



(“FMIF”), and Robert Tripode (“Tripode”)<sup>1</sup>, individually and as an agent of FMIF, defrauded more than 100 members of the public (“pool participants”) of more than \$1.4 million in connection with pooled investments in retail off-exchange foreign currency contracts (“forex”). Specifically, the Complaint alleged violations of 7 U.S.C. §§ 6b(a)(2)(A)-(C), 6k(2), 6m(1), and 6o(1) (2012) and 17 C.F.R. §§ 3.12, 4.20, 4.41(a), 5.2(b), 5.3(a)(2)(i) and (ii) (2014), and sought, *inter alia*, injunctive relief, disgorgement, restitution and civil monetary penalties.

The answers of Pierre-Charles and FMIF were due on October 22, 2014, and Chauvel’s answer was due on November 6, 2014. Because Chauvel, Pierre-Charles, and FMIF failed to answer or otherwise respond to the Complaint, the CFTC filed its Motions for Clerk’s Entry of Default against Chauvel on November 10, 2014 [D.E. #27], against FMIF on November 17, 2014 [D.E. #31], and against Pierre-Charles on November 24, 2014 [D.E. #33]. The Clerk of the Court entered the defaults against Chauvel, FMIF, and Pierre-Charles on November 12, 18, and 25, 2014, respectively [D.E. #29, 32, 34].

The CFTC now has submitted its Application for Entry of Default Judgment, Permanent Injunction, Civil Monetary Penalty, and Ancillary Equitable Relief Against Defendants FMIF, Chauvel, and Pierre-Charles (collectively, the “Default Defendants”) pursuant to Fed. R. Civ. P. 55(b)(2) and Local Rule 7(a)(1)(E). The Court has considered carefully the Complaint, the allegations of which are well-pled and hereby taken as true, the CFTC’s Application, and all oppositions thereto, and being fully advised in the premises, hereby:

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<sup>1</sup> Tripode answered the Complaint on November 17, 2014 [D.E. #30] and, therefore, is not subject to this Order.

**GRANTS** the CFTC's Application and enters this Order finding the Default Defendants liable as to all violations as alleged in the Complaint and imposing on the Default Defendants a permanent injunction, registration and trading bans, civil monetary penalties, and ancillary equitable relief, as more fully described herein.

## **II. FINDINGS OF FACT**

1. The U.S. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.*

2. Defendant Forex Monthly Income Fund, LLC is a Florida limited liability company created by Chauvel and Pierre-Charles on January 31, 2011 with a business address of 8362 Pines Blvd, No. 314, Pembroke Pines, FL 33024. FMIF has never been registered with the Commission in any capacity. On September 27, 2013, FMIF was administratively dissolved by the State of Florida for failing to file an annual report.

3. Defendant Jean Chauvel is an individual whose last known address was in Miami, Florida. Chauvel is a principal, officer, and manager of FMIF and is responsible for its acts. Chauvel has never been registered with the Commission in any capacity.

4. Defendant Renaud Pierre-Charles is an individual residing in Hallendale Beach, Florida. Pierre-Charles is a principal, officer, and manager of FMIF and is responsible for its acts. Pierre-Charles has never been registered with the Commission in any capacity.

5. During the Relevant Period, FMIF, by and through Chauvel and Pierre-Charles, solicited existing and prospective pool participants, by use of the mails and/or other means or instrumentalities of interstate commerce, to send money to FMIF to trade forex in a commodity

pool operated by FMIF. Some of the pool participants solicited were unsophisticated investors, including senior citizens, who sought higher monthly income on their retirement savings.

6. As part of their solicitation, the Default Defendants represented to prospective pool participants that FMIF offered a safe investment with steady, guaranteed returns. The Default Defendants reinforced this belief by providing pool participants a “Schedule of Monthly Returns” stating the exact amount of each monthly payment the pool participants were to receive based on the size of their investments.

7. At least some pool participants signed a “Foreign Currency Fund Membership Agreement” (hereinafter, “Agreement”) provided to them by the Default Defendants. The Agreement reiterated the guaranteed monthly returns and also provided that either party could terminate the Agreement and that funds would be refunded upon 60 days written notice.

8. In addition to personally soliciting prospective and existing pool participants, the Default Defendants solicited pool participants through a website, *www.forexmonthlyincomefund.com*, in which FMIF was described as the “world’s leading and most trusted online investment opportunity” and “an international investment company which has been efficiently operating in the Forex market since 2010.” The website also repeated the Default Defendants’ guarantees: “FMIF provides its clients with a fixed monthly income at a predetermined rate, with return of your initial deposit with a [sic] 60 days written notice.”

9. FMIF’s website offered pool participants four separate “plans” under which they could participate in the FMIF pool. These plans touted monthly returns on investment from two to three percent and annual returns from 30 to 50 percent.

10. FMIF's website also offered an "Affiliate/Referral Program" under which pool participants and non-participants alike could receive guaranteed payments for referring new pool participants to the FMIF pool.

11. The Default Defendants' representations, as described above, prompted at least 100 pool participants to provide FMIF approximately \$1.429 million for trading forex in the purported FMIF pool.

12. During the Relevant Period, Pierre-Charles and Chauvel opened bank accounts in the name of "Forex Monthly Income Fund" at J.P. Morgan Chase, N.A. ("Morgan Chase") and Bank of America, N.A. ("BofA"). Pierre-Charles and Chauvel had sole signatory authority over these bank accounts.

13. In order to invest, pool participants were instructed to make their checks payable to FMIF. These checks were deposited by Chauvel and Pierre-Charles into the Morgan Chase or BofA bank accounts.

