

THE COMMODITY FUTURES ACT    )  
  )  
Section 27(1)                            )

Order No. 6546

June 27, 2012

ROSENTHAL COLLINS GROUP LLC

**WHEREAS:**

(A) On June 25, 2012, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("NOH") giving notice of its intention to hold a hearing ("Proceedings") to consider whether it was in the public interest to grant an order under *The Commodity Futures Act* ("Act") with respect to Rosenthal Collins Group LLC ("Rosenthal Collins");

(B) Staff of the Commission and the respondent entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated June 4, 2012 ("Settlement Agreement"), which proposed settlement of the Proceedings, subject to the approval of the Commission;

(C) The respondent has consented to the issuance of this Order and has waived its rights to a full hearing;

(D) On June 27, 2012, the Commission held a hearing ("Settlement Hearing") to consider whether or not to approve the Settlement Agreement;

(E) The Commission is of the opinion that it is in the public interest to make this order.

**IT IS ORDERED:**

1.           **THAT** the Settlement Agreement, Schedule "A", be and the same is hereby approved.

2.           **THAT** Rosenthal Collins will make a voluntary payment of \$20,000 to the Treasurer of The Province of Manitoba.

**BY ORDER OF THE COMMISSION**

  
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Director

## SCHEDULE "A"

**IN THE MATTER OF: THE COMMODITY FUTURES ACT, C.C.S.M. c. 152**

**-and-**

**IN THE MATTER OF: ROSENTHAL COLLINS GROUP LLC**

### SETTLEMENT AGREEMENT

#### INTRODUCTION

1. In this Settlement Agreement ("Settlement Agreement"), staff of The Manitoba Securities Commission ("Staff") and Rosenthal Collins Group LLC ("Rosenthal Collins") wish to settle certain issues arising under The Commodity Futures Act ("the Act").
2. Discussions have been held between Staff and Rosenthal Collins in an effort to settle matters arising out of Rosenthal Collins trading in futures contracts under the Act. A settlement has been reached on the terms set forth in this Settlement Agreement.
3. Staff agrees to recommend the terms set out in this Settlement Agreement for approval by The Manitoba Securities Commission ("Commission")

#### AGREED STATEMENT OF FACTS

4. Rosenthal Collins acknowledges the following facts as correct:
  - a) Rosenthal Collins is registered with the US Commodity Futures Trading Commission and is a member of the National Futures Association as a futures commission merchant. Rosenthal Collins is also a clearing member on several United States futures exchanges, including the Chicago Mercantile Exchange, Chicago Board of Trade, New York Mercantile Exchange and New York Board of Trade as well as a registered futures commission merchant participant of ICE Futures Canada.

- b) Rosenthal Collins' head office is located in Chicago, Illinois and all of Rosenthal Collins principal operations, employees, contractors, activities, books and records are located in the United States. Rosenthal Collins conducts business with institutional and individual retail clients as well as providing futures, clearing and execution services to introducing brokers, broker-dealers and other future commission merchants.
- c) As of the date hereof, Rosenthal Collins has not advertised to or solicited residents of the Province of Manitoba.
- d) Rosenthal Collins is not registered in any capacity under the Act.
- e) As a result of inquiries made by Staff, Rosenthal Collins advises that in June, 2010 it had 29 open accounts with Manitoba residents (collectively described in this agreement as the "Manitoba accounts"). Of the 29 open Manitoba accounts,
- (i) 27 accounts were introduced or transferred, to Rosenthal Collins by various registered introducing brokers or future commission merchants located in the U.S.
  - (ii) one account was transferred to Rosenthal Collins by a now defunct firm in the U.S. and
  - (iii) one account was opened at Rosenthal Collins unsolicited by Rosenthal Collins.
- f) As of February 15, 2012 Rosenthal Collins represents it had 20 open accounts for residents of Manitoba that do not qualify as hedgers as that term is defined under the Act. ("non hedging account").
- g) With the exception of two hedger (as that term is defined in the Act) accounts all trades in the Manitoba accounts have been conducted on U.S. Futures Exchanges of which Rosenthal Collins is a full clearing member.
- h) Rosenthal Collins has traded in exchange traded futures listed on ICE Futures Canada on behalf of two hedgers resident in Manitoba.
- i) As a result of correspondence received from Staff, Rosenthal Collins had sought to close all non hedging accounts forthwith. Rosenthal Collins represents the trading activity in the two remaining hedging accounts will be conducted in compliance with the exemption set forth in section 34(a) of the Act.
- j) Rosenthal Collins acknowledges it has engaged in unregistered trading through the opening and operation of exchange trade futures accounts with residents of Manitoba. Further, Rosenthal Collins

