

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

COMMODITY FUTURES TRADING COMMISSION,)	
)	
Plaintiff,)	CIVIL ACTION NO.: 10-80738-
)	Civ – Hurley/Hopkins
v.)	
)	
PHILIP MILTON, WILLIAM CENTER, GREGORY CENTER, and TRADE, LLC. ,)	
)	
Defendants,)	
)	
BD, LLC, CMJ Capital, LLC, Center Richmond, LLC, and TWTT, LLC. ,)	
)	
Relief Defendants.)	

**PLAINTIFF U.S. COMMODITY FUTURES TRADING COMMISSION,
DEFENDANT TRADE, LLC, AND RELIEF DEFENDANTS BD, LLC,
CMJ CAPITAL, LLC, CENTER RICHMOND, LLC, AND TWTT, LLC'S
SUPPLEMENTAL CONSENT ORDER OF PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY, AND FOR OTHER EQUITABLE RELIEF
AGAINST TRADE, LLC, AND ALL RELIEF DEFENDANTS, ASSESSING
RESTITUTION, DISGORGEMENT AND CIVIL MONETARY PENALTIES**

I. BACKGROUND

On June 22, 2010, Plaintiff U.S. Commodity Futures Trading Commission (the "Commission" or "CFTC") filed a Complaint against Philip Milton, William Center, Gregory Center, and Trade, LLC (collectively, "Defendants") and BD, LLC, CMJ Capital, LLC, Center Richmond, LLC, and TWTT, LLC (collectively, "Relief Defendants") for Permanent Injunction, Civil Penalties, and Other Equitable Relief, for violations of the anti-fraud provisions of Sections 4b(a)(2) and 4g(1) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 6(b)(a)(2) and

6o(1), and Section 4b(a)(1) of the Act, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), § 13102, 122 Stat. 1651 (enacted June 18, 2008), 7 U.S.C. § 6(b)(a)(1).¹ Further, Trade acted as a CPO of the pool without being registered with the Commission as such in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006). The Court entered an *ex parte* statutory restraining order against the Defendants and Relief Defendants on June 22, 2010, and a Consent Order of Permanent Injunction, Civil Monetary Penalty and for Other Equitable Relief Against Trade, LLC, BD, LLC, CMJ Capital, LLC, Center Richmond, LLC, and TWTT, LLC ("Consent Order of Permanent Injunction"), on September 6, 2011.

II. CONSENTS AND AGREEMENTS

To resolve the remaining issues of the amounts of restitution, disgorgement, and civil monetary penalty (as provided in the Consent Order of Permanent Injunction, without any further judicial proceedings), Trade, LLC and Relief Defendants:

1. Consent to the entry of this, Plaintiff U.S. Commodity Futures Trading Commission, Defendant Trade, LLC, and Relief Defendants BD, LLC, CMJ Capital, LLC, Center Richmond, LLC, and TWTT, LLC's Supplemental Consent Order of Permanent Injunction Civil Monetary Penalty, and for Other Equitable Relief Against Trade, LLC, and all Relief Defendants, Assessing Restitution, Disgorgement and Civil Monetary Penalties ("Supplemental Consent Order");

¹ Subsequent to the filing of the complaint in this case, the Act was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.* Defendants' misconduct predates the enactment of the Dodd-Frank Act.

2. Affirm that they have read and agreed to this Supplemental Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the CFTC or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Supplemental Consent Order;
3. Acknowledge service of the summons and Complaint;
4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1(2006 & Supp. IV 2011);
5. Admit the jurisdiction of the CFTC over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1, *et seq.*;
6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e) (2006 & Supp. IV 2011);
7. Waive:
 - (a) any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2012), relating to, or arising from, this action;
 - (b) any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;
 - (c) any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Supplemental Consent Order; and

(d) any and all rights of appeal from this action;

