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UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)

Travis Maurice Cox,)

Respondent.)

) CFTC Docket No. 14-08

**ORDER INSTITUTING PROCEEDING PURSUANT TO SECTIONS 6(c) and 6(d) OF
THE COMMODITY EXCHANGE ACT, AS AMENDED,
MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about August 2009 through in or about December 2011 (the “Relevant Period”), Travis Maurice Cox (“Cox” or “Respondent”) violated Sections 4b(a)(2)(A) and (C) of the Commodity Exchange Act (the “Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII, §§ 13101-13204, 122 Stat. 1651 (the CFTC Reauthorization Act of 2008 (the “CRA”)), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII, §§ 701-774, 124 Stat. 1376 (the Wall Street Transparency and Accountability Act of 2010 (the “Dodd-Frank Act”)), to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C), and Commission Regulation 5.2(b)(1) and (3), 17 C.F.R. §§ 5.2(b)(1) and (3) (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of instituting an administrative proceeding, Respondent has submitted an *Offer of Settlement* (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings herein, Respondent acknowledges service of this *Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, as amended, Making Findings and Imposing Remedial Sanctions* (“Order”).¹

¹ Respondent does not consent to the use of the *Offer*, or the findings or conclusions in the *Order* consented to in the *Offer*, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of the *Order*. Nor does Respondent consent to the use of this *Offer* or the *Order*, or the findings or conclusions in the *Order* consented to in the *Offer*, by any other party in any other proceeding.

III.

The Commission finds the following:

A. Summary

During the Relevant Period, Cox fraudulently solicited approximately \$1.3 million from at least five persons to trade off-exchange foreign currency contracts (“forex”) on a leveraged or margined basis through Cox and his partners. In his solicitations, Cox falsely represented that his forex trading partners, who would conduct the trading on behalf of Cox’s customers, had made money for Cox through forex trading, and that they could be trusted. He also falsely represented that all of the customer funds would be traded. Cox failed to disclose to his customers that his forex trading partners previously told Cox they lost Cox’s money trading forex and that they failed to fully return his principal or pay the promised returns. Cox also failed to transfer all of his customers’ funds to his partners for trading and to return to his customers their principal and the profits he guaranteed. Further, during the Relevant Period, Cox misappropriated for his personal use approximately \$114,000 of his customers’ funds.

B. Respondent

Travis Maurice Cox was, during the Relevant Period described herein, a resident of Raleigh, North Carolina. Respondent has never registered with the Commission in any capacity.

C. Facts

1. Misrepresentations and Omissions of Material Facts by Cox

In or about March 2009, one of Cox’s future forex trading partners solicited Cox to trade forex. The partner falsely claimed that he was a millionaire and a successful forex investor and that he would use Cox’s money to trade forex. He also guaranteed that Cox would earn a 50% profit. Cox transferred a few thousand dollars to the partner to trade forex. After purportedly trading Cox’s funds successfully, the partner paid Cox a 50% gain and a return of Cox’s principal. This caused Cox to place his trust in the partner and he gave him an additional approximately \$70,000 to continue trading forex on his behalf. Although Cox received some of the promised profit and a return of some of his principal on these later investments, in about August 2009, the partner eventually told Cox that the remainder of his money had been lost in trading. The partner promised to pay Cox back by the end of 2009 but never did.

In August 2009, the partner invited Cox to work with him and another partner, and told Cox that they would split any trading profits with him. Between approximately August 2009 and approximately December 2011, Cox solicited at least five customers to trade forex through him and his partners, whom he did not identify to his customers. Cox told his customers that his partners had made money for him, that they could be trusted and that all of their funds would be used to trade forex. Cox also told at least one customer that the only fees or commissions Cox

and his partners would keep would be any trading profit that was above the amount they promised to make for the customer.²

Each time he solicited customers during the Relevant Period, Cox knew that his partners claimed to have lost his funds trading forex. For his solicitation of four of the five customers, Cox also knew that his principal had not been returned and that he had not received the guaranteed profit that one of the partners had promised to pay by the end of 2009. Cox disclosed neither of these facts to his customers when he solicited them, and in fact made affirmative misrepresentations to the contrary to gain their trust and to successfully solicit funds from them for trading forex.

