

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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| U.S. COMMODITY FUTURES TRADING<br>COMMISSION,                                | ) |             |
|  | ) |             |
| Plaintiff,   | ) | 10-cv-00737 |
|  | ) |             |
| v.   | ) |             |
|  | ) |             |
| INTEGRA CAPITAL MANAGEMENT LLC,<br>RODNEY W. WHITNEY and NICHOLAS T.<br>COX, | ) |             |
|  | ) |             |
| Defendants.  | ) |             |

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**ORDER OF DEFAULT JUDGMENT, PERMANENT INJUNCTION,  
AND ANCILLARY RELIEF**

**I. INTRODUCTION**

On September 28, 2010, Plaintiff U.S. Commodity Futures Trading Commission ("Commission") filed a Complaint against Defendant Rodney W. Whitney ("Whitney") and Integra Capital Management LLC ("Integra") (collectively, "Defendants") alleging violations of the Commodity Exchange Act ("Act"), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the "CFTC Reauthorization Act of 2008"), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008) ("CRA"), to be codified at 7 U.S.C. § 1 *et seq.*, arising from Whitney's alleged fraud in connection with his trading of commodity futures and off-exchange foreign exchange ("forex") contracts.

The Commission's Complaint sought, among other relief, permanent injunctions, civil monetary penalties, restitution and disgorgement (Doc. 1). At the same time, the Commission filed a Motion for *Ex Parte* Statutory Restraining Order and a Motion for Preliminary Injunction seeking to enjoin Whitney and Integra from committing future violations of the Act (Docs. 2, 3). The court entered an *Ex Parte* Statutory Restraining Order against Whitney and Integra on September 29, 2010. (Doc. 13.)

On September 30, 2010, the Commission properly served Whitney, Integra's president, registered agent and 50% owner, with a copy of the Commission's Complaint and Summons by overnight delivery. (Doc. 25-1.) Whitney and Integra have not answered or otherwise responded to the Commission's Complaint<sup>1</sup> and, as a result, the Commission filed a request for entry of default against Whitney on April 14, 2011 (Doc. 25) and against

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<sup>1</sup> Although not answering or otherwise responding to the Complaint, Whitney and Integra signed a consent order for preliminary injunction in this case. (Doc. 20.) Whitney, who signed the consent order on behalf of Integra, was served with the Commission's motions for entry of default against Whitney and against Integra as well as the motion for this default judgment. (Docs. 26, 29, 37.) Whitney also received notice of the entry of default with respect to himself and to Integra, as noted in the docket, on April 15, 2011, and May 18, 2011, respectively. Neither Whitney nor Integra have responded to the motion for default judgment, and the court finds that it is able to determine appropriate damages from the record in this case. See, e.g., Maloney v. Disciples Ltd., LLC, No. 1:06CV00124, 2007 WL 1362393, at \*1 (M.D.N.C. May 8, 2007) (noting courts, in applying Fed. R. Civ. P. 55(b)(2), have broad discretion to determine whether a hearing is "necessary and proper" and, where the court possesses an adequate basis on which to enter a damage award, it need not conduct a hearing (citing cases)).

Integra on May 18, 2011 (Doc. 28). On April 15, 2011, the Clerk of Court for the Middle District of North Carolina entered a default against Whitney (Doc. 27), and on May 18, 2011, entered a default against Integra (Doc. 30). Whitney and Integra were properly served with copies of the Clerk's defaults.

Among other documents, the court has reviewed the Commission's Complaint, the allegations of which are well-pleaded and taken as true for the purposes of the Commission's Motion for Default Judgment; the Commission's Memorandum in Support of its Motion for Default Judgment; the Supplementary Declaration of Commission Investigator Judith McCorkle; the Commission's Brief in Support of its Motion for *Ex Parte* Statutory Restraining Order and Preliminary Injunction (Doc. 4); and the Appendix of Declarations and Exhibits in Support of Plaintiff's Motion for Statutory Restraining Order and Preliminary Injunction (Docs. 5-8). Being fully advised in the premises,

**THE COURT FINDS AS FOLLOWS:**

1. This court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), 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 this court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Defendants are found in, inhabit, or transact business in this district, and the acts and practices conducted in violation of the Act occurred, are occurring, or are about to occur within this district, among other places.