8. Consent to the continued jurisdiction of this Court over them for the purpose of enforcing the terms and conditions of the Consent Order of Permanent Injunction and Supplemental Consent Order and for any other purpose relevant to this action even if Trade, LLC or Relief Defendants now or in the future reside outside the jurisdiction of this Court;

9. Agree that they will not oppose enforcement of this Supplemental Consent Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

10. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Supplemental Consent Order, or creating or tending to create the impression that the Complaint and/or this Supplemental Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the CFTC is not a party. Trade, LLC and Relief Defendants shall undertake all steps necessary to ensure that their agents or employees under their authority or control understand and comply with this agreement;

11. By consenting to the entry of this Supplemental Consent Order, neither admit nor deny the allegations of the Complaint or the Findings of Fact and Conclusions of Law in this Supplemental Consent Order, except as to jurisdiction and venue, which they admit. Further, Trade, LLC and Relief Defendants agree and intend that the allegations contained in the Complaint and all of the Findings of Fact and Conclusions of Law contained in this Supplemental Consent Order shall be taken as true and correct and be given preclusive effect,

without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Trade, LLC and Relief Defendants; (b) any proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a (2006), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2012); and/or (c) any proceeding to enforce the terms of this Supplemental Consent Order;

12. Agree to provide immediate notice to this Court and the CFTC by certified mail, in the manner required by paragraph 35 of Part V of this Supplemental Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against them, whether inside or outside the United States; and

13. Agree that no provision of this Supplemental Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Trade, LLC and the Relief Defendants in any other proceeding. The Court, being fully advised in the premises, finds there is good cause for entry of this Supplemental Consent Order and that there is no just reason for delay. The Court therefore directs the entry of Findings of Fact, Conclusions of Law and a permanent injunction and ancillary equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006 & Supp. IV 2011), as set forth herein.

III. FINDINGS AND CONCLUSIONS

14. The Findings of Fact and Conclusions of Law contained in the Consent Order of Permanent Injunction are incorporated herein by reference and given preclusive effect as provided in the Consent Order of Permanent Injunction.

IV. RESTITUTION, DISGORGEMENT AND CIVIL MONETARY PENALTY

IT IS HEREBY ORDERED that Trade, LLC and the Relief Defendants shall comply fully with the following terms, conditions, and obligations relating to the payment of restitution, disgorgement and civil monetary penalty:

A. Restitution

15. Trade, LLC shall, jointly and severally, pay restitution in the amount of eleven million, four hundred thirty-eight thousand, three hundred twenty-six dollars and seventy-one cents (\$11,438,326.71) ("Restitution Obligation"), plus post-judgment interest, within thirty (30) days of the date of the entry of this Supplemental Consent Order. Post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Supplemental Consent Order, and shall be determined by using the Treasury Bill rate prevailing on that date pursuant to 28 U.S.C. § 1961 (2006).

16. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendants' customers, upon the Receiver's discharge, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall collect restitution payments from Trade, LLC 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.

17. Trade, LLC shall make Restitution Obligation payments under this Supplemental Consent Order to the Monitor in the name "TRADE, LLC-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. Trade, LLC 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.

18. 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 Defendant's customers identified by the CFTC 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 customers is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the CFTC following the instructions for civil monetary penalty payments set forth in paragraph 26, below.

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

20. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Trade, LLC's customers 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.

21. Upon the termination of the receivership estate, the Receiver shall provide the Commission with a report detailing the disbursement of funds to Trade, LLC's customers. The Receiver 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.

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

23. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Trade, LLC who suffered a loss is explicitly made an intended third-party beneficiary of this Supplemental Consent Order and may seek to enforce obedience of this Supplemental Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Trade, LLC to ensure continued compliance with any provision of this Supplemental Consent Order and to hold Trade, LLC in contempt for any violations of any provision of this Supplemental Consent Order.