14. In opening these bank accounts and accepting funds from pool participants, Chauvel and Pierre-Charles made no distinction between the purported FMIF pool and FMIF as the commodity pool operator.

15. During the Relevant Period, the Default Defendants did not open any domestic or foreign forex trading accounts.

16. As early as summer 2012, FMIF was losing its ability to keep up with the promised monthly payments to pool participants. In a July 2012 letter sent to FMIF pool participants, Chauvel and Pierre-Charles, identified as the CFO and CEO of FMIF, respectively, wrote that the pool participants' "percentages [i.e., the promised returns on investment] are

temporarily adjusted down due to market conditions...but we expect the situation to back [sic] to normal within the next 60-90 days.”

17. By early 2013, new deposits from pool participants ceased flowing into FMIF. Within weeks of receiving the last deposit, the Default Defendants ceased making regular monthly payments to pool participants. At least as early as fall 2013, some pool participants demanded that FMIF return their principal payments. Some or all of these demands were not honored by the Default Defendants, despite the guarantee of withdrawal upon 60 days written notice.

18. In reality, the Default Defendants’ purported forex pool was a sham. The Default Defendants knowingly and willfully made, or caused others to make, multiple material misrepresentations and omissions in their solicitation of existing and prospective pool participants, including as described above. In making their investment decisions, existing and prospective pool participants in the FMIF pool relied on the Default Defendants’ material misrepresentations and omissions, including statements regarding FMIF’s trading activity, purported profits earned from that trading, and the manner in which pool participants’ funds would be used.

19. Instead of trading forex and paying the promised returns, the Default Defendants misappropriated the vast majority of pool participants’ funds. Of the \$1,429,018.23 received from pool participants, the Default Defendants and agent Tripode returned only \$420,312.82 to pool participants in the form of purported monthly profits from forex trading and withdrawals of principal. The remaining approximately \$1,008,705.41 was misappropriated by the Default Defendants and agent Tripode, including \$334,570.45 transferred directly to Chauvel;

\$20,038.00 paid to Pierre-Charles, \$203,090.01 paid to agent Tripode, and \$484,880.95 in the form of cash withdrawals and miscellaneous payments to third parties.

20. In order to conceal and perpetuate their fraud, the Default Defendants distributed false statements to existing and prospective pool participants through the mails and/or other means or instrumentalities of interstate commerce that indicated the Default Defendants were engaged in profitable trading when, in fact, they conducted no trading at all for the FMIF pool.

### III. CONCLUSIONS OF LAW

21. When a party against whom a default judgment is sought has failed to plead or otherwise assert a defense, and that fact has been documented, the clerk shall enter the party's default. Fed. R. Civ. P. 55(a). The party seeking the default shall then apply to the court for a default judgment. Fed. R. Civ. P. 55(b). Fed. R. Civ. P. 55(b)(2) provides that judgment by default may be entered by a district court against a defendant upon the failure of that defendant to plead or otherwise defend. *CFTC v. Machado*, No. 11-22275-Civ, 2012 WL 2994396 at \*3 (S.D. Fla.); *CFTC v. FX Professional Intern. Solutions, Inc.*, No. 1:10-cv-22311, 2010 WL 5541050 at \*4 (S.D. Fla.); *Dunn v. Prudential Ins. Co. of America*, No. 8:10-cv-1626, 2011 WL 1298156 at \*3-4 (M.D. Fla.); *Vaccaro v. Custom Sounds, Inc.*, No. 3:08-cv-776-J-32, 2009 U.S. Dist. LEXIS 113982 (M.D. Fla.). The grant or denial of a motion for default judgment lies within a district court's sound discretion. *Hamm v. DeKalb County*, 774 F.2d 1567, 1576 (11th Cir. 1985). The fact that a defendant may make himself impossible to contact cannot prevent the entry of default judgment. *Florida Physician's Ins. Co. v. Ehlers*, 8 F.3d 780, 784 (11th Cir. 1993). If a district court determines that a defendant is in default, then well-pled factual allegations of the complaint, except those relating to unspecified damages, will be taken as true and liability is established by the entry of a default. *Sampson v. Brewer, Michaels & Kane, LLC*,

No. 6:09-cv-2114-Orl-31DAB, 2010 WL 2432084 (M.D. Fla. 2010) (citing *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir.1987)); see also Fed. R. Civ. P. 8(b)(6) (effect of failure to deny an allegation). Moreover, “[i]t is a familiar practice and an exercise of judicial power for a court upon default, by taking evidence when necessary or by computation from facts of record, to fix the amount which the plaintiff is lawfully entitled to recover and to give judgment accordingly.” *Machado*, 2012 WL 2994396 at \*3 (quoting *Pope v. United States*, 323 U.S. 1, 12 (1944) (internal quotes omitted)).

22. The Clerk of the Court already has entered defaults against the Default Defendants [D.E. #29, 32, 34]. As such, in accordance with Fed. R. Civ. P. 55(b)(2), the CFTC’s allegations in the Complaint against the Default Defendants are deemed to be well-pled and are taken as true, and a default judgment is hereby entered against the Default Defendants.

**A. Jurisdiction**

23. This Court has jurisdiction over this action pursuant to 7 U.S.C. § 13a-1 (2012) which provides that whenever it shall appear to the CFTC that any 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 promulgated thereunder, the CFTC may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

24. Venue properly lies with the Court pursuant to 7 U.S.C. § 13a-1(e) (2012), in that the Default Defendants transacted business in the Southern District of Florida and the acts and practices in violation of the Act and Regulations occurred within this District, among other places.

