.F.R. § 240.10b-5. Thus, Beacon Rock's conviction for defrauding mutual fund shareholders forms a solid basis under Sections 8a(2)(D) and 8a(2)(E) for statutory disqualification from registration as a CPO and CTA.

IV.

OFFER OF SETTLEMENT

Beacon Rock has submitted an Offer in which, without admitting or denying the findings herein, it acknowledges service of the Notice and Order, and admits: (1) the jurisdiction of the Commission with respect to the matters set forth in the Order; (2) that it pled guilty to the Superseding Information and has been convicted in the action entitled *United States v. Beacon Rock Capital, LLC and Thomas Gerbasio*, No. 2:07-cr-00142-ER (E.D. Pa), thereby admitting that it committed securities fraud; and (3) that Beacon Rock is registered with the Commission as a CPO and CTA.

Further, in the Offer, Beacon Rock waives: (1) a hearing; (2) all post-hearing procedures; (3) judicial review by any court; (4) any objection to the staff's participation in the Commission's consideration of the Offer; (5) any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any relief; and (6) all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and/or Part 148 of the Commission Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2008), relating to, or arising from, this action.

⁴ Section 8a(2)(E) provides in full that the Commission may revoke the registration of any person:

if such person, within ten years preceding the filing of the application or at any time thereafter, has been found in a proceeding brought by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, (i) to have violated any provision of this Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940, the Foreign Corrupt Practices Act of 1977, chapter 96 of Title 18 of the United States Code, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversation, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (ii) to have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person.

Finally, Beacon Rock stipulates that the record basis on which this Order is entered consists solely of the findings in this Order, the entry of which Beacon Rock has consented to in the Offer. Pursuant to the Offer, Beacon Rock consents to the Commission's issuance of this Order determining that it is statutorily disqualified from registration with the Commission.

V.

FINDING

Based on the foregoing, the Commission finds that Beacon Rock's registration as a CPO and a CTA shall be revoked pursuant to Sections 8a(2)(D) and 8a(2)(E) of the Act, 7 U.S.C. § 12a(2)(D) and (E).

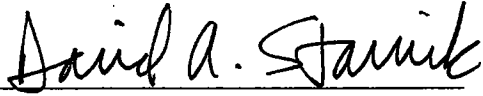
VI.

Accordingly, IT IS HEREBY ORDERED THAT:

Beacon Rock's registrations as a CPO and CTA are hereby revoked.

The provisions of this Order shall be effective immediately. A copy of this Order shall be served on Beacon Rock at the address set forth in the Notice, on all contract markets and on the National Futures Association.

By the Commission.



David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 17, 2008