

3. Nutone, through associated persons (“APs”) acting on its behalf, represents to potential investors that RIF is a multi billion-dollar hedge fund offering customers an opportunity to earn 28% quarterly profits by investing in one or more of eleven different sub-funds, including those that trade commodity futures and options. Nutone claims that RIF boasts an impressive 2-year track record of 103% returns for the moderate risk portfolio and over 160% returns for the more aggressive managed account program.

4. None of the more than \$1.1 million in customer funds solicited by Nutone and deposited into the Operating Account are being used to finance trades on the customers’ behalf. Instead, the Operating Account is a business checking account in Remco’s name. Defendant Andrei Maruha (“Maruha”) serves as the sole signatory on the Operating Account.

5. None of the funds deposited into the Operating Account were directed to a bank, clearinghouse, or other designated contract facility that might indicate the existence of trading activity. Rather, \$24,369 was taken in cash withdrawals, \$4,253 was used for business related expenses, \$380 was used for restaurant and nightclub charges, and \$200,000 was transferred to the relief defendants.

6. Through the conduct described above, Defendant Nutone, as a CTA, through APs acting on its behalf, is engaged in solicitation fraud, by making material omissions and misrepresentations to induce customers to invest in RIF, in violation of Sections 4o(1)(B) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 6o(1)(B).

7. Through the conduct described above, Remco, as a CPO, through its principal Maruha, has engaged in fraudulent misappropriation in violation of Section 4o(1)(B) of the Act, 7 U.S.C. §6o(1)(B) (2002).

8. In addition, the failure of Defendant Remco to register as a CPO violates Section 4m(1) of the Act, 7 U.S.C. §6m(1) (2002). Likewise, Nutone's failure to register as a CTA violates Section 4m(1) of the Act, 7 U.S.C. §6m(1) (2002).
9. By failing to receive all customer funds for RIF in RIF's name, Defendant Remco violated Regulation 4.20(b), 17 C.F.R. § 4.20 (b).
10. Because Defendant Maruha is Defendant Remco's controlling person, Defendant Maruha is vicariously liable for Remco's violations of Sections 4o(1)(B) and 4m(1) of the Act and Commission Regulation 4.20, by operation of Section 13(b) of the Act, 7 U.S.C. § 13c(b).
11. Accordingly, pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2002), Plaintiff Commission brings this action to enjoin the unlawful acts and practices of Defendants Nutone, Remco and Maruha, and to compel their compliance with the provisions of the Act and Regulations thereunder. In addition, the Commission seeks civil penalties, an accounting and such other equitable relief as the Court may deem necessary or appropriate.

II.

JURISDICTION AND VENUE

12. The Commodity Exchange Act, as amended, 7 U.S.C. § 1 et. seq. (the "Act"), prohibits fraud in connection with the trading of commodity futures contracts and options and establishes a comprehensive system for regulating the purchase and sale of such futures contracts and options. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commodity Futures Trading Commission ("Commission" or "CFTC") to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

13. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), in that defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

III.

THE PARTIES

A. Plaintiff

14. The Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 et seq. (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2004).

B. Defendants

15. Remco Capital Management Inc. ("Remco") was incorporated on January 14, 2004 in the state of New York. The New York State Department of State records indicate that there is no registered agent, but its address for service of process is 305 West Broadway, New York, New York 10013. Remco's principal place of business is 410 Park Avenue, Suite 1530, New York, New York 10022. Remco has never been registered with the Commission in any capacity.

16. Nutone Asset Management, Ltd. ("Nutone") is located at 410 Park Avenue, Suite 1530, New York, New York 10022. Nutone has never been registered with the Commission in any capacity.

17. Andrei Maruha ("Maruha") is an individual believed to reside at 2077 East 12th St., Apartment 4D, Brooklyn, New York 11229. Maruha opened Remco's operating account on August 31, 2004, at a Commerce Bank branch located in Brooklyn. Maruha serves as the sole

signatory on the account, and is also listed as Remco's president on account records. Maruha has never been registered with the Commission in any capacity.

