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FILED
 U.S. DISTRICT COURT
 EASTERN DISTRICT OF TEXAS

JUN - 9 2003

DAVID J. MALANDRINO, CLERK
 BY _____
 DEPUTY _____

**IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF TEXAS
 TYLER DIVISION**

**COMMODITY FUTURES TRADING
 COMMISSION,**

Plaintiff,

v.

- 1. JOHN A. WHEELER,**
- 2. LONG POINT INVESTMENTS, LLC**
- and**
- 3. CDM TECHNOLOGIES, LLC**

Defendants,

and

- 4. WALTER S. COLE,**
- 5. MARC DONATELLI,**
- 6. MICHAEL FAGAN,**
- 7. ROBERT MENDOZA, and**
- 8. GARY WOOD**

Relief Defendants.

CIVIL ACTION NO 6:03 CV 42

U.S. District Judge Hannah

**CONSENT ORDER OF PERMANENT INJUNCTION
 AND OTHER ANCILLARY RELIEF AGAINST DEFENDANTS
 JOHN A.WHEELER, LONG POINT INVESTMENTS, LLC AND
CDM TECHNOLOGIES, LLC**

Plaintiff, Commodity Futures Trading Commission ("Commission"), has filed a Complaint against John A. Wheeler ("Wheeler"), Long Point Investments, LLC ("Long Point") and CDM Technologies, LLC ("CDM") (collectively "the Defendants"), seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended ("Act"),

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7 U.S.C. §§ 1 et seq. (2001), and Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2002).

I.

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint against Wheeler, Long Point and CDM without a trial on the merits or any further judicial proceedings, defendants Wheeler, Long Point and CDM:

1. Consent to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief Against Defendants Wheeler, Long Point and CDM ("Order").
2. Affirm that Wheeler, Long Point and CDM have 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. Acknowledge service of the Summons and Complaint.
4. Admit jurisdiction of this Court over them and the subject matter of this action pursuant to Sections 6c and 2(c)(2)(B)(i)-(ii) of the Act, 7 U.S.C. §§ 13a-1, 2(c)(2)(B)(i)-(ii) (2001).
5. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).
6. Waive:
 - a. all claims which they 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. (2002), relating to, or arising from, this action;

b. 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

c. all rights of appeal from this Order.

7. Wheeler, Long Point and CDM consent 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

It further appearing to this Court that there is no just reason to delay, the Court being fully advised in the premises and the Court finding there is just cause for entry of this Order that fully disposes of all issues in this matter, **THE PARTIES AGREE AND THE COURT FINDS THAT:**

1. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (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. This Court also has jurisdiction over the subject matter of this action and the parties hereto pursuant to Section 2(c)(2)(B)(i)-(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)-(ii) (2001), which provides that the CFTC

shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery so long as that contract is "offered to, or entered into with, a person that is not an eligible contract participant" unless the counterparty, or the person offering to be a counterparty, is a regulated entity, as defined therein.

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

3. The allegations of the complaint are well-pled and hereby taken as true. This Order is supported by the following facts.

The Parties

4. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2001), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2002).

5. Defendant John A. Wheeler, age 51, currently resides on a ranch located in Nacogdoches, Texas. John Wheeler formed and at all relevant times was the day-to-day decision maker for Long Point and CDM; he was the sole general manager of Long Point and secretary of CDM. Wheeler committed the acts alleged in this complaint individually and as an agent of Long Point and CDM. Wheeler has never been registered with the Commission in any capacity.

6. Defendant Long Point Investments, LLC is a limited liability company created on June 27, 2000, and domiciled in Nevis, West Indies. Long Point has never been registered with the Commission in any capacity.

7. CDM Technologies, LLC is a Nevada limited liability company created on June 18, 2000 and located in Reno, Nevada. CDM has never been registered with the Commission in any capacity.

Wheeler's Foreign Currency Trading Program

8. From at least December 2000, Wheeler, individually and as an agent of Long Point and CDM, solicited investment funds totaling at least \$35 million from at least 810 members of the public ("investors" or "lenders") for purposes of trading foreign currencies, among other investments.