**A. Parties**

3. Plaintiff Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.*

4. Defendant Integra Capital Management, LLC is a North Carolina Limited Liability Company established in September 2006. Integra ceased doing business in approximately January 2009 and has never been registered with the Commission in any capacity.

5. Defendant Rodney W. Whitney resides in Thomasville, North Carolina. During the relevant period he was a founding member, manager, organizer, 50% owner, and the president and registered agent of Integra Capital, and acted as an associated

person ("AP") of the firm. He has never been registered with the Commission in any capacity.

**B. Defendants' Solicitation Fraud**

**1. Misrepresentations of Integra's Profits and Losses**

6. Beginning in or about September 2006 and continuing through at least August 2009, Defendants represented to prospective pool participants that Integra consistently earned 3% to 5% monthly returns, and sustained virtually no losses, as a result of their futures and forex trading activities, and that they could guarantee participants returns of at least 3% per month. The Defendants determined this rate solely by reviewing rates of return achieved by successful hedge funds. The rate was not based on Defendants' past trading history.

7. Whitney also told at least one participant in June or July 2008 that Integra would pay him 3% of his principal investment per month regardless of whether Integra's trading was profitable, and provided at least one other participant with a document entitled "Integra Capital Management Hedge Fund Prospectus" in the fall of 2007, stating that Integra paid monthly dividends of 3% per month and that all other gains on principal would go to Integra for fees and commissions.

8. Additionally, in June or July 2008, Whitney told at least one participant that Integra had earned trading profits in

seventeen of the previous eighteen months when, at that time, Integra had lost money in all but two of the eighteen months it had traded. Overall, Integra lost money in twenty four of the twenty seven months it traded.

9. Whitney drafted, signed and sent to participants investment contracts printed on Integra's letterhead that acknowledged receipt of their investments and guaranteed returns of 3% to 5% "of the initial deposit amount on a monthly basis." The terms of the contracts varied over time and from participant to participant, but in substance each stated that Integra would pay a minimum 3% monthly return for investments up to \$100,000, 4% monthly returns for investments up to \$300,000, and 5% monthly returns for investments that exceed \$300,000.

10. Whitney also falsely told prospective participants that trading losses would be limited to 10% of their investment because Integra only traded 10% of participants' pooled funds at any one time, and that the remaining funds would be held in an escrow account. He falsely told other participants that any losses would be limited to 1% of their investment because only 1% of pooled participant funds were traded at any one time, and that the remaining funds would be kept in an interest bearing account. Contrary to both representations, he had lost their funds trading.

## **2. False Reports**

11. After participants invested with Integra, Whitney sent them monthly checks that he represented were profits earned from commodity futures trading. During the relevant time, Whitney issued checks to participants totaling approximately \$1,000,000 and, based on these purported "profits," induced at least five participants to invest additional funds. In reality, Integra was consistently losing money trading commodity futures.

12. Whitney also provided false account statements to some participants reflecting significant profits with no losing months when, in fact, all of Integra's futures trading accounts suffered net losses. Whitney's representations and the false information contained in the account statements induced some customers to invest more money with Integra.

13. Whitney also provided participants with false 1099 tax forms for 2007 and 2008 that purported to show that Integra made money trading futures in those years. Contrary to the information reflected on these forms, Integra lost over \$200,000 trading in 2007 and over \$500,000 trading in 2008.

### **C. Defendants' Misrepresentations Regarding the Location of Participant Funds**

14. Whitney misrepresented to Integra customers that he deposited their funds in a commodity trading account at Worldwide Futures Systems ("Worldwide"), a Florida branch office

of a Chicago-based Futures Commission Merchant ("FCM"), and that he could not return their funds when requested. Specifically, Whitney falsely told at least two investors that their funds could not be immediately returned because Worldwide would penalize Integra for an early withdrawal, and falsely told a different investor that he could not give him his monthly interest check because Whitney had not yet received the funds to do so from Worldwide. Contrary to these representations, Defendants never placed any of Integra's participants' money at Worldwide.

