

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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2:07 pm, Sep 28, 2023

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In the Matter of:)

)
)
Michael T. Zatorski and Highland)
Quantitative Driven Investments LLC,)

CFTC Docket No. 23-55

)
Respondents.)
_____)

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

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that beginning no later than October 2017 and continuing through at least December 2020 (the “Relevant Period”), Respondents Michael T. Zatorski (“Zatorski”) and Highland Quantitative Driven Investments LLC (“Highland”) (together, “Respondents”) violated Sections 4b(a)(1)(A) and 4o(1)(A) and (B) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 6b(a)(1)(A), 6o(1)(A), (B). 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.

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 Section 6(c) and (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 use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondents do not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondents do not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. Summary

During the Relevant Period, Highland, a registered Commodity Pool Operator (“CPO”), and Zatorski, a registered Associated Person (“AP”) of Highland for part of the Relevant Period, made \$176,206.54 in unauthorized transfers from a commodity pool they operated—Highland Quantitative Investment Funds LP (the “Pool”)—to a Zatorski-controlled entity, in contravention of the Pool’s Private Placement Memorandum (“PPM”) and Limited Partnership Agreement (“LPA”) and without proper disclosure to Pool participants.

Respondents violated Sections 4b(a)(1)(A) and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), 6o(1)(A), (B), by making the unauthorized transfers.

B. Respondents

Highland Quantitative Driven Investments LLC, a Delaware Limited Liability Company and Colorado Foreign Limited Liability Company, operated as the CPO of the Pool. Highland was registered with the Commission as a CPO from August 2, 2016 through January 27, 2021.

Michael T. Zatorski, a Colorado resident, was the owner, manager, and control person of Highland. Zatorski was a Principal of Highland from July 15, 2016 through January 27, 2021 and was registered with the Commission as an AP of Highland from June 25, 2018 through January 27, 2021.

C. Facts

From October 2016 through October 2021, Respondents operated the Pool, which traded futures and/or options on futures in crude oil, interest rates, treasury bonds, E-Mini S&P 500, and E-Mini Nasdaq, among other things. The Pool had approximately 60 participants and an initial net asset value of around \$25 million. According to the Pool’s PPM and LPA (“operating documents”), Highland represented to Pool participants that it would trade the Pool’s assets using algorithmic trading strategies developed by another Zatorski-controlled entity (“Firm A”) pursuant to a licensing agreement with Highland. In exchange for the use of the algorithmic trading strategies, the original Pool operating documents provided that Highland would pay Firm A up to \$2,000 per month.

Notwithstanding that provision in the Pool operating documents, during the Relevant Period, Respondents transferred significantly more than \$2,000 per month in Pool funds directly to Firm A. In 2018 and 2019, Respondents made and/or attempted to make multiple amendments to the Pool operating documents that purported to both retroactively and prospectively permit the Pool, rather than Highland, to pay substantially increased monthly fees to Firm A. Despite Respondents’ attempts to validate the total amount transferred from the Pool to Firm A, some transfers were not authorized by the effective Pool operating documents and/or were made without prior notice to the Pool participants. Respondents eventually repaid some of

the unauthorized transfers to the Pool. In total, and taking into account these repayments, Respondents improperly transferred a net \$176,206.54 from the Pool to Firm A in excess of the amounts authorized by the Pool operating documents.

III. LEGAL DISCUSSION

A. Respondents violated Section 4b(a)(1)(A) of the Act.

Section 4b(a)(1)(A) of the Act, 7 U.S.C. § 6b(a)(1)(A), provides that it shall be unlawful, in or in connection with a futures contract made on or subject to the rules of a designated contract market, for or on behalf of any other person, to cheat or defraud, or attempt to cheat or defraud, such other person. Liability attaches under Section 4b(a) of the Act with: “(1) the making of a misrepresentation, misleading statement, or a deceptive omission; (2) scienter; and (3) materiality.” *CFTC v. JBW Capital*, 812 F.3d 98, 106 (1st Cir. 2016).

