

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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Office of Proceedings
Proceedings Clerk

12:10 pm, Oct 26, 2012

In the Matter of:

JOSHUA T.J. RUSSO,

Respondent.

CFTC Docket No. 13-04

**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 Joshua T.J. Russo (“Russo” or “Respondent”) violated Section 4c(b) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6c(b) (2006); Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii)(2006), Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C)(Supp. III 2009) as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008) and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), and Commission Regulations 33.10 and 166.2, 17 C.F.R. §§ 33.10 and 166.2 (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 has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Act, As Amended, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹Respondent 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 or conclusions in this Order consented to in the Offer, as the

III.

The Commission finds the following:

A. Summary

From around March 2007 through April 2011 (the “Relevant Period”), Respondent, who was a registered associated person (“AP”) of an independent introducing broker (“IB”), fraudulently solicited at least one of the IB’s customers by telling the customer that he would be a general partner in a fictitious pool called Peak Performance Fund, LP (“PPF”) (the “PPF customer”). Respondent also issued false statements to the PPF customer in the form of purported PPF audited financial statements and in the form of weekly spreadsheets that Respondent represented were summaries of the value of the PPF customer’s purported pool account as well as other personal trading accounts held by the PPF customer. In fact, however, Respondent’s statements to the PPF customer grossly overinflated the value of his accounts, as evidenced by the account statements of the futures commission merchant (“FCM”) that carried the PPF customer’s trading accounts.

Respondent provided at least five other customers with similar spreadsheets that purported to summarize the customers’ trading accounts, which were either self-directed or managed accounts introduced by the IB and Respondent. Those spreadsheets also grossly inflated the value of the customers’ accounts. Although the customers received account statements directly from the FCM carrying their trading accounts, the customers relied on the Respondent’s statements to understand how their accounts were doing.

Respondent also engaged in a significant amount of unauthorized trading in these customers’ accounts as well as in the accounts of three other customers. For at least one customer, Respondent held verbal authority to trade the accounts but he engaged in speculative trading contrary to the hedging strategy Respondent represented he would utilize.

During the Relevant Period, the eight customers deposited at least \$3 million into trading accounts for the purpose of trading commodity futures and options in managed and self-directed accounts. Through his false statements to the eight customers, Respondent concealed from the customers his unauthorized trading and the overall of losses of approximately \$1.7 million that were being sustained by the customers in their trading accounts.

B. Respondent

Joshua T.J. Russo resides in Chicago, Illinois. He currently is not registered with the Commission in any capacity. During the Relevant Period, Russo was a registered AP of the IB and at various times before the Relevant Period, was a registered AP of two FCMs. In March 2012, the National Futures Association (“NFA”) ordered Russo to never apply for NFA

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 does Respondent 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.

membership, associate membership or principal status with any NFA member at any time in the future in connection with the same or related conduct found herein.

C. Facts

During the Relevant Period, Russo, while a registered AP of an IB, fraudulently solicited at least one of the IB's customers and issued false statements to that customer and at least four of the IB's other customers overstating the value of the customers' managed or self-directed commodity futures and options accounts. With respect to the accounts of those five customers and three others, Russo also engaged in unauthorized trading or engaged in speculative trading contrary to the hedging trading strategy he represented he would follow.

In or around March 2007, Russo met the PPF customer at a trade show and solicited him to participate as a general partner in a fictitious pool Russo called PPF. Based on Russo's representations, the PPF customer opened an account in his name, which the PPF customer believed held his share of the PPF pool. In reality, there was no commodity pool and the account was simply a self-directed account in the PPF customer's name.

Throughout the Relevant Period, Russo created and provided the PPF customer with false statements, either in the form of purported pool account statements, purported quarterly audit reports prepared by a Certified Public Accountant or other documents showing profitable results. For example, Russo provided the PPF customer with purported quarterly audited statements for PPF dated March, June, September and December 2010. The four statements showed varying values of the PPF customer's pool share ranging around \$1 million depending on the quarter. As of March 31, 2011, the PPF customer believed, based on the statements provided by Russo, that his interest in the PPF pool had a value of \$982,000 whereas, in truth, his account had a debit balance of more than \$774,000.

Over time, the PPF customer had opened 15 managed and self-directed accounts at an FCM through Russo. The FCM sent daily account statements to the PPF customer for each of his accounts, including the account he believed held his share in PPF. However, the PPF customer was frustrated by the number and complexity of the FCM statements and told Russo that he could not decipher them. In response, Russo offered to create weekly and monthly summary charts of the PPF customer's account balances and to send the PPF customer a daily email with the total day-end value of his portfolio. Trusting Russo's representation that the spreadsheets and emails would be accurate reflections of the actual value of his portfolio, the PPF customer accepted Russo's offer.

