

III.

The Commission finds the following:

A. Summary

From April 2003 through December 2005 (the “relevant period”), RCG, without obtaining internal approval as required by its own procedures, made disbursements to third parties from a customer account. RCG, thus, failed to diligently supervise its employees in their handling of certain payments in cash and by check, made or initiated at the customer’s direction, to third parties from the customer’s account by failing to follow its own compliance procedures, which should have detected the prohibited payments to third parties. Accordingly, RCG violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2008).

B. Settling Respondent

Rosenthal Collins Group, L.L.C. maintains its principal offices at 216 West Jackson Boulevard, Chicago, IL 60606. RCG has been registered with the Commission as a FCM since 1975. RCG has maintained a New York City branch office since the early 1970s.

C. Facts

During the relevant period, RCG’s compliance rules and procedures prohibited the issuance of third party checks unless they were approved by RCG’s Compliance Department or were for payment of a customer’s bona fide business expenses. Further, during the relevant period, RCG’s compliance rules and procedures also prohibited cash disbursements to customers unless the customers were approved by RCG’s Compliance Department to receive such cash payments.

In April 2003, two individuals (the “Accountholders”) opened a joint account at the RCG New York City branch office (the “account”). The Accountholders were introduced to RCG by an employee of a floor brokerage operation (the “FB employee”) who worked on the New York Mercantile Exchange (“NYMEX”) floor.

During the relevant period, RCG regularly received requests from one of the Accountholders to have cash disbursed from and third party checks drawn against the account. Although RCG’s Compliance Department had not approved the Accountholders to receive cash payments, RCG disbursed cash on behalf of the Accountholders, at the Accountholder’s instruction, to the FB employee on the floor of the NYMEX on numerous occasions during the relevant period. Furthermore, during the relevant period, RCG drew numerous third party checks from the account even though there was no evidence that these third party checks were for payment of the Accountholders’ bona fide business expenses and these checks were not approved by RCG’s Compliance Department.

Accordingly, by this conduct, RCG violated its own compliance rules and procedures.

D. Legal Discussion

Regulation 166.3 provides that every Commission registrant (except associated persons who have no supervisory duties) diligently supervise the handling by its partners, employees and agents of all activities relating to its business as a registrant. Regulation 166.3 imposes on registrants an affirmative duty to supervise their employees and agents diligently by establishing, implementing, and executing an adequate supervisory structure and compliance programs. "The duty to supervise ... include[s] the broader goals of detection and deterrence of possible wrongdoing by a [registrant's] agents." *Lobb v. J.T. McKerr & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,568 at 33,444 (CFTC Dec. 14, 1989). In order to prove a violation of Regulation 166.3, it must be demonstrated that either: (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 Paragon Futures Assoc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992); *Bunch v. First Commodity Corp. of Boston*, [1990-1992 Transfer binder] Comm. Fut. L. Rep. (CCH) ¶ 25,352 at 39,168-69 (CFTC Aug. 5, 1992).

Under Regulation 166.3, a FCM has a "duty to develop procedures for the detection and deterrence of possible wrongdoing by its agents." *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) (quoting *Lobb v. J.T. McKerr & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,568 at 36,444 (CFTC Dec. 14, 1989)). A FCM also must ensure that these procedures are diligently administered. *In re GNP Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,219 (CFTC Aug. 11, 1992) (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 in part and rev'd in part sub nom. Monieson v. CFTC*, 996 F. 2d 852 (7th Cir. 1993). 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. *Paragon Futures*, ¶ 25,266 at 38,850.

As described above, due to failure to properly follow and monitor its own supervisory procedures, RCG failed to diligently supervise the handling of payments in cash and by check to third parties from the Accountholders' account.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that RCG violated Regulation 166.3, 17 C.F.R. § 166.3 (2008).

V.

OFFER OF SETTLEMENT

RCG has submitted the Offer in which it acknowledges service of this Order, admits the jurisdiction of the Commission with respect to all matters set forth in this Order and 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 (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq.*, relating to or arising from this proceeding; (7) any and all claims that it may possess under the Small Business Regulatory Enforcement Act, Pub. L. 104-121, Subtitle B, Section 223, 110 Stat. 862-63 (March 29, 1996), relating to or arising from this proceeding; and (8) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief.

RCG stipulates that the record basis on which this Order is entered consists solely of this Order and the findings in this Order consented to which RCG consented in its Offer. RCG consents to the Commission's issuance of this Order, which makes findings as set forth herein and orders that: (1) RCG and its successors and assigns cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2008); (2) RCG pay a civil monetary penalty in the amount of three hundred ten thousand dollars (\$310,000), plus post-judgment interest, within ten (10) days of the date of the entry of this Order; and (3) RCG and its successors and assigns comply with its undertakings consented to in the Offer and set forth below in Part VI.C of this Order.

Upon consideration, the Commission has determined to accept RCG's Offer.

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. RCG shall cease and desist from violating Regulation 166.3, 17 C.F.R. §166.3 (2008).
- B. RCG shall pay a civil monetary penalty in the amount of three hundred ten thousand dollars (\$310,000), plus post-judgment interest, within ten (10) days of the date of the entry of this Order. Post judgment interest shall accrue beginning eleven days after 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. RCG shall pay this penalty 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 by other than electronic funds transfer, 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: Marie Bateman AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-6569

If payment by electronic funds transfer is chosen, RCG shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. RCG shall accompany payment of the penalty with a cover letter that identifies RCG and the name and docket number of this proceeding. RCG shall simultaneously transmit a copy of the cover letter and the form of payment to: 1) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, DC 20581, 2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address, and 3) Regional Counsel, Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19th Floor, New York, NY 10005. In accordance with Section 6(e)(2) of the Commodity Exchange Act, as amended, 7 U.S.C. § 9a(2)(2001), if this amount is not paid in full within fifteen (15) days of the due date, RCG shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the penalty, with interest thereon to the date of the payment, has been made.

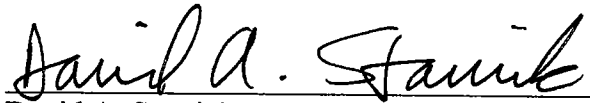
C. RCG and its successors and assigns shall comply with the following undertakings set forth in its Offer:

- 1) RCG shall take the necessary steps to monitor and enforce its compliance rules and procedures, including those concerning disbursements from customer accounts, whether in cash or by check, to assure proper and appropriate disbursements in accordance therewith;
- 2) RCG shall implement and enforce appropriate oversight procedures for all activities of branch office employees with respect to disbursements from customer accounts;
- 3) RCG shall provide annual training to all employees involved in disbursements from customer accounts so that such disbursements meet all requirements of RCG's compliance rules and procedures; and
- 4) Neither RCG nor any of its successors, assigns, employees, agents, attorneys or representatives shall take any action or make any public statement denying, directly or indirectly, any finding in this Order, or creating, or tending to create, the impression that this Order is without factual basis; provided, however, that nothing in this provision shall affect RCG's: (i) testimonial obligations; or (ii) right to take

appropriate legal positions in other proceedings to which the Commission is not a party. RCG and its successors and assigns shall undertake all steps necessary to ensure that all of its employees, agents, attorneys and representatives under its authority and/or actual or constructive control understand and comply with this undertaking.

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

By the Commission

A handwritten signature in black ink, reading "David A. Stawick", written over a horizontal line.

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

Dated: August 26, 2008