

UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

RECEIVED
C.F.T.C.
2004 JUL 13 A 10:04
OFFICE OF PROCEEDINGS
PROCEEDINGS CLERK

In the Matter of :
: CFTC Docket No. 04-19
:
HAROLD LUDWIG :
: ORDER INSTITUTING PROCEEDINGS
: PURSUANT TO SECTIONS 6(c), 6(d) and
: 8a(2) OF THE COMMODITY EXCHANGE
: ACT, AS AMENDED, MAKING
: FINDINGS AND IMPOSING REMEDIAL
: SANCTIONS
:

Respondent :

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Harold Ludwig (“Ludwig”) has violated Sections 4b(a)(2)(i) and (iii) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) and 6o(1). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether Ludwig has engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of this administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Without admitting or denying the findings herein, Respondent acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c), 6(d) and 8a(2) of the Commodity Exchange Act, as amended, Making Findings and Imposing Remedial Sanctions (“Order”). Respondent consents to the use of the findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

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

III.

The Commission finds that:

A. SUMMARY

Respondent engaged in an illegal trade allocation scheme, pursuant to which he allocated trades to his personal trading account to the detriment of Princeton accounts over which he also had trading authority.² These Princeton accounts were set up at Republic New York Securities Corporation ("RNYSC") by Martin Armstrong who, along with his two companies, Princeton Global Management, Ltd. and Princeton Economics International Ltd and Maria Toczyłowski, a vice president of RNYSC's futures division, and William Rogers, president of the futures division of RNYSC, carried out the fraudulent scheme.

Ludwig, who resides in Newtown, Pennsylvania, is, along with Martin Armstrong, a co-director of Princeton Global Management, Ltd., incorporated in the Turks and Caicos, British West Indies. During the relevant time period, Ludwig had trading authority over all of the Princeton accounts and actively traded in the PGM K-5 and Princeton Aggressive Fund accounts. In 1997, Ludwig opened a personal trading account in the name of Blue Horizon Trading, Ltd. (the "Blue Horizon" account), which is a Turks and Caicos Island unincorporated association owned and controlled by Ludwig and his wife. With the help of Rogers and Toczyłowski, Ludwig allocated winning trades to the Blue Horizon account to the detriment of the Princeton accounts. Ludwig has been registered with the Commission as a Commodity Trading Advisor ("CTA") from July 1987 to the present. He has also been registered as an Associated Person from November 1986 to the present.

B. FACTS

a. *Ludwig establishes his personal trading account*

Ludwig was Armstrong's co-director, and was responsible for managing a few Princeton accounts, including the Princeton International Aggressive Fund (Princeton Aggressive Fund) account, and the Princeton Global Management K-5 (PGM K-5) account.³ Ludwig allocated winning trades to an account owned by Ludwig and his wife, and the losing trades were allocated into Princeton accounts over which Ludwig had trading authority. In particular, Ludwig received a bonus based on a percentage of the

² Today, the Commission issued a separate order finding that William Rogers and Maria Toczyłowski aided and abetted the allocation scheme described herein. Neither Rogers nor Toczyłowski admitted nor denied the findings of fact contained in that Order by consenting to its entry. See Order Instituting Proceedings Pursuant to Section 6(c) and 6(d) of the Commodity Exchange Act, As Amended, Making Findings and Imposing Remedial Sanctions.

³ These accounts were funded with monies obtained by Armstrong from Japanese investors, but due to Armstrong's constant transfer of funds and the commingling of investors' monies, it is not possible to determine which investor's funds were in which account.

profits he made in these accounts.⁴ In 1997, Ludwig used the bonus he earned from his apparently successful trading to open a trading account designated as the Blue Horizon account. This was Ludwig's personal trading account, established as a Turks and Caicos Island unincorporated association in the name of Blue Horizon Trading, Ltd., which was owned and controlled by Ludwig and his wife.⁵ Ludwig continued to manage the PGM K-5 and Princeton Aggressive Fund accounts while trading for the Blue Horizon account. Now, however, Ludwig began to allocate winning trades to the Blue Horizon account. Ludwig's trade allocations functioned to siphon away funds from the Japanese investors for Ludwig's own benefit.