**B. The Commodity Exchange Act**

25. In analyzing the CFTC's Application, the Court keeps in mind a crucial purpose of the Act, *inter alia*, "protecting the innocent individual investor – who may know little about the intricacies and complexities of the commodities market – from being misled or deceived." *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1329 (11th Cir. 2002). "[C]aveat emptor has no place in the realm of federal commodities fraud. Congress, the CFTC, and the Judiciary have determined that customers must be zealously protected from deceptive statements by brokers who deal in these highly complex and inherently risky financial instruments." *Id.* at 1334.

**C. Violations of 7 U.S.C. §§ 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b)**

26. 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2012) make it unlawful for any person:

in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery . . . (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever. . .

27. 17 C.F.R. § 5.2(b) (2014) makes it unlawful for any person:

by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction (1) to cheat or defraud or attempt to cheat or defraud any person; (2) willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or (3) willfully to deceive or attempt to deceive any person by any means whatsoever.

28. The Default Defendants, through their willful misappropriation of pool participant funds, fraudulent sales solicitations, and issuance of false statements, violated 7 U.S.C. §§ 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b).

1. **Fraud by Misappropriation**

29. Misappropriation of customer funds constitutes “willful and blatant fraudulent activity” in violation of 7 U.S.C. §§ 6b(a)(2)(A) and (C). *CFTC v. Noble Wealth Data Info. Serv., Inc.*, 90 F. Supp. 2d 676, 687, (D. Md. 2000) (defendants violated Section 6b(a) by diverting investor funds for operating expenses and personal use), *aff’d sub nom. CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002); *see also CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (holding that defendant violated Section 6b when she misappropriated customer funds by soliciting funds for trading and then trading only a small percentage of those funds, while disbursing the rest of the funds to investors, herself, and her family); *CFTC v. Weinberg*, 287 F. Supp. 2d. 1100, 1106 (C.D. Cal. 2003) (misappropriating investor funds violated Section 6b(a)); *In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,315 (CFTC July 19, 1999), *aff’d in relevant part sub nom. Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000) (respondents violated Section 6b by surreptitiously retaining money in their own bank accounts that should have been traded on behalf of participants); *CFTC v. King*, No. 3:06-CV-1583-M, 2007 WL 1321762, at \*2 (N.D. Tex. May 7, 2007) (“King’s violation of section [6b(a)] is further proven by his admitted misappropriation of customer funds for personal and professional use”); *CFTC v. McLaurin*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,768 at 44,180 (N.D. Ill. 1996) (by depositing customer funds in accounts in which the customers had no ownership interest and making unauthorized disbursements for his own use, defendant violated Section 6b).

30. During the Relevant Period, the Default Defendants violated 7 U.S.C. §§ 6b(a)(2)(A) and (C) and 17 C.F.R. § 5.2(b) by willfully misappropriating pool participant funds. Specifically, of the \$1,429,018.23 provided by pool participants to the Default Defendants for

trading forex, the record reflects that only \$420,312.82 was returned to pool participants. The remaining funds were misappropriated by the Default Defendants.

**2. Fraud by Misrepresentations and Omissions to Existing and Prospective Pool Participants**

31. To establish that the Default Defendants violated 7 U.S.C. §§ 6b(a)(2)(A) and (C) and 17 C.F.R. § 5.2(b) through misrepresentations and omissions, the CFTC must prove that 1) a misrepresentation or omission was made, 2) with scienter; and 3) that the misrepresentation or omission was material. *R.J. Fitzgerald & Co.*, 310 F. 3d at 1328-29. Scienter requires proof that a defendant committed the alleged wrongful acts “intentionally or with reckless disregard for his duties under the Act.” *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988); *see also Do v. Lind-Waldock & Co.* [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,516 at 43,321 (CFTC Sept. 27, 1995) (determining that a reckless act is one where there is so little care that it is “difficult to believe the [actor] was not aware of what he was doing”). A statement is material if “it is substantially likely that a reasonable investor would consider the matter important in making an investment decision.” *R.J. Fitzgerald*, 310 F.3d at 1328 (internal quotation omitted). Any fact that enables investors to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. *In re Commodities Int’l Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943, at 44,563-64 (CFTC Jan. 14, 1997). Moreover, a material misrepresentation or omission is a violation whether or not it induces investor action or inaction; rather, it is sufficient that a material misrepresentation or omission is made to “attempt to cheat or defraud” or willfully to “attempt to deceive” a person. *See CFTC v. Int’l Fin. Servs.*, 323 F. Supp. 2d 482, 502 (S.D.N.Y. 2004) (investor reliance need not be proven in an enforcement action alleging fraud) (citing *Slusser v. CFTC*, 210 F.3d 783, 785-86 (7th Cir 2000)).

32. As described above, the evidence demonstrates that during the Relevant Period Chauvel and Pierre-Charles, individually and on behalf of FMIF, lied to existing and prospective pool participants that they were making and would make large profits and that pool participants would receive guaranteed returns on their investments. Chauvel and Pierre-Charles willfully or with reckless disregard of the truth made these misrepresentations and omissions in order to induce participants to invest with the Default Defendants. These misrepresentations and omissions are material in that a reasonable pool participant would want to know, among other things, that the Default Defendants had not opened forex trading accounts and that they never generated any trading profits. Accordingly, each of the elements of fraud by misrepresentation and omission is met in this case, and the Default Defendants therefore violated 7 U.S.C. §§ 6b(a)(2)(A) and (C) and 17 C.F.R. § 5.2(b).