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

B. Civil Monetary Penalty

25. Trade, LLC shall pay a civil monetary penalty in the amount of twenty-eight million, four hundred thousand dollars (\$28,400,000) ("CMP Obligation"), plus post-judgment

interest, within thirty (30) days of the date of the entry of this Supplemental Consent Order.

Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Supplemental Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Supplemental Consent Order pursuant to 28 U.S.C. § 1961 (2006).

26. Trade, LLC shall pay its 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 – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, Trade, LLC shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Trade, LLC shall accompany payment of the CMP Obligation with a cover letter that identifies Trade, LLC and the name and docket number of this proceeding. Trade, LLC 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.

C. Disgorgement

27. Relief Defendant Center Richmond, LLC shall pay disgorgement in the amount of one million, two hundred fifty-three thousand, eight hundred sixty-two dollar and sixty-three cents (\$1,253,862.63) ("Center Richmond, LLC Disgorgement Obligation"), plus post-judgment

interest, within (30) days of the date of the entry of this Supplemental Consent Order. Post-judgment interest shall accrue on the Center Richmond, LLC Disgorgement Obligation beginning on the date of entry of this Supplemental Consent Order, and shall be determined by using the Treasury Bill rate prevailing on that date pursuant to 28 U.S.C. § 1961 (2006).

28. Relief Defendant BD, LLC shall pay disgorgement in the amount of five hundred forty-five thousand, two hundred dollars (\$545,200) ("BD, LLC Disgorgement Obligation"), plus post-judgment interest, within (30) days of the date of the entry of this Supplemental Consent Order. Post-judgment interest shall accrue on the BD, LLC Disgorgement Obligation beginning on the date of the entry of this Supplemental Consent Order, and shall be determined by using the Treasury Bill rate prevailing on that date pursuant to 28 U.S.C. § 1961 (2006).

29. Relief Defendant TWTT, LLC shall pay disgorgement in the amount of one hundred thousand (\$100,000) ("TWTT, LLC Disgorgement Obligation"), plus post-judgment interest, within (30) days of the date of the entry of this Supplemental Consent Order. Post-judgment interest shall accrue on the TWTT, LLC Disgorgement Obligation beginning on the date of the entry of this Supplemental Consent Order, and shall be determined by using the Treasury Bill rate prevailing on that date pursuant to 28 U.S.C. § 1961 (2006).

30. Relief Defendant CMJ Capital, LLC shall pay disgorgement in the amount of two million, eight hundred twenty-six thousand, nine hundred eighty-one dollars and thirty-seven cents (\$2,826,981.37) ("CMJ Capital, LLC Disgorgement Obligation"), plus post-judgment interest, within (30) days of the date of the entry of this Supplemental Consent Order. Post-judgment interest shall accrue on the CMJ Capital, LLC Disgorgement Obligation beginning on the date of entry of this Supplemental Consent Order, and shall be determined by using the Treasury Bill rate prevailing on that date pursuant to 28 U.S.C. § 1961 (2006).

31. The Relief Defendants shall pay their Disgorgement Obligations 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 – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, Relief Defendants shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Relief Defendants shall accompany payment of their Disgorgement Obligations with a cover letter that identifies the Relief Defendant and the name and docket number of this proceeding. The Relief Defendant 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. Provisions Related to Monetary Sanctions

32. **Partial Satisfaction:** Any acceptance by the CFTC or the Monitor of partial payment of Trade, LLC or the Relief Defendants' Restitution Obligation, Disgorgement Obligation, or CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Supplemental Consent Order, or a waiver of the CFTC's right to seek to compel payment of any remaining balance.

E. Cooperation

33. Trade, LLC and the Relief Defendants shall cooperate fully and expeditiously with the CFTC, including the CFTC's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.

F. Receivership

34. Nothing in this Supplemental Consent Order shall affect the Court's orders authorizing the Receiver to administer the receivership.

