



aided and abetted by Howard, fraudulently allocated commodity interest trades by placing losing trades in customer accounts (“victim accounts”) and winning trades in the accounts of friends and relatives (“favored accounts”).

2. To effect settlement of the matters alleged in the Complaint against Hayes without a trial on the merits, Hayes and the Commission consent to the entry of this Consent Order of Disgorgement and other Equitable Relief Against Loren Hayes (“Consent Order”). Hayes also: (1) acknowledges service of the Summons and Complaint; (2) admits both personal and subject matter jurisdiction of this Court in this action; (3) admits that venue properly lies with this Court; and (4) generally waives the entry of findings of fact and conclusions of law in this action pursuant to Rule 52 of the Federal Rules of Civil Procedure, except as provided in Part II below.

3. By consenting to the entry of this Consent Order, Hayes admits all of the allegations of the Complaint relevant to her conduct. Hayes further agrees and the parties to this Consent Order intend that all of the findings of fact made by the Court in this Consent Order shall be taken as true and correct and be given preclusive effect without further proof only in any subsequent bankruptcy proceeding filed by, on behalf of or against Hayes for the purpose of determining whether the disgorgement payments ordered herein are excepted from discharge. Hayes shall also provide immediate notice of any bankruptcy proceeding filed by, on behalf of or against her in the manner required by the Notice provision of this Consent Order.

4. Hayes agrees (1) not to take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating or tending to create, the impression that the Complaint or this Consent Order is without factual basis; and (2) no agent or employee of Hayes or other person acting under Hayes’ authority or control shall take any action or make any statement denying, directly or indirectly, any allegation in the

Complaint or creating, or tending to create, the impression that the Complaint is without factual basis and Hayes shall take all steps necessary to insure that all of her agents and employees understand and comply with this agreement. Nothing in this provision affects Hayes' (1) testimonial obligations; or (2) right to take legal positions in other proceedings to which the Commission is not a party.

5. Hayes waives: (1) all claims that she may possess under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121. §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commissions' Regulations, 17 C.F.R. §§ 148.1, et seq. (2002), relating to or arising from this action and any right under EAJA to seek costs, fees and other expenses relating to or arising from this proceeding; (2) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and (3) all rights of appeal from this Consent Order.

6. The parties hereto also consent to the continued jurisdiction of the Court for the purpose of enforcing the terms and conditions of this Consent Order and for any other purposes relevant to this case.

7. Hayes agrees to cooperate fully with the Commission in its prosecution of the Complaint in this proceeding, in any ongoing investigations related to the subject matter of the Complaint, and in all other proceedings arising from such investigations by, among other things: (1) responding promptly, completely, and truthfully to any inquiries or requests for information and otherwise cooperating fully with respect to discovery; (2) providing authentication of documents; (3) testifying completely and truthfully; and, (4) not asserting privileges under the

Fifth Amendment of the United States Constitution in connection with any testimony Hayes is asked to provide.

8. Hayes further affirms that she has read the Consent Order and agrees to entry of this Consent Order voluntarily, and that no promise or threat of any kind has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce her to consent to this Consent Order, other than as set forth specifically herein.

## **II.**

### **FINDINGS OF FACT**

9. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason to delay. The Court therefore directs the entry of an order for ancillary equitable relief, pursuant to § 6c of the Commodity Exchange Act, as amended, 7 U.S.C. § 13a-1 (2001), as set forth herein.

10. This Court has subject matter jurisdiction over this action and the allegations in the Complaint pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).

11. This Court has personal jurisdiction over Hayes and Hayes has acknowledged service of the Summons and Complaint and consented to the Court's jurisdiction over her.

12. The Commission and Hayes have agreed that this Court shall retain jurisdiction over each of them for the purpose of enforcing the terms of this Consent Order.

### **THE PARTIES AND OTHER ENTITIES**

13. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency charged with the responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 *et seq.* (2001), and Regulations promulgated under it, 17 C.F.R. §§ *et seq.* (2001).

14. Defendant Geoffrey Thompson, age 29, resides in Chicago, Illinois. At all relevant times, Thompson was an officer and employee of F. C. Stone, LLC (“Stone”) or its predecessor corporation Saul Stone, and managed Stone’s Futures Direct unit. From March 6, 1996, until September 26, 2000, Thompson was registered with the Commission as an associated person (“AP”) of Stone or Saul Stone. Thompson voluntarily terminated his employment with Stone on or about September 26, 2000. Thompson entered into a Consent Order of Permanent Injunction and Other Equitable Relief that was entered by the Court on March 27, 2002. Thompson is Hayes’ brother.

