

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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<b>U.S. COMMODITY FUTURES TRADING COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Case No. 2:12-cv-00971</b>
	)	
<b>v.</b>	)	
	)	
<b>ERIC N. SCHMICKLE and Q WEALTH MANAGEMENT INC.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

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**CONSENT ORDER FOR PERMANENT INJUNCTION,  
CIVIL MONETARY PENALTY, AND OTHER EQUITABLE RELIEF AGAINST  
ERIC N. SCHMICKLE AND Q WEALTH MANAGEMENT INC.**

**I. INTRODUCTION**

On September 24, 2012, Plaintiff U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against Defendants Eric N. Schmickle and Q Wealth Management Inc. (collectively, “Defendants”) seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 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), 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations promulgated thereunder.

## II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Defendants without a trial on the merits or any further judicial proceedings, Defendants Schmickle and Q Wealth Management:

1. Consent to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendants Eric N. Schmickle and Q Wealth Management Inc. (“Consent Order”);
2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent, or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledge service of the summons and Complaint;
4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1;
5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1 *et seq.*;
6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e);
7. Waive:
  - (a) 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 Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2012), relating to, or arising from, this action;

(b) 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 action;

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

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

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

9. Agree that they will not oppose enforcement of this Consent Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waive any objection based thereon;

10. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their:

(a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendants 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;

11. Admit to all of the findings made in this Consent Order and all of the allegations in the Complaint. Further, Defendants agree and intend that the allegations contained in the Complaint and all of the Findings of Fact and Conclusions of Law contained in this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Defendants; (b) any proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2012); and/or (c) any proceeding to enforce the terms of this Consent Order;

12. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 81 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against them, whether inside or outside the United States; and

13. Agree that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Defendants in any other proceeding.

### **III. FINDINGS AND CONCLUSIONS**

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

**THE PARTIES AGREE AND THE COURT HEREBY FINDS:**

**A. Findings of Fact**

**i. The Parties to This Consent Order**

14. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

15. Defendant **Eric N. Schmickle** is thirty-seven years old and currently resides in Cedarburg, Wisconsin. Schmickle formerly resided in Bolivar, Missouri, where he still owns a home and maintains bank accounts. Schmickle has never been registered with the Commission. In a related criminal case, the U.S. Attorney's Office for the Eastern District of Wisconsin charged Schmickle by information with one count of wire fraud. *United States v. Schmickle*, No. 12-cr-149 (E.D. Wis. filed Jul. 18, 2012). That same day, Schmickle entered into a plea agreement admitting to a scheme to defraud customers based upon substantially the same facts as alleged in the Complaint. In the plea agreement, Schmickle agreed to pay restitution of \$2,964,936.44. Schmickle pled guilty on August 31, 2012, and his sentencing hearing is set for February 26, 2013.

16. Defendant **Q Wealth Management Inc.** is a Missouri close corporation formed in May 2005. During the relevant period, it operated out of offices located at 793 E. 419th Road, Bolivar, Missouri and 393 Douglas Lane, Cedarburg, Wisconsin. From May 2009 through approximately April 2012 ("relevant period"), Schmickle was the sole employee and controller of Q Wealth Management. Q Wealth Management has never been registered with the Commission.

**ii. Other Relevant Entity**

17. **Aquinas SF LLC** is a Missouri limited liability company formed in May 2009. During the relevant period, it operated out of offices located at 793 E. 419th Road, Bolivar, Missouri and 393 Douglas Lane, Cedarburg, Wisconsin. Schmickle was Aquinas' organizer, registered agent, and manager with sole power and authority to act on behalf of the company until May 25, 2012, when he resigned from the entity. Aquinas is no longer in operation. The current members of Aquinas are the pool participants and victims of Schmickle's fraud. Aquinas has never been registered with the Commission.

**iii. Formation of the Entities**

Q Wealth Management

18. Schmickle originally formed Q Wealth Management with family members in May 2005 as an investment advisor firm. At the time, Schmickle was licensed to sell securities. By 2009, Schmickle was operating Q Wealth Management on his own.

