

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

**COMMODITY FUTURES  
TRADING COMMISSION,**

**Plaintiff,**

**v.**

**DARREN ROBINSON, and  
THE QYU HOLDINGS INC.,**

**Defendants.**

**Case No.: 2:23-cv-12456-LVP-EAS**

District Judge Linda V. Parker

Magistrate Judge Elizabeth A. Stafford

**ORDER FOR FINAL JUDGMENT BY DEFAULT, PERMANENT  
INJUNCTION, CIVIL MONETARY PENALTY, AND OTHER EQUITABLE  
RELIEF AGAINST DEFENDANTS DARREN ROBINSON AND THE QYU  
HOLDINGS INC.**

Before the Court is Plaintiff Commodity Futures Trading Commission's ("Plaintiff" or "CFTC") Motion for an Order of Final Judgment by Default, Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendants Darren Robinson ("Robinson") and The QYU Holdings Inc. ("QYUHI") pursuant to Fed. R. Civ. P. 55(b)(2), supporting memorandum, and the accompanying declaration and exhibits submitted therewith. (Mot., ECF No. 14.) For the reasons stated below and good cause having been shown, it is this 23rd day of April 2024, hereby **ORDERED** that Plaintiff's Motion is **GRANTED**.

Accordingly, the Court enters findings of fact, conclusions of law, and an Order of Final Judgment by Default for Permanent Injunction, Civil Monetary Penalty, and Other Statutory and Equitable Relief Against Defendants Robinson and QYUHI (“Order”), as set forth herein.

## I. BACKGROUND

1. On September 28, 2023, the CFTC filed its Complaint for Injunctive and Other Equitable Relief and Civil Monetary Penalties Under the Commodity Exchange Act. (ECF No. 1.)

2. On October 11, 2023, the CFTC served Robinson and QYUHI with a copy of the Summons and Complaint. (*See* Certificates of Service, ECF Nos. 7-8.)

3. Defendants failed to answer or otherwise respond to the Complaint.<sup>1</sup>

4. Pursuant to Fed. R. Civ. P. 55(a), the Commission submitted an application for a Clerk’s entry of default against Defendants. (ECF No. 9.)

5. On November 7, 2023, the Clerk of the Court entered defaults against Robinson (ECF No. 10) and QYUHI (ECF No. 11).

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<sup>1</sup> The Sixth Circuit has held that “[f]ederal courts may take judicial notice of proceedings in other courts of record.” *Lyons v. Stovall*, 188 F.3d 327, 333 n. 3 (6th Cir. 1999). The Court takes judicial notice that Defendant has been indicted in a twelve-count indictment alleging eleven counts of wire fraud in violation of 18 U.S.C. § 1343 and one count of money laundering in violation of 18 U.S.C. § 1957. (*See* 2:24-cr-20025 (E.D. Mich.) ECF No. 21.) The Court further takes notice that Defendant has an active arrest warrant issued for his arrest that has yet to be executed. (*See* ECF No. 22.)

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. Findings of Fact

#### The Parties

6. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1-26, and the Regulations promulgated thereunder, 17 C.F.R. pts. 1–190 (2023).

7. Defendant **Darren Robinson** is a U.S. citizen who resided in Miami Beach, Florida during the time period of January 1, 2017 to September 28, 2023 (the “Relevant Period”). Upon information and belief, Robinson is currently a fugitive from U.S. law enforcement with a warrant issued for his arrest. Robinson is the President, Director, and Treasurer of QYUHI. Robinson was registered with the CFTC as Principal, AP, and Forex AP of QYU Technologies Corp., a commodity trading advisor (“CTA”), from February 2018 until May 5, 2023, when his registration was withdrawn. Robinson has not been registered with the CFTC in any capacity since May 5, 2023.

8. Defendant **The QYU Holdings Inc.** is a corporation organized and operated pursuant to the laws of Wyoming, with a purported principal address in Dallas, Texas. Robinson is identified in the records of the Wyoming Secretary of

State as the President, Treasurer and Director of QYUHI. QYUHI has never been registered with the CFTC in any capacity.

**Related Individuals and Entities**

9. **QYU Holdings Corporation** is a corporation organized and operated pursuant to the laws of the Republic of Panama. It is owned by Robinson and third parties not named in this Complaint. QYU Holdings Corporation was registered with the CFTC as a commodity trading advisor (“CTA”) on December 30, 2013; that registration was withdrawn on March 7, 2018. QYU Holdings Corporation was registered with the CFTC as a CPO on September 11, 2015; that registration was withdrawn on March 7, 2018. QYU Holdings Corporation has not been registered with the CFTC in any capacity since March 7, 2018.

10. **Dwight A. Foster** (“Foster”) is a dual citizen of the United States and Canada. Foster’s last known residence is in West Bloomfield, Michigan. Foster holds himself out as the President and CEO of K.E.L. Enterprises, Inc. Foster has never been registered with the CFTC in any capacity. Foster is a defendant in a suit recently filed by the Commission. *CFTC v. Foster*, Case No. 2:23-cv-11552-SFC-EAS (E.D. Mich. June 28, 2023).

11. **K.E.L. Enterprises, Inc.** (“KEL”) is a company organized and operated pursuant to the laws of Michigan on or about November 19, 1984. Foster is identified in the records of the Michigan Secretary of State, Corporations

Division, as the President, Vice President, Treasurer and Secretary of KEL, as well as its registered agent. The records of the Michigan Secretary of State, Corporations Division, identifies KEL's principal place of business as located in West Bloomfield, Michigan. KEL has never been registered with the CFTC in any capacity. KEL is also a defendant in *CFTC v. Foster*.