C. Relief Defendants

18. Rancon Capitol Management Corporation ("Rancon") was incorporated on September 14, 2004 in the state of New York. The New York State Department of State records indicate that there is no registered agent, but its address for service of process is 2798 Ford Street, Brooklyn, New York 11235. Rancon has never been registered with the Commission in any capacity.

19. Karina Mestolo ("Mestolo") is the sole signatory of Rancon's operating account at JP Morgan Bank. Mestolo is believed to reside at 2798 Ford Street, Brooklyn, New York 11235. Mestolo has never been registered with the Commission in any capacity.

IV.

STATUTORY BACKGROUND

20. A commodity pool operator ("CPO") means, any firm or individual engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and that, in connection therewith, solicits, accepts, or receives from others funds, securities, or property, either directly through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market. Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2002). Pursuant to § 4m(1) of the Act, 7 U.S.C. §6m(1), and subject to certain exceptions not applicable here, a person who comes within the statutory definition of a CPO must be registered with the Commission if that person makes use of the mails or any means or instrumentality of interstate commerce in connection with that person's business as CPO.

21. Section 1a(6) of the Act, 7 U.S.C. § 1a(6), defines a CTA as any person who, *inter alia*, for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market. Section 4m(1) Act makes it unlawful to make use of the mails or instrumentalities of interstate commerce to provide commodity trading advice to 15 or more persons during the preceding 12-month period, or to hold oneself out generally to the public as a CTA, unless registered as a CTA under the Act.

V.

FACTS

A. **Defendants Remco and Maruha Fraudulently Misappropriate Customer Funds and Defraud Investors**

22. In less than two months, Defendant Nutone, through APs working on its behalf, has solicited more than \$1.1 million dollars from at least 31 customers to purportedly invest in RIF. Nutone's telephone solicitations and other advertising materials purport that RIF is a hedge fund that includes a portfolio of various sub-funds.

23. Nutone's telephone solicitations and other advertising materials purport to offer investors the opportunity to speculate in a variety of markets, including commodity futures and options. In a prospectus, Nutone represents to customers and prospective customers that "the total value of investments which are futures, options, forwards, swaps, collars, floors and other derivatives (excluding derivatives entered into for hedging purposes) shall not exceed 15% of the total value of each Sub-Fund."

24. Nutone's APs promise customers impressive returns on their investment while downplaying the risk of loss. The "Fund of Funds" program, which is suited for those investors

seeking a “moderate risk, modest return strategy,” boasts a two-year performance record of 18.57% (year 1) and 30.49% (year 2) and 103.12% since its inception in October 2000. The “Managed Accounts” program, which is advertised as a “higher risk/higher reward alternative for investors seeking capital appreciation,” claims remarkable annual returns of 38.08% (year 1), 54.29% (year 2), and 68.22% (year 3) and 160.59% since inception in June 2003 [sic].

25. In contrast to Defendant Nutone’s promises, customer funds are not traded at all. After customers are instructed to invest by making checks payable to Remco, the customer funds are deposited into the Operating Account, an ordinary business checking account in Remco’s name at a Commerce Bank branch office in New York.

26. Funds are then withdrawn by Defendant Maruha, transferred to the relief defendants, or used for business or personal expenses. Specifically, \$8,300 in customer funds was taken as a counter withdrawal, \$15,766 in ATM withdrawals, \$4,253 for Federal Express and minor business expenses, \$380.52 for restaurant and nightclub charges. In addition \$200,000 in customer funds was transferred to Relief Defendant Rancon by check. This check was subsequently deposited into Rancon’s business checking account at JP Morgan. The sole signatory on this account is Relief Defendant Mestolo. None of the funds transferred to Relief Defendant Rancon were used for trading.

27. The remainder of the funds lie idle in the Operating Account since deposit.

28. Defendant Maruha, as sole signatory of the Operating Account, is responsible for all movement of funds in the Operating Account.

