

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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CARLTON KRUMPFES  
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v.  
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NATIONAL FUTURES ASSOCIATION  
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CFTC Docket No. CRAA 00  
ORDER DENYING REGISTRATION

Carlton Krumpfes (“Krumpfes”) appeals *pro se* from the National Futures Association’s (“NFA”) denial of his application to register as a floor broker because he failed to show that his registration will not pose a substantial risk to the public. The NFA found that Krumpfes was statutorily disqualified from registration pursuant to Section 8a(3)(D) of the Commodity Exchange Act (“CEA” or “Act”), 7 U.S.C. § 12a(3)(D) (2006) in light of his 2006 felony convictions for possession of a controlled substance, and that he did not provide sufficient evidence of mitigation or rehabilitation to overcome the presumption of unfitness for registration that attaches to a statutory disqualification under Section 8a(3) of the Act.

On appeal, Krumpfes asks the Commission to find that his registration would not pose a substantial risk to the general public, that he possesses professional competency in the industry of futures trading, and could be entrusted with funds. NFA opposes his appeal and requests that the Commission affirm its order denying Krumpfes’s registration. For the reasons below, the NFA Order is affirmed.

**PROCEDURAL BACKGROUND**

Krumpfes filed an application for registration as a floor broker with the NFA on June 27, 2007 in which he disclosed that on July 6, 2006, in the Circuit Court of Cook County, Illinois, he

pled guilty to and was convicted of two counts of the felony offense of possession of a controlled substance (cocaine) in violation of 720 ILCS § 402(c) (*Illinois v. Krumpfes*, Case No. 06 CR3 018). NFA served Krumpfes with a Notice of Intent to Deny Registration on October 24, 2007, which alleged that Krumpfes's guilty plea and felony convictions disqualified him from registration under Section 8a(3)(D) of the Act.

Krumpfes filed a Response to the Notice of Intent ("Response") on November 6, 2007. In his Response, Krumpfes indicated that he intended to challenge the accuracy of NFA's allegations based on a post-conviction modification of his criminal record,<sup>1</sup> and overcome the presumption of unfitness by showing that his registration would pose no substantial risk to the public. NFA subsequently scheduled a hearing for April 30, 2008 before a Subcommittee of its Membership Committee. On April 23, 2008, Krumpfes filed notice that, while he did not dispute the accuracy of the allegations in the Notice of Intent, he would be presenting evidence of mitigation and rehabilitation at the hearing. The hearing convened as scheduled.

On June 24, 2008, the Subcommittee issued its Final Order Denying Registration finding that Krumpfes's felony convictions disqualified him from registration under Section 8a(3)(D) of the CEA. The Subcommittee found that Krumpfes's mitigation and rehabilitation evidence was not sufficient to prove his registration will not pose a substantial risk to the public. Order at 14. This appeal followed.

#### **NFA MEMBERSHIP SUBCOMMITTEE HEARING**

At the hearing, NFA introduced documentary evidence of Krumpfes's statutory disqualification, including his application (Form 8-R), and certified copies of the Information, Sentencing Order, and Statement of Conviction/Disposition. NFA Record of Proceedings ("Record") Tab 12. Krumpfes did not challenge the fact that he pled guilty and was convicted of

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<sup>1</sup> On November 21, 2007, Krumpfes filed a copy of a certified statement of early termination of probation.

the charges. Rather, he attempted to overcome the presumption of unfitness for registration created by the statutory disqualification through his own testimony and that of two witnesses: Harlan Krumpfes, his father and employer; and Dr. Sarz Maxwell, M.D. (“Dr. Maxwell”), his psychiatrist.<sup>2</sup>

### Testimony of Harlan Krumpfes

Harlan Krumpfes, a floor broker and member of the Chicago Board of Trade (“CBOT”), is president of his own company, K Commodities. As such, he testified to being fully aware of Krumpfes’s disqualifying conduct under Section 8a(3)(D) of the CEA, and of the purpose of the proceeding. He testified that he has seen a dramatic change in his son’s behavior since Krumpfes’s January 2006 convictions. Tr. at 16. He stated his son is focused on education, no longer associates with people that he associated with prior to his convictions, has been extremely reliable at work, and has a much better attitude. He opined that in the past two years, Krumpfes has been more honest, responsible and trustworthy, and expressed his belief that his son has taken full responsibility for his prior actions. He also testified that, even though his son has relapsed twice after undergoing drug rehabilitation treatment, he believes that the current treatment his son is receiving from Dr. Maxwell is excellent, and that Krumpfes is no longer dependent on drugs.

