

against Groendyke on May 3, 2011 and a Consent Order for Preliminary Injunction and Other Ancillary Relief against Groendyke on June 13, 2011.

II. CONSENTS AND AGREEMENTS

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

1. Consents to the entry of this Consent Order for Permanent Injunction and Other Equitable Relief Against Defendant Jeffery L. Groendyke d/b/a JG Forex Fund (“Consent Order”);
2. Affirms that he has read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
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 of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, ;
5. Admits the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, and 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);
6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(e);

7. Waives:

(a) any and all claims that he may possess under the Equal Access to Justice Act (“EAJA”), 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 (“Regulations”), 17 C.F.R. §§ 148.1-30 (2011), relating to, or arising from, this action and any right pursuant to EAJA to seek costs, fees and other expenses relating to or arising from this action;

(b) 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, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

(c) any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

(d) any and all rights of appeal from this action;

8. Consents to the continued jurisdiction of this Court over him for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Groendyke now or in the future resides outside the jurisdiction of this Court;

9. Agrees that he will not oppose enforcement of this Consent Order on the ground that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

10. 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 the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order are without a factual basis; provided, however, that nothing in this provision shall affect his (a) testimonial obligations or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendant Groendyke shall undertake all steps necessary to ensure that his agents or employees under his authority or control understand and comply with this agreement; and

11. Admits to all of the findings made in this Consent Order and all of the allegations in the Complaint. Further, Defendant Groendyke agrees and intends that the allegations contained in the Complaint and all of the Findings of Fact and Conclusions of Law contained in this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Groendyke; any proceeding pursuant to Section 8a of the Act, as amended, to be codified at 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2011); and any proceeding to enforce the terms of this Consent Order. Furthermore, Defendant Groendyke agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 51 of Part VII of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, and he 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 Defendant Groendyke in any other proceeding.

III. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), as set forth herein.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

1. The Parties To This Consent Order

12. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

13. Defendant Jeffery L. Groendyke d/b/a JG Forex Fund currently resides in Middleville, Michigan, a village located outside of Grand Rapids. He owns and operated a commodity pool, JG Forex Fund (“JGF”), and solicited customers to invest in the commodity pool to trade off-exchange foreign currency contracts (“forex”). Groendyke operated the commodity pool from his residence. He has never been registered with the Commission in any capacity.

2. Groendyke’s Forex Trading Accounts

14. From May 2010 through April 2011 (“the relevant time”), Groendyke solicited and accepted \$1,009,844.56 from 42 individuals for the purpose of investing in a pool to trade forex, approximately \$9,000 of these funds were solicited and accepted from four families who

are members of his church. Groendyke accepted funds for the JGF pooled account in his own name and/or made out to JGF, which he deposited into one or more personal bank accounts in his name. Groendyke represented to pool participants that he was a successful trader with a profitable track record and minimized the risk of loss trading forex. Groendyke told pool participants that he offered a “long term investment,” and accepted retirement funds. Groendyke represented that he was compensated by a commission in the amount of 50% of new forex profits.

15. Groendyke also represented to pool participants that he traded forex on their behalf pursuant to “automated systems” as well as manually inputting trades for the pool’s accounts, and that he provided a limited power of attorney to third parties to trade for the pool either manually or pursuant to an “automated system.” In reality, Groendyke has never had a trading account in the name of JGF. The trading accounts he did maintain he designated as individual accounts in his own name that he claimed on futures commission merchant (“FCM”) and retail foreign exchange dealer (“RFED”) account opening documents contained his personal funds, and did not contain any third party customer funds.

