



STATE OF MISSOURI  
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF )  
)  
JOHN N. CUCINELLA, CRD No. 2614279; )  
MACKROW ASSET MANAGEMENT GROUP; )  
and RUNNSTARR ASSET MANAGEMENT )  
GROUP, ) Case No. AP-18-16  
)  
*Respondents.* )

**CONSENT ORDER**

1. The Enforcement Section of the Missouri Securities Division of the Office of Secretary of State (“Enforcement Section”), through Enforcement Counsel Derek Green, has alleged that John N. Cucinella (“Cucinella”), Mackrow Asset Management Group (“Mackrow”), and Runnstarr Asset Management Group (“Runnstarr”) violated Section 409.3-301, RSMo. (2016)<sup>1</sup>, by offering or selling unregistered, non-exempt securities in the state of Missouri. This violation constitutes grounds to issue an order pursuant to Section 409.6-604.
2. Respondents and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the Respondents’ alleged violations of Section 409.3-301.

**CONSENT TO JURISDICTION**

3. Respondents and the Enforcement Section stipulate and agree that the Missouri Commissioner of Securities (“Commissioner”) has jurisdiction over Respondents and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
4. Respondents and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), which provides:

“The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.”

**WAIVER AND EXCEPTION**

5. Respondents waive Respondents’ right to a hearing with respect to this matter.

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<sup>1</sup> Unless otherwise noted, all statutory references are to the 2016 Revised Statutes of Missouri.

6. Respondents waive any right that Respondents may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondents specifically forever release and hold harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondents stipulate and agree with the Enforcement Section that, should the facts contained herein prove to be false or incomplete in a material way, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

#### CONSENT TO COMMISSIONER'S ORDER

8. Respondents and the Enforcement Section stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondents agree not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondents' (a) testimonial obligations; (b) right to take legal or factual positions in connection with litigation, arbitration, or other legal proceeding in which the Commissioner is not a party; or (c) right to make public statements that are factual.
10. Respondents agree that Respondents are not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondents neither admit nor deny the allegations made by the Enforcement Section, but consent to the Commissioner's Findings of Fact, Conclusions of Law, and Order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

#### COMMISSIONER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

##### I. FINDINGS OF FACT

12. Mackrow is a New York business organized on February 10, 2015. Its registered agent is Cucinella with an address at 83 Bay 28th Street, Brooklyn, New York 11214. A check of the records maintained by the Commissioner indicates that at all times relevant, there was no registration, granted exemption, or notice filing indicating status as a "federal covered security" for any securities issued by Mackrow.
13. Runnstarr is a New York business organized on December 29, 2017. No registered agent is listed but Runnstarr has an address at 83 Bay 28th Street, Brooklyn, New York 11214. A check of the records maintained by the Commissioner indicates that at all times relevant, there was no registration, granted exemption, or notice filing indicating status as a "federal covered security" for any securities issued by Runnstarr.

14. Cucinella is a 40 year-old New York resident with a last known address at 83 Bay 28th Street, Brooklyn, New York 11214. A check of the Central Registration Depository (“CRD”) indicates that Cucinella is assigned CRD number 2614279 but Cucinella has not been a registered agent in the state of Missouri since November 2013. Cucinella has not been a registered agent anywhere since March 2015.

**A. Missouri Resident 1**

15. In or around November 2016, Cucinella cold called<sup>2</sup> a 59 year-old Arnold, Missouri resident (“MR1”) and solicited an investment in an initial public offering (“IPO”).
16. Cucinella indicated to MR1 that Cucinella was a registered securities agent.
17. On or around November 29, 2016, MR1 wrote a check payable to Mackrow in the amount of \$9,000.
18. Sometime after making the investment, Cucinella contacted MR1 and said the IPO investment was not ready and suggested other investments to receive a return.
19. MR1 told Cucinella that MR1 was not interested in investing in precious metals. Cucinella suggested an investment in U.S. Tier 3, which MR1 assumed to be some type of mutual fund.
20. Cucinella indicated that the potential investment loss would not exceed \$50. Cucinella also indicated that a commission would not be charged.
21. Later, MR1 noticed on Mackrow’s website that U.S. Tier 3 was a precious metals investment.

**Mackrow Disclosure Statement**

22. Cucinella sent MR1 a Disclosure Statement that said, among other things, the following:
  - a. “When we accept your account application, we are agreeing to serve you as your broker and to maintain an account for you.”;
  - b. “The ownership of physical precious metals grams, ounces or as in our diversified metal commodity instruments and investment products whether grams, units, ounces or any other denomination for investment purposes, diamonds, etc. [c]an be made through various vehicles.”; and
  - c. “The commission and service fee’s that we charge is a percentage of the total position value. New account fee is a one time flat fee.”

