

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:)

Stillwater Capital Partners, Inc.)
and)

Stillwater Capital Partners, LLC,)

Respondents.)
_____)

CFTC Docket No. 08 - 17

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

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Stillwater Capital Partners, Inc. and Stillwater Capital Partners, LLC have violated Commission Regulation ("Regulation") 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2008). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether Stillwater Capital Partners, Inc. and Stillwater Capital Partners, LLC have engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of this administrative proceeding, Stillwater Capital Partners, Inc. and Stillwater Capital Partners, LLC (hereinafter, collectively, "Respondents") have submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings herein, Respondents acknowledge service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions ("Order").¹

¹ Respondents consent 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 Respondents do not consent to the use of this Order or the Offer, or the findings 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 do Respondents consent to the use of the Offer or this Order, or the findings in the Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. Summary

Stillwater Capital Partners, LLC, a registered commodity pool operator (“CPO”), and Stillwater Capital Partners Inc., a formerly registered CPO, claimed for their respective commodity pools exemptions from recordkeeping, disclosure and reporting requirements under Regulation 4.7(b), 17 C.F.R. § 4.7(b)(2008). Pursuant to Regulation 4.7(b)(3)(i), Respondents were required to file with the National Futures Association (“NFA”) and distribute to each pool participant an annual report for each of the pools subject to this exemption, within 90 days of the end of the pool’s fiscal year. Regulations 4.22(f)(1) and (f)(2) provide CPO’s with extensions of this annual report deadline under certain circumstances and conditions.

Despite their claims for extensions of time, Respondents failed to distribute to pool participants and to file with the NFA one or more of their commodity pools’ annual reports in a timely manner, in violation of Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i)(2008).

B. Respondents

Stillwater Capital Partners, Inc. is located at 41 Madison Avenue, New York, New York 10010. Stillwater Capital Partners, Inc. was registered with the Commission as a CPO from March 13, 1998 until June 4, 2005.

Stillwater Capital Partners, LLC is located at 41 Madison Avenue, New York, New York 10010. Stillwater Capital Partners, LLC has been registered with the Commission as a CPO since March 13, 1998.

C. Facts

Respondents are or were CPOs for pools that invest in other collective investment vehicles (i.e., they operate as “fund-of-funds”).² For the years 2004 through 2007, Respondents’ commodity pools’ fiscal years ended on December 31st. Pursuant to Regulation 4.7(b), Respondents each claimed for their pools exemption from recordkeeping, disclosure and reporting requirements under the Regulations. Accordingly, under Regulation 4.7(b)(3)(i), Respondents were required to distribute and file annual reports for all their pools subject to this exemption within 90 days of the end of its fiscal year on December 31st.

For fiscal years 2004, 2005, and 2007, Respondents each claimed an extension of time under Regulation 4.22(f)(2) for their pools requiring them to file and distribute annual reports for their pools no more than 150 days after the end of the pools’ fiscal years, i.e., by May 30th. For fiscal year 2006, Stillwater Capital Partners, LLC requested pursuant to Regulation 4.22(f)(1) and received from the NFA 90-day extensions of time from the date its annual reports were to

² Stillwater Capital Partners, Inc. was the CPO for one such fund until 2005, when it withdrew its registration and Stillwater Capital Partners, LLC became the CPO for that fund.

have been filed and distributed, thus extending its deadline for filing and distributing its annual reports to June 29th.

For fiscal years 2004 through 2007, Respondents failed to file with the NFA and distribute to pool participants one or more of its commodity pool's annual reports in a timely manner.

D. Legal Discussion

Sections 4n(3) and (4) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 6n(3) and (4) (2006), provide, in relevant part, that every CPO registered with the Commission shall file such reports and regularly furnish statements of account to each pool participant, and that such reports and statements shall be in such form and manner as may be prescribed by the Commission. Regulation 4.22(c) requires a CPO to file with the NFA and to distribute to pool participants within 90 days of the end of the pool's fiscal year annual reports for its commodity pools that contain the information required by and in accordance with Regulations 4.22(c) and (d).

Pursuant to Regulation 4.7(b)(3), a CPO may claim relief from the reporting requirements of Regulations 4.22(c) and (d) for certain pools where the CPO offers or sells participations in the pools solely to qualified eligible persons (as defined in Regulation 4.7), in an offering that is exempt from registration under the federal securities laws and the offering is not marketed to the public. However, a CPO claiming such exemption must, within 90 days after the end of the exempt pool's fiscal year, electronically file with the NFA and distribute to each pool participant an annual report that contains, at a minimum, certain financial information that is in lieu of the information required by Regulations 4.22(c) and (d). Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2008).

