

Commodity Exchange Act, as Amended, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.¹

III.

The Commission finds the following:

A. SUMMARY

From approximately August 2008 through October 2009, Kaup, first through the Lunden Entities and then through the Black Horse Entities, fraudulently solicited investors for the purpose of trading leveraged or margined off-exchange foreign currency contracts (“Forex”). Respondents misappropriated investor funds by using those funds, without disclosure to or authorization from their investors, to make payments to other investors, and to pay Kaup’s personal expenses. Further, in order to conceal trading losses and the misappropriation of investor funds, Respondents made false statements to investors and issued false account statements to investors.

As a result of this scheme, investors were defrauded in the amount of almost \$1.4 million.

B. RESPONDENTS

David Kaup is an individual who resides in San Gabriel, California. Kaup was the founder and principal of Lunden Forex Partners, LP, and Lunden Forex Management, LLC; he directed others to form Black Horse Funds, LLC, Black Horse Management, LLC, and Black Horse Partners, LP, and served as a principal of these entities. Kaup was a manager and employee of Lunden Forex Partners, LP, Lunden Forex Management, LLC, Black Horse Funds, LLC, Black Horse Management, LLC, and Black Horse Partners, LP. Kaup has never been registered with the Commission in any capacity.

Lunden Forex Partners, LP is organized in the State of California as a limited partnership. During the Relevant Period, it maintained its principal place of business in Los Angeles, California. It has never been registered with the Commission in any capacity.

Lunden Forex Management, LLC is organized in the State of California as a limited liability company. During the Relevant Period, it maintained its principal place of business in Los Angeles, California. It has never been registered with the Commission in any capacity.

¹ 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 or conclusions 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 or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

Black Horse Funds, LLC is organized in the State of California as a limited liability company. During the Relevant Period, it maintained its principal place of business in Los Angeles, California. It has never been registered with the Commission in any capacity.

Black Horse Management, LLC is organized in the State of California as a limited liability company. During the Relevant Period, it maintained its principal place of business in Los Angeles, California. It has never been registered with the Commission in any capacity.

Black Horse Partners, LP is organized in the State of California as a limited partnership. During the Relevant Period, it maintained its principal place of business in Los Angeles, California. It has never been registered with the Commission in any capacity.

C. FACTS

1. The Lunden Entities

In or about April 2008, Kaup formed the Lunden Entities and held himself out as the founder, manager and principal of the Lunden Entities. Further, as their employee, Kaup opened and managed the Lunden Entities' bank accounts and trading accounts, and solicited funds from investors for the purpose of trading Forex in the Lunden Entities' trading accounts for or on behalf of these investors. In total, between August 2008 and July 2009, Kaup and the Lunden Entities, through Kaup, fraudulently solicited and accepted approximately \$926,000 from approximately 15 investors for this purpose.

In his solicitations, Kaup represented that he would trade Forex on behalf of investors. As part of his solicitation, Kaup falsely told investors that he and the Lunden Entities had a successful track record of earning returns on investments of as much as 5-20% per month, and provided some investors with documents purporting to show a history of profitable Forex trading. These documents were fraudulent in that they were not based on actual trading. Kaup also guaranteed some investors monthly profits of from 5-10%. Based on Kaup's representations, the Lunden Entities' investors collectively sent approximately \$926,000 to the Lunden Entities for the purpose of trading in Forex for or on their behalf.

The trading on behalf of investors by Kaup and the Lunden Entities, through Kaup, resulted in consistent trading losses. Despite these consistent losses, Kaup assured some of the Lunden Entities' investors that their investments were profitable. On at least two occasions, Kaup sent an investor fraudulent account statements showing investment profits when none existed. On at least four occasions, Kaup and the Lunden Entities sent investors what was claimed to be profits on their investments; these profits did not exist, and were sent from the funds invested by other investors. In addition, a number of the Lunden Entities' investors were told by Kaup that their accounts were being transferred to an account in the name of the Black Horse Entities and were given agreements stating that their principal plus investment profits from the Lunden Entities were being transferred to the Black Horse Entities' account. In reality, there were no profits on these accounts, and no funds were transferred from the Lunden Entities to the Black Horse Entities.

Of the approximately \$926,000 solicited from investors by Kaup and the Lunden Entities, through Kaup, only approximately \$392,000 was deposited in the Lunden Entities' trading accounts, and approximately \$310,000 of this amount was lost trading Forex. Over \$240,000 of the Lunden Entities investor funds were misappropriated by Kaup and the Lunden Entities, through Kaup, to make payments to investors either as false profits or as the return of their investment, and to pay personal expenses of Kaup such as rent, car payments, travel expenses, entertainment and retail purchases.

