

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of :
:
JOSEPH DEFRANCESCO, MARC GREENSTEIN, :
RONALD KILBRIDE, and BRIAN THORNTON :
:
Respondents. :
-----X

CFTC Docket No. 02-09

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**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS
AS TO RESPONDENT BRIAN THORNTON**

I.

On March 20, 2002 the Commodity Futures Trading Commission ("Commission") filed a Complaint and Notice of Hearing ("Complaint") against Brian Thornton. The Complaint charges that Thornton violated Sections 4b(a)(i), (iii) and (iv), 4c(a)(1), and 4g of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 6b(a)(i), (iii) and (iv), 6c(a)(1) and 6g (1994), and Commission Regulations 1.35(d) and 1.38, 17 C.F.R. §§ 1.35(d), 1.38 (2001) and aided and abetted violations of Section 4c(a)(1) of the Act.

II.

In order to dispose of the allegations and issues raised in the Complaint as to him, Thornton has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the allegations of the Complaint or the findings herein, Thornton acknowledges service of this Order Making Findings and Imposing Remedial Sanctions ("Order"). Thornton consents to the use of the findings contained in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Thornton does not consent to the use of his Offer or the findings in this Order, or consented to in his Offer, as the sole basis for any other proceeding brought by the Commission, other than a proceeding brought to enforce the terms of this Order. Thornton also does not consent to the use of his Offer or the findings in the Order by any other person or entity in this or in any other proceeding. The findings made in the Order are not binding on any other person or entity named as a defendant or respondent in this or any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

From February 8, 2000 through November 17, 2000, Thornton fraudulently executed trades in the coffee futures ring of the Coffee, Sugar & Cocoa Exchange, ("CSCE"), a Division of the New York Board of Trade ("NYBOT"), by trading for his own account indirectly opposite his customer orders, and thus engaged in fraud and deception in violation of Sections 4b(a)(i) and (iii) of the Act, indirect bucketing in violation of Section 4b(a)(iv) of the Act, trading at non bona fide prices in violation of Section 4c(a)(1) of the Act, and noncompetitive trading in violation of Section 1.38 of the Regulations. In addition, in accommodating indirectly bucketed trades, Thornton entered into wash sales to accommodate such trades, in violation of Section 4c(a)(1) of the Act, which prohibits wash sales and accommodation trades. Thornton also failed to record required trading information on trading cards in violation of the recordkeeping requirements of Section 4g of the Act and Section 1.35(d) of the Regulations.

B. SETTLING RESPONDENT

BRIAN THORNTON, who resides at 31 Barn Street, Long Beach, New York 11561, is now, and was at all times relevant to this matter, registered with the Commission as a floor broker pursuant to Sections 4e and 4f of the Act, as amended, 7 U.S.C. §§ 6e and 6f (1994), and a member of the Coffee, Sugar & Cocoa Exchange, Inc. Thornton has been a floor broker on the Coffee, Sugar & Cocoa Exchange since December 1993.

C. FACTS

During the time period from February 8, 2000 through November 17, 2000, Thornton traded for his personal account and for customers in coffee futures on the CSCE.

1. Indirect Bucketing

On one occasion between February 8, 2000 through November 17, 2000, Thornton indirectly bucketed his customer order by noncompetitively trading for himself and for a customer so that, aided by an accommodating trader, he ended up with a position for his own account opposite a position for his customer.

In that case, Thornton bought and sold noncompetitively in the same contract month at or about the same price and time opposite another trader (the "Accommodator") trading for his own account. Thornton traded to fill a customer order on one of the trades and traded for his own account on the other trade. The Accommodator executed both sides for his own account and received a profit. Thornton ended up with a position opposite his customer order, and also made a profit.

2. Wash Sales and Accommodation Trades

Thornton also accommodated other traders to indirectly bucket their customer orders on eight occasions. In so doing, Thornton engaged in wash sales and accommodation trades. Thornton engaged in wash sales and accommodation trades by simultaneously or nearly simultaneously purchasing and selling for his own account the same future noncompetitively to assist a broker in taking the opposite side of his customer order.