b. *Trading results confirm the allocation scheme*

An analysis of the trading results for day trades for the S & P 500 futures contracts in the accounts managed by Ludwig show widely disparate returns that favor his Blue Horizon account. According to account documents, between June 1997 and August 1999, the Blue Horizon account day traded S&P 500 futures contracts on 98 days. Blue Horizon traded profitably on 83 of the 98 days, which translates into an 85% profitability rate and the realization of some \$4.5 million in profits. In contrast, the other two accounts that Ludwig had control over were profitable only approximately 40% of the time. The Princeton Aggressive Fund account day traded S&P 500 futures contracts on 275 days between June 1997 and August 1999, and the trades were profitable on 113 of those days, providing a 40% profitability rate. The Princeton Aggressive Fund account lost approximately \$550,000 during that period. The PGM K-5 account day traded S&P 500 futures on 102 days between June 1997 and August 1999 and the trades were profitable on 41 days, providing a 39% profitability rate. While the PGM K-5 account profited overall by approximately \$290,000 in trades involving the S&P 500 futures contracts, a substantial portion of this amount resulted from eight trades that were held overnight. When these eight trades are not considered in the calculation, the PGM K-5 account lost approximately \$363,000.

Trading records also reveal that on 51 days during the period, the Blue Horizon account received profitable day trades while the PGM K-5 and Princeton Aggressive Fund accounts did not receive any trades. On most days when there were no profitable day trades in any of the accounts at issue, the Blue Horizon account did not trade but the PGM K-5 and Princeton Aggressive Fund accounts had losing day trades.

c. *Floor order tickets*

⁴ Ludwig received a larger bonus for profits from the Princeton Aggressive Fund account. Although the Commission's claim in this instance only addresses Ludwig's trade allocation to his personal account beginning in 1997, prior to that time Ludwig allocated trades to enhance his performance in the Princeton Aggressive Fund account.

⁵ There were, in fact, two Blue Horizon accounts opened by Ludwig at Republic New York Securities Corporation ("RNYSC"). The first account (no. 45143) was opened in February 1997 and traded for only a few days in June and July 1997. At the end of July, the cash equity was transferred to another account in the name of Blue Horizon, no. 45153.

A review of the floor order tickets supports the trade allocation scheme. A random sample of original floor order tickets shows that account numbers for the Blue Horizon, PGM K-5 and Princeton Aggressive Fund accounts were added to the order tickets for day trades of S&P 500 futures contracts after the trades were executed. Many of the tickets show that the order instructions, i.e. the quantity, contract month, commodity and price instructions were in the same handwriting and writing instrument. Most of these orders indicated that the trades were placed for "Hal," which was Ludwig's nickname. Account numbers on these tickets were written in different colored ink and/or in different handwriting than the rest of the order, indicating that pertinent information was added at a different time and/or by a different person, most likely after the execution of the order. Other tickets with trades that were never executed have no account number at all, and only identify the customer as "Hal."

d. *Telephone conversations confirm the allocation scheme*

In recorded telephone conversations Ludwig and another Armstrong employee discuss (1) whether specific trades could be allocated to the Blue Horizon account after having been executed, and (2) the procedure that should be followed when Ludwig placed bulk trade orders that would allow trades to be allocated after they were executed.

C. VIOLATIONS OF THE ACT AND COMMISSION REGULATIONS

Ludwig Engaged in Allocation Fraud

Ludwig violated Sections 4b(a)(2)(i) and (iii) and 4o(1) of the Act for his conduct in fraudulently allocating trades among the Blue Horizon, PGM K-5 and Princeton Aggressive Fund accounts. Ludwig allocated profitable trades to the Blue Horizon account that he owned while allocating unprofitable trades to the PGM K-5 and Princeton Aggressive Fund accounts, which he managed but did not own. Such conduct constitutes an unlawful trade allocation scheme and violates sections 4b(a)(2)(i) and (iii) and 4o(1) of the Commodity Exchange Act (the Act) 7 U.S.C. §6b(a)(2)(i) and (iii) and 6o(1) (2002).

a. *Violations of §4b(a)(2)(i) and (iii)*

Section 4b(a)(2)(i) and (iii) of the act is violated when a party allocates trades in a way that consistently disadvantages a particular customer. GNP Commodities [1990-92 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,360, 39,214 (CFTC Aug. 11, 1992) (citing In re Lincolnwood [1982-84 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,986 (CFTC Jan. 31, 1984)). The proper question is whether the defendant acted with intent by "knowingly employing an allocation scheme that was neither predetermined nor fair to all his customers." In re Nikkhah, [Current Transfer Binder] Comm. Fut. L. Rep. ¶28,129, 49,887 (CFTC May 12, 2000).

