

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

**U.S. COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

vs.

**JOSEPH A. DAWSON and
DAWSON TRADING LLC,**

Defendants.

Civil Action No. 10-cv-04510

Judge: Virginia M. Kendall

Magistrate Judge: Jeffrey Cole

**[PROPOSED] CONSENT ORDER FOR PERMANENT INJUNCTION
AND OTHER ANCILLARY RELIEF AGAINST
DEFENDANT JOSEPH A. DAWSON**

I. BACKGROUND

On July 20, 2010, Plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”) filed a Complaint (“Complaint”) against Defendants Joseph A. Dawson (“Dawson”) and Dawson Trading LLC (“DT”) (collectively, “Defendants”) seeking injunctive and other equitable relief for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 *et seq.* (2006), the Act as amended by the Food, Conservation and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Commission Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2010). The Court entered a Consent Order for Preliminary Injunction and Other Ancillary Relief Against Defendant Joseph A. Dawson (“Preliminary Injunction Order”) on October 6, 2010.

II. CONSENTS AND AGREEMENTS

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

1. Consents to the entry of this Consent Order for Permanent Injunction and Other Ancillary Relief Against Defendant Joseph A. Dawson (“Consent Order”);
2. Affirms that his consent is entered into voluntarily and that no promise or threat has been made by the CFTC or any member, officer, agent, or representative thereof to induce him to consent to this Consent Order, other than as specifically contained herein;
3. Acknowledges service of the summons and Complaint;
4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006);
5. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006);
6. Waives:
 - A. any and all claims 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 Part 148 of the Commission’s Regulations, 17 C.F.R. §§ 148.1-30 (2010), relating to, or arising from, this action;
 - B. any and all claims he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, §§ 201-253, 110 Stat. 857, 857-868 (1996), as amended by Pub. L. 110-28, § 8302, 121 Stat. 204-205 (2007), relating to, or arising from, this action;

- C. any and all claims of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing restitution, a civil monetary penalty, or any other relief; and
- D. all rights of appeal from this Consent Order;

7. Consents to the continued jurisdiction of this Court for the purposes of enforcing the terms and conditions of this Consent Order, resolving the issues of restitution and civil monetary penalties, and for any other purposes relevant to this action, even if Dawson now or in the future resides outside this District;

8. Agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions 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 Dawson's (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Dawson shall take all steps necessary to ensure that all of his agents and employees understand and comply with this agreement;

9. Admits the findings of fact and conclusions of law made in this Consent Order and the allegations contained in the Complaint, and agrees that the allegations of the Complaint and all of the findings of fact and conclusions of law made by this Court and contained in Parts III and IV of this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, for the purpose of: (a) any Commission registration proceeding relating to him; (b) any proceeding to enforce the terms of this Consent Order; and/or (c) any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States;

10. Agrees to provide immediate notice to this Court and the CFTC by certified mail, in the manner required by Part VII of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

11. Agrees 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 him in any other proceeding.

III. FINDINGS OF FACT

A. Jurisdiction and Venue

12. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006), which authorizes the CFTC to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

13. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13 a-1(e) (2006), because Dawson resides in this District, Defendants transacted business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places.

B. Parties to this Consent Order

14. Plaintiff **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.* (2006), the Act as amended by the CRA, the Act as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-

203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), and the regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2010).

15. Defendant **Joseph A. Dawson** is the sole manager of DT and is responsible for all facets of DT's operations. Dawson resides in Fox Lake, Illinois. Since 1996, Dawson has been registered with the Commission as an associated person ("AP") of various registered entities other than DT. Most recently, Dawson has been registered as an AP of Strategic Research, LLC, a registered commodity pool operator ("CPO"), since February 2009. Dawson also has acted as an AP of DT, an unregistered CPO, but he has never been registered as an AP of DT.

C. Other Relevant Party

16. Defendant **Dawson Trading LLC** is a Delaware limited liability company established in October 2004 with a business address in McHenry, Illinois. DT has acted as a CPO by pooling participant funds and using them to trade commodity futures, among its various investment activities. DT has never been registered with the Commission in any capacity.

D. The Fraudulent Course of Conduct

17. In approximately 2000, Dawson established the LEAP Fund. Shortly thereafter, he began to accept funds from friends and family members. The participant funds were pooled and invested in various financial instruments, including trading in commodity futures.

18. In October 2004, Dawson established DT. Shortly thereafter, he opened bank and trading accounts in the name of DT and transferred all LEAP Fund funds to DT, where the funds were again invested as a pool in various financial instruments, including trading in commodity

futures. Dawson thereafter began soliciting additional funds for DT from family members and friends with whom Dawson had long-standing relationships.

19. Dawson customarily documented transactions with DT participants solely using a “guaranteed note with incentives” (“note”), the terms of which were similar, if not identical, from participant to participant. The note customarily acknowledged that DT “invests in all forms of investments including stocks, commodities, bonds, and real estate.” The note also customarily provided for a certain rate of return to be compounded quarterly and a “bonus of fifty (50%) of the trading gains of the borrowed funds.”

20. The note customarily stated that DT “hopes to make a profit from the spread between gains in the trading accounts and what must be paid in interest costs and incentives.”