### **Factual Overview**

12. During the Relevant Period, Robinson and QYUHI engaged in a multimillion-dollar fraudulent scheme through which Robinson, individually and as the agent of QYUHI, solicited and Defendants accepted \$7,196,365.37 from 38 members of the public to participate in a commodity pool operated by QYUHI ("commodity pool" or "Pool"), for the purpose of trading in commodity interests, including foreign currency ("forex") pairs on a leveraged, margined or financed basis with participants who were not eligible contract participants ("retail forex") and forex futures contracts.

13. Instead of trading pool participants' funds, Defendants misappropriated all of the pool participants' funds by depositing them directly into QYUHI's corporate bank account controlled by Robinson, rather than depositing the funds directly into an account carried in the name of the Pool at a Futures Commission Merchant ("FCM") and/or a retail foreign exchange dealer ("RFED"). Defendants misappropriated participants' funds to pay Robinson's personal

expenses, including, but not limited to: luxury cruises, airfare, luxury vehicle purchases, and real property purchases. Additionally, Defendants used \$1,272,850 of later-in-time participants' funds to pay earlier-in-time participants purported "profits" and/or "redemptions" in the nature of a Ponzi scheme.

14. Robinson, individually and as the agent of QYUHI, using instrumentalities of interstate commerce, took steps to conceal the fraudulent activity by, among other things, creating fictitious trading data and providing false participant account statements which purported to show that each participant's account in Defendants' Pool consistently traded at a profit throughout the Relevant Period. In fact, these reports to participants were false. Defendants failed to advise participants that there was no trading, no profits were ever generated by trading, and all of the participants' funds were misappropriated by Defendants.

15. Throughout the Relevant Period, while operating a business that was of the nature of a commodity pool, Defendants used the Internet, interstate wires, and other means or instrumentalities of interstate commerce, directly or indirectly, to employ a device, scheme, or artifice to defraud existing and prospective participants, and to engage in transactions, practices, or a course of business that operated as a fraud or deceit upon existing and prospective participants. Robinson, individually and as the agent of QYUHI, made fraudulent omissions of material facts in solicitations through his "client managers" to actual and prospective pool

participants, and/or in accepting funds from actual participants, and in account statements to actual participants, including but not limited to failing to disclose that: (1) Defendants never traded pool participant funds as promised; (2) Defendants did not open forex trading accounts in the name of the Pool with any lawfully operating commodity exchange, or with any registered FCM or RFED; (3) Defendants misappropriated participants' funds; (4) the "account statements" provided to participants showing purported profits were false, created by Robinson, and not reflective of actual trading; (5) QYUHI was unlawfully acting as an unregistered commodity pool operator ("CPO"); and (6) Robinson was unlawfully acting as an unregistered associated person ("AP") of a CPO.

16. Throughout the Relevant Period, QYUHI acted at all times as a CPO without being registered with the Commission, in that it accepted, or received from participants, funds for the purpose of trading commodity interests. Throughout the Relevant Period, Robinson acted at all times as an AP of a CPO without being registered with the Commission. At no time during the Relevant Period did QYUHI provide required disclosures and reports and keep and maintain the records required to be kept and maintained by a CPO. Furthermore, throughout the Relevant Period, QYUHI, while acting as a CPO: failed to operate the commodity pool as a legal entity separate from itself; received funds from existing or prospective pool participants for the purchase of an interest in the Pool without

receiving the same in the Pool's name; and commingled Pool funds with the personal funds of Robinson and the corporate funds of QYUHI.

### **Defendants' Fraudulent Scheme**

#### **1. Defendants' Solicitations to Participants and False Statements**

17. Beginning in at least January 2017, Robinson, via his network of unregistered APs that he referred to as "client managers" that he supervised in his capacity as an officer of QYUHI, (hereafter referred to as "unregistered APs"), solicited members of the public in the Eastern District of Michigan and elsewhere to participate in a commodity pool purportedly operated by QYUHI for the purpose of trading in commodity interests, including retail forex and forex futures contracts. Robinson, through QYUHI's unregistered APs, supervised and targeted the solicitations to participants who were not ECPs, and who were generally not sophisticated financially.<sup>2</sup> Many of the individuals who were solicited by Robinson and QYUHI's unregistered APs, and who ultimately become participants in Defendants' Pool, were friends and family members of Robinson or QYUHI's

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<sup>2</sup>An ECP is defined by Section 1a(18)(A)(xi) of the Act, 7 U.S.C. § 1a(18)(A)(xi), in relevant part, as an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$10,000,000, or \$5,000,000 and who enters into the agreement, contract or transaction to manage the risk associated with an asset owned or a liability incurred, or reasonably likely to be owned or incurred, by the individual.



unregistered APs and had little to no experience trading forex or commodity interests.

18. Throughout the Relevant Period, Robinson, through QYUHI's unregistered APs, solicited current and prospective pool participants through direct, person-to-person solicitations, and referrals from current pool participants. As part of the solicitation process, QYUHI's unregistered APs provided actual and prospective pool participants with written solicitation materials—drafted and/or approved by Robinson—from QYU Holdings Corporation, which was described in the solicitation materials as “a boutique professional trading firm which specializes in the commodities and foreign exchange market.”

19. Robinson, through QYUHI's unregistered APs, represented to actual and prospective pool participants that Defendants pooled participants' funds at a trading account in the name of QYU Holdings Corporation. However, such representations were false because no participant funds were sent by Defendants to a bank account carried in the name of QYU Holdings Corporation or traded in a pool operated by Defendants or QYU Holdings Corporation. Pool participants' funds were ultimately misappropriated when deposited into QYUHI's bank account, and thereafter transferred to other QYU entities' bank accounts. At no time were participant funds used to trade forex in a pooled trading account on behalf of the pool participants.

