

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF MICHIGAN

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

AURIFEX COMMODITIES RESEARCH  
COMPANY;  
AURIFEX RESEARCH, L.L.C.;  
TY KLOTZ, individually and d/b/a  
AURIFEX INVESTMENTS; and  
MONETTE KLOTZ, individually and d/b/a  
AURIFEX INVESTMENTS,

Defendants.

CIVIL ACTION NO. 06-CV-0166

Hon. Robert Holmes Bell

Hon. Magistrate Judge Joseph G. Scoville

**CONSENT ORDER OF PERMANENT INJUNCTION AND  
OTHER ANCILLARY RELIEF AGAINST DEFENDANT  
AURIFEX COMMODITIES RESEARCH COMPANY**

On March 7, 2006, Plaintiff, Commodity Futures Trading Commission ("CFTC" or "Commission"), filed its Complaint in the above-captioned action seeking to enjoin the defendants from engaging in practices that constituted violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.* (2002), and Commission Regulations ("Regulations") promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2005) (the "Complaint"). The Complaint seeks injunctive and other equitable relief against each of the defendants, namely Aurifex Commodities Research Company ("ACRC"), Aurifex Research, L.L.C. ("Research"), Ty Klotz ("Klotz") and Monette Klotz ("M. Klotz"), as well as the imposition of civil monetary penalties for violations of the Act and Regulations. A statutory restraining order was entered

against the defendants on March 8, 2006 and, after an evidentiary hearing, a Preliminary Injunction was entered against each of the defendants on June 1, 2006. On February 1, 2008, the Court entered summary judgment against Klotz and M. Klotz and on February 15, 2008, the Court entered an order of default against Research. The entry of this Consent Order of Permanent Injunction and Other Ancillary Relief concludes this action as to the only remaining defendant, ACRC.

I.

**CONSENTS AND AGREEMENTS**

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

1. Consents to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief Against ACRC ("Order").
2. Affirms that it has read and 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 that this Court has personal and subject matter jurisdiction over it and this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).
5. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).
6. 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 it may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), to seek costs, fees and/or other expenses relating to or arising from this action;
- c. any claim that it may possess under the Small Business Regulatory Enforcement Fairness Act, 1996 HR 3136, Pub. L. 104-121, §§ 231-232, 110 Stat. 862-63 (Mar. 29, 1996) 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;
- d. 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
- e. all rights of appeal in this action.

7. ACRC 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.

8. ACRC agrees that neither it nor its agents, servants, employees, contractors, attorneys or representatives acting under its authority or actual or constructive control shall: (1) take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or any findings or conclusions in this Order, or creating or tending to create, the impression that the Complaint or Order is without a factual basis; and (2) take any action or make or permit to be made any public statement denying, directly or indirectly, any of the findings or conclusions in this order or creating, or tending to create, the impression that any allegation of the complaint or this Order is without factual basis. Nothing in this provision shall affect ACRC's (1) testimonial obligations, or (2) its right to take legal positions in other proceedings to which the Commission is not a party. ACRC shall undertake all steps necessary to assure that all of its agents, servants, employees, contractors, attorneys and representatives understand and comply with this agreement.

9. By consenting to the entry of this Order, ACRC neither admits nor denies the allegations of the Complaint or the Findings of Fact and Conclusions of Law contained in this

Order, except as to jurisdiction and venue, which it admits. However, ACRC agrees and intends that the allegations of the Complaint and all of the Findings of Fact and Conclusions of Law made by this Court and contained in Part II of this Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: any subsequent bankruptcy proceeding filed by, on behalf of, or against ACRC; any proceeding to enforce this Order; or any other proceeding relating to the fitness of ACRC to act in various capacities governed by the Act.

10. ACRC shall provide immediate notice to the Commission of any bankruptcy filed by, on behalf of, or against ACRC in the manner required in Part V of this Order.

11. No provision of this Order shall in any way limit or impair the ability of any person to seek any legal or equitable remedy against ACRC or any other person or entity in any other proceeding.

## II.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason to delay. The Court therefore directs the entry of the 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 (2002), as set forth herein.

#### Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

3. This Court has personal jurisdiction over ACRC, and ACRC has been served with the Summons and the Complaint and consented to the Court's jurisdiction over it.

4. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), in that ACRC transacted business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

Parties to this Order

5. The Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ *et seq.* (2002), and the regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2007).

6. ACRC is a Michigan corporation incorporated on June 20, 2005, with its mailing address in Mason, Michigan. ACRC's resident agent and incorporator owns the real estate firm that shared office space with ACRC and Research and the building where the shared office was located and where ACRC's and Research's business was conducted. ACRC has never been registered with the Commission in any capacity.

Violations of the Act and Regulations

7. From at least April 2004 through March 2006, Klotz, M. Klotz and Research accepted and pooled funds from individual members of the public to be participants in a commodity pool that they were operating under the name Aurifex Investments (hereinafter sometimes referred to as "Aurifex"). The purported purpose for soliciting funds from participants was to trade commodity futures contracts and options on futures contracts in the Aurifex pool. Klotz and M. Klotz operated Aurifex out of an office located in Mason, Michigan.

