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In The United States District Court
For The District Of Utah, Central Division

Commodity Futures Trading Commission,

Plaintiff,

vs.

Stanley E. Varner,

Defendant.

Civil No: 2:02-CV-1373

Judge Ted Stewart

Consent Order of Permanent
Injunction and Other Equitable
Relief and Civil Monetary
Penalty Against Stanley E.
Varner

On December 11, 2002, plaintiff Commodity Futures Trading Commission ("Commission") filed a complaint against defendant Stanley E. Varner ("Defendant") seeking injunctive and other equitable relief, and a civil monetary penalty, for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 et seq. (2001), and regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2002). The Court entered a Consent Order of Preliminary Injunction on that same day.

I. Consents And Agreements

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

1. Consents to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief and Civil Monetary Penalty Against Stanley E. Varner ("Order").
2. Affirms that he has agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.
3. Acknowledges service of the Summons and Complaint.
4. Admits jurisdiction of this Court over him, admits the subject matter of this action, and admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.
5. Waives:
 - (a) the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, except as set forth below;
 - (b) all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and Part 148 of the Regulations, 17 C.F.R. § 148.1, et seq. (2003), relating to, or arising from, this action;
 - (c) any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and
 - (d) all rights of appeal from this Order.
6. Defendant neither admits nor denies any of the allegations of the Complaint except as to jurisdiction and venue, which he admits. Defendant does not consent to the use of any provision of this Order, or conclusions of law to which he has consented in this Order, as the

basis for any other proceeding brought by the Commission other than a proceeding brought to enforce the terms of the Order. The parties do not consent to the use of the Order by any other person or entity in this or any other proceeding and do not intend that it be so used. Defendant agrees, and the parties to this Order intend, that the allegations of the Complaint and all of the conclusions of law made by this Court in this Order shall be taken as true and be given preclusive effect without further proof for the purpose of any subsequent bankruptcy proceeding filed by, on behalf of, or against Defendant for the purpose of determining whether his restitution obligation and/or civil monetary penalty ordered herein are excepted from discharge and not in any other proceeding. Defendant shall also provide immediate notice of any bankruptcy filed by, on behalf of, or against him in the manner required by paragraph 1 of Part V of this Order.

7. Defendant agrees that neither he nor any of his agents or employees acting under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or any conclusions of law in this Order, or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Defendant's right to take legal positions in other proceedings to which the Commission is not a party. Defendant shall take all reasonable steps to ensure that all of his agents and employees understand and comply with this agreement.

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

II. Conclusions of Law

1. During the relevant time period, Defendant acted as a commodity trading advisor as that term is defined in Section 1(a)(6) of the Act, 7 U.S.C. § 1(a)(6).
2. During the relevant time period, Defendant violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1).
3. During the relevant time period, Defendant violated Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 4b(a)(2)(i)-(iii).
4. During the relevant time period, Defendant violated Commission Regulation 4.30, 17 C.F.R. § 4.30.

III. Order For Permanent Injunction

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Defendant and all persons insofar as they are acting in the capacity of his agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendant who receive actual notice of such order by personal service or otherwise, are permanently prohibited from directly or indirectly:
 - (a) Cheating or defrauding, or attempting to cheat or defraud, any other person 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 such other person, in violation of Section 4b(a)(2)(i), 7 U.S.C. § 6b(a)(2)(i);
 - (b) Willfully making or causing to be made to any other person any false report or statement thereof, or willfully entering or causing to be entered for any person any false record thereof, in violation of Section 4b(a)(2)(ii), 7 U.S.C. § 6b(a)(2)(ii);
 - (c) Willfully deceiving or attempting to deceive any other person by any means whatsoever in regard to any such order or contract, or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person, in violation of Section 4b(a)(2)(iii), 7 U.S.C. § 6b(a)(2)(iii);

(d) In the capacity of a commodity trading advisor ("CTA"), employing any device, scheme or artifice to defraud any client or prospective client or engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1), 7 U.S.C. § 6o(1);

(e) In the capacity of a CTA, soliciting, accepting, or receiving client funds, securities, or other property in his name (or extended credit in lieu thereof) to purchase, margin, guarantee, or secure any commodity interest of the client, in violation of Commission Regulation 4.30, 17 C.F.R. § 4.30;

(f) Directly or indirectly soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity futures or options contract;

(g) Engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;

(h) Introducing customers to any other person engaged in the business of commodity futures and options trading; and

(i) Issuing false statements or reports to others concerning commodity futures or options trading.