### 3. **Fraud by False Statements**

33. Delivering, or causing the delivery of, false statements to participants relating to forex trades (or other transactions regulated by the CFTC) constitutes a violation of 7 U.S.C. § 6b(a)(2)(B) and, by definition, 17 C.F.R. § 5.2(b). *See, e.g., CFTC v. Skorupskas*, 605 F. Supp. at 932-33 (finding that defendant violated Section 6b(a) of the Act by issuing false monthly statements to customers); *CFTC v. Sorkin*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,855 at 27,585 (S.D.N.Y. August 25, 1983) (determining that distribution of false account statements which falsely report trading activity or equity is a violation of Sections 6a and 6b of the Act); *Weinberg*, 287 F. Supp. 2d. at 1107 (false and misleading statements as to the amount and location of investors' money violated Section 6b(a)); *Noble Wealth*, 90 F. Supp. 2d at 685-87 (defendants violated Section 6b(a) through the delivery of false account statements).

34. During the Relevant Period, the Default Defendants violated 7 U.S.C. § 6b(a)(2)(B) and 17 C.F.R. § 5.2(b) by willfully sending account statements stating their purported monthly returns and publishing promotional material to pool participants and others on their website that misrepresented their trading performance and their ability to pay the promised returns.

**D. Violations of 7 U.S.C. § 6o(1) and 17 C.F.R. § 4.41(a)**

35. 7 U.S.C. § 6o(1) (2012) makes it unlawful:

for a ... commodity pool operator, or associated person of a commodity pool operator by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

- (A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or
- (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

36. 17 C.F.R. § 4.41(a) (2014) makes it unlawful for any commodity pool operator or any principal thereof to publish, distribute, or broadcast, whether by electronic media or otherwise, any report, letter, writing, or other literature which:

- (1) Employs any device, scheme or artifice to defraud any participant or client or prospective participant or client; [or]
- (2) Involves any transaction, practice or course of business which operates as a fraud or deceit upon any participant or client or any prospective participant or client.

37. 7 U.S.C. § 1a(11) (2012) defines a “commodity pool operator,” in relevant part, as a person

engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the

sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including any—

II. [forex] agreement, contract, or transaction...

38. Unlike 17 U.S.C. §§ 6b(a) and 6o(1)(A), the language of Section 6o(1)(B) does not require “knowing” or “willful” conduct as a prerequisite for establishing liability. *See, e.g., Messer v. E.F. Hutton & Co.*, 847 F.2d 673, 678-79 (11th Cir. 1988). Section 6o applies to all commodity pool operators, whether registered, required to be registered, or exempted from registration. *See, e.g., CFTC v. Skorupskas*, 605 F. Supp. at 932. The same conduct that constitutes violations of Section 6b(a), as described above, constitutes violations of Section 6o. *See, e.g., CFTC v. Skorupskas*, 605 F. Supp. at 932-33.

39. From at least July 16, 2011<sup>2</sup> to the present, FMIF operated as a commodity pool operator in that it engaged in a business that is of the nature of an investment trust, syndicate or similar form of enterprise, and in connection therewith, solicited, accepted, or received funds, securities, or property from others for the purpose of trading forex.

40. From at least July 16, 2011 to the present, Chauvel and Pierre-Charles were principals and/or agents of FMIF and acted as associated persons of FMIF in that they solicited and accepted funds, securities, or property for FMIF.

41. From at least July 16, 2011 to the present, FMIF (acting as a commodity pool operator) and Chauvel and Pierre-Charles (acting as associated persons of FMIF), through the

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<sup>2</sup> As of July 16, 2011, the statutory definition of a commodity pool operator set forth in 7 U.S.C. § 1a(11) was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111–203, 124 Stat. 1376, (July 21, 2010), to include commodity pool operators operating commodity pools that solicit and accept funds for the purpose of trading forex, in addition to other commodity interests.

use of the mails or other means or instrumentalities of interstate commerce (including through the use of telephone calls and electronic mail with pool participants and prospective pool participants), violated 7 U.S.C. § 60(1) (2012) by knowingly (i) misappropriating pool participants' funds, (ii) making material fraudulent statements and omissions to existing and prospective pool participants about FMIF's forex trading and profitability, including statements published through FMIF's website, and (iii) issuing false account reports to existing and prospective pool participants.

42. From at least July 16, 2011 to the present, FMIF (acting as a commodity pool operator) and Chauvel and Pierre-Charles (acting as principals of FMIF) violated 17 C.F.R. § 4.41(a) (2014) by knowingly (i) misappropriating pool participants' funds, (ii) making material fraudulent statements and omissions to existing and prospective pool participants about FMIF's forex trading and profitability, including statements published through FMIF's website, and (iii) issuing false account reports to existing and prospective pool participants.

**E. Violations of 7 U.S.C § 6m(1) and 17 C.F.R. § 5.3(a)(2)(i)**

43. 7 U.S.C § 6m(1) (2012) provides that it is unlawful for any commodity pool operator, unless registered, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a commodity pool operator.

44. Similarly, 17 C.F.R. § 5.3(a)(2)(i) (2014) provides that any commodity pool operator, as defined in 17 C.F.R. § 5.1(d)(1), is required to register as a commodity pool operator. 17 C.F.R. § 5.1(d)(1) (2014) defines a commodity pool operator as anyone who "operates or solicits funds... for a pooled investment vehicle... that engages in retail forex transactions."

45. As set forth above, from July 16, 2011 to the present, FMIF, by and through its employees, agents, and control persons, including Chauvel and Pierre-Charles, used the mails or instrumentalities of interstate commerce in or in connection with a commodity pool as a commodity pool operator while failing to register as a commodity pool operator, in violation of 7 U.S.C. § 6m(1) (2012).

