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CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

U.S. COMMODITY FUTURES TRADING )  
COMMISSION, )

Plaintiff, )

v. )

RICHARD D. THEYE; and MICIND )  
CAPITAL MANAGEMENT, INC., )

Defendants. )

Civil Action No. 1:10-cv-00385-SS

**[PROPOSED] DEFAULT JUDGMENT ORDERING A PERMANENT INJUNCTION,  
CIVIL MONETARY PENALTY AND OTHER EQUITABLE RELIEF**

**I. INTRODUCTION**

On June 1, 2010, Plaintiff U.S. Commodity Futures Trading Commission (the "CFTC" or "Commission") filed a *Complaint for Permanent Injunction, Civil Monetary Penalties, and Other Equitable Relief* ("Complaint") (Docket ("Dkt") #1) against *pro se* Defendants Richard D. Theye ("Theye") and Micind Capital Management, Inc. ("Micind") (hereinafter collectively referred to as "Defendants") alleging violations of certain anti-fraud provisions of the Commodity Exchange Act ("CEA" or "Act"), 7 U.S.C. §§ 1 *et seq.* (2006), the Act as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act ("CRA") (hereinafter, "the Act as amended by the CRA")), §§ 13101-13204, 122 Stat. 1651 (effective June 18, 2008), to be codified at 7 U.S.C. §§ 1 *et seq.*, and Commission's Regulations ("Regulation"), 17 C.F.R. §§ 1.1 *et seq.* (2010), promulgated thereunder, and seeking a permanent injunction, civil monetary penalty, and other equitable relief for violations of the Act, the Act as amended by the CRA, and the Regulations.

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On June 2, 2010, the Commission sent *Waivers of Service of the Complaint* (“Waivers”) to each of Defendants that informed them that by executing the Waivers, they “must file and serve an answer or a motion under Rule 12” to the Complaint within 60 days of June 2, 2010 (*i.e.*, the date that the Waivers were sent to them) and that if they failed to file and serve an answer or a motion, “a default judgment would be entered against [them.]” Defendants executed the Waivers and returned them to the Commission, which then filed them with the Court (Dkt #3-4). The Clerk made an entry into the Docket noting that Defendants’ response to the Complaint was due on or before August 2, 2010 (Dkt #3-4).

By August 2, 2010, the deadline for Defendants to file their response to the Complaint, Defendants had not answered or otherwise responded to the Complaint.

On January 13, 2011, the Commission filed a *Motion for Entry of Default* against the Defendants pursuant to Fed. R. Civ. P. 55(a) (Dkt #41) for Defendants’ failure to answer or otherwise respond to the Complaint. The Clerk entered a *Default* against Defendants on January 31, 2011 (Dkt #46).

Now, pursuant to Fed. R. Civ. P. 55(b), this matter comes before the Court on the Commission’s *Motion for Default Judgment and for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief against Defendants and Memorandum in Support Thereof* (“Motion”).

This Court has considered the entire record in this matter, including the Commission’s Motion and Memorandum in Support together with the Summary of Facts upon which this Motion relies, and finds that good cause exists for entry of the relief requested.

Accordingly, the Commission’s Motion is **GRANTED**, as detailed below.

**THE COURT HEREBY FINDS:**

## II. JURISDICTION AND VENUE

1. The Act establishes a comprehensive system for regulating the purchase and sale of futures and options on futures. This Court has jurisdiction over the Commission's action pursuant to Section 6c of Act, 7 U.S.C. § 13a-1 (2006), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such 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 thereunder.

2. Venue properly lies with the Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e), in that Defendants are found in, inhabit, or transact business in this District, and the acts and practices in violation of the Act, as amended by the CRA, and Regulations have occurred, are occurring, or are about to occur within this District, among other places.

## III. PARTIES

3. The Commission is a federal independent regulatory agency charged by Congress with the administration and enforcement of the CEA, 7 U.S.C. §§ 1 *et seq.* (2006), the Act as amended by the CRA, to be codified in 7 U.S.C. §§ 1 *et seq.*, and the Regulations thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2010).

