

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

U.S. COMMODITY FUTURES )  
TRADING COMMISSION )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DIMITRY VISHNEVETSKY, )  
et al., )  
 )  
Defendants. )

Civil No. 12-cv-03234  
Honorable Ruben Castillo  
Magistrate Judge Nolan

**ORDER OF DEFAULT JUDGMENT FOR PERMANENT INJUNCTION AND OTHER  
ANCILLARY RELIEF AGAINST DEFENDANTS DIMITRY VISHNEVETSKY,  
INDIVIDUALLY AND D/B/A HODGES TRADING LLC AND HODGES COURT  
TRADING AND OXFORD CAPITAL, LLC**

**INTRODUCTION**

On May 1, 2012, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against Dimitry Vishnevetsky (“Vishnevetsky”), individually and d/b/a Hodges Trading LLC (“Hodges”) and Hodges Court Trading (“Hodges Court”), and Oxford Capital, LLC (“OCL”) (collectively “Defendants”), 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 (“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 (July 21, 2010), 7 U.S.C. §§ 1 *et seq.*, and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. § 1.1 *et seq.* (2012). This Court entered an

*ex parte* statutory restraining order against Defendants on May 1, 2012, and a Consent Order for Preliminary Injunction and Other Ancillary Relief against Defendants on May 29, 2012.

On May 1, 2012, Vishnevetsky was indicted by the United States Attorney for the Northern District of Illinois and charged with six counts of wire fraud, two counts of mail fraud and one count of bank fraud. The scheme underlying the criminal wire and mail fraud action is based on substantially the same facts as alleged in the enforcement action filed by the Commission. See, *USA. v. Vishnevetsky*, Case No. 12 CR 315 (N.D. Ill filed May 1, 2012).

The Commission properly effected service upon Defendants, pursuant to Fed. R. Civ. P. 4(e)(2)(C), by delivering a copy of the summons and complaint to Defendants' attorney (Dkts.12, 13). On June 12, 2012, this Court entered an order staying the proceedings pending the resolution of Vishnevetsky's criminal case. (Dkt. 24).

On August 27, 2012, Vishnevetsky entered a guilty plea to Counts 1 and 9 of the indictment alleging wire and bank fraud, and on March 4, 2013, Vishnevetsky was sentenced on those counts to 6 years in prison and ordered to pay \$1,684,763 in restitution, thus concluding the criminal proceedings against him. See, *USA. v. Vishnevetsky*, Case No. 12 CR 315 (N.D. Ill judgment entered March 4, 2013).

On March 18, 2013, this Court entered an order requiring Defendants to answer or plead to the complaint on or before April 9, 2013. (Dkt. 26). Defendants failed to answer or plead to the complaint as ordered by the Court, and on April 25, 2013, this Court entered a default against Defendants pursuant to Fed. R. Civ. P. 55(a). (Dkt. 31).

The Commission has now moved for entry of default judgments finding that Defendants are liable for each cause of action alleged in the Complaint and should be permanently enjoined from violating the Act. Plaintiff also requested that this Court enter an order assessing restitution

and civil monetary penalties against Defendants. The Defendant has not contested the default judgment.

This Court has carefully considered the CFTC's Application for Default Judgment and Order for Permanent Injunction and Other Ancillary Relief Against Defendants and incorporated Memorandum of Law, the declarations and exhibits filed by Plaintiff, and all other papers filed herein, and being fully advised in the premises.

### **FINDINGS OF FACT**

#### **THE COURT FINDS:**

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

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e) (2006), in that transacted business in this district and the acts and practices in violation of the Act have occurred within this district.

3. Service was properly effected upon Defendants, pursuant to Fed. R. Civ. P. 4(e)(2)(C), by delivering a copy of the summons and complaint to Defendants' attorney (Dkts.12, 13).

4. Defendants have failed to timely answer or otherwise defend the CFTC's Complaint within the time permitted by Fed. R. Civ. P. 12. Defendant Vishnevetsky is not in the military service, nor is he an infant or incompetent.