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<sup>2</sup> Cold calling is the solicitation of a potential customer who had no prior interaction with a salesperson.

### **Mackrow Trade Confirmations and Account Statements**

23. On or around December 2, 2016, Cucinella sent MR1 a Trade Confirmation that listed, among other things, the following:
  - a. Cucinella is identified as the “Investment Manager”;
  - b. “Trade Amount” was \$8,615;
  - c. the investment description was “U.S. Defense Tier 3 (Units)”, “\$17.23 Price Per Unit/Gram”, and “Quantity 500”;
  - d. “Commision” [*sic*] was \$100; and
  - e. “Ticket Charge” was \$47.
24. On or around December 13, 2016, Cucinella sent MR1 an account statement that indicated MR1’s account value had decreased to a “Position Value” of \$6,985.
25. On or around January 1, 2017, Cucinella sent MR1 a Mackrow Account Statement that listed, among other things, the following:
  - a. “Deposit” as \$9,000;
  - b. “New Account Fee” of \$299;
  - c. “Debit” of \$106.07; and
  - d. “Service Fee” of \$45.07.
26. On or around January 30, 2017, Cucinella sent MR1 a Trade Confirmation that listed, among other things, the following:
  - a. MR1’s investment was sold at \$11.48 “Price Per Unit/Gram”;
  - b. MR1 suffered a trading loss of \$2,875; and
  - c. “Commision” [*sic*] was listed at \$100, “Ticket Charge” as \$47, and “Service Fee” of \$36.48.

### **Payment to MR1**

27. On or around January 30, 2017, Cucinella sent a check payable to MR1 in the amount of \$5,450.45.

28. In a document titled “Check Disbursement Details”, this payment was described as a “Fully Paid Position.”
29. In addition, the document indicted the transaction as “Sale total minus fee’s and a debit in account of -\$106.07=TOTAL ACCOUNT EQUITY \$5450.45.”

**B. Missouri Resident 2**

30. In or around March 2018, Cucinella, representing Runnstarr, cold called an 83 year-old Fayette, Missouri resident (“MR2”) and solicited an investment in Rhodium<sup>3</sup>.
31. On or around March 29, 2018, MR2 wrote a \$5,000 check payable to Runnstarr.
32. Cucinella sent MR2 a Runnstarr Disclosure Statement similar to the Disclosure Statement MR1 received.

**Runnstarr Buy Confirmation**

33. On or around March 30, 2018, Cucinella sent MR2 a Buy Confirmation document that listed, among other things, the following:
  - a. “Quantity” of Rhodium purchased was 75;
  - b. “Price Per Unit/Gram” was \$67.88;
  - c. “Transaction Amount” was \$5,091; and
  - d. “Transaction Charge” was \$100.
34. On or around May 17, 2018, Cucinella sent MR2 a Buy Confirmation document that listed, among other things, the following:
  - a. “Quantity” as 80;
  - b. “Price Per Unit/Gram” as \$71.89;
  - c. “Transaction Amount” as \$5,751.20; and
  - d. “Transaction Charge” as \$4,157.89.

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<sup>3</sup> Rhodium is a chemical element with the symbol Rh and atomic number 45. It is a rare, silver-white, hard, corrosion-resistant and chemically inert transition metal. It is a noble metal and a member of the platinum group.

### **Runnstarr Account Statement**

35. On or around June 1, 2018, Cucinella sent MR2 a Runnstarr account statement that listed, among other things, the following:
  - a. “Total Position Value” as \$5,080.50;
  - b. “Credits/(Debits)” as -\$455.91;
  - c. “Service Fee” as \$34.52; and
  - d. “Ending of Period Equity Value” as \$4,624.59.

### **Payment to MR2**

36. On or around June 8, 2018, Cucinella sent a check payable to MR2 in the amount of \$3,676.72.
37. In a document titled “Check Disbursement Details”, this payment was described as “Loss of 734.89 from 80 rhodium minus equity of 4411.61 give you a net equity of 3676.72.”

## **II. CONCLUSIONS OF LAW**

38. The Commissioner finds Respondents offered or sold unregistered, non-exempt securities in the state of Missouri in violation of 409.3-301, and that this conduct constitutes grounds to issue an order pursuant to Section 409.6-604.
39. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondents and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over Respondents and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409.