19. In the spring of 2009, Schmickle opened a "demonstration account" – i.e., a paper trading account with no actual funds – for trading commodity futures. During a two week period, Schmickle was successful in his futures trading in the demonstration account. Schmickle showed his success to a friend, who Schmickle convinced to invest in futures, with Schmickle as the trading advisor and the friend as the managed client. Schmickle used Q Wealth Management as the entity to deal with the managed client.

20. In May 2009, Schmickle and the managed client set up trading accounts at a futures commission merchant ("FCM") in the managed client's name. Ordinarily, account statements go to the person named on the account, not to the account's advisor; however, Schmickle created a false email address in the managed client's name and provided this false

email address to the FCM. Schmickle controlled this false email address and received all of the account statements from the FCM.

21. During the relevant period, the managed client transferred approximately \$2.6 million into trading accounts to be traded by Schmickle. Of those funds, trading losses and fees totaled over \$1.7 million, and the remaining funds, approximately \$846,000, were returned to the managed client. Moreover, as explained in greater detail below, the managed client paid false “commissions” totaling approximately \$410,000, but he also received payments misappropriated from the pool participants totaling \$967,000. The managed client’s total out of pocket loss was therefore approximately \$1.2 million.

22. During the relevant period, Q Wealth Management acted as a commodity trading advisor (“CTA”) by engaging for compensation in the business of advising others as to the value of or the advisability of trading commodities for future delivery. Schmickle acted as an associated person (“AP”) of Q Wealth Management, in that, as an agent of Q Wealth Management, he solicited one prospective client to open a discretionary trading account.

#### Aquinas

23. Schmickle formed Aquinas in May 2009 as a limited liability corporation with five original members, including Schmickle. Aquinas eventually had a total of ten members. The Aquinas members pooled their money in a bank account in Aquinas’ name, which Schmickle controlled. In July 2009, Schmickle opened a trading account in the name of Aquinas, with Schmickle as the account controller. Schmickle set up the trading account at the FCM so that he received the account statements; none of the other members received the account statements from the FCM.

24. During the relevant period, the Aquinas pool participants invested approximately \$2.6 million in the pool. Schmickle did not invest any of his own funds in the pool. Of those funds, trading losses and fees totaled over \$1.2 million, and Schmickle returned \$173,000 to pool participants. Schmickle misappropriated \$967,000 of the pool's funds to pay fake gains to his Q Wealth Management client, as well as approximately \$237,000 for his own business and personal expenses. Approximately \$12,000 of the pool participant funds remained in the pool's bank account, which Schmickle handed over to the U.S. Marshals, and approximately \$4,000 is frozen in the pool's trading account. The pool participants' total out of pocket loss was over \$2.4 million.

25. During the relevant period, Aquinas acted as a commodity pool operator ("CPO") by engaging in a business that was of the nature of an investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received funds, securities, or property from others for the purpose of trading in commodities for future delivery on or subject to the rules of a contract market. Schmickle acted as an AP of Aquinas, in that, as an agent of Aquinas, he solicited funds, securities, or property for participation in Aquinas.

**iv. Defendants Sent Numerous False Account Statements, Invoices, and Tax Forms to Hide Losses and Misappropriation and Give the Appearance of Success**

26. During the relevant period, Schmickle sustained heavy trading losses every year for both the Q Wealth Management client and Aquinas' pool participants. Schmickle also misappropriated funds, as discussed below. In order to hide the trading losses and misappropriation, Schmickle fabricated a myriad of documents.

27. In connection with Q Wealth Management, Schmickle sent numerous false account statements to the managed client. Because Schmickle had provided the FCM with a fake email address in the name of the client, Schmickle received the actual account statements from

the FCM. Schmickle then fabricated or caused to be fabricated false account statements using the FCM's letterhead and sent these false account statements to the managed client via email. For example, Schmickle fabricated and sent the client a false statement for August 2011 that showed a balance of over \$4.7 million for one account when, in reality, that account contained less than \$300.

