

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading  
Commission,

Plaintiff,

v.

ATWOOD & JAMES, LTD., a New York  
Corporation, ATWOOD & JAMES, SA, a New  
York Corporation, MICHAEL A.  
KARDONICK, an individual, and GARY R.  
SHAPOFF, an individual,

Defendant(s).

Case No. 09-cv-6032

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTY  
AND OTHER EQUITABLE RELIEF UNDER THE COMMODITY EXCHANGE ACT**

**I. INTRODUCTION**

On January 22, 2009, Plaintiff U.S. Commodity Futures Trading Commission (the “Commission” or “CFTC”) filed a Complaint against Defendants Atwood and James, LTD (“Atwood LTD”), Atwood and James SA, Inc. (“Atwood SA”), (collectively “Atwood”), Gary Shapoff (“Shapoff”) and Michael Kardonick (“Kardonick”) (collectively “Defendants”) for Permanent Injunction, Civil Penalties, and Other Equitable Relief, for violations of the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.* (2012), and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. § 1.1 *et seq.* (2013).

**II. CONSENTS AND AGREEMENTS**

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

1. Consent to the entry of this Consent Order For Permanent Injunction, Civil Monetary Penalty And Other Equitable Relief Under The Commodity Exchange Act (“Consent Order”) against Defendants Atwood, Shapoff, and Kardonick;

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 CFTC 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 7 U.S.C. § 13a-1(2012);

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)(2012);

7. Waive:

(a) any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the 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, even if Kardonick or Shapoff now or in the future reside outside the jurisdiction of this Court;

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 the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/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 CFTC is not a party. Defendants shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement; and

11. Admit to all of the findings made in this Consent Order and all of the allegations in the Complaint. Further, 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 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 Defendants; (b) any proceeding pursuant to 7 U.S.C. § 12a (2012), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2013); and/or (c) any proceeding to enforce the terms of this Consent Order.

12. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 74 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. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to 7 U.S.C. § 13a-1 (2012), as set forth herein.

#### THE PARTIES AGREE AND THE COURT HEREBY FINDS:

##### A. Findings of Fact

###### 1. The Parties To This Consent Order

14. **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with administering and enforcing 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. **Atwood Ltd.** was a registered New York corporation. Atwood Ltd. operated out of Rio de Janeiro, Brazil but claimed that its main office is in Rochester, New York. Atwood Ltd., along with Atwood S.A., engaged in the business of soliciting and accepting funds from clients to trade foreign currency options on their behalf. Atwood Ltd. has never been registered with the Commission in any capacity.

16. **Atwood S.A.** was a registered New York corporation. Atwood S.A. operated out of Rio de Janeiro, Brazil but claimed its main office in Rochester, New York. Atwood S.A., along with Atwood Ltd., engaged in the business of soliciting clients and accepting funds from clients to trade foreign currency options with or on their behalf. Atwood S.A. has never been registered with the Commission in any capacity.

17. **Kardonick** is an individual who is currently incarcerated in Federal custody. Kardonick, through Atwood, engaged in the business of soliciting clients and accepting funds to trade foreign currency options with or on their behalf. Kardonick, at different time, identified himself as the president or a principal of Atwood. Other Atwood representatives and the Atwood website described Kardonick as Atwood's head analyst and trader. Kardonick was a signatory on bank accounts in the name of Atwood Ltd. and Atwood S.A. He has never been registered with the Commission in any capacity.

18. **Shapoff** is an individual who is currently incarcerated in Federal custody. Shapoff was often identified as an agent, employee or officer of Atwood and solicited clients on behalf of Atwood to trade foreign currency options. Shapoff was a signatory on an Atwood S.A. bank account. He has never been registered with the Commission in any capacity.

## **2. Defendants' Solicitation of Clients**

19. Beginning in or about January 2005 and continuing to January 22, 2009, ("Relevant Period") Defendants fraudulently solicited and accepted funds from multiple

individuals located throughout the world, including the United States, the United Kingdom and other parts of Western Europe, for the purported purpose of trading foreign currency options. Defendants fraudulently solicited more than \$1 million, and misappropriated client funds for personal use.