16. Groendyke opened and funded three forex trading accounts from January 2010 to the present, which traded forex from January 24, 2010 through November 30, 2010. The accounts are held in Groendyke’s name at two entities registered as FCMs and RFEDs, Oanda Corporation (“Oanda”) and Forex Capital Markets (“FXCM”). None of Groendyke’s accounts were profitable, and they collectively lost money in all but two of the eleven months in which Groendyke traded in them. Specifically, Groendyke collected a total of \$1,009,844.56 from pool participants, which he deposited into three bank accounts in his name. Out of these bank accounts, Groendyke transferred \$366,950 into his three forex trading accounts, from which

Groendyke withdrew approximately \$42,645.05 and lost \$324,228.72 trading forex leaving a combined balance of \$76.23 in the three accounts. Groendyke used the remaining funds for purposes other than forex trading including personal expenses, paying pool participants their purported forex trading profits in the manner of a Ponzi scheme, and trading futures contracts in a personal futures trading account that he did not disclose to pool participants.

17. Two of Groendyke's forex accounts were originally maintained at FXCM in London, which FXCM later transferred to FXCM's New York office, as of October 20, 2010, due to changes in CFTC regulations. Groendyke opened a third forex account at Oanda on August 16, 2010, which he funded with a total of \$43,000; Groendyke subsequently withdrew \$10,725 from that account on September 2, 2010 and lost the remainder trading. The account has not traded since November 2010 and currently has an \$11.94 balance. Groendyke did not disclose this account to pool participants.

18. As part of his scheme, Groendyke retained an accounting firm in Middleville, Michigan to prepare statements for the JGF. These statements included a report titled "JG Fund Statement of Assets, Liabilities and Equity" and a report titled "JG Fund Statements of Revenue and Expenses." The accounting firm prepared these statements from May 2010 through January 2011 based solely upon false information that Groendyke provided to it and sent them to Groendyke with a letter affirming that the firm "compiled the accompanying statements of assets, liabilities and owners' equity of Jeffrey Groendyke d/b/a/ JG Forex . . . and the related statement of income and proprietor's capital in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants."

19. The “JG Fund Statement of Assets, Liabilities and Equity” purports to identify the value of JGF investment accounts numbered “8450” and “2368,” and “investments in transit,” as well as cumulated net income, contributions and distributions. These statements generally reflected monthly growth in the current assets in the two investment accounts and represented that as of December 31, 2010, JGF had \$1,090,661 in account “8450,” and \$458,018 in account “2368.” In reality, account #XXXXXXX8450 that Groendyke holds at FXCM has had a \$14 balance since November 13, 2010, and has not traded since September 2010, and account #XXXXXXX2368 at FXCM has had a \$49 balance since September 2010 and has not traded since then.

20. The “JG Forex Statements of Revenue and Expenses” purports to identify cumulated “investment income,” “commission income,” and operating expenses. The statement for the eight months ended December 31, 2010, reported total revenue of \$679,843 over the eight months. In reality, account #XXXXXXX8450 that Groendyke holds at FXCM lost \$226,295.24 for the eight months ending December 31, 2010, and account #XXXXXXX2368 that Groendyke holds at FXCM lost \$65,650.42 for the eight months ending December 31, 2010.

3. Solicitation Fraud And False Account Statements

21. Groendyke regularly communicated with pool participants concerning the JGF pool’s purported performance, and, on at least a monthly basis from June 2010 through January 2011, emailed to pool participants transmittal statements attaching copies of a “J.G. Forex Fund” investor balance spreadsheet purporting to show: the number of investors in JGF and their respective investment, earnings, draws, new investment and balance; a “Combined Account Statement” purportedly received from the forex firm carrying the JGF accounts; and a letter from the accounting firm with a “Statement of Assets, Liabilities and Equity” and “Statements of Revenue and Expenses” prepared by the accounting firm. Through December 9, 2010,

Groendyke reported on the status of JGF as of the 9th day of each month, and issued reports on a month-end basis on December 31, 2010 and January 31, 2011.

22. Groendyke represented to pool participants via email that the pool earned 42% in June 2010, 16% in August 2010, 24% in September 2010, 6.73% in October 2010, 11% in November 2010 and 17% in December 2010 trading forex at FXCM in London. In reality, Groendyke's accounts at FXCM made \$198,022.77 in June 2010, which was actually greater than 42%, but lost \$456,825 in July 2010, \$14,158 in August, and \$382.12 in September, and have not traded since September 2010.

