

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:)
)
Robert S. Moss,)
)
Respondent.)
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CFTC Docket No. 11-15

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 Robert S. Moss (“Moss” or “Respondent”) has violated: (i) Sections 4c(b), 4o(1), and 4m(1) 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), to be codified at 7 U.S.C. §§ 6c(b), 6o(1), and 6m(1); and (ii) Commission Regulations 4.20(a) and (c), 4.21(a) and 33.10, 17 C.F.R. §§ 4.20(a) and (c), 4.21(a) and 33.10(a)-(c) (2010). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein, and to determine whether any order should be issued imposing remedial sanctions.

II.

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

¹ Respondent consents 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 Respondent does not consent to the use of the Offer, or the findings consented to in this Order, as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy or to

III.

The Commission finds the following:

A. Summary

From at least 2001 through 2008, Moss, acting as an unregistered Commodity Pool Operator (“CPO”), fraudulently solicited approximately \$3.1 million from 22 individuals to trade options on commodity futures (“options”) through a commodity pool. During this period, Moss misrepresented his past trading performance to pool participants, sustained trading losses and misappropriated pool participants’ funds for his living expenses and to make payments to pool participants, as is typical in a Ponzi scheme. Moss concealed the trading losses and misappropriation by making false statements to certain pool participants.

B. Respondent

Robert S. Moss resides in Charlotte, North Carolina. Moss has never registered with the Commission.

C. Facts

From at least 2001 through 2008, Moss, acting as an unregistered CPO, solicited approximately \$3.1 million from 22 individuals to participate in a commodity pool which would trade options. To document their participation, Moss provided the participants with promissory notes whereby he either guaranteed annual returns of 16% to 18% or offered variable rates in which the returns were dependent upon the level of Moss’s trading profits.

Moss’s solicitation materials consisted of a brief, one-page letter in which Moss, among other things, described his trading philosophy, made representations regarding trading profits and historical annual returns, and summarized the economic profile of the pool participants. While this letter included disclosures of the speculative nature of the investment, it also contained several false statements: 1) that Moss had not had a losing year since 1993; 2) that Moss’s annual returns from trading were 22% to 41% per year; 3) that no participant had ever lost any capital; and 4) that Moss’s liquid assets were more than three times the size of his trading account. In fact, Moss had a number of losing years after 1993 and therefore did not earn the 22% to 41% represented in the letter. For example, between 2003 and 2009, Moss lost \$342,264 trading commodity options, primarily options on S&P 500 and Treasury bond futures. Further, his liquid assets were not three times the size of his trading account. Moss did not provide prospective pool

enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party in any other proceeding.

participants with a separate Disclosure Document that conformed to the requirements of Commission Regulations 4.24 and 4.25.

Moss did not operate the commodity pool as a separate legal entity, as required by the Commission's Regulations. Instead, he deposited funds from pool participants directly into his personal bank accounts. Moss used some of the pool funds to trade options, while transferring participants' funds from his personal bank accounts to trading accounts that he maintained in his own name at various Futures Commission Merchants ("FCMs"). He also placed a substantial amount of pool participants' funds in certificates of deposit and in a money market account, all of which were in his name.

In addition to his trading losses, Moss also misappropriated at least \$1.5 million of the pool participants' funds, withdrawing them for personal use and using them to repay other participants, in the manner of a Ponzi scheme. Moss used pool participant funds to pay the mortgage on his residence and to support himself financially, including spending pool participant funds on groceries and all manner of personal and household expenses.

To conceal his trading losses and misappropriation, Moss issued false statements, usually via electronic mail message, to certain participants reflecting that they were receiving their quarterly or annual returns in the form of interest payments or accrued interest on their promissory notes, which purportedly were based upon Moss's trading profits.

In or around February 2009, Moss notified the pool participants via a letter from his counsel that he was not able to return participants' funds or purported profits through the promised interest payments. At that point, Respondent owed the participants approximately \$1.5 million in principal but only had approximately \$177,000 remaining of the funds he received from the participants.