20. Atwood, Kardonick and Shapoff solicited clients through the internet at [www.atwoodjames.com](http://www.atwoodjames.com), mail flyers, other promotional material, cold calling and other personal solicitations. Atwood S.A.'s solicitations focused on prospective clients located in Portugal and Atwood Ltd.'s solicitations focused on prospective clients located in the United States, the United Kingdom and elsewhere. However, Atwood S.A. and Atwood Ltd. representatives generally referred only to "Atwood" in their oral solicitations of prospective clients.

21. In its written and oral solicitations, Atwood, directly and through its employees, agents and officers, and , Kardonick and Shapoff directly made material misrepresentations and omissions concerning, among other things, Atwood's operations and regulatory status, Defendants' lengthy and successful trading histories, the safety of clients' principal investment due to the use of certain trading strategies, and Kardonick and Shapoff's criminal records. Overall, Atwood conveyed to prospective clients that profitable returns on small investments in foreign currency options were highly likely, if not virtually guaranteed.

22. Through its website, [www.atwoodjames.com](http://www.atwoodjames.com), promotional material and customer agreements, Atwood offered trading in foreign currency options in the "global foreign exchange market" ("forex market"). The website provided a detailed description of the forex market, advice on investing in foreign currency options, as well as regularly updated market reports. Through its oral solicitations of at least certain prospective clients, Atwood, Kardonick and Shapoff emphasized that Atwood trades foreign currency options on U.S. exchanges on behalf of

its clients.

23. On the website and in the flyers and other materials, Atwood created an appearance of a sophisticated global enterprise. Its website contact information indicated its office is in Rio de Janeiro, Brazil. In email correspondence, Atwood also listed offices in Amsterdam, London and New York City. To create the appearance of a strong European presence, Atwood used what appears to be a British royal family crest with the letters "A" and "J" emblazoned on it as its logo, and "Ltd" in its name, a British commonwealth term for incorporation. The Atwood website also claimed to serve "clients all over Western and Central Europe." Similarly, with respect to their solicitations of prospective clients in areas such as Portugal, Atwood used "S.A." in its name and logo.

24. Yet, in certain oral solicitations, Atwood, Kardonick and Shapoff emphasized that while having a global presence, its main office was in Rochester, New York. Earlier United States clients understood Atwood's main office to be in New York City.

25. Atwood's website reassured prospective clients that, with Atwood, the customer receives over 30 years of combined tenure in the forex market with the ability to "instantly choose and execute trades most likely to succeed for our clients." Atwood's website provided further reassurance about Atwood's experience by stating that "it has unparalleled knowledge of the forex market supported by experience in commodity futures and options." Atwood further claimed on the website that it focused on forex exclusively the last fifteen years. By such claims, Atwood implied that it has been profitably engaged in foreign currency trading for much of the time after its initial incorporation in 1978.

26. Atwood also used promotional flyers that similarly emphasized its claimed almost 30-year trading history. At least one Atwood client saw an Atwood flyer stating, "Small

movements. Big benefits ... Every day for the past 29 years, we have been making timely and intelligent decisions on behalf of our clients. Isn't it time you found out how you can earn big investments from small currency movements?"

27. According to its website and oral solicitations, Atwood, Kardonick and Shapoff purportedly assigned a team of three, a broker, analyst, and strategist, to each client account, and promised weekly contact to discuss planned transactions. Clients either provided powers of attorney to allow Atwood to trade on their behalf without explicit approval, i.e., with discretion, or authorized all transactions to be executed on their behalf.

28. Atwood purported to offer four month trades where at the end of four months Atwood exercised the options, and the client could elect to withdraw principal and revenue or reinvest and plan another four month trade.

29. In the website, Atwood pronounced that "Our goal for you is a 30% return in four months. That is equivalent to a 90% annual return. When is the last time your stocks almost doubled in a year!"

30. In the website, Atwood provided an example of "A Typical Forex Trading Experience" to show how they may achieve this goal by using a trading strategy called a "straddle." Atwood's website described a straddle as "playing on both sides of the fence" and as an "insurance policy" against heavy losses.

31. Atwood's website also represented that Atwood trades through a clearing firm and deals with established firms. To convince prospective clients that Atwood was a "legitimate company," Atwood's website answered the question of "how do I know that I am dealing with a legitimate company" by stating that "it is important to trade with firms which are utilizing established financial entities" and claiming its "current clearing firm did \$28 billion dollars in

business last year.”

