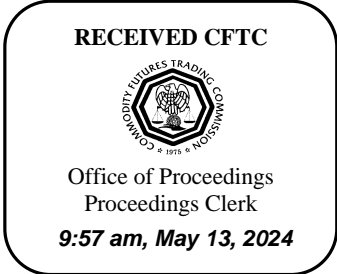




U.S. COMMODITY FUTURES TRADING COMMISSION

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www.cftc.gov

Office of Proceedings



Mark Sergio, *

Fred and Darcy Frost, *

Alan Guo and Weili He, *

George Smith, Bruce Ai, *

Herm, LLC, *

Janice C. Marschel Revocable Trust, *

Daniel L. Baker, Jr. and Margie M. *

Baker Revocable Trust, *

Kevin Schmidt, and *

John Corbett, *

Complainants, *

v. *

JBJ Capital Management, Inc., and *

Martin Dim, *

Respondents. *

CONSOLIDATED CASES

CFTC Docket Nos. 18-R012; 18-R014;
18-R015; 18-R016; 18-R017; 18-R018;
18-R019; 18-R020; 18-R021; 18-R022
Served Electronically

INITIAL DECISION AWARDING DAMAGES

Before: Kavita Kumar Puri, Administrative Judge
Commodity Futures Trading Commission
Washington, D.C.

Appearances: John J. Muldoon, III
Muldoon & Muldoon, LLC
Chicago, Illinois
For Complainants

Martin L. Dim
Self-Represented
Santa Monica, CA
For Respondents

The Complainants brought this case as a formal proceeding in 2018 for fraudulent solicitation and fraud against Martin L. Dim and his corporate form, JBJ Capital Management, Inc., because of seven-fold losses they incurred on February 5, 2018. Complainants argue that Dim misrepresented the risks of his trading strategies and failed to disclose that their principal investments were in jeopardy, leading to their losses. In contrast Dim argues on behalf of himself and JBJ Capital Management that Complainants' losses were caused by non-party Advantage Futures' (the futures commission merchant's) hamstringing of Dim's ability to put on the positions he wanted and the volatility of February 5, 2018. He also argues that Complainants' claims are precluded by their receipt of the required disclosure documents.

This case went to a two-day hearing held on November 15 and 16, 2022. After careful consideration of the parties' evidence and sworn testimony, both oral and written, I find that Respondents Dim and JBJ Capital Management, Inc. committed fraud, violated certain provisions of the Commodity Exchange Act (CEA), and are liable to each of the Complainants for the entirety of their losses as set forth below. I also find Respondents responsible for pre-judgment interest from February 5, 2018 through the date of this Order, and post-judgment interest in the amounts listed below in the Conclusion. Finally, Respondents are ordered to pay the ten Complainants each of their filing fees of \$250, amounting to a total of \$2,500.

I. Procedural History

1. Complainants initially filed a single Complaint on February 15, 2018.

2. This Office sent a letter to the Complainants informing them that they were required to file separate complaints because “they opened separate accounts and have separate account numbers.” Pugh Letter to Complainants at 1 (Feb. 22, 2018).

3. On February 26, 2018, Complainants Lahanh Dang (18-R009), Barbara Terry (18-R010), Barbara and Christopher Terry (18-R011), Mark Sergio (18-R012), Kathryn Sergio (18-R013), and Fred and Darcy Frost (18-R014) filed their Complaints.

4. On February 27, 2018, Complainants Alan Guo and Weili He (18-R015), George Smith (18-R016), Bruce Ai (18-R017), and Herm, LLC (18-R018) filed their Complaints.

5. On February 28, 2018, Complainants Janice C. Marschel Revocable Trust (18-R019), Daniel L. Baker Jr. and Margie M. Baker Revocable Trust (18-R020), and Kevin Schmidt (18-R021) filed their Complaints.

6. And on March 1, 2018 John Corbett (18-R022) filed his Complaint.

7. On May 17, 2018, Respondent Advantages Futures LLC filed its Answer, as well as its Motion To Dismiss and Memorandum In Support Of Its Motion To Dismiss.

8. This Office denied Advantage Future’s Motion To Dismiss “because the criteria for forwarding [the] complaint and for initiating a reparations proceeding [had] been met.” *See* Director of Office of Proceedings Letter to Advantage Futures at 1 (Jun. 13, 2018).

9. On May 21, 2018, Respondents JBJ Capital Management, Inc. and Martin Dim filed a Notice of Appearance And Request For Extension Of Time (Motion For Extension Of Time).

10. This Office granted Respondents Motion For Extension Of Time, and the Answer was due by June 19, 2018. *See* Director of Office of Proceedings Letter to JBJ Capital and Dim at 1 (May 22, 2018).

11. After curing the defects in the initial Answer, Respondents JBJ Capital and Dim timely filed their Amended Answer (JBJ and Dim Answer) on August 6, 2018.

12. These cases were forwarded to my docket on August 17, 2018.

13. On August 31, 2018, Complainants filed a Motion To Consolidate. None of the Respondents objected to consolidation.

14. I granted Complainants unopposed Motion To Consolidate, and informed Advantage Futures it could re-file its Motion To Dismiss before the close of discovery. *See* Consolidation & Discovery Order at 2 (Sept. 4, 2018).

15. Advantage Futures re-filed its Motion To Dismiss on September 7, 2018. That Motion To Dismiss lead to unimportant scheduling activity, as well as a consent Motion To Stay Proceedings Pending Settlement Negotiations filed by all parties on October 17, 2018.

16. Advantage Futures had several, separate lawsuits against the individual Complainants in state and federal courts to collect margin deficiencies arising from the same set of facts at issue in these consolidated cases. *See* Motion

To Extend Time To File Amended Complaint (Apr. 25, 2019), and Second Motion To Extend Time To File Amended Complaint (May 17, 2019). In the interest of judicial economy, I stayed these proceedings on October 18, 2018 while those litigations were pending to see if a universal settlement—involving the margin collection cases as well as the cases here—could be reached.

17. After a brief email exchange, the parties agreed to attend a teleconference that took place on February 27, 2019. At that teleconference, I gave Complainants four weeks to file a motion to amend the complaint pending continued settlement discussions between the parties. *See* Judge Puri Email To Parties (Feb. 27, 2019).

18. The parties did not settle, and on April 25, 2019, Complainants filed a Motion To Extend Time To File Amended Complaint from May 6, 2019 to May 20, 2019.

19. On May 2, 2019, I granted that Motion by way of Order.

20. On May 17, 2019, Complainants filed a Second Motion To Extend Time To File Amended Complaint. In that Motion, Complainants requested an indefinite extension of the May 20, 2019 deadline to amend their complaint, as well as a status conference with Respondents and this Office sometime in July 2019.

21. I granted Complainants' request to hold a status conference in July 2019, and stayed these consolidated cases pending the completion of the status conference. *See* Order Staying Consolidated Cases And Holding July Status Conference at 2 (May 20, 2019).

22. The status conference was held on July 31, 2019. *See* Order (June 7, 2019).

23. After the status conference, I lifted the stay on these cases. I further ordered Complainants file their response to Respondent Advantage Futures' Motion To Dismiss along with their proposed amended complaints. *See* Scheduling Order at 2 (July 31, 2019).

24. On September 3, 2019, Complainants filed their Response and Motion to Amend the Complaints and append their proposed amended complaints.

25. While these proceedings were underway, from September 2019 through February 2021, the parties sent this Office periodic updates concerning the Advantage Futures cases. *Id.*

26. During that time, each of the fourteen Complainants filed motions to dismiss Respondent Advantage Futures after settling their disputes, all of which were granted. *See* Orders from June 24, 2019 through Oct. 7, 2020 dismissing Advantage Futures cases.

27. On March 25, 2021, the parties attended a status conference. On that same day the parties were served an Amended Scheduling Order which discussed that Complainants and Advantage Futures had amicably settled their disputes and Advantage Futures was no longer a party to these cases. *See* Amended Scheduling Order at 1-2 (Mar. 25, 2021).