3. Recordkeeping Violations

Members of contract markets are required by the Act and the Regulations to prepare and retain certain records. In particular, Section 1.35(d) of the Regulations requires that members prepare a trading card or other record detailing the trades executed by them. This Regulation specifies that members record trades sequentially, without skipping lines, and that the trading cards be properly identified and numbered.

The date, hour and/or minute of the transaction was omitted on numerous trading cards for Thornton.

D. LEGAL DISCUSSION

1. CHEATING, DEFRAUDING AND DECEIVING CUSTOMERS

Thornton cheated or defrauded, or attempted to cheat or defraud, or willfully deceived, or attempted to deceive, customers in connection with the execution of his customer orders by indirectly bucketing his customer orders.

Executing floor brokers are subject to the anti-fraud provisions of Section 4b of the Act.² Fraud under the Act requires a showing of scienter.³ Scienter is established when a respondent commits a wrongful act intentionally or with reckless disregard.⁴ A reckless act is one where there is so little care that it is "very difficult to believe the [actor] was not aware of what he was doing."⁵ Scienter cannot be avoided by ignorance brought about by willfully or recklessly ignoring the truth.⁶

² *In re Murphy*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,798 at 31,151 (CFTC Sept. 25, 1985).

³ *In re Staryk*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,206, at 45,810 (CFTC Dec. 18, 1997). See also *Reddy v. CFTC*, 191 F.3d 109, 119 (2d Cir. 1999).

⁴ *Hammond v. Smith Barney, Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659 (CFTC Mar. 1, 1990).

⁵ *Do v. Lind-Waldock & Co.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,516, at 43,321 (CFTC Sept. 27, 1995); *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748-49 (D.C. Cir. 1988).

⁶ See *Hammond v. Smith Barney*, [1987-90 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659 (CFTC Mar. 1, 1990); see also *Do v. Lind-Waldock & Co.*, ¶ 26,516, at 43,321 (an employee acted recklessly by failing to ascertain the status of an order prior to advising the customer that it was too late to cancel).

Thornton cheated, defrauded, and deceived his customers by indirectly taking the opposite side of his customer orders through noncompetitive trades. Noncompetitive executions of customer orders constitute cheating and defrauding of customers.⁷ The prices these customers received were not the result of arms length trading. As illustrated above, the customers were deprived of the competitive process, and may have purchased at higher prices or sold at lower prices as a result of Thornton's misconduct.

The Seventh Circuit reached a similar conclusion in upholding mail and wire fraud convictions in a Chicago Board of Trade soybean traders' case. The court observed that "by picking customer prices and opposing traders, the defendants removed their customers from the pit's competitive marketplace and forced the customers to accept the results they selected . . . denying the customer the opportunity to obtain a better price." *United States v. Ashman*, 979 F.2d 469, 477 (7th Cir. 1992). The court in *Ashman* further stated "even though customers may not be entitled to any specific price, deliberate refusal to pursue the best price the broker can obtain can constitute a scheme to defraud." *Id.* at 478.

Analysis of trading patterns may be the basis for establishing noncompetitive trading.⁸ The Commission has found that "a pattern marked by characteristics unlikely to occur in an open and competitive market [is] indicative of noncompetitive trading." *Rouso*, ¶ 27,133, at 45,308. Where such a pattern exists, a court may infer that the trades that form the pattern were intentionally achieved by noncompetitive means.⁹

However, the Division must show that "it is more likely than not that the respondents engaged in noncompetitive trading." *Rouso*, ¶ 27,133, at 45,308. In *Rouso*, the Division presented evidence of 143 noncompetitive trades involving four respondents over a six-month period. The Division's expert identified repeated instances fitting the indirect bucketing pattern occurring on approximately 40% of the trading days examined. Accordingly, the Commission upheld the ALJ's finding that the *Rouso* respondents knowingly participated in noncompetitive trading in violation of section 4b(a)(i).

Thornton had a duty to his clients to execute their orders in a manner where he would not personally profit at their expense. His reckless disregard of his obligations to his customers in trading opposite customer orders constitutes fraud.

⁷ *In re Murphy*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,798 at 31,151 (CFTC Sept. 25, 1985); *In re Julian Marks*, 22 A.D. 761, 773 (1964) (customers "entitled to have the orders executed on their merits.").