32. The Atwood website also reassured prospective clients that they would be able to track an option’s current market value because “currencies are traded on exchanges that have continuous electronic quotation systems.”

33. To further lull prospective clients into believing that Atwood was legitimate and regulated, the website then claimed that the Atwood advisors and principals “although they are not have required to be licensed to trade foreign currency options, have been licensed through various governmental agencies at one time or another in the past most still are.”

34. Atwood’s, Kardonick’s and Shapoff’s personal solicitations repeated the claims of Atwood’s vast and successful trading experience, the legitimacy of Atwood and its representatives through licensing, regulation and exchange trading, the likelihood of profits, and the security of clients’ principal through the use of the straddle strategy.

35. Shortly after mailing an Atwood postage-paid flyer, or sometimes without prior contact, prospective clients received a call from an Atwood representative. The Atwood representative urged prospective clients to purchase options in Eurodollars or the Japanese Yen in order to capitalize on markets that Atwood represented would move dramatically.

36. During these initial calls with at least certain prospective clients, Atwood representatives emphasized that Atwood was a licensed or registered U.S. entity regulated by the U.S. government to trade foreign currency options, and in certain instances, claimed the trading occurred on U.S. exchanges.

37. Atwood also reinforced the use and protections of the straddle strategy. Atwood representatives told prospective clients that, with this strategy, clients would not lose their principal. Those same representatives created the impression that Atwood’s trading strategy

virtually guaranteed profits. For example, one prospective client was told that he would never lose his investment and if he did, he would be the “unluckiest trader in history.”

38. In one such solicitation, Atwood, Kardonick and Shapoff told clients and prospective clients that Atwood conducted its business and trading out of its main office in Rochester, New York. The Atwood website and emails, however, did not provide any information concerning a Rochester office. To the contrary, the website listed only an address and telephone number in Rio de Janeiro, Brazil. Atwood emails identified other Atwood offices purportedly located in Amsterdam, London and New York City, but not Rochester. When questioned by prospective clients, Atwood representatives provided a Rochester address, a local Rochester telephone number and a toll-free telephone number. These contact points were for Shapoff.

39. At least three of Atwood’s clients called the Rochester local and toll-free telephone numbers to verify that Atwood was a U.S. company with a legitimate and substantial presence in the United States.

40. In one instance, a prospective client called the Rochester number and a person named “Gary” answered the telephone. “Gary” told this client that all Atwood representatives were out of the office and that no other executives were available to talk at that time. Gary also told the client that the Rochester office had 16 other people in it, but that none had direct lines because they were traders and did not wish to be interrupted while trading. “Gary” was Shapoff.

41. Prospective clients were satisfied after calling the Rochester numbers that they were dealing with a legitimate U.S. entity based in Rochester, New York.

42. During the telephone solicitations, if prospective clients questioned Atwood’s, Kardonick’s and Shapoff’s claim that clients’ principal was not at risk through options trading,

or if they were unable to invest the minimum investment amount of \$13,000, the Atwood representative referred them to the website and a “senior trading advisor,” or to Kardonick himself, who representatives and Kardonick describe as Atwood’s head trading advisor.

43. Atwood representatives informed prospective clients that Kardonick had over 30 years of trading experience with a virtually spotless trading history. Representatives also told prospective clients that Kardonick made the decisions on whether a prospective client may invest less than the required minimum amount.

44. Kardonick boasted to prospective clients that he was one of the best in the business with over 30 years of experience in options trading “on Wall Street” and regaled them with supposed connections with heads of state, Wall Street and politicians. He reiterated that when trading with Atwood, clients’ principal investments were safe and profitable returns were virtually guaranteed.

45. As part of their solicitations, Atwood, Kardonick and Shapoff provided a Customer Advisory Agreement for clients to sign (the “Agreement”). The Agreement referenced on-exchange and over-the-counter trading of foreign currency options but did not specify where or with whom trading occurs. The only trading entity referenced is Atwood.

46. The Agreement also provided that Atwood charged a \$220 commission fee and a \$20 administrative fee per option contract.