B. Defendant Nutone Solicits Investors Through Fraudulent Misrepresentations and Omissions

29. In soliciting prospective customers to invest on their behalf, Defendant Nutone makes the following misrepresentations of material fact:

- a. All funds deposited by customers are used for trading directed by Defendant Nutone.
- b. All funds are directed into one or more sub-funds that compose the customer's investment portfolio and represent the customer's investment in various markets that are made through futures, options, and other derivatives.
- c. Remco is a multi-billion dollar fund that trades in over 14 countries in Europe and Asia.
- d. Remco upholds the highest standards and business practices and is subject to strict financial requirements and reporting.
- e. Remco's "Fund of Funds" program, suited for those customers seeking a moderate risk/return strategy, boasts a performance record of 103% since inception in October 2000, and its "Managed Accounts" program, marketed towards higher risk/reward investors, claims annual returns of 160% since inception in June 2003.

30. These representations are intended to create an appearance of legitimacy. However, these statements are false and or misleading, in that:

- a. None of the customer funds are traded by either Nutone or Remco; rather, they remain in Remco's operating account, are withdrawn by Maruha through ATM or counter withdrawals, used for business or personal expenses, or transferred to the relief defendants.
- b. None of the customer funds are directed into sub-funds, and, in fact, none are ever directed anywhere that would be consistent with trading. Rather, all funds are deposited into a regular business checking account in Remco's name where they remain, are spent on business or personal expenses, are withdrawn by Maruha, or transferred to the relief defendants.
- c. Despite claims that its funds have been in operation for 4 years, Remco was recently incorporated in New York in January 2004.
- d. Remco's operating account does not support its claim that it is a multi-billion dollar fund or that it manages anything more than the \$1.1 million it solicited since it opened the account on August 31, 2004. In addition, the account into which the customer funds are deposited is not a trading account, but an ordinary business

checking account, and none of the funds are sent to any bank, financial institution, or other facility that would indicate the existence of trading.

e. Neither Remco nor Nutone is registered, or has ever been registered, with the CFTC or SEC, which means it is not in compliance with the financial and reporting requirements it describes.

C. Defendants Illegally Operate Without Registering

31. Defendant Remco holds itself out as a CPO by soliciting, accepting, and receiving funds from retail customers for the purpose of pooling funds for the trading of a variety of investment interests, including commodities, traded through futures, options, and other derivatives. At least 31 customers sent money to Remco for the purpose of investing in Remco's hedge fund, RIF, and its sub-pools. In the course of soliciting customers, it makes use of the mails or instrumentalities of interstate commerce.

32. Remco's prospectus purports to offer eleven separate and distinct sub-funds that invest in different markets or groups of markets, including commodity futures and options. Investors are allowed to select and allocate their assets into the sub-funds, which pool investor funds together in accordance with a collective investment scheme. Remco's prices its investment instruments at \$1,000 per unit. Notably, the prospectus, which is comprised of an impressive 47-page detailed introduction to and description of the fund, is virtually identical to that of an unrelated legitimate hedge fund available on the Internet.

34. Defendant Nutone holds itself out to the public as a CTA in that for compensation or profit, it represented that it engaged in the business of advising others as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery. In the course of doing so, it makes use of the mails or instrumentalities of interstate commerce.

D. Maruha is Remco's Controlling Person

35. Remco's bank records identify Maruha as the President of Remco. As Remco's President, principal, and the sole signatory on Remco's bank account, Maruha is the only person authorized to accept and receive customer investments. Maruha authorized each transaction that resulted in the fraudulent misappropriation of customer funds. As a result, Maruha is a controlling person of Remco.

VI.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS

COUNT I

CPO and CTA FRAUD IN VIOLATION OF SECTION 4o(1) OF THE ACT

36. Paragraphs 1 through 35 are re-alleged and incorporated herein.

37. During the relevant time period, Defendant Nutone, through its APs, made material misrepresentations and omitted material facts including, but not limited to, the misrepresentations and omissions set forth in Paragraphs 22 through 30, which has operated as a fraud or deceit upon pool participants and prospective pool participants, in violation of Section 4o(1)(B) of the Act.