23. The "Combined Account Statements" that Groendyke emailed to participants each month also were false. Groendyke represented that the Combined Account Statement is the account statement that he received from FXCM. In fact, Groendyke altered the numbers on the actual account statements he received from FXCM to reflect profits instead of losses, and then issued the falsified statements to pool participants so that it appeared to them that the pool was earning consistent monthly profits. These falsified account statements persuaded pool participants to add to their investments with Groendyke.

24. After losing virtually all of the participant funds in Groendyke's forex accounts trading forex, on October 15, 2010, Groendyke sent pool participants an email informing them that he was partnering with an entity called Capstone FX, that he was seeking "to grow the investor base of our fund," and consequently was offering existing pool participants a commission "for any direct referral to the fund." Groendyke then entered into "Commission Agreements" with at least five pool participants agreeing to pay the pool participants "5% of Manager Commission for each new Investment Group Member he refers up to a combined total of \$100,000." "Thereafter he will receive 10% of Manager Commission for each additional new

Investment Group Member.” The five pool participants referred nine new pool participants to Groendyke, who collectively invested \$336,432. Groendyke also informed pool participants via email that as of December 31, 2010, he had \$1,548,679 under management. However, as of December 31, 2010, the actual combined balance of Groendyke’s forex trading accounts was approximately \$76.23.

25. Groendyke informed pool participants that they could only withdraw their profits, not principal, from JGF for one year. When one pool participant asked to withdraw his funds from JGF, Groendyke discouraged him from doing so telling him that he should withdraw the funds from his retirement account instead as that would “be less complicated.”

26. On February 1, 2011, Groendyke falsely informed pool participants via email that due to “major federal regulations enacted by congress,” he was forced to “halt trading” in January 2011 because “under the new regulations our fund is considered ‘unregistered.’” Groendyke further explained that he was transferring pool participant funds to a “global investment banking firm” called Boston Asia Capital. In reality, Groendyke had already lost or misappropriated virtually all of the pool participants’ funds, had ceased trading the forex accounts by November 30, 2010, had never had any business relationship with Boston Asia Capital, and was required to be registered with the Commission as a CPO as of October 18, 2010.

27. On February 24, 2011, Groendyke informed pool participants via email that he would be transferring their funds to an entity called LPL Financial, a registered CPO and FCM located in Boston. Groendyke represented to pool participants that LPL Financial is the “clearing firm” that Boston Asia Capital works with. Groendyke claimed that he had “opened up an account for our fund to be transferred into, on or around the first of the month. Then each one

of you as an individual investor . . . will open up your own account with LPL.” Groendyke also instructed pool participants to complete additional paper work to open individual accounts. In reality, Groendyke never opened an account with LPL Financial for the fund or for any individual investors.

4. Misappropriation of Customer Funds

28. During the relevant time, Groendyke misappropriated pool participants’ funds. Of the \$1,009,844.56 Groendyke solicited and accepted from 42 pool participants for the purpose of trading forex, he used only \$366,950 of that amount to trade forex, of which \$324,228.72 was lost trading. Of the remaining \$685,615.44, he used \$46,703.06 to pay purported forex trading profits to existing pool participants in the manner of a Ponzi scheme, lost \$5,503 trading commodity futures for his personal account, sent \$501,510 to Capstone, its owner Nicholas Trimble, and related investment entities, which they used for purposes other than forex trading, and spent \$131,899.78 on personal expenses such as computer equipment, rent, groceries, restaurants, hotels, and retail store merchandise. Groendyke did not disclose to participants that he would use their funds for these purposes or any other purpose other than trading forex.