46. As set forth above, during the Relevant Period, FMIF, by and through its employees, agents, and control persons, including Chauvel and Pierre-Charles, solicited funds for a pooled investment vehicle that engaged in retail forex transactions while failing to register as a commodity pool operator, in violation of 17 C.F.R. § 5.3(a)(2)(i) (2014).

**F. Violations of 7 U.S.C. § 6k(2) and 17 C.F.R. §§ 3.12 and 5.3(a)(2)(ii)**

47. 7 U.S.C. § 6k(2) (2012) and 17 C.F.R. § 5.3(a)(2)(ii) (2014) prohibit persons from being associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for participation in a commodity pool, or (ii) the supervision of any person or persons so engaged, unless such person is registered.

48. 7 U.S.C. § 6k(2)(ii) (2012) further prohibits commodity pool operators from permitting such persons to become or remain associated with the commodity pool operator if the commodity pool operator knew or should have known that such persons were not so registered.

49. 17 C.F.R. § 3.12 (2014) prohibits a person from being associated with a commodity pool operator unless the person is registered as an associated person of the sponsoring commodity pool operator.

50. As set forth above, from July 16, 2011 to the present, Chauvel and Pierre-Charles solicited funds for participation in a commodity pool operated by FMIF and/or supervised persons so engaged. Because Chauvel and Pierre-Charles were not registered as associated persons of FMIF, Chauvel and Pierre-Charles violated 7 U.S.C. § 6k(2) (2012) and 17 C.F.R. §§ 3.12 and 5.3(a)(2)(ii) (2014).

51. As set forth above, FMIF, by and through its employees, agents, and control persons, permitted Chauvel and Pierre-Charles, among others, to become or remain associated with FMIF knowing that they were not registered as associated persons, in violation of 7 U.S.C. § 6k(2)(ii) (2012).

**G. Violations of 17 C.F.R. §§ 4.20(a) and (b)**

52. 17 C.F.R. § 4.20(a) (2014) provides that a commodity pool operator “must operate its pool as an entity cognizable as a legal entity separate from that of the pool operator.” 17 C.F.R. § 4.20(b) (2014) provides that all funds received by a commodity pool operator from pool participants must be received in the name of the pool.

53. During the Relevant Period, FMIF failed to operate the purported pool as a legal entity separate from itself, the commodity pool operator. Instead, the Default Defendants referred to the pool operator and the pool by the same name. In addition, FMIF accepted funds from pool participants in the name of FMIF, the commodity pool operator, rather than in the name of an FMIF pool and made no distinction as to which bank accounts belonged to FMIF the commodity pool operator and which belonged to an FMIF pool. Therefore, FMIF violated 17 C.F.R. §§ 4.20(a) and (b) (2014).

**H. Chauvel and Pierre-Charles are Liable as Controlling Persons**

54. Chauvel and Pierre-Charles controlled FMIF and, as controlling persons, are liable for FMIF's violations pursuant to 7 U.S.C. § 13c(b) (2012), which provides that:

Any person who, directly or indirectly, controls any person who has violated any provision of this Act or any of the rules, regulations, or orders issued pursuant to this Act may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person. In such action, the Commission has the burden of proving that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.

A “fundamental purpose” of the statute is “to reach behind the corporate entity to the controlling individuals of the corporation and to impose liability for violations of the Act directly on such individuals as well as on the corporation itself.” *R.J. Fitzgerald & Co.*, 310 F.3d at 1334 (quoting *JCC, Inc. v. CFTC*, 63 F.3d 1557, 1567 (11th Cir. 1995) (internal quotation marks and citation omitted)).

55. To establish controlling person liability under 7 U.S.C. § 13c(b) (2012), the CFTC must show both (1) control and (2) lack of good faith or knowing inducement of the acts constituting the violation. *In re First Nat'l Trading Corp.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,142, at 41,787 (CFTC July 20, 1994), *aff'd without opinion sub nom. Pick v. CFTC*, 99 F.3d 1139 (6th Cir. 1996). To establish the first element, control, a defendant must possess general control over the operation of the entity principally liable. *See, e.g., R.J. Fitzgerald*, 310 F.3d at 1334 (recognizing an individual who “exercised the ultimate choice-making power within the firm regarding its business decisions” as a controlling person). Evidence that a defendant is an officer, founder, principal, or the authorized signatory on the company's bank accounts indicates the power to control a company. *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103, at 34,767 (CFTC Jan. 12, 1988); *see also*

*Apache Trading Corp.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,251, at 38,795 (CFTC Mar. 11, 1992) (finding that an individual who “maintained control over the economic aspects of the operations” of a firm was a controlling person of it).

56. To establish the “knowing inducement” element of the controlling person violation, the CFTC must show that “the controlling person had actual or constructive knowledge of the core activities that constitute the violations at issue and allowed them to continue.” *JCC, Inc. v. CFTC*, 63 F.3d at 1568 (quoting *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103, at 34,767 (CFTC Jan. 12, 1988)). Controlling persons cannot avoid liability by deliberately or recklessly avoiding knowledge about potential wrongdoing. *In re Spiegel*, ¶ 24,103, at 34,767. Indeed, constructive knowledge of wrongdoing is sufficient for a finding of knowing inducement. See *JCC, Inc.*, 63 F.3d at 1568. To support a finding of constructive knowledge, the CFTC must show that a defendant “lacked actual knowledge only because he consciously avoided it.” *Id.* at 1569 (citations omitted).

