

Camille M. Arnold  
Ava Gould  
Attorneys for: Commodity Futures Trading Commission  
Suite 1100  
525 W. Monroe St.  
Chicago, IL 60661  
312-596-0524 (Arnold)  
312-596-0535 (Gould)

Carlie Christensen  
(Bar # 0633)  
Civil Division Chief  
Office of the United States Attorney  
185 South State Street  
Suite 400  
Salt Lake City, Utah 84111  
801-524-5682

FILED  
CLERK, U.S. DISTRICT COURT  
-3 NOV 03 AM 10:52  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

vs.

STEPHEN W. BROCKBANK,  
CAROL J. LOVE,  
BIRMA, LTD.,  
DONALD J. PURSER,  
and  
THOMAS E. JONES,

Defendants.

RECEIVED CLERK

NO: 2:00 CV 00622ST

OCT 30 2003

Hon. Ted Stewart

U.S. DISTRICT COURT

**CONSENT ORDER OF PERMANENT  
INJUNCTION AND OTHER  
ANCILLARY RELIEF AGAINST  
DEFENDANT THOMAS E. JONES**

On January 16, 2003, Plaintiff, Commodity Futures Trading Commission (“CFTC” or “Commission”), filed an Amended Complaint in the above-captioned matter that added Thomas E. Jones (“Jones”) and Donald J. Purser (“Purser”) as defendants. The Amended Complaint seeks injunctive and other equitable relief against Jones and Purser, as well as the imposition of

222

civil monetary penalties for violations of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 et seq. (2001), and Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2001). Entry of this Consent Order of Permanent Injunction and Other Ancillary Relief would conclude this action as to defendant Jones.

**I.**

**CONSENTS AND AGREEMENTS**

To effect settlement of the matters alleged in the Complaint against Jones without a trial on the merits or any further judicial proceedings, defendant Jones:

1. Consents to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief Against Jones (“Order”).
2. Affirms that he has agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.
3. Acknowledges service of the Summons and Complaint.
4. Admits jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).
5. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).
6. Waives:
  - a. the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, except as set forth below;
  - b. all claims which he may possess under the Equal Access to Justice Act, 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 Regulations, 17 C.F.R. § 148.1, et seq. (2001), relating to, or arising from, this action;

c. 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

d. all rights of appeal from this Order.

7. By consenting to the entry of this Order, defendant Jones neither admits nor denies the allegations of the Complaint except as to jurisdiction and venue, which he admits.

8. Jones agrees that neither he nor his agents, employees or representatives acting under their authority or control will take any action or make any public statement to the media denying, directly or indirectly, any allegations of the Complaint or findings or conclusions in this Order, or creating or tending to create, the impression that the Complaint or Order is without a factual basis; provided, however, that nothing in this provision shall affect Jones' (i) testimonial obligations, or (ii) his right to take legal positions in other proceedings to which the Commission is not a party. Jones will undertake all steps necessary to assure that all of his agents, employees and representatives understand and comply with this agreement.

9. Defendant Jones acknowledges that the Court is not imposing civil monetary penalties, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, based on the accuracy and completeness of his sworn representations to the Commission concerning his financial condition as described in Jones' Financial Disclosure Statement dated May 14, 2002. Jones further consents that if, at any time following the entry of this Order, the Commission obtains information indicating that Jones' representations to the Commission concerning his financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect at the time such representations were made, the Commission may, at its sole discretion and without

prior notice to Jones, petition the Court for an order requiring Jones to pay civil monetary penalties. In connection with any such petition, the only issues shall be whether the financial information provided by Jones was fraudulent, misleading, inaccurate or incomplete in any material respect at the time such representations were made, and the amount of the civil monetary penalties to be imposed. In any such petition, the Commission may move the Court to consider all available remedies, including, but not limited to, ordering Jones to pay funds or transfer assets, directing the forfeiture of any assets, or imposing sanctions for contempt of this Order, and the Commission may also request additional discovery. Jones may not, by way of defense to such petition, challenge the validity of this Order, contest the allegations in the Complaint filed by the Commission, or assert that payment of civil monetary penalties should not be ordered.

10. Jones consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this case.

## II.

### FINDINGS AND CONCLUSIONS

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 the findings of fact and conclusions of law below, and a permanent injunction and ancillary equitable relief, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), as set forth herein.

