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2 **UNITED STATES DISTRICT COURT**
3 **CENTRAL DISTRICT CALIFORNIA**
4 **WESTERN DIVISION**

5 **Commodity Futures Trading**)
6 **Commission,**)

7 **Plaintiff,**)

8 **vs.**)

9 **Robert D. Bame and**)
10 **Forward Investment Group,**)
11 **LLC,**)

12 **Defendants.**)
13)

Case No:
CV 08-05593 RGK (PLAX)

14 **[PROPOSED] ORDER OF PERMANENT INJUNCTION AND OTHER**
15 **EQUITABLE RELIEF AGAINST DEFENDANTS ROBERT D. BAME**
16 **AND FORWARD INVESTMENT GROUP, LLC**

17 **I. INTRODUCTION**

18 On August 26, 2008, plaintiff Commodity Futures Trading Commission
19 filed the complaint in this action against defendants Robert D. Bame and Forward
20 Investment Group, LLC (collectively, “Defendants”) seeking injunctive and other
21 equitable relief for violations of the Commodity Exchange Act, as amended,
22 7 U.S.C. §§ 1 et seq. (2002), and the Commission’s Regulations promulgated
23 thereunder, 17 C.F.R. §§ 1 et seq. (2005). The Court entered an Agreed Order of
24 Preliminary Injunction and Other Ancillary Relief against Defendants on
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1 September 19, 200 and modified it on March 13, 2009. Plaintiff has moved for
2 partial summary judgment. The Court, having considered all the submissions by
3 the parties, finds there are no genuine issues of material fact and grants Plaintiff's
4 motion as follows.

6 II. FINDINGS OF FACT

7 1. Plaintiff Commodity Futures Trading Commission ("CFTC or
8 Commission") is the independent federal regulatory agency of the United States
9 charged with the responsibility for administering and enforcing provisions of the
10 Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1 *et seq.* (2006), as amended by
11 the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII
12 (subtitled "CFTC Reauthorization Act of 2008" ("CRA")), §§ 13101-13204, 122
13 Stat. 1651 (enacted June 18, 2008), and the Commission's Regulations
14 promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2009).

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18 2. Robert D. Bame ("Bame") was the sole manager and controlling
19 person of Forward Investment Group LLC ("Forward"), which operated in
20 Riverside County, California, and elsewhere from approximately January 2007
21 through at least August 2008. Bame has never been registered in any capacity with
22 the Commission.

23
24 3. On May 29, 2009, Bame pled guilty to one count of violating
25 18 U.S.C. § 1843 and two counts of 18 U.S.C. § 1957 in connection with his
26

1 Forward enterprise. On October 6, 2009, Bame was sentenced to 97 months of
2 imprisonment and was ordered to pay restitution in the amount of \$16,038,568.68.

3 4. Forward is a California limited liability company established by Bame
4 in January 2007. Forward has never been registered in any capacity with the
5 Commission.
6

7 5. Bame, as the owner and operator of Forward, solicited individuals to
8 invest in the trading of E-mini S&P 500 futures contracts through TransAct
9 Futures (“TransAct”), a division of York Business Associates, LLC, a registered
10 futures commission merchant (“FCM”).
11

12 9. Bame told his investors that their money would be contributed to
13 Forward’s investment account with TransAct. Bame provided wire transfer
14 instructions to each investor, usually via e-mail. Bame obtained investor funds
15 via those wire transfers to an account under his control.
16

17 10. Bame regularly sent his investors e-mail updates containing false
18 information regarding their investments and their account value. Bame also
19 provided many of his potential investors with false account statements,
20 representing trading history and profits earned by existing investors,
21

22 11. In reality, however, Bame only invested approximately \$605,000 out
23 of the \$20 million that he collected from approximately 134 investors with
24 TransAct. Bame incurred consistent trading losses in Forward’s investment
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1 account with TransAct and the net trading losses and fees totaled approximately
2 \$595,500 when Bame stopped trading in May 2008.

3 12. Bame diverted about \$19 million of investors' money either to pay
4 off other investors or for his personal use, such as purchasing automobiles or
5 traveling in private jets. As a result of Bame's actions over the course of at least
6 18 months, investors lost more than \$16 million.
7

8 9 **III. CONCLUSIONS OF LAW**

10 13. This Court has jurisdiction over this action pursuant to Section 6c(a)
11 of the Act, 7 U.S.C. § 13a-1, which authorizes the CFTC to seek injunctive relief
12 against any person whenever it shall appear to the CFTC that such person has
13 engaged, is engaging, or is about to engage in any act or practice constituting a
14 violation of the Act or any rule, regulation, or order thereunder.
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17 14. Venue properly lies with this Court pursuant to Section 6c(e) of the
18 Act, 7 U.S.C. § 13a-1, since Defendants were found in, inhabited, and transacted
19 business in this District.
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21 15. Bame engaged in the conduct described herein as the manager and
22 agent of Forward, and consequently, Forward is liable for Bame's violations of the
23 Act pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).
24

