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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

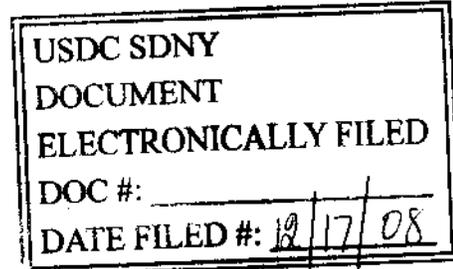
COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

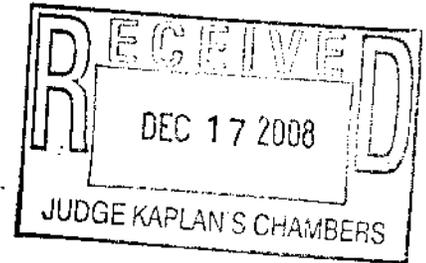
ABBAS A. SHAH and LINUXOR ASSET
MANAGEMENT LLC,

Defendants.



05 CV 8091 (LAK)

ECF Case



**[proposed] CONSENT ORDER OF PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF AGAINST
ABBAS A. SHAH AND LINUXOR ASSET MANAGEMENT LLC**

On September 19, 2005, plaintiff Commodity Futures Trading Commission ("Commission") filed its Complaint in the above-captioned action against defendants Abbas A. Shah ("Shah") and Linuxor Asset Management, LLC ("LAM") (collectively, the "Defendants") seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2004), and the Commission's Regulations promulgated thereunder ("Regulations"), 17 C.F.R. §§ 1 *et seq.* (2007).

I.

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint in this action, Defendants:

1. Consent to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief against Shah and LAM ("Order");

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2. Affirm that they have agreed to this Order voluntarily, and that no threats, or promises, other than as contained herein, have been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order;
3. Acknowledge proper 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, 7 U.S.C. § 13a-1;
5. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;
6. Waive:
 - a. all claims that they may possess under the Equal Access to Justice Act (EAJA) ("EAJA"), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1, et seq. (2008), relating to, or arising from, this action;
 - b. any claim that they may possess under the Small Business Regulatory Enforcement Fairness Act, 1996 HR 3136, Pub. L. 104-121, §§ 231-232, 110 Stat. 862-63 (Mar. 29, 1996), relating to or arising from this action;
 - c. any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and,
 - d. all rights of appeal in this action;
7. Consent to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for all other purposes relevant to this case, even if Defendants, now or in the future, reside outside the jurisdiction;

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8. Agree that neither Defendants nor any of their agents, employees, representatives or attorneys acting under their actual or constructive authority or control shall take any action or make any public statement denying, directly or indirectly, any allegations in the Complaint or the facts and conclusions of law stipulated (Parts II and III) and found (Parts IV and V) in this Order, or creating or tending to create the impression that the Complaint and this Order are without a factual basis; provided, however, that nothing in this provision shall affect Defendants' (i) testimonial obligations, or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Defendants shall undertake all steps necessary to assure that their agents, employees, representatives and attorneys understand and comply with this agreement.

9. Admit the findings of fact and conclusions of law in Parts IV and V of this Order, below, concerning their failure to send participants the requisite quarterly statements and timely annual reports as required by Regulations 4.7(b)(2)-(3), 17 C.F.R. §§ 4.7(b)(2)-(3), and that Defendants commingled pool property with non-pool property in violation of Regulations 4.20(b)-(c), 17 C.F.R. §§ 4.20(b)-(c).

10. Neither admit nor deny the allegations of the Complaint, except as stated in paragraph 9 above, nor any of the stipulated facts or conclusions of law in Parts II and III of this Order, except as to jurisdiction and venue, which they admit. Defendants do not consent to the use of the allegations of the Complaint, except as stated in paragraph 9 above, this Order, or the facts and conclusions of law stipulated in Parts II and III of this Order, as the sole basis for any other proceeding brought by or involving the Commission, other than a proceeding: in bankruptcy relating to any of the Defendants; to revoke, restrict, or condition the registration of any of the Defendants pursuant to the Act or Regulations, or to enforce the terms of this Order. Solely with respect to any bankruptcy proceeding relating to any Defendant, any proceeding to

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revoke, restrict, or condition the registration of any of the Defendants pursuant to the Act or Regulations, or any proceeding to enforce this Order, Defendants agree that the allegations of the Complaint and all of the Stipulated Facts and Conclusions of Law as contained in this Order shall be taken as true and correct and be given preclusive effect, without further proof.

11. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by Part VIII of this Order, of any bankruptcy proceeding filed by, on behalf of, or against either of the Defendants.

12. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason to delay. The Court directs the entry of: findings of fact, stipulated facts, conclusions of law and stipulated conclusions of law; a permanent injunction; civil monetary penalty; and other equitable relief, pursuant to § 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

II.

STIPULATIONS OF FACT

A. Defendants

Abbas A. Shah is a resident of New York, New York and was the owner, principal and, since December 2001, a registered Associated Person ("AP") of LAM. Shah managed the Linuxor Global Macro Fund LP ("Linuxor Fund") and acted as its trading advisor.

Linuxor Asset Management LLC is a Delaware Limited Liability company and its principal place of business was in New York, New York. LAM has been registered as a Commodity Pool Operator ("CPO") since December 2001. LAM was the general partner and CPO of the Linuxor Fund.

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B. Facts

1. In 2002, the Linuxor Fund had four participants who contributed a total of \$11.8 million: (1) Phillip Egger (\$300,000); (2) 2001 Jane F. McCarthy GRAT [Grantor Retained Annuity Trust] No. 5 (\$1.5 million); (3) McCarthy Investments LLC (\$5 million); and (4) JFM Holdings LP (\$5 million). The latter three participants are hereinafter referred to as the "McCarthy Participants." Another participant contributed \$2 million in the fall of 2003.

2. In March 2002, Shah, on behalf of LAM, sent written notice to the National Futures Association that the Linuxor Fund would be acting as an exempt commodity pool in accordance with Regulation 4.7, 17 C.F.R. § 4.7. Defendants began trading commodity futures and options on behalf of the Linuxor Fund in March 2002. In August 2003, the Linuxor Fund participants received their 2002 Schedule K-1 income tax forms that showed the pool had suffered nearly 43% losses, approximately \$5.1 million, in 2002.

3. After the McCarthy Participants received their 2002 Schedule K-1s income tax forms in August 2003, they contacted Shah and inquired about the \$5.1 million in losses. Shah verbally assured them that he would be able to recover their principal if given a few more months.

4. On August 25, 2003, Shah sent an email to a representative of the McCarthy Participants in which Shah falsely stated that "we have thus far recovered more than half of the capital loss and if we continue at this pace we hope that we will have not only recovered all of the capital loss but there is a good likelihood that we will be positive as far as returns since inception are concerned."

5. In fact, the Linuxor Fund had suffered further losses since the beginning of 2003 of approximately \$2.5 million. Shah knew that the Linuxor Fund had not recouped more than

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half of the capital losses suffered since 2002, and knew that Linuxor Fund had suffered additional losses, when he wrote the August 25, 2003 email to the McCarthy Participants.

6. Additionally, on January 30, 2004, Shah sent an email to a McCarthy Participants representative falsely stating that as of December 30, 2003 the Linuxor Fund account balance was \$8,095,000, with a realized value of \$6.5 million and an unrealized value of \$1.595 million. At the time the email was sent, Shah knew that the true Net Asset Value ("NAV") of the Linuxor Fund on December 30, 2003 was approximately \$4.9 million. Shah never corrected in writing the false statements in the January 30, 2004 email.

7. In July 2004, Defendants ceased all trading on behalf of the Linuxor Fund and returned approximately \$4 million to the remaining pool participants.

III.

STIPULATED CONCLUSIONS OF LAW

A. Defendants violated Section 4b of the Act

1. Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), prohibit persons from cheating or defrauding or attempting to cheat or defraud other persons and willfully making or causing to be made to such other persons false reports or statements, or willfully entering or causing to be entered for such other persons false records in connection with commodity futures contract sales or purchases.

2. From at least fall 2001 through July 2004 (the "relevant period"), Defendants cheated or defrauded the McCarthy Participants by sending two emails, one on August 25, 2003 and the other on January 30, 2004, that contained misrepresentations of material facts, including the Linuxor Fund's account balance, in violation of Sections 4b(a)(2)(i)-(iii) of the Act.

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3. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2, LAM is liable for Shah's violation of Sections 4b(a)(2)(i)-(iii) of the Act, which occurred in the scope of Shah's employment with LAM. During the relevant period, Shah was a controlling person of LAM, did not act in good faith and knowingly induced LAM's violations of the Act and thus is liable LAM's violations of Sections 4b(a)(2)(i)-(iii) of the Act in accordance with Section 13(b) of the Act, 7 U.S.C. § 13c(b).

