

UNITED STATES OF AMERICA
Before The
COMMODITY FUTURES TRADING COMMISSION

In the Matter of

Bentley Rothchild Group, Inc.

-and-

Eugene Todd

Respondents.

CFTC Docket No. 05-04

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

RECEIVED
C.F.T.C.
2005 NOV 23 P 3:51
OFFICE OF PROCEEDINGS
PROCEEDINGS CLERK

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Bentley Rothchild Group, Inc. ("BR") and Eugene Todd ("Todd"), (collectively, "Respondents"), have violated Section 4(a) of the Commodity Exchange Act as amended (the "Act"), 7 U.S.C. §§ 6(a) (2004). Consequently, the Commission deems it appropriate and in the public interest that an administrative proceeding be, and hereby is, instituted to determine whether Respondents have engaged in the violations set forth in this Order, and whether an Order should be issued imposing remedial sanctions.

In anticipation of the institution of this administrative proceeding, Respondents have submitted a Joint Offer of Settlement ("Joint Offer") that the Commission has determined to accept. Without admitting or denying the findings in this Order, and prior to any adjudication on the merits, Respondents acknowledge service of this Order and Respondents each consent to the use of the findings in this Order in this or any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Respondents do not consent to the use of the Joint Offer or this Order, or the findings to which they have consented in their Joint Offer, as the sole basis for any other proceeding brought by the Commission, or to which the Commission is a party, other than a proceeding in bankruptcy brought to enforce the terms of this Order or to address registration issues under the Act and Commission Regulations. Respondents do not consent to the use of their Joint Offer or this Order, or the findings to which they have consented in their Joint Offer, by any other person or entity in this or any other proceeding. The Respondents do not consent to the use of the Offer, the findings consented to in the Offer, or this Order, by any other party in any other proceeding..

II.

The Commission finds the following:

A. SUMMARY

From approximately June 2002 through July 2003, BR and its Chairman and Chief Executive Officer, Todd, solicited retail customers and introduced them to an entity that was not registered with the Commission for the purpose of trading foreign currency ("forex") contracts which were, in fact, illegal forex futures contracts. Neither BR nor Todd has ever been registered with the Commission.

BR and Todd solicited customers to engage in transactions with an unregistered entity that were not consummated on or subject to the rules of a board of trade designated or registered by the Commission as a contract market or derivatives transaction execution facility. The entity that acted as the counterparty to these transactions but did not constitute a counterparty permitted under the Act to offer and sell forex futures contracts to the retail public. Therefore, BR and Todd solicited customers for the purchase or sale of illegal futures contracts, in violation of Section 4(a) of the Act.

B. RESPONDENTS

Respondent **Bentley Rothchild Group, Inc.** is a New York corporation with its principal place of business at 160 Pearl Street, New York, New York 10005. BR has never been registered with the Commission in any capacity.

Respondent **Eugene Todd** resides in Brooklyn, New York. Todd is the Chairman and Chief Executive Officer ("CEO") of BR. He has never been registered with the Commission in any capacity.

C. FACTS

From approximately June 2002 through November 2002, BR and Todd solicited approximately 20 customers to invest in Managed Currency Trading Accounts, some of whose accounts remained open through at least July 2003. BR's commission consisted of 30% of any profits made in the customers' accounts. BR sent customers monthly account statements reflecting the amount of profit they had accumulated over the month.

The contracts that the BR customers purchased and sold, through the counterparty, were foreign currency futures contracts. The entity that acted as the counterparty to the transactions did not constitute a counterparty permitted under the Act to offer and sell forex futures contracts to retail customers. It was not a financial institution, broker or dealer, or an associated person of a broker or dealer. It was not a futures commission merchant ("FCM") or an affiliate of an FCM. Accordingly, BR solicited customers to engage in transactions with a counterparty that were not

conducted on a facility designated as a contract market or registered as a derivatives transaction execution facility.

D. LEGAL DISCUSSION

1. Violation of Section 4(a) of the Act

Section 4(a) of the Act makes it unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (1) unless such transaction is conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity; (2) such contract is executed on consummated through a contract market; and (3) such contract is evidenced by a record in writing.

Section 2(c)(2)(B)(ii) of the Act clarified the Commission's jurisdiction over foreign currency futures transactions between members of the general public who are not eligible contract participants and counterparties that are not regulated financial institutions. In this case, BR's customers were retail customers rather than eligible contract participants, as that term is defined in Section 1a(12) of the Act,² and the entity acting as the counterparty did not constitute one of the enumerated regulated entities that may act as a counterparty under the Act.³ Accordingly, the Commission has jurisdiction over the transactions, as such transactions involved futures contracts.