V. MISCELLANEOUS PROVISIONS

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

Notice to CFTC:

Notice to the Commission:
David Meister, Director of Enforcement
Commodity Futures Trading Commission
Division of Enforcement
1155 21st Street N.W.
Washington, DC 20581

Notice to Defendant Trade, LLC and Relief Defendants:
Patrick Rengstl – Counsel for Receiver Jeffrey Schneider
LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP
201 South Biscayne Boulevard
22nd Floor, Miami Center
Miami, FL 33131

All such notices to the CFTC shall reference the name and docket number of this action.

36. Change of Address/Phone: Until such time as Trade, LLC and Relief Defendants satisfy in full their Restitution Obligation, Disgorgement Obligation, and CMP Obligation as set

forth in this Supplemental Consent Order, Trade, LLC and Relief Defendants shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

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

38. **Invalidation:** If any provision of this Supplemental Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of this Supplemental Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

39. **Waiver:** The failure of any party to this Supplemental Consent Order or of any customer at any time to require performance of any provision of this Supplemental Consent Order shall in no manner affect the right of the party or customer at a later time to enforce the same or any other provision of this Supplemental Consent Order. No waiver in one or more instances of the breach of any provision contained in this Supplemental Consent 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 Supplemental Consent Order.

40. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action to ensure compliance with this Supplemental Consent Order and for all other purposes related to this action, including any motion by Trade, LLC or Relief Defendants to modify or for relief from the terms of this Supplemental Consent Order.

41. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Supplemental Consent Order shall be binding upon Trade, LLC and the Relief Defendants, upon any person under their authority or control, and upon any person who receives actual notice of this Supplemental Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Trade, LLC and Relief Defendants.

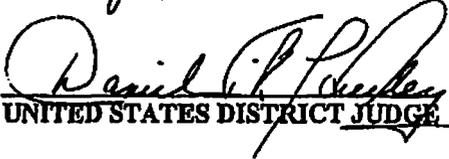
42. **Authority:** Patrick Rengstl, Esq., hereby warrants that he is counsel for Receiver Jeffrey Schneider, Esq., that Mr. Schneider was appointed Receiver over Trade, LLC and Relief Defendants' assets by this Court's June 23, 2010 Order, and that he has been duly authorized and empowered by the Receiver to sign and submit this Supplemental Consent Order.

43. **Counterparts and Facsimile Execution:** This Supplemental Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Supplemental Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Supplemental Consent Order.

44. Trade, LLC and the Relief Defendants understand that the terms of the Supplemental Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Supplemental Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Supplemental Consent Order.

IT IS SO ORDERED on this 24th day of April, ~~2012~~ ²⁰¹³.


UNITED STATES DISTRICT JUDGE

Consented to and Approved by:

Patrick J. Rengstl
Patrick Rengstl, counsel for Receiver for Trade,
LLC

10/23/12
Date

Patrick J. Rengstl
Patrick Rengstl, counsel for Receiver for BD, LLC

10/23/12
Date

Patrick J. Rengstl
Patrick Rengstl, counsel for Receiver for CMJ
Capital, LLC

10/23/12
Date

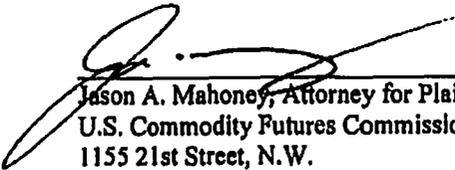
Patrick J. Rengstl
Patrick Rengstl, counsel for Receiver for Center
Richmond, LLC

10/23/12
Date

Patrick J. Rengstl
Patrick Rengstl, counsel for Receiver for TWTT,
LLC

10/23/12
Date

Consented to and Approved by:



Jason A. Mahoney, Attorney for Plaintiff
U.S. Commodity Futures Commission
1155 21st Street, N.W.
Washington D.C. 20581
Phone: 202-418-5289
Facsimile: 202-418-5868
Email: jmahoney@cftc.gov

12/19/12

Date