5. The allegations of the CFTC's Complaint are well-pleaded and hereby taken as true. This Order is supported by the following facts.

**Plaintiff**

6. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

**Defendants**

7. Dimitry Vishnevetsky is 34 years old and beginning on or about May 28, 2013, he will be residing in the Federal Prison Camp in Duluth, Minnesota. He was registered with the Commission as an associated person ("AP") of Morgan Stanley DW ("Morgan Stanley") from March 4, 2004 through June 4, 2004. He is not currently registered with the Commission in any capacity. As OCL's principal and general partner, Vishnevetsky was signatory on OCL's bank account and controlled all aspects of OCL's operations. Vishnevetsky prepared OCL's solicitation materials, including performance charts, Offering Memoranda and Subscription Agreements, solicited and accepted customer monies, issued account statements to customers, and made all decisions concerning OCL's financial operations. As such, Vishnevetsky is OCL's controlling person and held himself out to the public as such. Vishnevetsky also solicited commodity pool participants while doing business as Hodges Trading, LLC and Hodges Court Trading

8. Oxford Capital LLC was a Wisconsin limited liability company that was formed on August 20, 2004, and was dissolved on September 20, 2010. During its operation, its

principal office was located in Chicago, Illinois and Vishnevetsky was its sole principal and registered agent.

### **Commodity Pool Fraud Schemes**

9. From the time Defendants began soliciting for their three commodity pools in the fall of 2006 through April 2012, the Defendants attracted seven participants in Oxford Global Macro Fund, L.P. (“OGMF”), one participant in Oxford Global Arbitrage Fund, L.P. (“OGAF”) and one participant in Oxford Quantum Fund, L.P. (“Quantum”) (collectively, “pools”). OCL, the commodity pool operator (“CPO”), commingled the funds it received from the participants in OGMF with the funds it received from the participant in OGAF and the participant in Quantum, received pool participants’ monies in the name of OCL, and did not operate the pools as legal entities separate from OCL. The one OGAF participant was also a participant in OGMF, and invested in OGAF only after receiving account statements from Defendants showing purportedly profitable returns from his investment in OGMF. Similarly, the participant in Quantum invested after he received a chart from Defendants showing purportedly profitable annual returns for OGMF from 2005 through 2008.

10. When soliciting for the pools, Vishnevetsky represented to prospective participants that OGMF, OGAF and Quantum traded Standard and Poors (“S&P”) 500 index futures contracts, foreign currencies and bond futures, such as the 10-year US Treasury Note futures contracts. Vishnevetsky solicited prospective participants for the various pools he operated by presenting them with false information about OGMF. In particular, he falsely represented that OGMF had a low-risk trading strategy because no trading positions were held over-night, and if the pool lost 30% overall, it would be shut down. Vishnevetsky provided prospective pool participants with false performance charts for OGMF, which reported positive

annual returns ranging from 17.86% to 36.15% between 2005 and 2008. The performance charts misrepresented that the performance numbers were “generated from audited results and are net of management and incentive fees.”

11. Vishnevetsky also misrepresented to prospective pool participants and pool participants that OGMF had approximately \$4 million under management, and that his compensation as OGMF’s manager would be a 2% up-front management fee and an incentive fee of 20% of profits, using a high water mark.

12. Promotional material for the pools, authored by Vishnevetsky, touted his experience as a bond trader and financial advisor at Lehman Brothers, Inc. (“Lehman”) and Morgan Stanley. For example, OGMF’s Investment Offering represented that during Vishnevetsky’s tenure at Lehman, he “acted as an integral member of the deal execution team involved in idea generation, research, analysis, modeling, due diligence and negotiations.” Vishnevetsky was involuntarily terminated from his positions at both firms, but he failed to tell pool participants and prospective pool participants about his terminations.

13. Based on Defendants’ misrepresentations and omissions described above, pool participants collectively invested \$548,340 in OGMF, OGAF and Quantum.