**D. Misappropriation of Participant Funds**

15. Of the \$3,298,989.13 Defendants solicited and accepted from pool participants, Defendants used only \$976,848 for commodity futures and forex trading. They returned \$1,123,825.14 to participants, but used at least \$1,198,316 for their own benefit without informing Integra's participants, including \$22,940 for personal travel, dining and entertainment, \$11,447 for personal automobile-related expenses, and \$111,088 for personal real estate purchases and expenses incurred by companies with which Whitney was affiliated other than Integra.

**E. Whitney's Control of Integra**

16. Whitney is listed on Integra's articles of organization filed with the state of North Carolina as a member,

organizer and owner of Integra. Whitney presented himself as the president and registered agent of Integra and controlled its day-to-day business operations during the relevant time. In addition, Whitney was responsible for hiring and supervising Integra's employees, had authority generally to fire Integra employees, and solicited pool participants and forex investors to invest with Integra.

17. Whitney was a signatory on at least three of Integra's bank accounts and on twelve of Integra's trading account agreements with the FCMS with which it did business. As described above, Whitney directly and knowingly induced Integra's violations of the Act by making misrepresentations to Integra's futures trading and forex pool participants regarding profit potential, risk of loss, trading profits, and the firm's solvency. In addition, Whitney distributed false account statements to at least two pool participants and false 1099 tax forms to at least four pool participants, and failed to return pool participants' funds when requested and misrepresented the reasons for his failure to do so.

## II. CONCLUSIONS OF LAW

### **A. Integra's and Whitney's Violations of Section 4b(a) of the Act: Futures Fraud by Misrepresentation, Omission, Misappropriation, and False Reports**

18. For the reasons set forth above in paragraphs 1 through 17, by (1) soliciting investments through fraudulent misrepresentations about Integra's past and current trading performance and the risk of loss; (2) misappropriating funds received from pool participants for the purpose of trading commodity futures; and (3) making or causing to be made false reports and false statements issued or communicated to pool participants who invested money with Integra and Whitney to trade commodity futures, Integra and Whitney violated Sections 4b(a)(1)(A), (B) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (B) and (C), for conduct occurring on or after June 18, 2008; and Sections 4b(a)(2)(i), (ii), and (iii) of the Act, 7 U.S.C. §§6b(a)(2)(i), (ii) and (iii) (2006), for conduct occurring before June 18, 2008.

### **B. Integra's and Whitney's Violations of Section 4b(a)(2): Fraud in Connection with Forex**

19. For the reasons set forth above in paragraphs 1 through 17, from at least June 18, 2008, and continuing through August 2009, Defendants Integra and Whitney violated Sections 4b(a)(2)(A), (B) and (C) of the Act, as amended by the CRA, in or in connection with forex contracts, made or to be made, for

or on behalf of, or with, other persons, by, among other things: (1) soliciting investments through fraudulent misrepresentations about Integra's past and current trading performance and the risk of loss; (2) misappropriating funds received from participants for the purpose of trading forex; and (3) issuing false reports to participants.

**C. Integra's and Whitney's Violations of Section 4o(1) of the Act: Fraud by Commodity Pool Operators and Their Associated Persons**

20. For the reasons set forth above in paragraphs 1 through 17, beginning in or about September 2006 and continuing through at least August 2009, Whitney, while acting as an AP of a Commodity Pool Operator ("CPO"), and Integra, while acting as a CPO, violated Section 4o(1) (A) and (B) of the Act, 7 U.S.C. § 6o(1) (A) and (B), in that they employed schemes or artifices to defraud pool participants or prospective pool participants or engaged in transactions, practices or a course of business which operated as a fraud or deceit upon pool participants or prospective pool participants by using the mails or other means or instrumentalities of interstate commerce. The fraudulent acts included, but were not limited to: (1) soliciting investments through fraudulent misrepresentations about Integra's past and current trading performance and the risk of loss; (2) misappropriating funds received from pool participants

for the purpose of trading commodity futures; and (3) issuing false reports to participants.