21. The customary note did not provide for a management fee or other form of compensation. Additionally, the customary note did not explain how “guaranteed” principal and interest would be paid to participants if there were not sufficient trading profits.

22. From approximately May 2005 through December 2009, Dawson traded securities and commodity futures with pooled participant funds primarily in an account maintained in the name of DT at Interactive Brokers, LLC (“Interactive”), a registered futures commission merchant. Dawson received periodic account statements from Interactive for this account.

23. From at least July 2005 through December 2009, Defendants lost approximately \$945,000 trading securities and commodity futures in the Interactive account.

24. On multiple occasions when soliciting and accepting funds, Dawson communicated to pool participants, including by use of the mails, email, and interstate telephone

wires, that DT's trading was profitable, when in fact he knew that DT suffered numerous monthly trading losses of as much as tens or hundreds of thousands of dollars.

25. Between at least February 2005 and December 2009, Defendants misappropriated approximately \$2.1 million of participant funds.

26. Dawson used the misappropriated funds for various personal expenses and purchases, including, but not limited to, a down payment on a personal residence, mortgage payments, an in-ground swimming pool, landscaping, furniture, restaurants, movie tickets, and car payments. Dawson admitted his misappropriation of participant funds to multiple pool participants.

27. From at least September 2005 through September 2009, Dawson prepared and delivered, including by use of the mails and email, a number of periodic DT statements to pool participants showing that the trading of their funds had been profitable, when in fact Dawson knew the trading of their funds had not been profitable and the periodic statements were false.

IV. CONCLUSIONS OF LAW

28. By misrepresenting the pool's profitability, misappropriating pool participant funds for personal benefit, and willfully making or causing to be made false statements to pool participants that misrepresented the pool's profitability and/or the value of participants' respective interests in the pool, in connection with acts occurring prior to June 18, 2008, Dawson violated Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), which made it unlawful for any person: (i) to cheat or defraud or attempt to cheat or defraud other persons; (ii) willfully to make or cause to be made to other persons any false report or statement, or willfully to enter or cause to be entered for other persons any false record; or (iii) willfully to deceive or

attempt to deceive by any means whatsoever other persons, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery made, or to be made, for or on behalf of such other persons if such contract for future delivery is or may be used for: (A) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof; (B) determining the price basis of any transaction in interstate commerce in such commodity; or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in connection with acts occurring before June 18, 2008.

29. By misrepresenting the pool's profitability, misappropriating pool participant funds for personal benefit, and willfully making or causing to be made false statements to pool participants that misrepresented the pool's profitability and/or the value of participants' respective interests in the pool, in connection with acts occurring on or after June 18, 2008, Dawson violated Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), which make it 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, on or subject to the rules of a designated contract market, for or on behalf of any other person: (A) to cheat or defraud or attempt to cheat or defraud such other person; (B) willfully to make or cause to be made to such other person any false report or statement or willfully to enter or cause to be entered for such other person any false record; or (C) willfully to deceive or attempt to deceive such 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 such other person, in connection with acts occurring on or after June 18, 2008.

30. By misrepresenting the pool's profitability, misappropriating pool participant funds for personal benefit, and willfully making or causing to be made false statements to pool participants that misrepresented the pool's profitability and/or the value of participants' respective interests in the pool through use of the mails or other means or instrumentalities of interstate commerce, Dawson violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), which makes it unlawful for an AP of a CPO, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly: (A) to employ any device, scheme, or artifice to defraud any participant; or (B) to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any participant.

31. By acting as an agent of DT, a CPO, in a capacity involving the solicitation of funds, securities, or property for participation in a commodity pool without registering as an AP of a CPO, Dawson violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

32. In the conduct constituting his violations of the Act as described in these conclusions of law, Dawson was acting as an agent of DT under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010).

33. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Dawson will continue to engage in the acts and practices alleged in the Complaint or in similar acts and practices in violation of the Act. Other ancillary equitable relief is imposed to carry out the goals of the Act.

V. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

34. Dawson is permanently restrained, enjoined, and prohibited from directly or indirectly:

- A. Cheating or defrauding, or attempting to cheat or defraud, other persons; willfully making, or causing to be made, any false report or statement to other persons, or willfully entering, or causing to be entered, any false record for other persons; or willfully deceiving, or attempting to deceive, other persons 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, on or subject to the rules of a designated contract market, for or on behalf of any other person, in violation of Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C);
- B. Employing any device, scheme, or artifice to defraud any pool participant, or engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any participant, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 6o(1);
- C. Being associated with a CPO as a partner, officer, employee, consultant, or agent, or a person occupying a similar status or performing similar functions, in any capacity that involves the solicitation of funds, securities, or property for participation in a commodity pool unless registered with the Commission as an associated person of the CPO pursuant to Section 4k(2) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 6k(2).