IV. LEGAL DISCUSSION

A. **Section 4c(b) of the Act and Regulation 33.10:
Fraud by Misrepresentations, Omissions, Misappropriation and False Statements**

Section 4c(b) of the Act prohibits "option" transactions contrary to any rule, regulation or order of the Commission. *See* Section 4c(b) of the Act, 7 U.S.C. §6c(b). Commission Regulation 33.10 makes it unlawful for any person, directly or indirectly, to: (a) cheat or defraud or attempt to cheat or defraud any other person; (b) make or cause to be made to any other person any false report or statement; or (c) deceive or attempt to deceive any other person by any means whatsoever, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction. *See* Regulation 33.10, 17 C.F.R. § 33.10.

Respondent, through misrepresentations, omissions, misappropriation, and the issuance of false account statements, violated Section 4c(b) of the Act and Regulation 33.10.

1. Fraud by Misrepresentations and Omissions

To prove that a respondent has violated Section 4c(b) of the Act and Regulation 33.10(a) and (c) by misrepresentations or omissions, the Commission need show only that the respondent “made a material misrepresentation of presently existing or past fact with scienter.” *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 447 (D.N.J. 2000) (the Court analyzed the same conduct to find violations of the Act’s anti-fraud provisions, including Sections 4b and 4c(b) of the Act and Commission Regulation 33.10); *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002) citing *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).

A statement “is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision.” *Rosenberg*, 85 F. Supp. 2d at 447 (quoting *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 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, 1044 & n.5 (2d Cir. 1983)); *R.J. Fitzgerald*, 310 F.3d at 1328-29 (“Whether a misrepresentation has been made depends on the ‘overall message’ and ‘common understanding’ of the information conveyed.”) (citing *Hammond*, ¶24,617 at 36,657 n.12); see also *In re JCC*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,080 at 41,568 (CFTC May 12, 1994) (“When the language of a solicitation obscures the important distinction between the possibility of substantial profit and the probability that it will be earned, it is likely to be materially misleading to customers.”), *aff’d sub nom. JCC, Inc. v. CFTC*, 63 F.3d 1557 (11th Cir. 1995); *CFTC v. Commonwealth Fin. 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 to reasonable investors).

The scienter requirement is met when “highly unreasonable omissions or misrepresentations [are made]...that present a danger of misleading [customers] which is either known to the Defendant[s] or so obvious that Defendant[s] must have been aware of it.” *R.J. Fitzgerald*, 310 F.3d at 1328 (citation omitted).

As found above, Respondent solicited prospective pool participants by misrepresenting his historical trading performance, when in fact, Respondent failed to disclose that he also suffered substantial trading losses and was misappropriating participant funds, using them to repay other participants, and for his living expenses. Respondent also issued false statements showing profitable returns. Such misrepresentations and omissions are material in that a reasonable pool participant would want to know that Respondent’s trading was not as successful as he claimed, and in that

the statements provided by Respondent misrepresented the value of pool participants' investments and the purported "returns" on those investments.

Respondent committed these acts directly, and thus knew he was misrepresenting his historical trading performance, misappropriating funds, and providing false statements. Accordingly, Respondent violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c).

2. Fraud by Misappropriation

Respondent used pool participant funds to pay personal expenses as well as to make distributions to other participants. Accordingly, Respondent misappropriated pool participant funds in violation of Section 4c(b) of the Act, 7 U.S.C. §6c(b), and Regulation 33.10(a) and (c), 17 C.F.R. §33.10(a) and (c). *See CFTC v. Noble Wealth Data Info. Serv., Inc.*, 90 F. Supp. 2d 676, 683-87 (D. Md. 2000) (defendants defrauded investors by diverting investor funds for operating expenses and personal use), *aff'd in part, vacated in part, sub nom. CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002); *In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,315 (CFTC July 19, 1999), *aff'd in relevant part sub nom. Slusser v. CFTC*, 210 F.3d 783, 784-85 (7th Cir. 2000) (respondents violated Section 4b by surreptitiously retaining money in their own bank accounts that should have been traded on behalf of participants); *CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (defendant violated Section 4b of the Act by misappropriating customer funds entrusted to her for trading commodity futures contracts).