Thereafter, from May 2007 to April 2011, Russo provided the PPF customer with hundreds of materially inaccurate spreadsheets and emails, on a weekly, monthly and sometimes daily basis, which purported to summarize the value of the 15 accounts in the PPF customer's and his wife's portfolios, including the account that the PPF customer believed held his PPF shares. For example, in September 2010, Russo told the PPF customer that his entire portfolio was worth approximately \$2,480,000 when, in fact, it was worth only approximately \$410,000. In March 2011, the PPF customer believed based on Russo's fabricated statements that his accounts had a total value of over \$1.3 million when, in fact, the accounts had a negative balance

of approximately \$440,000. Russo provided the false statements to the PPF customer in order to keep his business.

Russo knew that the PPF customer was trying to convince several of his friends to trade through Russo and showing them the highly profitable trading results he was purportedly achieving as set out in the spreadsheets and emails from Russo. Indeed, in 2010, two of the PPF customer's friends and their respective wives became Russo's customers. Russo also sent them regular summary charts that purported to reflect the values in their FCM statements but which overstated the value of their accounts. These customers also received daily statements from the FCM but chose to rely on Russo's summaries because Russo told them they were accurate reflections of their account values.

In addition to sending false statements to five customers, Russo placed trades without authorization in those five customers' and three others' self-directed accounts, which trading resulted in losses but generated significant commissions for Russo.

In addition, Russo exercised discretion over at least one other account where he had verbal, but not written, power of attorney to do so. Russo represented to the customer that he would trade on his behalf to hedge positions that the customer held in other trading accounts. However, Russo did not trade to hedge as represented; to the contrary, he engaged in speculative trading on behalf of the customer, which in turn generated significant commissions and resulted in customer losses.

On a few occasions, customers noticed discrepancies concerning their trading results between the spreadsheets Russo provided and their statements received from the FCM. When customers confronted Russo about the discrepancies, he lied, telling that his spreadsheets were correct and the discrepancies were due to the effects of hedging.

Russo's fraud came to light in April 2011 when Russo did not comply with one of the customer's requests to liquidate his account.

IV.

LEGAL DISCUSSION

A. Respondent Engaged in Fraudulent Solicitation in Violation of Sections 4b and 4c(b) of the Act and Commission Regulation 33.10

With respect to conduct occurring before June 18, 2008, Sections 4b(a)(2)(i) and (iii) of the Act make it unlawful

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (B) determining the price basis of any transaction in interstate commerce

in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—(i) to cheat or defraud or attempt to cheat or defraud such other person; . . . [or]; (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person.

Similarly, with respect to conduct occurring on or after June 18, 2008, Section 4b(a)(1)(A) and (C) of the Act, as amended, makes it unlawful

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market for or on behalf of any other person – (A) to cheat or defraud or attempt to cheat or defraud the other person; . . . (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

The same fraudulent conduct that violates Section 4b(a), as set forth above, also violates Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Commission Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) (2010) which similarly prohibit cheating, defrauding, deceit and attempts thereof in connection with commodity options transactions. *See 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).

Fraudulent solicitation of prospective customers violates Section 4b(a) of the Act. To establish solicitation fraud, the Commission must prove that: (1) a misrepresentation has occurred; (2) with scienter; and (3) the misrepresentation was material. *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328-29 (11th Cir. 2002). “Whether a misrepresentation has been made depends on the overall message and the common understanding of the information conveyed.” *R.J. Fitzgerald & Co.*, 310 F.3d at 1328 (internal quotation marks and citation omitted). A statement or omission is material if “a reasonable customer would consider it important in deciding whether to make an investment.” *Id.* at 1328-29. “Scienter requires proof that an individual committed the alleged wrongful acts intentionally or with reckless disregard for his duties under the Act.” *CFTC v. Rolando*, 589 F. Supp. 2d 159, 169-170 (D. Conn. 2008) (*citing Lawrence v. CFTC*, 759 F.2d 767, 773 (9th Cir. 1985) and *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988)); *Do v. Lind-Waldock & Co.* [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,516, 1995 CFTC LEXIS 247, at *4 (CFTC Sept. 27, 1995) (determining that a reckless act is one that “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”) (*quoting Drexel Burnham Lambert*, 850 F.2d at 848); *see also CFTC v. Noble Metals Int’l, Inc.*, 67 F.3d

766, 774 (9th Cir. 1995) (“Mere negligence, mistake, or inadvertence fails to meet Section 4b’s scienter requirement.”).