2. It is further ordered that:

(a) For five years from the date of this Order, Defendant will not trade commodity futures or options on commodity futures on any board of trade as that term is defined in Section 1a(2) of the Act, 7 U.S.C. § 1a(2); and

(b) Defendant will never apply for registration or claim exemption from registration with the Commission in any capacity, or engage in any activity requiring such registration or exemption from registration from the Commission, except as provided for in Commission Regulation 4.14(a)(9), 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 with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9).

IV. Order For Other Equitable Relief

IT IS FURTHER ORDERED THAT:

1. Restitution: Defendant shall be liable for restitution to clients in the amount of \$1,017,741.17. Interest after the date of this Order until the restitution is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961, assessed pursuant to the payment plan outlined below in paragraph 4 of this section. The Attachment to this Order includes the names of the investors to whom restitution shall be made pursuant to this paragraph, together with the amount of restitution payable by Defendant to each of them (not including required interest) and the pro-rata distribution percentage by which each investor shall be paid. The amounts contained in the Attachment as of the date of the entry of this Order shall not limit the ability of any client to prove that a greater amount is owed from Defendant, and nothing herein shall be construed in any way to limit or abridge the rights of any client that may exist under state or common law. Defendant's obligation to make restitution under this paragraph shall be reduced by any amounts paid to the clients listed in the Attachment pursuant to any restitution ordered in any other legal proceeding.

2. Payment of Restitution: Restitution shall be made as follows:

(a) Defendant shall make annual restitution payments ("Annual Restitution Payment") according to the payment plan outlined below in paragraph 4 of this section to an account designated by a Monitor of a percentage of his adjusted gross income (as defined by the Internal Revenue Code) earned or received by him during the previous calendar year. The Annual Restitution Payment shall be made on or before July 31 of each calendar year, starting in calendar year 2005 (based on Defendant's 2004 income) and continuing for ten years or until his restitution amount is paid in full from any source, whichever occurs sooner.¹

¹ The ten-year restitution period shall run from January 1, 2005 through December 31, 2014. Restitution payments for a calendar year shall take place by July 31 of the following year. Therefore, the final restitution payments for the year 2014 will occur on or before July 31, 2015.

(b) Defendant agrees that the National Futures Association is hereby designated as the Monitor for a period of twelve years commencing January 1, 2004. Notice to the Monitor shall be made to Daniel A. Driscoll, Executive Vice President, Chief Compliance Officer, or his successor, in the manner outlined in paragraph 1 of Part VI of this Order.

(c) Defendant shall provide the Monitor with complete copies of his signed and filed federal income tax returns, including all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099 (or with sworn Financial Disclosure Statements if he does not file federal tax returns), as well as any filings he is required to submit to any state tax or revenue authority, for the preceding calendar year, on or before May 15 of each calendar year, or as soon thereafter as the same are filed, starting with tax returns for calendar year 2004 and continuing for ten years or until the restitution amount is paid in full, whichever occurs first.

(d) If, during the same time period, Defendant elects to file a joint tax return, he shall provide all documents called for by this paragraph 2, including the signed and filed joint tax return, plus a draft individual tax return prepared on IRS Form 1040 containing a certification by a licensed certified public accountant that the "Income" section (currently lines 7-22 of Form 1040) truly, accurately and completely reflects all of Defendant's income, that the "Adjusted Gross Income" section truly, accurately and completely identifies all adjustments that Defendant 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 Defendant is entitled to claim on the joint tax return; provided, however that Defendant may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely his. Such individual tax return shall include all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filings required to be submitted to any state tax or revenue authority. If Defendant does not file a return, he shall provide his sworn Financial Disclosure Statements on June 30 and December 31 of each calendar year, starting on June 30, 2005 and continuing through and including June 30, 2015. For example, if Defendant does not file a 2004 return by April 15, 2005, he must provide Financial Disclosure Statements On June 30 and December 31 of 2005. The Financial Disclosure Statements shall provide:

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

(e) Based on the information contained in Defendant's tax returns (and, to the extent they are provided, sworn Financial Disclosure Statements) and further instructions to be issued by this Court regarding the method of calculating distribution of any funds to investors, the Monitor shall calculate the Annual Restitution Payments to be paid by the Defendant for that year and the specific amounts payable to each investor. On or before June 30 of each year and starting in calendar year 2005, the Monitor shall send written notice to the Defendant with instructions to pay the Annual Restitution Payments on or before July 31 of that year to an account designated by the Monitor, or if the Defendant's restitution obligation has been satisfied or otherwise discharged, the amount of civil monetary penalty to be paid in accordance with the payment instructions in paragraphs 3 and 4 of this section. If the Monitor determines that an Annual Restitution Payment is due, then the Monitor will increase the amount of the remaining restitution payment by post-judgment interest calculated to the date of the payment based on the total remaining restitution obligation, pursuant to 28 U.S.C. § 1961. The Monitor shall then disburse any payment by defendants to the investors in the appropriate amounts listed on the Attachment. Based upon the amount of funds available, the Monitor may decide to defer distribution. If at the end of the ten-year payment period, any amount of the Annual Restitution Payments of Defendant has not been distributed, that amount shall instead be immediately paid and applied as a payment to Defendant's civil monetary penalty obligation as provided below in paragraphs 3 and 4.

3. Civil Monetary Penalty: Defendant shall pay a contingent civil monetary penalty of \$575,000 pursuant to the payment plan outlined in Paragraph 4 below, commencing upon his fulfillment of his total restitution obligation as set forth in Paragraphs 1 and 2 above. Defendant shall make an annual civil monetary penalty payment ("Annual CMP Payment") following his satisfaction of his restitution obligation, and continuing until December 31, 2014 (or until the civil monetary penalty is paid in full, if that happens first). Defendant shall make each such 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, 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 Defendant and the name and docket number of the proceeding; Defendant shall simultaneously transmit a copy of the cover

letter and the form of payment to the Monitor and to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, NW, Washington, D.C. 20581.

4. Payment Plan: The Annual Restitution Payments and Annual CMP Payment shall be calculated as follows:

(a) Where Adjusted Gross Income or Net Cash <u>Receipts Total</u> :	<u>Percent of Total to be Paid By Defendant is:</u>
Under \$25,000	0%
\$25,000 up to and including \$50,000	20% of the amount between \$25,000 and \$50,000
\$50,000 up to and including \$100,000	\$5,000 (20% of \$25,000) plus 30% of the amount between \$50,000 and \$100,000
Above \$100,000	\$20,000 (20% of \$25,000 plus 30% of \$50,000) plus 40% of the amount above \$100,000

(b) Defendant shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all duties with respect to the restitution and civil monetary penalty payments. He will cooperate fully with the Monitor and the Commission in explaining his financial income and earnings, status of assets, financial statements, asset transfers and tax returns, and shall provide any information concerning himself as may be required by the Commission and/or the Monitor. Furthermore, Defendant shall provide such additional information and documents with respect thereto as may be requested by the Commission and/or the Monitor.

5. Third-Party Beneficiaries: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the individuals identified in the Attachment is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution amount which has not been paid by Defendant, to

ensure continued compliance with any provision of this Order and to hold Defendant in contempt for any violations of any provision of this Order.

6. Collateral Agreements: Defendant shall immediately notify the Monitor and the Commission if he makes or has previously made any agreement with any investor obligating him to make payments outside of this Order. Defendant shall also provide immediate evidence to the Court, the Monitor and to the Commission of any payments made pursuant to such agreement. Upon being notified of any payments made by Defendant to clients outside of this Order, and receiving evidence of such payments, the Commission will have the right to reduce and offset Defendant's obligations to specified clients, on an annual basis, and to make any other changes in the restitution distribution schedule that it deems appropriate.

7. Transfer of Assets: Defendant shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any other person for the purpose of concealing such funds from the Court, the Commission, the Monitor or any investor or until his restitution obligation and civil monetary penalty have been paid in full.

8. Default: Any failure by Defendant to carry out any of the terms, conditions or obligations under any paragraph of this Order shall constitute an Event of Default, unless such failures are de minimis or inadvertent. If any Event of Default occurs the Commission (or its designee) shall be entitled to:

(a) an order requiring immediate payment of any unpaid restitution obligation, and/or civil monetary penalty, or, at the Commission's option, the entire unpaid balance, or any unpaid portion, of the restitution and/or civil monetary penalty amount set forth above; and/or

(b) move the Court for imposition of all other available remedies, including, but not limited to, an order holding Defendant in contempt for violation of this Order.