3. Fraud by Issuance of False Statements

Issuing or causing to be issued false statements to pool participants concerning the profitability of commodity futures trading conducted on their behalf violates Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10(b), 17 C.F.R. § 33.10(b). *See Rosenberg*, 85 F. Supp. 2d at 447-48 (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); *see also Skorupskas*, 605 F. Supp. at 932-33 (defendant violated the anti-fraud provisions of the Act by issuing false monthly statements to customers).

On various occasions during the relevant period, Respondent sent messages via electronic mail to certain pool participants that reported profitable trading in commodity options and showed that they were earning perceived profits on the funds that they entrusted to Respondent. These statements were false. These statements did not reflect the actual profits or losses for the periods addressed by the statements and they did not reflect that participants' funds were being misappropriated. By knowingly issuing such false statements, Respondent violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Regulation 33.10(b), 17 C.F.R. § 33.10(b).

**B. Section 4o(1) of the Act, as amended by the CRA:
Fraud by Commodity Pool Operators and Their Associated Persons**

Section 4o(1) of the Act, in relevant part, makes it unlawful for a CPO or an AP of a CPO, by using the mails or any means or instrumentality of interstate commerce, directly or indirectly: (a) to employ a device, scheme or artifice to defraud pool participants; or (b) to engage in a transaction or course of business that operated as a fraud or deceit upon pool participants. Section 4o(1) of the Act, 7 U.S.C. § 6o(1). This section of the Act applies to all CPOs and their APs whether registered, required to be registered, or exempt from registration. *See Skorupskas*, 605 F. Supp. at 932; Regulation 4.15, 17 C.F.R. § 4.15 (2010). Although scienter must be proved to establish violations of Sections 4c(b), 4b and 4o(1)(A) of the Act, it is not necessary to prove scienter to establish a violation of Section 4o(1)(B) of the Act. *See Messer v. E.F. Hutton & Co.*, 847 F.2d 673, 677 (11th Cir. 1988); *accord In re Kolter*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,262 at 42,198 (CFTC Nov. 8, 1994) (the Commission cited *Messer* for this proposition with approval).

By operating a business in the nature of an investment pool, syndicate or similar form of enterprise and by soliciting, accepting or receiving funds for the purpose of trading commodity options, Moss acted as a CPO. *See* Regulation 1.3(cc), 17 C.F.R. §1.3(cc) (defining CPO); *see, e.g., Slusser*, ¶ 27,701 at 48,310 (respondent acted as a CPO when it accepted investment funds from individual investors who deposited funds in respondent's bank account for the purpose of trading in a commodity pool).

The same fraudulent conduct that violates Section 4c(b) of the Act and Regulation 33.10 as set forth above, including the fraudulent solicitations, the misappropriations, and the issuance of false statements, also violates Section 4o(1). *See Skorupskas*, 605 F. Supp. at 932-33. Accordingly, Respondent violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1).

**C. Section 4m(1) of the Act, as amended by the CRA:
Failure to Register as a Commodity Pool Operator**

The Commission Regulations define a CPO as “any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery or commodity option on or subject to the rules of any contract market....” Regulation 1.3(cc), 17 C.F.R. §1.3(cc). Section 4m(1) of the Act provides that it is unlawful for any CPO, unless registered under the Act, to make use of the mails or any instrumentality of interstate commerce in connection with its CPO business. Section 4m(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6m(1).