5. Failure To Register With The CFTC

29. On October 18, 2010, the Commission enacted new regulations implementing certain provisions of the Dodd-Frank Act and the CRA with respect to off-exchange forex transactions. Also, beginning October 18, 2010, Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011), require that a person must be registered as a commodity pool operator (“CPO”) if he wants to solicit or accept orders from non-Eligible Contract Participants (“ECP”) in connection with forex transactions for a pooled investment. Groendyke acted as a CPO consistently from May 2010 through April 2011 without the benefit

of registration with the Commission in that, among other things, he has solicited and accepted funds from 42 pool participants for the purpose of trading forex in JGF. Consequently, as of October 18, 2010, Groendyke was required to become registered as a CPO.

B. Conclusions of Law

1. Jurisdiction and Venue

30. This Court has jurisdiction over this action pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the CFTC that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the CFTC may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

31. The CFTC has jurisdiction over the forex solicitations and transactions at issue in this action pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, and 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).

32. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(e), because the Defendant resides in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

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

33. By the conduct described in paragraphs 1 through 29 above, Groendyke cheated and defrauded, or attempted to cheat and defraud, and willfully deceived, or attempted to deceive, his retail forex customers by, among other things, knowingly or recklessly:

(a) misrepresenting the profitability of his forex trading; (b) failing to disclose trading losses;

(c) issuing false statements to participants; and (d) misappropriating participant funds in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C), and Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2011).

34. By the conduct described in paragraphs 1 through 29 above, since October 18, 2010, Groendyke, through use of the mails or other means or instrumentalities of interstate commerce, has made or caused to be made false account statements to JGF pool participants in violation of Regulation 5.2(b)(2), 17 C.F.R. § 5.2(b)(2) (2011).

3. Failure to Register with CFTC

35. By the conduct described in paragraphs 1 through 29 above, beginning on October 18, 2010, and continuing to the present, Groendyke solicited or accepted orders from non-ECPs in connection with forex transactions and acted as a CPO, as defined in Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2011). Groendyke engaged in this conduct without being registered as a CPO, as required by Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011), all in violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011).

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

36. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, Defendant Groendyke is permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Cheating or defrauding , or attempting to cheat or defraud, 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, or swap, that is made, or to be made, for or on

behalf of, or with, any other person in violation of Sections 4b(a)(2)(A) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(2)(A), and Regulation 5.2(b)(1), 17 C.F.R. § 5.2(b)(1) (2011).

- b. Willfully making or causing to be made to such other person any false report or statement thereof, or willfully entering or causing to be entered for such other person any false record thereof, in violation of Section 4b(a)(2)(B) of the Act as amended, to be codified at 7 U.S.C. § 6b(a)(2)(B), and Regulation 5.2(b)(2), 17 C.F.R. § 5.2(b)(2)(2011).
 - c. Willfully deceiving or attempting to willfully deceive any other persons 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 with such persons in violation of Section 4b(a)(2)(C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(2)(C) and Regulation 5.2(b)(3), 17 C.F.R. § 5.2(b)(3) (2011).
 - d. Soliciting or accepting orders from non-ECPs in connection with forex transactions without registering with the CFTC, and acting as a commodity pool operator (“CPO”), as defined in Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2011), without being registered as a CPO, as required by Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011), all in violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011).
37. Defendant is also permanently restrained, enjoined and prohibited from directly or

indirectly:

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a);
- b. 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”), swaps, and/or 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;
- c. Having any commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts traded on his 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;
- 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;
- 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and/or

- g. Acting as a principal (as that term is defined in 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 of the Act, as amended, 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

V. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution

38. Defendant Groendyke shall pay restitution in the amount of \$963,141.10 within ten (10) days of the date of the entry of this Consent Order (the “Restitution Obligation”). If the Restitution Obligation is not paid within ten (10) days of the date of entry of this Consent Order, then post judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

39. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendant’s pool participants, the court appoints the National Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor shall collect restitution payments from Defendant Groendyke and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA’s appointment as Monitor, other than actions involving fraud.