28. Schmickle also fabricated IRS Form 1099s that he sent to his Q Wealth Management client. Schmickle apparently intercepted the real Forms and replaced them with Forms that he fabricated to show investment profits. For example, Schmickle sent the client a false IRS Form 1099 for 2011 that showed profit in one of the client's accounts of over \$4.3 million. The true Form 1099 showed a loss in that account of approximately \$196,294.

29. Schmickle and the managed client agreed that Schmickle would be entitled to 25% of any gains in the client's accounts. In connection with Q Wealth Management, Schmickle created and emailed fabricated invoices that showed false gains and requested payment representing Schmickle's compensation based upon those gains. He sent these false invoices every quarter. For example, on October 18, 2011, Schmickle emailed to the client an invoice for the preceding quarter. The invoice stated that the client's gain for the quarter was approximately \$1,515,924, so that Schmickle was entitled to approximately \$378,981 in fees. In reality, the client's accounts began the quarter with approximately \$2,500 in them, and Schmickle lost approximately \$2,000 during the quarter.

30. Schmickle sent numerous false account statements to the Aquinas pool participants. As the manager of the pool and the controller of the trading account, Schmickle received the true account statements from the FCM. He fabricated or caused to be fabricated false account statements and emailed these to the pool participants. For example, on March 7,

2012, Schmickle sent to the pool participants a false account statement for February 2012. The statement showed an account balance of approximately \$3.8 million and the month's gain as \$387,783. In reality, the account balance was approximately \$231,000 and the month's loss was approximately \$37,688.

31. Schmickle also emailed false IRS Form 1065s (i.e., Schedule K-1s) to the Aquinas pool participants to show partnership income, when in reality Aquinas lost money. For example, on March 30, 2012, Schmickle sent to a pool participant a Form 1065 that showed that pool participant had a 3.94% partnership interest and \$72,659 in allocated partnership income for 2011. In reality, Aquinas had losses of \$706,221 for 2011.

32. Schmickle intentionally or recklessly fabricated the false documents referenced in paragraphs 26 through 31 that he sent to the Q Wealth Management client and the Aquinas pool participants.

**v. Defendants Made Misrepresentations to Bring in Additional Funds**

33. As Schmickle's trading losses mounted, Schmickle sought additional funds for his scheme. As a result, Schmickle made fraudulent misrepresentations to potential and current customers to induce investment. These misrepresentations were in addition to the false documents described above, which also had the effect of inducing investment.

34. For example, in connection with Q Wealth Management, Schmickle convinced the managed client to invest an additional \$100,000 in December 2010. Schmickle claimed that with this additional investment, the client would be able to withdraw \$40,000-60,000 a month beginning in February 2011 and projected a total value of \$8 million in twelve to eighteen months. Schmickle's representations were false and without reasonable basis. In reality,

Schmickle had lost approximately \$1.4 million of the managed client's money by that point, and the account balances totaled approximately \$200,000.

35. In another example, in connection with Aquinas, Schmickle told a potential pool participant that Schmickle made 10% gains per month, and he showed the potential participant account statements and graphs as evidence of those returns. As a result of these representations, the person invested \$250,000 with Aquinas in January 2012. Schmickle's representations were false, as he did not make 10% gains per month with Aquinas. In fact, in 2011, Schmickle lost approximately \$706,000 of the approximately \$1.1 million deposited in the Aquinas trading account.

36. In another example, in connection with Aquinas, Schmickle convinced a pool participant to invest an additional \$300,000 in December 2011. Schmickle claimed that he would use this money, along with his own \$300,000, to purchase a seat on an exchange, so that Aquinas would have lower trading fees. Schmickle's representations were false, as he did not intend to or actually use the funds to purchase an exchange seat.

37. Schmickle intentionally or recklessly made the misrepresentations referenced in paragraphs 33 through 36 above.

**vi. Defendants Misappropriated Customer Funds**

38. Schmickle misappropriated approximately \$1.6 million from his customers during the relevant period, of which approximately \$647,000 was directly for his personal benefit and approximately \$967,000 were funds that Schmickle misappropriated from the Quinas pool to pay his Q Wealth Management client.