28. In that same Order, I detailed the four cases (of the original fourteen) that were dismissed in their entirety after Lahanh Dang (18-R009), Barbara Terry

(18-R010), Barbara and Christopher Terry (18-R011), and Kathryn Sergio (18-R013) also amicably settled their disputes with JBJ Capital Management and Dim.

29. The remaining ten cases, 18-R012 and 18-R014 through 18-R022, moved forward against the two remaining Respondents—JBJ Capital Management and Martin Dim.

30. I held an additional discovery conference on July 15, 2021 to ensure the necessary discovery between the remaining parties would be exchanged and to resolve any outstanding issues.

31. On August 9, 2021, counsel for the parties emailed our Office requesting I stay these proceedings pending their renewed settlement discussions. *See Email From Counsel For Resps. To OP (Aug. 9, 2021)*. I issued an Order and stayed the remaining proceedings pending the outcome of the parties' negotiations. *See Order (Aug. 9, 2021)*.

32. Those settlement discussions were unfruitful, and I reopened the proceedings on October 14, 2021.

33. While attempting to schedule a hearing, Respondents JBJ Capital's and Dim's counsel withdrew his representation on October 24, 2022. *Email From Counsel For Resps. To OP (Oct. 24, 2022)*.

34. After Dim and JBJ Capital Management became self-represented, the parties agreed to hold a virtual prehearing conference and a hybrid format hearing, in which Dim would appear in person in Washington, DC, and Complainants would appear virtually.

35. A virtual prehearing conference was held on November 3, 2022.

36. The hybrid hearing was held virtually and at the Commission's Office in Washington, DC on November 15 and 16, 2022. Dim represented himself. The following witnesses appeared on behalf of Complainants: John Corbett, Barbara Herman, Alan Guo, George Smith, Bruce Ai, and Fred Frost. Dim appeared as the sole witness for the Respondents.

37. After the hearing, the parties were ordered to submit their post-hearing briefs. *See* Post-Hearing Briefs Order (Feb. 23, 2023). The parties timely submitted their briefs on April 4, 2023.

38. This case is now ready for disposition.

II. Findings of Fact

1. Respondent Martin Dim served as the Principal, owner and sole employee of JBJ Capital Management, Inc. from December 2015 to sometime in early 2018. Dim and JBJ were registered commodity trading advisors (CTAs) from March 17, 2016 to October 11, 2018. Compls. at 2; JBJ and Dim Answer at 26-27; *See also* NFA Basic research available at <https://www.nfa.futures.org/BasicNet/basic-profile.aspx?nfaid=NxASgaDqNM4%3D>.

2. Respondent JBJ Capital Management, Inc. was a CFTC-registered CTA from March 17, 2016 to October 11, 2018. *See* NFA Basic research available at <https://www.nfa.futures.org/BasicNet/basic-profile.aspx?nfaid=dpCLbnWZsXM%3D>.

Individual Complainants

3. Complainant Bruce Ai is a resident of Piscataway, NJ. He met Dim while Dim was teaching a Futures and Options class at Online Trading Academy in New Jersey. Ai Aff. ¶ 5. Dim explained to Ai during class or on a break that he was a trader with his “own company” and could “help people.” Nov. 15 Tr. at 117-18.

4. Ai told Dim during that break,

I do not need to squeeze every penny off the market because this money is for my, for my children, for their education, or maybe living expenses. So, to me, to preserve the money is the most important. Now you told me it's very safe. It's like . . . an insurance policy. Over time, it will increase; you will, you will get more money. And I asked you repeatedly, would it be very safe? And you told me, yes, it's very safe. So, that's what I remember vividly.

Nov. 15 Tr. at 120-21.

5. Dim solicited Ai's business, “promis[ing Ai that] his system was safe . . . due to his professional trading experience.” Ai Aff. ¶¶ 6-7. He did so at a train station meeting that Dim himself requested. Nov. 15 Tr. at 126-27.

6. Ai “emphasized that [he needed] to keep these funds safe as they were intended for [his] 3 young children's college funds and living expenses.” Ai Aff. ¶ 8.

7. Based on Dim's assurances, Ai invested \$999,400 with him. Ai Aff. ¶ 10.

8. Although Dim promised to preserve Ai's assets and make that his first priority, Dim proceeded to invest Ai's funds in exceptionally risky positions. Ai Aff. ¶ 11.

9. In December 2017 or January 2018, Ai informed Dim that he needed to withdraw \$500,000 in order to pay an insurance premium. Not only did Dim not do

so, citing margin deficiencies as an excuse, he never provided this money to Ai. Ai Aff. ¶¶ 12-14; Nov. 15 Tr. at 138-40. Ai made this request without knowing the “account was in deep trouble.” Nov. 15 Tr. at 140.

10. Ai was completely unaware he did not need Dim’s permission to withdraw money from his account. Nov. 15 Tr. at 140.

11. On February 1, 2018, Ai sent Dim an email instructing him not to make any trades without first contacting him. Dim ignored this instruction and continued to put on trades. Ai Aff. ¶¶ 15-18.

12. As of February 6, 2018, Ai’s account had a deficit of \$6,899,815.07. Ai Aff. ¶ 20.

13. As a result of these losses, Ai had to pay Advantage Futures \$4.4 million to settle its margin recovery suit against him. Ai Aff. ¶ 21.

14. In total, Ai has suffered \$5,399,500 in losses. Ai. Aff. ¶ 22.

15. As a result of these heavy losses, Ai has had to sell his assets, and borrow money from his insurance policies. He has been struggling to keep his business above water and his children have lost their education funds. Ai Aff. ¶¶ 6-23-25.

16. Complainant Daniel L. Baker, Jr. and Margie M. Baker Revocable Trust (the Baker Trust) is organized in Wisconsin. Daniel Baker met Dim in August 2013 while Dim was teaching an investment seminar in Milwaukee, WI through Online Trading Academy. Baker “kiddingly told [Dim] he should just hire [Dim] to manage” Baker’s investments. Baker Aff. ¶8.

17. Dim lead him to believe it would be unethical for him to solicit clients while being employed by Online Trading Academy, but Dim nevertheless contacted Baker less than a month later with an invitation to be his client. Baker Aff. ¶¶ 9-10.

18. At that time, around 2014, Baker gave Dim \$200,000 to invest, and within the year, invested another \$495,000. In total, Baker invested \$695,000. Baker Aff. ¶¶ 11-12.

19. Some months Baker lost money and some he made money, but Baker asked Dim “[m]ore than once” whether he was “ever in danger of losing all [his] money.” Dim assured him “that with his built-in safeguards, that could never happen.” Baker Aff. ¶¶ 13-17.

20. However, by February 6, 2018, Baker was left with a deficit of \$6,298,477.70 in his account. Baker Aff. ¶ 19.

21. Baker paid \$225,000 to Advantage Futures to settle its margin deficiency lawsuit. In total, Baker suffered \$920,000 in losses. Baker Aff. ¶¶ 21-22.

22. In an email on February 7, 2018, Dim apologized for the losses and stated “If I had any assets I would willingly share them with you.” When Baker responded that the very least he could do was pay the \$10,488 in account fees Dim collected in January 2018, Dim never responded. Baker Aff. ¶¶ 23-26.

23. Baker also states that during the entirety of his trading relationship with Dim, Dim never disclosed the extent to which Baker’s account was leveraged. Baker Aff. ¶ 29.

24. Baker further testified that as a result of these losses, his relationships with his wife and children have greatly suffered, and that he has contemplated suicide. Baker Aff. ¶¶ 30-34.