In his solicitations of the PPF customer, Respondent falsely represented that he had formed a commodity futures and options pool and that the PPF would be a general partner in the pool, knowing that no pool existed. A reasonable customer would consider whether the pool actually existed before making the decision to participate in that pool. Accordingly, Respondent engaged in fraudulent solicitation in violation of Sections 4b(a)(2)(i) and (iii) with respect to conduct occurring before June 18, 2008, Section 4b(a)(1)(A) and (C), with respect to conduct occurring on or after June 18, 2008, and 4c(b) of the Act and Commission Regulations 33.10 (a) and (c).

B. Respondent Engaged in Unauthorized Trading In Violation of Sections 4b and 4c(b) of the Act and Commission Regulations 33.10 and 166.2

Respondent also violated Sections 4b(a)(2)(i) and (iii), 4b(a)(1)(A) and (C) and Section 4c(b) of the Act, as amended, and Commission Regulations 33.10(a) and (c), and 166.2, 17 C.F.R. §§ 33.10(a) and (c), and 166.2 (2010), by willfully engaging in unauthorized trading. Unauthorized trading falls within the Act’s anti-fraud prohibition when trades are executed without the account owner’s permission or contrary to the account owner’s trading instructions. *In re Interstate Securities Corp.*, [1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,595 (CFTC June 1, 1992) (citing *Cange v. Stotler, Inc.*, 826 F.2d 581, 589-590 (7th Cir. 1987); *Haltmier v. CFTC*, 554 F.2d 556, 560-562 (2d Cir. 1977)).

Regulation 166.2, 17 C.F.R. § 166.2 (2010) makes it unlawful for an FCM, introducing broker or any of their associated persons to effect a transaction in a customer’s commodity interest account unless (a) the customer has specifically authorized the transaction in advance, or (b) the customer has executed a written authorization (e.g., an LPOA) for the FCM, introducing broker, or their associated person to effect transactions without the customer’s specific authorization. A transaction cannot be “specifically authorized” within the meaning of Regulation 166.2(a) “unless the customer selects the type of transaction (purchase or sale), the commodity interest, and the exact amount of the commodity interest, in advance of the transaction.” *In re Heitschmidt*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,263 at 43,204 (CFTC Nov. 9, 1994).

Here, Respondent placed trades in several of his customers’ self-directed futures and options accounts without authorization to do so. In other accounts, Russo traded where he had verbal but not written power of attorney to do so. In these instances, Russo was verbally authorized to trade to hedge against the trading positions held in their other accounts, but instead, he engaged in speculative trading on their behalf.

By such acts of unauthorized trading of commodity futures contracts and options, Russo violated Section 4b(a)(i) and (iii), with respect to conduct occurring before June 18, 2008, Section 4b(a)(A) and (C), with respect to conduct occurring on or after June 18, 2008, Section 4c(b) and Commission Regulations 33.10(a) and (c) and 166.2, 17 C.F.R. § 33.10(a) and (c), 166.2 (2010).

C. Fraud by Issuance of False Statements

With respect to conduct occurring before June 18, 2008, Sections 4b(a)(2)(ii) of the Act also makes it unlawful

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (B) determining the price basis of any transaction in interstate commerce in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof— . . . (ii) willfully to make or cause to be made to such other person any false report or statement thereof,

Similarly, with respect to conduct on or after June 18, 2008, Sections 4b(a)(1)(B) of the Act, as amended, make it unlawful

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person – . . . (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record;

Commission Regulation 33.10(b) similarly prohibits the willful issuance of false reports or statements in connection with commodity options transactions.

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

During the Relevant Period, Respondent created and issued to the PPF customer false audit reports, financial statements, and other purported financial records for PPF. Respondent also created and issued weekly and monthly spreadsheets which he represented to customers contained summaries of the amounts reflected in their FCM statements. Those summaries reflected that the customers' accounts were experiencing significant profits when, in fact, they were not.

By knowingly or recklessly issuing such false statements in connection with commodity futures and options, Respondent violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C § 6b(a)(2)(ii) (2006), with respect to conduct occurring before June 18, 2008, and Section 4b(a)(1)(B) of the Act, as amended, with respect to conduct occurring on or after June 18, 2008, and Commission Regulation 33.10(b), 17 C.F.R. § 33.10(b) (2010).

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C § 6b(a)(2)(i)-(iii)(2006), with respect to conduct occurring before June 18, 2008; Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C § 6b(a)(1)(A)-(C)(Supp. III 2009) as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to conduct occurring on or after June 18, 2008, Section 4c(b) of the Act, 7 U.S.C. §§ 6c(b) (2006); and Commission Regulations 33.10 and 166.2, 17 C.F.R. §§ 33.10 and 166.2 (2010).