⁸ *In the matter of Rouso*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,133, at 45,308 (CFTC Jul. 29, 1997); *In the matter of Buckwalter*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,995, at 37,684 (CFTC Jan. 25, 1991); *In the matter of Rosenberg*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,992, at 37,643 (CFTC Jan. 25, 1991).

⁹ *Rouso*, ¶ 27,133, at 45,308; *See In re Collins*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,982 at 31,900 n. 16 (CFTC Apr. 4, 1986).

2. BUCKETING CUSTOMER ORDERS

Thornton engaged in bucketing customer orders in violation of Section 4b(a)(iv) of the Act. Bucketing customer orders consists of the broker directly or indirectly "trading opposite the order for the broker's own account." *In re Reddy*, 191 F.3d 109, 115 (2nd Cir. 1999). A transaction can be a bucket even if the orders are executed on the exchange floor as long as the order is not submitted for competitive bidding.¹⁰ A bucket may be accomplished indirectly by using an accommodation trade whereby the accommodating trader trades opposite the broker trading for a customer and then trades opposite the broker trading for his own account. In this way, the broker indirectly takes the opposite side of the customer's order and the accommodating trader ends up without an open position.¹¹ Accordingly, the broker trades opposite his own customer while appearing to trade opposite the accommodator.¹²

3. ENTERING INTO WASH SALES OR ACCOMMODATION TRADES

Thornton violated the prohibition in Section 4c(a)(1) against wash sales and accommodation trades. Wash sales are trades undertaken for the purpose of giving the appearance that trades have been executed without positions actually being taken in the market, or without any actual change in the account holder's market position. In *In re Bear Stearns*, [1990-1992 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,663 (CFTC Jan. 25, 1991), the Commission explained:

In a wash sale, for example, a trader gives the appearance of making independent decisions to buy and then sell (or sell and then buy) one or more futures contracts. His actual intention at the time he initiates the transaction, however, is to both buy and sell the contract at the same or a similar price – in other words, to create a financial and position nullity extraneous to the price discovery and risk shifting functions of the futures market.

Thornton's round-turn, accommodation trading for his own account are classic wash sales. In these trades, he had no position in the market. Accommodation trading consists of noncompetitive trades entered into by one trader to facilitate another trader in making trades prohibited by the Act or Regulations.¹³

4. NONCOMPETITIVE TRADING

By failing to execute his trades openly and competitively, Thornton violated Section 1.38 of the Regulations. Noncompetitive trades are generally transacted in accordance with expressed or implied agreements or understandings between the traders and include illegal price changes.

¹⁰ *In re The Siegel Trading Company, Inc.*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,452 at 21,841 (ALJ July 26, 1977), *vacated on other grounds*, ¶ 20,637 (CFTC June 21, 1978).

¹¹ *Id.*

¹² *Reddy*, 191 F.3d at 115.

¹³ See *In re Reddy*, 191 F.3d 109, 115 (2nd Cir. 1999); *Sundheimer v. Commodity Futures Trading Commission*, 688 F.2d 150, 152 (2d Cir. 1982), *cert. denied*, 460 U.S. 1022 (1983); *In re Eisen*, 22 A.D. 758 (1963).

Trades can be noncompetitive even though they were executed in the pit.¹⁴ “The Commission has found that in appropriate circumstances a pattern marked by characteristics unlikely to occur in an open and competitive market [is] indicative of noncompetitive trading.” *Rouso* ¶ 27,133 at 45,308. The indirect bucketing configuration permits the inference that the pattern of trades with that configuration was achieved by intentionally noncompetitive means. *Id.* In addition to the pattern of indirect buckets, the evidence that trades were executed noncompetitively includes audit trail irregularities, including alteration of records and insertion of trades. In addition, for each of the trades Thornton made money as the executing broker or either made money or broke even on the trade as the accommodator. By indirectly bucketing his customer orders, and accommodating other brokers to do so, Thornton engaged in noncompetitive trading in violation of Section 1.38 of the Regulations.