Under Regulation 4.22(f)(1), a CPO may file with the NFA an application for extension of time to a specific calendar date not more than 90 calendar days after the date its annual report was to be distributed, if it cannot distribute a timely annual report without "substantial undue hardship."

In addition, where a pool is a fund-of-funds, a CPO, under Regulation 4.22(f)(2), may claim by notice filed with the NFA an extension of time to file and distribute the pool's annual report. Under this extended deadline, the CPO is required to file and distribute its pool's annual report no later than 150 days after the end of the pool's fiscal year (i.e., up to 60 days beyond the original 90-day filing deadline).

For fiscal years 2004, 2005 and 2007, Respondents claimed an extension of time from the dates their pools' annual reports were to have been filed and distributed, requiring them to file and distribute annual reports no more than 150 days after the end of the pools' fiscal year. For fiscal year 2006, Stillwater Capital Partners, LLC requested, pursuant to Regulation 4.22(f)(1), and received from the NFA, 90-day extensions of time from the date its annual reports were to have been filed and distributed.

As described above, between fiscal years 2004 and 2007, Respondents failed to file and distribute one or more of their commodity pools' annual reports in a timely manner. Respondents, therefore, violated Regulation 4.7(b)(3), 17 C.F.R. § 4.7(b)(3) (2008).

The furnishing of annual reports was designed to "provide (pool) participants with the information necessary to assess the overall trading performance and financial condition of the pool." Commodity Pool Operators and Commodity Trading Advisors; Final Rules, 44 Fed. Reg. 1918 (CFTC Jan. 8, 1979) (announcing the adoption of Regulation 4.22). Without timely and complete reporting, the Commission's goal of providing pool participants with complete and necessary data is hampered.

IV.

FINDINGS OF VIOLATIONS

Based upon the foregoing, the Commission finds that Respondents violated Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2008).

V.

OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order;
- C. Waive: the filing and service of a complaint and notice of hearing; a hearing; all post-hearing procedures; judicial review by any court; all objections to the participation by any member of the Commission's staff in consideration of the Offer; all claims that they may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1, et seq. (2008), relating to, or arising from, this proceeding; any and all claims that they 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 action; and 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;
- D. Stipulate that the record upon which this Order is entered shall consist solely of the findings contained in this Order to which the Respondent has consented; and

- E. Consent, solely on the basis of the Offer, to entry of this Order that:
1. makes findings by the Commission that Respondents violated Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2008);
 2. orders Respondents and their successors and assigns to cease and desist from violating Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2008);
 3. orders Respondents jointly and severally to pay a civil monetary penalty in the amount of one hundred thirty-five thousand dollars (\$135,000) within ten (10) days of the date of entry of this Order; and
 4. orders Respondents and their successors and assigns to each comply with their undertaking consented to in the Offer and set forth below in Part VI of this Order.

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

VI.

ORDER

Accordingly, **IT IS HEREBY ORDERED THAT:**

- A. Respondents, and their successors and assigns, shall cease and desist from violation of Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2008);
- B. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of one hundred thirty-five thousand dollars (\$135,000) within ten (10) days of the date of entry of this Order. Respondents shall pay this civil monetary penalty by making 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 payments shall be made payable to the Commodity Futures Trading Commission, and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Mare Bateman - AMZ-300
DOT/FAAAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-6569

If payment by electronic transfer is chosen, the paying respondent shall contact Marie Bateman or her successor at the above address to receive payment

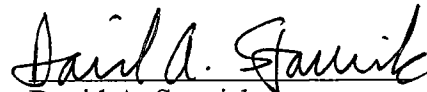
instruction and shall fully comply with those instructions. Respondents shall accompany payment of the penalty with a cover letter that identifies the paying respondent and the name and docket number of this proceeding. Respondents shall simultaneously transmit copies of the cover letter and the form of payment to (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington, D.C. 20581 and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address. In accordance with Section 6(e)(2) of the Act, as amended, 7 U.S.C. § 9a(2) (2006), if this amount is not paid in full within fifteen (15) days of the due date, Respondents 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; and

- C. Respondents, and their successors and assigns, shall comply with the following undertaking set forth in their Offer:

Public Statements: Neither Respondents nor any of their successors, assigns, employees, agents, or representatives shall take any action or make any public statement denying, directly or indirectly, any finding in the Order, or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents' (i) testimonial obligations, or (ii) right to take appropriate legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of their employees, agents and representatives under their authority and/or actual or constructive control understand and comply with this undertaking.

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

By the Commission.



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

Dated: September 23, 2008