B. Defendants violated Section 4q(1) of the Act

1. Section 4q(1) of the Act, 7 U.S.C. § 6q(1), prohibits a CPO or AP of a CPO from using the mails or other means or instrumentality of interstate commerce, directly or indirectly, to a) employ a device, scheme or artifice to defraud, or b) engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or participant or prospective client or participant.

2. During the relevant period, LAM was a registered CPO and Shah was a registered AP of LAM. Defendants, directly or indirectly, a) employed a device, scheme or artifice to defraud the McCarthy Participants, and b) engaged in transactions, practices, or courses of business that operated as a fraud upon the McCarthy Participants by sending two false emails, one on August 25, 2003 and the other on January 30, 2004, both in violation of Section 4q(1) of the Act, 7 U.S.C. § 6q(1).

3. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2, LAM is liable for Shah's violation of Section 4q(1) of the Act, which occurred in the scope of Shah's employment with LAM. During the relevant period, Shah was a controlling person of LAM, did not act in good faith and knowingly induced LAM's violations

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of the Act, and thus is liable for LAM's violations of Section 4o(1) of the Act in accordance with Section 13(b) of the Act, 7 U.S.C. § 13c(b).

IV.

FINDINGS OF FACTS ON COUNTS III AND IV OF THE COMPLAINT

On February 25, 2008, the Court issued an order granting the Commission summary judgment on Counts III and IV of the Complaint. The Court held that there were no genuine issues of material fact with regard to Defendants' alleged violations of Regulations 4.7(b)(2)-(3) and 4.20(b)-(c). The Defendants admitted that LAM did not distribute the required quarterly reports, that it was late distributing the 2002 annual report and that LAM had received pool participant funds in an account named Linuxor Capital Management. The Court further held that "Defendants' assertions that these actions were mistakes and that the pool participants suffered no loss as a result of the actions are immaterial." The Court denied summary judgment on Counts I and II of the Complaint.

V.

CONCLUSIONS OF LAW ON COUNTS III AND IV OF THE COMPLAINT

1. Regulations 4.7(b)(2)-(3), 17 C.F.R. §§ 4.7(b)(2)-(3), require CPOs who operate exempt commodity pools to send quarterly NAV statements to all participants and annual financial reports within 90 days of the end of each fiscal year. LAM failed to send quarterly reports to pool participants and was late in sending the 2002 annual report in violation of Regulations 4.7(b)(2)-(3), 17 C.F.R. §§ 4.7(b)(2)-(3). During the relevant period, Shah was a controlling person of LAM, did not act in good faith and knowingly induced LAM's violations of the Regulations, and thus is liable for LAM's violations of Regulations 4.7(b)(2)-(3) in accordance with Section 13(b) of the Act, 7 U.S.C. § 13c(b).



2. Regulations 4.20(b)-(c), 17 C.F.R. §§ 4.20(b)-(c), require CPOs to receive pool funds in the name of the pool and prohibit CPOs from commingling pool property with the property of others. LAM directed participants to send their capital contributions to an account in the name of Linuxor Capital Management LLC rather than to the Linuxor Fund in violation of Regulations 4.20(b)-(c), 17 C.F.R. §§ 4.20(b)-(c). During the relevant period, Shah was a controlling person of LAM, did not act in good faith and knowingly induced LAM's violations of the Regulations, and thus is liable for LAM's violations of Regulations 4.7(b)(2)-(3) in accordance with Section 13(b) of the Act, 7 U.S.C. § 13c(b).

VI.

ORDER FOR PERMANENT INJUNCTION

The Court **HEREBY ORDERS THAT:**

1. Shah and LAM are permanently restrained, enjoined and prohibited from directly or indirectly, cheating or defrauding or attempting to cheat or defraud other persons in connection with any commodity futures contract sale or purchase, for or on behalf of any other person; willfully making or causing to be made to such other persons any false report or statement thereof, or willfully entering or causing to be entered for such person any false record thereof; and willfully deceiving or attempting to deceive such other person by any means whatsoever in regard to any such order or contract or the 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 in violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii).

2. Shah and LAM are permanently restrained, enjoined and prohibited from using the mail or any means or instrumentality of interstate commerce to directly or indirectly employ

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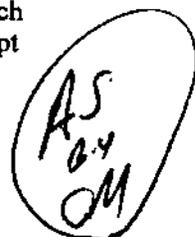
any device, scheme or artifice to defraud any client or participant or prospective client or participant, or to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant in violation of Section 40(1) of the Act, 7 U.S.C. § 60(1).