39. Schmickle misappropriated approximately \$410,000 from his Q Wealth Management client by emailing his client false invoices, where he charged a 25% management

fee on claimed gains of approximately \$1.6 million, when, in fact, Schmickle had sustained trading losses. The client paid Schmickle approximately \$410,000 due to the false invoices.

40. Schmickle also misappropriated approximately \$1.2 million of Aquinas pool participant funds. Schmickle misappropriated funds from the pool participants by transferring \$967,000 of pool funds to pay purported profits to the managed client. In addition, Schmickle used approximately \$237,000 of pool participant funds for his own business and personal purposes.

## **B. Conclusions of Law**

### **i. Jurisdiction and Venue**

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

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

### **ii. Fraud by Misappropriation and Misrepresentations**

43. By the conduct described in paragraphs 1 through 40, Defendants violated Section 4b(a)(1)(A) and (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A) and (C), by, among other things, misappropriating pool participant and managed client funds and making

misrepresentations to potential and actual pool participants and the managed client to induce investment.

44. Defendants committed such acts intentionally or recklessly.

45. The actions and omissions of Schmickle in violation of Section 4b(a)(1)(A) and (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A) and (C), were committed in the scope of his employment with Q Wealth Management. Q Wealth Management is therefore liable for Schmickle's actions and omissions that are violations, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

46. Schmickle directly and indirectly controlled Q Wealth Management, and he did not act in good faith or he knowingly induced the acts or omissions constituting Q Wealth Management's violations of Section 4b(a)(1)(A) and (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A) and (C). Schmickle is therefore liable for Q Wealth Management's violations, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

**iii. Fraud by False Reports or Statements**

47. By the conduct described in paragraphs 1 through 40, Defendants violated Section 4b(a)(1)(B) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(B), in that they willfully made, or caused to be made, false account statements, invoices, and tax forms to customers that hid actual trading losses and misappropriation and showed false trading gains.

48. Defendants committed such acts intentionally or recklessly.

49. The actions and omissions of Schmickle in violation of Section 4b(a)(1)(B) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(B), were committed in the scope of his employment with Q Wealth Management. Q Wealth Management is therefore liable for Schmickle's actions and omissions that are violations, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

50. Schmickle directly and indirectly controlled Q Wealth Management, and he did not act in good faith or he knowingly induced the acts or omissions constituting Q Wealth Management's violations of Section 4b(a)(1)(B) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(B). Schmickle is therefore liable for Q Wealth Management's violations, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

**iv. Fraud by a CTA and AP**

51. By the conduct described in paragraphs 1 through 40, Defendants violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2006), in that, as a CTA (Q Wealth Management) and an AP (Schmickle) of a CTA and CPO, they directly or indirectly employed a device, scheme, or artifice to defraud customers and engaged in transactions, practices, or a course of business which operated as a fraud or deceit upon customers by misappropriating customer funds; making or causing to be made false account statements, invoices, and tax forms that hid actual trading losses and misappropriation and showed false trading gains; and making misrepresentations to induce investment.

52. Defendants committed such acts intentionally or recklessly.

53. Defendants engaged in such acts by use of the mails or other means or instrumentalities of interstate commerce.

54. The actions and omissions of Schmickle in violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2006), were committed in the scope of his employment with Q Wealth Management. Q Wealth Management is therefore liable for Schmickle's actions and omissions that are violations, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

55. Schmickle directly and indirectly controlled Q Wealth Management, and he did not act in good faith or he knowingly induced the acts or omissions constituting Q Wealth Management's violations of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2006). Schmickle is therefore liable for Q Wealth Management's violations, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

**v. Fraud by Manipulative or Deceptive Devices or Contrivances**

56. By the conduct described in paragraphs 1 through 40, Defendants violated Section 6(c)(1) of the Act, as amended, 7 U.S.C. § 9(1), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012), by employing manipulative or deceptive devices or contrivances in connection with commodities for future delivery on or subject to the rules of a registered entity, including: misappropriating customer funds; making or causing to be made false account statements, invoices, and tax forms to customers that hid actual trading losses and misappropriation and showed false trading gains; and making misrepresentations to induce investment.

