

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:

Rosenthal Collins Group, LLC,

Respondent.

CFTC Docket No. 12-1

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

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Rosenthal Collins Group, LLC (“RCG”), a registered futures commission merchant (“FCM”), has violated Commission Regulation (“Regulation”) 166.3, 17 C.F.R. § 166.3 (2011); Section 4g(a) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6g(a) (Supp. III 2009); and Regulations 1.31(a) and 1.35(a), 17 C.F.R §§ 1.31(a) & 1.35(a) (2011). The Commission, therefore, deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether RCG engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, RCG has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings and conclusions herein, RCG acknowledges service of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Act and Making Findings and Imposing Remedial Sanctions (“Order”).¹

¹ RCG consents to the entry of this Order, 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 RCG does not consent to the use of 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 a proceeding in bankruptcy or to enforce the terms of this Order. In addition, RCG does not consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party in any other proceeding.

III.

The Commission finds the following:

A. Summary

From at least April 1, 2006 until April 29, 2009 (“relevant period”), RCG failed to diligently supervise its officers’, employees’, and agents’ handling of an account held at RCG in the name of Money Market Alternative, LP (“MMA”), in violation of Regulation 166.3, 17 C.F.R. § 166.3. In particular, RCG’s officers, employees, and agents failed: (1) to enforce RCG’s compliance procedures that, given certain account activity, required RCG to obtain updated financial information; and (2) to follow RCG’s compliance procedures that required RCG to document, investigate, and report certain activity regarding the MMA account. In addition, RCG employed an inadequate supervisory system that did not allow RCG and those individuals specified in its compliance procedures to readily access certain information necessary to properly supervise the MMA account, which Enrique F. Villalba (“Villalba”) used in his multimillion dollar Ponzi scheme (“the MMA fraudulent scheme”). During the relevant period, the MMA account generated \$921,260.90 to RCG in gross commissions and fees.

Further, during the Division of Enforcement’s (“Division’s”) investigation into the MMA fraudulent scheme, RCG failed to respond accurately and completely to certain Division inquiries, in violation of Section 4g(a) of the Act, 7 U.S.C. § 6g(a), and Regulations 1.31(a) and 1.35(a), 17 C.F.R. §§ 1.31 & 1.35.

B. Respondent

Rosenthal Collins Group, LLC is an Illinois limited liability company formed on October 10, 1998 (as a successor to a limited partnership formed on February 22, 1974), with its principal place of business at 216 West Jackson Boulevard, Suite 400, Chicago, Illinois. RCG and/or its predecessors have been registered with the Commission as an FCM since January 1, 1979.²

² The Commission has determined in two previous proceedings since 2008 that RCG violated Regulation 166.3 for failure to supervise. *In re Rosenthal Collins Group, L.L.C.*, Docket No. 10-21 (September 30, 2010) (imposing \$780,000 civil monetary penalty and \$618,526 disgorgement award for RCG’s failure to supervise diligently its employees handling of accounts used in fraudulent scheme); *In re Rosenthal Collins Group, L.L.C.*, Docket No. 08-12 (Aug. 26, 2008) (imposing a \$310,000 civil monetary penalty for permitting unauthorized cash disbursements and third-party checks from an account).

C. Facts

1. **The Commission Brought a Fraud Action Against MMA and Villalba, Who Was Also Prosecuted Criminally**

On March 29, 2010, the Commission filed a fraud action against Villalba and MMA.³ The action alleged that Villalba and MMA operated a commodity futures Ponzi scheme in which they defrauded more than \$37.5 million from more than 35 investors. The action was resolved by a May 19, 2011 consent order against Villalba and MMA. On the same day the Commission's action was filed, the U.S. Attorney for the Northern District of Ohio filed a criminal information against Villalba accusing him of one count of wire fraud.⁴ Villalba entered into a plea agreement on April 7, 2010 in which he agreed to plead guilty to the charge. On September 10, 2010, Villalba was sentenced to 105 months in federal prison and ordered to pay full restitution in the amount of \$30,445,141.91.