² Section 1a(12) defines an eligible contract participant in relevant part as

- (i) a financial institution;
- (ii) an insurance company regulated by a State . . .
- (iii) an investment company subject to regulation . . .
- (iv) a commodity pool that has (I) total assets exceeding \$5,000,000 . . .
- (v) a corporation . . .
- (vi) an employee benefit plan . . .
- (vii) a governmental entity . . .
- (viii) a broker or dealer subject to regulation under the Securities Exchange Act . . .
- (ix) a futures commission merchant subject to regulation under this Act. . .
- (x) a floor broker . . .
- (xi) individual who has total assets in excess of: (I) \$10 million; or (II) \$5 million and who enters the transaction to manage the risk associated with the asset he owns. . .

³ The CFMA denies the Commission jurisdiction over retail sales of foreign currency contracts if the counterparty, or the person offering to be the counterparty, of the retail customer is:

- (I) a financial institution;
- (II) a broker or securities dealer . . .
- (III) an associated person of a broker or dealer . . .
- (IV) an insurance company . . .
- (V) a financial holding company . . .
- (VI) an investment bank holding company

As such, Respondents offered illegal foreign currency futures contracts to the retail public that were not conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or as a derivative transaction execution facility for such commodity, in violation of Section 4(a) of the Act.

III. Joint Offer

BR and Todd have submitted a Joint Offer in which, without admitting or denying the allegations contained in the findings in this Order, and without any adjudication of any issue of fact or law, they:

- A. Acknowledge service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order;
- C. Acknowledge that failure to comply with this Order shall constitute a violation of this Order and may subject them to injunctive or administrative proceedings under the Act;
- D. Waive:
 - 1. the service and filing of a Complaint and Notice of hearing;
 - 2. a hearing;
 - 3. all post-hearing procedures;
 - 4. judicial review by any court;
 - 5. all objections to the participation by any member of the Commission's staff in consideration of the Joint Offer;
 - 6. all claims of Double Jeopardy based upon the institution of this proceeding or the entry of any order imposing a civil monetary penalty or any other relief;
 - 7. all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. §504 (2000) and 28 U.S.C. § 2412 (2000), and Part 148 of the Commission's Regulations ("Regulations"), 17 C.F.R. § 148 (2004), relating to or arising from, this proceeding; and

- E. Stipulate that the record basis on which this Order is entered consists of the Order and the findings to which Respondents have consented in their Joint Offer, which are incorporated in this Order; and
- F. Consent to the Commission's issuance of this Order, which makes findings, as set forth herein, and orders that: (1) Respondents shall cease and desist from violating the provision of the Act that they have been found to have violated; (2) Respondents shall pay, jointly and/or severally, a civil monetary penalty in the amount of \$10,000; and (3) Respondents shall comply with their undertakings as set forth in the Joint Offer and incorporated in this Order including, but not limited to: (a) agreeing to not take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or finding or conclusion in this Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; (b) agreeing not to apply, for a period of five years, for registration or seek exemption from registration with the Commission in any capacity, except as provided for in Regulation 4.14(a)(9), and not to engage in any activity requiring registration or exemption from registration, unless such exemption is pursuant to Regulation 4.14(a)(9); and (c) Respondents shall fulfill all aspects of their obligations as described in the Joint Offer.

IV. Violations

Solely on the basis of the consent evidenced by the Joint Offer, and without any adjudication on the merits, the Commission finds that Respondents each violated Section 4(a) of the Act.

V. Order

Accordingly, it is hereby **ORDERED** that BR and Todd shall:

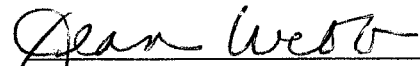
- A. Cease and desist from violating Section 4(a) of the Act, 7 U.S.C. § 6(a);
- B. Pay, jointly and/or severally, a civil monetary penalty in the amount of \$10,000; and
- C. Comply with the following undertakings:
 - 1. not to take any action or make any public statement denying, directly or indirectly, any finding 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 affects BR or Todd's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party;

2. for a period of five (5) years, not to apply for registration, seek exemption from registration, engage in any activity requiring registration or exemption from registration, except as provided in Section 4.14(a)(9) of the Commission Regulations, or act in any capacity or affiliate in any way with any individual or entity that is registered, is required to be registered, or is exempt from registration with the Commission, except as provided in Section 4.14(a)(9) of the Commission Regulations, or is acting in any capacity requiring registration with the Commission or exempt from registration, except as provided in Section 4.14(a)(9) of the Commission Regulations; and
3. to fulfill all aspects of Respondents' obligations as described in the Joint Offer.

Unless otherwise specified, the provisions of this Order shall be effective on this date.

Dated: November 23, 2004

BY THE COMMISSION


Jean Webb

Secretary to the Commission
Commodity Futures Trading Commission