47. Atwood instructed the prospective clients to strike certain risk disclosure provisions in the Agreement, including provisions stating that “as a result of market conditions and other factors, you may sustain a loss to your initial investment and any additional fund[s] you deposit,” and “[s]trategies utilizing ... straddles may have as much risk as simple long or short positions. It may be difficult or impossible to execute orders and offset or liquidate open

market position due to market liquidity and /or operations.”

48. At the same time, Atwood instructed prospective clients to highlight a statement in the Agreement that emphasizes the much higher probability of a profitable return based on the straddle strategy touted in Atwood’s personal solicitations of prospective clients. The highlighted statement provides:

However options traded on a weighted straddle basis have a much higher probability of making money Then [sic] just playing calls or puts alone, also buying options closer to market price greatly enhances your chances of making money.

49. The highlighted statement reinforced Atwood’s, Kardonick’s and Shapoff’s oral reassurances to prospective clients concerning the security of their investment through use of the straddle strategy and eviscerated the risk disclosure set forth immediately above it in the Agreement, which included the statement that “an option is an extremely complicated trading vehicle, which carries substantial risks ...”

50. Atwood instructed clients to wire funds to U.S. bank accounts held in the name of Atwood. Kardonick was a signatory on the Atwood bank accounts, and Shapoff was a signatory on at least one Atwood bank account.

51. Thereafter, Atwood sent confirmations on Atwood letterhead of the profitable trades purportedly executed by Atwood traders. The confirmations contained the client’s name, the client’s account number, analyst name, and the date and details of the trades. The confirmations did not reflect any exchange, clearing firm, or counterparty information. The only company identified on the confirmations is Atwood. Based on the confirmations, Atwood clients believed their funds were held in segregated accounts in their individual names.

52. Along with the confirmations showing profitable trading, Atwood, Kardonick and Shapoff also made oral representations that clients were making money through Atwood’s

trading.

53. After receiving written and oral representations of profitable trading based on their initial investments, some Atwood clients invested additional funds with Atwood.

54. To the extent that Atwood and Kardonick actually engaged in any trading on behalf of clients, in at least one instance, Atwood and Kardonick traded client funds without client authorization. The client had not granted Atwood power of attorney over the trading of his account. He initially authorized certain trades in Euro options. Shortly thereafter, Atwood informed the client that his Euro options trade had reached its strike price and, if the client relinquished his position, he would sell for a profit of \$1,000 or 15%. The client instructed Atwood to exercise the option and pay him his principal and return. Instead, Atwood sold the Euro option and bought five Japanese Yen puts for a total of \$6,650. When the client complained, an Atwood representative said Kardonick had authorized the trade.

55. With respect to at least certain Atwood clients, Atwood eventually notified them that all their funds had been lost in trading, including their principal investments. Despite demands by clients, Atwood refused to refund clients' principal. Atwood also refused to provide additional documentation that Atwood was indeed trading on behalf of the clients.

### **3. Defendants' Solicitations Were False and Misleading**

56. Defendants' solicitations of prospective and existing clients as alleged above were materially false and misleading because, among other things:

(a) Atwood Ltd., Atwood S.A., and Kardonick did not hold any known licenses or registrations with the United States government in connection with the trading of foreign currency options; specifically, Atwood and Kardonick were not registered with the Commission, the Securities and Exchange Commission or any other financial regulator;

(b) Atwood had not been profitably trading foreign currency options for the last fifteen years on behalf of clients; as noted herein, no Atwood trading accounts were located and funds in Atwood bank accounts were not used for trading on behalf of clients; in addition,

although Atwood Ltd. has an incorporation date of 1978, the New York Division of Corporations dissolved it in 1982, and Atwood did not form again until 2005. Similarly, Atwood S.A. did not form until 2003;

(c) Defendants failed to disclose that Kardonick and Shapoff had criminal fraud convictions;

(d) Atwood did not maintain an office with staff in Rochester, New York. The Rochester address Atwood provided was the address of a retail clothing store and the Rochester telephone number Atwood provided was the home telephone number of . Shapoff; and

(e) even with the use of the straddle strategy, clients' principal was at risk when trading foreign currency options.

