



UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Rosenthal Collins Group, L.L.C.

Respondent.

CFTC Docket No. 15-08

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

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Rosenthal Collins Group, L.L.C. (“RCG” or “Respondent”), a registered futures commission merchant (“FCM”), has violated Commission Regulation (“Regulation”) 166.3, 17 C.F.R. § 166.3 (2013). Therefore, the Commission 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 as set forth herein and to determine whether any order shall be issued imposing remedial sanctions.

II.

In anticipation of the institution of this 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 consents to the entry of and acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act and Making Findings and Imposing Remedial Sanctions (“Order”).¹

¹ RCG consents 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 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 in 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

Between March 20, 2008 and July 30, 2013 (the “Relevant Period”), RCG failed to ensure that significant aspects of its supervision and compliance programs of and about one of its Memphis Branch Offices (the “Memphis Branch”) comported with its obligations to diligently supervise the handling by its employees and agents of all of its commodity interest accounts and activities relating to its business as a registrant in violation of Regulation 166.3. As illustrated by the events set forth below, RCG failed to diligently supervise an associated person (“AP”) with the Memphis Branch; failed to provide adequate supervisory training to the Memphis Branch Office Manager, and failed to enforce adequately its own supervisory policies within the Memphis Branch. Consequently, RCG violated Regulation 166.3, 17 C.F.R. § 166.3 (2013).

B. RESPONDENT

Rosenthal Collins Group, L.L.C. is an Illinois limited liability company with its principal place of business at 216 West Jackson Boulevard, Suite 400, Chicago, Illinois that has been registered with the Commission as an FCM since January 1, 1979. On or about March 20, 2008, RCG opened a branch office located at 775 Ridge Lake Blvd., Memphis, Tennessee, 38120, which became one of RCG’s branch offices in Memphis. RCG has closed the Ridge Lake Blvd. office.

C. FACTS

1. **Failure to Supervise Diligently an AP in the Memphis Branch**

In March 2008, RCG acquired a branch office which then became one of RCG’s Memphis branches. As part of this transaction, many of the former employees and APs of another FCM became employees and APs of RCG, including RCG’s Memphis Office Branch Manager (“Branch Manager”) and one of its APs (“AP #1”). Subsequently, and at all times during the Relevant Period, AP #1 was authorized by RCG to solicit and introduce customer accounts to RCG and to accept and execute customer orders to trade futures. However, AP #1 never even had a key card needed to access RCG’s Memphis Branch, let alone an office, desk, computer, e-mail address or phone at RCG’s Memphis Branch. Instead, AP #1 maintained and worked out of an office at yet another FCM in Memphis (“FCM A”), from which he conducted business on behalf of both FCM A and RCG. The Branch Manager knew that AP #1 was working from the offices of FCM A and did not have an office, desk, computer, e-mail address, phone or key card to access the Memphis Branch during the Relevant Period. For much of the time during which AP #1 was registered as an AP of the Memphis Branch, he also was registered as an AP of FCM A. Although the Branch Manager knew she was responsible for enforcing RCG’s policies and procedures within the Memphis Branch, she did not know that RCG’s policies prohibited AP #1 from conducting his business from inside FCM A instead of RCG’s Memphis Branch. Consequently, the Branch Manager failed to notify RCG’s Compliance Department that AP #1 was conducting his business from inside FCM A as she was required to

do as the Branch Manager. In fact, the Branch Manager took no action whatsoever to address this violation of RCG's policies and procedures.

Throughout the Relevant Period, AP #1 introduced customer accounts to RCG and earned commissions from RCG for the trades placed in the accounts. AP #1 also executed customer orders through another AP located in RCG's Memphis Branch ("AP #2"). In particular, AP #1 arranged swap agreements for FCM A, including orders with several cattle feedyards and helped open new futures accounts for the feedyards at RCG. AP #2 received all commissions from RCG for trades in these feedyard accounts, but he split his commissions with AP #1 by personal check. The Branch Manager denies being aware of this commission sharing arrangement.

2. Failure to Provide Adequate Supervisory Training to the Branch Manager

During the Relevant Period, the Branch Manager was responsible for establishing and maintaining an internal control structure within the Memphis Branch and was the sole supervisor on-site for employees, agents and APs of the Memphis Branch. Specifically, the Branch Manager was responsible for ensuring that the Memphis Branch conducted business in accordance with Commission Regulations, National Futures Association Rules and RCG policies and procedures on an ongoing basis.

RCG provided its Compliance Manual, which contained RCG's policies regarding compliance and supervision of APs and other employees, to the Branch Manager and the APs in the Memphis Branch, including AP #1. Specifically, RCG maintained company policies prohibiting its APs from conducting business on its behalf from an office other than RCG's offices, including the office of another FCM, from placing trades in RCG customer accounts without discretionary authority over those accounts, and entering into commission sharing arrangements absent approval from RCG. However, the Branch Manager was unaware of these policies because RCG did not provide adequate training on its company policies to the Branch Manager resulting in the above described supervisory failures in the Memphis Branch.