8. Neither Klotz nor M. Klotz was ever registered in any capacity with the Commission.

9. From at least June 2005 through March 2006, ACRC was a principal acting through its agents, Klotz and M. Klotz, in connection with their activities related to the Aurifex pool.

10. During the course of operating their commodity pool, Klotz and M. Klotz misappropriated Aurifex participant funds. They did this by commingling participant funds with their own funds in bank accounts and in a commodity trading account owned by M. Klotz, and by spending participant money for their own personal use.

11. M. Klotz used Aurifex participant funds for commodity futures trading and commodity options trading at a futures commission merchant ("FCM") account that she owned and that was set up in her name only.

12. Klotz failed to disclose material facts to prospective Aurifex participants, including where their funds would be deposited, how those funds would be used and the past performance of the funds invested in the Aurifex pool.

13. Klotz made specific misrepresentations of material facts to prospective participants and participants, including misrepresentations claiming that: Aurifex participants had been averaging a return of 20% pre month; their investment was insured through a policy with the Lloyd's of London insurance company; he was a registered commodity pool operator ("CPO"); and participants could withdraw their funds at any time.

14. Klotz made and distributed false account statements to Aurifex participants.

15. Klotz and M. Klotz failed to provide periodic account statements, certified annual reports or disclosure documents to Aurifex participants.

16. ACRC received \$30,000 from M. Klotz from a bank account owned by M. Klotz called "Monette Klotz, d/b/a Aurifex Investments."

17. The source of the \$30,000 that ACRC received from M. Klotz was Aurifex participant funds.

18. ACRC used the funds it received from M. Klotz to pay salaries to employees of Aurifex and for other expenses related to Aurifex's operations.

Need for Permanent Injunctive and Other Ancillary Equitable Relief

19. By the conduct described above, Klotz and M. Klotz violated Sections 4b(a)(2)(i) and (iii), 4c(b), 4m(1) and 4o(1)(A) and (B), 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6c(b), 6m(1), 6o(1)(A) and (B), and Regulation 33.10, 17 C.F.R. § 33.10 (2007).

20. The actions and omissions of Klotz and M. Klotz described herein were done individually and as agents on behalf of ACRC. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), ACRC is also liable for Klotz's and M. Klotz's violations of Sections 4b(a)(2)(i) and (iii), 4c(b), 4m(1) and 4o(1)(A) and (B), of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6c(b), 6m(1) and 6o(1)(A) and (B) (2002), and Regulation 33.10, 17 C.F.R. § 33.10 (2007).

21. As a result of its strict liability under Section 2(a)(1)(B) of the Act for the acts of its agents, Klotz and M. Klotz, ACRC is liable for violating the Act and Regulations, and, therefore, ACRC should be restrained and enjoined from further violating the Act and Regulations. The imposition of other ancillary equitable relief is required to comply with the basic objectives of the Act.

**III.**

**ORDER FOR PERMANENT INJUNCTION**

Pursuant to Section 6c of the Act, 7 U.S.C. § 13 a-1, IT IS HEREBY ORDERED THAT:

1. ACRC is permanently restrained, enjoined and prohibited from directly or

indirectly:

- a) soliciting, accepting, or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market while acting as a commodity pool operator without being registered with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).
- b) cheating or defrauding, or deceiving or attempting to cheat, defraud or deceive other persons in or in connection with any order to make, or the making of any contract of sale of any commodity for future delivery, made or to be made, for or on behalf of any other person in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii);
- c) cheating or defrauding, or deceiving or attempting to cheat, defraud or deceive other persons and making or causing to be made to any other person any false report or statement thereof or causing to be made for any person any false record thereof, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transactions, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Commission Regulation 33.10, 17 C.F.R. § 33.10; and
- d) employing any device, scheme or artifice to defraud any client or participant or prospective client or participant or engaging 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 by use of the mails or any means or instrumentality of interstate commerce, in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B).

2. ACRC is permanently prohibited from engaging, directly or indirectly, in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) ("commodity interest"), including but not limited to, the following:

- a. trading on or subject to the rules of any registered entity, at that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);

- b. engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- c. soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest;
- d. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9) (2007), or acting as a principal, agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9) (2007);
- e. entering into any commodity interest transactions for its own accounts, for any account in which it has a direct or indirect interest and/or having any commodity interests traded on its behalf; and
- f. engaging in any business activities related to commodity interest trading.

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

#### IV.

#### ORDER FOR OTHER EQUITABLE RELIEF

##### IT IS FURTHER ORDERED THAT:

##### A. RESTITUTION

1. ACRC shall pay restitution in the amount of thirty-thousand dollars (\$30,000), plus post-judgment interest (the "Restitution Amount"). The Restitution Amount is due and owing immediately upon entry of this Order. Post-judgment interest 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.

2. Pursuant to an Order of this Court dated March 27, 2006; Rodger D. Young was appointed as Receiver in this case. The Receiver shall collect the restitution payment from ACRC; compute *pro rata* allocations to injured participants identified as persons entitled to restitution after a final adjudication by the Court, and make distributions as set forth below.