20. As part of the fraudulent scheme, Robinson, individually and as the agent of QYUHI, provided written solicitation material he drafted, purportedly from QYU Holdings Corporation to actual and prospective participants via QYUHI's unregistered APs, that touted QYU Holding Corporation's trading experience and the "QYU Edge." For example, the solicitation material stated:

QYU's strength in trading, or QYU's "Edge," is built on our exceptional understanding and analysis of the nuances of the US economy and our expert skill in dealing with financial markets...To summarize, the majority of our trades involve pairing the US Dollar with one of the seven major currencies.

The average person does not understand the great influence that trade agreements have on the world's countries because only an elite few benefit directly from those trade relationships. Those elite few may argue that the masses also gain a benefit from these agreements, but those benefits are only through ancillary effects.

Part of our success in the foreign currency markets comes from our ability to understand and analyze all of these economic components and relationships. The other part of our success comes from our trading skill which is based on our expert understanding of market behavior.

21. Defendants never operated a commodity pool as an entity cognizable as a separate legal entity and never had accounts at any registered FCM or RFED. QYU Holdings Corporation never operated a commodity pool or held accounts at any registered FCM or RFED, and Defendants never transferred participant funds from their bank accounts to any commodity interest trading account. There are no commodity interest accounts operated or controlled by Defendants at any registered FCM and/or RFED.

22. After accepting participants' funds, Defendants, through Robinson or QYUHI's unregistered APs, provided participants with electronic statements via online account access which falsely showed each participant's purported account in Defendants' Pool. These statements were false: there was no Pool and there was no trading taking place.

23. These accounts were purportedly held at QYU Holdings Corporation and purportedly traded by Robinson on behalf of the Pool. These statements, provided to participants through interstate commerce via the Internet, purported to show that Defendants' Pool traded at a profit each month during the Relevant Period. These statements were false, and no trading took place on behalf of the pool participants.

## **2. Omissions of Material Facts**

24. In furtherance of the fraudulent scheme, Robinson, individually and as the agent of QYUHI, made fraudulent omissions of material facts in solicitations to actual and prospective pool participants either directly by Robinson and/or through QYUHI's unregistered APs who were supervised by Robinson, including but not limited to, failing to disclose that: Defendants were misappropriating participants' funds; Defendants were using later-in-time participants' funds to pay purported "profits" and/or "redemptions" to earlier-in-time participants, in the nature of a "Ponzi" scheme; Defendants were not registered with the Commission as a CPO or

AP of a CPO; there was no QYU account in participant funds traded on behalf of the Pool; participants' funds were not used for trading forex futures contracts on any lawfully operating exchange; participants' funds were not used for trading retail forex with any registered FCM or RFED; and the account "statements" provided to participants showing profitable trading activity were created by Robinson and not reflective of actual trading.

25. Defendants' omissions of facts were material. Defendants failed to advise participants that at no time throughout the Relevant Period did Defendants transfer any participant funds to a commodity pool trading account or bank account in the name of QYU Holdings Corporation, or to any commodity trading account carried in the name of a CPO and/or RFED registered with the Commission. Rather than have participants send their funds directly to an FCM and/or RFED carrying a forex trading account in the name of the Pool, Defendants accepted participants' funds, either directly from participants or from bank accounts controlled by the unregistered APs, by depositing them into a bank account ending in \*4708 carried in the name of QYUHI at Bank of America ("BOA") ("QYUHI BOA account"). These funds were misappropriated upon receipt, and were subsequently transferred by Defendants to other bank accounts carried in the name of other QYU entities at other foreign or domestic banking institutions. Robinson was the primary signatory on the QYUHI BOA account during the Relevant

Period.

26. For example, during the period December 13, 2018 to August 30, 2021, Robinson and QYUHI accepted more than \$6.7 million sent by pool participants into the QYUHI BOA account for the purpose of participating in Robinson and QYUHI's purported forex trading pool. All of this \$6.7 million came from related parties Foster and KEL, as KEL's pool participants participated in Defendants' Pool. In addition, during the period February 3, 2017 to November 8, 2018, the QYUHI BOA account received an additional \$469,000 from a bank account ending in \*5733 carried in the name of QYUHI at Wells Fargo Bank ("WFB")—all funds from pool participants. All of these funds were misappropriated.

27. Robinson and QYUHI also fraudulently used pool participant funds to pay more than \$1,272,850 to earlier-in-time participants in the form of purported "redemptions." Because Robinson and QYUHI did not actually operate a forex trading pool on behalf of the pool participants, the "redemption" payments were actually Ponzi-like scheme payments made from funds that Robinson and QYUHI obtained from later-in-time pool participants.

### **3. Commingling of Pool Funds**

28. In addition, no participant funds that were originally transferred from the QYUHI BOA account to other QYU entities' bank accounts were deposited

into a pool trading account or used for trading commodity interests on behalf of pool participants.

29. Throughout the Relevant Period, Robinson and QYUHI commingled participants' funds with third party funds by accepting participants' funds into bank accounts which were carried in the name of QYUHI, and controlled by Robinson. Robinson and QYUHI subsequently transferred participants' funds into bank accounts of third parties, unrelated to Robinson and QYUHI's Pool. At no time during the Relevant Period did Robinson and QYUHI deposit participant funds into an account carried in the name of the Pool at a registered FCM or RFED.

**Failures to Provide Required Disclosures and Reports and Keep and Maintain Required Books and Records**

30. Throughout the Relevant Period, QYUHI, as the CPO, failed to provide certain required disclosures and reports to prospective and/or actual participants and keep and maintain books and records required to be maintained by a CPO pursuant to Part 4 of the Commission's Regulations, 17 C.F.R. pt. 4 (2022). During the Relevant Period, QYUHI, as the CPO, failed to deliver to each prospective participant in the Pool the Disclosure Document required to be delivered pursuant to Regulation 4.21(a)(1), 17 C.F.R. § 4.21(a)(1) (2022), by each CPO registered or required to be registered with the Commission, by no later than the time the CPO delivers to the prospective participant a subscription agreement

for the pool. At no time did QYUHI deliver a Disclosure Document to any prospective or actual participant in the Pool.

