

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84851 / December 19, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 5078 / December 19, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18940

In the Matter of

**CENTRAL STATES CAPITAL
MARKETS, LLC**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934 AND SECTION 203(e) OF THE
INVESTMENT ADVISERS ACT OF 1940
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) against Central States Capital Markets, LLC (“Central States” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission’s jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940 Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

These proceedings arise out of the failure of Central States Capital Markets, LLC ("Central States"), a registered broker-dealer, (1) to file Suspicious Activity Reports ("SARs") when it knew, suspected, or had reason to suspect that certain transactions were conducted in order to hide or disguise funds derived from illegal activity or had no apparent lawful purpose, and (2) to accurately document the procedures set forth in its customer identification program ("CIP").

Central States failed to file SARs in connection with a series of transactions occurring in accounts at Central States owned by Scott Tucker. In under a three month period, between December 21, 2012 and March 13, 2013, Central States knew, suspected, or had reason to suspect, that 18 wire transfers totaling over \$40 million from external accounts held by certain tribal corporations to Scott Tucker's accounts at Central States were derived from an alleged "rent-a-tribe" scheme in which Scott Tucker used the tribal corporations to mask his involvement in a multi-million dollar payday lending business in possible violation of state and federal laws.

Prior to opening brokerage accounts for Scott Tucker, Blaine Tucker (Scott Tucker's brother) (together the "Tuckers"), and certain tribal corporations, Central States was aware that Scott Tucker had been convicted of fraud in 1991, that news reports from as early as 2011 alleged that Scott Tucker was using these tribal corporations to hide his ownership and control of the payday lending business, and that the U.S. Federal Trade Commission ("FTC") had filed a lawsuit against Scott Tucker and the tribal corporations alleging, among other things, that Scott Tucker was the true beneficiary of the payday lending business.

Shortly after opening the above brokerage accounts, the tribal corporations began transferring funds from accounts outside of Central States to Scott Tucker's personal Central States account in even dollar amounts. These transfers occurred over a period of less than three months and totaled over \$40 million. Under Central States' written supervisory procedures, these types of transactions should have been identified as red flags requiring further investigation. Despite the suspiciousness of these transactions, the allegations concerning Scott Tucker, and the requirements of its written procedures, Central States never filed a SAR.

Additionally, Central States failed to comply with its written anti-money laundering ("AML") policies and procedures, which required, among other things, that it verify the authority of business representatives to act on behalf of the customer. Although Central States treated the Tuckers as the authorized representatives of the tribal corporations, Central States did not obtain

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

written verification that Scott Tucker was actually authorized to represent the tribal corporations. Central States therefore failed to follow its CIP, and, as a consequence, failed to accurately document its CIP and to maintain records in accordance with its recordkeeping obligations.

Respondent

1. **Central States** is a Kansas limited liability corporation with its principal place of business in Prairie Village, Kansas. Central States is registered with the Commission as a broker-dealer. Central States is also registered as an investment adviser with Kansas and Missouri. From January 2015 to the end of December 2016, Central States was registered as an investment adviser with the Commission. On March 15, 2016, the Commission instituted settled administrative proceedings against Central States and others captioned In the Matter of Central States Capital Markets, LLC et al, Admin. Proc. File No. 3-17170. On June 18, 2015, the Commission instituted settled administrative proceedings against Central States captioned In the Matter of Central States Capital Markets, LLC, Admin. Proc. File No. 3-16612.

Other Relevant Individuals and Entities

2. **Tribal Corporation 1** is a corporation chartered under the laws of an American Indian tribe.

3. **Tribal Corporation 2** is a corporation chartered under the laws of an American Indian tribe.

4. **Tribal Corporation 3** is a corporation chartered under the laws of an American Indian tribe (together with Tribal Corporation 1 and Tribal Corporation 2, the “Tribal Corporations”).

5. **Tribal Corporation 4** is a corporation chartered under the laws of an American Indian Tribe.