Respondent, acting as a CPO, accepted funds from individuals for purposes of participating in a pool and pooled those funds in bank accounts. He transferred a portion

of the funds through interstate commerce by wire to commodity options trading accounts maintained at several FCMs. *See CFTC v. Wall St. Underground, Inc.*, 281 F. Supp. 2d 1260, 1270 (D. Kan. 2003) (commodity trading advisors used mails and other instrumentalities of interstate commerce by making “extensive use of telephones, facsimile transmissions and emails in the course of marketing their trading systems”). Therefore, Moss violated Section 4m(1) of the Act by using an instrumentality of interstate commerce while failing to register with the Commission as a CPO.

**D. Commission Regulation 4.20(a):
Failure to Operate a Pool as a Separate Legal Entity**

Commission Regulation 4.20(a)(1) provides that a “commodity pool operator must operate its pool as an entity cognizable as a legal entity separate from that of the pool operator.” 17 C.F.R. § 4.20(a)(1) (2010). Respondent accepted and traded pool participant funds in his own name and failed to operate the pool as a separate legal entity. Respondent thus violated Commission Regulation 4.20(a)(1).

**E. Commission Regulation 4.20(c):
Commingling Pool Funds**

Commission Regulation 4.20(c) states that “No commodity pool operator may commingle the property of any pool that it operates or that it intends to operate with the property of any other person.” 17 C.F.R. § 4.20(c) (2010). Respondent deposited pool participants’ funds into bank accounts in his name that contained his personal funds. Respondent thus violated Commission Regulation 4.20(c).

**F. Commission Regulation 4.21(a):
Failure to Provide Disclosure Documents**

Commission Regulation 4.21(a) provides that each CPO registered or required to be registered under the Act must deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool by no later than the time it delivers to the prospective participant a subscription agreement for the pool. 17 C.F.R. § 4.21(a) (2010). Respondent failed to provide a Disclosure Document to prospective pool participants and thus violated Commission Regulation 4.21(a).

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated: (i) Sections 4c(b), 4q(1), and 4m(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6c(b), 6q(1), and 6m(1); and (ii) Commission Regulations 4.20(a) and (c), 4.21(a) and 33.10(a)-(c), 17 C.F.R. §§ 4.20(a) and (c), 4.21(a) and 33.10(a)-(c) (2010).

VI.

OFFER OF SETTLEMENT

Respondent submitted the Offer in which, without admitting or denying the findings herein, and prior to any adjudication of any issues of fact or law by the Commission, Respondent:

- A. Acknowledges service of this Order;
- B. Admits jurisdiction of the Commission with respect to the matters set forth in this Order;
- C. Waives: service and filing 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 claim of Double Jeopardy based on the institution of this proceeding or the entry of any order imposing a civil monetary penalty or other relief; 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 Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2010), relating to, or arising from, this proceeding; and 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, 121 Stat. 112 (2007), relating to, or arising from, this proceeding;
- D. Stipulates that the record basis on which this Order is entered consists solely of this Order, including the findings in this Order;
- E. Consents, solely on the basis of the Offer, to entry of this Order that:
 - 1. makes findings, including findings that Respondent violated: Sections 4c(b), 4o(1), and 4m(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6c(b), 6o(1), and 6m(1);
 - 2. makes findings, including findings that Respondent violated Commission Regulations 4.20(a) and (c), 4.21(a) and 33.10(a)-(c);
 - 3. orders Respondent to cease and desist from violating: Sections 4c(b), 4o(1), and 4m(1) 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. §§ 6c(b), 6o(1), and 6m(1);

4. orders Respondent to cease and desist from violating Commission Regulations 4.20(a) and (c), 4.21(a) and 33.10(a)-(c);
5. orders Respondent to pay restitution to pool participants in accordance with Schedule A attached to the Offer in the amount of \$1,501,151.29 plus post-judgment interest;
6. orders Respondent to pay a civil monetary penalty in the amount of \$500,000 plus post-judgment interest;
7. permanently prohibits Respondent from trading on or subject to the rules of any registered entity, as that term is defined in Section 1a of the Act, as amended by the CRA and Dodd-Frank Act, to be codified at 7 U.S.C. § 1a, for his own account, for any account in which he has a direct interest or indirect interest, or for any other account for or on behalf of any other person or entity, whether by power of attorney or otherwise, and all registered entities shall refuse him all privileges; and
8. orders Respondent to comply with the undertakings consented to in the Offer and set forth below in Section VII of this Order.