57. As described above, at all material times, Chauvel and Pierre-Charles controlled FMIF and the bank accounts in which pool participant funds were deposited and, therefore, had actual knowledge of the activities that constituted the violations described above. Chauvel and Pierre-Charles are the founders and managers of FMIF and its sole principals and officers. Chauvel and Pierre-Charles solicited participants to trade through FMIF. Chauvel and Pierre-Charles corresponded with participants regarding their accounts and knowingly caused the false statements to be sent to participants. Chauvel and Pierre-Charles, thus, had the requisite control of FMIF, knew of the fraudulent acts, and allowed them to continue. Chauvel and Pierre-Charles, therefore, are liable pursuant to 7 U.S.C. § 13c(b) (2012) for FMIF’s violations described above.

**I. FMIF is Liable for the Acts of its Agents**

58. 7 U.S.C. § 2(a)(1)(B) (2012) and 17 C.F.R. § 1.2 (2014) provide, *inter alia*, that the act or omission of any agent or other person acting for a corporation within the scope of his employment shall be deemed the act or omission of such corporation as well as of such agent or other person. As described above, Chauvel and Pierre-Charles, who were the founders and sole managers of FMIF, committed the acts and omissions described herein within the course and scope of their employment at FMIF. Therefore, FMIF is liable under 7 U.S.C. § 2(a)(1)(B) (2012) and 17 C.F.R. § 1.2 (2014) for Chauvel's and Pierre-Charles' violations described above. *See CFTC v. Sidoti*, 178 F.3d 1132, 1135-36 (11th Cir. 1999).

**IV. REMEDIES**

**A. Permanent Injunction Against the Default Defendants**

59. 7 U.S.C. § 13a-1 (2012) authorizes and directs the CFTC to enforce the Act and Regulations and allows a district court, upon a proper showing, to grant a permanent injunction. *CFTC v. Wilshire Inv. Mgmt. Corp.*, 531 F.3d 1339, 1346 (11th Cir. 2008). 7 U.S.C. § 13a-1 (2012) states in relevant part:

(a) Whenever it shall appear to the Commission that any registered entity or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule, regulation or order, thereunder . . . the Commission may bring an action in the proper district court of the United States . . . to enjoin such act or practice, or to enforce compliance with this Act, or any rule, regulation or order thereunder . . .

60. The CFTC is entitled to injunctive relief upon a showing that a violation has occurred and is likely to continue unless enjoined. *CFTC v. Sidoti*, 178 F.3d at 1137; *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978);<sup>3</sup> *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979), *cert denied*, 442 U.S. 921 (1979); *CFTC v. British American Commodity Options Corp.*, 560 F.2d 135, 141 (2nd Cir. 1977); *SEC v. Unique Financial Concepts, Inc.*, 196 F.3d 1195, 1199 n.2 (11th Cir. 1999).

61. In analyzing whether future violations are likely to occur, a district court may infer a likelihood of future violations from the defendant's past unlawful conduct. *See SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1322 (11th Cir.1982); *CFTC v. Am. Bd. of Trade, Inc.*, 803 F.2d 1242, 1250-51 (2d Cir. 1986); *CFTC v. Heritage Capital Advisory Services, Ltd.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. ¶ 21,627 at 26,385 (N.D. Ill.1982). Such an inference is appropriate because "past illegal conduct is highly suggestive of the likelihood of future violations." *CFTC v. Crown Colony Commodity Options, Ltd.*, 434 F. Supp. 911, 919 (S.D.N.Y. 1977); *Hunt*, 591 F.2d at 1220; *British American*, 560 F.2d at 142.

62. The scope of the injunctive relief can be tailored to meet the circumstances of the violations shown. *See, e.g., Wilshire Inv. Mgmt. Corp.*, 531 F.3d at 1346 (upholding the district court's permanent injunction prohibiting the defendants from "engaging in any commodity-related activity"); *see also Noble Wealth Data Info. Servs.*, 90 F. Supp. 2d at 692 ("[t]he pervasiveness and seriousness of [the defendant's] violation justify the issuance of a permanent injunction prohibiting him from violating the Act and from engaging in any commodity-related activity, including soliciting customers and funds"). Under these standards, permanent

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<sup>3</sup> The Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions that were handed down prior to the close of business on September 30, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (*en banc*).

injunctive relief, including a comprehensive trading and registration ban, is clearly warranted against the Default Defendants.

63. Based on the Default Defendants' conduct and pursuant to 7 U.S.C. § 13a-1 (2012), the Default Defendants are permanently restrained, enjoined and prohibited 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 forex contract that is made, or to be made, for or on behalf of, or with, any other person in violation of 7 U.S.C. § 6b(a)(2)(A)-(C) (2012) and 17 C.F.R. § 5.2(b) (2014);

b) employing any device, scheme, or artifice to defraud or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any participant or prospective participant in a commodity pool in violation of 7 U.S.C. § 6q(1) and 17 C.F.R. § 4.41(a);

c) acting as a commodity pool operator without being registered in violation of 7 U.S.C. § 6m(1) and 17 C.F.R. § 5.3(a)(2)(i) (2014);

d) soliciting funds for or being associated with a commodity pool operator without being registered in violation of 7 U.S.C. § 6k(2) and 17 C.F.R. §§ 3.12 and 5.3(a)(2)(ii); and

e) failing to operate a pool as a legal entity separate from the commodity pool operator and accepting funds from pool participants in the name of the pool operator rather than in the name of the pool in violation of 17 C.F.R. §§ 4.20(a) and (b) (2014).