VI.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which he, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits 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 or enforcement of this Order;
- C. Waives:
 - 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 he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or 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 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 proceeding; and
 8. any and all 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. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondent violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b); Sections 4b(a)(2)(i)-(iii) of the Act, with respect to conduct occurring before June 18, 2008, 7 U.S.C § 6b(a)(2)(i)-(iii)(2006); Sections 4b(a)(1)(A)-(C) of the Act, as amended, with respect to conduct occurring on or after June 18, 2008, 7 U.S.C. §§ 6(b)(a)(1)(A)-(C); and Commission Regulations 33.10 and 166.2, 17 C.F.R. §§ 33.10 and 166.2 (2010);
 2. Orders Respondent to cease and desist from violating Section 4c(b) of the Act, 7 U.S.C. § 6c(b); Section 4b(a)(1)(A)-(C) of the Act, as amended, 7 U.S.C. §§ 6b(a)(1)(A)-(C); and Commission Regulations 33.10 and 166.2, 17 C.F.R. §§ 33.10 and 166.2 (2012);
 3. Orders Respondent to pay restitution in the amount of Nine Hundred and Sixty Thousand Dollars (\$960,000), plus post-judgment interest;
 4. Orders Respondent to pay a civil monetary penalty in the amount of Six Hundred and Forty Five Thousand Dollars (\$645,000), plus post-judgment interest;
 5. Appoints the NFA as Monitor in this matter;
 6. Orders that Respondent 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 him trading privileges; and
 7. Orders Respondent and his successors and assignees 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. Respondent shall cease and desist from violating Section 4c(b) of the Act, 7 U.S.C. § 6c(b); Section 4b(a)(1)(A)-(C) of the Act, as amended, 7 U.S.C. §§ 6b(a)(1)(A)-(C); and Commission Regulations 33.10 and 166.2, 17 C.F.R. §§ 33.10 and 166.2 (2012);
- B. Respondent shall pay restitution in the amount of Nine Hundred and Sixty Thousand Dollars (\$960,000) plus post-judgment interest (“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).

To effect payment by Respondent and the distribution of restitution to Respondent’s customers, the Commission appoints the NFA as “Monitor.” The Monitor shall collect payments of the Restitution Obligation from Respondent 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.

Respondent shall make his payment of the Restitution Obligation under this Order in the name of the “Joshua T.J. Russo 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 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 the Restitution Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to the Respondent’s customers 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 the Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this Order.

- C. Respondent shall pay a civil monetary penalty in the amount of Six Hundred and Forty Five Thousand Dollars (\$645,000) plus post-judgment interest (“CMP Obligation”).

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). Respondent 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, Respondent shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent 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 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.

- D. Respondent is 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 him trading privileges.
- E. Respondent and his successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondent agrees that neither her nor any of his successors and assigns, 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 and his successors and assigns 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.
 2. Respondent agrees that he 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) (2011)) (“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 Respondent’s own personal accounts or for any accounts in which Respondent has 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 Respondent’s 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. **Disgorgement:** Respondent agrees to pay disgorgement in the amount of Two Hundred and Fifteen Thousand Dollars (\$215,000) (“Disgorgement Obligation”).

To effect payment by Respondent and the distribution of disgorgement to Respondent’s customers, the Commission appoints the NFA as “Monitor.” The Monitor shall collect payments of the Disgorgement Obligation from Respondent 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.

Respondent shall make his payment of the Disgorgement Obligation under this Order in the name of the “Joshua T.J. Russo 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,

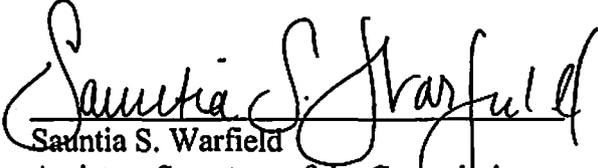
National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, D.C. 20581.

The Monitor shall oversee the Disgorgement Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to the Respondent's customers or may defer distribution until such time as the Monitor may deem appropriate. In the event that the amount of payments of the Disgorgement Obligation to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a disgorgement distribution is impractical, the Monitor may, in its discretion, treat such disgorgement 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 the Disgorgement Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this Order.

- F. **Cooperation with Monitor:** Respondent shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondent's customers, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments. Respondent 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.
- G. **Partial Satisfaction:** Respondent understands and agrees that any acceptance by the Commission or the Monitor of partial payment of Respondent's Restitution Obligation, CMP Obligation, or Disgorgement Obligation shall not be deemed a waiver of his 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.
- H. **Change of Address/Phone:** Until such time as Respondent satisfies in full his Restitution Obligation, CMP Obligation, and Disgorgement Obligation as set forth in this Order, Respondent 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.

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

By the Commission.


Sauntia S. Warfield
Assistant Secretary of the Commission
Commodity Futures Trading Commission

Dated: October 26, 2012