6. **Scott Tucker**, 55, is a resident of Overland Park, Kansas. On April 4, 2012, the FTC filed a complaint in federal district court against Scott Tucker and others captioned FTC v. AMG et al., 12-cv-0536 (GMN)(VCF) (D. Nev. April 4, 2012) and on September 30, 2016 the court granted summary judgment against Scott Tucker and others. On February 10, 2016, the United States Attorney for the Southern District of New York unsealed an indictment against Scott Tucker captioned U.S. v. Tucker and Muir, 16-crim-091 (S.D.N.Y. Feb. 10, 2017). On October 13, 2017, Scott Tucker was convicted of all counts in the indictment, which included two counts of money laundering.

7. **Blaine Tucker**, deceased, was a resident of Overland Park, Kansas, and Scott Tucker’s brother.

Background

8. Toward the end of March 2012, Central States first met the Tuckers to discuss opening brokerage accounts for the Tribal Corporations at Central States. Before this meeting, no one at Central States had met or done business with the Tuckers. At the meeting, Scott Tucker explained that he was involved in the payday lending business along with the Tribal Corporations, which he explained were entities incorporated under tribal law.

9. During this initial meeting, Scott Tucker told Central States that he was acting as a consultant for the Tribal Corporations and that the Tribal Corporations needed to open accounts at Central States because their bank had claimed that regulatory requirements made holding excess cash associated with their accounts too costly.

10. Following the initial meeting, and prior to opening any accounts for the Tribal Corporations, Central States conducted due diligence and found that in 1991 Scott Tucker had been convicted and served one year in prison for fraud. It also found news reports from as early as 2011 alleging that the Tuckers were engaging in a “rent-a-tribe” scheme in which the Tribal Corporations were paid a fee by the Tuckers to claim ownership and control over the payday lending business when the true owners and controlling executives were the Tuckers. The reports alleged that this arrangement was to exploit the Tribal Corporations’ ability to assert sovereign immunity as a defense to charges that the payday lending business violated state usury laws. Further, Central States became aware of an action brought by the FTC against the Tuckers and the Tribal Corporations, among others, for allegedly engaging in unfair business practices, which included allegations that the Tribal Corporations were not protected by sovereign immunity and that Scott Tucker was the true beneficiary of the business.

11. Central States opened brokerage accounts for the Tuckers and the Tribal Corporations despite its knowledge of the above red-flags, in part, because it planned to monitor the Tuckers’ and the Tribal Corporations’ transactions. Between April 10, 2012 and April 12, 2012, Central States opened brokerage accounts for each of the Tribal Corporations. The account funds were held at Central States’ clearing firm pursuant to a fully disclosed clearing agreement. Along with executed account opening documents, Central States obtained executed corporate resolutions from the Tribal Corporations identifying their respective officers and copies of driver licenses for each of the officers of the Tribal Corporations. According to the opening account forms, Blaine Tucker was granted full trading authorization for each of the Tribal Corporations’ accounts.

12. On August 23, 2012, Central States opened a personal brokerage account for Scott Tucker. In his account opening documents, Scott Tucker indicated that he was employed by Tribal Corporation 4.

13. On September 7, 2012, Central States opened a personal brokerage account for Blaine Tucker. Blaine Tucker indicated in the account opening documents that he was a manager at Tribal Corporation 4.

Central States Did Not Follow its CIP and Verify the Identity of the Tribal Corporations

14. In opening the brokerage accounts described above, Central States did not obtain written verification of Scott Tucker's authorization to act on behalf of the Tribal Corporations in accordance with its CIP.

15. According to Central States' CIP, a customer's identity must be verified when opening a new account. The information gathered to verify a new customer varied according to the risks posed by "each type of account and the beneficial owners of the accounts."