acknowledges it did not, prior to January 1, 2012, file Form 18s for trades in the hedger accounts as required by s. 34(a) of the Act and MSC Rule 2000-11.

### **MITIGATING FACTORS**

5. Rosenthal Collins represents there has not been any complaints by Rosenthal Collins' customers resident in Manitoba concerning their accounts or trading in their accounts.
6. Rosenthal Collins represents it has stopped opening accounts in Manitoba as a result of regulatory inquiries and will continue to preclude the opening of accounts with residents of Manitoba unless Rosenthal Collins becomes registered under the Act or alternatively the opening of accounts would be in compliance with an applicable exemption from the registration requirements of the Act.
7. Rosenthal Collins has cooperated fully with Staff's investigation of the matters referred to herein including responding to information requests by Staff.
8. Rosenthal Collins has no offices or employees in Manitoba, and as of the date hereof, has not advertised or otherwise directly solicited customers in Manitoba.

### **UNDERTAKING**

9. Rosenthal Collins undertakes and agrees as follows:
  - a) To make a voluntary payment to the Province of Manitoba in the sum of \$20,000 upon approval of this Settlement Agreement.
  - b) Not to open any accounts with Manitoba residents unless it becomes registered under the Act or an exemption is available under the Act or granted by the Commission.

### **TERMS OF SETTLEMENT**

10. Staff seeks a consent order from the Commission consistent with the terms set out in paragraph 9 of the Settlement Agreement.
11. The consent order sought by staff is as follows:

a) That the Settlement Agreement be approved; and upon approval of this settlement Rosenthal Collins will make a voluntary payment of \$20,000 to the Treasurer of the Province of Manitoba.

## PROCEDURE

12. The approval of this Settlement Agreement shall be sought at a public hearing.
13. If this Settlement Agreement is approved by the Commission, and if a Consent Order issues in accordance with this Settlement Agreement, this Settlement Agreement will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings and, upon the making of the order contemplated by this Settlement Agreement, Rosenthal Collins waives its right to a full hearing and appeal of this matter.
14. Notwithstanding any other provision of this Settlement Agreement, if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in paragraph 11 above is not made by the Commission, Staff will be entitled to proceed with whatever steps it is entitled by law to take unaffected by this Settlement Agreement or the settlement discussions. In the event that such steps are taken, Rosenthal Collins shall have all of the usual rights of a person subject to such proceedings.
15. If the Settlement Agreement is not approved or the Consent Order set out in paragraph 11 above is not made by the Commission, the terms of this Settlement Agreement shall remain confidential and shall not be raised in this or any other proceeding, and any admissions contained in this Settlement Agreement shall be considered as without prejudice communications and furtherance of settlement discussions which will not be binding upon the parties and which will be inadmissible in any proceeding whatsoever.
16. If this Settlement Agreement is approved by the Commission and the Consent Order made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.
17. Rosenthal Collins agrees that, if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, Rosenthal Collins will not raise as a basis for attack on the Order this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement, alleged bias, alleged unfairness, or any such other challenges to the validity of the Consent Order.

18. Rosenthal Collins further agrees, that if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement. Agreement, it will not make any statements inconsistent with the terms of this Agreement.

DATED at Winnipeg, Manitoba this 4<sup>TH</sup> day of JUNE, 2012.

  
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Director, Legal and Enforcement

DATED at Chicago, Ill. this 31<sup>st</sup> day of May, 2012.

  
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Rosenthal Collins Group LLC