**D. Integra's Violation Of Section 4m(1) of the Act: Failure to Register as a CPO**

21. For the reasons set forth above in paragraphs 1 through 17, Integra violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1), in that it used the mails or other instrumentalities of interstate commerce in connection with its activities as a CPO without the benefit of registration with the Commission as a CPO.

**E. Integra's and Whitney's Violation of Section 4k(2) of the Act: Failure to Register as an AP of a CPO**

22. For the reasons set forth above in paragraphs 1 through 17, Whitney violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2), by engaging in solicitation activities for Integra without the benefit of registration as an AP of a CPO, and Integra violated Section 4k(2) by allowing Whitney to act as an unregistered AP of Integra when it knew or should have known that he was not registered as such with the Commission.

**F. Whitney's Liability as a Controlling Person of Integra and Defendant Integra's Liability for Acts Committed by Whitney**

23. For the reasons set forth above in paragraphs 1 through 17, during the relevant time, Whitney directly and indirectly controlled Integra, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting

Integra's violations of: Sections 4b(a)(1)(A), (B) and (C) and 4b(a)(2)(A), (B) and (C) of the Act as amended by the CRA, for conduct occurring on or after June 18, 2008; Sections 4b(a)(2)(i), (ii) and (iii) of the Act for conduct occurring before June 18, 2008; and Sections 4k(2), 4m(1), and 4o(1)(A) and (B) of the Act. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Whitney is therefore liable for these violations to the same extent as Integra.

24. The acts, omissions and failures of Whitney described in paragraphs 1 through 17 above were committed within the scope of his employment with Integra. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), Integra is liable to the same extent as Whitney for Whitney's acts, omissions and failures violations of: Sections 4b(a)(1)(A), (B) and (C) and 4b(a)(2)(A), (B) and (C) of the Act as amended by the CRA, for conduct occurring on or after June 18, 2008; Sections 4b(a)(2)(i), (ii) and (iii) of the Act for conduct occurring before June 18, 2008; and Sections 4k(2), and 4o(1)(A) and (B) of the Act.

25. Notwithstanding Defendants' default, the totality of the circumstances, including Defendants' extended course of fraud and efforts to convince customers to allow continued trading even after that fraud became manifest, establish that,

unless permanently restrained and enjoined by this court, there is a reasonable likelihood that Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act, as amended, and Regulations promulgated pursuant to the Act. Further, Defendants' violations merit restitution, disgorgement, and a civil penalty.

### **III. PERMANENT INJUNCTION**

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

26. Defendants Integra and Whitney are permanently restrained, enjoined and prohibited from directly or indirectly:

- a) cheating, defrauding or willfully deceiving, or attempting to cheat, defraud or willfully deceive any other person in or in connection with any order to make, or the making of any contract of sale of any commodity for future delivery, made or to be made, for or on behalf of any other person in violation of Section 4b(a)(1)(A) and (C) of the Act, as amended by the CRA and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. § 6b(a)(1)(A) and (C);
- b) willfully making or causing to be made to any other person any false report or statement, or willfully entering or causing to be entered for such other person any false record, in or in connection with any order to make, or the making of any contract of sale of any commodity for future delivery, made or to be made, for or on behalf of any other person in violation of Section 4b(a)(1)(B) of the Act, as amended by the CRA

and the Dodd-Frank Act, to be codified at 7 U.S.C. § 6b(a)(1)(B);

- c) cheating, defrauding or willfully deceiving, or attempting to cheat, defraud or willfully deceive, other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market, in violation of Sections 4b(a)(2)(A) and (C) of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C);
- d) willfully making or causing to be made to any other person any false report or statement, or willfully entering or causing to be entered for such other person any false record, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, in violation of Section 4b(a)(2)(B) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 6b(a)(2)(B);
- e) employing any device, scheme or artifice to defraud any client or participant or prospective client or participant or engaging 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 by use of the mails or any means or instrumentality of interstate commerce, in violation of Sections 4o(1)(A) and (B) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6o(1)(A) and (B);
- f) making use of the mails or any means or instrumentality of interstate commerce in connection with a business as a CPO without being registered with the Commission as a CPO, in violation of Section 4m(1) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 6m(1); and
- g) associating with a CPO as a partner, officer, employee, consultant, or agent, or any person occupying a similar status or performing similar functions, in any capacity

that involves (1) the solicitation of funds, securities, or property for participation in a commodity pool, or (2) the supervision of any person or persons so engaged, without such person being registered with the Commission as an AP of such CPO, or permitting such a person to become or remain associated with the CPO in any such capacity, in violation of Section 4k(2) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 6k(2).