57. Defendants committed such acts intentionally or recklessly.

58. The actions and omissions of Schmickle in violation of Section 6(c)(1) of the Act, as amended, 7 U.S.C. § 9(1), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012), were committed in the scope of his employment with Q Wealth Management. Q Wealth Management is therefore liable for Schmickle's actions and omissions that are violations, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

59. Schmickle directly and indirectly controlled Q Wealth Management, and he did not act in good faith or he knowingly induced the acts or omissions constituting Q Wealth Management's violations of Section 6(c)(1) of the Act, as amended, 7 U.S.C. § 9(1), and

Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012). Schmickle is therefore liable for Q Wealth Management's violations, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

**vi. Failure to Register as an AP of a CTA and CPO**

60. By the conduct described in paragraphs 1 through 40, Schmickle violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), by being associated with Aquinas as an officer (i.e., the pool's manager), soliciting funds for participation in the pool, and failing to register with the Commission as an AP.

61. By the conduct described in paragraphs 1 through 40, Schmickle violated Section 4k(3) of the Act, 7 U.S.C. § 6k(3) (2006), by being associated with Q Wealth Management as its agent, soliciting funds for a client's discretionary account, and failing to register with the Commission as an associated person.

62. By the conduct described in paragraphs 1 through 40, Q Wealth Management violated Section 4k(3) of the Act, 7 U.S.C. § 6k(3) (2006), by allowing Schmickle to be associated with Q Wealth Management when Q Wealth Management knew or should have known that Schmickle was not registered.

63. The actions and omissions of Schmickle in violation of Section 4k(3) of the Act, 7 U.S.C. § 6k(3) (2006), were committed in the scope of his employment with Q Wealth Management. Q Wealth Management is therefore liable for Schmickle's actions and omissions that are violations, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

64. Schmickle directly and indirectly controlled Q Wealth Management, and he did not act in good faith or he knowingly induced the acts or omissions constituting Q Wealth Management's violations of Section 4k(3) of the Act, 7 U.S.C. § 6k(3) (2006). Schmickle is

therefore liable for Q Wealth Management's violations, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

65. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

#### **IV. PERMANENT INJUNCTION**

##### **IT IS HEREBY ORDERED THAT:**

66. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, Defendants are permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. Cheating or defrauding, or attempting to cheat or defraud, another person in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery that is made, or to be made, for or on behalf of, or with, any other person, in violation of Section 4b(a)(1)(A) and (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A) and (C);
- b. Willfully making or causing to be made any false report or statement to another person in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery that is made, or to be made, for or on behalf of, or with, any other person, in violation of Section 4b(a)(1)(B) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(B);
- c. As a CTA or AP of a CTA or CPO, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly employing

any device, scheme, or artifice to defraud any client or participant, or engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or participant, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006);

- d. Using or employing, or attempting to use or employ, in connection with a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in violation of Section 6(c)(1) of the Act, as amended, 7 U.S.C. § 9(1), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012); and
- e. With respect to Schmickle, acting as an associated person of a commodity trading advisor or commodity pool operator without the benefit of registration; and with respect to Q Wealth Management, allowing an unregistered person to be associated with it, when it knew or should have known such person was unregistered, in violation of Section 4k(2) and (3) of the Act, 7 U.S.C. § 6k(2) and (3) (2006).

67. Defendants are also permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a);
- b. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2012)) (“commodity options”),

security futures products, swaps (as that term is defined in Section 1a(47) of the Act, as amended, and as further defined by Commission regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx)), and/or foreign currency (as described in Section 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 their own personal account or for any account in which they have a direct or indirect interest;

- c. Having any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts traded on their behalf;
- d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts;
- e. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts;
- f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012);  
and

- g. Acting 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, exempted from registration, or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

## **V. CIVIL MONETARY PENALTY AND RESTITUTION**

### **A. Civil Monetary Penalty**

68. Defendants shall, jointly and severally, pay a civil monetary penalty in the amount of one million five hundred thousand dollars (\$1,500,000.00) (“CMP Obligation”), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006).