15. Relief Defendant Loren Hayes resides in Hazel Crest, Illinois. Hayes has never been registered with the Commission in any capacity.

16. F.C. Stone, LLC is registered with the Commission as a futures commission merchant (“FCM”) and is a member firm of the Chicago Board of Trade, the Chicago Mercantile Exchange and the National Futures Association. It is located at Suite 2600, 141 West Jackson Blvd., Chicago, Illinois 60604. As of July 1, 2000, it succeeded Saul Stone & Company LLC and assumed the rights and responsibilities of Saul Stone under all relevant customer account agreements. At all times, the term “Stone” shall refer to both Saul Stone & Company, LLC and F.C. Stone, LLC, as its successor and assignee.

#### **THE ALLOCATION SCHEME**

17. During the relevant time, while employed at Stone, the Defendants engaged in a fraudulent trade allocation scheme.

18. In April 2000, Hayes, at the direction of or by agreement with Thompson, opened a commodity interest account at Stone. The account opening documents falsely stated that Hayes was an experienced trader. Hayes did not deposit any funds with Stone to open her

commodity trading account. Immediately after Hayes' commodity trading account was opened at Stone, the Defendants placed profitable trades into Hayes' account and losing trades in victim accounts.

19. Between April 2000 and November 2000, Hayes' favored account at Stone received at least \$500,683 in funds that were obtained as a result of the Defendants' fraudulent scheme. Thereafter, the Defendants and Hayes caused \$494,500 of the funds to be transferred from Hayes' favored account at Stone to Hayes' two bank accounts. Hayes was the only one who withdrew ill-gotten gains from her bank account. Hayes withdrew at least \$494,500 of the funds in cash or by check and gave at least \$247,250 of those funds back to Thompson.

20. The Defendants did not have specific authorization to place any trades in the victim accounts or written authorization to place trades in those accounts without specific authorization.

21. Hayes has no legitimate entitlement to or interest in the funds received from the Defendants' fraudulent conduct.

22. Hayes is required to disgorge the funds she received from Defendant's fraudulent conduct or the value of those funds that she may have subsequently transferred to third parties.

23. By reason of the foregoing, Hayes holds funds in constructive trust for the benefit of Stone customers who were victimized by Defendants' fraudulent scheme.

24. As of the date this Order was entered, Hayes has not returned any of the illicitly obtained funds to Stone for the benefit of the customers whose accounts were victimized in the scheme.

### III.

#### **ORDER OF DISGORGEMENT**

NOW THEREFORE, IT IS ORDERED THAT:

25. **DISGORGEMENT**: Hayes is ordered to disgorge \$247,500 (Two Hundred Forty Seven Thousand Five Hundred Dollars), representing profits or proceeds she received as a result of the acts and/or conduct alleged in the Complaint, plus pre-judgment interest thereon from October 27, 2000, to the date of this Order in the amount of \$40,341.28, and post-judgment interest thereon (“Disgorgement Obligation”). Pre-judgment interest is calculated at the underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. §662(a)(2). Hayes shall pay post-judgment interest from the date of this Order until her Disgorgement Obligation is paid in full, at the Treasury Bill rate prevailing on the date of this Order, pursuant to 28 U.S.C. § 1961(a).

26. **PAYMENT OF DISGORGEMENT**: Payment of Hayes’ Disgorgement Obligation shall be made as follows:

- a. The balance of funds in Hayes’ account at Stone in the amount of \$6,183, shall be released with Hayes’ cooperation to an account designated by the Monitor, as described in subparagraph c below, within ten days of the date this Order is entered by the Court. The Monitor shall distribute the payment in accordance with Attachment A and any applicable court Order. Based upon the amount of funds available, the Monitor may decide to defer distribution. The amount of such funds shall reduce Hayes’ Disgorgement Obligation on a dollar-for-dollar basis.
- b. Hayes shall make an annual disgorgement obligation payment (“Annual Payment”) to an account designated by a Monitor determined by the Commission (“the Monitor”) of: (1) a percentage of her adjusted gross income (as defined by the Internal Revenue Code) earned or received by her during the previous calendar year, plus (2) all other cash receipts, cash entitlements or proceeds of non-cash assets received by her during the previous calendar year. The Annual Payment shall be made on or before

July 31 of each calendar year starting in calendar year 2003 and continuing for ten years or until the Disgorgement Obligation is paid in full from any source, whichever occurs sooner. The ten year Annual Payment period shall run from January 1, 2002 through December 31, 2011. Annual Payments for a calendar year shall take place by July 31 of the following year. Therefore, the final Annual Payment for the year 2011 will occur on or before July 31, 2012.