5. NON BONA FIDE PRICES

Thornton violated Section 4c(a)(1) of the Act, which makes it unlawful to confirm the execution of any commodity futures transaction “if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.”¹⁵ Bona fide prices are only those prices that result from competitive trading. Thornton executed trades noncompetitively, and, thus, the prices that were reported on his trading cards, to his customers and to CSCE were not bona fide.¹⁶ Such trades are not “bona fide” for purposes of Section 4c(a)(1), even if they accurately reflect the current price prevailing in the pit.¹⁷ Accordingly, Thornton violated Section 4c(a)(1) of the Act.

6. RECORDKEEPING VIOLATIONS

Section 4g of the Act and Section 1.35(d) of the Regulations are violated by members of a contract market who fail to record required information on their trading cards or similar records. Section 1.35(d) of the Regulations specifies that members of contract markets prepare trading cards or similar records documenting their trades and requires, among other things, that for each transaction executed by the member, the trading card or other record state the date, hour and minute of the transaction. Thornton routinely failed to record this trade information in violation of Section 1.35(d) of the Regulations.

¹⁴ *In re Buckwalter*, ¶ 24,995 at 37,683 (citing *Laiken v. Dep’t of Agriculture*, 345 F.2d 784, 785 (2d Cir. 1965)).

¹⁵ *In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993 at 37,653 (CFTC Jan. 25, 1991).

¹⁶ See *In re Gilchrist* ¶ 24,993 at 37,653.

¹⁷ *Id.* at n.25; see also *United States v. Winograd*, 656 F.2d 279, 283 (7th Cir. 1981); *CFTC v. Savage*, 611 F.2d 270, 284 (9th Cir. 1979); *In re Goldwurm*, 7 A.D. 265 at 275-276 (1948).

IV.

OFFER OF SETTLEMENT

Thornton has submitted an Offer in which he, without admitting or denying the findings herein: (1) acknowledges service of the Complaint and the Order; (2) admits the jurisdiction of the Commission with respect to the matters set forth herein; (3) waives a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offer, 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 (1996), and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2001), relating to or arising from this action, and any claim of Double Jeopardy based upon institution of this proceeding or the entry of any order imposing a civil monetary penalty or any other relief; (4) stipulates that the record basis on which the Order may be entered shall consist solely of the Complaint, Order and findings in the Order consented to in the Offer; and (5) consents to the Commission's issuance of the Order, which makes findings as set forth below and: (a) orders Thornton to cease and desist from violating the provisions of the Act and Regulations that he has been found to have violated; (b) imposes civil monetary penalties of \$25,000; (c) suspends his registration for three months; (d) restricts his registration for a one-year period including the imposition of supervision requirements; (e) prohibits him from executing trades for customers for a period of three years; and (f) orders him to comply with his undertakings consented to in his Offer.

V.

FINDINGS OF VIOLATIONS

Solely on the basis of the consent evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Thornton violated Sections 4b(a)(i), (iii) and (iv), 4c(a)(1), and 4g of the Act, 7 U.S.C. §§ 6b(a)(i), (iii) and (iv), 6c(a)(1) and 6g, and Sections 1.35(d) and 1.38 of the Regulations, 17 C.F.R. §§ 1.35(d) and 1.38 and aided and abetted violations of Section 4c(a)(1) of the Act.

VI.

ORDER

Accordingly, it is hereby ordered that:

1. Thornton shall cease and desist from further violations of Sections 4b(a)(i), (iii) and (iv), 4c(a)(1), and 4g of the Act, 7 U.S.C. §§ 6b(a)(i), (iii) and (iv), 6c(a)(1) and 6g, and Sections 1.35(d) and 1.38 of the Regulations, 17 C.F.R. §§ 1.35(d) and 1.38;
2. Thornton shall pay a civil monetary penalty in the amount of \$25,000, to be made by an annual civil monetary payment ("Annual CMP Payment") as directed by a

monitor designated by the Commission (the "Monitor")¹⁸ on or before July 31 of each calendar year, starting in calendar year 2004 and continuing for ten years (or until the civil monetary penalty is paid in full, if that happens first).¹⁹ Thornton shall make each such Annual CMP Payment by electronic funds transfer, U.S. postal money order, certified check, bank cashier's 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 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Thornton and the name and docket of this proceeding. Thornton 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, 1155 21st Street, N.W., Washington, D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2) (1994), if Thornton fails to pay the full amount of his Annual CMP Payment within fifteen (15) days of the due date, he shall be automatically prohibited from trading on all contract markets and, if he is registered with the Commission, such registration shall be automatically suspended until he shows to the satisfaction of the Commission that payment of the full amount of the Annual CMP Payment with interest thereon to the date of payment has been made.