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<sup>2</sup> Proof that a statutory disqualification exists raises a rebuttable presumption that the applicant is unfit for registration. The burden then shifts to the applicant to show by the appropriate level of evidence that, notwithstanding his statutory disqualification, his registration will not pose a substantial risk to the public. *See generally In re Antonacci*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,835 at 36,930 (CFTC Apr. 18, 1990) (“*Antonacci*”); *In re Horn*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,836 at 36,939 (CFTC Apr. 18, 1990) (“*Horn*”); *In re Walter*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,215 at 35,013 (CFTC Apr. 14, 1988) (“*Walter*”). In the context of a Section 8a(3) disqualification, such as this one, the applicant must show by the weight of the evidence that his registration will not pose a substantial risk to the public. *See, e.g., In re Bryant*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,847 at 36,998-99 (CFTC Apr. 18, 1990) (“*Bryant*”).

The senior Krumpfes testified that he feels “absolutely” comfortable having his son working with his clients, Tr. at 19, and that his son may be trusted to carry out his fiduciary duties in good faith and fair dealing and to handle client funds. Tr. at 20. Harlan Krumpfes testified that his son currently answers the phones and writes out orders, talks to his customers on a daily basis, and that the customers really enjoy dealing with his son. Tr. at 22-23. He testified that he would like to see his son approved for registration because he wants him to assume some of the responsibility of filling orders. Tr. at 23.

Harlan Krumpfes also testified that he employed his son approximately six years ago despite being aware that Krumpfes was using drugs, and that he continued to employ Krumpfes when his addiction interfered with work. He stated that he reprimanded Krumpfes, but those reprimands arose from their father/son relationship, not their employer/employee status. Despite his son’s going in and out of treatment, Harlan Krumpfes stated he never terminated Krumpfes’s employment, believing and hoping that Krumpfes had changed after each rehabilitation treatment. Tr. at 26. He testified that he believes this time is different because Krumpfes is associating with different people, has a demanding schedule and does not have the time to do anything other than what he really has to do. Tr. at 27.

#### Testimony of Dr. Sarz Maxwell

Dr. Maxwell, a psychiatrist and addiction specialist, who has been treating Krumpfes since October 2006, testified as an expert witness. She stated that she was aware of Krumpfes’s disqualifying conduct under Section 8a(3)(D) and the nature of the NFA proceeding. Dr. Maxwell testified that her initial diagnosis of Krumpfes was cocaine dependence and attention deficit disorder. Tr. at 34. She testified that when Krumpfes began rehabilitation treatment he was deceitful and dishonest. *Id.* According to Dr. Maxwell, deceit and dishonesty are symptoms

of the disease of drug addiction and as a person becomes rehabilitated he or she is less likely to engage in deceit and dishonesty. Dr. Maxwell further testified that Krumpfes's rehabilitation has been proceeding successfully for approximately the last 19 or 20 months.

Dr. Maxwell testified that she was aware that Krumpfes relapsed twice previously after undergoing rehabilitation treatments, and it was her belief that Krumpfes relapsed because he was misdiagnosed. Dr. Maxwell stated that other physicians failed to diagnose and treat Krumpfes's attention deficit disorder, and that this failure to receive the proper medication made him more likely to relapse. She explained that stimulants typically are prescribed for attention deficit disorder, and that sufferers lacking proper treatment may use cocaine in a misguided effort to self-medicate. Dr. Maxwell testified that since she diagnosed Krumpfes's attention deficit disorder and began prescribing the appropriate medication, he no longer needed cocaine. Tr. at 38.