## **III. ORDER**

**NOW, THEREFORE**, it is hereby Ordered that:

40. Respondents, their agents, employees and servants, and all other persons participating in the above-described violations with knowledge of this order are permanently enjoined and restrained from engaging in violations of Section 409.3-301.
41. Respondents are hereby **BARRED**, effectively immediately, from registration as an investment adviser, investment adviser representative, broker-dealer, or agent in the state of Missouri.

42. Respondents shall pay, jointly and severally, \$4,872.83 in restitution. The payment shall be paid within 30 days of the date of execution of this Consent Order. The payment shall be made payable to the Missouri Secretary of State's Investor Restitution Fund and sent to the Securities Division at 600 West Main Street, Jefferson City, Missouri 65101. The Commissioner will take reasonable and necessary actions to distribute such funds to the aggrieved investors.
43. Respondents shall pay, jointly and severally, \$15,000 to the Missouri Secretary of State's Investor Education and Protection Fund. This amount shall be suspended provided Respondents comply with the terms of this Consent Order and do not violate the Missouri Securities Act for a period of five years from the date of execution of this Consent Order. This suspended amount shall become due immediately upon the sooner of (1) Respondent's noncompliance with the terms of this Consent Order, or (2) a finding, after notice and opportunity for a hearing, by the Commissioner or a court of competent jurisdiction, that Respondents have violated the Missouri Securities Act. Such immediately due payments shall be in addition to all other penalties then available under the law. The payment shall be made payable to the Missouri Secretary of State's Investor Education and Protection Fund and sent to the Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101.
44. Respondents shall pay, jointly and severally, \$2,500 for the cost of this investigation. This payment shall be paid within 30 days of the date of execution of this Consent Order. This payment shall be made payable to the Missouri Secretary of State's Investor Education and Protection Fund and sent to the Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101.
45. Respondents shall pay their own costs and attorneys' fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS 22<sup>nd</sup> DAY OF AUGUST, 2018.



JOHN R. ASHCROFT  
SECRETARY OF STATE

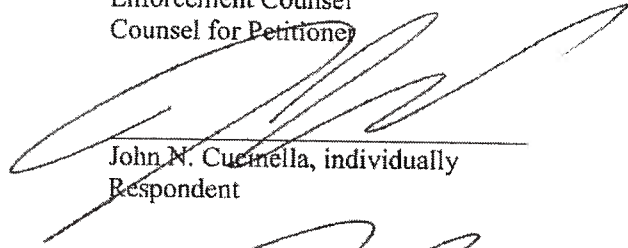
  
DAVID M. MINNICK  
COMMISSIONER OF SECURITIES

Consented to by:

THE ENFORCEMENT SECTION OF THE  
MISSOURI SECURITIES DIVISION

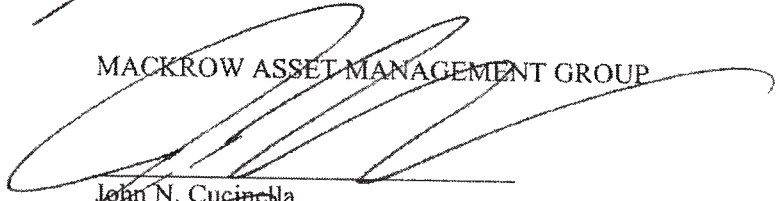


Derek Green  
Enforcement Counsel  
Counsel for Petitioner



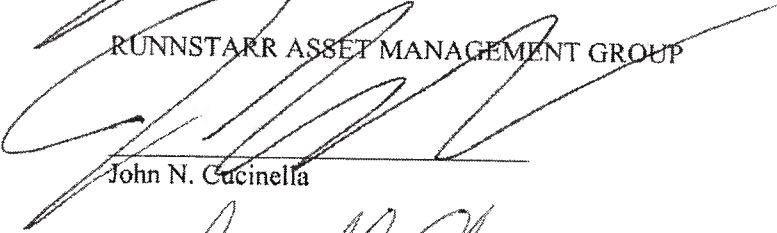
John N. Cucinella, individually  
Respondent

MACKROW ASSET MANAGEMENT GROUP



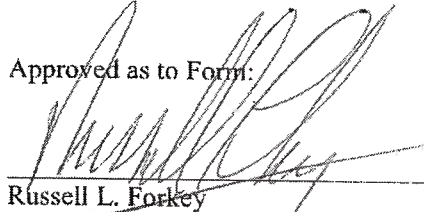
John N. Cucinella

RUNNSTARR ASSET MANAGEMENT GROUP



John N. Cucinella

Approved as to Form:



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