

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA



U.S. Commodity Futures Trading
Commission,

Plaintiff,

v.

Integra Capital Management LLC, Rodney
W. Whitney and Nicholas T. Cox,

Defendants.

No. 10-cv-00737-TDS-PTS

Hon. Thomas D. Schroeder

**CONSENT ORDER FOR PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF AGAINST DEFENDANT NICHOLAS T. COX**

I. INTRODUCTION

On September 28, 2010, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against defendants Integra Capital Management, LLC (“Integra”), Rodney W. Whitney (“Whitney”) and Nicholas T. Cox (“Cox”) seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and 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), §§701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.*

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Defendant Cox without a trial on the merits or any further judicial proceedings, Defendant Cox:

1. Consents to the entry of this Consent Order for Permanent Injunction and Other Equitable Relief Against Defendant Nicholas T. Cox (“Consent Order”);
2. Affirms that he has agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledges service of the Summons and Complaint;
4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006);
5. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006);
6. Waives:
 - a) any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Commission’s Regulations (“Regulations”), 17 C.F.R. §§ 148.1 et seq. (2010), relating to, or arising from, this action;
 - b) any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121 §§ 201-253, 110 Stat.

847, 857-68 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

c) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and

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

7. Consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this case, even if Cox now or in the future operates or resides outside the jurisdiction;

8. Agrees that Defendant Cox will not oppose enforcement of this Consent Order on the ground that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

9. Agrees that neither Defendant Cox nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact and Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order are without a factual basis, provided, however, that nothing in this provision shall affect Defendant Cox's: a) testimonial obligations, or b) right to take contrary legal positions in other proceedings to which the Commission is not a party; including, but not limited to, any criminal actions. Defendant

Cox shall undertake all steps necessary to ensure that his agents or employees under his authority or control understand and comply with this agreement.

10. By consenting to the entry of this Consent Order, Defendant Cox neither admits nor denies the allegations of the Complaint or the Findings of Fact and Conclusions of Law in this Consent Order, except as to jurisdiction and venue, which he admits. However, Defendant Cox agrees and intends that the allegations of the Complaint and all of the Findings of Fact and Conclusions of Law in Part III of this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in and only in: any bankruptcy proceeding filed by, on behalf of, or against Cox; any Commission registration proceeding related to Cox; and any proceeding to enforce the terms of this Consent Order. Furthermore, Defendant Cox agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 46 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him. No provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Defendant Cox in any other proceeding.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact and Conclusions of Law.

A. The Parties To This Consent Order

11. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2010). The CFTC is authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, to bring a civil action to enjoin any act or practice constituting a violation of the Act, to enforce compliance with the Act, and to seek civil penalties.

12. Defendant **Nicholas T. Cox** resides in Denton, North Carolina. He is a founding member, manager, and organizer of Integra Capital and, prior to his withdrawal from the firm in January 2009, acted as an Associated Person (“AP”) of Integra Capital and as the firm’s principal trader. He has never been registered with the Commission in any capacity

B. Jurisdiction and Venue

13. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), which authorizes the CFTC to seek injunctive relief against any person who has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order promulgated thereunder.

14. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(e), because Defendant Cox is a resident of

and transacted business in this district, and the acts and practices in violation of the Act occurred within this district.

C. Defendant Cox's Violations of Section 4b(a) of the Act: Futures Fraud by Misrepresentation, Omission, Misappropriation, and False Reports

15. It is a violation of the Act for any person, in or in connection with any order to make, or the making of, any on-exchange futures contract, for or on behalf of any other person: (i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof; or (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act or agency performed with respect to such order or contract for such person. Section 4b(a)(2)(i), (ii), and (iii), 7 U.S.C.

§§ 6b(a)(2)(i), (ii), (iii) (2006) (with respect to conduct before June 18, 2008); and Section 4b(a)(1)(A), (B) and (C) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (B), and (C) (with respect to conduct on or after June 18, 2008).

16. 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 Cox to trade commodity futures, Cox violated Sections 4b(a)(1)(A), (B) and (C) of the Act, as

amended, 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.

D. Defendant Cox's Violations of Section 4b(a)(2): Fraud in Connection with Forex

17. Sections 4b(a)(2)(A), (B) and (C) of the Act, as amended, make it unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g) of the Act, 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 – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

18. Section 4b(a)(2) of the Act, as amended, applies to Defendants' foreign currency transactions "as if" they were a contract of sale of a commodity for future delivery. *See* Section 2(c)(2)(C)(iv) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C)(iv).

