

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

<p>In the Matter of:</p> <p>Acceleration Capital, LLC,</p> <p style="text-align: center;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CFTC Docket No. 07</p> <p>ORDER INSTITUTING</p> <p>PROCEEDINGS PURSUANT TO</p> <p>SECTIONS 6(c) AND 6(d) OF THE</p> <p>COMMODITY EXCHANGE ACT,</p> <p>MAKING FINDINGS AND</p> <p>IMPOSING REMEDIAL SANCTIONS</p>
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I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Acceleration Capital, LLC (“Acceleration Capital” or “Respondent”) has violated Section 4b(a)(2)(i), (ii) and (iii) of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. § 6b(a)(2)(2002). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent 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, the Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Without admitting or denying the findings of fact herein, the Respondent consents to the entry of this Order in full and final settlement of any alleged violations of the above referenced section of the Act solely as it relates to the activities and conduct described in Section III.C. below and acknowledges 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”). Respondent consents to the use by the Commission of the findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Respondent does not consent to the use of its Offer or the findings in this Order 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. Respondent does not consent to the use of the Offer or the findings in this Order by any other person or entity in this or any other proceeding. The findings made in this Order are not binding on any other person or entity, including, but not limited to, any person or entity named as a defendant or respondent in any other proceeding.

III.

A. SUMMARY

From at least November 2004 through August 2005 (the “relevant period”), an individual working for Acceleration Capital, who was responsible for clerical, accounting and compliance matters, misappropriated One Hundred Ninety Thousand Eight Hundred and Eight-Three Dollars (\$190,883) from Acceleration Mercury Fund 4X L.P. Fund, a commodity pool operated by Acceleration Capital. This individual concealed his theft by: (i) altering the pool’s bank and trading account statements; and (ii) creating and causing to be issued to pool participants false monthly account statements. By this conduct, the individual, who was an agent of Acceleration Capital, committed fraud in violation of Section 4b(a)(2)(i), (ii) and (iii) of the Act. Pursuant to Section 2(a)(1)(B) and Commission Regulation 1.2, 7 U.S.C. § 2(a)(1)(B) (2002) and 17 C.F.R. § 1.2 (2006), Acceleration Capital is responsible for the fraudulent conduct of its agent. Accordingly, Acceleration Capital, through the acts of its agent, violated Section 4b(a)(2)(i), (ii) and (iii) of the Act.

B. RESPONDENT

Acceleration Capital, LLC, a Delaware limited liability corporation, is headquartered in Northridge, California. Acceleration Capital is registered as a commodity pool operator and a commodity trading advisor and was the commodity pool operator of the commodity pool Acceleration Mercury Fund 4X L.P. Acceleration Mercury Fund 4X L.P. (“the pool” or “Acceleration Mercury Fund”) is no longer operating. Acceleration Capital’s president is Yuri Plyam (“Plyam”).

C. FACTS

From September 2003 to August 2005, Acceleration Capital operated a commodity pool known as the Acceleration Mercury Fund. The pool traded commodity futures on behalf of approximately sixteen pool participants. Acceleration Capital maintained a trading account at a Futures Commission Merchant (“FCM”) and a bank checking account, both in the name of the pool.

Between approximately September 2003 and August 2005, an individual, acting as an agent of Acceleration Capital, performed various clerical, accounting and compliance duties for Acceleration Capital. The individual’s responsibilities included preparing the monthly account statements that were sent to Acceleration Mercury Fund pool participants.

Between November 2004 and August 2005, this individual misappropriated \$190,883 from the pool for his own use and benefit. He perpetrated this fraud by writing at least fifty-eight checks payable to himself from the pool’s checking account and forging the signature of the account’s only signatory on each check. On numerous

occasions, he surreptitiously transferred funds from the pool's trading account to its bank account for the purpose of misappropriating such funds.

To conceal his misappropriation of Acceleration Mercury Fund monies, the individual regularly altered the pool's bank and FCM account statements and created false account statements to be sent to Acceleration Mercury Fund pool participants.

D. LEGAL DISCUSSION

1. The Misappropriation of Pool Participant Funds Violates Section 4b(a)(2)(i) and (iii) of the Act

Section 4b(a)(2)(i) and (iii) of the Act provides that it shall be unlawful, in or in connection with any order to make or the making of a futures contract, for or on behalf of any other person, (i) to cheat or defraud, or attempt to cheat or defraud, such other person . . . or (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person.

Misappropriation of customer funds violates Section 4b(a)(2)(i) and (iii) of the Act. *CFTC ex rel Kelley v. Skorupskas*, 605 F.Supp. 923, 932 (E.D. Mich. 1985) (defendant violated Section 4b(a) of the Act by misappropriating customer funds entrusted to her for trading commodity futures contracts); *CFTC v. Weinberg*, 287 F.Supp. 2d. 1100, 1106 (C.D. Cal. 2003) (CTA violated Section 4b(a)(i) and (iii) of the Act by misappropriating investor funds); *CFTC v. Noble Wealth Data Info. Serv., Inc.*, 90 F.Supp. 2d. 676, 687 (D. Md. 2000)(misappropriation of funds constitutes "willful and blatant" fraudulent activity violative of Section 4b(a) of the Act), *aff'd in part, vacated in part sub nom.*, *CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002).