- c. Hayes agrees that the National Futures Association is hereby designated as the Monitor for a period of eleven years commencing January 1, 2003. Notice to the Monitor shall be made to Daniel A. Driscoll, Esq., Executive Vice President, Chief Compliance Officer, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, Illinois 60606.
- d. Hayes shall provide a sworn financial statement to the Monitor on June 30 and December 31 of each calendar year, starting December 31, 2002 and continuing through and including June 2011. The financial statement shall provide;
  - i). a true and complete itemization of all of her rights, title and interest in (or claimed in) any asset, wherever located, however and by whomever held;
  - ii). an itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of her over the preceding six-month interval; and
  - iii). a detailed description of the source and amount of all her income or earnings, however generated.

Hayes shall also provide the Monitor with complete copies of her signed federal income tax returns, including all schedules and attachments thereto (*e.g.*, IRS Forms W-2) and Forms 1099, as well as any filings she is required to submit to any state tax or revenue authority, for the preceding calendar year, on or before June 30 of each calendar year, or as soon thereafter as the same are filed, starting in calendar year 2003 and continuing for ten years or until all amounts due under this agreement are paid in full, whichever occurs first.

- e. Based on the information contained in Hayes' tax returns, Hayes' sworn Financial Disclosure Statement and other financial records, the Monitor shall calculate the Annual Payment to be paid by Hayes for that year. Thereafter, the Monitor shall distribute the payment in accordance with Attachment A and any applicable court order. On or before June 30 of

each year and starting in calendar year 2003, the Monitor shall send written notice to Hayes with instructions to pay the Annual Payment on or before July 31 of that year to an account designated by the Monitor. The Monitor shall then disburse any payment by Hayes in accordance with Attachment A. When the Monitor determines that the victims listed in Attachment A have recovered their losses in full, the Monitor shall direct Hayes to make each such Annual Payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashiers check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW Washington, D.C. 20581, under cover of a letter that identifies Hayes and the name and docket number of the proceeding. Hayes shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor and to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581.

27. ANNUAL PAYMENT: The Annual Payments shall be calculated as follows:

Where Adjusted Gross Income Plus Net Cash Receipts Total:	Percent of total to be paid by Hayes:
Under \$25,000.00	0%
\$25,000.00 up to and including \$50,000.00	20% of the amount between \$25,000.00 and \$50,000
\$50,000.00 up to and including \$100,000	\$5,000.00 (which represents 20% of the amount between \$25,000.00 and \$50,000.00) plus 30% of the amount between \$50,000.00 and \$100,000.
Above \$100,000	\$20,000.00 (which represents 20% of the amount between \$25,000.00 and \$50,000.00 plus 30% of the amount between \$50,000.00 and \$100,000) plus 40% of the amount above \$100,000.

28. Cooperation: Hayes shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all duties with respect to her Disgorgement Obligation payments. She shall cooperate fully with the Monitor and the Commission in explaining her financial

income and earnings, status of assets, financial statements, asset transfers and tax returns, and shall provide any information concerning herself as may be required by the Commission and/or the Monitor. Furthermore, Hayes shall provide such additional information and documents with respect thereto as may be requested by the Commission and/or the Monitor.

29. Collateral Agreements: Hayes shall immediately notify the Commission if she makes or has previously made any agreement with any victim account holder obligating her to make payments outside of this order. Hayes shall also provide immediate evidence of any payments made pursuant to such agreement in the manner required by Paragraph 33.

30. Default: Any failure by Hayes to carry out any of the terms, conditions or obligations under any paragraph of this Consent Order shall constitute an Event of Default. If any Event of Default occurs the Commission (or its designee) shall be entitled to:

- a. an order requiring immediate payment of any unpaid Annual Disgorgement Payment or, at the Commission's option, the entire unpaid balance, or any unpaid portion, of the Disgorgement Obligation set forth in Paragraphs 25 through 27 above; and/or
- b. move the Court for imposition of all other available remedies, including, but not limited to, an order holding Hayes in contempt for violation of this Order.