14. During the relevant period, Defendants did not open any commodity trading accounts in the names of OGMF, OGAF and Quantum. While Vishnevetsky opened and funded a total of 11 commodity futures trading accounts at 7 registered FCMs during the relevant period, those accounts were carried in the names of Vishnevetsky, OCL, Hodges Court Trading, and Troika LLC (“Troika”). During that time, Defendants deposited a total of approximately \$1,260,665 into the 11 accounts described above and withdrew a total of approximately \$448,941 from them. At least a portion of the monies deposited into the foregoing trading

accounts were pool participants' monies. Over the life of these accounts, Defendants lost approximately \$971,333 trading commodity futures. Vishnevetsky overtraded four of these accounts which resulted in large debit balances and a loss of funds exceeding the aggregate deposits into the trading accounts.

15. Because Vishnevetsky, as an AP and controlling person of OCL, never engaged in any commodity trading on behalf of OGMF, he knew that the commodity pool had no performance record and no audited results. Defendants, therefore, knowingly and intentionally misstated material facts and failed to disclose material facts to prospective OGMF, OGAF and Quantum pool participants and pool participants by representing that OGMF had positive returns based on audited results, when in fact, Defendants never traded for the pool. Similarly, Defendants omitted material facts from prospective pool participants and pool participants by failing to inform them that Vishnevetsky was involuntarily terminated from his positions at Lehman and Morgan Stanley.

16. Defendants misappropriated pool participants' monies for their own benefit, in that Defendants never conducted any commodity trading on behalf of pool participants and instead used the pool participants' monies for their own purposes, including trading commodity futures for themselves and paying personal expenses. Defendants also misappropriated pool participants' monies by paying themselves incentive fees when, in fact, they never traded for OGMF, OGAF and Quantum.

17. During the relevant period, Defendants mailed or emailed monthly account statements to pool participants that misrepresented the value of their respective interests in OGMF, OGAF and Quantum and concealed Defendants' misappropriation of their monies. In particular, the monthly account statements Defendants issued to pool participants reported false

monthly and annual returns for the pools since their purported inception, misrepresented the value of the pool participants' respective accounts, charged unmerited incentive fees based upon false reported profits, falsely represented that the performance returns were based on audited results, and concealed Defendants' misappropriation of pool participants' monies.

18. Beginning in September 2009, Vishnevetsky, individually and d/b/a Hodges and Hodges Court, solicited two pool participants to invest in another commodity pool he operated. Specifically, Vishnevetsky represented to those pool participants that Hodges operated a Fund which issued Libor Notes in partnership with CIBC World Markets Inc. ("CIBC"), its underwriter and broker, and traded commodity futures and derivatives to enhance the value of the Libor Notes. Vishnevetsky sent prospective pool participants a Private Placement Memorandum ("PPM"), which stated the Fund's objective as maximizing its annual return by "the buying and selling of any asset class," including "equities, bonds, currencies, commodities and derivatives." The PPM also represented that CIBC was the lead underwriter and prime broker for the Fund and that the Libor Notes "will be backed by a collateral account that CIBC World Markets has set forth" and that "[t]he 'Loss Recovery' account, backed by the full faith and credit of CIBC World Markets, will ensure that the initial principal payment will be made to the LIBOR Adjusted Note holders ...."

19. When one of the pool participants described in Paragraph 18 above asked for information about the role of CIBC, Vishnevetsky sent him an email on October 28, 2009, with an attached chart. In his email, Vishnevetsky represented that a "loss recovery account" was set up at CIBC and was backed by a series of derivative instruments, called a special purpose vehicle ("SPV"), to ensure that the Libor Note holders received their initial investment in case Hodges was unable to honor the initial principal repayment. The chart Vishnevetsky sent the

pool participant represented that a “SPV ‘Collateral Account’ Swap” was created “for insurance against default.”

20. When Vishnevetsky solicited the pool participants described in Paragraph 18 above, he knew that CIBC was neither the prime broker for, nor had underwritten any investment that he, Hodges or Hodges Court offered and that CIBC never maintained any loss recovery account backed by derivative instruments to repay Libor Note holders their principal investments. Vishnevetsky, therefore, knowingly made material misrepresentations when soliciting pool participants to invest in his commodity pool. Similarly, when soliciting pool participants, Vishnevetsky failed to disclose that he was involuntarily terminated from his positions at Lehman and Morgan Stanley.