Respondent violated Section 4b(a)(2)(i) and (iii) of the Act when its agent misappropriated pool participants' funds.²

2. The Creation and Issuance of False Account Statements to Pool Participants Violates Section 4b(a)(2)(ii) of the Act

Section 4b(a)(2)(ii) provides that it is unlawful for any person, in or in connection with any order to make or the making of a futures contract for or on behalf of any other person, willfully to make or cause to be made to such other person any false report or

² Under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Section 1.2 of the Commission's Regulations, 17 C.F.R. § 1.2 (2006), the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust. Consequently, Acceleration Capital is liable for its agent's conduct in violation of the Act.

statement thereof, or willfully to enter or cause to be entered for such person any false record thereof.

Delivering, or causing the delivery of, false account statements to commodity pool participants constitutes a violation of Section 4b(a)(2)(ii) of the Act. *Skorupskas*, 605 F.Supp at 932-33 (defendant violated Section 4b(a) of the Act by delivering false monthly account statements to commodity pool participants); *Weinberg*, 287 F.Supp. at 1107 (false and misleading statements as to the amount and location of investors' money violated Section 4b(a) of the Act.); *Noble Wealth*, 90 F.Supp. 2d. at 685-87 (defendants violated Section 4b(a) of the Act through the delivery of false account statements).

Respondent violated Section 4b(a)(2)(ii) of the Act, pursuant to Section 2(a)(1)(B) of the Act and Section 1.2 of the Commission's Regulations, when its agent caused false monthly account statements to be delivered to Acceleration Mercury Fund's pool participants in his efforts to conceal his misappropriation.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Section 4b(a)(2)(i), (ii) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (ii) and (iii)(2002).

V.

OFFER OF SETTLEMENT

Respondent has submitted an Offer of Settlement in which, without admitting or denying the findings herein, it acknowledges service of the Order; admits jurisdiction of the Commission with respect to the matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based upon violations of or for enforcement of the Order; waives service and filing of a complaint and notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offer, any claim of Double Jeopardy based on the institution of this proceeding or the entry of any order imposing a civil monetary penalty or other relief, and all claims which it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2006), relating to, or arising from, this action; stipulates that the record basis on which this Order is entered consists solely of this Order, including the findings in this Order; and consents to the Commission's issuance of this Order. Pursuant to the Offer of Settlement herein, Respondent agrees to the entry of an Order in which the Commission: makes findings, including findings that Respondent violated Section 4b(a)(2) (i), (ii) and (iii) of the Act; orders that Respondent (i) cease and desist from violating Section 4b(a)(2)(i), (ii) and (iii) of the Act, and (ii) make restitution to Acceleration Mercury Fund in the amount of One Hundred Ninety Thousand Eight Hundred and Eighty Three Dollars (\$190,883), plus

prejudgment interest of Twenty-Seven Thousand Seven Hundred and Nineteen Dollars and Five Cents (\$27,719.05) for a total of Two Hundred Eighteen Thousand Six Hundred and Two Dollars and Five Cents (\$218,602.05); revokes Acceleration Capital's commodity pool operator and commodity trading advisor registrations; orders Acceleration Capital and Plyam to comply with the conditions and undertakings as set forth in this Order, including Acceleration Capital's undertaking never to apply for registration in any capacity or act in an exempt capacity, and Plyam's undertaking that neither he nor any entity owned or controlled by him shall apply for registration as a commodity pool operator or associated person thereof or act in an exempt capacity for a period of three (3) years.

VI.

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondent shall cease and desist from violating Section 4b(a)(2)(i), (ii) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i),(ii) and (iii)(2002);
2. Respondent's registrations with the Commission are revoked;
3. Respondent shall within ten (10) days of the date of this Order pay restitution to Acceleration Mercury Fund in the amount of One Hundred Ninety Thousand Eight Hundred and Eighty Three Dollars (\$190,883), representing funds fraudulently obtained from the pool as described herein, together with prejudgment interest thereon in the amount of Twenty-Seven Thousand Seven Hundred and Nineteen Dollars and Five Cents (\$27,719.05), for a total of Two Hundred Eighteen Thousand Six Hundred and Two Dollars and Five cents (\$218,602.05), distributed *pro rata* in accordance with Exhibit A to the Offer. Respondent shall provide evidence of payment by sending a copy of the letters transmitting such restitution and a copy of the checks on the date they are transmitted to Gregory George Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581;
4. Respondent and Plyam shall comply with the following conditions and undertakings as specified:
 - (a) Respondent shall never apply for registration in any capacity or claim exemption from registration with the Commission in any capacity, and shall never engage in any activity requiring registration in any capacity, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9), or act as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration except as provided for in Regulation 4.14(a)(9), 17 C.F.R § 4.14(a)(9).
 - (b) Plyam and any entity owned or controlled by Plyam shall not apply for registration as a commodity pool operator or associated person thereof or claim

exemption from registration with the Commission as a commodity pool operator or associated person thereof, and shall not engage in any activity requiring registration as a commodity pool operator or associated person thereof or exemption from registration as a commodity pool operator or associated person thereof with the Commission, or act as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration as a commodity pool operator, for a period of three (3) years;

(c) By neither admitting nor denying the findings of fact or conclusions of law, Respondent and Plyam agree that neither they nor any of their officers, agents or employees under their 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 factual basis; provided, however, that nothing in this provision shall affect Respondent's or Plyam's: (i) testimonial obligations; or (ii) right to take factual or legal positions in other proceedings to which the Commission is not a party. Respondent and Plyam will undertake all steps necessary to assure that all of the agents and employees under their authority or control understand and comply with this agreement.

By the Commission.



Eileen A. Donovan
Acting Secretary of the Commission
Commodity Futures Trading Commission

Dated: January 16, 2007