9. Wheeler structured the transactions on paper as purported "loans" for "business purposes." The Defendants gave promissory notes to the purported lenders and the parties also executed a loan agreement. The typical loan agreement was for a one-year period and promised the lender interest at the rate of 6 or 8 per cent per month, compounded monthly on the outstanding balance of principal and accrued unpaid interest.

10. Wheeler solicited funds by telling prospective investors that their funds would be pooled together and that repayment of their so-called loans was tied to the success of his investments in foreign currencies, among other investments. Wheeler did not disclose to investors that he would use the funds for personal expenses. Rather, Wheeler represented that his compensation would only come from profits derived from the investments. Because the

Defendants solicited customers for investments and transactions that were indeed futures, the Commission has jurisdiction.

The Role of the PSA Agents

11. Wheeler recruited Relief Defendants Walter S. Cole ("Cole"), Marc Donatelli ("Donatelli"), Michael L. Fagan ("Fagan"), Robert Mendoza ("Mendoza") and Gary S. Wood ("Wood"), among others, to solicit investors for defendants and gave them the title profit sharing account ("PSA") agents. The PSA agents executed no written contract with Wheeler. Instead, they operated on an informal basis referring investors to Wheeler. Wheeler paid the PSA agents trailing monthly commissions equal to 2 per cent of the compounded value of the purported loans they referred. Thus, on an annual basis, defendants paid the PSA agents trailing commissions, which could total in excess of 30 per cent of each investor's initial investment. Other than referring prospective investors to Wheeler, the PSA agents performed no other services for defendants and did not work in defendants' office. In the aggregate, Wheeler paid over \$1.8 million in trailing commissions to PSA agents.

Wheeler Made Material Misrepresentations and Omissions to Investors

12. Wheeler's primary method of soliciting investors was through referrals received from PSA agents and by hosting free dinner meetings and barbeques. Wheeler held the dinner meetings at hotels in California, Nevada and Texas and he hosted the barbeques at his ranch in Nacogdoches, Texas. Attendees at these meetings ranged from 50 to over 200 people.

13. In soliciting investors, Wheeler falsely represented that he was able to repay investors their principal and interest because of his "guaranteed" monthly profit of 25 per cent

earned through trading foreign currencies. To allay investor fears, Wheeler downplayed the risks of foreign currency trading by stating that he could limit losses.

Long Point's Foreign Currency Futures Trading Account

14. Prior to December 2000 and continuing through March 2001, Wheeler funded an account in the name of Long Point with an entity named Giovanni Fleury Investments ("Fleury"). During the period November 2000 through March 2001, Wheeler funded this account with investor funds totaling \$860,000. In less than five months, by the end of March 2001, Long Point lost its entire investment with Fleury.

15. The foreign currency transactions entered into between Long Point and Fleury were futures contracts.

16. Fleury is not a regulated entity and is not a proper counterparty for retail foreign currency transactions. Nor was Long Point, CDM or Wheeler an eligible contract participant. The Commission, therefore, has jurisdiction over the foreign currency futures transactions between Long Point and Fleury.

17. In soliciting investors after March 2001, Wheeler never told prospective investors about Long Point's \$860,000 loss incurred through foreign currency futures trading with Fleury, nor did Wheeler tell investors about any losses his investments had incurred.

Wheeler Misappropriated Investor Funds

18. During the relevant period, Wheeler accepted at least \$35 million from at least 810 investors. He misappropriated at least \$8.4 million of the investor funds and may have misappropriated as much as \$18 million. Of the funds he misappropriated, Wheeler spent the following: a) at least \$1.9 million on gambling debts and casino vacations; b) at least \$889,000

on the purchase of jewelry, including two ten carat diamond rings and two Rolex watches; c) at least \$620,000 on the purchase or lease of automobiles and automobile expenses, including two Mercedes Benz automobiles; d) at least \$1.2 million on the remodeling of his residence located on the ranch in Nacogdoches, Texas; e) at least \$379,000 on home furnishings and art objects; and f) at least \$1.5 million on personal expenses, such as utilities, credit card bills, medical and dental expenses.

19. Wheeler also misappropriated at least \$1.8 million in investor funds to pay interest payments and PSA commissions to PSA agents.

Wheeler Issued Fraudulent Monthly Investor Statements

20. Wheeler, or individuals under his direction, sent monthly account statements to each investor who gave funds to the defendants. The statements included calculations of the principal amount owed to the investor and the purported compounded monthly interest owed to date.