4. Defendant Richard D. Theye is an individual who is currently residing in California. At all times relevant to the Complaint, Theye resided in Austin, Texas. Theye is the Chief Executive Officer, Operating Manager, Presiding Member and unregistered Commodity pool operator of RYCO Group, L.L.C. ("RYCO Group"), and First RYCO, L.L.C. ("First RYCO"), two commodity pools. During the relevant period, Theye controlled the day-to-day operations of RYCO Group and First RYCO, including making the commodity pools' trading decisions, and opening trading accounts at a registered futures commission merchant ("FCM") in

the names of the commodity pools to trade on behalf of the commodity pools' participants.

Theye has never been registered with the Commission as a CPO or in any other capacity.

5. Defendant Micind Capital Management, Inc. is a Nevada corporation, created on April 16, 1998, with its principal place of business in Nevada. At all times relevant hereto, Micind also maintained business offices in Austin, Texas. Theye is the President and Director of Micind. Micind has never been registered with the Commission in any capacity.

#### IV. PROCEDURAL HISTORY

6. On June 1, 2010, the Commission filed its four-count Complaint (Dkt #1) against Theye and Micind. The Complaint alleges that from at least December 2005 to December 2009 ("relevant period"), Theye, president, officer and agent of RYCO Group and First RYCO (collectively, the "RYCO pools" or "commodity pools"), fraudulently solicited members of the general public to pool together millions of dollars to trade commodity futures contracts ("futures"). Specifically, the Complaint further alleges that in order to induce current and prospective pool participants to invest or reinvest, Theye, as the CPO for the RYCO pools, made numerous material misrepresentations and omissions, and employed a scheme to defraud current and prospective pool participants by, among other things:

- a. Falsely representing during face-to-face meetings, as well as in advertising flyers and newsletters, the RYCO pools' purported historical profitability, when, in fact, (1) Theye misappropriated the majority of pool participants' funds to further a Ponzi scheme, through which he paid out of participants' funds false "profits" to other victims of the scheme, and (2) what little futures trading Theye did with participants' funds on behalf of the RYCO pools has resulted in over \$200,000 in pool participant losses since 2006; and
- b. Issuing false and fictitious monthly account statements to pool participants regarding the purported "profits" of the RYCO pools.

7. Based on these acts, the Complaint alleges that Theye: engaged in acts and practices in violation of Sections 4o(1) and 4m(1) of the Act, 7 U.S.C. §§ 6o(1) and 6m(1)

(2006); Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006) (for conduct that occurred prior to June 18, 2008); Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C) (for conduct that occurred on or after June 18, 2008); and Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2010).

8. In addition, the Complaint alleges that from June 2009 through the present time, Micind and Theye, president of Micind, employed a separate scheme to defraud a Micind investor, by, among other things:

- a. Falsely representing in a joint venture agreement that, in exchange for the investor's capital contributions to Micind, Theye, through Micind, would "conduct" "trading" on the customer's behalf in futures, stocks, options and forex; in fact, Theye, through Micind, conducted no such trading but rather misappropriated the funds to further his Ponzi scheme; and
- b. Issuing false and fictitious account statements to the investor showing that Defendants were trading futures on the investor's behalf at a profit, when, in fact, Defendants were conducting no such trading and thus earning no such profits.

9. Based on these acts, the Complaint alleges that Micind and Theye engaged in acts and practices in violation of Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C).

10. On June 18, 2010, the Court, upon the Commission's motion and appendix in support (Dkt #5-10) (1) entered a *Statutory Restraining Order* ("SRO") (Dkt #13), without bond, that (a) froze the assets of Defendants, (b) required Defendants to provide a full accounting to the Commission, (c) prohibited Defendants from destroying documents, and (d) authorized the Commission to immediately inspect and copy books and records. Thereafter, on July 2, 2010, the parties jointly moved the Court to enter a [*Proposed*] *Consent Order of Preliminary Injunction and Other Equitable Relief* ("Consent Order") (Dkt #20) which, among other things: (1) enjoined Defendants from violating any provision of the Act, the Act as amended by the

CRA, and Regulations; and (2) provided that the SRO remain in full force and effect until further order of the Court. The Court granted the joint motion and issued the Consent Order on July 8, 2010 (Dkt #22).

11. Subsequently, on August 27, 2010, upon the parties' joint motion to appoint a Receiver (Dkt#23), the Court granted the parties' motion (Dkt #24). The Order empowers the Receiver to take possession of any legal or equitable interest in, right to, or claim to, any real or personal property of whatever kind and description, wherever situated, of Defendants ("Receivership Assets"). The ultimate goal of the Receiver and the purpose of the underlying authority granted to the Receiver is marshalling and conserving Receivership Assets for distribution to the victims defrauded by Defendants.