25 16. Prior to being amended by the CRA, Section 4b(a)(2)(ii) of the Act,
26 7 U.S.C. § 6b(a)(2)(ii) (2006), made it unlawful

1 for any person, in or in connection with any order to make, or the making of,
2 any contract of sale of any commodity for future delivery, made, or to be
3 made, for or on behalf of any other person if such contract for future delivery
4 is or may be used for (A) hedging any transaction in interstate commerce in
5 such commodity or the products or byproducts thereof, or (B) determining
6 the price basis of any transaction in interstate commerce in such commodity,
7 or (C) delivering any such commodity sold, shipped, or received in interstate
8 commerce for the fulfillment thereof — (ii) willfully to make or cause to be
9 made to such other person any false report or statement thereof....

10 17. Similarly, Section 4b(a)(1)(B) of the Act, as amended by the CRA, to
11 be codified at 7 U.S.C. § 6b(a)(1) (B), makes it unlawful

12 for any person, in or in connection with any order to make, or the making of,
13 any contract of sale of any commodity in interstate commerce or for future
14 delivery that is made, or to be made, on or subject to the rules of a designated
15 contract market, for or on behalf of any other person – (B) willfully to make
16 or cause to be made to the other person any false report or statement....

17 18. By giving false statements to pool participants, Defendants violated
18 Section 4b(a)(2)(ii) of the Act, 7 U.S.C. §§ 6b(a)(2)(ii) (2006), before June 18,
19 2008, and Section 4b(a)(1)(B) of the Act, as amended by the CRA, to be codified
20 at 7 U.S.C. § 6b(a)(1)(B) on or after June 18, 2008.

21 19. Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B),
22 provide:

- 23 (1) It shall be unlawful for a commodity trading advisor, associated
24 person of a commodity trading advisor, commodity pool operator, or
25 associated person of a commodity pool operator, by use of the mails
26 or any means or instrumentality of interstate commerce, directly or
indirectly -
(A) to employ any device, scheme, or artifice to defraud any
client or participant or prospective client or participant; or

1 (B) to engage in any transaction, practice, or course of
2 business which operates as a fraud or deceit upon any client or
3 participant or prospective client or participant.

4 20. From at least February 2007 to August 2008, Bame acted as an AP of
5 a CPO under Section 4k(2) of the Act, 7 U.S.C. § 6k(2), by associating with a CPO
6 as a partner, officer, employee, consultant, or agent (or as a person occupying a
7 similar status or performing similar functions), in a capacity that involves (i) the
8 solicitation of funds, securities, or property for participation in a commodity pool
9 or (ii) the supervision of any person or persons so engaged.
10

11 21. By misappropriating participant funds and issuing false statements to
12 participants, Forward, as a CPO, and Bame as an AP of a CPO, violated Sections
13 4o(1)(A) and (B) of the Act.
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15 **IV. PERMANENT INJUNCTION**

16 22. Defendants engaged in acts and practices that violated Sections
17 4b(a)(2)(ii) of the Act, 7 U.S.C. §§ 6b(a)(2)(ii), before June 18, 2008, Sections
18 4b(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C.
19 §§ 6b(a)(1)(B), after June 18, 2008, and Sections 4o(1)(A) and 4o(1)(B) of the
20 Act, 7 U.S.C. §§ 6o(1)(A) and 6o(1)(B). Unless restrained and enjoined by this
21 Court, there is a reasonable likelihood that Defendants will continue to engage in
22 the acts and practices alleged in the Complaint and in similar acts and practices in
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1 violation of the Act. Other ancillary equitable relief is imposed to carry out the
2 goals of the Act

3 **IT IS HEREBY ORDERED THAT:**

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5 23. Defendants are prohibited and permanently enjoined from directly or
6 indirectly:

- 7 a) making or causing to be made to any other person any false report or
8 statement thereof or causing to be entered for any person any false
9 record thereof, in violation of former Section 4b(a)(2)(ii) of the Act,
10 7 U.S.C. §§ 6b(a)(2)(ii), and Section 4b(a)(1)(B) of the Act, as
11 amended by the CRA to be codified as 7 U.S.C. § 6b(a)(1)(B); and
12 b) employing any device, scheme or artifice to defraud any client or
13 participant or prospective client or participant or engaging in any
14 transaction, practice, or course of business which operates as a fraud
15 or deceit upon any participant or prospective participant by use of the
16 mails or any means or instrumentality of interstate commerce, in
17 violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C.
18 §§ 6o(1)(A) and (B).

