

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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12:39 pm, Sep 20, 2016

In the Matter of:)
)
)

RNS Holdings LP and Raja)
Michael Mawad,)

Respondents.)
_____)

CFTC Docket No. 16-28

**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 from in or about 2009 to at least early 2015 (the “Relevant Period”), RNS Holdings LP and Raja Michael Mawad (collectively “Respondents”) violated Section 4o(1)(B) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6o(1)(B) and Commission Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2015). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents 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, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent to the entry 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”) and acknowledge service of this Order.¹

¹ Respondents consent to the entry of this Order and 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 the Offer, or the findings or conclusions 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

III.

The Commission finds the following:

A. Summary

From 2009 to 2015, Respondents withdrew \$189,032.72 from a commodity pool they operated for the personal use of Respondent Raja Michael Mawad and for other unauthorized uses in contravention of the pool's Private Placement Memorandum and Limited Partnership Agreement and without disclosure to pool participants. Further, Respondent RNS Holdings LP failed to distribute and submit required Annual Reports for 2013 and 2014.

B. Respondents

RNS Holdings LP ("RNS"), a Texas corporation headquartered in Houston, TX, was, at various times from 2009 to 2015, the operator of several commodity pools including the RNS Capital LP Fund ("RNS Capital" or the "Fund") and the RNS Phoenix Fund ("RNS Phoenix"). RNS has been registered as a commodity pool operator ("CPO") with the CFTC since 2013; it effectively ceased operations in early 2015.

Raja Michael Mawad was the President, founder, principal, 99% owner, and sole associated person ("AP") of RNS. He has been registered as the AP of RNS with the CFTC since 2013. During the Relevant Period, Mawad resided in Houston, TX.

C. Facts

During the Relevant Period, RNS operated the commodity pool RNS Capital, a pool which traded primarily foreign exchange and precious metals. The Fund had a maximum of 22 participants, who were friends and family of Mawad, RNS's President, founder, 99% owner, and sole AP. The Fund reached a high value of approximately \$32.5 million in 2011; by January 2015, due primarily to trading losses, the value of the Fund had fallen to approximately \$18,000.

As the CPO of the Fund, RNS was entitled to a management fee of 1% and an incentive fee of 20% of annual net profits (subject to certain conditions). As provided by the Fund's Private Placement Memorandum ("PPM") and Limited Partnership Agreement ("LPA"), management fees were payable quarterly and incentive fees increased RNS's equity in the Fund. Despite the provisions in the PPM and LPA concerning management fees, Mawad withdrew the management fees RNS had earned on an ad hoc basis, rather than quarterly. Mawad's ad hoc withdrawals of the management fees to which RNS was entitled were generally for Mawad's personal expenses.

Beginning in 2009, and throughout the Relevant Period, Mawad's ad hoc withdrawals of money from the Fund for his personal expenses exceeded the amount Mawad was entitled to

findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

withdraw as management fees RNS had earned. The amount of personal expenses withdrawn in excess of management fees earned was \$52,437.46.

Additionally, throughout the Relevant Period, Mawad withdrew \$23,299.72 from the Fund to cover travel and meals for actual or potential clients of the Fund, including Mawad's parents, who were pool participants. These expenses were not permitted by the PPM and LPA.

Further, from 2011 to 2013, RNS employed a chief financial officer ("CFO"). For the entire period of the CFO's employment, the CFO's salary and payroll taxes were paid out of the Fund, totaling \$110,931.29. Neither the PPM nor LPA permitted the RNS CFO's salary or payroll taxes to be paid from money of the Fund. Additionally, the PPM expressly stated that the Fund would not reimburse RNS for salaries.

Finally, in 2013 and 2014, Mawad withdrew \$2,364.25 from the Fund to pay expenses related to a separate pool, RNS Phoenix. Such withdrawals for another pool were not permitted by the PPM and LPA.