#### V. THE CRIMINAL ACTION

12. On June 1, 2010, the United States Attorney for the Western District of Texas filed a thirteen count indictment charging Theye with: (1) embezzlement of commodity pool funds, in violation of 7 U.S.C. § 13(a)(1) (Count I); (2) securities fraud, in violation of 15 U.S.C. §§ 77q(a) and 77x (Count II); (3) securities and commodities fraud, in violation of 18 U.S.C. § 1348 (Count III); (4) wire fraud, in violation of 18 U.S.C. § 1343 (Counts IV-XI); and (5) money laundering in violation of 18 U.S.C. § 1956 (Counts XII-XIII). See *United States v Hudgins*, Cr. No. 1:108-CR-246-SS U.S.D.C. W.D. Tx. (Austin) (June 1, 2010) (the "Criminal Action"). On July 13, 2010, Theye entered a plea of guilty to Counts III through XI in the Criminal Action. Subsequently, on December 17, 2010, upon the Government's *Motion for Proposed Order of Restitution* in the Criminal Action (CR Dkt #37) (the "Restitution Motion"), the Court ordered Theye to pay restitution in the amount of \$5,700,587.02 to the individuals and entities in the respective amounts set out in Attachment A to the Restitution Motion (CR Dkt #43). On January

24, 2011, the Court issued its Amended Judgment in the Criminal Action, which among other things, sentenced Theye to 144 months at the Lompoc Federal Correctional Institution in Lompoc, California (CR Dkt #45).

**VI. FINDINGS OF FACT**

13. The allegations of the Complaint are well-pled and hereby taken as true. This Order is supported by the following facts.

**A. The RYCO Pools**

14. RYCO Group is a California limited liability company, created on November 9, 2005, with its principal place of business located at 825 Cally Court, Suite 2, Redding, California. RYCO Group also maintained business offices at 3445 Executive Center Drive, Suite 110, Austin, Texas. RYCO Group is a commodity pool created by Theye, in part, for the purpose of trading commodity futures (“futures”) on behalf of pool participants. Theye is RYCO Group’s unregistered CPO.

15. First RYCO is a California limited liability company, created on January 23, 2006, with its principal place of business located at 825 Cally Court, Suite 2, Redding, California. First RYCO is a commodity pool created by Theye, in part, for the purpose of trading futures on behalf of pool participants. Theye is First RYCO’s unregistered CPO.

**B. Theye Opened Trading Accounts for the RYCO Pools**

16. From September 2006 through November 2008, Theye opened a total of eight (8) separate trading accounts in the name of RYCO Group at R.J.O’Brien & Associates (“RJO”), a registered FCM. In each of these trading accounts, Theye traded futures, including contracts in the S&P 500 index, the Russell index, the Dow index, and crude oil.

17. In August 2009, Theye opened a trading account in the name of First RYCO at RJO, through which, for two months, he traded futures, including contracts in the S&P 500 index, the Russell index, and natural gas.

**C. Theye Operated the RYCO Pools as Commodity Pools**

18. Despite not having opened trading accounts, the RYCO pools received, accepted and pooled money from members of the general public to trade futures through RYCO Group and First RYCO (a) beginning in at least December 2005 with respect to RYCO Group, and (b) beginning in at least March 2006 with respect to First RYCO.

19. Theye solicited pool participants or prospective pool participants to write checks, wire monies, or transfer funds to RYCO Group's and/or First RYCO's bank account(s) located in Austin, Texas, telling them that their money would be pooled with funds from other pool participants and that Theye would use the money to trade, among other things, futures on behalf of all pool participants.

20. After the pool participants' monies were deposited, wired, or transferred into RYCO Group's or First RYCO's bank account(s) in Austin, Texas, Theye then wired some, but not all, of the pool participants' monies from those bank accounts to the RYCO pools' trading account(s) at RJO located in Chicago, Illinois, through which Theye traded futures (a) beginning in September 2006 with respect to RYCO Group, and (b) beginning in August 2009 with respect to First RYCO.

21. Theye had pool participants sign "Class B LLC Membership Interest Purchase Agreements" ("Purchase Agreement") in either RYCO Group or First RYCO. The Purchase Agreements provided that RYCO Group's and First RYCO's objectives are to manage their members' funds and provide up to two percent monthly gains as to RYCO Group pool

participants and one percent monthly gains as to First RYCO pool participants with the excess over those amounts being distributed to the Operating Manager (*i.e.*, Theye) as his management fee.