38. During the relevant time period, the Defendant Remco, through its principal, Maruha, engaged in a transaction, practice or course of business which has operated as a fraud or deceit upon pool participants and prospective pool participants by misappropriating funds received from investors, in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B).

39. Maruha directly or indirectly controlled Remco and, by misappropriating funds, did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described above. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), Maruha

is liable for Remco's violations of Section 4o(1) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

40. Each act of misappropriation, each material misrepresentation or omission, and each act that operated as a fraud during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act.

COUNT II

FAILURE TO REGISTER AS A CPO or CTA IN VIOLATION OF SECTION 4m(1) OF THE ACT

41. The allegations set forth in paragraphs 1 through 35 are re-alleged and incorporated herein.

42. Since August 2004, Defendant Remco operated as a CPO by accepting and receiving funds from at least 31 retail customers for the purpose of trading commodity futures contracts and made use of the mails or instrumentalities of interstate commerce. Because Remco engaged in this conduct without registering as a CPO, it is in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

43. Because Maruha is Remco's controlling person, and did not act in good faith or knowingly induced, directly or indirectly, the failure to register, Maruha is also liable for Remco's violation of Section 4m(1) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

44. Since at least August 2004, Defendant Nutone has purported to operate as a CTA by representing itself as engaging in the business of advising others, for compensation or profit, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market. Because Nutone

makes use of the mails or other instrumentalities of interstate commerce and engaged in this conduct without registering as a CPO, it is in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

COUNT III

ACCEPTANCE BY A CPO OF POOL FUNDS OTHER THAN IN THE NAME OF THE POOL IN VIOLATION OF REGULATION 4.20 (b)

45. The allegations set forth in paragraphs 1 through 35 are re-alleged and incorporated herein.

46. Beginning in or about August 31, 2004, by accepting customer funds other than in the name of RIF pool, Remco violated Regulation 4.20(b), 17 C.F.R. § 4.20(b).

47. Because Maruha is Remco's controlling person, and did not act in good faith or knowingly induced, directly or indirectly the violation of Section 4.20(b), Maruha is liable for Remco's violation of Regulation 4.20(b), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

48. Each act of accepting customer funds other than in the name of the pool during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.20(b).

VII.

RELIEF REQUESTED

Wherefore, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

- A. Find that Defendants violated Sections 4o(1)(B) and 4m(1) of the Act, 7 U.S.C. §§ 6o(1)(B) and 6m(1) (2002), and Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2004);

- B. Enter orders of permanent injunction prohibiting the Defendants and any other person or entity associated with them, including any successor thereof, from:
1. engaging in conduct, in violation of Sections 4o(1)(B) and 4m(1) of the Act, 7 U.S.C. §§ 6o(1)(B) and 6m(1) (2002), and Regulation 4.20(b) (2004);
 2. engaging in any commodity-related activity, including soliciting new customers or customer funds or pool participants or pool funds.
- C. Enter orders of permanent injunction restraining and enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:
1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;
 2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations; and

3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of Defendants.
- D. Enter an order directing Defendants and any successors thereof to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest thereon from the date of such violations;
 - E. Enter an order directing Defendants to make full restitution to every customer whose funds were received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;
 - F. Enter an order assessing a civil monetary penalty against each Defendant in the amount of not more than the higher of \$130,000 or triple the monetary gain to the defendant for each violation by Defendant of the Act or Regulations;
 - G. Enter an order directing that Defendants make an accounting to the court of all their assets and liabilities, together with all funds they received from and paid to clients and other persons in connection with commodity futures or options transactions or purported commodity futures or options transactions, and all

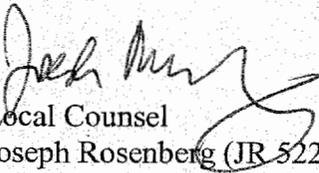
disbursements for any purpose whatsoever of funds received from commodity transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind;

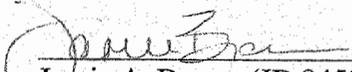
- H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- I. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: 11/16/04

Respectfully submitted,

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