31. For each of the participants in the Pool, QYUHI failed to provide required reports to participants pursuant to 17 C.F.R. § 4.22(a) (2023), by a CPO registered, or required to be registered, with the Commission, including but not limited to: an Account Statement, presented in the form of a Statement of Operations and a Statement in Changes in Net Assets. The purported account statements Defendants provided to participants were not presented and computed in accordance with generally accepted accounting principles, as required by 17 C.F.R. § 4.22(a), and further failed to set-forth the information required by 17 C.F.R. § 4.22(a)(1)-(2).

32. The purported account statements Defendants provided to participants during the Relevant Period also failed to include an Account Statement that must be presented in the form of a Statement of Changes in Net Assets that separately itemized certain information as required by 17 C.F.R. § 4.22(a)(2), and further failed to disclose information required by 17 C.F.R. § 4.22(a)(3), including but not limited to any material business dealings between the pool, the pool's operator, commodity trading advisor, futures commission merchant, retail foreign exchange dealer, swap dealer, or the principals thereof that previously have not been

disclosed in the pool's Disclosure Document or any amendment thereto, other Account Statements, or Annual Reports.

33. QYUHI failed to keep and maintain books and records required to be kept and maintained pursuant to 17 C.F.R. § 4.23(a)-(b) (2023), by a CPO registered, or required to be registered, with the Commission, including but not limited to: an itemized daily record of each commodity interest transaction of the pool; a general ledger; Statements of Financial Condition; and a Statement of Income/Loss.

34. Defendants did not inquire, and failed to keep or maintain any records, as to whether a prospective customer was an ECP or about a prospective participant's savings and investments.

35. For example, QYUHI did not inquire or keep any records as to whether a prospective participant had assets in excess of \$5 million, nor did it inquire if the prospective participant was seeking to engage in forex transactions to manage the risk of an asset or liability already owned, or about to be owned, by the prospective participant.

### **Defendants' Failure to Register**

36. Throughout the Relevant Period, QYUHI acted in a capacity as a CPO by soliciting, accepting, and receiving funds from the public while engaged in a business that was of the nature of an investment trust, syndicate, or similar form of



enterprise, for the purpose of, among other things, trading in commodity interests, including retail forex and forex futures contracts, without being registered with the Commission as a CPO. At no time during the Relevant Period did QYUHI seek an exemption from the requirement to register with the Commission as a CPO. At no time during the Relevant Period did QYUHI qualify for an exemption from the requirement to register with the Commission as a CPO.

37. Throughout the Relevant Period, Robinson acted in a capacity as an AP of QYUHI by, in his capacity as a partner, officer, employee, consultant or agent of the CPO (QYUHI), soliciting or supervising the solicitation of funds for participation in the Pool, without being registered with the Commission as an AP of a CPO.

**Robinson is the Controlling Person of QYUHI**

38. Throughout the Relevant Period, Robinson acted as the controlling person of QYUHI. During the Relevant Period, Robinson was the President, Treasurer, and a Director of QYUHI, and solely possessed the power and authority to control all day-to-day business operations of QYUHI. As the primary signatory on the QYUHI BOA account, Robinson controlled all credits and debits in the QYUHI BOA account. Robinson also solely controlled all solicitations to actual and prospective participants through QYUHI's unregistered Aps.

39. Throughout the Relevant Period, Robinson was the owner and controlling person of QYUHI. Robinson was the primary officer and director of QYUHI, he operated and controlled the day-to-day operations of QYUHI's business activities, and he controlled the QYUHI BOA account. Therefore, Robinson was de facto and de jure solely in charge of the operations of QYUHI throughout the Relevant Period.

40. As the controlling person of QYUHI, Robinson was aware of the activities that formed the violations of the Act and Regulations set-forth herein. Further, Robinson failed to act in good faith at all times throughout the Relevant Period because he failed to create and/or implement any supervisory controls over the daily operations of QYUHI throughout the Relevant Period.

## **B. Conclusions of Law**

### **1. Defendant's Failure to Answer Warrants Entry of Default Judgment**

41. Fed. R. Civ. P. 55 authorizes a default judgment when "a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend." Fed. R. Civ. P. 55(a). Upon the entry of default, "the well-pleaded allegations of a complaint relating to liability are taken as true." *Dundee Cement Co. v. Howard Pipe & Concrete Prods., Inc.*, 722 F.2d 1319, 1323 (7th Cir. 1983). Plaintiff bears the burden of establishing damages on a motion for default judgment. *See Flynn v. People's Choice Home Loans, Inc.*, 440 Fed. Appx. 452,

457 (6th Cir. 2011). However, “[a]n evidentiary hearing is not required if the Court can determine the amount of damages by computation from the record.” *Broadcast Music*, 2014 WL 2993661, at \*4. Indeed, a judgment by default may be entered without a hearing on damages if “the amount claimed is liquidated or capable of being ascertained from definite figures contained in the documentary evidence or in detailed affidavits.” *Dundee Cement Co*, 722 F.2d at 1323. A default judgment establishes, as a matter of law, that a defendant is “liable to plaintiff as to each cause of action alleged in the complaint.” *Breuer Elec. Mfg. Co. v. Toronado Sys. Of Am., Inc.*, 687 F.2d 182, 186 (7th Cir. 1982). Granting a motion for default judgment lies within a district court’s sound discretion. *Dundee Cement Co*, 722 F.2d at 1322.

42. The well-pleaded facts of the Complaint establish Defendants’ liability, and the evidence submitted by the CFTC establishes the appropriate amount of restitution and civil monetary penalty to be awarded.