The mere failure to place account numbers on order tickets is not, in and of itself, a fraudulent act. GNP Commodities, at 39,214. But the failure to place account numbers

on order tickets does provide the opportunity to direct profitable fills to favored accounts. Id. Therefore, the significance of the fact that trades were placed without account numbers "cannot be overstated." Id. at n. 8.

Where specific account identification is withheld from the order ticket at the time the order is communicated to the trading floor, the Commission has found that this fact "raise[s] serious questions about the allocation process" In re Nikkhah, Comm. Fut. L. Rep. ¶28,129, 49,885 (CFTC May 12, 2000). This is because it is consistent with the intent to eliminate the type of audit trail information that would impede post-execution allocation. Id. Additionally, the Commission has recognized that day trades are particularly susceptible to manipulation in furtherance of the kind of allocation scheme described above because day trades also reduce the evidence of ownership of a particular trade to a bare minimum. In re Lincolnwood, [1982-84 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,986, 28,226 (CFTC Jan. 31, 1984).

The wide disparity in profits among accounts that were commonly controlled, coupled with the controlling person's ability to allocate trades, is also highly indicative of an unlawful allocation scheme. See Lincolnwood, at ¶28,244-45 (comparing average profit per trade and account balances). Similarly, where account numbers on order tickets are written with different writing instruments or in different handwriting, and where a name appears in place of account numbers, such evidence indicates an unlawful allocation scheme. GNP Commodities, at 39,209.

Ludwig's allocation scheme violates Section 4b(a)(2)(i) and (iii) of the Act because he consistently disadvantaged the PGM K-5 and Princeton Aggressive Fund accounts to the benefit of the Blue Horizon account. There are wide disparities in profits achieved by the Blue Horizon account in day trades of S&P 500 futures, as opposed to the profits achieved by the PGM K-5 and Princeton Aggressive Fund accounts. Further, the original trade tickets show that the fill orders and the account numbers were written with different writing instruments from the orders themselves.

b. *Violations of § 4o(1)*

In order to establish a violation of Section 4o(1) of the Act the Division must prove that the respondent was (i) a CTA and (ii) either (a) employed any device, scheme, or artifice to defraud any client or prospective client, or (b) engaged in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. Section 4o(1) of the Act which also requires the use of the mails or any means or instrumentality of interstate commerce, prohibits both registered and unregistered CTAs from defrauding their clients.

Under Section 1a(5) of the Act, in order to establish that someone is acting as a CTA, it must be shown that the person (i) advised another about the value or advisability of trading in futures contracts, (ii) "either directly or through publications, writings or electronic media," and (iii) for compensation or profit. Section 1a(5) of the Act, 7 U.S.C. § 1a(5). Ludwig is a registered CTA and AP and gave commodity futures trading advice for

compensation or profit to the corporations that owned the PGM K-5 and Princeton Aggressive Fund accounts.

By engaging in a fraudulent allocation scheme, Ludwig violated Section 4o(1) of the Act just as he violated Sections 4b(a)(i) and (iii) of the Act. In re R&W Technical Services, Comm. Fut. L. Rep. (CCH) ¶27,582 (CFTC March 16, 1999) ("Because we have found that [respondents] violated Section 4b(a) of the Act and that they acted as CTAs, further analysis is not needed to conclude that [respondents] also violated Section 4o(1) of the Act"), *aff'd in relevant part*, R&W Technical Services v. CFTC, 205 F.3d 165 (5th Cir. 2000).

IV.

OFFER OF SETTLEMENT

The Respondent has submitted an Offer in which he, without admitting or denying the findings herein: (1) acknowledges service of the Order (2) admits the jurisdiction of the Commission with respect to all matters set forth herein; (3) waives the service and filing of a complaint and notice of hearing, 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 that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), 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. (2003), 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 Order and findings in the Order consented to in their Offers; and (5) consents to the Commission's issuance of this Order, which makes findings as set forth below and: (a) orders the Respondent to cease and desist from violating the provisions of the Act and Regulations that he has been found to have violated; (b) directs that Respondent be permanently prohibited from trading on or subject to the rules of any contract market; (c) revokes certain registrations; (d) imposes civil monetary penalties; (e) assesses restitution; and (f) orders the Respondent to comply with certain undertakings set forth below.