The amount of Thornton's Annual CMP Payment shall consist of a portion of: (a) the adjusted gross income (as defined by the Internal Revenue Code) earned or received by him during the course of the preceding calendar year; plus (b) all other net cash receipts, net cash entitlements or net proceeds of non-cash assets received by him during the course of the preceding calendar year. The Annual CMP Payment will be determined as follows:

Where Adjusted Gross Income Plus Net Cash Receipts Total:	Percent of Total to be Paid by Thornton is:
Up to \$25,000	0%
\$25,000 - \$50,000	20% of the amount above \$25,000
\$50,000 - \$100,000	\$5,000 (this represents 20% of the amount between \$25,000 and \$50,000) plus 30% of the amount above \$50,000

¹⁸ Thornton agrees that the National Futures Association is hereby designated as the Monitor. Notice to the Monitor shall be given 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, IL 60606.

¹⁹ Thornton's ten-year CMP period shall run from January 1, 2003 through December 31, 2012. Annual CMP Payments for a calendar year shall take place by July 31 of the following year. Therefore, the final Annual CMP Payment for the year 2012 will occur on or before July 31, 2013. For ten years, based on the information contained in Respondent's sworn financial statements, tax returns and the other financial statements and records provided to the Monitor, the Monitor shall calculate the total amount of civil monetary penalty to be paid by Respondent for the year. Starting in calendar year 2004 and concluding in calendar year 2013, the Monitor shall send written notice to Respondent on or before June 30 with instructions to pay by no later than July 31 the amount of CMP to an account designated by the Monitor.

Above \$100,000

\$20,000 (this represents 20% of the amount between \$25,000 and \$50,000, plus 30% of the amount between \$50,000 and \$100,000) plus 40% of the amount above \$100,000;

3. The Commission notes that an order requiring complete immediate payment of the civil monetary penalty against Thornton would be appropriate in this case, but does not impose one based upon Thornton's financial condition. Thornton acknowledges that the Commission's acceptance of the Offer is conditioned upon the accuracy and completeness of the sworn Financial Statement sent to the Commission on December 18, 2002 and other evidence Thornton has provided regarding his financial condition. Thornton consents that if at any time following the entry of this Order, the Division of Enforcement ("Division") of the Commission obtains information indicating that Thornton's representations concerning his financial condition were fraudulent, misleading, inaccurate, or incomplete in any material respect at the time they were made, the Division may, at any time following the entry of the Order, petition the Commission to: (a) reopen this matter to consider whether Thornton provided accurate and complete financial information at the time such representations were made; (b) require immediate payment of the full amount of the civil monetary penalty as set forth above; and (c) seek any additional remedies that the Commission would be authorized to impose in this proceeding if Thornton's Offer had not been accepted.
4. Thornton's registration as a floor broker will be suspended for a period of three months beginning on the first Monday after the entry of the Commission Order accepting the Offer (the "Suspension Date");
5. Thornton is prohibited for a period of three years, beginning three months after the Suspension Date, from executing trades for customers on or subject to the rules of any contract market;
6. For a period of twelve months, beginning three months after the Suspension Date:
 - a. Thornton may not act as a floor trader pursuant to Sections 4e and 4f of the Act, 7 U.S.C. §§ 6e and 6f, and as defined under Section 1.3(x) of the Regulations, 17 C.F.R. §1.3(x), unless his activities as a floor trader are subject to a Supplemental Sponsor Certification Statement ("Certification Statement"), in Form A or Form B attached hereto, executed and submitted to the Commission by a qualified sponsor²⁰ ("Sponsor") and in accordance with Section 3.60(b)(2) of the Regulations, 17 C.F.R. §3.60(b)(2). Immediately upon the sponsor's ceasing to act as Thornton's sponsor, Thornton shall stop acting as a floor trader, until he once again