64. The Default Defendants are also permanently restrained, enjoined and prohibited from directly or indirectly:

- a. trading on or subject to the rules of any registered entity (as that term is defined in 7 U.S.C. § 1a(40) (2012));
- b. entering into any “commodity interests” (as that term is defined in 17 C.F.R. § 1.3(yy) (2014)) for their own personal account or for any account in which they have a direct or indirect interest;
- c. having any commodity interests traded on their behalf;
- d. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
- e. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- f. applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC, except as provided for in 17 C.F.R. § 4.14(a)(9) (2014); and/or
- g. acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a) (2014)), agent or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(38) (2012)) registered, exempted from registration or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9) (2014).

**B. Restitution**

65. In a civil enforcement action brought pursuant to 7 U.S.C. § 13a-1 (2012), the district court may order equitable relief in the form of restitution. A district court has broad discretion in determining equitable remedies to be imposed upon a finding of violation of the

Act. Indeed, “the unqualified grant of statutory authority to issue an injunction under [7 U.S.C.] § 13a–1 carries with it the full range of equitable remedies.” *CFTC v. Wilshire Inv. Mgmt. Corp.*, 531 F.3d 1339, 1344 (11th Cir. 2008). Included within that range of equitable remedies “is the power to grant restitution.” *Id.* Prior to July 16, 2011, the Court’s authority to order restitution in such cases was founded on the well-established legal principle articulated by the Supreme Court in *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946):

Unless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction. And since the public interest is involved in a proceeding of this nature, those equitable powers assume an even broader power and more flexible character than when a private controversy is at stake. Power is thereby resident in the District Court, in exercising this jurisdiction, “to do equity and to mould each decree to the necessities of the particular case.”

66. The Supreme Court reaffirmed this principle in *Mitchell v. Robert De Mario Jewelry, Inc.*, 361 U.S. 288 (1960), where it recognized that “the comprehensiveness of [the court’s] equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a necessary and inescapable reference, restricts the court’s jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied.” *Id.* at 291 (quoting *Porter*, 328 U.S. at 398).

67. The Eleventh Circuit has followed these principles in granting broad equitable powers to district courts in enforcement matters brought by federal agencies. *See, e.g., Wilshire Inv. Mgmt. Corp.*, 531 F.3d at 1344; *see also CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187, 193 (4th Cir. 2002) (“It is well settled that equitable remedies such as disgorgement are available to remedy violations of the [Act]”); *United States v. Universal Mgmt. Servs., Inc.*, 191 F.3d 750, 760-61 (6th Cir. 1999) (“[r]estitution and disgorgement are part of the court’s

traditional equitable authority”). In the absence of a statutorily provided remedy, Eleventh Circuit courts measure restitution by the defendant’s unjust gain. *See Wilshire Inv. Mgmt. Corp.*, 531 F.3d at 1345; *CFTC v. Levy*, 541 F.3d 1102, 1113 (11th Cir. 2008).

68. On July 16, 2011, newly added subsection (d)(3) of 7 U.S.C. § 13a-1 became effective. This section provides in relevant part:

(3) Equitable remedies

In any action brought under this section, the Commission may seek, and the court may impose, on a proper showing, on any person found in the action to have committed any violation, equitable remedies including—

(A) restitution to persons who have sustained losses proximately caused by such violation (*in the amount of such losses*).

7 U.S.C. § 13a-1(d)(3) (2012) (emphasis added). Therefore, for violations of the Act and Regulations occurring on or after July 16, 2011, the measure of restitution is determined by the amount of the pool participants’ losses rather than the defendant’s unjust enrichment.

69. In this case, the total amount of participant funds misappropriated by the Default Defendants is equal to the total amount of losses incurred by participants and is calculated with straightforward arithmetic, *i.e.* \$1,429,018.23 (the amount taken in from participants) minus \$420,312.82 (the amount returned to participants) equals \$1,008,705.41 (the amount misappropriated from/lost by participants).

70. Accordingly, this Court orders the Default Defendants to pay, jointly and severally, restitution in the amount of \$1,008,705.41, plus post-judgment interest (the “Restitution Obligation”). Post-judgment interest on the Restitution Obligation shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

71. To effect payment of the Restitution Obligation and the distribution of any restitution payments to FMIF's pool participants, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall collect restitution payments from the Default Defendants and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

72. The Default Defendants shall make Restitution Obligation payments under this Consent Order to the Monitor in the name "[NAME OF DEFENDANT] – FMIF Restitution Fund" and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies the paying Defendant and the name and docket number of this proceeding. The Default Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

73. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to FMIF's pool participants identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible pool participants is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the

Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part IV.C below.

74. The Default Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify FMIF's pool participants to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. The Default Defendants shall execute any documents necessary to release funds that he may have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

75. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to FMIF's pool participants during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

76. The amounts payable to each FMIF pool participant shall not limit the ability of any pool participant from proving that a greater amount is owed from the Default Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any pool participant that exist under state or common law.

77. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each FMIF pool participant who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by the Default Defendants to ensure

continued compliance with any provision of this Consent Order and to hold the Default Defendants in contempt for any violations of any provision of this Consent Order.