Upon the occurrence of an Event of Default based upon a claim or cause of action that Hayes failed to make any Annual Disgorgement Payments when due, Hayes will be barred from asserting any defense, including expiration of any statute of limitations, waiver, estoppel or laches, where such defense is based on the alleged failure of the Commission to pursue such claims or causes of action during the pendency of this civil action, during the negotiation of Hayes' consent to this Order or while this Order remains in effect. The only issue that Hayes may raise in defense is whether she made the Annual Disgorgement Payment as directed by the Monitor. Any motion by the Commission for entry of an order pursuant to this paragraph

requiring payment of less than the full amount of the Disgorgement Obligation, set forth in paragraphs 25 through 27 above, or any acceptance by the Commission of partial payment of the Annual Disgorgement Payments made by Hayes shall not be deemed a waiver of the Commission's right to require Hayes to make further payments pursuant to the payment plans set forth above, or, in the event of a further Event of Default, a waiver of the Commission's right to require immediate payment of the entire remaining balance, or any unpaid portion, of the Disgorgement Obligation set forth in paragraphs 25 through 27 above.

31. Reliance on Financial Disclosure: Based upon the sworn representations of Hayes contained in her Financial Disclosure Statement dated June 5, 2002, and other evidence provided by Hayes regarding her financial condition, the Court is not ordering immediate payment of the full Disgorgement Obligation pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 and Rule 143.8 of the Commission's Regulations, 17 C.F.R. § 143.8. The determination not to order immediate payment of the full amount of disgorgement is contingent upon the accuracy and completeness of the Financial Disclosure Statement and other evidence provided by Hayes regarding her financial condition. If at any time following the entry of this Consent Order, the Commission obtains information indicating that Hayes' representations to the Commission concerning her financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may move this Court for an order requiring Hayes to make immediate payment of her entire Disgorgement Obligation or of any portion thereof, the amount of which shall be determined by the Commission. In connection with any such motion, the only issues shall be whether the financial information provided by Hayes was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. In its motion, the Commission

may move this Court to consider all available remedies, including, but not limited to ordering Hayes to pay funds or transfer assets or directing the forfeiture of any assets and the Commission may also request additional discovery. Hayes may not, by way of defense to such motion, challenge the validity of her consent to this Consent Order, or contest any of the findings of fact or conclusions of law set forth in this Consent Order, assert that payment of the Disgorgement Obligation should not be ordered, or contest the amount of the Disgorgement Obligation to be paid. If in such motion the Commission moves for, and the Court orders, payment of less than the full amount of the Disgorgement Obligation, such motion will not be deemed a waiver of the Commission's right to require Hayes to make further payment pursuant to the payment plans set forth above.

32. Transfer of Assets: Hayes shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any members of her family or any other person for the purpose of concealing such funds from the Court or the Commission until the disgorgement is paid in full.

#### **IV.**

#### **MISCELLANEOUS PROVISIONS**

33. Notices: All notices required to be given by any provision in this Consent Order shall be sent certified mail, return receipt requests, as follows:

Notice to Commission:

Regional Counsel  
Division of Enforcement – Central Region  
Commodity Futures Trading Commission  
525 W. Monroe, Suite 1100  
Chicago, Illinois 60661

Notice to Hayes:

Loren Hayes  
33418 Maple Lane  
Hazelcrest, Illinois 60429

Notice to Monitor:

Daniel Driscoll  
Vice President, Compliance  
National Futures Association  
200 West Madison Street  
Chicago, Illinois 60606

In the event that Hayes changes her residential or business telephone number(s) and/or address(es) at any time, she shall provide written notice of her new number(s) and/or address(es) to the Monitor and to the Commission within ten (10) calendar days thereof.

34. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

35. Waiver: The failure of any party hereto or of any victim account holder listed in Attachment A at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

36. Successors and Assigns: This Consent Order shall insure to the benefit of and be binding upon the successors, assigns, heirs, beneficiaries and administrators of the parties hereto.

37. Acknowledgements: Upon being served with copies of this Consent Order after entry by the Court, Hayes shall sign acknowledgements of such service and serve such acknowledgments on this Court and the Commission within seven (7) calendar days.

38. Invalidation: If any provision of this Consent Order, or the application of any provisions or circumstances is held invalid, the remainder of the Consent Order and the application of the provision to any other person or circumstance shall not be effected by the holding.

39. Jurisdiction: This Court shall retain jurisdiction of this cause to assure compliance with this Consent Order and for all other purposes related to this action.

ENTERED THIS \_\_\_\_\_ of \_\_\_\_\_, 2002.

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Hon. George W. Lindberg  
United States District Court Judge

Consented to and  
approved for entry by:

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Loren Hayes

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Ava Gould, Senior Trial Attorney  
Elizabeth M. Streit, Senior Trial Attorney  
Scott R. Williamson, Deputy Regional  
Counsel,  
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