In total, over the Relevant Period, Mawad and RNS withdrew or caused to be withdrawn \$189,032.72 from the Fund in unauthorized personal expenses, travel and meal expenses, salary and payroll tax expenses, and expenses of a separate pool. None of these uses were disclosed to pool participants or potential participants. These withdrawals were made through the use of the mails or other means or instrumentalities of interstate commerce, including by check, debit card, and ACH electronic transfer.

Prior to 2013, RNS claimed exemption from registration under then-operative Commission Regulation 4.13(a)(4).² After the exemption in Regulation 4.13(a)(4) was rescinded in 2012,³ RNS was required to register as a CPO with the Commission, which it did. As a

² Former Commission Regulation 4.13(a)(4) allowed a CPO to claim exemption from registration as to a specific pool if:

(i) Interests in the pool are exempt from registration under the Securities Act of 1933, and such interests are offered and sold without marketing to the public in the United States;

(ii) The person reasonably believes, at the time of investment (or, in the case of an existing pool, at the time of conversion to a pool meeting the criteria of paragraph (a)(4) of this section), that:

(A) Each natural person participant (including such person's self-directed employee benefit plan, if any), is a "qualified eligible person," as that term is defined in § 4.7(a)(2); and

(B) Each non-natural person participant is a "qualified eligible person," as that term is defined in § 4.7, or an "accredited investor," as that term is defined in § 230.501(a)(1)–(3), (a)(7) and (a)(8) of this title; Provided, That nothing in paragraph (a)(4) of this section will prohibit the person from claiming an exemption under this section if it additionally operates one or more pools that meet the criteria of paragraph (a)(3) of this section

17 C.F.R. § 4.13 (2012).

³ The Commission's final rule rescinding the exemption in Regulation 4.13(a)(4) was effective April 24, 2012. 77 Fed. Reg. 11,251, 11,252 (Feb. 24, 2012); 77 Fed. Reg. 17,328, 17,329-30 (Mar. 26, 2012) (reprinting corrected portions of the Final Rule). CPOs, such as RNS, that had previously claimed an exemption under Regulation 4.13(a)(4), were required to comply with the rescission by December 31, 2012. 77 Fed. Reg. 11,251, at 11,252.

registered CPO, RNS was required to distribute Annual Reports to participants and to submit them to NFA. RNS failed to distribute to participants and submit to NFA the required Annual Reports for 2013 and 2014.

IV.

LEGAL DISCUSSION

A. Respondents Violated Section 4o(1)(B) of the Act

Section 4o(1)(B) of the Act prohibits CPOs and their APs from engaging, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly in “any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.” 7 U.S.C. § 6o(1)(B). Scierter is not required to prove a violation of Section 4o(1)(B). *See In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,701 at 48,315 (CFTC July 19, 1999), *aff’d* in relevant part, *Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000).

During the Relevant Period, as set forth above, Mawad and RNS, acting as a CPO and AP of a CPO (viz., RNS) respectively, withdrew by means including by check, debit card, and ACH electronic transfer, a total of \$189,032.72 from the Fund for expenses which were not authorized. Neither Mawad nor RNS disclosed these withdrawals for prohibited expenses to pool participants or prospective participants. Therefore, Respondents violated Section 4o(1)(B) of the Act.

B. Respondent RNS Violated Commission Regulation 4.22(c)

With exceptions not relevant to this Order, Regulation 4.22(c) requires that a CPO registered or required to be registered under the Act distribute an Annual Report to each participant and electronically submit a copy of the Annual Report to the NFA. 17 C.F.R. § 4.22(c).

As set forth above, the CPO RNS failed to distribute to participants or submit to NFA Annual Reports for 2013 and 2014. Accordingly, RNS violated Regulation 4.22(c).

C. Respondents are Liable for Each Other’s Violations

In addition to his own violation of Section 4o(1)(B), Mawad, the founder, principal, 99% owner, and sole AP of RNS, directly controlled RNS and did not act in good faith or knowingly induced, directly or indirectly, RNS’s acts in violation of the Act and Commission Regulations. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Mawad is liable for RNS’s violations of Section 4o(1)(B) of the Act and Regulation 4.22(c).