2. **RCG Failed to Supervise Diligently the Handling of the MMA Account by Its Officers, Employees, and Agents**

a. **Villalba Made Significant Assertions to RCG Regarding the MMA Account in the Account Opening Documents**

When MMA opened its account as a commodity pool at RCG in 1998, Villalba executed and submitted to RCG "account opening documents." In these documents, Villalba stated that, among other things: MMA's annual income was \$45,000; its net worth was \$300,000; and Villalba was not required to register as a commodity pool operator because he received no commissions, operated only this one account, did not advertise, and was not otherwise required to register with the Commission. Included with these documents was an MMA offering circular, which stated that the offering would terminate by, at the latest, February 27, 2003.

b. **Despite MMA Account Activity Inconsistent with the Account Opening Documents, RCG Delayed Requesting Updated Financial Information**

RCG's compliance procedures impose upon the company, its employees, associated persons ("APs"), and guaranteed introducing brokers ("GIBs") a continuing duty to "know the customers" with which RCG does business. In accordance with that duty, RCG's compliance procedures state that customers may be asked to provide updated financial information when there is a change in money flows, among other things.

Through the course of trading at RCG during the relevant period, the money flow into the MMA account changed dramatically. The MMA account began 2005 with an open trade equity balance of \$560,004.27. In 2005, 2006, 2007, and 2008, the MMA account received deposits of \$590,130.00, \$2,208,979.00, \$3,087,000.00, and \$14,862,900.00, respectively. These deposits all occurred well after the subscription period set forth in the offering circular would have

³ *CFTC v. Villalba*; Case No. 5:10CV00647-DDD (N.D. Ohio).

⁴ *United States v. Villalba*; Case No. 1:10CR00133-JG (N.D. Ohio).

terminated, and the deposits far exceeded MMA's stated net worth of \$300,000. In fact, in February 2008, the MMA account received a single deposit of more than \$11 million.

Further, during the same period, trading and losses in the MMA account increased significantly. For the years 2005, 2006, 2007, and 2008, the MMA account lost over \$28,000, \$463,000, \$2 million, and \$13 million, respectively. These losses, from 2006 forward, far exceeded MMA's stated net worth.

Despite significant changes to money flows throughout the relevant period, RCG did not request updated information regarding the MMA account until March 25, 2009,⁵ by which time the account had experienced losses of over \$17 million. These losses represented more than fifty times MMA's stated net worth. Further, at no time during the relevant period did RCG, its employees, APs, or GIBs review the account opening documents or have knowledge of the information contained therein.

c. RCG Failed to Document or Follow-Up on Numerous Red Flags Concerning Suspicious Activity in the MMA Account

RCG's compliance procedures set forth multiple methods for RCG to detect suspicious account activity. First, during the relevant period, RCG generated a monthly report that showed the deposits and disbursements of over \$3,000. Suspicious money in-flows and out-flows from these reports are investigated and the results of such investigations documented. Second, RCG's compliance procedures require that its officers, employees, and APs report to RCG's compliance department "any suspicious money transfers, non-economic transactions, and other activity outside of the ordinary course of business." Per RCG's compliance procedures, "red flags" that may be indicative of suspicious activity include "sudden excessive wire activity into and out of [the] account" and a customer's "noticeable lack of regard for amount of commissions, profitability of trades, or level of fees." RCG's compliance procedures also require that its compliance department "document, investigate, and evaluate in writing all reports of suspicious account activity," and, where appropriate, to contact proper regulatory authorities and law enforcement officials.

During the relevant period, no RCG officer, employee, or AP ever reported to the compliance department a single instance of "any suspicious money transfers, non-economic transactions, and other activity outside of the ordinary course of business" with regard to the MMA account. This, despite: (1) that from April 2006 to March 2009, the MMA account should have appeared approximately 35 times on RCG's monthly deposits and disbursements reports; (2) years of excessive wire activity into and out of the MMA account; and (3) MMA's lack of regard for trading losses, commissions, and fees in its account (which far exceeded MMA's stated net worth).⁶ Further, in violation of RCG's compliance procedures, at no time

⁵ RCG's March 25, 2009 request for updated account information was ignored by Villalba, who, after receiving a second request for updated account information on April 24, 2009, withdrew substantially all the funds in the MMA account.