21. Based on Vishnevetsky’s misrepresentations described in Paragraphs 18 through 20 above, two pool participants transferred a total of \$1,017,500 to OCL for investments in the Hodges commodity pool between November 2009 and October 2010. Vishnevetsky used a portion of the pool participants’ monies to open and fund a commodity futures trading account in the name of Hodges Court at a registered FCM. During the period March 2010 to September 2010, Vishnevetsky lost approximately \$287,000, trading commodity futures in that account and withdrew approximately \$194,500 from the account.

22. Vishnevetsky misappropriated the Hodges pool participants’ monies by, among other things, using a portion of those monies to pay for personal expenses.

23. During the period March 2010 to the present, Vishnevetsky, individually and d/b/a Hodges and Hodges Court, issued false account statements to at least one participant who invested in his Hodges commodity pool. In particular, the account statements, on purported CIBC letterhead, misrepresented the value of the pool participant’s respective interest in the

pool, concealed Vishnevetsky's misappropriation of his monies, and falsely represented that CIBC was underwriting the Fund's investments, in connection with Hodges. One of the account statements purportedly bore the signature of a CIBC Managing Director, who, in fact, had no involvement in Vishnevetsky's pool and never signed the account statement.

24. Additionally, when the two Hodges pool participants asked to redeem their investments in the Hodges pool, Vishnevetsky falsely represented to them that he could not honor their redemption requests because their funds were purportedly frozen due to the MF Global bankruptcy action.

#### **Other Commodity Futures Fraud**

25. During period December 2007 through December 2009, two customers transferred \$100,000 each to OCL, in order for OCL and Vishnevetsky to place commodity trades on their behalf in managed accounts. In particular, Defendants entered into agreements with the two customers, which required Vishnevetsky to open and fund commodity trading accounts for the benefit of the customers, place commodity futures trades as instructed by the customers for their respective accounts, and issue account statements to the customers confirming that the trades had been placed and confirming the corresponding profits or losses to the account. Both customers understood Vishnevetsky to be an experienced commodities and securities professional. Vishnevetsky, however, failed to disclose to the foregoing customers that he was involuntarily terminated from his positions at Lehman and Morgan Stanley.

26. Defendants issued account statements to the two customers described in Paragraph 25 above, confirming that commodity futures accounts were opened for their benefit, that their monies were deposited into the accounts and that commodity trades were placed for their respective accounts, thereby generating profits or losses for their accounts. In fact,

Defendants opened no commodity trading accounts for these two customers. Because the two customers' monies were not used to open commodity accounts in their names, Defendants misappropriated these customers' monies.

27. Vishnevetsky emailed one of the customers described in Paragraphs 25 above approximately 70 fictitious account statements dated May 1, 2009 through November 30, 2009. These statements falsely represented that an account was opened in OCL's name at a registered introducing broker ("IB"), that the customer's monies were deposited into that trading account, and that the trades the customer instructed be placed were, in fact, placed for the account, thereby generating profits and losses for the account. When the customer contacted the IB that purportedly carried the account, the customer learned that an account was never opened at the firm and that all of the account statements Defendants issued to him were false.

#### **Misappropriation from the Three Fraudulent Schemes**

28. During the relevant period, Defendants solicited and accepted at least \$1,765,840 from pool participants and customers, returned approximately \$157,513 to pool participants and customers and lost approximately \$971,333 trading commodity futures. Therefore, Defendants misappropriated at least \$636,994 from pool participants and customers.