V.

FINDING OF VIOLATIONS

Solely on the basis of Respondent's consent, as evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Ludwig engaged in trade allocation fraud in violation of §§ 4b(a)(2)(i) and (iii) and 4o(1) of the Act.

VI.

ORDER

Accordingly, **IT IS HEREBY ORDERED THAT:**

- A. Respondent shall cease and desist from violating §§ 4b(a)(2)(i) and (iii) and 4c (1) of the Act;
- B. Respondent is permanently prohibited from trading on or subject to the rules of any registered entity, and all registered entities are directed to refuse Respondent trading privileges, beginning on the third Monday after the date of the Order;
- C. Respondent's registration as a commodity trading advisor and an associated person is revoked;
- D. Respondent shall pay restitution in the amount of \$4,900,000 ("the Restitution Obligation"), pursuant to a ten-year payment plan. Ludwig shall pay an initial restitution payment of \$3,000,000, and the remainder to be paid pursuant to a payment plan, as provided below.

- i. Within five (5) days from the date of this order, Ludwig shall make an initial restitution payment totaling \$3,000,000 to an account designated by a monitor designated by the Commission (the "Monitor"), and provide proof of payment to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, and to Stephen J. Obie, Regional Counsel, Commodity Futures Trading Commission, Division of Enforcement, Eastern Regional Office, 140 Broadway, New York, NY 10005.

Provided, however, that if Ludwig can verify to the Monitor's satisfaction that he has paid an initial restitution payment pursuant to the Order from the United States District Court for the Southern District of New York in *U.S. v. Harold Ludwig* ("SDNY Order"), his initial restitution payment shall be the difference between \$3,000,000 and the amount he paid in restitution pursuant to the SDNY Order. Should the amount of initial restitution paid pursuant to the SDNY Order equal or exceed \$3,000,000, no initial restitution payment shall be owed;

- E. Respondent shall make annual restitution payments, as calculated under the payment plan described below, on or before July 31 of each calendar year (the "Annual Restitution Payment"), starting in calendar year 2004 and continuing for ten years, or until the Respondent's Restitution Obligation is paid in full, or until satisfaction or other discharge of his Restitution Obligation pursuant to the SDNY Order, whichever occurs first. The ten-year restitution period shall run from the date of entry of this Order through December 31, 2013. Restitution payments for

a calendar year shall take place by July 31 of the following year. Therefore, the final restitution payment in the year 2013 will occur on or before July 31, 2014. Each Annual Restitution Payment shall be made 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 Dennese Posey, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies the respondent and the name and docket number of the proceeding. Copies of the cover letter and the form of payment shall be simultaneously transmitted to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, and to Stephen J. Obie, Regional Counsel, Commodity Futures Trading Commission, Division of Enforcement, Eastern Regional Office, 140 Broadway, New York, NY 10005. Respondent shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor;

Provided, however, that if Respondent can verify to the Monitor's satisfaction that during a particular calendar year he has paid restitution pursuant to that Respondent's SDNY Order, his Annual Restitution Payment shall be the difference between the amount of the Annual Restitution Payment calculated pursuant to the income-based schedule set forth below and the amount he or she paid in restitution pursuant to the Respondent's SDNY Order for the same calendar year. Should the amount of restitution paid by the Respondent pursuant to the Respondent's SDNY Order equal or exceed the amount of the Annual Restitution Payment owed pursuant to the income-based schedule, an Annual Restitution Payment shall not be owed that calendar year by the Respondent;

F. Respondent shall pay a civil monetary penalty ("CMP") in an amount of \$2,000,000 (the "CMP Obligation"), pursuant to a payment plan, as provided below, commencing upon the satisfaction or other discharge of Respondent's Restitution Obligation. Therefore Respondent's CMP Obligation will commence upon satisfaction or other discharge of his restitution obligation pursuant to the SDNY Order.