During the Relevant Period, Cox entered into Limited Partnership Investment Contracts with at least two customers. In the contracts, Cox promised customers that he would pay them a 50% profit and return the customers' principal within 30 to 180 days. One of the contracts stated that its purpose was "to trade otc 'over the counter' free market global trading financial instruments and precious metals such as but not limited to currency contracts, gold contracts, etc."

Cox failed to honor his promises to repay his customers' principal, as well as the trading profit he guaranteed.

2. Misappropriations by Cox

Cox told his customers that all of their funds would be used to trade forex. Of the approximately \$1.3 million Cox received from customers during the Relevant Period, Cox transferred approximately \$988,000 to his trading partners to trade forex for and on behalf of Cox's customers. Cox deposited some of the funds into a personal trading account, which was traded by one of his partners and sustained losses of approximately \$206,000. Cox returned about \$2,500 to one of his customers. .

Cox misappropriated the remaining approximately \$114,000 of his customers' funds for his personal use.

In January 2012, Cox informed one customer that he believed his trading partners had committed fraud. Cox, however, did not disclose his misappropriation of customer funds.

² At least some of Cox's customers were not "eligible contract participants" ("ECPs") as that term is defined in Section 1a(18)(A)(xi) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(18)(A)(xi). In addition, at least some of Cox's customers were not ECPs as that term was defined prior to July 16, 2010. See 7 U.S.C. § 1a(12)(A)(xi) (Supp. III 2009). An ECP, as relevant here, is an individual who has total assets in an amount in excess of (i) \$10 million or (ii) \$5 million and who enters into the transaction in order to manage risk.

IV.

LEGAL DISCUSSION

Section 4b(a) of the Act prohibits all manner of fraud in, or in connection with forex transactions, including fraudulent solicitation and misappropriation.³ Sections 4b(a)(2)(A) and (C) of the Act, as amended by the CRA, provide that it is unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery . . . that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market -- (A) to cheat or defraud or attempt to cheat or defraud the other person . . . [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person

Effective October 18, 2010, Commission Regulation 5.2(b) also prohibits fraud in or in connection with forex transactions. Commission Regulations 5.2(b)(1) and (3) make it unlawful:

for any person, in or in connection with any retail forex transaction: (1) To cheat or defraud or attempt to cheat or defraud any person; . . . or (3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

A. Respondent Made Misrepresentations and Omitted Material Facts

To establish that Respondent committed solicitation fraud in violation of Sections 4b(a)(2)(A) and (C) of the Act, as amended by the CRA, and Commission Regulations 5.2(b)(1) and (3), the Commission must prove that Respondent (1) made a misrepresentation, misleading statement, or deceptive omission; (2) with scienter; and (3) the misrepresentation, misleading statement, or deceptive omission was material. *See CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328 (11th Cir. 2002); *CFTC v. PMC Strategy, LLC*, 2013 WL 1349177, *5 (W.D.N.C. Apr. 3, 2013).

Respondent knowingly or recklessly made misrepresentations to his customers and omitted material facts by, among other things: (i) falsely stating to customers that his trading partners had made money for him and that they could be trusted; (ii) guaranteeing return of his customers' principal while claiming he intended to trade in highly speculative and volatile forex; (iii) guaranteeing to return an exorbitant profit to customers through highly speculative and

³ The Commission has jurisdiction over Cox's fraud in connection with off-exchange forex pursuant to Sections 6(c) and 2(c)(2)(C) of the Act. Section 2(c)(2)(C)(iv) of the Act, further provides that Section 4b (fraud in connection with futures) shall apply to any forex agreement, contract, or transaction over which the Commission has jurisdiction "as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery."

volatile forex trading; (iv) falsely representing that all funds would be used for trading; (v) failing to disclose until January 2012 at the earliest that his partners had lost his funds trading forex and had repeatedly failed to honor promises to return his principal and to pay him a profit; and, (vi) failing to disclose that he was misappropriating his customers' funds.