**2. Jurisdiction and Venue**

43. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by act of Congress). In addition, Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), provides that U.S. district

courts possess jurisdiction to hear actions brought by the CFTC for injunctive relief or to enforce compliance with the Act whenever it shall appear 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.

44. Venue lies properly with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Defendants transacted business in this District, and the acts and practices in violation of the Act and Regulations occurred in this District, among other places.

**3. Defendants Violated 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6b(a)(2)(A)-(C), and 17 C.F.R. § 5.2(b)(1)-(3) (2023) (Count I): Fraud in Connection with Forex Contracts Fraud in Connection with Retail Forex Transactions and Forex Futures Contracts**

45. 7 U.S.C. § 6b(a)(1)(A)-(C) makes it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person: “(A) to cheat or defraud or attempt to cheat or defraud another person;” “(B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record;” or “(C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the

disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for . . . the other person.”

46. During the Relevant Period, by and through Robinson, Defendants cheated or defrauded, or attempted to cheat or defraud, actual and prospective pool participants; willfully made, or caused to be made, false account statements; and willfully deceived, or attempted to deceive, actual and prospective pool participants in connection with Defendants’ Pool that purportedly traded forex futures contracts, by, among other things: (i) omitting material facts in solicitations to and/or accepting funds from actual and prospective participants, including but not limited to, failing to disclose that Defendants never traded pool participant funds as promised; (ii) misappropriating participants’ funds; and (iii) providing participants with false account statements showing purported profits from fictitious trading activity created by Robinson and not reflective of actual trading, all in violation of 7 U.S.C. § 6b(a)(1)(A)-(C).

47. In substantially identical language to 7 U.S.C. § 6b(a)(1)(A)-(C), 7 U.S.C. § 6b(a)(2)(A)-(C) makes it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market: “(A) to cheat or defraud or attempt to cheat or defraud the other person;

(B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; or (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to an order or contract for or . . . with the other person.

48. 7 U.S.C. § 2(c)(2)(C)(ii)(I), makes agreements, contracts, or transactions described in 7 U.S.C. § 2(c)(2)(C)(i), and accounts or pooled investment vehicles described in 7 U.S.C. § 2(c)(2)(C)(vii), “subject to” 7 U.S.C. § 6b. Additionally, 7 U.S.C. § 2(c)(2)(C)(iv), in part, provides that 7 U.S.C. § 6b applies to such agreements, contracts, or transactions, including those offered by Defendants, “as if” they were contracts of sale of a commodity for future delivery. Furthermore, 7 U.S.C. § 2(c)(2)(C)(vii) states that the CFTC has jurisdiction over an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in 7 U.S.C. § 2(c)(2)(C)(i).

49. Similarly, 17 C.F.R. § 5.2(b)(1)-(3) makes it is unlawful for any person, by use of the means or instrumentalities of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction: (1) to cheat or defraud or attempt to cheat or defraud any person; (2) willfully to make or cause to

be made to any person any false report or statement or cause to be entered for any person any false record; or (3) willfully to deceive or attempt to deceive any person by any means whatsoever. Here, Defendants used instrumentalities of interstate commerce, including the Internet and bank wires, to omit material facts, misappropriate participant funds, and provide false account statements to pool participants.

**i. Fraud by Making Omissions of Material Facts**

**1. Defendants' Omissions of Material Facts**

50. To establish Defendants' liability for fraud based on misrepresentations or omissions in violation of 7 U.S.C. § 6b(a), the Commission must show that Defendants: (1) made a misrepresentation or deceptive omission; (2) with scienter; and (3) the misrepresentation or deceptive omission was material. *See CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328 (11th Cir. 2002) (analyzing the elements required to establish liability for fraud through omissions); *CFTC v. Bazzi*, Case No. 21-cv-11909, 2022 WL 17650442, at \*4-5 (E.D. Mich. Dec. 13, 2022) (Leitman, J.) (same); *CFTC v. Driver*, 877 F. Supp. 2d 968, 977-79 (C.D. Cal. 2012) (analyzing the elements required to establish liability for fraud through misappropriation); *CFTC v. Millenium Trading Group, Inc.*, No. 07-CV-11626, 2007 WL 2639474, at \*6-8 (E.D. Mich. Sept. 6, 2007) (Duggan, J.) (analyzing the elements required to establish liability for fraud through omissions).

Similarly, 17 C.F.R. § 5.2(b)(1)-(3) (2023), makes it unlawful, in connection with off-exchange retail forex transactions, to use the mails or any means or instrumentality of interstate commerce to cheat or defraud or attempt to cheat or defraud any person, or willfully deceive any person by any means. *Bazzi*, 2022 WL 17650442, at \*5-6. Whether a misrepresentation or omission of material fact has been made is determined objectively through examination of the “overall message” and the “common understanding of the information conveyed.” *See R.J. Fitzgerald & Co.*, 310 F.3d at 1328 (internal quotation marks and citations omitted).

51. Here, the well-pleaded allegations of the Complaint show that Defendants made deceptive omissions of material facts to pool participants by failing to disclose, among other things, that: (1) Defendants were misappropriating participants’ funds; (2) Defendants were using later-in-time participants’ funds to pay purported “profits” and/or “redemptions” to earlier-in-time participants, in the nature of a Ponzi scheme; (3) Defendants were not registered with the Commission as CPOs or APs of CPOs; (4) there was no QYU account into which participants funds were traded on behalf of the Pool; (5) participants’ funds were not used for trading forex futures contracts on any lawfully operating exchange; and (6) participants’ funds were not used for trading retail forex with any registered FCM or RFED; and (7) the account “statements” provided to participants showing



profitable trading activity were created by Robinson and not reflective of actual trading.