25. Complainant John Corbett resides in Dresher, PA. He met Dim while Dim was teaching an investment seminar through Online Trading Academy. Corbett Aff. ¶ 5. Nov. 15 Tr. at 9. He invested with him because Dim told him “at no time would all of [his] investment be at risk.” Corbett Aff. ¶ 7; Nov. 15 Tr. at 12. Corbett informed Dim that he was looking to him to help him feel financially secure as he approached retirement. Nov. 15 Tr. at 9. Corbett never understood Dim’s trading strategy. Nov. 15 Tr. at 23-24. Dim considered Corbett his friend. Nov. 15 Tr. at 8:15-16 (noting that they went to dinners together).

26. Corbett invested \$170,000, and ended up owing Advantage Futures \$929,066.48 on February 6, 2018. Corbett Aff. ¶¶ 8-9. Corbett settled the margin deficiency action brought by Advantage Futures for \$15,000, and has therefore suffered \$185,000 in damages. *Id.* ¶¶ 8-12.

27. Complainants Fred and Darcy Frost reside in Bothell, WA. Fred Frost met Dim in Bellevue, Washington while Dim was teaching an investment seminar through Online Trading Academy in November 2013. Frost Aff. ¶ 5. They spoke together on a break while heading to the men’s room. Frost asked him whether Dim did any work privately, and Dim “encouraged [him] to wait and talk later about [his] question.” Nov. 15 Tr. at 148.

28. Dim was invited to the Frost home for dinner some time thereafter, and Frost and Dim spoke again about opening up a trading relationship. Nov. 15 Tr. at 148-49.

29. He and Dim then began a mentorship relationship, in which Dim had limited authority to trade the Frosts' funds through a platform offered by TD Ameritrade from roughly February 2014 through February 2017. Frost Aff. ¶¶ 8-12. Frost considered Dim a friend and mentor, and he and Darcy Frost met with Dim and his wife, Joan in Chicago, IL in 2015. *Id.* ¶¶ 14, 18; Nov. 15 Tr. at 150.

30. At some point Dim lost the Frosts \$62,000. Fred and Darcy Frost flew to the Dim home in Chicago to be supportive of Dim during that time. As part of their support, they loaned Dim \$7,000. Nov. 15 Tr. at 150.

31. The Frosts made this loan because Dim was running into problems in "his personal debt situation, day-to-day, monthly bills, etc." Dim repaid the monies within about two months. Nov. 15 Tr. at 158.

32. And then in November 2017 at yet another visit to Chicago, Dim convinced Frost to invest with him through Advantage Futures because of his "22 months of successful trading." *Id.* ¶ 20-25. During that meeting, Dim told Frost that Advantage Futures was unhappy with Dim's trading strategy because he was having margin deficiency issues, but that Advantage Futures helped him improve his strategy. Nov. 15 Tr. at 152-54, 161-64. This convinced Frost to invest \$152,000 with Dim at that time. *Id.*

33. Frost had a debt of \$926,412.06 in his account on February 6, 2018. Frost paid Advantage Futures \$50,000 and transferred his wife's mineral rights (worth about \$100,000) to Advantage Futures to settle their margin deficiency action against him. *Id.* ¶ 35-38. Frost thus lost \$302,000 through his investment with Dim.

34. Complainant Alan Guo resides in San Jose, CA. Guo met Dim in June 2015, while Dim was teaching an investment seminar through Online Trading Academy in San Jose, California. Nov. 15 Tr. at 48. Although Guo received the impression from Dim during that course that Dim's trading was super-secure, Guo Aff. ¶ 7, he could not understand what the actual trading strategy entailed. Nov. 15 Tr. at 52-54. During Dim's classroom presentation, he mentioned that he had been trading for over 30 years, Guo Aff. ¶ 7, and had an advisory to help people manage their money, Nov. 15 Tr. at 56. Guo asked about the advisory, and he and Dim ended up discussing it in the hotel room because Dim was not permitted to discuss it during class or during class break-out sessions or breaks. Nov. 15 Tr. at 56-57.

35. Guo told Dim he was a "senior near retirement with very unstable jobs," and that he "did not [want] to take any risky investments." Guo Aff. ¶ 9.

36. Guo was assured by Dim that his account would be traded separately from other customers' accounts because he wanted to be very conservative with his money. Nov. 15 Tr. at 59-62; Guo Aff. ¶ 10.

37. Guo was nervous about investing, so he told Dim repeatedly that he was a very conservative guy who could not afford to lose principal. Guo Affidavit ¶

13. Dim assured Guo repeatedly that he was conservative too, that he would specially assign different risk parameters to manage Guo's account. Guo Aff. ¶ 14.

38. Dim never disclosed that his customers could lose many times their capital. Nov. 15 Tr. at 64-67.

39. Eventually Guo was convinced to transfer his account from TD Ameritrade to Advantage Futures. Guo Aff. ¶¶ 17-24.

40. Although Guo initially invested \$260,000 in a prior account at TD Ameritrade, he invested \$278,000 with Dim in December 2016 through Dim's Advantage Futures account and owed Advantage Futures \$1,888,371.52 on February 6, 2018. Guo settled the margin lawsuit brought by Advantage Futures for \$275,000, and as a result has experienced \$553,000 in losses. Guo Aff. ¶¶ 24-28.

41. Guo states that investing with Dim "ruined [his] financial life and future, broke [his] family, and destroyed [his] health." Guo Aff. ¶ 30. He has suffered "sleepless nights, liver pain, [and] serious depression" as a result. Guo Aff. ¶ 30.

42. Complainant Herm, LLC is incorporated in Ohio. Barbara Herm and her now-deceased husband met Dim when he was teaching a trading class for couples. Herm Aff. ¶ 5. Dim convinced Herm and her husband "that it would be safer for him to handle our larger trading." Herm Aff. ¶ 6. They were convinced not because of anything Dim said in private, but because of his knowledge base as a teacher and the impression he gave. Nov. 15 Tr. at 36-38. They proceeded to invest \$200,000 with Dim through their company, Herm, LLC. Herm Aff. ¶ 8.

43. Barbara Herm's husband passed away in 2016, after which time she spoke to Dim frequently. Herm Aff. ¶ 9. He was able to provide this reassurance because he and Barbara Herm had a "friendship and trusting relationship." Nov. 15 Tr. at 31-32.

44. To that end, Herm began taking a monthly draw of \$2,000, and she received a total of \$26,000 in monthly draws through January 2018. Herm Aff. ¶¶ 13-14.

45. By February 6, 2018, Herm had a deficit of \$1,894,951.05 in her account. Herm Aff. ¶ 15.

46. She paid \$140,000 to Advantage Futures to settle the margin deficiency lawsuit against her. Herm Aff. ¶¶ 16-17.

47. As a result, she has suffered \$314,000 in damages. Herm Aff. ¶ 18.

48. Complainant Janice C. Marschel Revocable Trust is incorporated in Minnesota. Ms. Marschel's son met Dim while Dim was teaching an investment seminar. She invested \$197,829.66 with him and had a deficit of \$1,221,745.50 on February 6, 2018. She paid Advantage Futures \$243,387.89 to settle the margin deficiency claims against her, and therefore lost \$441,217.55 through her accounts with Dim. Marschel Aff. ¶¶ 1-10.

49. Complainant Kevin Schmidt is now deceased and his claims are brought by his surviving spouse, Katherine Schmidt. Schmidt Aff. ¶ 5. Katherine Schmidt resides in Buffalo, MN. Kevin Schmidt met Dim at the investment seminar. Schmidt Aff. ¶ 5. Dim and Schmid had a few drinks afterwards, where he

explained to Schmidt that there was “no risk” to trading with him because of the way Dim put his “stops in.” Schmid Aff. ¶¶ 5-7. Based on Dim’s statements, the Schmidts collectively invested \$150,000.

50. By February 6, 2018, Dim’s trading lead to an account deficit of \$914,157.84 in the Schmidts’ Advantage Futures account. Schmidt Aff. ¶ 11. Advantage Futures then sued Schmidt to recover the margin deficiency, and to settle the lawsuit, Katherine Schmidt paid \$176,246.11. *Id.* ¶ 12. In total, Katherine Schmidt suffered \$326,246 in losses in accounts traded by Dim. *Id.* ¶ 16.

