

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

**In the Matter of:**

**Alan A. Grant and Francis Grant  
Investments Inc.,**

**Respondents.**

CFTC Docket No. 12-03

Office of  
Proceedings  
Clerk

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**ORDER INSTITUTING PROCEEDINGS 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 Alan A. Grant (“Grant”) and Francis Grant Investments Inc. (“FGI”) (collectively, “Respondents”) violated provisions of the Commodity Exchange Act (the “Act” or the “CEA”), 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), specifically Section 4b(a)(2)(A)-(C), to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C). The Commission, therefore, 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 the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings herein, Respondents acknowledge 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”).<sup>1</sup>

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<sup>1</sup> Respondents consent to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondents do not consent to the use of the Offer, or the findings in this 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 this Order. Nor do Respondents consent to the use of the Offer or this Order, or the findings in this Order or consented to in the Offer, by any other party in any other proceeding.

### III.

The Commission finds the following:

#### A. Summary

From April 2007 through August 2008, FGI, through the acts of Grant, solicited millions of dollars from hundreds of customers to participate in a commodity pool managed by an off-shore third party based out of the Turks and Caicos Islands (“off-shore pool”). The off-shore pool was to trade exclusively leveraged off-exchange foreign currency (“forex”). Grant was the sole owner and operator of FGI.

In early 2008, Respondents became aware of a foreign regulatory action being taken against the off-shore pool and learned that trading of the off-shore pool assets had ceased. Respondents did not disclose these material facts to their customers. Instead, Respondents continued to create and issue customer account statements falsely reflecting that their investments were increasing in value. Respondents also continued to solicit and accept new customer funds claiming that the off-shore pool was trading profitably. From June 18, 2008 through August 2008 (the “relevant period”), Respondents fraudulently solicited approximately \$155,000 from approximately eighteen (18) customers to participate in the off-shore pool.

By such acts, Respondents committed fraud and issued false account statements in violation of Section 4b of the Act.

#### B. Respondents

**Alan A. Grant** resides in Davie, Florida. Grant is not registered with the Commission in any capacity. Grant owns, operates and controls Francis Grant Investments Inc.

**Francis Grant Investments Inc.** is an active corporation organized and existing under the laws of the State of Florida. Its principal place of business is 4839 S.W. 148 Avenue, #454, Davie, FL 33330. Alan A. Grant is the principal shareholder of Francis Grant Investments Inc.

#### C. Facts

Prior to and throughout the relevant period, Grant, acting on behalf of FGI, solicited millions of dollars from hundreds of customers for purposes of trading forex through an off-shore pool managed by a third party.

In order to invest, Respondents required customers to complete a membership agreement. The membership agreement represented that Respondents would pool customer funds in a bank account they controlled, and Respondents would then transfer the pooled funds to the off-shore pool.

On a monthly basis, Respondents created and issued account statements on FGI letterhead. Respondents created these statements based upon information provided by the

operator of the off-shore pool. The account statements purportedly reflected the current value of the customer's individual account. Customers could access their individual account statements by creating an online account at *www.francisgrant.com*, a website maintained and operated by the Respondents. Generally, the account statements reflected that the off-shore pool was trading profitably and the individual customers' principal investment was increasing in value.

Respondents also processed all customer redemption requests. In early 2008, Respondents started experiencing significant delays in processing customer redemption requests through the off-shore commodity pool operator. When Respondents inquired with the off-shore commodity pool operator about the delays, they were informed that a foreign regulator had frozen the assets of the off-shore pool and that the pool had stopped trading.

Respondents did not disclose this information to the FGI customers and instead created and issued account statements which falsely reflected that the pool continued to trade profitably and that positive returns were being earned for the individual customers.

Respondents also continued to successfully solicit and accept funds from new customers. In their solicitations, Respondents failed to disclose that: the off-shore pool had ceased trading; the off-shore pool was subject to an investigation; and the account statements sent to customers were false. Respondents have not returned the customer funds they fraudulently solicited during the relevant period.

#### IV.

### **LEGAL DISCUSSION**

#### **A. Section 4b of the Act: Fraud by Misrepresentations, Omissions and False Statements**

Section 4b(a)(2)(A)-(C) of the Act provides 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 for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), 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; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; (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.

Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C).<sup>2</sup>

By knowingly making material misrepresentations and omissions, and issuing false account statements, Respondents violated Section 4b(a)(2)(A)-(C) of the Act.