G. Respondent shall make his Annual Civil Monetary Penalty Payment ("Annual CMP Payment") as calculated pursuant to the terms of this Order by the Monitor 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. The ten-year payment plan shall run from the date of entry of this Order through December 31, 2013. 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 2013 will occur on or before July 31, 2014. Respondent shall make his Annual 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 Dennese Posey, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies the Respondent and the name and docket number of the proceeding. Copies of the cover letter and the form of payment shall be simultaneously transmitted to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, and to Stephen J. Obie, Regional Counsel, Commodity Futures Trading Commission, Division of Enforcement, Eastern Regional Office, 140 Broadway, New York, NY 10005. The Respondent shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor;

H. Respondent's Annual Restitution Payments and Annual CMP Payments (the "Annual Payments"), to be made pursuant to subparagraphs E and G above, shall consist of a portion of (1) the adjusted gross income (as defined by the Internal Revenue Code) earned or received by the Respondent during the course of the preceding calendar year, plus (2) all other net cash receipts, net cash entitlements or net proceeds of non-cash assets (collectively "Net Cash Receipts") received by the Respondent during the course of the preceding calendar year. The Annual Payments will be determined as follows:

Where Adjusted Gross Income Plus Net Cash Receipts Total:	Percent of Total to be Paid by Respondent is:
Up to \$25, 000	0%
\$25,001 - \$50,000	20% of the amount above \$25,000
\$50,001 - \$100,000	20% of the amount between \$25,000 and \$50,000, plus 30% of the amount above \$50,000
Above \$100,000	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

I. In the event that Respondent does not make one or more Annual Payments as directed above, the Commission may bring a proceeding or an action to enforce compliance with this Order and at its option may seek payment of any one or more unpaid Annual Payments or immediate payment of the entire amount of the Restitution Obligation and CMP Obligation required above. The only issue the Respondent may raise in defense of such enforcement action is whether he has made the Annual Payments as directed by the Monitor. Any action or proceeding brought by the Commission compelling payment of the Annual Payments, due

and owing as set forth above, or any portion thereof, or any acceptance by the Commission of partial payment of the Annual Payments made by Respondent, shall not be deemed a waiver of Respondent's obligation to make further payments pursuant to the payment plans, or a waiver of the Commission's right to seek to compel payments of the remaining balance of the Restitution and Civil Monetary Obligation assessed against the Respondent;

J. The National Futures Association is hereby designated as the Monitor for a period of eleven years commencing from the date of this order. Notice to the Monitor shall be made to Daniel A. Driscoll, Esq., Executive Vice President and Chief Compliance Officer, or his successor, at the following address; National Futures Association, 200 West Madison Street, Chicago, IL 60606. For ten years, based on the information contained in Respondent's sworn financial statements, Respondent's tax returns and other financial statements and records provided to the Monitor, the Monitor shall calculate the total amount of Restitution Obligation or Civil Monetary Obligation to be paid by Respondent for that year. On or before June 30 of each year and starting in the calendar year 2004 and concluding in the calendar year 2013, the Monitor shall send written notice to Respondent with instructions to pay by no later than July 31 of that year the amount of the Restitution Obligation or Civil Monetary Obligation pursuant to the payment instructions provided above.

K. In the event that Respondent does not make a payment as directed in this Order, the Commission may bring a proceeding or an action to enforce compliance with the Order and at its option may seek payment of the unpaid CMP Obligation or Restitution Payment(s) or immediate payment of the entire amount of the Restitution and Civil Monetary Obligation owed by the Respondent. The only issue the Respondent may raise in defense of such enforcement action is whether the Respondent has made the Annual Payment(s) as directed by the Monitor. Any action or proceeding brought by the Commission compelling payment of the Annual Payments, or any acceptance by the Commission of the partial payment of the Annual Payments made by a Respondent, shall not be deemed a waiver of the Respondent's obligation to make further payments pursuant to the payment plans, or a waiver of the Commission's right to seek to compel payments of the remaining balance of the Restitution Obligation and CMP Obligation assessed against the Respondent.

