

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

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Proceedings Clerk

10:26 am, Sep 03, 2020

In the Matter of

McClelland Capital Management Inc.,

Respondent.

CFTC Docket No. 20-58

**COMPLAINT AND NOTICE OF HEARING PURSUANT TO SECTION 6(d)**  
**OF THE COMMODITY EXCHANGE ACT**

The Commodity Futures Trading Commission (“Commission”) has received information that tends to show, and the Commission’s Division of Enforcement (“Division”) alleges that:

**I. SUMMARY**

1. From August 5, 2009 through the present (the “Relevant Time”), McClelland Capital Management Inc. (“Respondent”), has been registered with the Commission as a Commodity Trading Advisor (“CTA”) without maintaining membership in the National Futures Association (“NFA”), the only futures association registered under Section 17 of the Commodity Exchange Act (“Act”), 7 U.S.C. § 21 (2018). Respondent has not claimed any exemption from the NFA membership requirement during the Relevant Time. Thus, Respondent has violated and is violating Commission Regulation (“Regulation”) 170.17, 17 C.F.R. § 170.17 (2019), which provides that each registered CTA, unless eligible for certain exemptions, “must become and remain a member” of a registered futures association, namely NFA.

**II. RESPONDENT**

2. Respondent is a registered CTA with NFA ID number 317468. In registration materials, Respondent provided the following contact information: mailing address 80 Varick

St. No. 5c, New York, NY 10013; telephone number (212) 966-2111; and email address r.c.mcclelland@mcclellandcapital.com. Respondent was an NFA member from May 15, 2002 to August 5, 2009.

### **III. FACTS**

3. Respondent has been registered with the Commission as a CTA from March 9, 2007 to the present.

4. NFA is the only futures association that is registered under Section 17 of the Act, 7 U.S.C. § 21 (2018). It is a private corporation that serves as an industry self-regulatory organization, with membership composed of futures commission merchants, commodity pool operators, CTAs, introducing brokers and other futures professionals registered with the Commission. NFA is responsible, under Commission oversight, for certain aspects of the regulation of these futures entities and their associated persons. NFA focuses primarily on the qualifications and proficiency, financial condition, retail sales practices, and business conduct of its members.

5. Respondent has not been an NFA member since August 5, 2009.

6. Respondent is not currently asserting and has not claimed an exemption from the requirement that registered CTAs be members of NFA.

7. By registering as a CTA, Respondent appears on NFA's publicly available database, BASIC, which provides information about CFTC registrants and those claiming exemption from registration. By registering as a CTA and being listed on the NFA database, the Respondent creates an air of legitimacy that can mislead potential clients as it suggests that Respondent is subject to NFA oversight and is otherwise complying with the regulatory requirements.

#### **IV. VIOLATIONS OF THE ACT AND COMMISSION REGULATIONS**

##### **(COMMISSION REGULATION 170.17)**

8. Paragraphs 1 through 7 are realleged and incorporated herein by reference.

9. Regulation 170.17, 17 C.F.R. § 170.17 (2019), requires that each person or entity registered as a CTA must:

[B]ecome and remain a member of at least one futures association that is registered under Section 17 of the Act and that provides for the membership therein of . . . commodity trading advisors . . . unless no such futures association is so registered; provided, however that a person registered as a commodity trading advisor shall not be required to become or remain a member of such a futures association, solely in respect of its registration as a commodity trading advisor, if such person is eligible for the exemption from registration as such pursuant to § 4.14(a)(9) of this chapter.

10. Respondent violated Regulation 170.17, 17 C.F.R. § 170.17, by failing to obtain membership in NFA without claiming any exemption to the membership requirement.

#### **V. NECESSITY OF PUBLIC ADMINISTRATIVE PROCEEDINGS**

By reason of the forgoing allegations, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute public administrative proceedings to determine whether the allegations set forth in Part I, II, III, and IV above are true, and if so, whether an appropriate order should be entered in accordance with Section 6(d) of the Act, 7 U.S.C. § 13b (2018), directing Respondent to cease and desist from violating the provisions of the regulations set forth above.

**VI. ADOPTION OF EXPEDITED PROCESS AND APPOINTMENT OF PRESIDING OFFICER**

Upon consideration of the information received from its staff and of the allegations of the Division of Enforcement contained in paragraphs 1 through 10 above, the Commission finds and determines that:

- A. the issues framed by paragraphs 1 through 10 of the pleadings of this matter are clear, narrow and capable of speedy resolution;
- B. Respondent is alleged to have registered as a CTA without obtaining membership in NFA or claiming or receiving an exemption from membership in violation of Regulation 170.17;
- C. Respondent and the public are entitled to a prompt decision on the question of whether Respondent has complied with the requirements of CTA registration; and
- D. this proceeding shall be conducted before a Presiding Officer other than an Administrative Law Judge.

WHEREAS the Commission has determined that no party to this proceeding will be prejudiced and that the ends of justice will be served by the adoption of expedited procedures in this matter, IT IS HEREBY ORDERED that a public hearing on the allegations contained in paragraphs 1 through 10 of this Complaint be held for the purpose of taking evidence on the question set forth in Section V above.

