

UNITED STATES OF AMERICA
Before the
U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of
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Inquiries

In the Matter of:)
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 Growth Capital Management)
 LLC)
)
)
 Registrant.)
_____)

CFTC Docket No. SD 12-06

**NOTICE OF INTENT TO REVOKE THE REGISTRATION OF GROWTH CAPITAL
MANAGEMENT LLC**

I.

The United States Commodity Futures Trading Commission (“Commission”) has received information from its staff that tends to show, and the Commission’s Division of Enforcement (“Division”) alleges and is prepared to prove that:

1. Growth Capital Management LLC (“GCM”) is a Texas Limited Liability Company formed on October 14, 2008, with its principal place of business at 6218 New Forest Drive, Rockwall, Texas 75087. GCM is not a financial institution, registered broker dealer (or their associated person), insurance company, bank holding company, or investment bank holding company.
2. GCM has been registered with the Commission as a Commodity Trading Advisor (“CTA”) since September 2008. GCM has been registered with the Commission as a Commodity Pool Operator (“CPO”) since October 2008.

3. On July 27, 2010, the Commission filed a complaint against GCM, Robert Mihailovich, Sr. (“Mihailovich, Sr.”), and Robert Mihailovich, Jr. (“Mihailovich, Jr.”) alleging that GCM, in concert with Mihailovich, Sr., fraudulently solicited over \$30 million from approximately 93 customers to open individual managed accounts and trade on-exchange commodity futures and off-exchange foreign currency (“forex”) on a managed or leveraged basis pursuant to an electronic trading software program and powers of attorney granted to GCM and Mihailovich, Sr. According to the Complaint, by its fraudulent acts, GCM violated Sections 4b(a)(1)(A) and (C) and 4b(a)(2)(A) and (C) of the Commodity Exchange Act (“Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (subtitled “CFTC Reauthorization Act of 2008” (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C), and Section 4g(1) of the Act, 7 U.S.C. 6g(1).

4. The Commission also alleged that GCM, through Mihailovich, Jr., failed to disclose in required filings with the Commission through the National Futures Association (“NFA”) pursuant to Regulation 3.10(a)(2) that Mihailovich, Sr. was a principal of GCM, and thereby GCM, aided and abetted by Mihailovich, Jr., filed false reports to the Commission in violation of Sections 6(c) and 9(a)(3) of the Act, 7 U.S.C. §§ 6k(1), 9, 15 and 13(a)(3) (2006), and Regulation 3.10(a)(2), 17 C.F.R. § 3.10(a)(2) (2010).

5. Finally, the Commission alleged that in soliciting prospective GCM managed account customers for commodity futures trading, or supervising the solicitation activities of others, Mihailovich, Sr. was required to be registered as an AP of GCM. Mihailovich, Sr. was not registered as an AP of GCM in violation of Section 4k(3) of the Act. By permitting Mihailovich, Sr. to engage in activities which required him to be registered with the Commission

as an AP while it knew or should have known that Mihailovich, Sr. was not registered as an AP, GCM violated Section 4k(3) of the Act.

6. On June 26, 2012, pursuant to a previous order holding GCM in default judgment, the federal court entered a permanent injunction against GCM. The federal district court enjoined GCM from:

- A. further violations of Sections 4b(a)(2)(A) and (C); 4b(a)(1)(A) and (C); 4o(1); 4k(3); and, 4m(1) as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 6;
- B. trading on or subject to the rules of any registered entity, as that term is defined in Section 1a of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a, for their own account, for any account in which either Defendant has a direct interest or indirect interest, or for any other account for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- C. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2011)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for either Defendant’s own personal account or for any account in which either Defendant has a direct or indirect interest;
- D. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on his behalf;
- E. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;
- F. soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;
- G. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging 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) (2011); and/or

- H. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, officer or employee of any person registered, required to be registered, or exempted from registration or with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011);

7. The facts set forth above constitute a basis to revoke GCM's registration pursuant to Section 8a(2)(C) of the Commodity Exchange Act ("Act"), as amended by the Dodd-Frank Act (2010) to be codified at 7 U.S.C. §§ 12(a)(2)(C).

II.

8. Pursuant to Commission Regulation ("Regulation") 3.60(a), 17 C.F.R. § 3.60(a) (2011), GCM is hereby notified that a public proceeding shall be conducted in accordance with the provisions of Regulation 3.60, 17 C.F.R. § 3.60 (2011), on the following questions:

- a. Whether GCM is subject to statutory disqualification from registration under Section 8a(2)(C) of the Act as set forth in Section I above.
- b. If the answer to the above question is affirmative, whether the registrations of GCM as a CTA and CPO should be revoked.

9. Such proceeding shall be held before a Presiding Officer in accordance with Regulation 3.60, 17 C.F.R. § 3.60 (2011), and all post-hearing procedures shall be conducted pursuant to Regulations 3.60(i)-(j), 17 C.F.R. § 3.60(i)-(j) (2011).

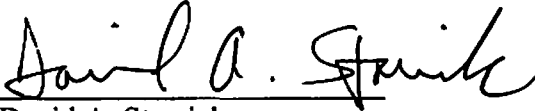
10. In accordance with the provisions of Regulation 3.60(a)(3), 17 C.F.R. § 3.60(a)(3) (2011), GCM is entitled to file a response challenging the evidentiary bases of the statutory disqualification or to show cause why, notwithstanding the accuracy of the allegations, its registrations should not be revoked. Such response must be filed with the Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and served upon Alison B. Wilson, Chief Trial

Attorney, Division of Enforcement, 1155 21st Street, Washington, D.C. 20581, within thirty (30) days after the date of service of this Notice upon GCM, in accordance with the provisions of Regulation 3.60(b), 17 C.F.R. § 3.60(b) (2011). If GCM fails to file a timely response to this Notice, the allegations set forth herein shall be deemed to be true with respect to the non-responding registrant, and the presiding officer may issue an Order of Default in accordance with the provisions of Regulation 3.60(g), 17 C.F.R. § 3.60(g) (2011).

III.

The Proceedings Clerk shall serve this Notice of Intent to Revoke the Registration of GCM by registered or certified mail pursuant to Regulation 3.50, 17 C.F.R. § 3.50 (2011).

By the Commission.


David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: August 24, 2012