#### **CONCLUSIONS OF LAW**

29. This Court has jurisdiction over this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such

person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

30. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e), because the Defendants reside in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

31. Vishnevetsky and OCL cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive pool participants and commodity customers by:

- i) misrepresenting that OGMF had a profitable performance record, based on audited results, when in fact, the Defendants did not trade for OGMF and, therefore, the pool had no performance record and was never audited;
- ii) failing to open commodity futures accounts for the pool participants;
- iii) failing to inform participants and OCL's customers that Vishnevetsky was involuntarily terminated from his positions at Lehman and Morgan Stanley;
- iv) misrepresenting that commodity trading accounts were opened and funded for OCL's customers and that commodity trades were placed for their accounts, when in fact, no accounts were opened and no trades were ever placed;
- v) making or causing to be made false reports or statements to the OGMF, OGAF and Quantum pool participants and OCL customers who invested money with Defendants to trade commodity futures contracts; and
- vi) misappropriating OGMF, OGAF and Quantum pool participants' monies and OCL's commodity customers' monies, in violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA and the Dodd-Frank Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008.

32. Vishnevetsky, individually and d/b/a Hodges and Hodges Court, also cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive Hodges pool participants by knowingly and willfully: i) misrepresenting that CIBC was the prime broker and lead underwriter for the Hodges pool; ii) misrepresenting that CIBC set up a collateral account and pledged assets to ensure that the Hodges pool was able to repay the Libor Note holders their principal investments in the event of a default by Hodges; iii) failing to inform the Hodges participants that he was involuntarily terminated from his positions at Lehman and Morgan Stanley; iv) making false reports and statements to at least one Hodges pool participant; and v) misappropriating Hodges pool participants' monies, in violation of Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA and the Dodd-Frank Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008.

33. Defendants engaged in the violative conduct described in Paragraphs 31-32, in or in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.

34. During the relevant period, Vishnevetsky controlled OCL, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting OCL's violations of Sections 4b of the Act. Vishnevetsky is thereby liable for OCL's violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and for OCL's violations of Sections 4b(a)(1)(A)-(C) of the Act as

amended by the CRA and the Dodd-Frank Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, as a controlling person, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

35. Vishnevetsky was acting within the scope of his employment and as an agent of OCL when he violated the Act with regard to OGMF, OGAF and Quantum pool participants and OCL's commodity customers and, therefore, OCL, as Vishnevetsky's principal, is liable for Vishnevetsky's acts constituting violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and for Vishnevetsky's acts constituting violations of Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA and the Dodd-Frank Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2012).

36. OCL acted as a CPO during the relevant period in that it accepted and received funds from OGMF, OGAF and Quantum pool participants for the purpose of trading commodity futures contracts, and Vishnevetsky acted as an AP of a CPO during the relevant period in that he solicited funds for OCL. Vishnevetsky, individually and d/b/a Hodges and Hodges Court, acted as a CPO during the relevant period in that he accepted and received funds from two Hodges pool participants for the purpose of trading commodity futures contracts. In connection with such conduct, OCL and Vishnevetsky, individually and d/b/a Hodges and Hodges Court, used the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in their businesses as CPOs and an AP of a CPO.

37. OCL and Vishnevetsky, while acting as a CPO and an AP of a CPO, directly or indirectly employed a device, scheme, or artifice to defraud OGMF, OGAF and Quantum

commodity pool participants, or engaged in transactions, practices or a course of business which operated as a fraud or deceit upon commodity pool participants by knowingly:

i) misrepresenting that OGMF had a profitable performance record, based on audited results, when in fact, the Defendants never traded any account for OGMF and, therefore, the pool had no performance record; ii) failing to open and fund commodity trading accounts for the commodity pools; iii) failing to inform OGMF, OGAF and Quantum pool participants that Vishnevetsky was involuntarily terminated from his positions at Lehman and Morgan Stanley; iv) misappropriating OGMF, OGAF and Quantum participants' monies; and v) issuing false account statements to OGMF, OGAF and Quantum participants that misrepresented the value of their respective interests in the pools, and concealed Defendants' misappropriation of their monies, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

38. Vishnevetsky, individually and d/b/a Hodges and Hodges Court, while acting as a CPO, directly or indirectly employed a device, scheme, or artifice to defraud Hodges commodity pool participants, or engaged in transactions, practices or a course of business which operated as a fraud or deceit upon Hodges commodity pool participants by knowingly: i) misrepresenting that CIBC was the prime broker and lead underwriter for the pool; ii) misrepresenting that CIBC set up a collateral account and pledged assets to ensure that the pool was able to repay the Libor Note holders their principal investments in the event of a default by Hodges; iii) failing to inform participants that he was involuntarily terminated from his positions at Lehman and Morgan Stanley; iv) making false reports and statements to at least one Hodges pool participant; and v) misappropriating Hodges pool participants' monies, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