²⁰ A "qualified sponsor" shall be an officer of the floor trader's clearing member who has executed Form A, if such officer is a registrant or a principal of a registrant, or a registered floor broker who is a member of the same exchange or registered entity on which Thornton trades and who has executed Form B.

obtains a Certification Statement executed and submitted to the Commission by a qualified sponsor, as defined below;

- b. If Thornton's Sponsor is an officer of the floor trader's clearing member, Thornton shall clear all trades through the FCM at which his Sponsor is an officer;
- c. Thornton shall not serve on any disciplinary committee, arbitration panel, oversight panel or governing board of any self-regulatory organization ("SRO") registered or subject to regulation by the Commission;
- d. Thornton shall not directly or indirectly act as a principal, partner, officer, or branch office manager of any entity registered or required to be registered with the Commission; further, Thornton shall not directly or indirectly act in any supervisory capacity over anyone registered or required to be registered with the Commission;
- e. The Certification Statement will become part of Thornton's registration file, and shall be a public document and may be made available to any SRO and state and federal governmental entities;
- f. Thornton shall send written notification to the Membership Department of all exchanges where he has floor trading privileges that his registration is subject to conditions. Such written notification shall include a copy of the Order and the Certification Statement;
- g. If the Commission, NFA or any other SRO or a law enforcement agency or regulatory agency institutes a proceeding charging Thornton with violation of the Act, the Regulations, the rules or requirements of NFA or any other SRO, the terms of the Order or a disciplinary offense as defined in Section 1.63(a)(6) of the Regulations, Thornton shall notify Sponsor, and Thornton and Sponsor shall immediately notify the Commission and NFA in writing of such action;
- h. Thornton's registration shall be automatically suspended if, while registered with the Commission and subject to the Certification Statement, he is charged with a disciplinary offense as defined in Section 1.63(a)(6) of the Regulations, 17 C.F.R. § 1.63(a)(6), except that, as to offenses defined in Section 1.63(a)(6)(i)(C) of the Regulations, suspension shall occur if fines aggregating \$5,000 or more are imposed during the period of these restrictions rather than during a calendar year;
- i. If Thornton's registration is automatically suspended, the period of suspension shall terminate six months after the date of the suspension, unless the Commission files within that period a Notice of Intent to Suspend, Revoke or Restrict Registration pursuant to Section 3.60(a) of

the Regulations, 17 C.F.R. § 3.60(a), pursuant to Section 6c or 6(c) of the Act, 7 U.S.C. §§ 13a-1 or 9. If such Notice or Complaint is filed within the six-month period, his registration shall be suspended, until a final order is entered resolving all issues arising under such Notice or Complaint; and

- j. Within five days after Sponsor notifies Thornton in writing that he is terminating his sponsorship of that Respondent for any reason, Thornton and Sponsor will each file with the Director of the Commission's Division of Market Oversight, the NFA and the Membership Department of the exchange where Respondent has trading privileges, a written notice of such termination. Such written notice shall fully set out the reasons that caused the Sponsor to terminate the supervision.
7. Thornton acknowledges that failure to comply with the Order shall constitute a violation of the Order and may subject him to administrative or injunctive proceedings, pursuant to the Act; and
8. Thornton is directed to comply with his undertakings:
- a. neither Thornton nor any of his agents or employees shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order, or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision affects Thornton's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Thornton shall take all steps necessary to ensure that his agents or employees, if any, understand and comply with this undertaking.
 - b. to cooperate fully with the Commission's Division of Enforcement in this proceeding and any investigation, civil litigation and administrative proceeding related to this proceeding by, among other things: (i) responding promptly, completely, and truthfully to any inquiries or requests for information; (ii) providing authentication of documents; (iii) testifying completely and truthfully; and (iv) not asserting privileges under the Fifth Amendment of the United States Constitution.

The provisions of this Order shall be effective on this date.

By the Commission

A handwritten signature in cursive script, appearing to read "Catherine D. Dixon".

Catherine D. Dixon
Assistant Secretary of the Commission
Commodity Futures Trading Commission

Dated: May 22, 2003