51. In addition to the monetary damages, the matter “created a financial disaster” and “ruined” the Schmidts’ marriage. *Id.* ¶ 14. Katherine Schmidt believes the financial ruination “played a part in the degradation of Kevin [Schmidt’s] health and ultimately his death.” *Id.* ¶ 15.

52. Complainant Mark Sergio resides in Boyton Beach, FL. Sergio was assured by Dim that he could provide him “significant gains without any risk.” Sergio Aff. ¶ 5. He further assured him “there was nothing to worry about and that [Sergio’s] capital would be safe.” *Id.* ¶ 7.

53. Dim never informed him he could “lose more money than [his] investment.” *Id.* ¶ 8.

54. Sergio was induced to invest \$100,000 with Dim. Once he did so, his investment began losing money. As a result, Sergio “called Dim repeatedly but [Dim] never returned [his calls].” “Instead Dim simply sent emails saying everything was fine and that the margin calls would be fixed.” *Id.* ¶¶ 10-12.

55. The margin call issues were not fixed, and as of February 6, 2018, Sergio had a deficit of \$621,545.55 in his account. *Id.* ¶ 14.

56. Advantage Futures sued to recover that deficit, and as a result, Sergio had to pay \$323,234 to settle the claims against him. In total, he has suffered \$423,234 in losses through his investment with Dim. *Id.* ¶¶ 14-20.

57. In addition to his financial losses, Sergio has suffered sleepless nights, weight loss due to the anxiety, as well as serious depression from these events. *Id.*

58. Complainant George Smith resides in West Islip, NY. He met Dim during a class at Online Trading Academy in New York, New York in 2011. Smith Aff. ¶ 5.

59. Dim was teaching a class regarding trading set ups and guard rails, and went through strategies on how to avoid losing a lot of money through risk mitigation and stop loss orders. *Id.* ¶¶ 6-11.

60. During that class, Dim made clear to Smith that Dim knew how to “avoid big losses,” which was what the bulk of his class teaching was about. Nov. 15 Tr. at 80-84.

61. Smith and Dim considered each other friends. Nov. 15 Tr. at 72. Smith would meet Dim in Chicago periodically while Smith went there for business trips. During one such meeting, Dim mentioned he was starting an investment company trading futures using the same strategies he taught in his class. *Id.* ¶¶ 12-14.

62. Smith invested with Dim, first using TD Ameritrade to host his account and then Advantage Futures. *Id.* ¶¶ 16-19.

63. Smith realized he could lose up to 30% of his money and that such trading was risky, but at no time did he realize he could have lost all of his money or more. Nov. 15 Tr. at 82.

64. Smith decided to invest with Dim for two reasons. “One is because [he was] teaching the class; and the other reason is the risk strategy [Dim] described in class.” Nov. 15 Tr. at 86.

65. Smith “thought things were going well” until he got a call from Dim at 10:00 pm on February 5, 2018 telling him that he, Dim, “was no longer allowed to trade the account” and that Smith had a \$500,000 margin call. *Id.* ¶ 20.

66. By February 6, 2018, that deficit increased to over \$1,200,000. *Id.* ¶ 21.

67. Dim then was “unavailable” while Smith tried to contact him to ask for advice and help on how to liquidate his account. **Dim then sent an email to Smith and other investors stating that “his wife had taken his phone and refused to let him contact” them.** *Id.* ¶¶ 22-23 (emphasis added).

68. In total, Smith invested \$180,000 with Dim. As of February 6, 2018, Smith’s account had a deficit of \$1,276,332.84. Advantage Futures sued to recover that amount, and Smith paid a total of \$845,186.70 to settle the losses. In total, Smith suffered \$1,025,186.60 in losses with respect to the account traded by Dim. *Id.* ¶¶ 28-32.

69. The litigation and losses resulted in the family experiencing extreme stress, and contributed to cardiac issues—including his wife’s surgical insertion of a pacemaker/defibrillator. *Id.* ¶¶ 33-34. In addition, they were unable to provide their desired wedding for their daughter, and delayed their own retirement due to these huge losses. *Id.* ¶¶ 36-37.

Facts Regarding Respondent Dim Generally

70. Dim traded each of Complainants’ accounts at Advantage Futures during some period between 2015 and February 28, 2018.

71. Dim represented himself as a mentor, instructor, teacher and friend to his investors. Nov. 15 Tr. at 72, 92, 126, 148-49 and *passim*; Nov. 16 Tr. *passim*.

72. Dim testified that he “tried to represent and protect these people who I all considered my friends to the best of [his] ability at all times.” Nov. 16 Tr. at 102.

73. In fact, he “considered their money [his] money.” Nov. 16 Tr. at 102-03.

74. He met each and every one of the above Complainants through a class he taught regarding online trading about how to avoid big losses. *See* ¶¶ 3, 16, 25, 27, 34, 42, 48, 49, and 58 above.

75. The Complainants were convinced that Dim was the correct CTA for them because they were impressed with his class presentation. *See* ¶¶ 3, 34, 42, 59-60 above.

76. Dim gave each of the investors the impression that he would be conservative and safe with their funds because his trading strategy was about loss limitation. *See* ¶¶ 4-6, 19, 25, 34-36, 42-43, 49, 52, 59-60 above.

77. None of the investors except Fred Frost (Nov. 15 Tr. at 160) understood the mechanics of Dim's trading strategy or trade placement. Nov. 15 Tr. at 142-43; *see also* ¶¶ 25 and 34, above.

78. Dim's general trading strategy involved buying S&P 500 E-Mini put options each month that would expire at month-end, which he would sell as close to month-end as possible. To cover those puts, he would buy puts at the beginning of each week that would expire on Friday of the same week. The goal was to have these weekly puts expire worthless, but for the premiums collected from the sale of the monthly puts to exceed their costs. It was a way for him to collect the premiums by way of profit. *See, e.g.*, Nov. 16 Tr. at 6-16.

79. This was not a set it and forget it strategy because Dim was required to keep replacing expired puts to cover the puts he had expiring at the end of the month. If Dim failed to do so, he would have naked puts out there. Nov. 16 Tr. at 16-17.

80. However, in January 2018, Dim departed from his usual trading strategy by adding a calendar call spread. Nov. 16 Tr. at 18-22. Dim was also trading "three or four times more than normal" in January 2018. Nov. 16 Tr. at 68 (citing Compl. Ex. C000057 (Jan. 17, 2018 Recording at 7:06 am between Dim and Advantage Futures)).

81. Dim did not inform his investors that he had begun deploying a different strategy as of January 2018. Nov. 16 Tr. at 25.

82. He also, on at least one occasion, deployed butterfly trades in large amounts without telling his investors. Nov. 16 Tr. at 57-58.

83. Dim did not keep track of his trades in any permanent or electronic way, despite the fact that he was trading complex options and deploying mathematically difficult trading strategies. Rather, Dim used a whiteboard to record his trades. Nov. 16 Tr. at 59. He would not “keep track of the specific execution prices of every trade in real time because almost everything he did . . . was done as a spread transaction.” Nov. 16 Tr. at 59-60. He would then record net credits or debits and hope they “got filled in the market,” but he would never know the precise fill prices. Nov. 16 Tr. at 60. He would make sure the orders were executed but did not confirm at what prices. *Id.*

84. This failure to record his trades accurately caused problems when talking to Advantage Futures because he could never verify the accuracy of his investors’ position allocations . . . Nov. 16 Tr. at 62, 68 (Compls. Ex. C000048-59 (Jan. 17, 2018 Recording at 7:06 am between Dim and Advantage Futures)).