Upon the occurrence of an Event of Default based upon a claim or cause of action that Defendant failed to make any Annual Restitution Payment and/or Annual CMP Payment when due, Defendant will be barred from asserting any defense, including expiration of any statute of limitations, waiver, estoppel or laches, where such defense is based on the alleged failure of the Commission to pursue such claims or causes of action during the pendency of this civil action, during the negotiation of Defendant's consent to this Order or while this Order remains in effect. The only issue that Defendant may raise in defense is whether he made the Annual Restitution Payment and/or Annual CMP Payment as directed by the Monitor. Any motion by the Commission for entry of an order pursuant to this paragraph requiring payment of less than the full amount of the restitution and/or civil monetary penalty set forth above, or any acceptance by the Commission of partial payment of the restitution obligation and/or civil monetary penalty made by Defendant, shall not be deemed a waiver of the Commission's right to require Defendant to make further payments pursuant to the payment plan set forth above, or, in the event of a further Event of Default, a waiver of the Commission's right to require immediate payment of the entire remaining balance, or any unpaid portion, of the restitution amount and/or civil monetary penalty.

9. Based upon Defendant's sworn representations in his Financial Disclosure Statement dated April 14, 2004, and other evidence provided by Defendant, the Court herein is not ordering immediate payment of the entire restitution obligation and civil monetary penalty. This determination is contingent upon the accuracy and completeness of Defendant's Financial Disclosure Statement and other evidence provided by Defendant regarding his financial condition. If at any time following the entry of this Order, the Commission obtains information indicating that Defendant's representations concerning his financial condition were fraudulent,

misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition this Court for an order requiring him to make immediate payment of his entire restitution obligation and/or civil monetary penalty, or of any portion thereof, the amount of which shall be determined the by the Commission. In connection with any such petition, the only issues shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Order, and the Commission may also request additional discovery. Defendant may not, by way of defense to such petition, challenge the validity of this Order, contest the allegations in the Complaint filed by the Commission, or assert that payment of restitution or civil monetary penalty should not be ordered. If in such motion the Commission moves for, and the Court orders, payment of less than the full amount of the restitution obligation or the full amount of civil monetary penalty, such motion will not be deemed a waiver of the Commission's right to require Defendant to make further payment pursuant to the payment plans set forth above.

V. Miscellaneous Provisions

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

Notice to Commission:

Regional Counsel
Division of Enforcement - Central Region
Commodity Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, Illinois 60661

Notice to Monitor:

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

Notice to Defendant:

Stanley E. Varner
3397 Plaza Way
Salt Lake City, Utah 84109

In the event that Defendant changes his residential or business telephone number(s) and/or address(es) at any time, he shall provide written notice of his new number(s) and/or address(es) to the Monitor and to the Commission within twenty (20) calendar days thereof.

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

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

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

5. Acknowledgements: Upon being served with copies of this Order after entry by the Court, Defendant shall sign acknowledgments of such service and serve such acknowledgments on the Court and the Commission within seven (7) calendar days. Upon being served with copies of this Order after entry by this Court, the Commission shall serve a copy of the Order upon the Monitor and all persons identified in Attachment A within seven (7) calendar days.

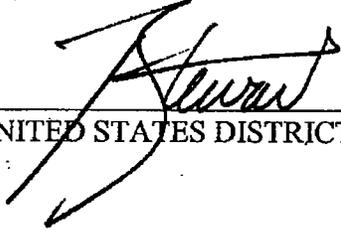
6. Release of all Liens: Upon being served with the acknowledgments listed in paragraph 5, the Commission shall release any and all remaining liens held on any or all property owned by Defendant within twenty (20) calendar days.

7. Successors and Assigns. This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries and administrators.

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

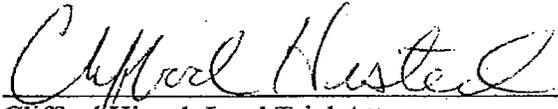
There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Equitable Relief and Civil Monetary Penalty Against Stanley E. Varner.

Done and ordered on this 5th day of July, 2004.


UNITED STATES DISTRICT JUDGE

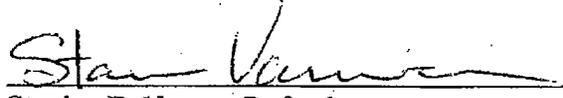
We agree to the entry of this Order.

For the Plaintiff:

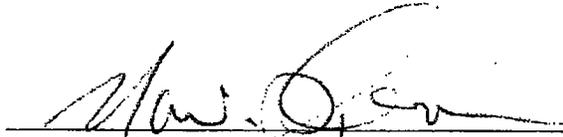


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