35. Dawson is further 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 Section 1a of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a), including, but not limited to, trading for himself or DT;

- B. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Commission Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2010)) (“commodity options”), swaps (as defined in Section 1a of the Act as amended by the CRA and Dodd-Frank Act, to be codified at 7 U.S.C. § 1a) (“swaps”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”), for any personal or proprietary account or for any account in which he has a direct or indirect interest, including, but not limited to, his own account or any DT account;
- C. Having any commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts traded on his or DT’s 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, swaps, and/or forex contracts, including, but not limited to, any DT account;
- 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, swaps, and/or forex contracts, including, but not limited to, doing so on behalf of DT;
- 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010); and
- G. Acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2010)), agent, or any other officer or employee of any person (as that term is defined in Section 1a of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a) registered, exempted from registration, or required to be registered with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010).

36. The injunctive provisions of this Consent Order shall be binding upon Dawson, all persons insofar as they are acting in the capacity of Dawson’s officers, agents, servants,

employees, and attorneys, and all persons insofar as they are acting in active concert or participation with Dawson who receive actual notice of this Consent Order by personal service or otherwise.

VI. RESTITUTION, CIVIL MONETARY PENALTY, AND OTHER ANCILLARY RELIEF

IT IS FURTHER ORDERED THAT:

A. Restitution and Civil Monetary Penalties

37. Pending Dawson's sentencing in the matter captioned *United States of America v. Joseph A. Dawson*, No. 09-cr-1037 (N.D. Ill.), the issues of necessary relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), regarding restitution for Defendants' defrauded pool participants and appropriate civil monetary penalties to be assessed against Dawson are unresolved and are hereby reserved for further determination by this Court upon motion of the Commission.

38. In connection with any motion to determine the appropriate amount of restitution and/or civil monetary penalties, and at any hearing held on such motion: (a) Dawson shall be precluded from arguing that he did not violate the Act as alleged in the Complaint; (b) Dawson may not challenge the validity of his consents and agreements herein or this Consent Order; (c) for the purposes of such motion, the allegations in the Complaint and the findings of fact and conclusions of law stipulated to by Dawson in this Consent Order shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and/or documentary evidence, without regard to the standards for summary judgment contained in Rule

56(c) of the Federal Rules of Civil Procedure. In connection with any such motion for restitution and/or civil monetary penalties, the parties may take discovery, including discovery from appropriate non-parties.

39. In order to facilitate determination of the appropriate amounts of restitution and/or civil monetary penalties, Dawson is hereby ordered to cooperate fully with the Commission and any other government agency in its investigation of: (a) the amount of funds and proceeds received by Defendants and losses to Defendants' customers; and (b) the identification of Defendants' assets. Dawson's cooperation obligations shall include, but not be limited to, the following:

- A. fully and truthfully completing financial questionnaire forms and providing any available documentary verification required by such forms;
- B. submitting to a financial deposition or interview should the Commission deem it necessary regarding the subject matter of such financial questionnaire forms;
- C. fully and truthfully answering all questions regarding his past and present financial condition in any such financial deposition or interview; and
- D. providing any additional documentation within his possession or control requested by the Commission regarding his financial condition or status, including, but not limited to, financial statements, tax returns, and documentation regarding his income and earnings, assets, and asset transfers.

B. Access to Records

40. Until further order of this Court, the terms of the Preliminary Injunction Order relating to destruction of Defendants' records and the Commission's access to Defendants' records shall remain in effect.

VII. NOTICES

IT IS FURTHER ORDERED THAT:

41. All notices required to be given by this Consent Order shall be sent via 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

Notice to Defendant Dawson:
Joseph A. Dawson
996 Reserve Court
Fox Lake, IL 60020

VIII. CONTINUING JURISDICTION OF THIS COURT

42. This Court shall retain jurisdiction over this action to implement and carry out the terms of this Consent Order, to ensure compliance with this Consent Order, to resolve the issues of restitution and civil monetary penalties, and for any suitable application or motion for additional relief within the jurisdiction of this Court.

IX. MISCELLANEOUS PROVISIONS

IT IS FURTHER ORDERED THAT:

A. Entire Agreement and Amendments

43. This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless it is: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

B. Invalidation

44. If any provision of this Consent Order or the application of any provision to any persons or circumstances is held to be invalid, the remainder of the Consent Order and the application of the provision to any other persons or circumstances shall not be affected by such holding.

C. Waiver

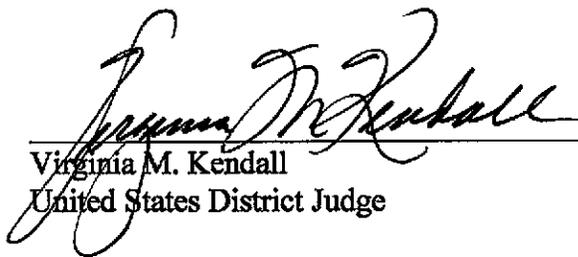
45. The failure of any party hereto at any time to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained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

D. Counterparts and Execution

46. 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 and delivered (by facsimile, email, 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 facsimile or email shall be deemed for all purposes as constituting good and valid execution and delivered by such party of this Consent Order.

IT IS SO ORDERED.

Date: 4-26, 2011



Virginia M. Kendall
United States District Judge

CONSENTED TO AND APPROVED BY:

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996 Reserve Court
Fox Lake, IL 60020

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Dated _____, 2011

Dated _____, 2011