Dim’s Problems With Margin Calls

85. As a general matter, Dim did not understand how to cure margin deficiencies.

86. Dim began going on and off margin calls once he changed his investment strategy in January 2018. Compl. Ex. G at 3029. Although he admitted

in an email sent on January 15, 2018 at 2:48 pm to his investors that there was a “50/50 possibility” he created a margin call that day, he gave no information as to how he got into that situation. *Id.*

87. In an email sent the following day, Dim states his “first priority is and always will be, protection of principal.” Compl. Ex. G at 3031.

88. Then on January 17, 2018 Dim sent his investors an email stating there was a margin call which “will be cured” without “any action necessary on [the investors’] part.” Compl. Ex. G at 3033.

89. Despite the sanguine and reassuring tone he struck with his investors, the calls Dim had with Advantage Futures make clear Dim had no idea what he was doing in terms of managing his investors’ risk or their margin. Dim was in fact falling apart at this time.

90. Dim’s investors’ accounts were on margin call four days in a row, from January 15 through January 19, 2018. **And then they were on margin call every trading day from January 25, 2018 through March 31, 2018.** Nov. 16 Tr. at 36.

91. Dim had no idea what to do to cure the margin deficiency.

92. Email communications to and from Advantage Futures on January 10, 16 and January 17 make plain that Dim had no idea what was causing the margin issues. Compl. Ex. D at 103-106.

93. On a January 17, 2018 call with Advantage Futures that occurred at 7:06 am, Dim asks, “I want to deal with the deficiencies and then everything else I have to do . . . because, . . . is the deficiency arising from puts calls and/or both?”

Nov. 16 Tr. at 61-64 (reflecting recording at Compl. Ex. C000052). In other words, he had to ask Advantage Futures what was triggering these deficiencies; he could not figure it out for himself.

94. Dim worked 24 hours according to a representation he made to Advantage Futures to cure margin deficiencies, but he did not realize until he had a call with Advantage Futures the following day on January 23, 2018 that his value was still under 35%. Nov. 16 Tr. at 76-78 (reflecting recording at Compl. Ex. C000059). He states in disbelief, “I didn’t clean that up?” and then “God” when he was informed that he did not. *Id.*

95. Advantage Futures pleaded with Dim to pare down his positions instead of trying to replace them because they couldn’t “be doing this margin stuff everyday.” Dim continued not to heed this advice because he was completely unwilling to take losses (which means he was willing to increase his risk exposure). Nov. 16 Tr. at 78-79 (reflecting recording at Compl. Ex. C000060).

96. Dim agreed he “was in a losing trade and . . . being buffeted continuously by the everchanging winds of margin requirements.” Nov. 16 Tr. at 82.

97. By January 24, 2018 Dim’s margin positions had become so dire that Advantage Futures was saying “God Almighty.” Advantage Futures told Dim to stop buying tiny puts and “get stuff that’s impactful. I mean you’re guessing is not going to do it.” Nov. 16 Tr. at 87 (reflecting recording at Compl. Ex. C000066).

98. Dim could not understand where his margin problems were coming from because of the convoluted nature of his positions. Nov. 16 Tr. at 88-90.

99. Instead of informing his investors that he honestly could not understand which positions were creating the margin problems, Dim sent his investors an email on January 24, 2018 at 7:20 pm that stated, in part: “Lastly, tonight, you will receive a scary, large margin notice. I have already cured this, but the firm alerted me too late in the day to take care of it before the market closed.” Compl. Ex G at 3034.

100. This email was untrue; Dim had not cured the margin problems. For example, Smith’s account had a \$421,774.82 margin deficit on January 24 and a \$29,116.71 margin deficit on January 25, 2018. In fact, January 24 was the start of a 5-day margin call. Compl. Ex. F at 2870-2900.

101. This January 24, 2019 email notably omitted the material truth from his investors—that Dim himself did not understand how to cure the margin. Nov. 16 Tr. at 93 (“No, I do not disclose that to investors.”). Nor does this email state the investors could liquidate their positions, lock in large losses, but cure the margin and potentially save them from even bigger losses. *Id.* at 93.

102. Dim never asked his investors to place cash in their account because he “fully intended to cure the margin” by de-risking his positions. Nov. 16 Tr. at 37.

103. Dim admitted he could have cured the margin by liquidating their accounts. But he did not do so because he “affirmatively chose not to do that because there wasn’t a moment during that time period where [he] didn’t honestly,

sincerely believe that [he] couldn't get these people through this with minimal risk, [and] less losses than they had at the time; or that those losses couldn't be recouped in a relatively short time period." Nov. 16 Tr. at 37, 93-94.

104. On a series of January 25, 2018 calls with Advantage Futures, Advantage Futures again asks Dim to move off this because it cannot constantly be running span values and worrying about Dim's investors' margin risk for him. Nov. 16 Tr. at 95-96 (reflecting recording at Compl. Ex. C000074).

105. In response **Dim states, "I know, listen I know your guys have been wonderful. I created this mess. I never dreamed it could . . . since I changed my configuration. . . . It's like a slow death."** Nov. 16 Tr. at 98 (reflecting recording at Compl. Ex. C000087) (emphasis added).

106. Dim testified that what he meant by slow death was "every time I thought I was doing something productive to reduce margin, I'd wake up the following day and see that it didn't accomplish anything or I had successfully flipped the upside margin to the downside margin requirement." Nov. 16 Tr. at 99.

107. Dim further admitted he has "no buffer" in terms of margin. *Id.*

108. Advantage Futures counseled him **again** "the best thing to do is just reduce what you actually have." Advantage Futures reiterated that Dim should "take the medicine, and get off call; and then, then you got that buffer." *Id.*

109. Dim did not want to "take the medicine" because he did not want to lock in any losses for his investors. Nov. 16 Tr. at 101.

110. And incredibly, for a CTA, he was unaware that Advantage Futures could liquidate under-margined accounts at any time in their discretion. Nov. 16 Tr. at 101-02.

111. On January 26, 2018, Dim sent another email to his investors stating, “[w]e have greatly reduced the margin issue. . . . Several of you have asked questions about taxes, margin, etc. Please let me defer them until the end of the weekend.” Compl. Ex. G at 3037.

112. He says he greatly reduced the margin issue without disclosing that he had no idea how to solve his margin issues in January 2018 because he had call positions deployed above the market and put positions deployed below the market—and larger positions than usual. According to Dim’s testimony, “[t]hat not only made it more prone to margin accounts, [it] made it nearly impossible to . . . know precisely what actions to take to cure those margin issues.”

113. On January 28, 2018, Dim sent an email to his investors saying he had two ways to adjust his positions, either move them higher within the same time frame or move them further out in time. He states he did a little of both. Compl. Ex. G at 3038. What he did not say was that he could have offloaded the risk by liquidating their positions. He further did not tell his investors they could deposit additional cash to meet the margin deficiency problems. He finally did not say he had no idea how to cure the margin problems, as he had been saying in his calls to Advantage Futures.

114. On a January 30, 2018 call with Advantage Futures at 9:34 am, Advantage Futures tells Dim that “inflating the position further is what . . . put you into this corner. We need you to reduce these . . . positions. . . . It’s just they’re, it’s too big.” Nov. 16 Tr. at 103-04 (reflecting recording at Compls. Ex. C000090).

115. Advantage Futures tells Dim later in the call

Reducing the size of the position is going to be the most important thing right now because . . . your net long deltas and, you know, it’s just, it keeps flipping around and this is, this is what we see whenever something like this happens is you try to do things one way, and then the next day the market moves the other way and it flips your position, and you’re right back in the same boat and you’re scrambling to try to cover everything again. And, you know - . . . incurring additional costs to do so.

Nov. 16 Tr. at 105-107 (reflecting recording at Compls. Ex. C000093) (emphasis added).

116. Although Dim said he would work on curing the problem, he in fact kept adding positions he thought would mitigate the risk to no avail (as Advantage Futures tried repeatedly to tell him throughout the day). Nov. 16 Tr. at 109-112. In fact, he just exacerbated the margin deficiencies. Nov. 16 Tr. at 114-16 (reflecting recording at Compls. Ex. C000095-96).