2. The Black Horse Entities

In or about June 2009, the Black Horse Entities were formed by others at the direction of Kaup. Kaup held himself out as a manager and principal of the Black Horse Entities, and as their employee, he managed the Black Horse Entities' bank accounts and trading account. The Black Horse Entities and Kaup solicited funds from investors for the purpose of trading Forex in the Black Horse Entities' trading account for or on behalf of these investors. In total, between August 2009 and October 2009, Kaup and the Black Horse Entities fraudulently solicited and accepted approximately \$578,000 from approximately 8 investors for this purpose.

Kaup also solicited an additional individual for the purpose of trading a discretionary Forex account which the individual opened and authorized the Black Horse Entities, through Kaup, to manage; this individual invested \$200,000 in this account.

In their solicitations, Kaup and the Black Horse Entities represented that Kaup would trade Forex on behalf of investors. As part of their solicitation, Kaup and the Black Horse Entities falsely told investors that Kaup and the Black Horse Entities had a successful track record of earning returns on investments of as much as 10-30% per month, and provided some investors with documents purporting to show a history of profitable Forex trading. These documents were fraudulent in that they were not based on actual trading. Kaup and the Black Horse Entities also falsely told investors that they used an algorithm which they had developed that consistently generated profits. This was false because the algorithm never generated profits. Kaup also guaranteed some investors monthly returns of from 5-10%. Based on these representations, the Black Horse Entities' investors collectively sent approximately \$578,000 to the Black Horse Entities for the purpose of trading in Forex for or on their behalf; and one investor, upon Kaup's instructions, opened a Forex trading account in the investor's own name, deposited \$200,000 in that account, and authorized the Black Horse Entities, through Kaup, to trade the account.

The trading on behalf of investors by Kaup and the Black Horse Entities, through Kaup, resulted in consistent trading losses. Despite these consistent losses, Kaup assured some of the Black Horse Entities' investors that their investments were profitable. On at least two occasions, Kaup sent an investor fraudulent account statements showing investment profits when none existed. On at least four occasions, Kaup and the Black Horse Entities sent investors what was claimed to be profits on their investments; these profits did not exist, but rather were sent from the funds invested by other investors in the Black Horse Entities.

Of the approximately \$578,000 solicited from investors by Kaup and the Black Horse Entities to be traded in the Black Horse Entities' account, only about \$340,000 was deposited in

the Black Horse Entities' trading account; approximately \$330,000 of this amount was lost trading Forex. Over \$40,000 of the Black Horse Entities investor funds were misappropriated by Kaup and the Black Horse Entities to make payments to investors either as false profits or as the return of their investment, and to pay for the personal expenses of Kaup such as rent, car payments, travel expenses, entertainment and retail purchases.

In addition, of the \$200,000 in the individual account being managed by the Black Horse Entities, through Kaup, approximately \$160,000 was lost trading Forex. During the approximately five weeks that this account was traded by the Black Horse Entities through Kaup, Kaup made false representations to the investor regarding the value of the account.

In total, Respondents defrauded investors in the amount of \$1,396,316.

3. The Investors and the Forex Transactions

The investors solicited by Respondents were not eligible contract participants, as defined in Section 1a(12) of the Act, 7 U.S.C. § 1a(12), and the investors, Respondents and/or counterparties to the trades were not persons described in Sections 2(c)(2)(B)(II)(aa), (bb), (dd), (ee), or (ff) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B)(II)(aa), (bb), (dd), (ee), or (ff). In addition, the Forex transactions did not involve a security, did not result in actual delivery within 2 days, and did not create an enforceable obligation to deliver between a seller and buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business.

IV.

LEGAL DISCUSSION

A. Violations of Sections 4b(a)(2)(A)-(C) of the Act: Fraud by Misrepresentations, Omissions, Misappropriation and False Statements

Sections 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), makes it unlawful to cheat, defraud, or willfully deceive, or to attempt to cheat, defraud, or deceive, any person, or to willfully make or cause to be made to any person any false report or statement in or in connection with any order to make, or the making of any contract or sale of any commodity 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.

Sections 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), applies to Respondents' Forex transactions "as if" they were a contract of sale of a commodity for future delivery. *See* Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iv).