57. Atwood's, Kardonick's and Shapoff's solicitations were also false and misleading because, despite claims that Atwood successfully traded on U.S. exchanges and that Atwood traded through a clearing firm, Atwood never traded on behalf of or in the name of clients on U.S. exchanges or indeed, anywhere. Likewise, Atwood did not have a relationship with a clearing firm. Moreover, no at any FCM or other financial institution holds trading accounts in the name of or controlled by Atwood Ltd. or Atwood S.A.

58. Defendants's solicitations were also false and misleading because Kardonick was not a successful foreign currency options trader. Kardonick's commodity futures and options trading accounts reflect that from 2003 through September 2008, Kardonick sustained net trading losses of approximately \$1.7 million.

59. Defendants knowingly or with reckless disregard made the above-alleged material misrepresentations or omissions. Atwood clients relied on these misrepresentations and omissions in making their decisions to trade foreign currency options with Atwood.

#### **4. Defendants Misappropriated Funds**

60. Defendants accepted funds from Atwood clients for the purported purpose of

trading foreign currency options.

61. Defendants misappropriated client funds for personal use and to make payments to other Atwood clients.

## **B. Conclusions of Law**

### **1. Jurisdiction and Venue**

62. 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 Commission 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 Commission 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.

63. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because the Defendants reside in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

### **2. Fraud by Misrepresentations and Omissions, False Account Statements, and Misappropriation of Funds**

64. By the conduct described in paragraphs 1 through 63 above, Defendants cheated and defrauded, or attempted to cheat and defraud, and willfully deceived, or attempted to deceive, their customers by, among other things, knowingly or recklessly making false, deceptive, or misleading representations and omissions of material facts in their solicitations of prospective and existing clients to trade foreign currency options, by engaging in unauthorized trading, by issuing false oral and written statements concerning the profitability of trading on behalf of clients, and by misappropriating client funds in violation of 7 U.S.C. § 6c(b) (2012), and 17 C.F.R. 1.1(b)(1)-(3), and 32.9(2013).

65. Kardonick and Shapoff controlled Atwood, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Atwood's act or acts in violation of the Act and Regulations; therefore, pursuant to 7 U.S.C. § 13c(b) (2012), Kardonick and Shapoff are liable for Atwood's violations of 7 U.S.C. § 6c(b) (2012), and 17 C.F.R. 1.1(b)(1)-(3), and 32.9(2013).

66. The foregoing acts, omissions, and failures of Kardonick and Shapoff occurred within the scope of their employment, office, or agency with Atwood; therefore, pursuant to 7 U.S.C. § 2(a)(1)(B)(2012) and 17 C.F.R. § 1.2 (2013), Atwood is liable for Kardonick and Shapoff's acts, omissions, and failures in violation of 7 U.S.C. § 6c(b) (2012), and 17 C.F.R. 1.1(b)(1)-(3), and 32.9(2013).

#### IV. PERMANENT INJUNCTION

##### IT IS HEREBY ORDERED THAT:

67. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), Defendants are permanently restrained, enjoined and prohibited from directly or indirectly:

- a. cheating and defrauding, or attempting to cheat and defraud, and willfully deceiving or attempting to deceive, their customers by, among other things, knowingly or recklessly making false, deceptive, or misleading representations and omissions of material facts in their solicitations of prospective and existing clients to trade foreign currency options, by engaging in unauthorized trading, by issuing false oral and written statements concerning the profitability of trading on behalf of clients, and by misappropriating client funds in violation of 7 U.S.C. § 6c(b) (2012), and 17 C.F.R. 1.1(b)(1)-(3), and 32.4(2013).

68. 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 (2012));
- b. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2013)) (“commodity options”), security futures products, and/or foreign currency (as described in 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;
- c. Having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts 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 futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
- e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
- f. 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 17 C.F.R. § 4.14(a)(9) (2013); and/or

- g. Acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a) (2013)), agent or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(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) (2013).

## V. RESTITUTION AND CIVIL MONETARY PENALTY

### A. Restitution

69. Defendants Shapoff and Kardonick shall pay restitution consistent with the Restitution Order in the Final Judgment in the criminal actions styled *U.S. v. Shapoff*, 6:11-CR-06110 (WDNY) and *U.S. v. Kardonick*, 6:11-CR-06068 (WDNY), respectively.