3. Failure to Maintain A Meaningful Program of Supervision At the Memphis Branch and Enforce The Supervisory Policies that Were In Place

RCG's program of supervision for the Memphis Branch included hiring the Branch Manager, having RCG's audit group visit the Memphis Branch once a year to conduct an audit and maintaining a RCG policies and procedures manual, anti-money laundering policy and privacy policy in the Memphis Branch. RCG conducted annual audits of the Memphis Branch in at least 2010, 2011 and 2012. According to RCG's policies and procedures manual, all branch office audits are reviewed by a committee of RCG's senior officers, directors and compliance staff located in Chicago, Illinois for purposes of addressing and remediating any compliance issues discovered during the audits. RCG also requires that any violation of company policies be reported to RCG's Compliance Department. The Branch Manager provided information for and received reports of annual audits conducted by personnel from RCG's home office in Chicago for at least 2010, 2011 and 2012. Each of these audit reports included a statement that AP #1 was a registered AP of RCG. Although the Branch Manager received these audit reports, she did not critically read them. Further, the Branch Manager did not audit AP #1's accounts. Similarly,

no one from RCG's Chicago office audited AP #1's accounts until the very end of his registration as a RCG AP in 2013.

As noted above, the Branch Manager did not notify anyone in RCG's Compliance Department about AP #1's use of FCM A's office to conduct business on behalf of RCG. Likewise, the Branch Manager did not verify whether AP #1 was registered with FCM A. AP #1's use of FCM A's office to conduct business on behalf of RCG during the Relevant Period violated RCG's policies.

IV. LEGAL DISCUSSION

Regulation 166.3, 17 C.F.R. § 166.3 (2012), 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 other 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 other persons occupying a similar status or performing a similar function) relating to its business as a registrant.

A violation under Regulation 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 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), *aff'd sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993); *In re Paragon Futures Ass'n*, [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*, ¶ 25,266 at 38,850; *CFTC v. Sidoti*, 178 F.3d 1132, 1137 (11th Cir. 1999) (defendant was liable for failure to supervise because he “knew of specific instances of misconduct, yet failed to take reasonable steps to correct the problems”).

RCG failed to provide adequate supervisory training to its Branch Manager and to enforce compliance with its own policies and procedures. As a result, RCG failed to employ an adequate supervisory system in violation of Regulation 166.3.

RCG also failed to supervise diligently the AP in its Memphis Branch in violation of Regulation 166.3.

V. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that during the Relevant Period, RCG failed to adequately supervise activities related to its business as a Commission registrant in violation of Commission Regulation 166.3, 17 C.F.R. §166.3 (2013).

VI. OFFER OF SETTLEMENT

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

- A.** Acknowledges receipt of service of this Order;
- B.** Admits the jurisdiction of the Commission with respect to all the 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.** Waives:
 - 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 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 the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2012), relating to, or arising from, this proceeding;
 - 7. 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, 857-68 (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 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 basis on which this Order is entered shall consist solely of the findings contained in this Order to which RCG has consented in the Offer; and
- E.** Consents, solely on the basis of the Offer, to the Commission's entry of this Order, that:
1. makes findings by the Commission that RCG violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2013);
 2. orders RCG to cease and desist from violating Commission Regulation 166.3, 17 C.F.R. § 166.3 (2013);
 3. orders RCG to pay disgorgement in the amount of one hundred four-thousand two-hundred and seventy-nine dollars (\$104,279) plus post-judgment interest as described below; and
 4. orders RCG to pay a civil monetary penalty in the amount of seven hundred thousand dollars (\$700,000) plus post-judgment interest as described below.

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

VII. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. RCG shall cease and desist from violating Commission Regulation 166.3.
- B. Civil Monetary Penalty: RCG shall pay a civil monetary penalty in the amount of seven hundred thousand dollars (\$700,000), within ten (10) days of the date of the entry of this Order (the "CMP Obligation"). Should RCG not satisfy its CMP Obligation within ten (10) days of the date of entry of this Order, then 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. RCG shall pay this penalty 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 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: Nikki Gibson AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-7262

If payment by electronic funds transfer is chosen, RCG shall contact Nikki Gibson 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, Three Lafayette Center, 1155 21st Street, N.W., Washington, DC 20581, 2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address, and 3) Regional Counsel, Commodity Futures Trading Commission, Chicago Regional Office, 525 West Monroe, 11th Floor, Chicago, IL 60661. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if this amount is not paid in full within fifteen (15) days of the due date, RCG 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.

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

1. Disgorgement: RCG shall pay disgorgement in the amount of one hundred four-thousand two-hundred and seventy-nine dollars (\$104,279), within ten (10) days of the date of the entry of this Order (the "Disgorgement Obligation"). Should RCG not satisfy its Disgorgement Obligation within ten (10) days of the date of entry of this Order, post judgment interest shall accrue on the 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. RCG shall pay this disgorgement 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 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: Nikki Gibson AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-7262

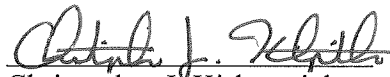
If payment by electronic funds transfer is chosen, RCG shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. RCG shall accompany payment of the penalty with a cover letter that identifies RCG and the name and docket 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, Three Lafayette Center, 1155 21st Street, N.W., Washington, DC 20581, 2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address, and 3) Regional Counsel, Commodity Futures Trading Commission, Chicago Regional Office, 525 West Monroe, 11th Floor, Chicago, IL 60661. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if this amount is not paid in full within fifteen (15) days of the due date, RCG 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 disgorgement, with interest thereon to the date of the payment, has been made.

2. Public Statements: RCG agrees that neither it nor any of its successors and assigns, 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 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 RCG's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. RCG and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.
3. Cooperation with the Commission: RCG shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.
4. Partial Satisfaction: RCG understands and agrees that any acceptance by the Commission of partial payment of RCG's CMP Obligation and/or Disgorgement Obligation shall not be deemed a waiver of its 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 RCG satisfies in full its CMP Obligation and Disgorgement Obligation as set forth in this Order, RCG shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

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

By the Commission



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

Dated: November 13, 2014