39. During the relevant period, Vishnevetsky controlled OCL and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting OCL's violations of Section 4o of the Act. Vishnevetsky is thereby liable for OCL's violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

40. Vishnevetsky was acting within the scope of his employment and as an agent of OCL when he violated the Act with regard to OGMF, OGAF and Quantum pool participants and, therefore, OCL as Vishnevetsky's principal, is liable for Vishnevetsky's acts constituting violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2012).

41. OCL and Vishnevetsky, individually and d/b/a Hodges and Hodges Court, acted as CPOs, without the benefit of registration as CPOs in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), and Vishnevetsky engaged in his solicitation activities for OCL without the benefit of registration as an AP of a CPO in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

42. During the relevant period, Vishnevetsky, directly or indirectly controlled OCL and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting OCL's violation of Section 4m(1) of the Act. Vishnevetsky is thereby liable for OCL's violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

43. OCL violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), by allowing Vishnevetsky to act as its AP.

44. OCL violated Regulation 4.20(a)-(b), 17 C.F.R. § 4.20(a)-(b) (2012), in that as a CPO, it failed to operate its pools as legal entities separate from that of the CPO and accepted

monies from pool participants for the purchase of interests in the pools in names other than the names of the commodity pools it operated. Vishnevetsky, individually and d/b/a as Hodges and Hodges Court, failed to operate his pool as a separate legal entity and accepted monies from pool participants for the purchase of interests in the pool in a name other than the name of the commodity pool, thus violating Regulation 4.20(a) and (b).

45. OCL and Vishnevetsky, individually and d/b/a Hodges and Hodges Court, violated Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2012), in that as CPOs they commingled funds received from pool participants by depositing such monies into bank and trading accounts containing Defendants' personal assets as well as funds of others received by Defendants for other purported investment vehicles.

46. During the relevant period, Vishnevetsky, directly or indirectly controlled OCL and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting OCL's violations alleged in this count. Vishnevetsky is thereby liable for OCL's violations of Regulation 4.20(a)-(c), 17 C.F.R. § 4.20(a)-(c) (2012), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

**Need for Permanent Injunction and Other Ancillary Equitable Relief**

47. Plaintiff has made a showing that Defendants have "engaged, are engaging, or are about to engage in acts and practices in violation of the Act and Commission Regulations." Notwithstanding their default, the totality of the circumstances establish that, unless 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 and Regulations.

## ORDER OF PERMANENT INJUNCTION

### IT IS HEREBY ORDERED THAT:

48. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, Defendants are permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Cheating or defrauding or attempting to cheat or defraud other persons and willfully deceiving or attempting to deceive other persons by making false, deceptive or misleading representations of material facts, by failing to disclose materials facts, or by misappropriating customer funds in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made for or on behalf of any other person, in violation of Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C);
- b. Willfully making false reports or statements or causing false reports or statements to be made to other persons, in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made for or on behalf of any other person, in violations of Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b(a)(1)(B);
- c. Employing any device, scheme, or artifice to defraud any participant or prospective participant, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any participant or prospective participant, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1);
- d. Acting as a CPO and an AP of a CPO without the benefit of registration with the Commission, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006) and Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006); and
- e. Receiving funds from commodity pool participants in the name of the CPO and commingling those funds with personal assets or the funds of others received for other investment vehicles, in violation of Regulation 4.20(a)-(c), 17 C.F.R. § 4.20(a)-(c) (2012).