B. Respondent Acted With Scienter

The scienter element is established when an individual's "conduct involves intentional omissions or misrepresentations that present a risk of misleading customers, either known to the defendant or sufficiently manifest that the defendant must have been aware of the risk." *CFTC v. King*, 2007 WL 1321762 at *2 (N.D. Tex. May 7, 2007) (citing *R.J. Fitzgerald & Co.*, 310 F.3d at 1328) (internal quotations omitted); see also *Wasnick v. Refco, Inc.*, 911 F.2d 345, 348 (9th Cir. 1990) (holding that scienter is established when an individual's acts are performed "with knowledge of their nature and character"); *Lawrence v. CFTC*, 759 F.2d 767, 773 (9th Cir. 1985) (providing that the Commission must demonstrate only that a defendant's actions were "intentional as opposed to accidental"). Respondent acted with scienter even if his conduct was merely reckless. See *Crothers v. CFTC*, 33 F.3d 405, 411 (4th Cir. 1994); *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988).

Respondent acted with the requisite scienter in his solicitations of customers to trade forex through him and his partners, because he knew that his trading partners had lost his money trading and had never returned his principal or paid the profits, as guaranteed.

C. Respondent's Misrepresentations and Omissions Were Material

A statement or omission is material if "there is a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest." *R&W Technical Svcs. Ltd. v. CFTC*, 205 F.3d 165, 169 (5th Cir. 2000); accord *R.J. Fitzgerald & Co.*, 310 F.3d at 1328-29. Any fact that enables customers to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. See *In re Commodities Int'l Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943 at 44,563-64 (CFTC Jan. 14, 1997).

Respondent's misrepresentations and omissions were material in that a reasonable customer would want to know, among other things, that the persons trading their funds had not made the profits claimed by Cox and had failed to honor promises to return principal or pay guaranteed profits.

D. Respondent Violated Sections 4b(a)(2)(A) and (C) of the Act, as Amended by the CRA, and Commission Regulations 5.2(b)(1) and (3) Through His Misappropriations

Respondent misappropriated approximately \$114,000 from his customers, by failing to deposit that money into forex trading accounts or to transfer it to his partners for trading and instead using the customer funds for personal expenses. Respondent's misappropriations constitute additional violations of Sections 4b(a)(2)(A) and (C) of the Act and Commission Regulations 5.2(b)(1) and (3). See *CFTC v. Noble Wealth Data Info. Svcs., Inc.*, 90 F. Supp. 2d 676, 687 (D. Md. 2000) (defendants violated Sections 4b(a)(2)(i) and (iii) (the predecessors to

4b(a)(2)(A) and (C)) by diverting investors' funds for operating expenses and personal use), *aff'd in part, vacated in part, sub nom. CFTC v. Baragosh*, 278 F.3d 319 (4th Cir.), *cert. denied*, 537 U.S. 950 (2002).

V.

FINDING OF VIOLATIONS

Based upon the foregoing, the Commission finds that, during the Relevant Period, Respondent Cox violated Sections 4b(a)(2)(A) and (C) of the Act and Commission Regulations 5.2(b)(1) and (3).

VI.

OFFER OF SETTLEMENT

Respondent has submitted the *Offer* in which he, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this *Order*;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this *Order*;
- C. Waives:
 - 1. the filing and service of a complaint and notice of hearing;
 - 2. a hearing;
 - 3. all post-hearing procedures;
 - 4. judicial review by any court;
 - 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the *Offer*;
 - 6. any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2012), relating to, or arising from, this proceeding;
 - 7. any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-68 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from this proceeding; and

8. any claims 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;
- D. Stipulates that the record upon which this *Order* is entered shall consist solely of the findings contained in this *Order* to which Respondent has consented in the *Offer*; and
- E. Consents, solely on the basis of the *Offer*, to the Commission's entry of this *Order* that:
1. makes findings by the Commission that Respondent violated Sections 4b(a)(2)(A) and (C) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C), and Commission Regulations 5.2(b)(1) and (3), 17 C.F.R. §§ 5.2(b)(1) and (3) (2012);
 2. orders Respondent to cease and desist from violating Sections 4b(a)(2)(A) and (C) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C), and Commission Regulations 5.2(b)(1) and (3), 17 C.F.R. §§ 5.2(b)(1) and (3) (2012);
 3. orders Respondent to pay restitution in the amount of \$1,306,010.95 plus post-judgment interest;
 4. orders Respondent to pay a civil monetary penalty in the amount of \$330,000, plus post-judgment interest;
 5. appoints the National Futures Association ("NFA") as Monitor in this matter;
 6. orders that Respondent be permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, as amended, to be codified at 7 U.S.C. § 1a(29)), and all registered entities shall refuse him trading privileges; and,
 7. orders Respondent and any successor or assignee of Respondent to comply with the conditions and undertakings consented to in the *Offer* and as set forth in Part VII of this *Order*.