By failing to advise Pool participants of certain unauthorized transfers, Respondents violated Section 4b(a)(1)(A) of the Act. An omission of a material fact is a misleading misrepresentation if the circumstances mandated disclosure to ensure that the representations were not misleading. *In re Sogemin Metals Inc.*, CFTC No. 00-44, 2000 WL 136059, at *4 (Feb. 7, 2000) (consent order) (*citing Modlin v. Cane*, CFTC No. 97-R083, 1998 WL 429622, at *8 (July 30, 1998)). By transferring fees above those expressly allowed under the Pool operating documents and contemporaneously effective amendments, Respondents misled Pool participants as to the expenses the Pool incurred. *Cf. CFTC v. Mankad*, No. CV-21-01719-PHX-DJH, 2022 WL 17752224, at *6 (D. Ariz. Oct. 19, 2022) (consent order) (finding CPO’s failure to disclose certain disproportionately higher commissions and AP’s unilateral discretion to increase trading costs misleading under Sections 4b(a)(1)(A) and (C) and 4o(1)(A) and (B) of the Act).

Respondents acted with the requisite scienter to support a violation of Section 4b(a) of the Act. To prove that conduct is intentional, the CFTC need only show that a defendant’s actions were “intentional as opposed to accidental.” *Lawrence v. CFTC*, 759 F.2d 767, 773 (9th Cir. 1985). To prove that conduct is reckless, the CFTC must show that it “departs so far from the standards of ordinary care that it is very difficult to believe the [actor] was not aware of what he was doing.” *Drexel Burnham Lambert Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988) (alteration in original) (internal quotation marks and citation omitted); *see CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328 (11th Cir. 2002) (“[S]cienter is established if Defendant[s] intended to defraud, manipulate, deceive, or if Defendant[s]’ conduct represents an extreme departure from the standards of ordinary care.” (citation omitted)). At the very least, Respondents’ conduct in failing to prospectively notify Pool participants of transfers in excess of authorized expenses was reckless.

Finally, failing to properly and timely notify Pool participants of \$176,206.54 in net undisclosed transfers in excess of those expressly limited by contemporaneous Pool operating documents and amendments is material. *See R.J. Fitzgerald & Co., Inc.*, 310 F.3d at 1328-29 (noting that a misrepresentation or omission is material if “a reasonable investor would consider it important in deciding whether to make an investment”).

Zatorski controlled Highland, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Highland's acts in violation of the Act; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Zatorski is liable for Highland's violation of Section 4b(a)(1)(A) of the Act.

Zatorski's acts in violation of the Act, as discussed above, occurred within the scope of his position as an official or agent of Highland or when he was otherwise acting for Highland; therefore, Highland is liable for Zatorski's acts, omissions, and failures in violation of Section 4b(a)(1)(A) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Commission Regulation ("Regulation") 1.2, 17 C.F.R. § 1.2 (2022).

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

Section 4o(1) of the Act, 7 U.S.C. § 6o(1), makes it unlawful for a CPO or an AP of a CPO using the instrumentalities of interstate commerce, directly or indirectly:

- (A) [T]o employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or
- (B) [T]o engage 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.

The same conduct that constitutes violations of Section 4b(a)(1)(A) of the Act, as described above, also constitutes violations of Section 4o(1) of the Act. *See, e.g., Stotler & Co. v. CFTC*, 855 F. 2d 1288, 1290-91 (7th Cir. 1988); *see also CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985). Further, proof of scienter is not required under Section 4o(1)(B) of the Act. *In re Kolter*, CFTC No. 93-19, 1994 WL 621595, at *7 (Nov. 8, 1994).

During the Relevant Period, Highland, as CPO of the Pool, and Zatorski, as an AP of Highland, transferred by wire and ACH electronic transfer a net total of \$176,206.54 in unauthorized and undisclosed funds to Firm A. Therefore, Respondents violated Section 4o(1)(A) and (B) of the Act. *See Mankad*, 2022 WL 17752224, at *6 (finding that CPO's failure to disclose AP's disproportionately higher commissions and unilateral exercise of discretion to increase trading costs, in light of pool operating documents, violated Sections 4b(a)(1)(A) and (C) and 4o(1)(A) and (B) of the Act); *In re RNS Holdings LP*, CFTC No. 16-28, 2016 WL 5582340, at *4 (Sept. 20, 2016) (consent order) (finding unauthorized withdrawals of pool funds in excess of amount authorized by pool operating documents violated Section 4o(1)(B) of the Act).

Zatorski controlled Highland, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Highland's acts in violation of the Act; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Zatorski is liable for Highland's violation of Section 4o(1)(A) and (B) of the Act.