27. Defendants Integra and Whitney also are permanently restrained, enjoined and prohibited from directly or indirectly:

- a) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a);
- b) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2011)) ("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)) ("forex contracts") for their own personal accounts or for any account in which they have a direct or indirect interest;
- c) having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;
- d) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;
- e) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;

- f) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and
- g) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), 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) (2011).

28. Defendants Integra and Whitney are further permanently restrained, enjoined and prohibited from filing a petition in bankruptcy without providing the Commission with prompt notice by Certified Mail of such filing, as required by paragraph 45 of Part V. of this Order.

29. The injunctive provisions of this Order shall be binding upon Defendants Integra and Whitney, upon any person under their authority or control, and upon any person who receives actual notice of this Order by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Integra or Whitney.

#### **IV. RESTITUTION, CIVIL MONETARY PENALTY AND DISGORGEMENT**

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

##### **A. Restitution**

30. Defendants' violations of the Act warrant the award of significant restitution to the customers they defrauded.

Defendants Integra and Whitney shall pay, jointly and severally, restitution in the amount of \$2,185,063.99 within ten (10) days of the date of entry of this Order ("Restitution Obligation"). Should Defendants not satisfy the Restitution Obligation within ten (10) days of the date of entry of this Order, post judgment interest shall accrue on the Restitution Obligation 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 of this Order pursuant to 29 U.S.C. § 1961.

31. Defendants Integra and Whitney shall receive a dollar-for-dollar credit against the Restitution Obligation for the amount of any restitution payments made by Defendant Nicholas T. Cox as may be ordered by the court in this action, from funds frozen pursuant to the *Ex Parte* Statutory Restraining Order or Preliminary Injunctions, or in satisfaction of any restitution amount ordered by the sentencing court in *United States v. Rodney W. Whitney*, No. 3:11-cr-049, currently pending in the United States District Court for the Western District of North Carolina.

**B. Appointment of Monitor**

32. To effect payment of the Restitution Obligation and the distribution of restitution to Integra's customers, the court appoints the National Futures Association ("NFA") as

Monitor. The Monitor shall collect restitution payments from Defendants and make distributions as set forth below. Because the Monitor is acting as an officer of the court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

33. Defendants shall make any required restitution payments under this Order to the Monitor in the name of the "Integra Customers' Restitution Fund" and shall send such restitution payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under cover of a letter that identifies Defendants Integra and Whitney as the payers, the case name, docket number, and the name of this court. Defendants shall simultaneously transmit copies of the cover letter and form of payment to the: (a) Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (b) Chief, Office of Cooperative Enforcement, Division of Enforcement, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

34. The Monitor shall distribute restitution payments to Integra's customers in an equitable manner as determined by the Monitor. The Monitor shall oversee the distribution of funds of the Restitution Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to Defendants' customers identified by the Commission or may defer distribution until such time as it deems appropriate. In the event that the amount of restitution payments made to the Monitor are of a *de minimis* nature, such that the Monitor determines that the administrative costs of making a distribution to Integra's customers is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for the civil monetary penalty obligation as set forth below.

35. Any amount paid to one of Integra's customers pursuant to this Order shall not limit the ability of that customer to independently prove in a separate action that a greater amount is owed from any person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under federal, state, or common law to assert a claim for recovery against Defendants subject to any

offset or credit that Defendants may be entitled to claim under the law governing that customer's claim.

36. Pursuant to Federal Rule of Civil Procedure 71, each customer identified by the Monitor is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of Defendants' Restitution Obligation, that has not been paid, to ensure compliance with any provision of this Order, and to hold Defendants in contempt for any violations of any provision of this Order.