Upon consideration, the Commission has determined to accept the *Offer*.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Sections 4b(a)(2)(A) and (C) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C), and Commission Regulations 5.2(b)(1) and (3), 17 C.F.R. §§ 5.2(b)(1) and (3) (2012);
- B. Respondent shall pay restitution in the amount of \$1,306,010.95 within ten (10) days of the date of entry of this Order (“Restitution Obligation”). Post-judgment interest shall accrue on the Restitution Obligation 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 (2006).

The NFA as Monitor shall collect payments of the Restitution Obligation from Respondent and make distributions as set forth below. Because the Monitor is not being compensated for these services, and these services are outside the normal duties of the Monitor, it shall not be liable for any action or inaction arising from its appointment as Monitor, other than actions involving fraud.

Respondent shall make his payments of the Restitution Obligation under this *Order* in the name of “Travis Maurice Cox’s Settlement Fund” and shall send such payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s check, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent 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.

The Monitor shall oversee Respondent’s Restitution Obligation, and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to Respondent’s customers or may defer distribution until such time as it may deem appropriate. In the event that the amount of restitution payments of the Restitution Obligation to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a restitution distribution is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission, as discussed below.

- C. Respondent shall pay a civil monetary penalty in the amount of \$330,000 within ten (10) days of the date of entry of this *Order* (“CMP Obligation”). Post-judgment interest shall accrue on the CMP Obligation 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 (2006). Respondent shall pay the CMP Obligation by

electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, the payments 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 Receivable -- AMZ-300
Email Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment is to be made by electronic transfer, Respondent shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

- D. Respondent is permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, as amended, to be codified at 7 U.S.C. § 1a(29)), and all registered entities shall refuse him privileges thereon.
- E. Respondent and his successors and assigns shall comply with the following conditions and undertakings set forth in the *Offer*:
1. Public Statements: Respondent agrees that neither he, nor any of his successors, assigns, agents or employees under his authority or control, shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this *Order*, or creating, or tending to create, the impression that this *Order* is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and his successors and assigns shall undertake all steps necessary to ensure that all of his agents and employees under his authority or control understand and comply with this undertaking;
 2. Respondent agrees that he shall never, directly or indirectly:
 - a. enter into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in

Commission Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2012)) (“commodity options”), swaps (as that term is defined in Section 1a(47) of the Act, to be codified at 7 U.S.C. § 1a(47) and as further defined in Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx) (2012)) (“swaps”), security futures products and foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”), for his own personal account or for any account in which he has a direct or indirect interest;

- b. have any commodity futures, options on commodity futures, commodity options, swaps, security futures products and/or forex contracts traded on his behalf;
- c. control or direct 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, swaps, security futures products and/or forex contracts;
- d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, swaps, security futures products and/or forex contracts;
- e. apply for registration or claim exemption from registration with the Commission in any capacity, or engage in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012);
- f. act as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, as amended, to be codified at 7 U.S.C. § 1a(38)) registered, required to be registered or exempted from registration with the Commission except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

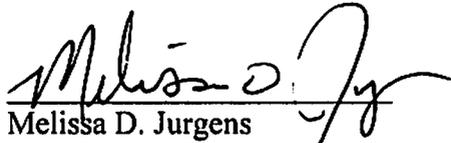
F. **Cooperation with Monitor:** Respondent shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondent’s customers, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments. Respondent shall execute any documents necessary to release funds that he has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

G. **Partial Satisfaction:** Respondent understands and agrees that any acceptance by the

Commission or the Monitor of partial payment of Respondent's Restitution Obligation or CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this *Order*, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

- H. Change of Address/Phone: Until such time as Respondent satisfies in full his Restitution Obligation and CMP Obligation as set forth in this *Order*, Respondent 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.

The provisions of this Order shall be effective as of this date.



Melissa D. Jurgens
Secretary of the Commission
Commodity Futures Trading Commission

Dated: February 19, 2014