1. Fraud by Misrepresentations and Omissions

To prove that a respondent has violated these provisions by misrepresentations or omissions, the Commission must 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.3d at 1328 (citing *Hammond*, Comm. Fut. L. Rep. ¶ 24,617 at 36,657, n.12). 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 Madel v. Anspacher & Assoc., Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,412 at 35,813 (CFTC Mar. 14, 1989) (citing *Sudol v. Shearson Loeb Rhoades, Inc.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,748 (CFTC Sept. 30, 1985)). Any fact that enables customers to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. *In re Commodities Int'l Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943 at 44,463-64 (CFTC Jan. 14, 1997) (finding that misrepresentations and omissions to customers were material and fraudulent because customers could not properly evaluate their circumstances with regard to risk of loss and opportunity for profit). Such actionable misrepresentations include those made to clients when soliciting their funds and when soliciting an investor to become a client. *See Saxe v. E.F. Hutton & Co., Inc.*, 789 F.2d 105, 110-111 (2d Cir. 1986); *Hirk v. Agri-Research Council Inc.*, 561 F.2d 96, 103-104 (7th Cir. 1977).

The scienter requirement is met when an individual’s “conduct involves intentional omissions or misrepresentations that present a risk of misleading investors, either known to the defendant or sufficiently manifest that the defendant ‘must have been aware’ of the risk.” *CFTC v. King*, No. 3:06-CV-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 addition, 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), *cert. denied sub nom. Schulze v. CFTC*, 519 U.S. 815 (1996). 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).

Respondents fraudulently solicited investors by misrepresenting that Respondents had a successful track record of earning profits on investments, and by providing some investors with documents purporting to show a history of profitable Forex trading. Respondents also misrepresented to at least some investors that their investments were profitable when they were not. In addition, Respondents did not disclose to investors that investor funds would be used to pay other investors, and for personal expenses. Such misrepresentations and omissions are material in that a reasonable investor would want to know the risk involved in his investment, how his money was being used, and what his actual trading results were. Respondents knew that information given to investors was false, that Respondents were incurring consistent losses, and that a significant portion of investor funds were being misappropriated. Respondents thus knew, or recklessly disregarded, that their statements, omissions, and misrepresentations were misleading.

Accordingly, by such acts of fraudulent solicitation and other misrepresentations and omissions, Respondents violated Sections 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).

2. Fraud by Misappropriation

Without disclosure to or the consent of investors, Respondents used investor funds to make payments to other investors either as false profits or as the return of their investment, and to pay for the personal expenses of Kaup. Accordingly, Respondents misappropriated investor funds in violation of Sections 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). *CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (defendant misappropriated customer funds in violation of Section 4b(a) of the Act by disbursing customer funds entrusted to her for trading commodity futures contracts to other investors, to herself and to her family). *CFTC v. Noble Wealth Data Info. Serv., Inc.*, 90 F. Supp. 2d 676, 683-87 (D. Md. 2000) (defendants misappropriated investor funds by diverting such funds for operating expenses and personal use), *aff'd in relevant part, vacated in part, sub nom. CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002), *cert. denied*, 537 U.S. 950 (2002); *In re Slusser*, Comm. Fut. L. Rep. ¶ 27,701 at 48,315 (respondents misappropriated investor funds in violation of Section 4b by surreptitiously retaining money in their own bank accounts that should have been traded on behalf of participants).

3. Fraud by Issuance of False Statements

Willfully making or causing to be made false reports or statements to investors concerning the profitability of trading conducted on their behalf violates 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). *See CFTC v. FX Prof'l Int'l Solutions, Inc.*, No. 1:10-cv-22311-PCH, 2010 WL 5541050 at *6 (S.D. Fla. Nov. 29, 2010) (delivering false account statements to customers regarding transactions regulated by the Commission constitutes a violation of Section 4b(a)); *Skorupskas*, 605 F. Supp. at 932-33 (defendant violated Section 4b(a) of the Act by issuing false monthly statements to customers); *Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d at 686 (finding that defendants violated Section 4b(a) because they issued false account statements); *CFTC v. Sorkin*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,855 at 27,585 (S.D.N.Y. Aug. 25, 1983)

(distribution of account statements that falsely report trading activity or equity is a violation of Section 4b of the Act).

The account statements that Respondents intentionally issued misrepresented the Respondents' trading performance by hiding consistent trading losses and the misappropriation of investor funds. 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. Respondents' Derivative Liability for Each Other's Violations

Kaup controlled the Lunden Entities and the Black Horse Entities, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, the Lunden Entities' and the Black Horse Entities' acts in violation of the Act, as amended; therefore, pursuant to Section 13(b) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13c(b), Kaup is liable for the Lunden Entities' and the Black Horse Entities' violations of Sections 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).