49. Defendants are also 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, 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 1.3(hh), 17 C.F.R. § 1.3(hh) (2012)) (“commodity options”), swaps (as that term is defined in Section 1a(47) of the Act, as amended, and as further defined by Commission regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx)); security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and/or 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and/or 2(c)(2)(C)(i)) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;
- c. having any commodity futures, options on commodity futures, commodity options, swaps, security futures products, and/or forex contracts traded on their behalf;
- d. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, swaps, security futures products, and/or forex contracts;
- e. soliciting, receiving or accepting funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, swaps, security futures products, 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) (2012); and
- g. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent or any other officer or employee of any person (as that term is defined in Section 1a(28) of the Act, 7 U.S.C. § 1a(28) (2006)) 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) (2012).

## **RESTITUTION AND CIVIL MONETARY PENALTY**

### **A. Restitution**

50. Defendants shall pay restitution in the amount of one million six hundred eight thousand three hundred twenty-seven dollars (\$1,608,327) (“Restitution Obligation”). Post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this

Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006). Vishnevetsky was a defendant in a criminal action charging him, in part, for the misconduct that is at issue in this matter. See *United States of America v. Dimitry Vishnevetsky*, Case No. 12 CR 315, United States District Court for the Northern District of Illinois, filed May 1, 2012 (“Criminal Action”). For amounts disbursed to Defendant’s pool participants and customers as a result of satisfaction of any restitution ordered in the Criminal Action, the Defendants shall receive a dollar-for-dollar credit against the Restitution Obligation. Within ten (10) days of disbursement in the Criminal Action to Defendants’ pool participants and customers, Vishnevetsky shall, under a cover letter that identifies the name and docket number of this proceeding, transmit to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, copies of the form of payment to those pool participants and customers.

51. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendants’ pool participants and customers, the Court appoints the National Futures Association (“NFA”) as Monitor (“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 this 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.

52. Defendants shall make Restitution Obligation payments under this Consent Order to the Monitor in the name “Vishnevetsky/OCL – Restitution Fund” and shall send such

Restitution Obligation 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 Defendants and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581.

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

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

55. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' participants and customers during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581.

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

57. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each participant or customer of Defendants 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 Defendants to ensure continued compliance with any provision of this Consent Order and to hold Defendants in contempt for any violation of any provision of this Consent Order.

58. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendants' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

**B. Civil Monetary Penalty**

59. Defendants shall, jointly and severally, pay a civil monetary penalty in the amount of one million nine hundred ten thousand nine hundred eighty-two dollars (\$1,910,982) ("CMP Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the CMP

Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006).

60. Defendants shall pay their 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, then 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: Accounts Receivables – AMZ 340  
E-mail Box: 9-AMC-AMZ-AR-CFTC  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, Defendants shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies Defendants and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

61. Any acceptance by the Commission or the Monitor of partial payment of Defendants' Restitution Obligation or CMP Obligation shall not be deemed a waiver of their 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.

62. Defendants shall not transfer, or cause others to transfer, funds or other property to the custody, possession, or control of any members of their family or any other person or entity for the purpose of concealing such funds from this Court, the Commission, or the Monitor until the Restitution Obligation and the CMP Obligation set forth above have been satisfied in full.

63. All notices required by this Order shall be sent by certified mail, return receipt requested. Notices to the CFTC shall be sent to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. Defendants shall provide the CFTC with written notice of all changes to their contact telephone numbers and/or mailing addresses within ten (10) calendar days of the change(s). Until such time as Defendants satisfy their Restitution and CMP Obligations as set forth in this Consent Order, Defendants shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

64. The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendants, upon any person under their 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 Defendants

65. This Court shall retain jurisdiction of this cause to assure compliance with this Order, the Restitution Obligation and for all other purposes related to this action. This Order shall be interpreted and enforced according to the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Northern District of Illinois, Eastern Division,

and all provisions of the Act and Commission Regulations relating or referring to the obligations hereunder.

65. There being no just cause for delay, the Clerk of the Court shall enter final judgment against Defendants forthwith and without further delay. There being no pending matters remaining in this matter, the case may be closed.

DONE AND ORDERED this 26th day of February, 2014.

A handwritten signature in black ink, appearing to read "Rubén Castillo", is written over a horizontal line. The signature is cursive and stylized.

Rubén Castillo  
Chief United States District Judge