⁶ During the relevant period, the MMA account generated more than \$1 million in gross fees and commissions, with RCG receiving \$921,260.90, which RCG shared with one of its branch managers and a GIB.

during the relevant period did RCG contact any regulatory authorities or law enforcement officials about Villalba or the MMA account.

d. RCG Employed an Inadequate Supervisory System

During the relevant period, activity in the MMA account was reviewed by numerous individuals and in various departments at RCG. When reviewing this activity, however, none of these individuals had knowledge of any financial information provided by MMA in its account opening documents. As such, no one reviewing activity in the MMA account knew that, for example, MMA's stated net worth was \$300,000 or its stated annual income was \$45,000.

3. RCG Failed to Properly Respond to a Commission Document Request

On December 30, 2009, the Division sent RCG a request for documents pursuant to Section 4g of the Act, 7 U.S.C. § 6g (2006 & Supp. III 2009), as well as certain Regulations. The document request sought, among other things, the identification of accounts "opened, introduced, controlled, associated, owned (in part or whole), or managed by, with, or in the name of" Villalba and MMA and copies of customer complaints or any other communications concerning such accounts. On January 5, 2010, RCG produced documents relating to the MMA account, including what RCG claimed were all communications relating to that account. Further, RCG stated that the MMA account appeared to be the only account responsive to the 4g request.

RCG failed to respond accurately and completely to the Division's 4g request on January 5, 2010 because RCG did not produce all of the communications relating to the MMA account. At the time of the Division's 4g request, Division staff was aware that RCG had in its possession certain documents from a Villalba victim. These documents, however, were not included in RCG's January 5, 2010 production. In response to repeated inquiries from Division staff, RCG maintained that it had only spoken with the victim and never received any documents from him. A few weeks later—after several follow up conversations with Division staff—RCG indicated that it had found documents provided by the victim and produced them to the Division.

Additionally, RCG's January 5, 2010 4g response was inaccurate and incomplete because RCG failed to produce documents relating to several other accounts associated with Villalba. The letter accompanying RCG's January 5, 2010 production stated that the MMA account appeared to be the only RCG account responsive to the 4g request. However, Division staff later received documents from another governmental regulator's files, which contained a September 2009 production from RCG that included documents relating to other RCG accounts associated with Villalba. After Division staff informed RCG of its prior production to another governmental regulator, RCG supplemented its 4g response to Division staff to include documents relating to these other RCG accounts associated with Villalba.

D. Legal Discussion

1. RCG Failed to Supervise Diligently Its Officers, Employees, and Agents Responsible for Monitoring the MMA Account

Regulation 166.3, 17 C.F.R. § 166.3, requires,

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

A violation under Regulation 166.3, 17 C.F.R. § 166.3, is an independent violation for which no underlying violation is necessary. *See In re Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,744 (CFTC Dec. 10, 1997).

A violation of Regulation 166.3, 17 C.F.R. § 166.3, is demonstrated by showing either that: (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 GNP Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,219 (CFTC Aug. 11, 1992) (providing that, even if an adequate supervisory system is in place, Regulation 166.3 can still be violated if the supervisory system is not diligently administered); *In re Paragon Futures Assoc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992) ("The focus of any proceeding to determine whether Rule 166.3 has been violated will be on whether [a] review [has] occurred and, if it did, whether it was diligent"); *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) (noting that, under Regulation 166.3, an FCM has a "duty to develop procedures for the detection and deterrence of possible wrongdoing by its agents") (internal quotation omitted). 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. *In re Paragon Futures Assoc.*, ¶ 25,266 at 38,850.

During the relevant period, RCG employed an inadequate supervisory system, in violation of Regulation 166.3, 17 C.F.R. § 166.3. Specifically, RCG's compliance procedures did not make information contained in its account opening documents readily available to anyone charged with supervision of the MMA account. As such, no one reviewing activity in the MMA account knew that, for example, MMA's stated net worth was \$300,000 or its stated annual income was \$45,000. Accordingly, RCG and those individuals specified in its compliance procedures were unable to evaluate fully whether activity in the MMA account required action under RCG's compliance manual.