117. Even during testimony, Dim refused to admit he could have fulfilled margin calls by divesting his investors of their risky positions. Nov. 16 Tr. at 26-34.

118. If he had liquidated his investors’ accounts at that time on January 30, 2018 as Advantage Futures had been counseling him for weeks to do, their account values would still be positive. Compl. Post-Hearing Br. Ex. 2.

119. On January 30, 2018 Dim sent an email to his investors. He did not mention margin deficiencies in that email. Instead he said “**I will make this money back in a responsible manner and we will still end up with a profitable year. I promise.**” Compl. Ex. G at 3040 (emphasis added).

120. Despite the fact that Dim’s investors were in margin calls in January and February 2018, he did not have a call with his investors regarding options for curing the margin calls. Nov. 16 Tr. at 40-41.

121. Dim plainly had a pattern of not informing his investors about precipitous drops in their account values or margin calls believing they would have “no reason to know” about them. Nov. 16 Tr. at 41-43, 120-21.

122. Dim’s failure to raise margin issues with his investors resulted in up to **700%** losses for them as of February 5, 2018. *See, e.g.*, Nov. 16 Tr. at 43-44.

123. The investors believed then and continue to believe that Advantage Futures stopped Dim from mitigating losses because of what Dim told them. *See, e.g.*, Nov. 15 Tr. at 124-25, 128-29, 161.

124. Dim maintains it was Advantage Futures’ fault his clients’ positions were so at risk. Nov. 16 Tr. at 44-46. He refuses to accept that Advantage Futures directed him to take certain actions to solve his intraday margin problems. *Id.*

125. Contrary to Dim’s assertions to his investors, Advantage Futures was trying to **stop** Dim’s bleed and force him to take more conservative positions. Nov. 16 Tr. at 73 (playing Jan. 18, 2018 Recording at 10:03 am between Advantage and Dim at Compl. Ex. B) (Advantage Futures telling Dim “from a regulatory

standpoint we have to take care of this call today.”). Dim never shared this fact with his customers.

126. Dim minimized the importance of margin requirements. Compl. Ex. G at 3046 (“[i]n protecting against **actual risk**, I inadvertently created equally big margin problems”) (emphasis added).

127. And then he states in a February 6, 2018 email to his investors after they lost multiples of their initial investment that Advantage Futures was “not happy with” his strategy of buying **even more positions** and “relieved [him] of his duties, unwillingly.” Compl. Ex. G at 3048-49.

128. Dim does not inform them that he left them with uncovered options because he had no idea what he was doing, which lead to large losses.

129. Rather than explain the importance of meeting margin calls and his inability to do so, Dim shifted the blame to Advantage Futures. Dim told his investors he would not be so quick to wire the funds to Advantage Futures if it liquidated their positions. Compl. Ex. G at 3048-49. That is a plain subversion of the legal framework governing margin.

130. And then, in an email sent on March 2, 2018, he told a group of investors that he would focus on a failure of Advantage Futures’ failure to supervise because in the past, they had a policy against naked short puts, which Advantage Futures did not enforce against Dim. Compl. Ex. G at 3051. Thus Dim stated in a letter that they should focus on Advantage Futures’ failure to supervise him for his wrongdoing.

III. Legal Analysis

The Commodity Exchange Act (CEA) bars persons from cheating or defrauding, or attempting to cheat or defraud other persons with regard to “any contract of sale of any commodity for future delivery, or swap.” CEA § 4b(a), 7 U.S.C. § 6b(a). *See also* CEA § 4c(b), 7 U.S.C. § 6c(b) (prohibiting any persons from entering trades such as options, puts and calls contrary “to any rule, regulation, or Order of the Commission”); 17 C.F.R. § 33.10 (prohibiting fraud in connection with commodity transactions).

To establish fraud under the CEA, Complainants must prove by a preponderance of the evidence that Respondents made (1) a misrepresentation or misleading statement (2) with scienter that was (3) material. *See, e.g., In the Matter of Forex Global Solutions Inc.*, CFTC No. 13-20, 2013 WL 1496931, at *4 (CFTC April 9, 2013); *In re Staryk*, 1997 WL 778236 (CFTC Dec. 18, 1997). This same standard applies for fraudulent inducement or solicitation as well. *Beck*, CFTC No. 08-R027, 2008 WL 5382300 at *2.

Determining whether a misrepresentation occurred requires “the Court to focus on ‘the common understanding of the information conveyed.’” *Modlin v. Cane*, CFTC No. 97-R083, 1998 WL 429622, at *8 (July 30, 1998) (internal citations omitted). A statement or omission is material if “there is a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest.” *R&W Technical Serv. Ltd. v. CFTC*, 205 F.3d 165, 169 (5th Cir. 2000). Finally, scienter exists where a person knew his representations were false or made them with a reckless disregard for their truth or falsity. *Drexel Burnham*

Lambert Inc. v. CFTC, 850 F.2d 742, 748 (D.C. Cir. 1988); *see also CFTC v. Noble Metals Int'l, Inc.*, 67 F.3d 766, 774 (9th Cir. 1995) (stating that the CFTC may establish scienter under Section 4b of the Act by showing a person intentionally violated the Act or acted with “careless disregard” of whether he violated the Act (quoting *Lawrence v. CFTC*, 759 F.2d 767, 773 (9th Cir. 1985))). Complainants must support each element by a preponderance of the evidence, and furnish sufficient “evidence to permit the court to estimate the damages proximately caused [by the fraud] with reasonable certainty.” *Beck v. Jonasson*, CFTC No. 08-R027, 2008 WL 5382300 at *2 (Dec. 24, 2008).

Under these standards, it is plain that Respondents Dim and JBJ Capital Management committed fraud, both in the inducement of these investments as well as during the investment relationship.¹

A. Dim made several misstatements and omissions.

1. *Dim failed to disclose to his investors the extent to which they were leveraged and promised they would retain their principal.*

Dim’s investors were promised that they would retain their principal, and Dim never disclosed orally the risks of investing with him. Baker asked Dim “[m]ore than once” whether he was “ever in danger of losing all [his] money.” Dim assured him “that with his built-in safeguards, that could never happen.” Baker Aff. ¶¶ 13-17. Dim told Ai his investment was like “an insurance policy” with

¹ Because Dim was the sole principal, owner and employee of JBJ Capital Management, I treat them as functionally the same and refer to Dim’s misconduct throughout, though I could also refer solely to JBJ, which is Dim’s corporate form. Liability thus attaches to both Dim and JBJ Capital Management. *See CFTC v. Kratville*, 796 F.3d 873, 894-95 (8th Cir. 2015) (discussing control) (citing control person liability under 7 U.S.C. § 13c).

respect to his invested capital. Nov. 15 Tr. at 120-21. Corbett invested with Dim because Dim told him “at no time would all of [his] investment be at risk.” Corbett Aff. ¶ 7; Nov. 15 Tr. at 12. When Guo told Dim that he could not afford to lose principal, Dim assured Guo repeatedly that he was conservative, and that he would specially assign different risk parameters to manage Guo’s account. Guo Aff. ¶ 14. And when Barbara Herm told Dim she worried about whether there would be sufficient funds to support her senior years after her husband passed away, Dim reassured her “that he was confident he would be able to continue” providing a monthly payment “while maintaining the basic money invested.” Herm Aff. ¶¶ 11-12. Dim explained to Kevin Schmidt that there was “no risk” to trading with him because of the way Dim put his “stops in.” Schmid Aff. ¶¶ 5-7. Dim assured Sergio that he could provide him “significant gains without any risk.” Sergio Aff. ¶ 5. He further assured him “there was nothing to worry about and that [Sergio’s] capital would be safe.” *Id.* ¶ 7. Although Smith realized he could lose up to 30% of his money and that such trading was risky, at no time did he realize he could have lost all of his money or more. Nov. 15 Tr. at 82.