3. Shah and LAM are permanently restrained, enjoined and prohibited from failing to send pool participants quarterly NAV statements and failing to send pool participants an annual financial statement within 90 calendar days after the end of the exempt pool's fiscal year in violation of Regulations 4.7(b)(2)-(3), 17 C.F.R. §§ 4.7(b)(2)-(3).

4. Shah and LAM are permanently restrained, enjoined and prohibited from receiving funds from an existing or prospective pool participant in a name other than in the commodity pool's name and from commingling the property of any pool that they operate or that they intend to operate with the property of any other person in violation of Regulations 4.20(b)-(c), 17 C.F.R. §§ 4.20(b)-(c).

5. Shah and LAM are permanently restrained, enjoined and prohibited from engaging, directly or indirectly, in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) ("commodity interest"), including but not limited to, the following:

- a. trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);
- b. engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- c. soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest;
- d. 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) (2008), or acting as a principal, agent or any other officer or employee of any person 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) (2008);

- c. entering into any commodity interest transactions for their own personal accounts, for any accounts in which they have a direct or indirect interest and/or having any commodity interests traded on their behalf; and
 - f. engaging in any business activities related to commodity interest trading.
6. The injunctive provisions of this Order shall be binding upon Defendants and any person who is acting as an officer, agent, employee, servant, or attorney of either of the Defendants, and any person acting in active concert or participating with Shah and/or LAM who receives actual notice of this Order by personal service or otherwise.

VII.

ORDER FOR CIVIL MONETARY PENALTY

The Court **FURTHER ORDERS THAT:**

1. Shah and LAM shall pay, jointly and severally, a civil monetary penalty in the amount of \$200,000, plus post-judgment interest. Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961(a).
2. Defendants shall pay this civil monetary penalty 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.



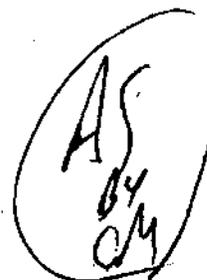
Oklahoma City, OK 73169
(405) 954-6569

If payment is to be made by electronic funds transfer, the paying Defendant shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the penalty with a cover letter that identifies the paying Defendant, and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to: a) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW, Washington, DC 20581; and b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

VIII.

MISCELLANEOUS PROVISIONS

1. Equitable Relief: The equitable relief provisions of this Order shall be binding upon Defendants and any person who is acting in the capacity of officer, agent, employee, servant, or attorney of Defendants, and any person acting in active concert or participation with Defendants who receive actual notice of this Order by personal service or otherwise.
2. Notices: All notices required to be given by any provision in this Order shall be sent certified mail, return receipt requested, as follows: Notice to Commission: Attention – Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.
3. Authority: Shah hereby warrants that he is the sole owner and operator of LAM, and that this Order has been duly authorized by LAM, and that he is duly empowered to sign and submit it on behalf of LAM.



4. Entire Agreement and Amendments: This Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

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

6. Waiver: The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this 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 Order.

7. Acknowledgements: Defendants understand and acknowledge that this Order must be accepted and ratified by the Commission before it becomes final. However, the Defendants understand and agree that by their signatures they are bound by the terms and conditions of this Order, unless the Commission refuses to accept and ratify the Order.

8. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this matter to assure compliance with this Order and for all other purposes related to this action.



There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order.

SO ORDERED.

Dated: 12/17, 2008

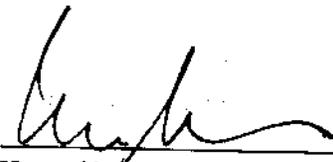
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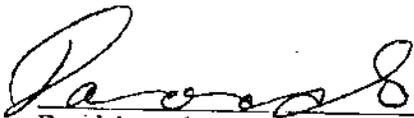
Dated: 12-16, 2008

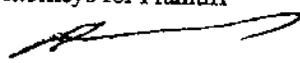
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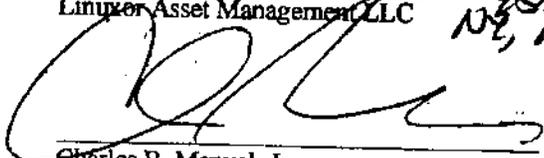
Dated: 9-29, 2008


Honorable Lewis A. Kaplan
United States District Judge


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