### B. Civil Monetary Penalty

70. Defendants shall, jointly and severally, pay a civil monetary penalty in the amount of Two Million, One Hundred, Sixty-Four Thousand, Fifty-Nine Dollars and Fifty-Seven Cents (\$2,164,059.57) ("CMP Obligation"), plus post-judgment interest, within thirty (30) days of the date of the entry of this Consent Order. 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 (2006).

71. Defendants shall pay their 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, Defendants shall contact the address above to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies Defendants and the name and docket number of this proceeding. 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.

**C. Provisions Related to Monetary Sanctions**

72. Partial Satisfaction: Any acceptance by the Commission or the Monitor of partial payment of Defendants' CMP Obligation shall not be deemed a waiver of his/her/their 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.

**D. Cooperation**

73. Defendants shall cooperate fully and expeditiously with the Commission, including the Commission'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.

**VI. MISCELLANEOUS PROVISIONS**

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

Notice to the Commission:

Richard A. Glaser  
Deputy Director  
US Commodity Futures Trading Commission  
Division of Enforcement  
1155 21<sup>st</sup> St, NW  
Washington, DC 20581

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

75. Change of Address/Phone: Until such time as Defendants satisfy in full their Restitution Obligation, Disgorgement Obligation, and CMP Obligation as set forth in this Consent Order, Defendants shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

76. 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 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.

77. Invalidation: 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.

78. Waiver: The failure of any party to this Consent Order or of any [Customer/Participant/Client] at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or [Customer/Participant/Client] 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.

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

80. Injunctive and Equitable Relief Provisions: 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.

81. Counterparts and Facsimile Execution: 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.

82. Defendants 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.

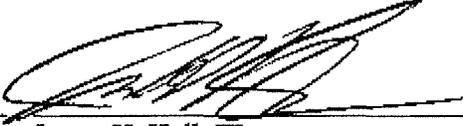
There being no just reason for delay, the Clerk of the Court is hereby directed to enter this *CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTY AND OTHER EQUITABLE RELIEF UNDER THE COMMODITY EXCHANGE ACT.*

IT IS SO ORDERED on this 3 day of DEC., 2014.

*Charles Mragusa*  
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:

Michael Kardonick, individually and on Behalf of Atwood & James, LTD and Atwood & James, SA, Inc.



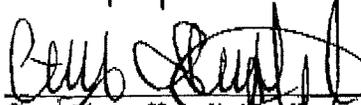
James H. Holl, III  
Chief Trial Attorney  
U.S. Commodity Futures Trading  
Commission  
1155 21<sup>st</sup> St., NW  
Washington, DC 20581  
(202)418-5000

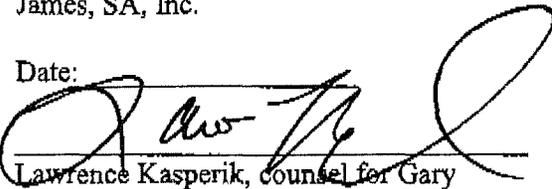
Date: \_\_\_\_\_

James Hartt, counsel for Michael Kardonick

Dated 9/24/14

Date: 8/13/14

  
Gary Shapoff, individually and on Behalf of Atwood & James, LTD and Atwood & James, SA, Inc.

Date: \_\_\_\_\_  
  
Lawrence Kasperik, counsel for Gary Shapoff

Date: 9/3/14

CONSENTED TO AND APPROVED BY:

Michael A. Kardonick  
Michael Kardonick, individually and on  
Behalf of Atwood & James, LTD and  
Atwood & James, SA, Inc.

Date: July 15 / 2014

James H. Holl, III  
Chief Trial Attorney  
U.S. Commodity Futures Trading  
Commission  
1155 21<sup>st</sup> St., NW  
Washington, DC 20581  
(202)418-5000

James Hartt  
James Hartt, counsel for Michael  
Kardonick

Dated \_\_\_\_\_

Date: 8/14/2014

Gary Shapoff, individually and on Behalf  
of Atwood & James, LTD and Atwood &  
James, SA, Inc.

Date: \_\_\_\_\_

Lawrence Kasperik, counsel for Gary  
Shapoff

Date: \_\_\_\_\_