

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

<p>U.S. COMMODITY FUTURES TRADING COMMISSION,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ALPHAMETRIX, LLC,</p> <p style="text-align: center;">Defendant,</p> <p>ALPHAMETRIX GROUP, LLC,</p> <p style="text-align: center;">Relief Defendant.</p>	<p>Civil Action No: 1:13-cv-7896</p> <p>Hon. Joan H. Lefkow</p>
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**CONSENT ORDER FOR PERMANENT INJUNCTION AND OTHER EQUITABLE
RELIEF AND PENALTIES AGAINST DEFENDANT ALPHAMETRIX LLC AND
RELIEF DEFENDANT ALPHAMETRIX GROUP, LLC**

I. INTRODUCTION

On November 4, 2013, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against Defendant AlphaMetrix, LLC (“AlphaMetrix”) and Relief Defendant AlphaMetrix Group, LLC (“AMG”) (collectively, “Defendants”) seeking injunctive and other equitable relief, as well as the imposition of civil penalties against AlphaMetrix for violations of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 1 *et seq.* (2012). (Doc. No. 1.) On November 5, 2013, the Court entered a Consent Statutory Restraining Order against Defendants which, among other things, froze Defendant AlphaMetrix’s assets and appointed Deborah Thorne of Barnes & Thornburg, LLP as Corporate Monitor to oversee the distribution of Defendant AlphaMetrix’s assets. (Doc. No. 14.) On December 18, 2013, the Court entered a

Modified Consent Statutory Restraining Order Expanding Role of Corporate Monitor to Temporary Equity Receiver (“Modified Consent Order”) that expanded the appointment of Ms. Thorne from Corporate Monitor of Defendant AlphaMetrix to Temporary Equity Receiver (“Receiver”) for AMG and all of its subsidiaries and affiliates, including AlphaMetrix. (Doc. No. 33.)

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges against Defendants AlphaMetrix and AMG alleged in the Complaint, Defendants, without a trial on the merits or any further judicial proceedings:

1. Consent to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendants AlphaMetrix, LLC and AlphaMetrix Group, LLC (“Consent Order”);
2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, 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 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, 7 U.S.C. § 13a-1 (2012);
5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to Section 6c of the Act, 7 U.S.C. §§ 13a-1 (2012);
6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012);
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 Commission Regulations (“Regulations”), 17 C.F.R. §§ 148.1 et seq. (2013), 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 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 implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action;

9. Agree that they will not oppose enforcement of this Consent Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waive 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 in this Consent Order, or creating or tending to create the impression that the Complaint or this 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 Commission is not a party. AlphaMetrix and AMG

shall undertake all steps necessary to ensure that all of their agents and employees under their authority or control understand and comply with this agreement;

11. By consenting to the entry of this Consent Order, Defendants AlphaMetrix and AMG neither admit nor deny the allegations of the Complaint or in this Consent Order, except as to jurisdiction and venue, which they admit. Further, Defendants AlphaMetrix and AMG agree and intend that the allegations contained in the Complaint and in this 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 AlphaMetrix or AMG; (b) any proceeding pursuant to Section 8a of the Act, 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2013); or (c) any proceeding to enforce the terms of this Consent Order. AlphaMetrix and AMG do not consent to the use of this Consent Order by any other party in any other proceeding.

12. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 35 of Part VII of this 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 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 them in any other proceeding.

III. SUMMARY

A. Parties

14. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2013).

15. Defendant **AlphaMetrix, LLC** is a Delaware limited liability company with its principal place of business located in Chicago, Illinois. AlphaMetrix has been registered with the Commission as a CPO and CTA since July 2005.

16. Relief Defendant **AlphaMetrix Group, LLC** is the parent and 100% owner of AlphaMetrix. AMG has never been registered with the Commission in any capacity.

17. On December 18, 2013, Deborah Thorne of Barnes & Thornburg was appointed by the Court as a Temporary Equity Receiver for AMG and all of its subsidiaries and affiliates, including AlphaMetrix and all commodity pools operated by AlphaMetrix. (Doc. No. 33.) Previously, on November 5, 2013, Ms. Thorne was appointed by the Court as a Corporate Monitor of Defendant AlphaMetrix. (Doc. No. 14.)

B. Factual Allegations in the Complaint

18. AlphaMetrix agreed to rebate certain fees to participants of commodity futures pools (the "pool participants") operated by AlphaMetrix by reinvesting the rebates in the pools in the name of and on behalf of the pool participants. Between January 1, 2013 and October 31, 2013, AlphaMetrix was obligated to reinvest approximately \$2.8 million of rebates in this manner.

19. AlphaMetrix failed to reinvest these rebates and instead transferred them to the bank accounts of its parent company, AMG, and AMG used the funds to meet obligations of AMG.

20. Account statements that AlphaMetrix emailed to these pool participants during this time period reflected increases in the net asset value of the pool participants' investment as if the rebates had been reinvested in the pools, even though they were not.