## 2. Defendants Acted with Scienter

52. Scienter requires that Defendants' conduct was either reckless or intentional. To establish the scienter element of fraud under 7 U.S.C. § 6b(a), the Commission need not show that Defendants "acted with an evil motive or intent to injure, rather recklessness is sufficient to satisfy the scienter requirement." *Millenium Trading*, 2007 WL 2639474, at \*7 (internal quotation marks and citations omitted). In other words, by making omissions "that have no reasonable basis, or that mark an extreme departure from the standards of ordinary care, a person acts with the requisite scienter." *Id.* (internal quotation marks omitted) (citing *R.J. Fitzgerald & Co.*, 310 F.3d at 1328; *SEC v. George*, 426 F.3d 786, 792 (6th Cir. 2005). The Commission need not prove "an evil motive or intent to injure a customer." *Cange v. Stotler & Co.*, 826 F.2d 581, 589 (7th Cir. 1987).

53. The well-pleaded allegations of the Complaint establish that Robinson, individually and as principal and agent of QYUHI, acted knowingly, or at the very least, with a reckless disregard for the truth. Robinson knew that he did not engage in any forex trading and knew that he misappropriated all participants' funds. Moreover, Robinson knew the account statements he provided participants were false because no trading took place. As the primary signatory on QYUHI's

bank account, the primary officer of QYUHI, and the sole manager of QYUHI's day-to-day operations, Robinson knew that participant funds were not sent to a commodity pool trading account or domestic bank account in the name of QYU Holdings Corporation, or to any commodity pool trading account carried in the name of a CPO and/or RFED registered with the Commission, and he knew that no such accounts existed. As such, Defendants acted with the requisite scienter.

### **3. Defendants' Deceptive Omissions Were Material**

54. An omitted fact is material if "a reasonable investor would consider the information important in making a decision to invest." *R.J. Fitzgerald & Co.*, 310 F.3d at 1328-29; *R&W Tech. Servs. Ltd. v. CFTC*, 205 F.3d 165, 169 (5th Cir. 2000). Any fact that enables customers to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. *Millenium Trading*, 2007 WL 2639474, at \*7 (finding that defendants' omissions concerning the risks involved in trading forex were material because "they went to the heart of the customers' decision-making process"); *R&W Tech. Servs. Ltd.*, 205 F.3d at 170 (stating a reasonable investor would find extravagant claims that understate the inherent risks of trading material).

55. Defendants' deceptive omissions were material because a reasonable participant would consider it important to know that their funds were misappropriated, there was no pool, and there was no trading taking place.

**a. Defendants Committed Fraud by Misappropriation**

56. Misappropriation of customer funds constitutes fraud in violation of 7 U.S.C. § 6b(a). *See Driver*, 877 F. Supp. 2d at 978 (finding that “[s]oliciting or obtaining funds from investors for trading, then failing to trade the funds while using them for personal and business expenses, is misappropriation” and granting summary judgment to the Commission on claims that a CPO and AP of a CPO’s misappropriation of customer funds violated 7 U.S.C. §§ 6b(a)(a)(2)(A)-(C) and §6o(1)); *CFTC v. Aurifex Commodities Research Co.*, No. 1:06–CV–166, 2008 WL 299002, at \*5-6, 8 (W.D. Mich. Feb. 1, 2008) (finding that CPO defendants misappropriated customer funds by “deposit[ing] participants’ funds in their own accounts, . . . [using] significant portions of the participants’ funds for their own personal expenditures, and knowing that the funds they were spending were not their own” in violation of 7 U.S.C. §§ 6b(a)(a)(2)(A)-(C) and §6o(1)); *CFTC ex rel. Kelley v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (Pratt, J.) (holding that a CPO defendant misappropriated customer funds by disbursing investor funds to other investors, herself and her family, in violation of 7 U.S.C. §§ 6b(a)(a)(2)(A)-(C) and §6o(1)).

57. The well-pleaded allegations of the Complaint establish that Defendants violated 7 U.S.C. § 6b(a) and 17 C.F.R. § 5.2(b)(1)-(3) by misappropriating \$7,196,365.37 million of pool participant funds from 38

participants during the Relevant Period.

**b. Defendants Violated 7 U.S.C. § 6o(1)(A)-(B) (Count II): Fraud by a CPO (QYUHI); Fraud by an AP of a CPO (Robinson))**

58. A CPO is defined in 7 U.S.C. § 1a(11), in relevant part as any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property either directly or through capital contributions for the purpose of trading in commodity interests, including any commodity for future delivery, or agreement, contract, or transaction described in 7 U.S.C. § 2(c)(2)(C)(i).

59. Throughout the Relevant Period, QYUHI acted as a CPO within the meaning of 7 U.S.C. § 1a(11), by soliciting, accepting or receiving funds from others for the purpose of trading commodity interests in a pooled investment vehicle.

60. An AP of a CPO is defined by 17 C.F.R. § 1.3 (2023), as any person who is associated with a CPO as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves: (i) the solicitation of funds, securities, or property for a participation in a commodity pool; or (ii) the supervision of any person or persons so engaged.

61. Throughout the Relevant Period, Robinson acted as an AP of CPO QYUHI because while he was an officer and owner of QYUHI, Robinson solicited funds from pool participants through QYUHI's unregistered APs for a participation in Defendants' Pool or supervised QYUHI's unregistered APs who solicited funds from pool participants for a participation in Defendants' Pool.

62. 7 U.S.C. § 6o(1)(A)-(B) prohibits CPOs and APs of CPOs, whether registered with the CFTC or not, "by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly . . . (A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant."

63. 7 U.S.C. § 2(c)(2)(C)(ii)(I), makes transactions, agreements, or contracts described in 7 U.S.C. § 2(c)(2)(C)(i), and accounts or pooled investment vehicles described in 7 U.S.C. § 2(c)(2)(C)(vii), "subject to" 7 U.S.C. § 6o. Additionally, 7 U.S.C. § 2(c)(2)(C)(vii) states that the CFTC has jurisdiction over an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in 7 U.S.C. § 2(c)(2)(C)(i).