16. For commercial entities, such as the Tribal Corporations, Central States' CIP stated that it would "collect information sufficient to determine the corporate or business entity's identity and the authority of its business representative to act on its behalf." Central States, however, did not collect sufficient information to determine that Scott Tucker was authorized to act on behalf of the Tribal Corporations. Central States did not meet with officers of Tribal Corporations for at least a year and a half after opening their accounts. Central States relied solely on Scott Tucker's initial statements indicating that he was a consultant to the Tribal Corporations and did not obtain any documentation verifying that he was authorized to act on their behalf.

The Suspicious Transactions

17. Scott Tucker engaged in suspicious transactions with Tribal Corporation 2 and Tribal Corporation 3. In under a three month period, between December 21, 2012 and March 13, 2013, these tribal corporations, in 18 wire transfers, sent a total of \$40,518,000 from their accounts at another financial institution to Scott Tucker's personal Central States account. On several occasions, Tribal Corporation 2 and Tribal Corporation 3 transferred the same dollar amounts on the same day to Scott Tucker's personal account. This pattern of activity was not previously observed.

Central States Did Not Investigate the Suspicious Transactions

18. Central States' written supervisory procedures required it to investigate the above transactions because, as described below, they should have raised red-flags. Under its written supervisory procedures, "upon detection of any red-flag, each employee must work with their Supervising Principal and the AML Compliance Officer in undertaking further investigations. This cooperation may include gathering additional information internally or from third party sources, contacting the government, freezing the account, and filing a SAR."

19. First, the pattern and amount of the above transactions should have raised red-flags. Central States' written supervisory procedures identified as red-flags instances where "[t]he customer's account has unexplained or sudden extensive wire activity, especially in accounts that had little or no previous activity."

20. The transactions described above occurred over a short period of time and were in even dollar amounts. On several occasions, Tribal Corporation 2 and Tribal Corporation 3

appeared to have coordinated their transfers to Scott Tucker's personal account in that they transferred the same dollar amounts on the same day. This pattern of activity was not previously observed in Scott Tucker's personal account or the Tribal Corporation accounts. Central States neither sought nor received an explanation from the Tribal Corporations or Scott Tucker for this activity.

21. Second, according to Central States' clearing firm, it alerted Central States to a red-flag indicating that the \$40 million transferred to Scott Tucker's personal account in such a short amount of time lacked business sense or was inconsistent with Scott Tucker's stated business. Central States' written supervisory procedures require it to investigate as red-flags "transactions that lack business sense or . . . are inconsistent with the customer's stated business."

22. Shortly after the above transactions and following Central States' request to open additional Tribal Corporation accounts, Central States' clearing firm inquired about Scott Tucker's role in connection with the Tribal Corporations, including Scott Tucker's relationship with Tribal Corporation 4. The clearing firm learned that Tribal Corporation 4 handled accounting and back-office tasks for the Tribal Corporations and that Scott Tucker was an employee of Tribal Corporation 4. According to the clearing firm, it informed Central States that it believed the characterization of Scott Tucker as an employee of Tribal Corporation 4 was a red-flag because it was inconsistent with the large amount of funds that had been transferred to him in a short period of time from the Tribal Corporation accounts at issue. At no point did Central States undertake further investigation of Scott Tucker's role with respect to the Tribal Corporations and Tribal Corporation 4.

23. Finally, according to the Central States' clearing firm, it alerted Central States to a red-flag indicating that Scott Tucker gave it misleading information concerning the source of the funds coming from the Tribal Corporations. Central States' written supervisory procedures required it to investigate as red-flags "information provided by the customer that identifies a legitimate source for funds [that] is false, misleading, or substantially incorrect."

24. In connection with the inquiry described above, Central States explained to its clearing firm that the Tribal Corporations were transferring funds from their bank to Central States because their bank informed them that regulatory requirements made holding excess cash associated with their accounts too costly. Upon learning this, the clearing firm stated that it informed Central States that it believed this explanation raised a red-flag because it had never before heard of a bank asking a customer to move funds because it was too costly for it to keep the funds in the bank. At no point did Central States undertake further investigation of the source of the Tribal Corporations' funds.