C. Jurisdiction and Venue

21. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

22. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because AlphaMetrix's principal place of business is located in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

THE PARTIES AGREE AND IT IS HEREBY ORDERED THAT:

IV. PERMANENT INJUNCTION

23. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, Defendant AlphaMetrix is permanently restrained, enjoined and prohibited from directly or indirectly engaging in any conduct in violation of Sections 4b(a)(1)(A)-(C) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) and 6o(1) (2012).

V. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution

24. Defendant AlphaMetrix shall pay restitution in the amount of TWO MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$2,800,000) ("Restitution Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961. The Restitution Obligation shall be reduced by any amount of the \$2,800,000 that is paid to the pool participants by the Receiver from the Receivership Assets, as defined by the Modified Consent Order.

25. The Receiver shall collect restitution payments from Defendant AlphaMetrix and make distributions as set forth below. Because the Receiver is acting as an officer of this Court in performing these services, the Receiver shall not be liable for any action or inaction, other than actions involving fraud.

26. The Receiver shall oversee the payment of the Restitution Obligation and shall have the discretion to determine and recommend to the Court the amount payable to each pool participant and an equitable manner of distribution.

27. The amount payable to each pool participant shall not limit the ability of any pool participant from proving that a greater amount is owed from Defendant AlphaMetrix or any other person or entity and, subject to Section VIII of the Modified Consent Order, 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.

28. Any acceptance by the Receiver of partial payment of Defendant AlphaMetrix's Restitution Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Consent Order, or a waiver of the Receiver or Commission's right to seek to compel payment of any remaining balance.

B. Civil Monetary Penalty

29. Defendant AlphaMetrix shall pay a civil monetary penalty in the amount of TWO MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$2,800,000) ("CMP Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

30. Defendant AlphaMetrix 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
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 telephone
(405) 954-1620 facsimile

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

31. Any acceptance by the Commission of partial payment of Defendant AlphaMetrix's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

VI. DISGORGEMENT

32. Relief Defendant AMG shall disgorge the amount of TWO MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$2,800,000) ("Disgorgement Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961. The Disgorgement Obligation shall be reduced by any amount up to \$2,800,000 that is paid to the pool

participants by the Receiver from the Receivership Assets, as defined by the Modified Consent Order.

33. Relief Defendant AMG shall pay its Disgorgement 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 telephone
(405) 954-1620 facsimile

If payment by electronic funds transfer is chosen, Relief Defendant AMG shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Relief Defendant AMG shall accompany payment of the Disgorgement Obligation with a cover letter that identifies Relief Defendant AMG and the name and docket number of this proceeding. Relief Defendant AMG 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.

34. Any acceptance by the Commission of partial payment of Relief Defendant AMG's Disgorgement Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

VII. NOTICES

35. All notices required to be given by any provision in this Consent Order shall be filed with the Court and sent by certified mail, return receipt requested, as follows:

Notice to Plaintiff Commission:

Director of the Division of Enforcement
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581

and

Stephanie Reinhart, Esq.
Commodity Futures Trading Commission
525 W. Monroe, 11th Floor
Chicago, IL 60661

Notice to Defendant AlphaMetrix and Relief Defendant AMG:

Deborah Thorne, Esq.
Receiver for AlphaMetrix LLC and AlphaMetrix Group, LLC
Barnes & Thornburg LLP
1 North Wacker, Suite 4400
Chicago, IL. 60606

and

Randall Lending, Esq.
Counsel for Defendant AlphaMetrix
Vedder Price, P.C.
222 N. LaSalle, Ste 2600
Chicago, IL 60601

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

36. Change of Address/Phone: Until such time as Defendant AlphaMetrix and Relief Defendant AMG satisfy in full their Restitution, CMP, and Disgorgement Obligations as set forth in this Consent Order, Defendant and Relief Defendant 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.

VIII. MISCELLANEOUS PROVISIONS

37. Nothing herein shall be construed in any way to limit or abridge the appointment of the Receiver or the powers granted to the Receiver by the Modified Consent Order, which remain in effect until further order of the Court.

38. 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 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.

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

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

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

42. This 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 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 Consent Order.

43. Defendant AlphaMetrix and Relief Defendant AMG understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

44. Except as permitted herein, this Consent Order shall not be used by any other party in any other proceeding.

IT IS SO ORDERED on this 16th day of December.



Honorable Joan H. Lefkow
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:

Deborah Thorne, Esq.
Receiver for AlphaMetrix LLC and
AlphaMetrix Group, LLC
Barnes & Thornburg, LLP
1 North Wacker, Suite 4400
Chicago, IL 60606
(312) 214-8307 (direct dial)
(312) 759-5646 (facsimile)
dthorne@btlaw.com

Dated: _____

Stephanie Reinhart, Esq.
Commodity Futures Trading Commission
Attorney for Plaintiff
U.S. Commodity Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, IL 60661
(312) 596-0688 (direct dial)
(312) 596-0714 (facsimile)
sreinhart@cftc.gov

Dated: _____

Approved as to form:

Randall M. Lending, Esq.
Attorney for AlphaMetrix, LLC and
AlphaMetrix Group, LLC
Vedder Price P.C.
222 North LaSalle Street, Suite 2600
Chicago, IL 60601
(312) 609-7564 (direct dial)
(312) 609-5005 (facsimile)
rlending@vedderprice.com

Dated: _____