37. To the extent that any funds accrue to the U.S. Treasury as a result of Defendant's Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in the preceding paragraphs.

**C. Civil Monetary Penalty**

38. Defendants Integra and Whitney shall pay, jointly and severally, a civil monetary penalty of \$3,594,948 within ten (10) days of the date of entry of this Order (the "CMP Obligation"). Should Defendants not satisfy their CMP Obligation within ten (10) days of the date of entry of this Order, 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).

**D. Disgorgement**

39. Defendants Integra and Whitney shall pay, jointly and severally, disgorgement in the amount of \$1,198,316 within ten (10) days of the date of entry of this Order (the "Disgorgement Obligation"). Should Defendants not pay their Disgorgement Obligation within ten (10) days of the date of entry of this Order, post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

40. Defendants shall pay their CMP Obligation and Disgorgement Obligation by electronic funds transfer, or by U.S. Postal money orders, certified checks, bank cashier's checks, or bank money orders, made payable to:

Commodity Futures Trading Commission  
Division of Enforcement  
Accounts Receivables - AMZ 340  
E-mail Box: 9-AMC-AMZ-AR-CFTC  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, Oklahoma 73169  
Telephone: 405-954-6569

41. If payment is to be made by electronic funds transfer, Defendants shall contact Linda Zurhorst 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 Defendants and the name and docket number of the proceedings. The Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

**E. Partial Payments**

42. Any acceptance by the Commission and/or Monitor of partial payment of Defendants' Restitution Obligation, Disgorgement Obligation and/or CMP Obligation shall not be deemed a waiver of the respective requirement to make further payments pursuant to this Order, or a waiver of the Commission's right to compel payment of any remaining balance.

**V. MISCELLANEOUS PROVISIONS**

**IT IS HEREBY ORDERED THAT:**

43. Collateral Agreements: Defendants Integra and Whitney shall immediately notify the Commission and Monitor if either Integra or Whitney makes or has previously made any agreement with any Integra customer obligating them to make payments outside this Order. Defendants shall also provide immediate

evidence to the Commission and the Monitor of any payments made pursuant to such agreement. Upon being notified of any payments by Defendants to Integra customers outside of this Order, and receiving evidence of such payments, the Monitor will have the right, but not the obligation, to reduce and offset the distribution of funds from the Restitution Obligation to those specified Integra customer(s) and to make any other changes in the restitution distribution schedule that the Monitor shall deem appropriate.

44. Transfer of Assets: Defendants Integra and Whitney shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any other person for the purpose of concealing such funds from the court, the Commission, the Monitor or any customer.

45. Notices: All notices required to be given by any provision in this Order shall be sent certified mail, return receipt requested and shall reference the name and docket number of this action, as follows:

a. **Notice to Commission:**

Regional Counsel  
Division of Enforcement-Central Region  
Commodity Futures Trading Commission  
525 West Monroe Street, Suite 1100  
Chicago, Illinois 60661

b. **Notice to the Monitor:**

Vice President, Compliance  
National Futures Association  
300 South Riverside Plaza, Suite 1800  
Chicago, Illinois 60606; and

c. **Notice to Defendants Whitney and Integra:**

Rodney W. Whitney  
103 Browning Dr.  
Thomasville, NC 27360

46. Change of Address/Phone: Until such time as Defendants satisfy their Restitution Obligation, Disgorgement Obligation and CMP Obligation as set forth in this Order, in the event that Defendant Whitney changes his residential or business telephone number(s) and/or address(es), he shall provide written notice of the new number(s) and/or address(es) to the Commission within twenty (20) calendar days thereof.

47. Modification of Order: Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (a) reduced to writing; and (b) approved by order of this court.

48. 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.

49. Waiver: The failure of any party subject to this Order at any time to require performance of any provision of the

Order 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.

50. Continuing Jurisdiction of this Court: This court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action, including resolution of the Commission's action against Defendant Nicholas T. Cox or any motion by a party to modify, or obtain relief from, the terms of this Order.

/s/ Thomas D. Schroeder  
United States District Judge

October 12, 2011