## 1. Fraud by Misrepresentations and Omissions

To prove that a respondent has violated Section 4b(a)(2)(A) and (C) of the Act by misrepresentations and/or omissions, the Commission need only show that: 1) the respondent misrepresented or failed to disclose certain information; 2) the misrepresentation or omission was “material”; and 3) the respondent acted with scienter. *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002) (citations omitted), *cert. denied*, 543 U.S. 1034 (2004); *see also In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,313 (CFTC July 19, 1999), *aff’d in relevant part sub nom. Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000); *Hammond v. Smith Barney Harris Upham & Co., Inc.* [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659 (CFTC Mar. 1, 1990). “Whether a misrepresentation has been made depends on the ‘overall message’ and the ‘common understanding’ of the information conveyed.” *R.J. Fitzgerald*, 310 F.2d at 1328 (citing *Hammond*, Comm. Fut. L. Rep. ¶ 24,617 at 36,657, n.12). The allegedly false or misleading representations should be viewed through the eyes of an objectively reasonable person interpreting their overall message. *R.J. Fitzgerald*, 310 F.3d at 1329.

A statement or omitted fact is material if “a reasonable investor would consider it important in deciding whether to make an investment.” *R.J. Fitzgerald*, 310 F.3d at 1328-29; *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 447 (D.N.J. 2000) (same); *see also Saxe v. E.F. Hutton & Co., Inc.*, 789 F.2d 105, 110 (2d Cir. 1986) (“material misrepresentations about the nature of the organization handling [an] account, the people [dealt] with, and the type of trading [the] funds were being used for would be sufficient to state a cause of action pursuant to the CEA”) (quoting *Psimenos v. E.F. Hutton & Co. Inc.*, 722 F.2d 1041, 1043-44 (2d Cir. 1983)); *CFTC v. Commonwealth Financial Group, Inc.*, 874 F. Supp. 1345, 1353-54 (S.D. Fla. 1994) (misrepresentations regarding the trading record of a firm or broker are fraudulent because past success and experience are material factors which a reasonable investor would consider when deciding to invest).

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*

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<sup>2</sup> The Commission has jurisdiction over the Respondents’ fraudulent solicitation of customers to trade forex through a pool pursuant to Section 2(c)(2)(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C). Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, provides that Section 4b (fraud in connection with futures) shall apply to any agreement, contract, or transaction that meets this criteria “as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.”

*v. King*, No. 3:06-CF-1583-M, 2007 WL 1321762, at \*2 (N.D. Tex. May 7, 2007) (citing *R.J. Fitzgerald*, 310 F.3d at 1328) (internal quotations omitted); *Wasnick v. Refco, Inc.*, 911 F.2d 345, 348 (9th Cir. 1990) (citation omitted) (holding that scienter is established when an individual's acts are performed "with knowledge of their nature and character"). In order to meet the scienter requirement, the Commission must demonstrate that the misrepresentations and omissions were made intentionally or recklessly. See *Drexel Burnham Lambert Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988) (recklessness is sufficient to satisfy scienter requirement); see also *CFTC v. Noble Metals Int'l, Inc.*, 67 F.3d 766, 774 (9th Cir. 1995) (discussing Section 4b's scienter requirement). To prove that the conduct is intentional, the Commission must demonstrate that the actions of respondents were "intentional as opposed to accidental." *Lawrence v. CFTC*, 759 F.2d 767, 773 (9th Cir. 1985). To prove that conduct is reckless, the Commission must show that it "departs so far from the standards of ordinary care that it is very difficult to believe the [actor] was not aware of what he was doing." *Drexel Burnham Lambert*, 850 F.2d at 748 (alteration in original) (internal quotation marks and citation omitted).

As found above, from early 2008 through August 2008, Respondents, through Grant, solicited customers by knowingly and intentionally omitting facts regarding the foreign regulatory action against the off-shore pool operator, the seizure of assets, and the cessation of trading. Instead, FGI falsely represented, through account statements and oral representations, that the individual customers were earning positive returns from their investment in the off-shore pool. Such misrepresentations and omissions are material to a reasonable person making an investment decision.

FGI, through Grant, knowingly and intentionally made these material misrepresentations and omissions. Accordingly, Respondents violated Section 4b(a)(2)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A) and (C).