69. Defendants shall pay their CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

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

If payment by electronic funds transfer is chosen, Defendants shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those

instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies Defendants and the name and docket number of this proceeding. Defendants 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, and to Regional Counsel, 525 W. Monroe Street Suite 1100, Chicago, IL 60661.

**B. Restitution**

70. Defendants shall pay restitution in the amount of three million, six hundred four thousand, sixty-eight dollars and fifty-six cents (\$3,604,068.56) (“Restitution Obligation”), plus post-judgment interest. Post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961. Schmickle is currently the defendant in a criminal action charging him, in part, for the misconduct that is at issue in this matter. *See United States v. Schmickle*, No. 12-cr-149 (E.D. Wis. filed Jul. 18, 2012) (“Criminal Action”). For amounts disbursed to Defendants’ pool participants and client as a result of satisfaction of any restitution ordered in the Criminal Action, Defendants shall receive a dollar-for-dollar credit against the Restitution Obligation. Within ten (10) days of disbursement in the Criminal Action to Defendants’ pool participants and client, Schmickle shall, under a cover letter that identifies the name and docket number of this proceeding, transmit to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, copies of the form of payment to those pool participants and customers.

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

72. Defendants shall make Restitution Obligation payments under this Consent Order to the Monitor in the name "Eric N. Schmickle and Q Wealth Management Inc. Settlement/Restitution Fund" and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies the paying Defendants and the name and docket number of this proceeding. Defendants 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.

73. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendants' pool participants and client identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to the eligible pool participants and client is

impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part V.A. above.

74. Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendants' pool participants and client to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendants shall 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.

75. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' pool participants and client during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

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

77. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each pool participant and client of Defendants who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to

obtain satisfaction of any portion of the restitution that has not been paid by Defendants to ensure continued compliance with any provision of this Consent Order and to hold Defendants in contempt for any violations of any provision of this Consent Order.

78. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendants' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

**C. Provisions Related to Monetary Sanctions**

79. Partial Satisfaction: Any acceptance by the Commission of partial payment of Defendants' CMP Obligation or Restitution Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

**D. Cooperation**

80. Defendants shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.

**VI. MISCELLANEOUS PROVISIONS**

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

Notice to Commission:

Director, Division of Enforcement  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

Notice to Defendants:

Eric N. Schmickle  
393 Douglas Lane  
Cedarburg, WI 53012

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

82. Change of Address/Phone: Until such time as Defendants satisfy in full their CMP Obligation and Restitution Obligation as set forth in this Consent Order, Defendants shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

83. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

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

85. Waiver: The failure of any party to this Consent Order or of any participant or client at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party, customer, or participant at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

86. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Defendants to modify or for relief from the terms of this Consent Order.

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

88. Authority: Eric N. Schmickle hereby warrants that he is the owner and principal of Q Wealth Management Inc., and that this Consent Order has been duly authorized by Q Wealth Management Inc., and he has been duly empowered to sign and submit this Consent Order on behalf of Q Wealth Management Inc.

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

90. Defendants understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this *Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Eric N. Schmickle and Q Wealth Management Inc.*

**IT IS SO ORDERED** on this 19th day of April, 2012.

  
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:

s/ Eric N. Schmickle  
Eric N. Schmickle, Owner and Principal  
Q Wealth Management Inc.

Date: 2/20/2013

s/ Eric N. Schmickle  
Eric N. Schmickle, individually

Date: 2/20/2013

s/ David Chu  
David Chu  
Commodity Futures Trading Commission  
525 W. Monroe St. Suite 1100  
Chicago, IL 60661  
(312) 596-0642  
dchu@cftc.gov  
Attorney for Plaintiff

Date: 4/19/2013