3. ACRC shall make payment of restitution pursuant to this Order by sending such restitution payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's or bank money order, to Rodger D. Young, Receiver, Young & Susser, PC, 26200 American Drive, Ste. 305, Southfield, MI 48034, under cover letter identifying ACRC and the name and docket number of this proceeding. ACRC shall simultaneously transmit copies of the cover letter and form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1152 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, and the Chief, Office of Cooperative Enforcement, at the same address. The Receiver shall oversee ACRC's restitution obligation, shall make periodic distribution of funds to participants as appropriate, or may defer distribution until such time as it deems appropriate.

4. The amounts paid by the Receiver to any ACRC participant shall not limit the ability of any such participant from proving that a greater amount is owed from ACRC or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any participant that exist under state or common law.

#### **B. CIVIL MONETARY PENALTY**

1. ACRC shall pay a civil monetary penalty in the amount of one-hundred and twenty-thousand dollars (\$120,000), plus post-judgment interest. The civil monetary penalty is

due and owing immediately upon entry of this Order. Post-judgment interest 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.

2. ACRC shall pay this civil monetary penalty by making 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, 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: Marie Bateman – AMZ – 300  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, Oklahoma 73169  
Telephone: 405-954-6569

If payment is to be made by electronic funds transfer, ACRC shall contact Marie Batemen or her successor at the above address to receive payment instructions and shall fully comply with those instructions. ACRC shall accompany payment of the penalty with a cover letter that identifies ACRC and the name of the docket number of the proceedings. ACRC shall simultaneously transmit copies of the cover letter and form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, and the Chief, Office of Cooperative Enforcement, at the same address.

**C. PRIORITY OF MONETARY SANCTIONS AND PARTIAL PAYMENTS**

1. All payments by ACRC pursuant to this Consent Order shall first be applied to satisfaction of the Restitution Amount, consistent with the authority granted the Receiver, above.

After satisfaction of the Restitution Amount, payments by ACRC pursuant to this Order shall be applied to satisfy its civil monetary penalty obligation.

2. Any acceptance by the Commission and/or Monitor of partial payment of ACRC's restitution obligation and/or civil monetary penalty obligation shall not be deemed a waiver of the respective requirement to make further payments pursuant to this Order, or a waiver of the Commission's and/or Receiver's right to seek to compel payment of any remaining balance.

V.

**MISCELLANEOUS PROVISIONS**

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

Notice to Commission:

Director  
Division of Enforcement  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

Susan B. Padove  
Division of Enforcement  
Commodity Futures Trading Commission  
525 W. Monroe Street  
Suite 1100  
Chicago, Illinois 60661

Notice to Defendant ACRC:

ACRC  
Resident Agent: Richard Robbins  
126 State Street  
Mason, Michigan 48854

Angela Emlet-Dardas, Esq.  
Attorney for Defendant ACRC  
Honigman Miller Schwartz and Cohn LLP  
222 N. Washington Square  
Suite 400  
Lansing, Michigan 48933

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 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 affected by the holding.

4. Waiver: The failure of any party hereto or of any customer 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 any other provision of this Order. No waiver in one or more instance 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. Authority: ACRC hereby warrants that Richard Robbins ("Robbins") is the President of ACRC, that this Order has been duly authorized by ACRC, and that Robbins has been duly empowered to sign and submit this Order on behalf of ACRC. By signing on behalf of ACRC, Robbins does not accept or admit any personal or individual liability under this Order, but signs this Order only as an officer with authority to sign on behalf of ACRC.

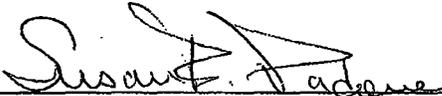
6. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action for all purposes, including the implementation and enforcement of this Final Judgment as to defendant ACRC.

**IT IS SO ORDERED.**

DATED: November 24, 2008

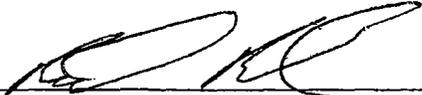
/s/ Robert Holmes Bell  
ROBERT HOLMES BELL  
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:  
\_\_\_\_\_



Susan B. Padove, Senior Trial Attorney  
U.S. Commodity Futures Trading Commission  
525 W. Monroe Street  
Suite 1100  
Chicago, IL 60661

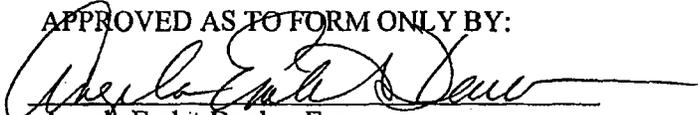
Date: 11-12-08



Richard Robbins, President on behalf of  
Aurifex Commodities Research Company

Date: 6-16-08

APPROVED AS TO FORM ONLY BY:



Angela Emler-Dardas, Esq.  
Attorney for Defendant ACRC  
Honigman Miller Schwartz and Cohn LLP  
222 N. Washington Square  
Suite 400  
Lansing, Michigan 48933-1800

Date: 6/16/08