1. This Court has jurisdiction over Jones and the subject matter of this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2001), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such

person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

2. This Court has personal jurisdiction over Jones and Jones has waived service of Summons and the Amended Complaint and consented to the Court's jurisdiction over him.

3. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), in that Jones is found in, inhabits, or transacts business in this district, or the acts and practices in violation of the Act alleged to have occurred, are occurring, or are about to occur within this district, among other places.

4. This Court shall retain jurisdiction over the Commission and Jones for the purpose of enforcing the terms of this Consent Order.

#### Violations of the Commodity Exchange Act and Regulations

5. From at least November 1999 to December 2000, Jones acted as an unregistered CPO in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002), in that he engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, solicited, accepted or received funds, securities or property from others for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market. In connection with such conduct, Jones used or is using the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CPO.

#### Need for Permanent Injunctive and Other Ancillary Equitable Relief

6. The Commission has made a showing that Jones has engaged, is engaging, and is about to engage in acts and practices which violate Sections 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002). The totality of the circumstances establish that, unless restrained and enjoined by this

Court, there is a reasonable likelihood that Jones will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Commission Regulations. The imposition of other ancillary equitable relief is required to comply with the basic objectives of the Act.

### **III.**

#### **ORDER FOR PERMANENT INJUNCTION**

Pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, IT IS HEREBY ORDERED THAT:

1. Jones is permanently restrained, enjoined and prohibited from directly or indirectly soliciting, accepting, or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or otherwise acting as a CPO without being registered with the Commission as such under the Act and using the mails or any means or instrumentality of interstate commerce in connection with his business as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002).

2. Jones is permanently restrained, enjoined and prohibited from directly or indirectly:

- a. trading on or subject to the rules of any registered entity;
- b. engaging in, controlling or directing the trading for any commodity futures, security futures, options, options on futures, or foreign currency options account for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
- c. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9) (2002), or acting as a principal, agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9) (2002). This includes, but is not limited to, soliciting, accepting or receiving any funds, revenue or other property from any person, giving commodity trading advice for compensation, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9) (2002), or soliciting prospective customers, related to the purchase or

sale of any commodity futures, security futures, options, options on futures, or foreign currency futures.

3. The injunctive provisions of this Order shall be binding upon Jones upon any person insofar as he or she is acting in the capacity of officer, agent, servant or employee of Jones and upon any person who receives actual notice of this Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with Jones.

#### IV.

#### **ORDER FOR OTHER EQUITABLE RELIEF**

IT IS FURTHER ORDERED THAT:

1. RESTITUTION: Jones shall pay \$74,000 (“restitution amount”) for the purpose of compensating customers of the The Jones LP who invested in BIRMA for their losses resulting from their dealings with these entities. Jones shall pay post-judgment interest from the date of this Order until his restitution 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). Jones shall pay the restitution amount to the Monitor, to be distributed to investors pro rata in the percentages as directed by the Court. The pro rata restitution amounts distributed to investors shall not limit the ability of any investor from proving that a greater amount is owed from Jones or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any investor that exist under state or common law.

2. PAYMENT OF RESTITUTION: Jones shall pay the restitution amount owed as follows:

- a. Jones shall make an annual restitution payment (“Annual Payment”) pursuant to a payment plan outlined in Paragraph 3 below to an account designated by the Monitor for pro-rata distribution to pool participants of:

(1) a percentage of his adjusted gross income (as defined by the Internal Revenue Code) earned or received by him during the previous calendar year, plus (2) all other cash receipts, cash entitlements or proceeds of non-cash assets received by him during the previous calendar year. The Annual Payment shall be made on or before July 31 of each calendar year, starting in calendar year 2004 and continuing for ten years or until his restitution amount is paid in full from any source, whichever occurs sooner. The ten-year restitution period shall run from January 1, 2003 through December 31, 2012. Restitution payments for a calendar year shall take place by July 31 of the following year. Therefore, the final restitution payment for the year 2012 will occur on or before July 31, 2013.