19. From at least June 18, 2008 and continuing through August 2009, Defendant Cox violated Sections 4b(a)(2)(A), (B) and (C) of the Act, as amended, 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.

E. Defendant Cox's Violations of Section 4o(1) of the Act: Fraud by Commodity Pool Operators and Their Associated Persons

20. During the relevant time, Integra acted as a Commodity Pool Operator ("CPO") within the meaning of Section 1a of the Act, and Cox acted as a AP of a CPO within the meaning of Commission Regulation 1.3(aa)(3).

21. Sections 4o(1)(A) and (B) of the Act, as amended, to be codified at 7 U.S.C. §§ 6o(1)(A) and (B), prohibit any CPO and any AP of a CPO from directly or indirectly employing any device, scheme or artifice to defraud any client, participant or prospective client or participant, or engaging in transactions, practices or a course of business which operate as a fraud or deceit upon any client or participant or prospective client or participant by using the mails or other means or instrumentalities of interstate commerce.

22. Beginning in or about September 2006 and continuing through at least August 2009, Cox, while acting as a AP of a CPO, violated Section 4o(1) of the Act, as amended, to be codified at, 7 U.S.C. § 6o(1), in that he 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 are not limited to the following: (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.

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

23. With certain exemptions and exclusions not applicable here, all CPOs making use of the mails or any instrumentality of interstate commerce in connection with their operation of a commodity pool are required by Section 4m(1) of the Act, as amended, to be codified at 7 U.S.C. § 6m(1), to be registered with the Commission as CPOs.

24. Integra used the mails or other instrumentalities of interstate commerce in connection with its activities as a CPO without the benefit of registration as a CPO, in violation of Section 4m(1) of the Act, as amended, to be codified at 7 U.S.C. § 6m(1)

G. Defendant Cox's Violation of Section 4k(2) of the Act: Failure to Register as an AP of a CPO

25. With certain specified exceptions and exemptions not applicable here, all APs of CPOs are required by Section 4k(2) of the Act, as amended, to be codified at 7 U.S.C. § 6k(2), to be registered with the Commission. Further, a CPO violates Section 4k(2) of the Act, as amended, to be codified at 7 U.S.C. § 6k(2), when it allows an unregistered AP to become or remain associated with a CPO when the CPO knew or should have known that the AP was not registered as such with the Commission.

26. Cox engaged in the solicitation activities for Integra without the benefit of registration as an AP of a CPO in violation of Section 4k(2) of the Act, as amended, to be codified at 7 U.S.C. § 6k(2).

H. Defendant Cox is Derivatively Liable For Integra's Violations of the Act

27. During the relevant time, Cox 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, 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, as amended, described above. Pursuant to Section 13(b) of the Act, as amended, to be codified at 7 U.S.C. § 13c(b), Cox is therefore liable for these violations to the same extent as Integra.

28. The acts, omissions and failures of Cox described herein were committed within the scope of his employment with Integra. Therefore, pursuant to Section 2(a)(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010), Integra is also liable for Cox's acts, omissions and failures in violation of the Act and Act, as amended, as described above, to the same extent as Cox.

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

29. Defendant Cox is 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, 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, 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 other agreement, contract or transaction subject to paragraphs (1) and (2) of Section 5a(g) of the Act, 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, 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 other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g) of the Act, in violation of Section 4b(a)(2)(B) of the Act, as amended, 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, 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, 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, to be codified at 7 U.S.C. § 6k(2).

30. Defendant Cox is permanently 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, 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 Commission 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, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for his own personal accounts or for any account in which he has a direct or indirect interest;
- c) having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on his 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 Commission 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 Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2010)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a) registered, exempted from registration or required to be registered with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010).

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

V. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution

32. Defendant Cox shall pay restitution in the amount of \$2,185,063.89 within ten (10) days of the date of the entry of this Order (the "Restitution Obligation"). Should Defendant Cox 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 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.

33. Defendant Cox shall receive a dollar-for-dollar credit against his Restitution Obligation for the amount of any restitution paid by Defendants Whitney and Integra as may be ordered by the Court in this action, and from funds frozen pursuant to the *Ex Parte* Statutory Restraining Order and the Preliminary Injunctions.

34. To effect payment of the Restitution Obligation and the distribution of any restitution payments to pool participants, the Court appoints the National Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor shall collect restitution payments from Cox, 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.

35. Defendant Cox shall make restitution payments under this Consent Order in the name “Integra Settlement 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 letter that identifies the paying Defendant and the name and docket number of the proceeding. The paying Defendant 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, 1152 21st Street, N.W., Washington, D.C. 20581,

and (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement at the same address.