**D. Theye Made False and Misleading Statements And Advertisements For Solicitation Purposes**

22. Beginning by at least December 2005 with respect to the RYCO Group, and March 2006 with respect to First RYCO, Theye solicited pool participants and prospective pool participants to invest, or remain invested, in the RYCO pools through (a) face-to-face meetings in Austin, Texas, and (b) promotional advertisements, including flyers and newsletters.

23. During the relevant period, to induce pool participants and prospective pool participants to invest, or remain invested, in RYCO Group, Theye promised, during face-to-face meetings that, among other things, he would trade, among other things, futures on their behalf as members of the pool, and they would receive the first two percent of monthly gains on their investment, and that he would receive the gains above two percent.

24. Likewise, during the relevant period, to induce pool participants or prospective pool participants to invest, or remain invested, in First RYCO, Theye promised, during face-to-face meetings that, among other things, he would trade futures on their behalf as members of the pool, and they would receive the first one percent of monthly gains on their investments, and that Theye would receive the gains above one percent.

25. During the relevant period, Theye prepared and distributed flyers to members of the general public, encouraging individuals and organizations to invest in the RYCO Group "fund", or the First RYCO "fund", by promising, among other things, that, Pool participants' money would be "[i]nvested in the commodity and equity markets"; "Investors" would receive, depending upon which RYCO pool they invested, either the first two percent (RYCO Group) or

one percent (First RYCO) of “gains calculated monthly”; and “Management” would only accumulate gains above the first two percent for the RYCO Group, and above the first one percent for First RYCO, such gains would be “calculated monthly”, and would “not be paid” if the respective pool “fails to perform.”

26. They encouraged pool participants and prospective pool participants in the flyers to roll funds from their 401(k)s, IRAs and Pension Funds into the RYCO pools.

27. The statements set forth above are materially false and misleading because:

- a. They did not trade futures or invest RYCO Group participants’ money in the commodity markets prior to September 2006 since RYCO Group had no trading accounts at any FCMs until that time;
- b. Likewise, They did not trade futures or invest First RYCO participants’ money in the commodity markets prior to August 2009 since First RYCO had no trading accounts at any FCMs until that time;
- c. They took managements fees out of the RYCO pools even though pool participants of RYCO Group and First RYCO had not earned monthly returns of two percent and one percent, respectively; and
- d. They did not use the majority of pool participant money to trade in any market but rather used the money to pay other investors false “profits” to perpetuate the Ponzi scheme.

28. In January 2009, They created and, thereafter, distributed to pool participants and prospective pool participants via, among other means, electronic mail via the internet a “newsletter” entitled “The RYCO Report” with the headline: “RYCO reports performance for 2006-2008 average 30.4% gross return.” The January 2009 report also represented:

Ryco Group, LLC experienced its best investment and trading performance in 2008, yielding 24% to investors from a gross return of 31.21%. Investors in Ryco received an average of 23.84% over the *past three full years of performance* tracking, just short of the investment’s objective of 24% annually. The average gross return was 30.40% in 2006-2008. (Emphasis added).

29. These statements are materially false and misleading because: (1) RYCO Group had no trading accounts at any FCMs until September 2006 and, therefore, could not have generated a profit during the first half of 2006; and (2) during the time that the RYCO Group traded futures at RJO, Theye lost nearly \$200,000 rather than made any profit.

30. In May 2009, Theye created and distributed to pool participants and prospective pool participants via, among other means, electronic mail via the internet a "newsletter" entitled "The RYCO Report" with the headline "12% return per year available through First Ryco [] LLC", and representing:

- a. "[First RYCO] offers a 40-month track record of successful performance paying 1% per month. Each investor also receives a monthly audited confirmation by an independent CPA firm of trading activity and profits, removing any doubt that 12% is 'too good to be true'";
- b. "We have a 40 month track records of producing 1% per month for investors. We feel assured we will be able to give investors 1% for some time to come"; and
- c. "Many positions are covered, or 'protected' by a corresponding option position against it – almost like an insurance policy. This reduces the profit potential, but it serves to limit or eliminate capital loss."