25. Despite the requirements of its written supervisory procedures described above, Central States did not investigate any of the above red-flags or file any SARs.

**Central States Did Not Sufficiently Monitor the Tuckers' or the
Tribal Corporations' Transactions**

26. Although Central States intended to monitor the Tucker and Tribal Corporation brokerage accounts in light of the red-flags it learned concerning Scott Tucker, as described below, it did not sufficiently monitor the account activity and did not file a SAR for the above described transfers, or any other funds transferred from or to the Tuckers or the Tribal Corporations.

27. Central States' written policies required it to file a SAR for "transactions that he or she knows or suspects, are[] related to illegal activity . . . or not apparently serving any business or lawful purpose." So that it may detect transactions for which Central States must file a SAR, Central States' written supervisory procedures describe how Central States monitors transactions to comply with its AML obligations.

28. Central States' written procedures state that "[f]or any transactions involving a clearing firm, [Central States] will monitor through the clearing firm's automated exception reports for unusual size, volume, pattern or type of transaction." The procedures state that the Chief AML Compliance Officer was responsible for (A) "creating monitoring parameters . . . to determine if a transaction lacks financial sense or is suspicious because it is an unusual strategy for that customer," (B) "ensuring that all Supervising Principals are sufficiently trained to utilize [Central States'] internal monitoring tools," (C) "undertak[ing] a monthly review to assure that the tools are sufficient for [Central States'] specific monitoring needs and are being appropriately utilized," (D) "document[ing] when and how [Central States'] monitoring efforts are carried out and [] report[ing] suspicious activities to the appropriate authorities, and (E) "conduct[ing] an appropriate investigation, in concert with all involved individuals and if necessary with other members of senior management, before a SAR is filed."

29. Central States did not sufficiently monitor the transactions associated with the Tuckers and the Tribal Corporations in accordance with its written procedures. In particular, from December 2011 through June 2016, Central States was not monitoring transactions through its clearing firm's automated anti-money laundering tool that was made available to it by the clearing firm, which generated alerts for two of Tribal Corporation 3's transfers to Scott Tucker described above. Further, on March 4, 2013, Central States processed a \$9 million wire transfer from Scott Tucker's Central States account to another financial institution, which Tucker had informed Central States was for the payment of his taxes. According to reports of the clearing firm's asset movement processing system used by Central States, Central States employees were presented, during the processing of the wire transfer, with two AML rule violations triggered by the transaction. Central States processed the transaction and did not file a SAR.

30. Nor did Central States customize the AML monitoring system's default parameters, or undertake a review to make sure that the tools available to it were sufficient for its specific monitoring needs or were being appropriately utilized. For example, at no extra cost, Central States' clearing firm provided it with the ability to generate a report reflecting, among other things, the identity of third parties transferring funds via wire transactions to Central States account holders. During the relevant period, however, Central States never generated such reports. Had it

done so, it would have learned that in under a three month period Tribal Corporation 2 and Tribal Corporation 3 transferred over \$40 million from their bank accounts to Scott Tucker's personal Central States account.

Violations

31. Rule 17a-8, promulgated under Section 17(a) of the Exchange Act, requires registered broker-dealers to “comply with the reporting, recordkeeping, and record retention requirements of Chapter X of title 31 of the Code of Federal Regulations.” 17 CFR § 240.17a-8. Those rules, among other things, require registered broker-dealers to (1) document and maintain records concerning their CIP procedures (31 C.F.R. § 1023.220) (the “CIP Rule”) and (2) file SARs with the Financial Crimes Enforcement Network (“FinCEN”) (31 C.F.R. § 1023.320) (the “SAR Rule”) under the Currency and Financial Transactions Reporting Act of 1970 (commonly referred to as the Bank Secrecy Act (“BSA”), 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-59, and 31 U.S.C. §§ 5311-30).