64. As alleged in the Complaint, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, Defendants employed a device, scheme, or artifice to defraud actual and prospective participants or engaged in transactions, practices, or a course of business which operated as a fraud or deceit upon any actual or prospective participant, including without limitation: misappropriation of participants' funds, providing false statements to participants via online account access, and omitting material facts in soliciting participants through QYUHI's unregistered APs and/or accepting participant funds, all in violation of 7 U.S.C. § 6o(1)(A)-(B).

**c. Defendants Violated Regulations 17 C.F.R. § 4.20(a)(1), (b), and (c), and 5.4 (2023) (Count III): Failure to Operate Commodity Pool as a Separate Legal Entity, Failure to Receive Funds in the Pool's Name, and Commingling of Pool Funds**

65. 17 C.F.R. § 5.4 states that 17 C.F.R. pt. 4 applies to any person required pursuant to 17 C.F.R. pt. 5 to register as a CPO, and that “[f]ailure by any such person to comply with the requirements of part 4 will constitute a violation of this section and the relevant section of part 4.”

66. 17 C.F.R. § 4.20(a)(1) requires a CPO to operate his or her commodity pool as an entity cognizable as a legal entity separate from that of the pool operator, with certain specified exceptions not applicable here. Throughout the Relevant Period, QYUHI, while acting as a CPO, violated 17 C.F.R. §§

4.20(a)(1) and 5.4 by failing to operate the commodity pool as a legal entity separate from itself.

67. 17 C.F.R. § 4.20(b) provides: “All funds, securities or other property received by a commodity pool operator from an existing or prospective pool participant for the purchase of an interest or as an assessment (whether voluntary or involuntary) on an interest in a pool that it operates or that it intends to operate must be received in the pool’s name. During the Relevant Period, QYUHI, while acting as a CPO, violated 17 C.F.R. §§ 4.20(b) and 5.4 by receiving funds from existing or prospective pool participants for the purchase of an interest in the Pool without receiving the same in the Pool’s name.

68. 17 C.F.R. § 4.20(c) provides: “No commodity pool operator may commingle the property of any pool that it operates or that it intends to operate with the property of any other person.” During the Relevant Period, QYUHI, while acting as a CPO, violated 17 C.F.R. §§ 4.20(c) and 5.4 by commingling Pool funds with the personal funds of Robinson and the corporate funds of QYUHI.

**d. Defendants Violated 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6m(1), and 6k(2), and 17 C.F.R. § 5.3(a)(2)(i), (ii) (2023) (Count IV): Failure to Register as a CPO (QYUHI), Failure to Register as an AP of a CPO (Robinson)**

69. 7 U.S.C. § 6m(1) makes it unlawful for any CPO, unless registered with the CFTC, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO. Similarly,

17 C.F.R. § 5.3(a)(2)(i) requires anyone acting as a CPO for a pooled investment vehicle that engages in retail forex transactions to register as a CPO, as defined in 17 C.F.R. § 5.1(d)(1).

70. Except in circumstances not relevant here, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) and 17 C.F.R. § 5.3(a)(2)(i) require those that meet the definition of a retail forex CPO under 17 C.F.R. § 5.1(d)(1) to register as a CPO with the Commission. A CPO is defined in 17 C.F.R. § 5.1(d)(1) (2023), as any person who operates or solicits funds, securities, or property for a pooled investment vehicle that is not an eligible contract participant as defined in section 1a(18) of the Act, and that engages in retail forex transactions.

71. During the Relevant Period, QYUHI acted as a CPO by engaging in a business that was in the nature of a commodity pool, investment trust, syndicate, or similar enterprise, and in connection therewith, solicited, accepted, or received from others, funds, securities, or property, either directly or otherwise, for the purpose of trading retail forex and forex futures contracts, while failing to register with the Commission as a CPO in violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc) and 6m(1) and 17 C.F.R. § 5.3(a)(2)(i). During the Relevant Period, QYUHI was not exempt from registration as a CPO.

72. 7 U.S.C. § 6k(2) makes it unlawful for any person to be associated with a CPO as an officer or agent (or any person occupying a similar status or



performing similar functions), in any capacity that involves the solicitation of funds, securities, or property for participation in a commodity pool, or the supervision of any person so engaged, unless such person is registered with the Commission as an AP of a CPO. Similarly, 17 C.F.R. § 5.3(a)(2)(ii) requires anyone acting as an AP of a CPO for a pooled investment vehicle that engages in retail forex transactions to register as an AP.

73. Except in certain circumstances not relevant here, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) and 17 C.F.R. § 5.3(a)(2)(ii) require those that meet the definition of an AP of a retail forex CPO under 17 C.F.R. § 5.1(d)(2) to register as an AP of a CPO with the Commission. An AP of a retail forex CPO is defined by 17 C.F.R. § 5.1(d)(2) (2023), as any person who is associated with a CPO as defined in subsection (d)(1) as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves: (i) the solicitation of funds, securities, or property for a participation in a pooled investment vehicle; or (ii) the supervision of any person or persons so engaged.

74. Throughout the Relevant Period, Robinson was associated with CPO QYUHI as an officer or agent in a capacity that involved the solicitation of funds, securities, or property, through QYUHI's unregistered APs, for participation in a commodity pool, for the purpose of trading retail forex and forex futures contracts,

and the supervision of QYUHI's unregistered APs so engaged, while failing to register with the Commission as an AP of QYUHI in violation of 7 U.S.C.