21. These monthly account statements were false because Wheeler's investments never earned the profits necessary to repay the principal and the compounded monthly rates of interest shown on the account statements. Not only did the account statements falsely represent that investor funds were growing, but they also failed to disclose the large sums of money misappropriated by Wheeler or lost as a result of his investments.

22. In reality, Wheeler was able to issue monthly interest checks to some investors and commission checks to PSA agents solely because he was repaying "earlier" investors with "new" investor funds, in a manner akin to a Ponzi scheme.

23. Under the terms of Wheeler's, Long Point's and CDM's purported loan agreements, investors were required to give written notice 60 days prior to their loan's maturity date in order to receive a return of their funds. Many investors have asked for a return of their money, but have not been repaid by Wheeler, Long Point or CDM.

Violations of the Commodity Exchange Act and Regulations

24. During the relevant time, Wheeler violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2001) and Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2002), in that he cheated or defrauded or attempted to cheat or defraud investors or prospective investors in the investment program and willfully deceived or attempted to deceive investors or prospective investors by, among other things: misappropriating funds received from investors and using the funds for personal expenses or to pay earlier investors, in a manner akin to a Ponzi scheme; misrepresenting his profits trading foreign currency futures contracts to investors and prospective investors; and downplaying the risks of foreign currency futures trading by stating that he could limit losses. Wheeler engaged in this conduct in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

25. To the extent that Wheeler engaged in such conduct as an agent of Long Point and CDM, those entities, as Wheeler's principals, also are liable for his violation of Section

4b(a)(2)(i) and (iii) of the Act and Regulation 1.1(b)(1) and (3), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

26. During the relevant time, Wheeler violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2001) and Regulation 1.1(b)(2), 17 C.F.R. § 1.1(b)(2) (2002), in that he, or persons working under his direction, willfully made or caused to be made false reports or statements thereof by preparing and issuing false account statements to investors. Wheeler, or persons working under his direction, engaged in this conduct in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

27. To the extent that Wheeler engaged in such conduct as an agent of Long Point and CDM, those entities, as Wheeler's principal also are liable for his violation of Section 4b(a)(ii) of the Act and Regulation 1.1(b)(2), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

Need for Permanent Injunctive and Other Ancillary Equitable Relief

28. The plaintiff has made a showing that the Defendants have engaged, are engaging, and are about to engage in acts and practices which violate Sections 4b(a)(2)(i), (ii), and (iii) of the Act, and Regulations 1.1(b)(1), (2), and (3) promulgated thereunder. The totality of the circumstances establish that, unless restrained and enjoined by this Court, there is a reasonable

likelihood that the defendants 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 Regulations. The imposition of other ancillary equitable relief is required to comply with the basic objectives of the Act.

III.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment shall be and hereby is entered in favor of Plaintiff Commission and against defendants John A. Wheeler, Long Point and CDM as follows:

1. Defendants are permanently enjoined from directly or indirectly:
 - A. Cheating or defrauding or attempting to cheat or defraud other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(i) of the Act, 7 U.S.C. § 6b(a)(2)(i) and Regulation 1.1(b)(1), 17 C.F.R. § 1.1(b)(1);
 - B. Willfully making or causing to be made to another person any false report or statement in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) and Regulation 1.1(b)(2), 17 C.F.R. § 1.1(b)(2); and

- C. Willfully deceiving or attempting to deceive other persons by any means whatsoever in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(iii) of the Act, 7 U.S.C. § 6b(a)(2)(iii) and Regulation 1.1(b)(3), 17 C.F.R. §1.1(b)(3).

2. Defendants are hereby permanently enjoined from directly or indirectly:

- A. Trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);
- B. Engaging in, controlling or directing the trading for any commodity futures or options on commodity futures or foreign currency, 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 or options.

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

facsimile, e-mail or otherwise insofar as he or she is acting in active concert or participation with Defendants.

4. To date, Wheeler has cooperated with the Division of Enforcement in its ongoing investigation. Wheeler shall continue to comply with his undertaking to cooperate fully with the Division of Enforcement in this proceeding and in any investigation, civil litigation and administrative proceeding related to this proceeding by, among other things: 1) responding promptly, completely, and truthfully to any inquiries or requests for information; 2) authenticating documents; 3) testifying completely and truthfully; and 4) not asserting privileges under the Fifth Amendment of the United States Constitution.

