

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE  
OF THE STATE OF IDAHO**

In the Matter of:

STATE OF IDAHO,  
DEPARTMENT OF FINANCE,  
SECURITIES BUREAU,

Complainant,

vs.

RUSS TRADING INC., NICOLAS RUSSO  
JR., CACTUS PARTNERS LP.

Respondents.

Docket No. 2017-7-10

**AGREEMENT AND ORDER**

The Director of the Idaho Department of Finance (“Department”) has conducted an investigation into the conduct of RUSS TRADING INC., NICOLAS RUSSO JR., and CACTUS PARTNERS LP. (collectively “Respondents”). Pursuant to the investigation, it appears to the Director that violations of Idaho’s Uniform Securities Act (2004), Idaho Code § 30-14-101, *et. seq.* (the Act), have occurred. The Director and Respondents have agreed to resolve this matter without a public hearing or other adjudication. Therefore, the Director deems it appropriate and in the public interest to enter into this Agreement and Order (“Order”). Respondents voluntarily consent to the entry of this Order:

**RESPONDENTS**

1. Respondent Russ Trading Inc. (“RT”) is an Arizona corporation and has been registered as an investment adviser in Idaho since January 28, 2015. RT was previously registered as an

investment adviser in Arizona (as the home state) from January 18, 1996 until December 31, 2012, and in Idaho from July 15, 1998 until December 31, 2012.

2. Respondent Cactus Partners LP. (“Cactus”) is a Delaware limited partnership organized as an investment fund with Russo as its General Partner. RT is and has been the investment adviser for Cactus.

3. Respondent Nicolas Russo Jr. (“Russo”) is the Managing Director of RT and its sole investment adviser and officer. Russo operates through RT as the investment adviser for Cactus and to clients that he provides investment advice to for a quarterly fee paid in advance (“Coaching Clients”).

### **BACKGROUND**

4. The Department conducted a routine investment advisory examination of RT on July 25-26, 2016. The Department issued a comment letter and request for further information to Russo on August 24, 2016.

5. Russo withdrew RT’s Idaho investment adviser registration on December 31, 2012. During the examination, Russo indicated that although he had ceased managing funds in Cactus from December 31, 2012-January 28, 2015, during that time he was still engaged in providing investment advice on an as-needed basis to his Coaching Clients and received an advance fee retainer of \$250 per quarter for this advice. Russo’s investment advice to these clients consists of general financial planning sessions including, but is not limited to, his favored investments for specific sectors, advice concerning investments in retirement accounts, and cash management of funds derived from investments. In addition, Russo through RT received a fee of \$3,369 from limited partners in Cactus on January 8, 2015 before the effective date of registration of RT of January 28, 2015.

6. During the examination and in subsequent communications with Russo and his accountant, it became apparent that Russo did not have an annual, independent audit done of Cactus. Russo has not had an audit done since RT became an Idaho registered investment adviser. Russo has custody of funds in Cactus as the General Partner of Cactus, and through RT, and, therefore, an annual audit is required.

### **FINDINGS OF VIOLATIONS**

#### ***Unregistered Investment Adviser***

7. Respondents Russo and RT conducted business as an investment adviser and gave investment advice to Coaching Clients, and during January 2015 to Cactus, without proper registration as an investment adviser. Russo and RT have violated Idaho Code § 30-14-403 which states it is unlawful to transact business in Idaho as an investment adviser without the benefit of registration as an investment adviser.

#### ***Failure to Conduct Audit***

8. Respondents violated Rule 96 pursuant to the Act for failure to have an annual, independent audit of client funds held in Cactus, in accordance with 17 CFR 275-206(4)-2 of the Investment Advisers Act of 1940.

### **AGREEMENT, ACKNOWLEDGEMENT & REMEDIES**

The Department and Respondents agree as follows:

9. Respondents consent to the entry of this Agreement and Order and admit the violations found herein.

10. Respondents attest and avow that all information provided to the Department is true, accurate, and complete.

11. Respondents agree to pay an administrative penalty in the amount of five thousand dollars (\$5,000).

12. Respondents agree to withdraw the Idaho investment adviser registration of Russ Trading Inc. within thirty (30) days of this Agreement and Order.

13. Respondents agree to not reapply for investment adviser or investment adviser representative registration in Idaho.

14. Respondents agree to a one (1) day suspension of the Idaho investment adviser registration of Russ Trading Inc. to be completed on the last day of registration before the withdrawal of Russ Trading Inc. as an investment adviser in Idaho.

15. Respondents agree to liquidate Cactus Partners LP and disburse all investment funds back to clients within thirty (30) calendar days of the date of this Agreement and Order, and prior to the withdrawal of Russ Trading Inc.

16. Respondents agree that failure to comply with the terms of this Order may result in the Director bringing further legal proceedings or administrative action.

AGREED TO and ACKNOWLEDGED this 16<sup>th</sup> day of MAY,

2017



NICOLAS RUSSO JR, RUSS TRADING INC.,  
CACTUS PARTNERS L.P.

IT IS SO ORDERED

DATED this 19<sup>th</sup> day of May, 2017.

STATE OF IDAHO  
DEPARTMENT OF FINANCE

Mary E. Hughes  
MARY E. HUGHES, Acting Director of Finance