31. These statements are materially false and misleading because: (1) First RYCO had no trading accounts at any FCMs until August 2009 and thus had no "track record" of producing any returns on investors' funds; (2) each investor did not receive a monthly audited confirmation by an independent CPA firm of trading activity and profits; (3) during the time that the First RYCO traded futures at RJO, Theye lost approximately \$50,000; and (4) Theye never traded options in any of RYCO Group's or First RYCO's trading accounts at RJO.

32. Theye made the representations regarding the RYCO pools set forth above knowing them to be false or with reckless disregard as to their truth.

**E. They Prepared and Distributed False and Fictitious Account Statements**

33. Once pool participants purchased their membership interest in RYCO Group or First RYCO, They provided them with access to the RYCO pools' website, www.rycogroupllc.com, on which pool participants could access and view via the internet electronic account statements prepared by Theye that purported to show the net value of their interest in RYCO Group or First RYCO, as well as the profit or loss on their investment.

34. Beginning in at least January 2006, the account statements for pool participants in the RYCO Group consistently reflected that the pool participants' interests in RYCO Group profited at a rate of two percent per month.

35. Beginning in at least April 2006, the account statements for pool participants in First RYCO consistently reflected that the pool participants' interests in First RYCO profited at a rate of one percent per month.

36. These electronic account statements from January 2006 to August 2006 for the RYCO Group and April 2006 to July 2009 for First RYCO are false because the RYCO pools did not have any trading accounts at FCMs and, therefore, Theye did not trade futures or invest on behalf of RYCO pool participants during these periods. Further, during the months in which Theye traded futures on behalf of the RYCO pools, RYCO Group suffered trading losses in 25 of the 31 months that its funds were traded, and First RYCO suffered losses in the two months that its funds were traded. Indeed, the cumulative net out-of-pocket losses (including related commissions and fees) for RYCO Group for the end of the years 2006 to 2009 was \$24,742, \$39,941.08, \$100,452.86 and \$195,442.98, respectively, while First RYCO had a cumulative net out of pocket loss of \$52,832.16 for 2009 (the only year in which it did any trading).

37. They made the representations in the account statements knowing them to be false or with reckless disregard as to their truth.

**F. They Orchestrated the Micind Fraudulent Scheme**

38. In or about April, 2009, Theye approached a pool participant of RYCO Group, (“Investor X”), with an investment opportunity with Micind. Theye proposed that he would manage Investor X’s funds through his company, Micind, without the two percent per month cap on Investor X’s profits (like in RYCO Group) and that Theye and Investor X would split the profits and/or losses evenly. Thereafter, between April and July, 2009, Investor X invested \$900,000 with Micind.

39. On June 11, 2009, Theye, as President of Micind, entered into a Joint Venture Agreement with Investor X spelling out the details of this new investment in Micind. The purpose of the joint venture was to “conduct Futures, Stocks, Options and Forex trading” through Micind.

40. Pursuant to the terms of the Joint Venture Agreement, Investor X was to supply the capital for the partnership. The net profits would be “divided equally between [Investor X] and Micind,” and the net losses would be “born equally by them[,]” up to the amount of Investor X’s capital contribution.

41. The Joint Venture Agreement also provided: “Micind . . . will be solely responsible for conducting trading and business activities and reporting profits/losses to Partner [Investor X ] Monthly and quarterly. [Investor X] will be provided a quarterly audited report of all trading activity in all related trading accounts.”

42. Micind had commodity trading accounts at two FCMs, MF Global and Dorman Trading, L.L.C. (“Dorman”). Investor X’s money was not deposited into either of these

accounts, and, in fact, Theye, through Micind, never conducted trading on Investor X's behalf as promised in the Joint Venture Agreement.

43. In October 2009, Theye provided to Investor X via facsimile a document purporting to be a monthly account statement issued by Dorman (the "Dorman Statement"), reflecting that Investor X's \$900,000 in payments to Micind had been deposited into the Dorman trading account for Micind and was earning a profit.

44. The Dorman Statement is false and fictitious. Dorman never prepared it. Rather, Theye produced it and sent it via interstate wire to Investor X and/or Investor X's agents to maintain the illusion that Investor X's money was being used to trade futures and that the trading was profitable, when, in fact, no such trading was conducted and no such profits realized.

45. Defendants made the representations in the Joint Venture Agreement and in the Dorman Statement knowing them to be false or with reckless disregard as to their truth.