IV.

ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

1. RESTITUTION: Wheeler, Long and CDM are jointly and severally liable for restitution. Within thirty days of the date of this Order, the Defendants shall make restitution in the total amount of \$23,157,504.82 ("Restitution Amount") to make whole each and every investor whose funds were received by Wheeler, Long Point or CDM and who was harmed by any of the Defendants' wrongful acts. The Defendants shall pay such restitution to the Clerk of this Court, who is holding funds received from the Defendants in a federally insured interest bearing account, pursuant to an Order for Preliminary Injunction entered by this Court on September 30, 2002 in In Re Certain Assets of John Wheeler, CDM Technologies, Long Point Investments, Case No. 9:02 CV-191 (Eastern District of Texas, Lufkin Division) or to any person ordered by this Court to collect restitution in the related criminal case, United States of

America v. John Allen Wheeler, Case No. 9:02-CR-34 (Eastern District of Texas, Lufkin Division) ("the criminal case"). The Clerk of this Court or any other person ordered by this Court to distribute restitution in the related criminal case, shall pay restitution on a pro rata basis to all of the Defendants' investors. The Defendants' obligation to make restitution under this paragraph shall be reduced by any pro rata amounts paid to investors, pursuant to any restitution ordered in the criminal case.

2. CIVIL MONETARY PENALTY: After the Defendants have paid the full Restitution Amount arising out of the Commission's litigation and any restitution ordered by this Court in United States of America v. John Allen Wheeler, Case No. 9:02-CR-34 (Eastern District of Texas, Lufkin Division), the Defendants shall pay to the Commission a civil monetary penalty of \$8,400,000.00 ("CMP Payment"). The Defendants shall make such CMP Payment by electronic funds transfer, or by 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 Derrnese Posey, or her successor, 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 the Defendants and the name and docket number of the proceeding.

V.

MISCELLANEOUS PROVISIONS

A. ENTIRE AGREEMENT, AMENDMENTS and SEVERABILITY. This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing,

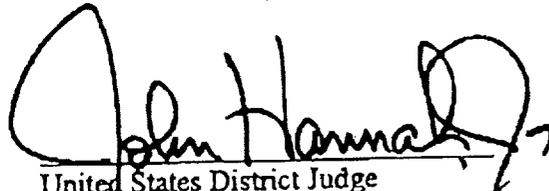
(2) signed by all parties, and (3) approved by order of the Court. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.

B. SUCCESSORS AND ASSIGNS. This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries and administrators.

C. JURISDICTION. This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

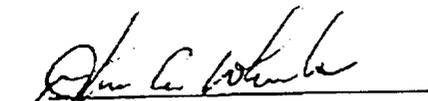
There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Equitable Relief Against Wheeler, Long Point and CDM.

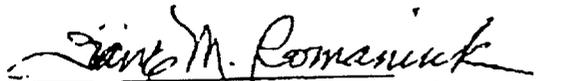
IT IS SO ORDERED.

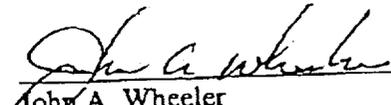

United States District Judge

DATED: 9 June, 2003

CONSENTED TO AND APPROVED BY:


John A. Wheeler
Dated: 4-20-03


Diane M. Romaniuk, Senior Trial Attorney
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(Pro hac vice)



John A. Wheeler
On behalf of Long Point Investments, LLC
and CDM Technologies, LLC
Dated: 4-20-03



Robert S. Bridges, Attorney for Defendants
Morton, Bridges & Tillman
1501 Handley Drive
Fort Worth, Texas 76112
Dated: 4/21/03

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Consent Order of Permanent Injunction and Other Ancillary Relief Against Defendants John A. Wheeler, Long Point Investments, LLC and CDM Technologies, LLC was served by U.S. Mail this 27th day of May 2003 upon the following:

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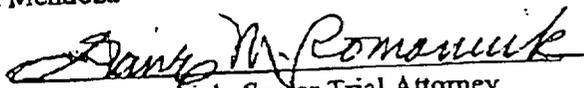
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