Dr. Maxwell attributed Krumpfes's rehabilitation to his own desire to make changes in his life and his acceptance of the drastic changes that he must make. Tr. at 35. She testified that Krumpfes has worked very hard at his rehabilitation, citing evidence of his insistence on taking urine toxicology tests at virtually every appointment. She said that such testing is unusual in clinical practice because it may be perceived as intrusive, but that Krumpfes used the tests therapeutically to demonstrate his rehabilitation. All of the tests produced negative results. Tr. at 36. In addition, she testified to her opinion that Krumpfes experienced the necessary "golden instant" an addict needs to recover. Tr. at 35. The "golden instant," she explained, is the moment when an addict realizes that in order to live, he or she has to change his or her lifestyle drastically. She said Krumpfes was experiencing that instant when she began treating him.

Dr. Maxwell testified that Krumpfes is still in treatment, that he is “edging” towards meeting with her once a week, and that in the fall, she will work towards meeting with him every two weeks. Tr. at 56. She also testified that Krumpfes is “set up with” another doctor and she has arranged to stay in e-mail contact and “other loop holes and safety nets” while she is on eight weeks of business travel. *Id.* While Dr. Maxwell testified that Krumpfes’s risk of relapse into cocaine addiction is “negligible at this point,” Tr. at 39-40, on cross-examination she noted that it was possible. Tr. at 50.

As evidence of Krumpfes’s current rehabilitation, Dr. Maxwell testified that during a previous stressful period, rather than relapsing Krumpfes drove to her office and sat in his car for several hours until she arrived. Tr. at 49. Krumpfes also has requested that his medication be prescribed in small amounts to reduce the risk of his abusing it. Tr. at 51. Dr. Maxwell testified that this is a sign of an addict who is working to recover rather than one likely to use drugs again.

Dr. Maxwell also testified that, in her opinion, Krumpfes may be trusted in a fiduciary capacity and is more trustworthy than the general public because people who have been caught up in the life of deceit and dishonesty that addiction forces them into appreciate honesty more. Tr. at 41. She averred that Krumpfes has built honesty and relapse prevention into his life and is ready to change his life. Tr. at 43. She said Krumpfes realizes that a little dishonesty would put him on a slippery slope to relapse.

#### Testimony of Carlton Krumpfes

Krumpfes testified that his January 2006 arrest was his second, having been charged in 2004 with, but not convicted of, possession of a controlled substance. Tr. at 76. As evidence of mitigation, Krumpfes testified that in exchange for a guilty plea, he received twenty-four months of probation--the lightest sentence he could receive. Tr. at 79-80. He averred that his probation

for the January 2006 arrest was terminated early and that his convictions were expunged. Tr. at 77-78.

Krumpfes testified he is rehabilitated and poses no risk to the public as a fiduciary. As evidence that his life has taken a new direction, Krumpfes testified that he is currently enrolled in a three-year graduate business program at Harvard, and takes one class at Northwestern University as part of an undergraduate degree program. Tr. at 63-64. He also testified that he experienced a “magic” or “golden” instant – the realization of where one is and how much work one has to do to get back to where one belongs. Tr. at 64-66. This, he testified, occurred in September 2006 (following the arrest that resulted in the guilty plea) when he was hospitalized after procuring heroin and cocaine and becoming intoxicated at a party.<sup>3</sup> Krumpfes testified that he has not had a relapse since the September 2006 hospitalization, which was shortly before he began treatment with Dr. Maxwell. He also testified that he continued drug testing despite the fact that neither the terms of his probation nor Dr. Maxwell required ongoing drug testing. Tr. at 88.

Krumpfes admitted that he violated the terms of his probation in September 2006, but stated he has not relapsed since. Tr. at 75. During questioning by the panel, Krumpfes admitted that he did not disclose his relapse to his probation officer to avoid jeopardizing his freedom. Tr. at 111.

#### **ADDITIONAL EVIDENCE OF RECORD**

In support of his application, Krumpfes also submitted letters to the NFA from Jason Nash, a CBOT floor trader, and Gregory Hawker, a coworker. Record Tab 5. Though not discussed at the hearing, the letters are part of the record.