## **2. Fraud by Issuance of False Statements**

Issuing or causing to be issued false statements to investors concerning the profitability of commodity futures trading conducted on their behalf violates Section 4b(a)(2)(B) of the Act. See *CFTC v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d 676, 686 (D. Md. 2000) (finding that defendants violated Section 4b(a) because they issued false account statements); *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 447-48 (D.N.J. 2000) (defendant violated the CEA's anti-fraud provisions by falsely stating that he would set up an account in the customer's name, reporting erroneous account balances, and preparing and sending false 1099 tax forms); *CFTC v. Skorupskas*, 605 F. Supp. 923, 932-33 (E.D. Mich. 1985) (defendant violated Section 4b(a) of the Act by issuing false monthly statements to customers).

During the relevant period, Respondents created, updated and made available to customers account statements that showed customers were earning profits. In truth, Respondents knew that the pool was not being traded or earning profits. By knowingly issuing such false statements, Respondents violated Section 4b(a)(2)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(B).

**B. Sections 2(a)(1)(B) and 13(b) of the Act:  
Respondents' Derivative Liability for Each Other's Violations**

The acts, omissions and failures of Grant in violation of the Act, as discussed above, occurred within the scope of his agency with FGI. Therefore, FGI is liable for these acts, omissions and failures pursuant to Section 2(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2011).

Grant, as FGI's owner and operator, controlled the day to day operations of FGI and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting FGI's violations of the Act as discussed above. Consequently, pursuant to Section 13(b) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13c(b), Grant is liable for FGI's violations of the Act to the same extent as FGI.

**V.**

**FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that Respondents violated Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C).

**VI.**

**OFFER OF SETTLEMENT**

Respondents have submitted the Offer in which they, without admitting or denying the findings herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based upon violation of or enforcement of this Order;
- C. Waive: the filing and service of a complaint and notice of hearing; a hearing; all post-hearing procedures; judicial review by any court; any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer; any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2011), relating to, or arising from, this proceeding; 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 proceeding; and any claim 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. Stipulate that the record upon which this Order is entered shall consist solely of the findings contained in this Order to which the Respondents have consented in the Offer; and
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
  - 1. makes findings by the Commission that Respondents violated Section 4b(a)(2)(A)-(C), as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C);
  - 2. orders Respondents to cease and desist from violating Section 4b(a)(2)(A)-(C), of the Act, as amended by the CRA and 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), to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C);
  - 3. orders that Respondents be permanently prohibited from engaging, directly or indirectly, in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(40)), and all registered entities shall refuse them trading privileges;
  - 4. orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of \$500,000 within ten (10) days of the date of entry of this Order; and
  - 5. orders Respondents to comply with the undertakings consented to in the Offer and set forth below 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. Respondents shall cease and desist from violating Section 4b(a)(2)(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)(2)(A)-(C);
- B. Respondents are permanently prohibited from engaging, directly or indirectly, in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40)

of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(40)), and all registered entities shall refuse them trading privileges;

- C. Respondents shall pay, jointly and severally, a civil monetary penalty of \$500,000 within ten (10) days of the date of entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid within ten (10) days of the date of entry of this Order, then 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. Respondents 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 by other than 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: Linda Zurhorst  
Accounts Receivable/AMZ-341  
MARAD, IMLS, CFTC, GAO, CPSC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: 405-954-5644

If payment by electronic funds transfer is chosen, Respondents shall contact Linda Zurhorst or her successor at the above address to receive payment instruction and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies Respondents and the name and docket number of this proceeding. Respondents shall simultaneously transmit copies of the cover letter and the form of payment to (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, DC 20581, and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address; and

- D. Respondents and their successors and assigns shall comply with the following undertakings set forth in the Offer:
1. Respondents agree that neither they nor any of their successors or assigns, employees or agents under their 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 Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of their

employees and/or agents under their authority or control understand and comply with this undertaking; and

2. Respondents agree that they shall never engage, directly or indirectly, in:
  - a. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2011)) (“commodity options”), 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 and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for Respondents’ own personal account(s) or for any account(s) in which Respondents have a direct or indirect interest;
  - b. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on Respondents’ behalf;
  - c. 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, and/or forex contracts;
  - d. 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, and/or forex contracts;
  - e. 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) (2011); and/or
  - f. acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(38)) 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) (2011).

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

By the Commission.

A handwritten signature in black ink, reading "David A. Stawick". The signature is written in a cursive style with a horizontal line underneath the name.

David A. Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: November 9, 2011