L. The Commission notes that an order requiring immediate full payment of the Restitution Obligation and the CMP Obligation against Respondent would be appropriate in this case, but does not impose it based upon Respondent's financial conditions. Respondent has submitted sworn financial affidavits, and has provided other evidence regarding his financial condition and has asserted his current financial inability to pay the Restitution Obligation and the Civil Monetary Penalty, other than as provided in the payment plans set forth above. If at any time following entry of this Order, the Division of Enforcement ("Division") of the Commission obtains information indicating that Respondent's representations concerning his financial condition was 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 this Order, petition the Commission to: (1) reopen this matter to consider whether the Respondent provided accurate and complete financial information at the time such representations were made; (2) require immediate payment of the full amount of the Restitution Obligation and CMP Obligation required above; and (3) seek any additional remedies that the Commission would be authorized to impose in this proceeding if the Respondent's Offer had not been accepted. No other issues shall be considered in connection with this petition other than whether the financial information provided by the Respondent was fraudulent, misleading, inaccurate or incomplete in any material respect, and whether any additional remedies should be imposed. The Respondent may not, by way of defense to any such petition concerning the financial information provided, contest the validity of or the findings in this Order, assert that payment of the Restitution Obligation and CMP Obligation should not be ordered, or contest the amount of the Restitution Obligation and CMP Obligation to be paid. If in such proceeding the Division petitions for and the Commission orders immediate payment of less than the full amount of the Restitution Obligation or CMP Obligation, such petition shall not be deemed a waiver of the Respondent's obligation to pay the remaining balance of the Restitution Obligation and CMP Obligation assessed against him pursuant to the payment plan;

M. Respondent shall comply with the following undertakings:

1. Reporting/Disclosure Requirements to be Reviewed by Monitor
Respondent shall provide sworn financial statements, CFTC Form 12, to the Monitor on June 30 and December 31 of each calendar year, starting on June 30, 2004, and continuing through and including June 30, 2014. The financial statement shall provide:
 - i. a true and complete itemization of all of Respondent's rights, title and interest in (or claimed in) any asset, wherever, 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 Respondent over the preceding six-month interval; and
 - iii. a detailed description of the source and amount of all of Respondent's income or earnings, however generated.
2. Respondent shall provide the Monitor with complete copies of his signed, individual or joint 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, on or before June 30 of each calendar year or as soon thereafter as the same are

filed. In the event that Respondent moves his residence at any time, the Respondent shall provide written notice of the new address to the Monitor and the Commission within ten (10) calendar days thereof. If, during the same time period, Respondent elects to file a joint tax return, the Respondent shall provide all documents called for by this paragraph, 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 the Respondent's income, that the "Adjusted Gross Income" section truly, accurately and completely identifies all deductions that the Respondent has a right to claim, and that the deductions contained in the "Adjusted Gross Income" section are equal to or less than 50% of the deductions that the Respondent is entitled to claim on the joint tax return; provided however that the Respondent may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely the Respondent's. 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;

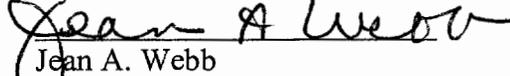
3. Respondent shall cooperate fully with the Commission and its staff in this proceeding and in any related inquiry, investigation or legal proceeding by, among other things:
 - i. responding promptly, completely, and truthfully to any inquiries or requests for information;
 - ii. authenticating documents;
 - iii. testifying completely and truthfully; and
 - iv. not asserting privileges under the Fifth Amendment of the United States Constitution.

4. Respondent shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all aspects of his Annual Payments. Respondent shall cooperate fully with the Monitor and the Commission in explaining his financial income and earnings, status of assets, financial statements, asset transfers, tax returns, and shall provide any information as may be required by the Commission. Respondent shall provide such additional information and documents with respect thereto as may be requested by the Monitor or the Commission. Furthermore, Respondent shall cooperate fully with and assist the Commission, the Office of the United States Attorney, the Securities and Exchange Commission, and the President's Corporate Fraud Task Force in the exercise of their authorities.

5. Respondent shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any member of Respondent's family or any other persons for the purpose of concealing such funds or property from the Monitor or the Commission.
6. Respondent shall never apply for registration or seek exemption from registration with the Commission in any capacity; and shall never engage in any activity requiring registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9), or act as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration, unless such exemption is pursuant to Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9); and
7. Respondent shall not, beginning on the date of the Order:
 - i. 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; and
 - ii. directly or indirectly act in any supervisory capacity over anyone registered or required to be registered with the Commission.
8. Respondent agrees that neither Respondent nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegations, 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 Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent will undertake all steps necessary to assure that all agents and employees under his authority or control understand and comply with this agreement.

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

By the Commission:



Jean A. Webb

Secretary to the Commission

Commodity Futures Trading Commission

Dated: July 13, 2004 .