Some customers were unaware of the extent to which their accounts were leveraged. *See, e.g.*, Baker Aff. ¶ 29 “I was never aware of how much he had leveraged me with the option investments because he never divulged that information.”

2. Dim misrepresented the risk profile of his investment strategies when establishing business relationships with the customers.

With regard to his representation of risk, Dim established business relationships with each of the individual Complainants here while he was teaching an investment seminar on how trading and how to avoid big losses. Because of this, his investors were under the impression that Dim's strategies would be conservative. This impression was underscored by Dim's assurances that his investing method was conservative and safe. For example, Ai informed Dim that he needed his money for his children's education and his living purposes. Nov. 15, 2022 Tr. at 120-122; Ai Aff. ¶ 8. In response, Dim told Ai that his money was "very safe" and like an "insurance policy." *Id.* See also Ai Aff. ¶¶ 7, 9. The false reassurances Dim provided to Ai were not limited to Ai alone. As discussed above and throughout the Findings of Facts, Dim informed his investors that his strategy was suitable for monies intended for use like education funds and retirement planning.

It was not. No matter how conservative a CTA's strategy, investing in S&P E-Mini options to collect premium is simply not safe or conservative. *See, e.g.*, 17 C.F.R. 1.55 (requiring FCMs to furnish risk disclosure statements that investors "may sustain a total loss of the funds that you deposit with your broker," and that they "may incur losses beyond these amounts.").

3. Dim falsely overstated his mastery over these options markets.

Dim overstated his mastery of these markets and his ability to preserve his investors' principal. Dim engaged in an options trading strategy on behalf of his

clients wherein he wrote put contracts and hoped to collect premiums that were greater than the costs of keeping the puts covered. Nov. 15 Tr. at 17:7-15. But it is clear from Dim's own actions and testimony that, at least in 2018, he had no idea what he was doing and simply could not promise otherwise (as he did).

For example, despite the fact that Dim deployed a sophisticated trading strategy, which included vertical spreads, horizontal spreads, diagonal spreads and butterfly trades, he recorded his trades on a whiteboard without recording fill prices. Nov. 16 Tr. at 58-61. This method of "bookkeeping" made it impossible to verify with Advantage Futures that the FCM was correctly allocating the positions across his investors. Advantage Futures told him repeatedly to fix his recordkeeping so that they could have informed conversations, but Dim did not do so. Nov. 16 Tr. at 62-65.

And Dim clearly had issues understanding the risks involved with his trading strategies. The record makes unrebutted references to the fact that Dim had repeated calls with Advantage Futures to improve and de-risk his trading strategies. *See generally* Compl. Exs. B (phone calls between Advantage and Dim) and C (transcripts of phone calls between Advantage and Dim). There is also unrebutted testimony in the record that TD Ameritrade (Dim's former FCM) forced Dim to close his futures trading accounts there because the risk was too severe. Nov. 15 Tr. at 74-76.

Dim's failure to understand the risks was never conveyed to his investors. On the contrary, his investors believed his status as their teacher on the subject of

avoiding large losses and the overblown conversations he had with them suggesting their investments functioned like insurance policies, meant that he had a mastery over the their account risks.

Further, Dim either did not understand the basics of managing margin or was unwilling to demonstrate this understanding during this proceeding. For example, he was unaware that Advantage Futures had the authority to liquidate under-margined accounts at any time. *Compare* Nov. 16 Tr. at 101-02, *with* Advantage Client Agreement at ¶ 12 (stating “Advantage has the right to . . . ‘cover or liquidate any position Client may have with Advantage (including but not limited to whole or partial liquidations of Client’s Account[.]’”)); *see also* Advantage Futures Motion to Dismiss at 5-6 (Sept. 7, 2018); 17 C.F.R. 1.55 (noting that failure to maintain margin allows the FCM to liquidate the entire position at a loss”). And his defense that Advantage Futures hijacked his investors’ accounts, Resp. Post-Hearing Br. ¶¶ 18-20, makes clear he had no idea that Advantage Futures had not just the authority but the obligation to prevent under-margined investors from adding positions despite the clarity of the law on this.²

² “Just as a customer cannot enter positions without initially having the funds to finance them, neither can the customer force a broker to keep positions open without having the funds to keep them properly margined. To hold otherwise would allow customers to force their risk upon brokers.” *Comtrade Inc. v. Cargill Investor Servs.*, CFTC Dkt. No. 94-R188, 1996 WL 397219 at *6 (CFTC July 15, 1996). Because this risk-shifting is impermissible, a “broker generally has a duty to accept customer orders to liquidate existing positions, but has no duty to accept customer orders for new positions. *Capital Options Investments v. Goldberg Bros. Commodities*, Dkt. No. 88 C 2073, 1990 WL 180583 at *7 (N.D. Ill. Nov. 5, 1990), *aff’d* 958 F.2d 186 (7th Cir. 1992). And “a customer cannot enter positions without initially having the funds to finance them.” *Id.*

Finally, Dim admitted during the hearing several times that he had gotten into a situation where he had **absolutely no idea how to solve the margin call situation**—despite being on margin call for at least 10 days in January and February 2018. And he refused to liquidate the tangled web of trades he entered on behalf of his clients when Advantage Futures counseled him to do so, choosing instead to add risk to his clients’ risk position. Compl. Ex. C000055-57, 60-62, 76-77, 84-85, 88-93, 95-99. He never informed his investors of this fact.

His overstatement of his ability to manage risk in these markets on behalf of others was laid bare when he left uncovered positions open in a market that was plainly volatile. Because of this, his clients experienced 7-fold losses on their original investments.

4. Dim omitted information or misinformed his investors as it suited him.

Dim engaged in a pattern of behavior that precluded his investors from understanding that they, and not Dim, were in control of their accounts.

First, when Ai asked to withdraw \$500,000 from his account, Dim told him he could not withdraw the money because of margin management issues. Nov. 15 Tr. at 139-140; Ai Aff. ¶¶ 12-14. He did not elaborate and omitted material truths. The truth was that withdrawing that sum may leave Ai with inadequate margin, but that he could liquidate some or all of his positions if he needed his own money returned to him. Dim said none of that. Instead, Ai was **completely unaware** that he had a right to withdraw his own funds on demand. Nov. 15 Tr. at 139-40.

Second, Dim traded against Ai's express wishes. Ai told Dim "do not make any trades without consulting me first" after February 2, 2018, but Dim disregarded this instruction and added to Ai's positions. *See, e.g.*, Nov. Tr. at 128-29 & Ai Aff. ¶ 8.

More importantly, however, Dim changed his strategy in 2018 to add call options in addition to his put options. Nov. 16 Tr. at 18-20. He never thought to inform his investors, despite the fact that entangling his clients' money in both sell and buy side risk is what precipitated his margin problems.

5. Dim's misrepresentations are not excused by disclosures in the account opening documents because of his lulling and ongoing misrepresentations.

Dim argues that he could not have misled his investors about the risks of investing with him because the risks were included in the mandatory disclosure documents. This proposition is not supported by the law.

The "Commission has uniformly held 'that conduct can vitiate the effect of the risk disclosure statement mandated by [the CFTC's] rules.'" *Modlin v. Cane*, CFTC No. 97-R083, 1998 WL 429622, at *12 (CFTC July 30, 1998) (quoting *Hannay v. First Commodity Corp. of Boston*, CFTC Dkt. No. 83-R589, 1987 WL 106945, at *3 (CFTC Sept. 21, 1987)). Thus "receipt of a risk disclosure statement does not always accurately represent one's understanding of the risks involved in commodity trading." *Id.*; *see also Paster v. Int'l Trading Group*, CFTC Dkt. No. 83-R58, 1985 WL 56332, *2 (CFTC Sept. 16, 1985) ("As we have held in other cases, statements that lead a customer to believe that a particular investment is virtually risk-free

and will almost certainly yield a profit are not protected from claims of fraud simply because the broker has made a pro forma disclosure of risk.”)