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

37. Defendant Cox shall cooperate with the Monitor as appropriate to provide such information as the NFA deems necessary and appropriate to identify Defendants' customers to whom the Monitor, in his sole discretion, may determine to include in any plan for distribution of any restitution payments. Defendant Cox shall execute any documents necessary to release funds that he has in any repository, bank, investment or other financial institution wherever located, in order to make partial or total payment toward the Restitution Obligation.

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

39. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Defendant Cox who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Defendant Cox, to ensure continued compliance with any provision of this Consent Order and to hold Defendant Cox in contempt for any violations of any provision of this Consent Order.

40. To the extent that any funds accrue to the U.S. Treasury as a result of Defendant Cox's Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in paragraph 35, above.

B. Civil Monetary Penalty

41. Defendant Cox shall pay a civil monetary penalty in the amount of \$2,185,063.89, plus post-judgment interest within ten (10) days of the date of the entry of this Order (the "CMP Obligation"). Should Defendant Cox not satisfy his CMP Obligation within ten (10) days of the date of entry of this Order, post judgment interest shall accrue on the CMP 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.

42. Defendant Cox shall receive a dollar-for-dollar credit against his CMP Obligation for the amount of any CMP paid by Defendants Whitney and Integra as may be ordered by the Court in this action, and from funds frozen pursuant to the *Ex Parte* Statutory Restraining Order and the Preliminary Injunctions.

43. Defendant Cox shall pay this 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
Telephone: (405) 954-6569

If payment by electronic transfer is chosen, the paying Defendant Cox shall contact Marie Bateman or her successor at the address above to receive payment instructions and shall fully comply with those instructions. The paying Defendant shall accompany payment of the civil monetary penalty with a cover letter that identifies the paying Defendant and the name and docket number of this proceeding. The paying Defendant 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 Chief, Office of Cooperative Enforcement, Division of Enforcement at the same address.

C. Partial Payments

44. Any acceptance by the Commission of partial payment of Defendant Cox's Restitution Obligation or CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

D. Cooperation

45. Defendant Cox shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement ("Division"), in this proceeding, and in any investigation, civil litigation, or administrative matter related to the subject matter of this proceeding or any current or future Commission investigation related thereto. As part of such cooperation, Defendant Cox agrees to:

- a) preserve all original instant messages and e-mails records relating to the subject matter of this proceeding, including, but not limited to audio files, e-mails, and trading records;
- b) provide assistance at any trial, or proceeding, or Commission investigation related to the subject matter of this proceeding, including but not limited to, requests for testimony, depositions, and/or interviews, and to testify completely and truthfully in any such proceeding, trial, or investigation Defendant Cox would be entitled to reimbursement for the statutory allowances for attendance and travel associated with such cooperation; and
- c) comply fully, promptly, and truthfully with any inquiries or requests for information including but not limited to inquiries or requests:
 - i. for authentication of documents; and
 - ii. for any documents within Defendant Cox's possession, custody, or control, including inspection and copying of documents; provided, however, that nothing in this paragraph 45 shall be interpreted as waiving or restricting Defendant Cox's right to make an appropriate assertion of the Fifth Amendment privilege against self-incrimination, or any other appropriate assertion of any other privilege or right.

VI. MISCELLANEOUS PROVISIONS

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

Notice to Commission:

Associate Director
Division of Enforcement, Central Region
Commodity Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, Illinois 60661

Notice to Defendant Cox:

Gavin Reardon
Attorney for Cox
Forman, Rossabi & Black, PA
3623 North Elm Street
Suite 200
Greensboro, NC 27455
(336) 378-1899
greardon@frb-law.com

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

47. Change of Address/Phone: Until such time as Defendant Cox satisfies his Restitution Obligation and CMP Obligation as set forth in this Consent Order, in the event that Defendant Cox 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.

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

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

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

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

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

53. Defendant Cox understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Consent Order.

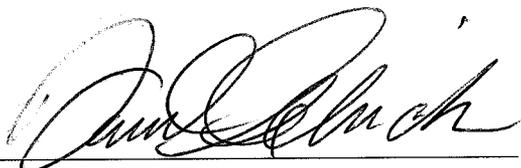
IT IS SO ORDERED on this 24th day of October, 2011


UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:


Defendant Nicholas T. Cox

Dated MARCH 9th, 2011


David Slovic
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Dated MARCH 8, 2011