32. The CIP Rule requires broker-dealers to “establish, document, and maintain a written [CIP] appropriate for [the broker-dealer’s] size and business” 31 C.F.R. § 1023.220(a)(1). The broker-dealer’s CIP must include risk-based procedures for verifying the identity of each customer such as to enable the broker-dealer to form a reasonable belief that it knows the true identify of each customer. 31 C.F.R. § 1023.220(a)(2). Further, the broker-dealer’s CIP must include procedures for making and maintaining records of the customer’s identifying information and its verification of the customer’s identity. 31 C.F.R. § 1023.220(a)(3).

33. Central States violated the CIP Rule because, as described above, it failed to follow the written verification procedures set forth in its CIP with respect to verifying that Scott Tucker was authorized to act on behalf of the Tribal Corporations, and, thus, failed to accurately document its procedures.

34. Under the SAR Rule, broker-dealers must file SARs with FinCEN to report a transaction (or a pattern of transactions of which the transaction is a part) conducted or attempted by, at, or through the broker-dealer involving or aggregating to at least \$5,000 that the broker-dealer knows, suspects, or has reason to suspect: (1) involves funds derived from illegal activity or is conducted to disguise funds derived from illegal activities; (2) is designed to evade any requirement of the BSA; (3) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts; or (4) involves use of the broker-dealer to facilitate criminal activity. 31 C.F.R. § 1023.320(a)(2).

35. Central States violated the SAR Rule because, as described above, it knew, suspected, or had reason to suspect that the approximately \$40 million in transactions between the Tribal Corporations and Scott Tucker described above involved funds derived from illegal activity or were conducted to disguise funds derived from illegal activities.

36. As a result of the conduct described above, Central States willfully² violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

Undertakings

37. Within 60 days from the issuance of this Order, at its own cost, Respondent will hire an independent consultant, not unacceptable to Commission staff (“Independent Consultant”), to review its CIP and AML compliance program under Section 17(a) of the Exchange Act and Rule 17a-8 thereunder for a period of two years.

38. Respondent will require the Independent Consultant to submit to the staff and to Respondent a written report within 90 days: (1) addressing the adequacy of Respondent’s CIP and AML compliance program; (2) describing the review performed and the conclusions reached; and (3) addressing the consultant’s recommendations, if any, for modifications and enhancements to Respondent’s policies, systems, procedures, and training.

39. After delivery of the Independent Consultant’s report, Respondent will adopt and implement the Independent Consultant’s recommendations, if any, or propose alternatives to the Independent Consultant within 30 days after issuance of the report. Respondent agrees that the Independent Consultant will determine whether the proposed alternatives are acceptable. Within 30 days after issuance of the Independent Consultant’s report or written determination regarding alternative procedures (if any), Respondent will provide the Commission staff with a written implementation report detailing its adoption and implementation of the Independent Consultant’s recommendations.

40. Beginning from the date Respondent implements the Independent Consultant’s recommendations, Respondent will require the Independent Consultant to monitor and review Respondent’s compliance with his/her recommendations for a period of two years. During this period, Respondent will require the Independent Consultant to submit to the staff a written report every six months addressing Respondent’s compliance with his/her recommendations.

41. Respondent will require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the

² A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Commission's New York Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

42. Respondent will certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. Respondent will respond to reasonable requests by Commission staff for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Sheldon Pollock, Assistant Director, New York Regional Office, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

Related Criminal Matter

43. In determining whether to accept the Offer, the Commission has considered the deferred prosecution agreement between Central States and the United States Attorney's Office for the Southern District of New York pursuant to which Central States will forfeit \$400,000.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondent Central States' Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.
- B. Respondent is censured.
- C. Respondent shall comply with the undertakings enumerated in paragraphs 37 through 42 above.

By the Commission.

Brent J. Fields
Secretary