IT IS FURTHER ORDERED that in order to expedite this matter, pursuant to the Commission's Rule of Practice under the Act ("Rules") 10.3(b), 17 C.F.R. § 10.3(b) (2019), the Commission is waiving the following rules:

- (i) Rule 10.12(a)(2)(v)(third sentence) and (a)(3), 17 C.F.R. § 10.12(a)(2)(v)(third sentence) and (a)(3) (2019);
- (ii) Rule 10.22(b)(second sentence), 17 C.F.R. § 10.22(b)(second sentence); and
- (iii) Rule 10.92(a)(first sentence), 17 C.F.R. § 10.92(a)(first sentence);

and implementing the following rules:

**Rule regarding service by fax or email.** Service by email shall be permitted to the email addresses as follows: (a) for the Division of Enforcement, service by email shall be permitted to the email address dsnodgrass@cftc.gov and ependleton@cftc.gov; (b) for Respondent, service by email shall be permitted to the email addresses provided with any of Respondent's registration materials or listed on NFA's BASIC website, including but not limited to r.c.mcclelland@mcclellandcapital.com; and (c) for both parties, service by fax or email shall be permitted to any number or address that either party identifies to the other party as the preferred number or address. All documents served by email must be in PDF or other non-alterable form.

**Rule regarding service of the complaint and notice of hearing.** Service by the Proceedings Clerk may be made in person, by confirmed telegraphic notice, by registered mail or certified mail, addressed to the last known business or residence address of the person to be served or the address of his duly authorized agent for service, by fax to any number identified by Respondent, or by email to the email addresses provided with any of Respondent's registration materials or listed on NFA's BASIC website, including but not limited to r.c.mcclelland@mcclellandcapital.com. If none of the methods result in delivery of the complaint and notice of hearing, the Division may apply to the Presiding Officer for an order directing service by publishing the complaint in a newspaper or periodical likely to be accessible

by Respondent, or if no such periodical is identifiable, by publishing the complaint and notice of hearing in the Federal Register and on the Commission's website.

**Rule regarding shortened procedures.** In lieu of a full oral hearing, the Presiding Officer shall order a shortened procedure as to the submission of direct evidence unless a party otherwise moves and the Presiding Officer finds that a shortened procedure will not adequately protect the rights of the parties and the public interest.

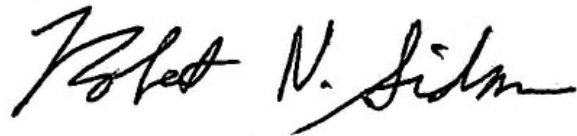
IT IS FURTHER ORDERED that, pursuant to Rule 10.8, 17 C.F.R. § 10.8 (2019), this proceeding shall be conducted before the Commission Judgment Officer, as the Presiding Officer, and all provisions of the Rules or of Part 3 of the Commission Regulations that refer to and grant authority to or impose obligations upon an Administrative Law Judge shall be read as referring to and granting authority to and imposing obligations upon the Commission Judgment Officer as the designated Presiding Officer;

IT IS FURTHER ORDERED that a public hearing for the purpose of taking evidence on the allegations set forth in Sections I to IV above be held before the Presiding Officer in accordance with the Rules, 17 C.F.R. §§ 10.1-10.107 (2019), except as where specifically ordered herein or by the Presiding Officer pursuant to the Rules, at a time and place to set as provided by Section 10.61 or 10.92 of the Rules, 17 C.F.R. §§ 10.61, 10.92 (2019), and that all post hearing procedures shall be conducted pursuant to Section 10.81 through 10.107 of the Rules, 17 C.F.R. §§ 10.81-10.107 (2019).

IT IS FURTHER ORDERED that the Respondent shall serve and file an Answer to the allegations made against such respondent in paragraphs 1 through 10 of this complaint within twenty (20) days after service, pursuant to Section 10.23 of the Rules, 17 C.F.R. § 10.23 (2019), and pursuant to Section 10.12(a) of the Rules, 17 C.F.R. § 10.12(a) (2019), and shall serve two

copies of such Answer and any documents filed in this proceeding upon Douglas Snodgrass, Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 525 W. Monroe St., Suite 1100, Chicago, IL 60661, dsnodgrass@cftc.gov. If the respondent fails to file the required Answer or fails to appear at a hearing after being duly notified, such party shall be deemed in default and the proceeding may be determined against the respondent upon consideration of the Complaint, the allegations of which may be deemed true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served on respondent personally or by registered or certified mail, pursuant to Section 10.22 of the Commission Rule, 17 C.F.R. § 10.22 (2019), or by fax or e-mail or other means as ordered herein. In the absence of an appropriate waiver no officer or employee of the Commission engaged in the performance of investigative or prosecutorial functions in this or any factually related proceedings will be permitted to participate or advise in the decision of this matter except as a witness or counsel in a proceeding held pursuant to notice.



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Robert N. Sidman  
Deputy Secretary of the Commission  
Commodity Futures Trading Commission

Dated: September 3, 2020