Upon consideration, the Commission has determined to accept the Respondent's Offer.

VII.

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondent shall cease and desist from violating: Sections 4c(b), 4o(1), and 4m(1) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6c(b), 6o(1), and 6m(1). In addition, Respondent shall cease and desist from violating Commission Regulations 4.20(a) and (c), 4.21(a) and 33.10(a)-(c), 17 C.F.R. §§ 4.20(a) and 4.20(c), 4.21(a) and 33.10(a)-(c) (2010).

2. Respondent shall pay restitution in the amount of \$1,501,151.29, plus post-judgment interest pursuant to Section 6(c) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 9 (the “restitution obligation”). Post-judgment interest shall accrue on the restitution obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2006).

3. To effect payment of the restitution obligation by Respondent and the distribution of restitution to pool participants, the Commission appoints the NFA as “Monitor.” The Monitor shall collect restitution payments from Respondent and make distributions to the pool participants indentified in Appendix A of the Offer. 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. Respondent shall make the required restitution payments under this Order in the name of the “Robert S. Moss 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 name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to: (a) Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581; and (b) Chief, Office of Cooperative Enforcement, Division of Enforcement at the same address. The Monitor shall oversee Respondent’s restitution obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to pool participants, or the Monitor may defer distribution until such time as it may deem appropriate. To the extent that any funds accrue to the U.S. Treasury as a result of Respondent’s restitution obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this paragraph.

4. Respondent shall execute any documents necessary to release funds held by or due to Respondent, including any funds held in escrow by Respondent’s counsel, in order to make partial or total payment toward the restitution obligation.

5. Respondent shall pay a civil monetary penalty of \$500,000 plus post-judgment interest pursuant to Section 6c of the Act, as amended by the CRA, to be

codified at 7 U.S.C. § 13a-1 (the “civil monetary penalty obligation”). Post-judgment interest shall accrue on the civil monetary penalty 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).

6. Respondent shall pay the civil monetary penalty 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, 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: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, Oklahoma 73169
Telephone: 405-954-6569

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the civil monetary penalty obligation with a cover letter that identifies the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to: Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; and Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

7. All payments by Respondent pursuant to this Order shall first be applied to satisfy the restitution obligation. After satisfaction of the restitution obligation, payments by Respondent pursuant to this Order shall be applied to satisfy the civil monetary penalty obligation.

8. Any acceptance by the Commission or the NFA of partial payment of Respondent’s restitution obligation and/or civil monetary penalty obligation shall not be deemed a waiver of the Respondent’s requirement 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; and

9. Respondent is permanently prohibited from trading on or subject to the rules of any registered entity, as that term is defined in Section 1a of the Act, as amended by the CRA and Dodd-Frank Act, to be codified at 7 U.S.C. § 1a, for his own account, for any account in which he has a direct interest or indirect interest, or for any other account for or on behalf of any other person or entity, whether by power of attorney or otherwise, and all registered entities shall refuse him all privileges.

10. Respondent shall comply with the following conditions and undertakings as specified:

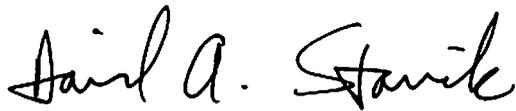
(a) Respondent shall never apply for registration or claim exemption from registration with the Commission, in any capacity, and shall never engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010).

(b) Respondent shall never act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2010)), agent, officer, or employee of any person 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) (2010).

(c) Respondent 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 findings or conclusions in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; *provided, however*, that nothing in this provision shall affect Respondent's (i) testimonial obligations or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.

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

By the Commission.



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

Dated: July 12, 2011