Moreover, during the relevant period, RCG failed to perform its supervisory duties diligently by not following its compliance procedures that were in place, also in violation of Regulation 166.3, 17 C.F.R. § 166.3. For example, despite significant changes to money flows throughout the relevant period, RCG did not request updated information regarding the MMA account until March 25, 2009. Accordingly, RCG failed to take steps necessary to ensure that it "knew" its customer. Further, during the relevant period, despite the MMA account appearing approximately 35 times on RCG's monthly deposits and disbursements reports; the excessive wire activity into and out of the MMA account; and the lack of regard for trading losses,

commissions, and fees in the MMA account, no RCG officer, employee, or AP reported to the compliance department a single instance of “any suspicious money transfers, non-economic transactions, and other activity outside of the ordinary course of business” with regard to the MMA account, and RCG never contacted any regulatory authorities or law enforcement officials about Villalba or the MMA account—in violation of RCG’s compliance procedures.

2. RCG Failed to Comply Fully and Accurately with a Division Request for Documents

Section 4g(a) of the Act, 7 U.S.C. § 6g(a), requires FCMs, among other registrants, to maintain books and records pertaining to certain “transactions and positions in such form and manner and for such period as may be required by the Commission” and to “keep such books and records open to inspection by any representative of the Commission.” The Regulations further elaborate that FCMs, among other registrants, must promptly provide required books and records and “furnish true and correct information and reports as to the contents or the meaning thereof” to a Commission representative upon the representative’s request. Regulations 1.31 & 1.35, 17 C.F.R §§ 1.31 & 1.35; *see also In re Forex Capital Markets LLC*, No. 12-01 (CFTC Oct. 3, 2011) (holding that FCM violated Section 4g of the Act and Regulation 1.35 by failing to produce promptly certain records sought in 4g requests). A violation of these record-keeping regulations does not require scienter. *In re GNP Commodities*, Comm. Fut. L. Rep. (CCH) ¶25,360 at 39,214 (Aug. 11, 1992); *see also In re Buckwalter*, Comm. Fut. L. Rep. (CCH) ¶24,995 at 37,687 (Jan. 25, 1991); *In re DiPlacido*, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. ¶ 29,866 at 56,590 (CFTC Sept. 14, 2004).

The facts surrounding the production of documents by RCG show that RCG violated Section 4g(a) of the Act, 7 U.S.C. § 6g(a), and Regulations 1.31(a) and 1.35(a), 17 C.F.R. §§ 1.31(a) & 1.35(a), because it did not respond accurately and completely to the Division’s 4g request as a result of its failure to conduct an adequate and diligent search for responsive documents. Specifically, despite possessing certain documents from a Villalba victim, RCG repeatedly told Division staff that it did not have these documents and failed to include them in its initial production to the Division. Also, RCG had in its possession documents relating to non-MMA accounts associated with Villalba that previously were produced to another governmental regulator, but RCG failed to provide these documents as part of its initial production to Division staff. With regard to each instance, RCG had incorrectly stated that its initial responses to the 4g request were complete and accurate. Only when informed by Division staff of the existence of specific responsive documents in its possession did RCG conduct an adequate and diligent search that enabled RCG to accurately and completely comply with the Division’s 4g request.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that RCG violated Regulation 166.3, 17 C.F.R. § 166.3; Section 4g(a) of Act, 7 U.S.C. § 6g(a); and Regulations 1.31(a) and 1.35(a), 17 C.F.R. §§ 1.31(a) & 1.35(a).

V.

OFFER OF SETTLEMENT

RCG has submitted the Offer in which it, without admitting or denying the findings herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order;
- C. Waives: the filing and service of a complaint and notice of hearing; a hearing; all post-hearing procedures; judicial review by any court; any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer; any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2011), relating to, or arising from, this proceeding; any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; 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. Stipulates that the record upon which this Order is entered shall consist solely of the findings contained in this Order, to which RCG has consented; and
- E. Consents, solely on the basis of the Offer, to entry of this Order that:
 - 1. Makes findings by the Commission that RCG violated Regulation 166.3, 17 C.F.R. § 166.3;
 - 2. Makes findings by the Commission that RCG violated Section 4g(a) of the Act, 7 U.S.C. § 6g(a); and Regulations 1.31(a) and 1.35(a), 17 C.F.R. §§ 1.31(a) & 1.35(a);
 - 3. Orders RCG to cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2011); Section 4g(a) of the Act, 7 U.S.C. § 6g(a); and Regulations 1.31(a) and 1.35(a), 17 C.F.R. §§ 1.31(a) & 1.35(a);
 - 4. Orders RCG to pay a civil monetary penalty of \$1,600,000 within ten days of the entry of this Order; and

5. Orders RCG and its successors and assigns to comply with the undertakings consented to in the Offer and set forth below in Part VI of this Order.