## VII. CONCLUSIONS OF LAW

### A. Violations of the Act; the Act as Amended by the CRA; and the Regulations

46. By the conduct described in Paragraphs 14 to 45 above, during the relevant time period Theye has violated: (1) Sections 4o(1) and 4m(1) of the Act, 7 U.S.C. §§ 6o(1) and 6m(1) (2006); (2) Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006) (for conduct prior to June 18, 2008), and Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C) (for conduct on or after June 18, 2008); and (3) Regulation 4.41(a), 17 C.F.R. §§ 4.41(a) (2010).

47. By the conduct described in Paragraphs 38 to 45 above, during the relevant time period Theye and Micind has violated Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C).

48. Under the totality of the circumstances, there is a reasonable likelihood of future violations of the Act, the Act as amended by the CRA, and as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010 (“Dodd-Frank”)), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), and the Regulations by Defendants. Therefore, a permanent injunction should issue in this action.

49. Under the totality of the circumstances, and based upon principles of equity, there is good cause for entry of an order directing Defendants to make restitution to pool participants, and barring them from registering, trading, soliciting, customers or engaging in any investment, advisory business, as specifically set forth in Sections VIII and IX below.

50. There is good cause for entry of any order requiring Defendants to pay a civil monetary penalty.

### **VIII. ORDER FOR PERMANENT INJUNCTION**

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

51. Defendants shall be permanently restrained, enjoined and prohibited from directly or indirectly engaging in conduct that violates Section 4b(a)(1)(A)-(C) of the Act as amended by the CRA, and as amended by Dodd-Frank, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C).

52. They shall be permanently restrained, enjoined and prohibited from directly or indirectly engaging in conduct that violates Sections 4o(1) and 4m(1) of the Act, 7 U.S.C. §§ 6o(1), and 6m(1) (2006), as amended by Dodd-Frank.

53. They shall be permanently restrained, enjoined and prohibited from directly or indirectly engaging in conduct that violates Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2010).

54. Defendants shall be 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(29) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a(29));
- b. Entering into any transactions involving futures, options, commodity options (as that term is defined in Regulation 32.1(b)(1)), 17 C.F.R. § 32.1(b)(1) (2010), (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) for their own personal account or for any account in which they have a direct or indirect interest;
- c. Having any futures, options, commodity options, 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 futures, options, commodity options, and/or forex contracts;
- e. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any futures, options, commodity options, and/or forex contracts;
- f. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010); and
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2010)), agent, or any other officer or employee of any person registered, exempted from registration or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010).

55. The injunctive provisions of this Order shall be binding upon Defendants, upon any person who acts in the capacity of an agent, employee, representative, and/or assign of Defendants, and upon any person who receives actual notice of this Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with Defendants.

**IX. RESTITUTION, CIVIL MONETARY PENALTY, AND  
OTHER ANCILLARY RELIEF**

**IT IS FURTHER ORDERED THAT:**

**A. Restitution**

56. They shall pay restitution in the amount of \$5,700,587.02, plus post-judgment interest (the "Restitution Obligation"). They shall receive a dollar-for-dollar credit against his Restitution Obligation as well as the restitution ordered by the Court on December 17, 2010 in the Criminal Action to the extent that the Receiver is successful in recovering and distributing Receivership Assets to the individuals and entities identified in Attachment A to the Restitution Motion (and which is attached here as Exhibit 1). Accordingly, should the Receiver, after petition to the Court and the Court granting such petition, make distributions to the individuals and entities identified in Attachment A to the Restitution Motion, They's Restitution Obligation as well as the restitution ordered in the Criminal Action will be decreased by the amount of the distribution. Post-judgment interest shall accrue commencing on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry this Order pursuant to 28 U.S.C. § 1961.

**1. Continuation of Appointment of Receiver**

57. To effect payment by Theye of the Restitution Obligation as well as the restitution ordered by the Court in the Criminal Action and distribution of restitution to the individuals and entities identified in Attachment A to the Restitution Motion, the Court continues the appointment of the Receiver as described in Paragraph 11 above. The Receiver shall collect restitution payments from Theye, and make distributions, after petition to the Court and the Court granting such petition, to the individuals and entities identified in Attachment A to the

Restitution Motion. The Court shall retain jurisdiction of this cause to assure compliance with this Order, the Restitution Obligation and for other purposes related to this action.