The foregoing acts, omissions, and failures of Kaup in violation of the Act pertaining to the Lunden and/or Blackhorse Entities occurred within the scope of his employment, office, or agency with the Lunden and/or Blackhorse Entities; therefore, 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 Regulation 1.2, 17 C.F.R. § 1.2 (2012), the Lunden and/or Blackhorse Entities are liable for these acts, omissions, and failures by Kaup in violation of Sections 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).

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, David Kaup, Lunden Forex Partners, LP, Lunden Forex Management, LLC, Black Horse Funds, LLC, Black Horse Management, LLC, and Black Horse Partners, LP committed fraud in violation of Sections 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).

VI.

OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions 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 on violation of or enforcement of this Order;

- C. Waive:
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 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 (2012), relating to, or arising from, this proceeding;
 7. 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
 8. any claims of Double Jeopardy based on 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 basis on which this Order is entered shall consist solely of the findings contained in this Order to which 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 Sections 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);
 2. orders Respondents to cease and desist from violating Sections 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)(2)(A)-(C);
 3. orders Respondents, jointly and severally, to pay restitution in the amount of one million three hundred ninety six thousand three hundred sixteen dollars (\$1,396,316), plus post-judgment interest;

4. orders Respondents, jointly and severally, to pay a civil monetary penalty in the amount of five hundred thousand dollars (\$500,000), plus post-judgment interest;
5. appoints the National Futures Association (“NFA”) as Monitor in this matter;
6. orders that Respondents 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 of the Act, as amended, 7 U.S.C. § 1a), and all registered entities shall refuse them trading privileges; and
7. orders Respondents and their successors and assigns 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. Respondents and their successors and assigns shall cease and desist from violating Sections 4b(a)(2)(A)-(C), 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, jointly and severally, shall pay restitution in the amount of one million three hundred ninety six thousand three hundred sixteen dollars (\$1,396,316) (“Restitution Obligation”). Should Respondents not satisfy this Restitution Obligation in full within ten (10) days of the date of entry of the Order, 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).

To effect payment by Respondents and the distribution of restitution to Respondents’ investors, the Commission appoints NFA as “Monitor.” The Monitor shall collect payments of the Restitution Obligation from Respondents and make distributions as set forth below. Because the Monitor is not being specially 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.

Respondents shall make their payments of the Restitution Obligation under this Order in the name of the “Lunden/Black Horse Settlement Fund” and shall send such payments by electronic funds transfer, or 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 the paying Respondent and the name and docket number of this

proceeding. The paying 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 Respondents' Restitution Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to Respondents' investors or may defer distribution until such time as the Monitor may deem appropriate. In the event that the amount of 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. To the extent any funds accrue to the U.S. Treasury for satisfaction of Respondents' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this Order.

- C. Respondents, jointly and severally, shall pay a civil monetary penalty in the amount of five hundred thousand dollars (\$500,000) (the "CMP Obligation"). Should Respondents not satisfy this CMP Obligation in full within ten (10) days of the date of entry of the Order, 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). Respondents shall pay the 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 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 is to be made by electronic funds transfer, Respondents shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit a copy 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.

- D. Respondents are 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 of the Act, as amended, 7 U.S.C. § 1a), and all registered entities shall refuse them trading privileges.
- E. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondents agree that neither they nor any of their successors and assigns, agents or employees 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 agents and/or employees under their authority or control understand and comply with this agreement.
 2. Respondents agree that they 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 Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2012)) ("commodity options"), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 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. have any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on Respondents' 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, 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, security futures products and/or forex contracts;
 - e. apply for registration or claim exemption from registration with the Commission in any capacity, and engage 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) (2012); and/or

- f. act as a principal (as that term is defined in 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 of the Act, as amended, 7 U.S.C. § 1a) registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).
3. Cooperation with Monitor: Respondents agree to cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondents' investors, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments. Respondents agree to execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.
4. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission or the Monitor of partial payment of Respondents' Restitution Obligation, or CMP Obligation shall not be deemed a waiver of their 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.
5. Change of Address/Phone: Until such time as Respondents satisfy in full their Restitution Obligation, and CMP Obligation as set forth in this Order, Respondents agree to provide written notice to the Commission by certified mail of any change to their telephone numbers and mailing addresses within ten (10) calendar days of the change.

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

By the Commission.



Stacy Yochum on behalf of
Sauntia S. Warfield
Assistant Secretary of the Commission
Commodity Futures Trading Commission

Dated: October 22, 2012