

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:)
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Paradigm Capital Management LLC,)
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Respondent.)
_____)

CFTC Docket No. 08-04

**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 Paradigm Capital Management LLC (“Paradigm”) has violated Commission Regulation (“Regulation”) 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2007). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether Paradigm has 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, Paradigm has submitted an *Offer of Settlement* (“Offer”) which the Commission has determined to accept. Without admitting or denying any of the findings herein, Paradigm 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”).¹

¹ Paradigm consents 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 Paradigm 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 in a proceeding in bankruptcy or to enforce the terms of this *Order*. Nor does Paradigm 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

Paradigm, a registered commodity pool operator (“CPO”), claimed for its two commodity pools exemptions from recordkeeping, disclosure and reporting requirements under Regulation 4.7(b), 17 C.F.R. § 4.7(b)(2007). Pursuant to Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i)(2007), Paradigm was required to file with the National Futures Association (“NFA”) and distribute to each participant an annual report for each of the pools subject to this exemption, either within 90 days, or, if Paradigm claimed an extension of time, 150 days after the end of the pools’ fiscal years. Paradigm claimed the extension of time to 150 days pursuant to Regulation 4.22(f)(2), 17 C.F.R. § 4.22(f)(2)(2007), based on its pools being invested in other funds (i.e., they operate as “fund-of-funds”). Despite its claim for an extension of time, Paradigm, failed to distribute to pool participants and file with the NFA one or more of its 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)(2007).

B. RESPONDENT

Paradigm Capital Management LLC is located at 650 Fifth Avenue, 17th floor, New York, NY 10017. Paradigm has been registered with the Commission as a CPO and commodity trading advisor since January 2001.

C. FACTS

Paradigm is a CPO for pools that operate as fund-of-funds. For the years ending December 31, 2001, through at least December 31, 2004, Paradigm’s commodity pools’ fiscal years ended on December 31st. Pursuant to Regulation 4.7(b), 17 C.F.R. § 4.7(b)(2007), Paradigm claimed for its pools exemption from recordkeeping, disclosure and reporting requirements under the Regulations. Because Paradigm claimed the extension of time under Regulation 4.22(f)(2), 17 C.F.R. § 4.22(f)(2)(2007), it was required to file annual reports for its pools within 150 days after the end of the pools’ fiscal years. During this period, despite its claim for an extension of time, Paradigm distributed to pool participants and filed with the NFA one or more annual reports significantly beyond the extended deadlines, in violation of Regulation 4.7(b)(3)(i), § 4.7(b)(3)(i) (2007).

D. LEGAL DISCUSSION

Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2007), requires a CPO to distribute to pool participants and file with the NFA annual reports for its commodity pools within 90 days of the end of the pools’ fiscal year and containing the information required by and in accordance with Regulations 4.22(c) and(d).

Pursuant to Regulation 4.7(b)(3), 17 C.F.R. § 4.7(b)(3) (2007), a CPO may claim relief from the reporting requirements of Regulation 4.22(c) for certain pools where the CPO offers or sells participations in the pools solely to qualified eligible persons (as defined), 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 pools' 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 Regulation 4.22(c) and (d). Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2007).

Where a pool is a fund-of-funds, a CPO, by a notice filed with the NFA, may claim 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 deadline). Regulation 4.22(f)(2), 17 C.F.R. § 4.22(f)(2) (2007). This extension of time is not limited to Regulation 4.22 pools but is also available to a CPO that operates pools exempted under Regulation 4.7. *See* Extension of Time to File Annual Reports for Commodity Pools, 65 Fed. Reg. 66663, 66664 (proposed Nov. 7, 2000).

Paradigm claimed exemption for its pools from the requirements of Regulation 4.22(c), pursuant to Regulation 4.7(b)(3), 17 C.F.R. § 4.7(b)(3) (2007). Pursuant to Regulations 4.7(b)(3)(i) and 4.22(f)(2), 17 C.F.R. §§ 4.7(b)(3) and 4.22(f)(2) (2007), Paradigm was required to file and distribute annual reports within 150 days after the end of the pools' fiscal years. As described above, over a period of four years, Paradigm filed one or more of its commodity pools' annual reports significantly after the applicable deadline. Paradigm, therefore, violated Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2007).

The furnishing of the annual report 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 (Jan. 8, 1979) (announcing the adoption of Regulation 4.22). Without timely reporting, the Commission's goal of providing pool participants with complete and necessary data is hampered.

IV.

FINDING OF VIOLATIONS

Based on the foregoing, the Commission finds that Paradigm violated Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2007).

V.

OFFER OF SETTLEMENT

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

- A. Acknowledges receipt of service of the *Order*;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in the *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 consideration of the *Offer*; any and all claims which 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.*, (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 the Respondent 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 Paradigm violated Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2007);
 - 2. orders Paradigm and its successors and assigns to cease and desist from violating Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2007);
 - 3. orders Paradigm to pay a civil monetary penalty in the amount of seventy-five thousand dollars (\$75,000.00) within ten (10) days of the date of the entry of this *Order*; and
 - 4. orders Paradigm and its successors and assigns to each comply with its undertaking consented to in its *Offer* and set forth below in Part VI of this *Order*.

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

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Paradigm and its successors and assigns shall cease and desist from violating Regulation 4.7(b)(3)(i), 17 C.F.R. § 4.7(b)(3)(i) (2007);

B. Paradigm shall pay a civil monetary penalty in the amount of seventy-five thousand dollars (\$75,000.00) within ten (10) days of the date of the entry of this *Order*. Paradigm shall pay its 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 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 transfer is chosen, Paradigm shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Paradigm shall accompany payment of the penalty with a cover letter that identifies Paradigm, and the name and docket number of this proceeding. Paradigm shall simultaneously submit a copy 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, 7 U.S.C. §9a(2)(2001), if this amount is not paid in full within fifteen (15) days of the due date, Paradigm 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

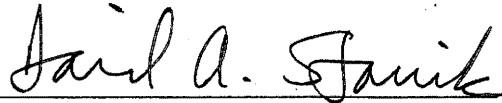
C. Paradigm and its successors and assigns shall comply with the following undertaking set forth in its *Offer*:

Public Statements: Neither Paradigm nor any of its 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 affects

Paradigm's (i) testimonial obligations; or (ii) right to take appropriate legal positions in other proceedings to which the Commission is not a party. Paradigm and its successors and assigns shall undertake all steps necessary to assure that all of their agents and employees under their authority and/or actual or constructive control understand and comply with this undertaking.

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

By the Commission.



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

Dated: February 14, 2008