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<sup>3</sup> He testified that “Dr. Maxwell was so kind not to mention it.” Tr. at 70.

Nash wrote that he worked on the CBOT trading floor for over 15 years and became aware of Krumpfes's "chemical dependency" five years ago. He noted that he discussed the issue with Krumpfes's brother, a CBOT floor trader, and believed the matter to be a family issue. He stated he was disappointed after the January 2006 arrest, but that by January 2007, Krumpfes was a "new person."

As an employee of Harlan Krumpfes, Hawker stated that he was aware of Krumpfes's "drug problem and legal situations." He stated further that he "has never seen a person go from down-and-out to ahead of the pack with the level of grace and dedication exhibited by Carlton Krumpfes." *See* Record Tab 5.

#### **FINAL ORDER DENYING REGISTRATION**

On June 24, 2008, the Subcommittee issued its Final Order Denying Registration, finding that Krumpfes admitted that he was subject to statutory disqualification under Section 8a(3)(D) of the CEA and failed to produce sufficient evidence of mitigation or rehabilitation to rebut the presumption of unfitness for registration.

With regard to evidence of mitigation, Krumpfes's only evidence consisted of his own testimony as to how his sentence compared in severity to sentences typically imposed on first time offenders, the early termination of his probation, and the fact that his convictions were expunged. The Subcommittee did not find this evidence persuasive.

The Subcommittee also found that Krumpfes's rehabilitation evidence, consisting of the testimony of his father, his doctor and himself, was insufficient to establish his fitness to be registered. In addition, the Subcommittee did not believe that sufficient time had passed to establish definitively Krumpfes's recovery from his drug addiction, inasmuch as Krumpfes

admitted to abusing drugs and alcohol for more than 15 years and relapsed twice previously after participating in drug rehabilitation programs.<sup>4</sup>

The Subcommittee found that even if Krumpfes had been able to establish that he was rehabilitated from his drug habit, additional evidence would be needed to prove that he could be trusted to act in a fiduciary capacity. Here, the Subcommittee, upon consideration of a similar NFA registration case, *In the Matter of Robert Johnson*, NFA Case No. 07-REG-014 (NFA Membership Committee, April 3, 2008) (“*Johnson*”), determined that Krumpfes failed to produce evidence establishing that he could be trusted to act in a fiduciary capacity. In *Johnson*, the applicant (Johnson) also had a felony drug conviction, albeit arguably more serious in that he was sentenced to 10 years in prison. Johnson, however, provided significant evidence related to his rehabilitation. Johnson, who worked for the seven years prior to applying for registration as a floor clerk at the CBOT, put forth two witnesses who testified that, during that time, they entrusted him to track their personal trades, and that he never abused his position by entering trades for himself. Based on this evidence, the Subcommittee found that Johnson had been placed in a position of trust and had proven that he could be trusted. In comparing this case to *Johnson*, the Subcommittee noted that the only similar evidence submitted by Krumpfes was his own testimony that he takes customer orders over the phone and works on the floor for his father. The Subcommittee gave Harlan Krumpfes’s testimony little weight because he provided few details of Krumpfes’s duties on the floor or how Krumpfes’s activities demonstrate his trustworthiness. Moreover, the Subcommittee found significant the fact that Krumpfes and his father acknowledged that prior to his recent rehabilitation treatment, Krumpfes acted in ways that should have resulted in his being fired.

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<sup>4</sup> The Subcommittee did not mention the letters sent to the NFA by Nash and Hawker in support of Krumpfes’s application.

The Subcommittee was also skeptical as to whether Krumpfes was adequately rehabilitated in light of his testimony that he violated the terms of his probation by using drugs shortly after his conviction and withheld this fact from his probation officer so that he would not jeopardize his freedom. This testimony caused the Subcommittee to question what else Krumpfes would do to protect himself from the consequences of his actions. Final Order at 14.

### DISCUSSION

Under Commission Regulation 171.34(c), the Commission must affirm the NFA's order unless it finds that: (1) the proceedings were not conducted in a manner consistent with fundamental fairness; (2) the proceedings were not conducted in a manner consistent with the rules of the NFA; (3) the weight of the evidence does not support the findings made or adopted in the final decision; or (4) the conclusion of the NFA is not consistent with the purposes of the Act.