58. To the extent Theye makes restitution payments directly towards the Restitution Obligation or the restitution ordered by the Court in the Criminal Action, Theye shall send his restitution payments under this Order by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, to the Receiver, Kelly M. Crawford, Scheef & Stone, L.L.P., 500 North Akard Street, Suite 2700, Dallas, Texas 75201 under cover letter that identifies Theye and the name and docket number of this proceeding. Theye 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, 1155 21st Street, NW, Washington, D.C. 20581, and (b) the Chief, Office of Cooperative Enforcement, at the same address.

59. The Receiver shall oversee Theye's Restitution Obligation and the restitution ordered in the criminal action, and shall have the discretion to determine the manner for distribution of funds in an equitable fashion to Defendants' defrauded customers, or may defer distribution until such time as the Receiver may deem appropriate. In the event that the amount of restitution payments to the Receiver are of a *de minimis* nature such that the Receiver determines that the administrative costs of making a restitution distribution is impractical, the Receiver may, in his discretion, treat such restitution payments as civil monetary penalty payments, which the Receiver shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Section IV.B., below.

Restitution Obligation and the restitution ordered by the Court in the Criminal Action will be decreased by the amount of the distribution.

63. Upon an order by the Court closing the Receiver Estate, the FLU shall be responsible for enforcement of the outstanding balance of Theye's Restitution Obligation and the restitution ordered by the Court in the Criminal Action. The FLU shall direct that all funds so collected be sent to the Clerk as set forth in paragraph 61, above and the Clerk shall distribute the funds received to the individuals and entities identified in the Final Report as still owed restitution and pursuant to 18 U.S.C. §§ 3611-3612.

64. After entry of the Court's order closing the Receiver Estate and upon a request by the Commission, the FLU shall provide the Commission with a payment history of all restitution payments made by Theye or monies collected by the FLU to satisfy the outstanding balance of Theye's Restitution Obligation and restitution ordered by the Court in the Criminal Action. Any request by the Commission shall be addressed to the FLU's agents at the United States Attorney's Office, Financial Litigation Unit, Western District of Texas, 601 NW Loop 410, Suite 600, San Antonio, Texas 78216.

**B. Civil Monetary Penalty**

65. Theye shall pay to the CFTC a civil monetary penalty in the amount of \$560,000 plus post-judgment interest (the "CMP Obligation").

66. 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).

67. Theye's CMP Obligation is immediately due and owing.

68. Theye shall pay his 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, 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, Theye shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Theye shall accompany payment of the CMP Obligation with a cover letter that identifies himself, and the name and docket number of this proceeding. Theye 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 21<sup>st</sup> Street, NW, Washington, DC 20581; and b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

**C. Priority of Monetary Penalties and Partial Payments**

69. All payments by Theye pursuant to this Order shall first be applied to satisfaction of the Restitution Obligation and the restitution ordered by the Court in the Criminal Action, consistent with the authority granted the Receiver above. After satisfaction of the Restitution Obligation and the restitution ordered by the Court in the Criminal Action in full, payments by Theye pursuant to this Order shall be applied to satisfy Theye's CMP Obligation.

70. Any acceptance by the Commission and/or the Receiver of partial payment from Theye of the Restitution Obligation and/or CMP 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 and Receiver's right to seek to compel payment from him of any remaining balance.

**D. Equitable Relief Provision**

71. 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 receives actual notice of this Order by personal service or otherwise.

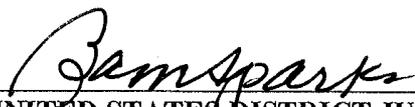
**X. MISCELLANEOUS PROVISIONS**

**IT IS FURTHER ORDERED THAT:**

72. Jurisdiction of this Court: This Court shall retain jurisdiction of this case to assure compliance with this Order, the Restitution Obligation, the restitution ordered by the Court in the Criminal Action and for all other purposes related to this action, including for purposes of entertaining any suitable application or motion by the Commission, the Receiver, or Defendants for additional relief within the jurisdiction of this Court as well as jurisdiction over all matters related to or arising out of this Court's continuing supervision of the Receivership Assets.

73. Entry of Judgment: There being no just cause for delay, the Clerk of the Court shall enter final judgment against Defendants forthwith and without further delay.

**SO ORDERED**, at Austin, Texas on the <sup>t</sup>16 day of May 2011.

  
UNITED STATES DISTRICT JUDGE