- b. Jones agrees that for these purposes the National Futures Association is hereby designated as the Monitor with respect to the Annual Payment for a period of eleven years commencing January 1, 2003. Notice to the Monitor shall be made to Daniel A. Driscoll, Executive Vice President, Chief Compliance Officer, or his successor, at the following address:  
National Futures Association, 200 West Madison Street, Chicago, IL 60606.
- c. Jones shall provide a sworn Financial Disclosure Statements and copies of his signed and filed federal income tax returns, including all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filings he is required to submit to any state tax or revenue authority, for



the preceding calendar year, on or before May 15 of each calendar year, or as soon thereafter as the same are filed, starting in calendar year 2004 and continuing for ten years or until the restitution amount is paid in full, whichever occurs first. If he moves his residence at any time, he shall provide written notice of his new addresses to the Monitor and the Commission, through the Director, or his successor, Division of Enforcement, Commodity Futures Trading Commission, at 1155 21<sup>st</sup> Street, N.W., Washington, DC 20581, within ten calendar (10) days thereof.

- d. If, during the same time period, Jones elects to file a joint tax return, he shall provide all documents called for by this paragraph 2, including the signed and filed joint tax return, plus a draft individual tax return prepared on IRS Form 1040 containing a certification by a licensed certified public accountant that the "Income" section (currently lines 7-22 of Form 1040) truly, accurately and completely reflects all of Jones' income, that the "Adjusted Gross Income" section truly, accurately and completely identifies all deductions that Jones has a right to claim, and that the deductions contained in the "Adjusted Gross Income" section are equal to or less than 50% or the deductions that Jones is entitled to claim on the joint tax return; provided however that Jones may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely his. Such individual tax return shall include all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any

filing required to be submitted to any state tax or revenue authority. If Jones does not file a return, he shall provide his sworn financial statement on June 30 and December 31 of each calendar year, starting on December 31, 2003 and continuing through and including June 30, 2013.

The financial statements shall provide:

1. A true and complete itemization of all Defendant's rights, title and interest in (or claimed in) any asset, wherever, however, and by whomever held:
2. An itemization, description and explanation of all transfers of assets with a value \$1,000 or more made by or on behalf of Defendant over the preceding six-month interval; and
3. A detailed description of the source and amount of all of Defendant's income or earnings, however generated.

- e. Based on the information contained in Jones' tax returns and, to the extent they are provided, his sworn financial statements, the Monitor shall calculate the Annual Payment to be paid by Jones for that year and the specific amounts payable to each investor. On or before June 30 of each year and starting in calendar year 2004, the Monitor shall send written notice to Jones with instructions to pay the Annual Payment on or before July 31 of that year to an account designated by the Monitor in accordance with the payment instructions in paragraph 3, below. If the Monitor determines that an Annual Payment is due, then the Monitor will increase the amount of the remaining restitution payment by post-judgment interest calculated to the date of payment based on the total remaining restitution obligation pursuant to 28 U.S.C. § 1961. The Monitor shall then disburse

any payment by Jones to the investors in the appropriate amounts as directed by the Court. Based upon the amount of funds available, the Monitor may decide to defer distribution. If at the end of the ten-year payment period, any amount of the Annual Payments has not been distributed, that amount shall instead be immediately paid as provided in paragraph 3, below.

3. ANNUAL PAYMENT: The Annual Payment for Jones shall be calculated as follows:

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

b. Jones shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all duties with respect to the Annual Payment. He shall cooperate fully with the Monitor and the Commission in explaining his financial income and earnings, status of assets, financial statements, asset transfers and tax returns, and shall provide any financial information concerning himself as may be required by the Commission

and/or the Monitor. Furthermore, Jones shall provide such additional information and documents with respect thereto as may be requested by the Commission and/or the Monitor.

4. THIRD-PARTY BENEFICIARIES: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the individuals to be identified by the Court as the Jones investors, is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution amount which has not been paid by Jones, to ensure continued compliance with any provision of this Order and to hold Jones in contempt for any past violations of any provision of this Order.

5. COLLATERAL AGREEMENTS: Jones shall immediately notify the Commission and the Monitor if he makes or has previously made any agreement with any pool participant obligating him to make payments outside of this Order. Jones shall also provide immediate evidence of any payments made pursuant to such agreement. Upon being notified of any payments made by Jones to investors outside of this Order, the Commission and the Monitor shall reduce and offset Jones' obligation to specified investors, on an annual basis, and make any other changes to investor payments as it deems appropriate.

6. TRANSFER OF ASSETS: Jones shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any other person for the purpose of concealing such funds from the Court, the Commission, the Monitor or any investor or until the restitution amount has been paid in full.