Krumpfes argues on appeal that: (1) the Commission should reweigh the evidence and set aside the NFA's Final Order Denying Registration; (2) the statutory disqualification does not apply because his convictions were expunged from his criminal record; and, in the alternative, (3) his addiction is a disability and denial of his registration is a violation of the Americans with Disabilities Act of 1990 ("ADA").

At the outset we note that there is no support for Krumpfes's argument that the statutory disqualification does not apply because his convictions were expunged. Section 8a(3)(D) of the Act does not exempt from its scope persons whose convictions were expunged. Moreover, Form 8-R instructs applicants that criminal records must be disclosed "**even if** the record was expunged or sealed." (Emphasis in original.)

With respect to the ADA allegation, the NFA correctly points out that the ADA is not applicable to this situation because there is no employer/employee relationship between Krumpfes and the NFA or the Commission, and even if it were applicable, Krumpfes failed to establish a prima facie case of disability discrimination.<sup>5</sup> See NFA Brief, filed Oct. 3, 2008, at 11-12. Moreover, as the Commission pointed out in *In re Moskowitz*, [Transfer Binder 1992-1994] Comm. Fut. L. Rep. (CCH) ¶ 25,656, at 40,142 (CFTC Feb. 5, 1993), Section 8a(3)(D) registration refusals are grounded on felony convictions, and not drug addictions. That is, in the language of the ADA, the refusal and ultimate determination of fitness for registration under the CEA goes not to the existence of a disability, but rather to whether the individual is a qualified individual. In denying Krumpfes's application for registration, NFA found that Krumpfes was not a qualified individual because the weight of the evidence did not sufficiently demonstrate evidence of rehabilitation such that it would negate the statutory presumption of unfitness. This eligibility determination was primarily based on whether Krumpfes has "changed direction in his activities since the time of his violation," and was not an evaluation of his rehabilitation from drug addiction. See, e.g. AMERICANS WITH DISAB.: PRACT. & COMPLIANCE MANUAL § 2:41 (2009) ("[A] person is a qualified individual with a disability with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification.").

The sole question remaining is whether the weight of the evidence supports the Subcommittee's Final Order. The Subcommittee based its conclusion on its finding that Krumpfes's mitigation and rehabilitation evidence did not overcome the presumption of unfitness for registration created by the statutory disqualification under Section 8a(3)(D) of the

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<sup>5</sup> In order to establish a prima facie case of disability discrimination, Krumpfes must establish that he: (1) has a disability; (2) is a qualified individual; and (3) has suffered an adverse employment action because of his disability. *Dean v. Pocono Med. Ctr.*, 142 F.3d 138, 142 (3d Cir. 1998).

Act. When an applicant appeals a denial of registration, the burden of proof shifts to the applicant to rebut the presumption that registration would pose a substantial risk to the public. To rebut the presumption, we look carefully at the applicant's evidence of mitigation and/or rehabilitation. *See Horn*, ¶ 23,731 at 33,889. Mitigation evidence focuses on the facts and circumstances surrounding the underlying conduct and tends to show that the weight that ordinarily would be accorded the presumption of unfitness should be lessened. *See Walter*, ¶ 24,215 at 35,013. Rehabilitation evidence shows that an applicant has changed the direction of his activities since the time of the wrongful conduct. *Antonacci*, ¶ 24,835 at 36,933; *Walter*, ¶ 24,215 at 35,013; *Horn*, ¶ 23,731 at 33,889. As discussed below, there is no basis in the record upon which to overturn the Subcommittee's conclusion.

Krumpfes contends that his light sentence and first-time offender status are mitigating factors. As noted by the Subcommittee, however, Krumpfes failed to present evidence supporting his assertion that he received a light sentence.