Zatorski's acts in violation of the Act, as discussed above, occurred within the scope of his position as an official or agent of Highland or when he was otherwise acting for Highland;

therefore, Highland is liable for Zatorski's acts, omissions, and failures in violation of Section 4o(1)(A) and (B) of the Act, pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondents violated Sections 4b(a)(1)(A) and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), 6o(1)(A), (B).

V. OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge 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, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2022), 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, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), 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, including this Order;

- 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; and
- 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 Sections 4b(a)(1)(A) and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), 6o(1)(A), (B);
 2. Orders Respondents to cease and desist from violating Sections 4b(a)(1)(A) and 4o(1)(A) and (B) of the Act;
 3. Orders Respondents to pay, jointly and severally, restitution in the amount of one hundred seventy-six thousand, two hundred six dollars and fifty-four cents (\$176,206.54), plus any post-judgment interest;
 4. Orders Respondents to pay, jointly and severally, a civil monetary penalty ("CMP") in the amount of three hundred thousand dollars (\$300,000), plus any post-judgment interest;
 5. Appoints the National Futures Association ("NFA") as Monitor in this matter;
 6. Orders that Highland is prohibited permanently from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40)), after the date of entry of this Order, and all registered entities shall refuse it trading privileges; and
 7. Orders Respondents to comply with the conditions and undertakings consented to in Section VI of this Order.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents shall cease and desist from violating Sections 4b(a)(1)(A) and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), 6o(1)(A), (B).
- B. Respondents shall pay, jointly and severally, restitution in the amount of one hundred seventy-six thousand, two hundred six dollars and fifty-four cents (\$176,206.54) ("Restitution Obligation"). If the Restitution Obligation is not immediately paid in full, then post-judgment interest shall accrue on the unpaid portion of 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.

To effect payment by Respondents and the distribution of restitution to Respondents' Pool participants (hereinafter, "customers"), the Commission appoints NFA as "Monitor." The Monitor shall receive payments of the Restitution Obligation and any post-judgment interest 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 payments of the Restitution Obligation and any post-judgment interest under this Order in the name of the "Highland 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, 320 South Canal Street, 24th Floor, Chicago, IL 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 three hundred thousand dollars (\$300,000) ("CMP Obligation"). If the CMP Obligation is not paid immediately in full, then post-judgment interest shall accrue on the unpaid portion of 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.

Respondents shall pay the CMP Obligation and any post-judgment interest 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:

C/O ESC/AMK326
Commodity Futures Trading Commission
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMZ-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondents shall contact Tonia King 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. Respondents shall simultaneously transmit copies of the cover letter and the form of payment to: (i) the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (ii) Charles Marvine, Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, 2600 Grand Boulevard, Suite 210, Kansas City, Missouri 64108.

- D. Highland is permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40)), after the date of entry of this Order and all registered entities shall refuse it trading privileges.
- E. 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 comply with this agreement, and shall undertake all steps necessary to ensure that all of the agents and/or employees under their authority or control understand and comply with this agreement.
 2. Highland agrees that it shall never, directly or indirectly:
 - a. enter into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2022)), for its own account or for any account in which Highland has a direct or indirect interest;

- b. have any commodity interests traded on Highland's behalf;
 - c. control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
 - d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
 - e. 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) (2022); and/or
 - f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2022)), 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)), registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9).
3. Zatorski agrees that he shall never, directly or indirectly:
- a. control or direct the trading for or on behalf of any other person or entity (other than for or on behalf of (i) his spouse, parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, or in-law; (ii) an entity he wholly owns; or (iii) a proprietary trading firm which is made aware of this Order prior to Zatorski controlling or directing any trading for or on its behalf), whether by power of attorney or otherwise, in any account involving commodity interests;
 - b. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
 - c. 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); and/or
 - d. act as a principal (as that term is defined in Regulation 3.1(a)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act), registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9).
4. 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' customers, whom the Monitor, in its sole

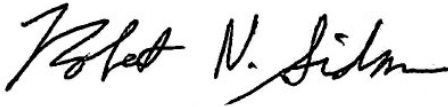
discretion, may determine to include in any plan for distribution of any restitution payments. Respondents shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment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

5. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission 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.
6. Change of Address/Phone: Until such time as Respondents satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Order, Respondents shall provide written notice to the Commission by certified mail of any change to their telephone numbers and mailing addresses within ten calendar days of the change.

* * *

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

By the Commission.



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

Dated: September 28, 2023