40. Defendant Groendyke shall make Restitution Obligation payments under this Consent Order to the Monitor in the name “Groendyke Settlement Fund” and shall send such

Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies Defendant Groendyke and the case name, docket number and the name of this Court. Defendant Groendyke shall simultaneously transmit copies of the cover letter and the form of payment to: (a) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, and (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

41. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendant's pool participants identified by the CFTC or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative costs of the making of a distribution to eligible pool participants 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 following the instructions for civil monetary penalty payments set forth in Part B below.

42. Defendant Groendyke shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant's customers to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendant Groendyke 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.

43. The amounts payable to each customer shall not limit the ability of any customer from proving that a greater amount is owed from Defendant Groendyke or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law.

44. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Defendant Groendyke who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Defendant Groendyke to ensure continued compliance with any provision of this Consent Order and to hold Defendant Groendyke in contempt for any violations of any provision of this Consent Order.

45. To the extent that any funds accrue to the U.S. Treasury as a result of Groendyke's Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

B. Civil Monetary Penalty

46. Defendant Groendyke shall pay a civil monetary penalty in the amount of \$420,000, plus post-judgment interest, within ten (10) days of the date of the entry of this Consent Order (the "CMP Obligation"). If the CMP Obligation is not paid within ten (10) days of the date of entry of this Consent Order, then post judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

47. Defendant Groendyke shall pay his 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 by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

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

C. Partial Payments

48. Any acceptance by the Commission of partial payment of Defendant Groendyke's Restitution Obligation or CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

D. Cooperation

49. Defendant Groendyke shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto. As part of such cooperation, Defendant Groendyke agrees to:

- (a) preserve all original instant messages and e-mails records relating to the subject matter of this proceeding, including, but not limited to audio files, e-mails, and trading records;
- (b) provide assistance at any trial, or proceeding, or Commission investigation related to the subject matter of this proceeding, including but not limited to, requests for testimony, depositions, and/or interviews, and to testify completely and truthfully in any such proceeding, trial, or investigation and not assert privileges under the Fifth Amendment to the United States Constitution. Groendyke would be entitled to reimbursement for the statutory allowances for attendance and travel associated with such cooperation; and
- (c) comply fully, promptly, and truthfully with any inquiries or requests for information including but not limited to inquiries or requests:
 - i. for authentication of documents; and
 - ii. for any documents within Defendant Groendyke's possession, custody, or control, including inspection and copying of documents.

VI. MISCELLANEOUS PROVISIONS

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

Notice to Commission:

Associate Director
Division of Enforcement, Central Region
Commodity Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, Illinois 60661

Notice to Defendant Groendyke:

Jeffery L. Groendyke
7030 Bowman Drive
Middleville, Michigan 49333

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

51. Change of Address/Phone: Until such time as Defendant Groendyke satisfies his Restitution Obligation and CMP Obligation as set forth in this Consent Order, Defendant Groendyke 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.

52. Entire Agreement and Amendments: 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: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

53. Invalidation: If any provision or the application of any provision of this Consent Order is held invalid, then the remainder of this Consent Order and the application of the provisions to any other person or circumstance shall not be affected by the holding.

54. Waiver: The failure of any party to this Consent Order or of any customer at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or customer 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.

55. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this

action, including any motion by Defendant Groendyke to modify or for relief from the terms of this Consent Order.

56. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendant Groendyke, upon any person under his authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendant Groendyke.

57. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

58. Defendant Groendyke understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Consent Order.

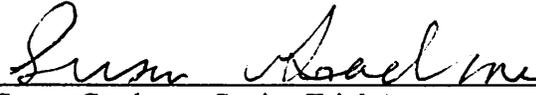
IT IS SO ORDERED on this 16th day of December, 2011.

/s/ Robert J. Jonker
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:


Defendant Jeffery L. Groendyke
7030 Bouman Drive
Middleville, Michigan 49333

Dated 12/8/, 2011


Susan Gradman, Senior Trial Attorney
Commodity Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, Illinois 60661
(312) 596-0523
(312) 596-0714 (facsimile)
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Dated 12-8-, 2011