To “determine whether complainant was duly apprised of the relevant risks requires a review of the totality of the circumstances, including all advice, oral and written, given complainant concerning the nature of the risks attendant upon the proposed transaction.” *Modlin*, 1998 WL 429622, at *12. Under this standard, the investors were not duly apprised of the risks of trading.

First, Dim’s status as these investors’ trading instructor and the personal relationship he cultivated with them was such that his words carried undue weight, overriding any written disclosures.

Second, Dim continued to provide reassurance to his investors, lulling them into a false sense of security. For example, he repeatedly instructed them to disregard the urgency of Advantage Futures’ margin communications, telling them falsely that although they would “receive a scary, large margin notice” from Advantage Futures, Dim had “already cured this.” Compl. Ex G at 3034 (January 24, 2018 Email). He had of course not “already cured this.” And he compounded that lie by telling his investors, in an email: “**I will make this money back in a responsible manner and we will still end up with a profitable year. I promise.**” Compl. Ex. G at 3040 (emphasis added) (Jan. 30, 2018 email). Dim gave his investors an unequivocal guarantee. No amount of written disclosures in account opening documents could make a dent in the certainty of that kind of promise.

B. Dim's misstatements were material.

Dim's misrepresentations regarding the relative safety of these investments and his ability to preserve their capital were material. Determining materiality requires the court to consider whether a reasonable investor would have regarded the misrepresented or omitted fact as "significantly altering the total mix of information available." *Modlin*, 1998 WL 429622 at *8. If Dim had said to his investors that these products were inherently risky and unsafe, they may have chosen not to invest their retirement savings, education funds, or insurance premium monies with him. They were prevented from weighing that information for themselves because they did not have it. Further, if they had any reason to know that Dim could not promise the preservation of their capital given the nature of these investments, they also may have chosen to invest differently.

C. Dim's misstatements were made with scienter.

Dim clearly believes he did not commit fraud because he considered his investors friends, Nov. 16 Tr. at 102:5-7, treated their money as his own, Nov. 16 Tr. at 102-103, and was doing his best. These beliefs are unavailing as a legal matter because the scienter standard is met not just when bad actors intentionally omit or mispresent the truth, but when they do so recklessly. *Drexel Burnham Lambert Inc.*, 850 F.2d at 748; *see also Noble Metals Int'l, Inc.*, 67 F.3d at 774.

Dim's omissions and misrepresentations take him to the very outer edge of the recklessness standard and sometimes into the intentionality standard.

First, there is unrebutted testimony in the record that Dim did not tell his investors things he believed they did not need to know, like the fact that they were having severe margin problems or that Advantage Futures was advising him to liquidate their positions. Nov. 16 Tr. at 120-121. And while his customers' investments were falling off a cliff, Dim thought to reassure them with false promises instead of telling the truth, which is that he was struggling to understand the tangled web of trades he wove and the impact they were having on the investors' margin requirements. He intentionally lied to his investors thinking he could solve the problem without them being the wiser. Nov. 16 Tr. at 120-21.

Second, Dim admitted wrongdoing in an email he sent to his investors, but tried to shift the blame to Advantage Futures. He told his investors that Advantage Futures was at fault because it failed to supervise him by allowing him to put on naked shorts (with limitless loss potential). Compl. Ex. G at 3051. Dim plainly understood **he was at fault by entering into naked shorts**. In fact, Dim believed that fault was so egregious that a separately registered FCM, Advantage Futures, had a duty to disallow Dim from his misconduct (notwithstanding the fact that Advantage Futures tried repeatedly to dissuade Dim from entering these positions).

Finally, Dim began and ended these relationships under the sketchiest of circumstances. For example, Dim told his investors at various times it would be unethical for him to solicit business during class—even arranging meetings in places like train stations and hotel rooms to avoid having the solicitation conversations during class. *See* ¶¶ 5, 17, 27, 34, and 49, above. He knew (or felt) he

might be abusing a position of trust and did it anyways. And when ending his relationship with investors after the severe losses of February 5, 2018, his wife confiscated his phone. Smith Aff. ¶¶ 22-23. It is hard to imagine a legitimate business reason to cut off Dim's contact with his investors during a time when Dim lost their money.

This conduct meets the scienter standard.

D. Dim's fraudulent conduct proximately caused the Complainants damages.

In deciding whether the illegal conduct proximately caused the losses at issue, "the Commission looks to whether (1) respondent's violative conduct was a substantial factor in bringing about complainant's loss and (2) the loss was a reasonably probable consequence of respondent's conduct." *Sansom Refining Co. v. Drexel Burnham Lambert, Inc.*, CFTC Dkt. No. 82-R448, 1990 WL 282783, at *5 (CFTC Feb. 16, 1990). Both of those inquiries are answered in the affirmative here.

February 5, 2018 was a period of unprecedented volatility and could constitute in other fact circumstances an intervening market event. This is not the case here; the case here was that Dim fraudulently induced the Complainants' investments, lulled them into thinking they were completely safe, and through a convoluted mix of trading left them completely vulnerable to nearly limitless losses should an event like February 5, 2018 occur. Dim gave his investors every impression that they could never lose their principal investments, let alone seven times their principal investments. Thus Dim's misconduct was a "substantial factor" in bringing about the Complainants' losses and those losses were a

reasonably probable consequence of Dim's fraud. *See Sansom Refining Co*, 1990 WL 282783 at *5.

E. Dim breached his fiduciary duties to the Complainants.

The Commission cannot adjudicate breach of fiduciary claims without an underlying violation of the CEA, but because there is a violation of the CEA here no such restriction applies. Dim breached his fiduciary duties to his customers by recklessly failing to disclose material information and by treating their money as if it was his own, Nov. 16 Tr. at 102-103, rather than theirs.

The nature of a commodity trading professional's duty to his or her customers will vary depending on the relationship between that broker and her investors. *Romano v. Merrill Lynch, Pierce, Fenner & Smith*, 834 F.2d 523, 530 (5th Cir. 1987). "The evaluation 'requires consideration of the degree of trust placed in the broker and the intelligence and personality of the customer.'" *Id.* (quoting *Clayton Brokerage Co. v. CFTC*, 794 F.2d 573, 582 (11th Cir. 1986)). Here, where the accounts were completely discretionary—that is they were under the complete control of Dim, the scope of those duties was broad. This is particularly true because many of the investors were completely unaware that they had any degree of control over their accounts. Because the scope of Dim's duties to his unsophisticated investors was so broad, the misconduct described above plainly violated those duties.

IV. Conclusion

Complainants have established by a preponderance of the evidence that Dim and JBJ Capital Management violated Sections 4b and 4c(b) of the CEA, 7 U.S.C. §§

6b(a), 6c(b), and Rule 33.10, 17 C.F.R. § 33.10. This violative conduct proximately caused the Complainants their actual losses.

Accordingly, Respondents are ordered to pay reparations in the following amounts reflected in the table below, plus pre-judgment interest of 1.87% compounded annually from February 5, 2018 through the date of this Order; and post-judgment interest on that amount at 5.19% compounded annually from the date of this award to the date of payment. 28 U.S.C. § 1961 (calculating applicable interest rates). Respondents are also ordered to pay \$250 in costs for the filing fee for each of the ten Complainants, equaling \$2,500.

Complainant	Damages
Bruce Ai	\$5,399,400
The Baker Revocable Trust	\$920,000
John Corbett	\$185,000
Fred Frost	\$302,000
Alan Guo	\$553,000
Herm LLC	\$314,000
Janice C. Marschel Revocable Trust	\$441,217.55
Kevin Schmidt	\$326,246.11
Mark Sergio	\$423,234
George Smith	\$1,025,186.7

Dated: May 13, 2024

/s/ Kavita Kumar Puri
 Kavita Kumar Puri
 Administrative Judge