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

VI.

Accordingly, IT IS HEREBY ORDERED THAT:

- A. RCG shall cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3;
- B. RCG shall cease and desist from violating Section 4g(a) of the Act, 7 U.S.C. § 6g(a), and Regulations 1.31(a) and 1.35(a), 17 C.F.R. §§ 1.31(a) & 1.35(a);
- C. RCG shall pay a civil monetary penalty of \$1,600,000 within ten days of the entry of this Order. Should RCG not satisfy its civil monetary penalty within ten days of the date of entry of this Order, post-judgment interest shall accrue on its civil monetary penalty 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 (2006). RCG shall pay this civil monetary penalty by making an 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 an 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: Linda Zurhorst DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone (405) 954-5644

If payment by electronic transfer is chosen, RCG shall contact Linda Zurhorst 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 copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581; (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address; and (3) Charles Marvin, Chief Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 4900 Main Street, Suite 500, Kansas City, MO 64112; and

- E. RCG is directed to comply with the following undertakings set forth in the Offer:

1. Disgorgement

RCG shall pay disgorgement in the amount of \$921,260.90 within ten (10) days of the date of the entry of the Order. Should RCG not satisfy its disgorgement obligation within ten days of the date of entry of this Order, post-judgment interest shall accrue on its disgorgement 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 (2006).

RCG shall make its disgorgement in the name of "Clerk, U.S. District Court FTB the Victims of Enrique Villalba" and shall send such disgorgement payment by electronic funds transfer, or by U.S. Postal money order, certified check, bank cashier's check, or bank money order, under cover letter that identifies RCG, the name of the docket number of this proceeding, and the name and docket number of the criminal proceeding in the U.S. District Court for the Northern District of Ohio (*United States v. Enrique Villalba*; Case No. 1:10CR00133-JG) to:

Clerk of the Court
U.S. District Court for the Northern District of Ohio
Office of the Clerk
Att'n: Intake
Carl B. Stokes U.S. Court House
801 West Superior Avenue
Cleveland, Ohio 44113

RCG shall simultaneously transmit copies of the cover letter and the form of payment to (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581; (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address; and (3) Charles Marvine, Chief Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 4900 Main Street, Suite 500, Kansas City, MO 64112.

The Clerk of the Court for the U.S. District Court for the Northern District of Ohio shall distribute these disgorgement funds to victims defrauded by Enrique Villalba consistent with the restitution order contained in the Amended Judgment of September 28, 2010 (*United States v. Enrique Villalba*; Case No. 1:10CR00133-JG).

2. Modification of RCG's Existing Account Supervision System

RCG shall modify its existing account supervision system to incorporate the net worth and annual income of all its customer account holders (as stated in the account opening documents and any updates thereto) in such

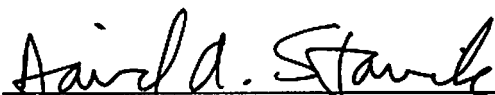
a way that RCG and those individuals specified in its compliance procedures will be able to evaluate activity in any account against that information in analyzing whether the account requires action under RCG's compliance manual.⁷

3. Actions or Public Statements

RCG agrees that neither it nor any of its agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions 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 RCG's: (1) testimonial obligations; or (2) right to take legal positions in other proceedings to which the Commission is not a party. RCG shall undertake all steps necessary to ensure that all of its agents and employees under its authority and/or control understand and comply with this agreement.

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: April 12, 2012

⁷ At the time RCG submitted its Offer, RCG represented that it already had complied with this undertaking, with the exception of certain accounts transferred in connection with the failure of an FCM in November 2011. RCG represented that it will undertake to bring those accounts into compliance with this undertaking as soon as reasonably possible.