78. To the extent that any funds accrue to the U.S. Treasury for satisfaction of the Default Defendants' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

**C. Civil Monetary Penalties**

79. 7 U.S.C. § 13a-1(d)(1) (2012) provides that "the [CFTC] may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation [of the Act or Regulations] a civil penalty." Pursuant to 7 U.S.C. § 13a-1(d)(1)(A) (2012) and 17 C.F.R. § 143.8(a)(1) (2014), for the time period at issue in the case at bar, the civil monetary penalty shall be not more than the greater of \$140,000 for each violation of the Act or triple the monetary gain to the Default Defendants. The CFTC has set forth several factors to consider in assessing a civil monetary penalty. These factors include: the relationship of the violation at issue to the regulatory purposes of the Act and whether or not the violations involved core provisions of the Act; whether or not scienter was involved; the consequences flowing from the violative conduct; financial benefits to a defendant; and harm to customers or the market. *In re Grossfeld*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,921 at 44,467-8 (CFTC Dec. 10, 1996), *aff'd*, 137 F.3d 1300 (11th Cir. 1998). Civil monetary penalties should "reflect the abstract or general seriousness of each violation and should be sufficiently high to deter future violations," which means that civil monetary penalties should make it financially detrimental to a defendant to fail to comply with the Act and Regulations so that the defendant would rather comply than risk violations. *Id.*

80. Conduct that violates the core provisions of the Act, such as customer fraud, should be considered extremely serious. *JCC, Inc.*, 63 F.3d at 1571. The CFTC itself has recognized that:

[c]ustomer fraud is a violation of the core provisions of the [Act]. Such conduct historically has been considered to be among the most serious of violations for purposes of initially determining the severity of the sanctions to be imposed under the [Act] and consistently has warranted substantial civil penalties.)

*In re Slusser*, CFTC No. 94-14, 1999 WL 507574 at \*18 (CFTC July 19, 1999) (internal quotations omitted). Severe sanctions are particularly warranted when a defendant repeatedly violates the Act, *id.*, and the CFTC may, as it did here, allege multiple violations in a single count. *Levy*, 541 F.3d at 1110-11. Courts have routinely awarded significant civil monetary penalties in cases involving fraud. *See, e.g., Machado*, 2012 WL 2994396 at \*10-11 (S.D. Fla. Apr. 20, 2012) (on default, ordering civil monetary penalty of \$3,920,000 in fraud case based on \$140,000 for each of 28 customers defrauded); *CFTC v. FX Professional Int'l Solutions, Inc.*, 2010 WL 5541050 at \*9-10 (S.D. Fla. Nov. 20, 2010) (on default, ordering civil monetary penalty of \$4,080,000 based on 30 false statements issued by defendants); *CFTC v. Cosmo*, 2012 WL 5986525 at \*3-4 (E.D.N.Y. Oct. 1, 2012) (on default, ordering civil monetary penalty of \$240 million (triple the monetary gain to defendant) based on finding that defendant's fraud violations were intentional and significantly harmed numerous investors); *CFTC v. Int'l Financial Servs., Inc.*, 2003 WL 22350941 at \*2 (S.D.N.Y. Jun. 24, 2003) (on default, ordering maximum allowable civil monetary penalty of \$76 million equal to triple the monetary gain to defendant for fraud violations).

81. This case warrants the imposition of a substantial civil monetary penalty against the Default Defendants because they knowingly engaged in fraud, which is a core violation of

the Act. *See Grossfeld*, ¶ 26,921 at 44,467 and n. 28 (citation omitted); *see also United Investors Group, Inc.*, 440 F. Supp. 2d 1345, 1361 (S.D. Fla. 2008) (determining that, among other things, “the gravity of the offenses, the brazen and intentional nature of the violations, [and] the vulnerability of the customers” justified “imposition of a substantial and meaningful [civil monetary] penalty”). Specifically, Defendants knowingly engaged in an illegal scheme by, *inter alia*, (i) misappropriating much of the pool participants’ funds, (ii) fraudulently soliciting hundreds of thousands of dollars from participants for the purported purpose of trading forex, and (iii) sending false account statements to these participants.

82. The Court believes that a civil monetary penalty in the total amount of \$3,026,116.23 against the Default Defendants, joint and several, is justified in this case. This amount represents three times the monetary gain to Default Defendants as a result of their fraud. The amount of the civil monetary penalty is appropriate given the repeated and egregious nature of the Default Defendants’ fraudulent scheme. *See United Investors Group, Inc.*, 440 F. Supp.2d at 1361. Accordingly, this Court orders the Default Defendants to pay, jointly and severally, a civil monetary penalty in the amount of \$3,026,116.23, plus post-judgment interest (the “CMP Obligation”). Post-judgment interest on this civil monetary penalty shall accrue beginning on the date of entry of this Order and shall be calculated using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961 (2012).

83. The Default Defendants shall pay this CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables  
DOT/FAA/MMAC/AMZ-341  
CFTC/CPSC/SEC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
(405) 954-7262 office  
(405) 954-1620 fax  
[nikki.gibson@faa.gov](mailto:nikki.gibson@faa.gov)

If payment by electronic funds transfer is chosen, the Default Defendants shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. The Default Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Defendant and the name and docket number of this proceeding. The Default Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

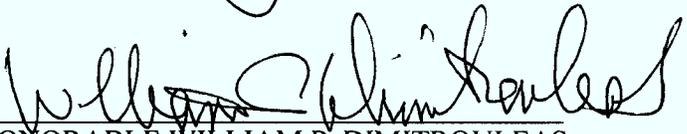
**D. Miscellaneous Provisions**

84. **Injunctive and Equitable Relief:** The injunctive and equitable relief provisions of this Order shall be binding upon the Default Defendants and any persons who are acting in the capacity of agent, employee, servant, or attorney of the Default Defendants, and any person acting in active concert or participation with the Default Defendants, who receives actual notice of this Order by personal service or otherwise.

85. **Partial Satisfaction:** Any acceptance by the CFTC or the Monitor of partial payment of the Default Defendants' Restitution and/or CMP Obligations shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the CFTC's right to seek to compel payment of any remaining balance.

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

**SO ORDERED**, this 11 day of February, 2015, at Fort Lauderdale, Florida.

  
HONORABLE WILLIAM P. DIMITROULEAS  
UNITED STATES DISTRICT JUDGE