Likewise, the acts, omissions, and failures of Mawad in violation of the Act, as discussed above, occurred within the scope of his position as an official or agent of RNS or when he was otherwise acting for RNS; therefore, RNS is liable for Mawad’s acts, omissions, and failures in violation of Section 4o(1)(B) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, RNS Holdings LP and Raja Michael Mawad violated Section 4o(1)(B) of the Commodity Exchange Act, 7 U.S.C. § 6o(1)(B), and Commission Regulation 4.22(c), 17 C.F.R. § 4.22(c).

VI.

OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions 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 and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waive:
 - 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 they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2014), relating to, or arising from, this proceeding;
 - 7. any and all claims that they 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
 - 8. any claims of Double Jeopardy based on 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 basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that Respondents violated Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B), and Commission Regulation 4.22(c), 17 C.F.R. § 4.22(c);
 2. orders Respondents to cease and desist from violating Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B), and Commission Regulation 4.22(c), 17 C.F.R. § 4.22(c);
 3. orders Respondents to pay, jointly and severally, restitution in the amount of one hundred eighty-nine thousand thirty-two dollars and seventy-two cents (\$189,032.72), offset (dollar for dollar) by all moneys already distributed by the National Futures Association ("NFA") as restitution in connection with NFA Case No. 15-BCC-021, plus post-judgment interest;
 4. orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of two hundred thousand dollars (\$200,000), plus post-judgment interest;
 5. appoints the National Futures Association ("NFA") as Monitor in this matter;
 6. orders Respondents and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents shall cease and desist from violating Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) and Commission Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2015).
- B. Respondents shall pay, jointly and severally, restitution in the amount of one hundred eighty-nine thousand thirty-two dollars and seventy-two cents (\$189,032.72), offset (dollar for dollar) by all moneys already distributed by the NFA as restitution in connection with NFA Case No. 15-BCC-021 ("Restitution Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the Restitution 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 (2012).

To effect payment by Respondents and the distribution of restitution to Respondents' customers, the Commission appoints the NFA as "Monitor." The Monitor shall collect payments of the Restitution Obligation from Respondents and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, it shall not be liable for any action or inaction arising from its appointment as Monitor other than actions involving fraud.

Respondents shall make their payments of the Restitution Obligation under this Order in the name of the "Raja Michael Mawad and RNS Holdings LP Settlement Fund" and shall send such payments by electronic funds transfer, or U.S. postal money order, certified check, bank cashier's check, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The Monitor shall oversee Respondents' Restitution Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to the Respondents' customers or may defer distribution until such time as the Monitor may deem appropriate. In the event that the amount of payments of the Restitution Obligation to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a restitution distribution is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission, as discussed below. To the extent any funds accrue to the U.S. Treasury for satisfaction of Respondents' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this Order.

- C. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of two hundred thousand dollars (\$200,000) ("CMP Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the CMP 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 (2012).

Respondents shall pay the CMP Obligation 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 other than by electronic funds transfer, then 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: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC

6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

D. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:


1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, 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 this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take 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 agents and/or employees under their authority or control understand and comply with this agreement.
2. Respondents agree that they shall never, directly or indirectly:
 - a. apply for registration or claim exemption from registration with the Commission in any capacity, and engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014); and/or
 - b. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2014)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)) registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014).
3. Cooperation with Monitor: Respondents shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondents' participants, whom the Monitor, in its sole

discretion, may determine to include in any plan for distribution of any restitution payments. Respondents shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

4. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission or the Monitor of any partial payment of Respondents' Restitution Obligation or CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
5. Change of Address/Phone: Until such time as Respondents satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Consent Order, each Respondent shall provide written notice to the Commission by certified mail of any change to that Respondent's telephone number and mailing address within ten (10) calendar days of the change.

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

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 20, 2016