7. DEFAULT: Any failure by Jones to carry out any of the terms, conditions or obligations under any paragraph of this 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 from this Court requiring immediate payment of any unpaid Annual Payments, or, at the Commission's option, the entire unpaid balance, or any unpaid portion, of the restitution amount set forth above in paragraphs IV. 1-3; and/or
- b. move the Court for imposition of all other available remedies, including, but not limited to, an order holding Jones in contempt for violation of this Order.

Upon the occurrence of an Event of Default based upon a claim or cause of action that Jones failed to make any Annual Payments when due, Jones 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 Jones' consent to this Order or while this Order remains in effect. The only issue that Jones may raise in defense is whether he has made the Annual Payments 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 restitution, set forth in paragraphs IV. 1 through 3 above, or any acceptance by the Commission of partial payment of the Annual Payments made by Jones, shall not be deemed a waiver of the Commission's right to require Jones 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 restitution amount set forth in paragraphs IV. 1 through 3 above.

8. Based upon Jones' sworn representations in his Financial Disclosure Statement dated May 14, 2002 and other evidence Jones provided to the Commission regarding his financial condition, the Court is not imposing a civil monetary penalty pursuant to Section 6c of

the Act, 7 U.S.C. § 13a-1, or requiring Jones to make an immediate payment of the full restitution amount. This determination is contingent upon the accuracy and completeness of Jones' Financial Disclosure Statement dated May 14, 2002 and other evidence Jones provided to the Commission regarding his financial condition. If at any time following the entry of this Order, the Commission obtains information indicating that Jones' representations concerning his 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 Jones to make immediate payment of the full restitution amount or any restitution amount beyond the amount paid pursuant to paragraphs IV. 1 - 3 above. In connection with any such motion, the only issues shall be whether the financial information Jones provided 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 Jones to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Order, and the Commission may also request additional discovery. Jones may not, by way of defense to such motion, challenge the validity of his Consent or this Order, or contest any of the findings of fact or conclusions of law set forth in this Order, assert that restitution or immediate payment of his remaining restitution obligation should not be ordered, or contest the amount of the restitution to be paid. If in such motion the Commission moves for, and the Court orders, payment of less than the full amount of the restitution obligation, such motion will not be deemed a waiver of the Commission's right to require Jones to make further payments pursuant to the payment plan set forth above.

United States District Court  
for the  
District of Utah  
November 3, 2003

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:00-cv-00622

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Deanna Lee Garrett  
66 N SCENIC HILL CIRCLE  
N SALT LAKE CITY, UT 84054

Mr. Dennis L. Mangrum, Esq.  
7110 S HIGHLAND DR  
SALT LAKE CITY, UT 84121

Stephen W. Brockbank  
591 12TH AVE  
SALT LAKE CITY, UT 84103

Edward W. McBride Jr., Esq.  
OTTO & MCBRIDE PC  
4001 S 700 E STE 500  
SALT LAKE CITY, UT 84107

Robert Heninger  
11710 SOUTHEAST 310TH ST  
AUBURN, WA 98092

Allen Andersen  
13059 S 3100 W  
RIVERTON, UT 84065

John Garrett  
66 N SCENIC HILLS CIR  
N SALT LAKE CITY, UT 84054

Ms. Anna W. Drake, Esq.  
215 S ST ST STE 500  
SALT LAKE CITY, UT 84111  
EMAIL

Donald J. Purser, Esq.  
DONALD JOSEPH PURSER & ASSOC PC  
2595 E 3300 S  
3RD FL  
SALT LAKE CITY, UT 84109  
EMAIL

Dale B. Kimsey, Esq.  
2828 KSEL DR  
SANDY, UT 84092  
EMAIL

Mr. P. Bruce Badger, Esq.  
FABIAN & CLENDENIN  
215 S STATE STE 1200  
PO BOX 510210  
SALT LAKE CITY, UT 84151  
JFAX 9,5311716

Birma  
BIRMA  
591 E TWELTH AVE  
SALT LAKE CITY, UT 84103

Carol J. Love  
9060 WINTHROP DR  
WEST JORDAN, UT 84088

Ms. Carlie Christensen, Esq.  
US ATTORNEY'S OFFICE  
, 84111  
EMAIL

Rosemary Hollinger, Esq.  
COMMODITY FUTURES TRADING COMM  
525 W MONROE ST STE 1100  
CHICAGO, IL 60661  
EMAIL