19 24. Defendants are permanently restrained, enjoined and prohibited from
20 directly or indirectly engaging, directly or indirectly in:

- 21 a) controlling or directing the trading for or on behalf of any other
22 person or entity, whether by power of attorney or otherwise, in any
23 account involving commodity futures, options on commodity futures,
24 commodity options, and/or forex contracts;
25 b) soliciting, receiving, or accepting any funds from any person for the
26 purpose of purchasing or selling any commodity futures, options on
commodity futures, commodity options, and/or forex contracts;
c) 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

1 Commission, except as provided for in Regulation 4.14(a)(9),
2 17 C.F.R. § 4.14(a)(9) (2009);and

- 3 d) acting as a principal (as that term is defined in Regulation 3.1(a),
4 17 C.F.R. § 3.1(a) (2009)), agent or any other officer or employee of
5 any person registered, exempted from registration or required to be
6 registered with the Commission, except as provided for in Regulation
7 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009).

8 25. The injunctive provisions of this Consent Order shall be binding
9 upon Defendants, upon any person who acts in the capacity of officer, agent,
10 employee, attorney, successor and/or assign of either of the Defendants and upon
11 any person who receives actual notice of this Consent Order, by personal service
12 or otherwise, insofar as he or she is acting in active concert or participation with
13 either of the Defendants.

14 **V. RESTITUTION, CIVIL MONETARY PENALTIES AND**
15 **OTHER ANCILLARY RELIEF RESERVED**

16 **IT IS FURTHER ORDERED THAT:**

17 **A. Asset Freeze and Access to Records**

18 26. Until further order of this Court, the terms of the Order of
19 Preliminary Injunction entered on September 19, 2008 and modified on March 13,
20 2009, shall remain in effect, except that the California Department of Motor
21 Vehicles is no longer bound by the asset freeze and may process otherwise
22 appropriate title changes from third-parties possessing vehicles currently titled to
23 either Defendant.
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1 **B. Restitution and Civil Monetary Penalties**

2 27. The issues of necessary relief pursuant to Section 6c of the Act,
3 7 U.S.C. § 13a-1, regarding restitution for Defendants' defrauded investors and
4 appropriate civil monetary penalties to be assessed against Defendants are still
5 unresolved and are hereby reserved for further determination by this Court upon
6 motion of the Commission.
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8 28. In connection with any motion to determine the amount of restitution
9 and/or civil monetary penalties, and at any hearing held on such a motion,
10 Defendants shall be bound by the findings of law and conclusions of law in this
11 order and estopped from arguing that they did not violate federal law as alleged in
12 the Complaint. In connection with any such motion to for restitution and/or civil
13 monetary penalties, the parties may take discovery, including discovery from
14 appropriate non-parties.
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18 **C. Cooperation**

19 29. In order to facilitate the determination of appropriate amounts for
20 restitution, disgorgement and civil monetary penalties, Defendants are hereby
21 ordered to cooperate fully with the Commission and any government agency in
22 their investigation of: a) the amount of funds and proceeds received by
23 Defendants, and losses to Defendants' pool participants; and b) the identification
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1 of Defendants' assets. The Defendants' cooperation obligations shall include, but
2 not be limited to, the following:

- 3 a) fully and truthfully completing financial questionnaire forms and
4 providing any available documentary verification required by the
5 forms;
- 6 b) submitting to a financial deposition or interview should the plaintiff
7 deem it necessary regarding the subject matter of said form;
- 8 c) fully and truthfully answering all questions regarding his past and
9 present financial condition in such interview or deposition; and
- 10 d) providing any additional documentation within his possession or
11 control requested by the plaintiff regarding his financial condition or
12 status, including, but not limited to, income and earnings, assets,
13 financial statements, asset transfers, and tax returns.

14 **VI. MISCELLANEOUS PROVISIONS**

15 **IT IS FURTHER ORDERED THAT:**

16 30. Notices: All notices required to be given by any provision in this
17 Consent Order to the Commission shall be sent certified mail, return receipt
18 requested, as follows:

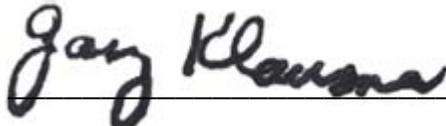
19 Notice to Plaintiff Commission:
20 Director of the Division of Enforcement
21 Commodity Futures Trading Commission
22 1155 21st Street NW,
23 Washington, DC 20581

24 Notice to Defendant Bame:
25 Robert D. Bame
26 Reg. No. 45839-112
CI Taft Correctional Institution
P.O. Box 7001
Taft, CA 93268

1 Notice to Defendant Forward Investment Group, LLC:
2 John K. Rubiner, Esq.
3 Bird, Marella, Boxer, Wolpert,
4 Nessim, Dooks & Lincenberg, P.C.
5 1875 Century Park E., 23rd Floor
6 Los Angeles, CA 90067-2501

7 31. Continuing Jurisdiction of this Court: This Court shall retain
8 jurisdiction of this action in order to resolve reserved issues of restitution and civil
9 monetary penalties, to implement and carry out the terms of this Consent Order
10 and any suitable application or motion for additional relief within the jurisdiction
11 of the Court, and to assure compliance with this Consent Order.
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13 **IT IS SO ORDERED** on this 18th day of March, 2010.

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16 **UNITED STATES DISTRICT JUDGE**