Krumpfes also proffered as mitigation evidence the early termination of his probation and the expunging of his convictions. The Statement of Conviction/Disposition states that his probation was terminated satisfactorily on October 24, 2007, but does not identify a reason. Moreover, Krumpfes concedes that he intentionally withheld information from his probation officer regarding his September 2006 relapse because he knew that it could negatively impact the terms of his probation. We conclude that any mitigating evidence based on early termination of probation is diminished and contradicted by Krumpfes's admission. As Krumpfes undoubtedly understood, his probation was in jeopardy, regardless of its ultimate termination. And, as discussed earlier, Krumpfes's convictions are not mitigated because they were expunged. We

find, therefore, that the Subcommittee's analysis is reasonable and that no basis exists upon which we may disturb the finding that Krumpfes did not present sufficient mitigation evidence.

Similarly, Krumpfes did not present sufficient evidence of rehabilitation. Accepting responsibility for past actions may constitute evidence of rehabilitation, *In re Ryan*, [1996-1998] Comm. L. Fut. Rep. (CCH) ¶ 27,049 at 44,982 (CFTC Apr. 25, 1997), but Krumpfes did not establish by the weight of the evidence that he has done so. Krumpfes's testimony that his actions were beyond his control due to addiction and his assertion that his crimes were not that serious and that other crimes are more egregious raise serious concerns as to whether Krumpfes accepts any responsibility for his drug addiction and the potential harm to the public that could result from drug use.

Dr. Maxwell's testimony is insufficient to rebut the statutory presumption of unfitness for registration because it casts doubt as to whether Krumpfes can, at this time, be trusted and handle stressful situations. Dr. Maxwell's testimony reveals that Krumpfes is still in treatment requiring weekly meetings and "safety nets" for those instances when she is unavailable. As well, Dr. Maxwell acknowledged that, at this time, Krumpfes himself realizes that a little dishonesty would put him on a slippery slope to relapse.

The testimony of Harlan Krumpfes also does not merit significant weight in the assessment of Krumpfes's change in direction. The Commission looks for character witnesses who are not motivated by bias and who are fully aware of the applicant's disqualifying conduct. *Bryant*, ¶ 24,847 at 36,998-99. Harlan Krumpfes testified that he continued to employ his son knowing of the addiction and potential risk to the public. He also testified that he reprimanded Krumpfes on the job as a father, and not as an employer. He admitted to having a vested interest in his son's registration in that he wants him to assume additional responsibilities at his

company. Tr. at 23. Without doubting the sincerity of Harlan Krumpfes's optimism this time, we note that he believed or hoped his son had been rehabilitated after each previous treatment program from which he relapsed. Tr. at 26-27.

Krumpfes also faults the NFA for not considering the letters from Nash and Hawker. We have reviewed the letters and do not find them persuasive evidence of rehabilitation. Both letters demonstrate that the authors regard Krumpfes's drug addiction as a family, and not a public, problem. Nash's opinion that Krumpfes is a "new person" is unsupported by any descriptive details. Hawker is an employee of Harlan Krumpfes and his testimony may not be regarded as unbiased. In addition, neither individual was available for cross-examination at the Subcommittee hearing.

The testimony, coupled with Krumpfes's history of relapse following rehabilitation and comparatively short period of a drug-free life, casts doubt as to whether Krumpfes is sufficiently rehabilitated at this point to cope independently with stressful situations.

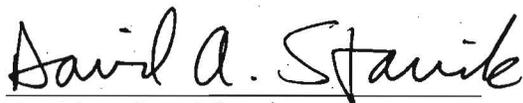
### CONCLUSION

Having reviewed all the evidence we find that Krumpfes failed to show that his registration at this time will not pose a substantial risk to the public. The record reveals a prolonged pattern of drug use compared to a relatively short period of recovery. We find it significant that Krumpfes is still under the weekly care of Dr. Maxwell, previous drug treatment programs having failed, and those failures raise significant questions about the likelihood that Krumpfes can follow through on his recent commendable success at avoiding drug involvement.

The NFA Subcommittee decision to deny registration is AFFIRMED.

IT IS SO ORDERED.

By the Commission (Chairman GENSLER, Commissioners DUNN, SOMMERS and CHILTON).

A handwritten signature in black ink that reads "David A. Stawick". The signature is written in a cursive style with a horizontal line underneath the name.

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

Dated: September 9, 2009