§§ 2(c)(2)(C)(iii)(I)(cc) and 6k(2) and 17 C.F.R. § 5.3(a)(2)(ii). Throughout the Relevant Period, Robinson was not exempt from the requirement to register as an AP of a CPO in connection with QYUHI.

**e. Defendants Violated 17 C.F.R. §§ 4.21, 4.22, 4.23, 5.4 (2023) (Count V): Failure to Provide Required Disclosures and Reports, and Keep and Maintain Required Books and Records**

75. 17 C.F.R. § 5.4 states that 17 C.F.R. pt. 4 applies to any person required pursuant to 17 C.F.R. pt. 5 to register as a CPO, and that “[f]ailure by any such person to comply with the requirements of part 4 will constitute a violation of this section and the relevant section of part 4.”

76. 17 C.F.R. §§ 4.21, 4.22, and 4.23, in relevant part, require that each CPO registered with the Commission, or required to be registered with the Commission, provide required disclosures and reports to prospective and/or actual participants and keep and maintain the books and records in an accurate, current and orderly manner, including without limitation, Disclosure Documents, Account Statements, and Statements of Operations.

77. As set forth above, during the Relevant Period, QYUHI acted as an unregistered CPO, and Robinson was associated with CPO QYUHI as an officer or agent in a capacity that involved the solicitation of funds.

78. At no time during the Relevant Period did QYUHI, in accordance with 17 C.F.R. §§ 4.21, 4.22, 4.23, and 5.4, provide required disclosures and reports to prospective and/or actual participants and keep and maintain the books and records identified herein, and/or in the required format, in violation of 17 C.F.R. §§ 4.21, 4.22, 4.23, and 5.4.

**f. Robinson is Liable for QYUHI's Violations**

79. 7 U.S.C. § 13c(b) (2018), provides: “[a]ny person who, directly or indirectly, controls any person who has violated any provision of this chapter or any of the rules, regulations, or orders issued pursuant to this chapter may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person.” The well-pleaded facts in the Complaint show that Robinson was the President, Treasurer, and a Director of QYUHI, and solely possessed the power and authority to control all day-to-day business operations of QYUHI during the Relevant Period. As the primary signatory on the QYUHI BOA account, Robinson controlled all credits and debits in the QYUHI BOA account during the Relevant Period. Robinson also solely controlled all solicitations to actual and prospective participants through QYUHI’s unregistered APs. *See CFTC v. Hunter Wise Commodities*, 1 F. Supp. 3d 1311, 1350 (S.D. Fla. 2014) (finding control exists where defendant is “an officer, founder, principal, or the authorized signatory on the company’s bank accounts”). Robinson did not act

in good faith and knowingly induced the acts that constituted QYUHI's violations of the Act and Regulations. Accordingly, Robinson is liable for QYUHI's violations as a controlling person pursuant to 7 U.S.C. § 13c(b).

**g. QYUHI is Liable for Robinson's Violations**

80. Under 7 U.S.C. § 2(a)(1)(B), and 17 C.F.R. § 1.2 (2023), a principal is strictly liable for the violations of its officials, agents, or other persons acting for it within the scope of their employment or office. *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986) (“[W]e have no doubt that [7 U.S.C. § 2(a)(1)] imposes strict liability on the principal . . . provided, of course, as the statute also states expressly, that the agent's misconduct was within the scope or (equivalently but more precisely) in furtherance of the agency.”). Here, Robinson committed his violative acts within his capacity as a principal and agent of QYUHI, as alleged in the Complaint. Therefore, QYUHI is liable for Robinson's violations of the Act and Regulations, pursuant to 7 U.S.C. § 2(a)(1)(B), and 17 C.F.R. § 1.2 (2023).

**III. RELIEF GRANTED**

**IT IS HEREBY ORDERED THAT:**

**A. Permanent Injunction**

81. Based upon and in connection with the conduct described above, pursuant to 7 U.S.C. § 13a-1, Robinson and QYUHI are each permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Cheating or defrauding, or attempting to cheat or defraud, other persons; willfully making or causing to be made to other persons any false report or statement or willfully entering or causing to be entered for other persons any false record; or willfully deceiving or attempting to deceive other persons in or in connection with any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person, in violation of 7 U.S.C. § 6b(a)(1)(A)-(C);
- b. Cheating or defrauding, or attempting to cheat or defraud, other persons; willfully making or causing to be made to other persons any false report or statement or willfully entering or causing to be entered for other persons any false record; or willfully deceiving or attempting to deceive other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or forex contract that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market, in violation of 7 U.S.C. § 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b)(1)-(3) (2023);
- c. While acting as a CPO, using the mails or any means or instrumentality of interstate commerce, directly or indirectly to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant, or to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant, in violation of 7 U.S.C. § 6o(1)(A)-(B);
- d. Failing to operate a commodity pool as an entity cognizable as a legal entity separate from that of the commodity pool operator in violation of 17 C.F.R. §§ 4.20(a)(1), 5.4 (2023);
- e. Receiving funds from an existing or prospective pool participant for the purchase of an interest or as an assessment on an interest in a commodity pool that it operates or intends to operate without receiving the same in the commodity pool's name in violation of 17 C.F.R. §§ 4.20(b), 5.4 (2023);

- f. Commingling the property of any commodity pool that the commodity pool operator operates or intends to operate with the property of any other person in violation of 17 C.F.R. §§ 4.20(c), 5.4 (2023);
- g. Acting as a CPO without registering with the CFTC as CPO in violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6m(1), and 17 C.F.R. § 5.3(a)(2)(i) (2023);
- h. Acting as an associated person of a CPO without registering with the CFTC as an AP of a CPO in violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6k(2), and 17 C.F.R. § 5.3(a)(2)(ii) (2022);
- i. While acting as a CPO registered or required to be registered with the CFTC under the Act, failing to deliver or cause to be delivered to prospective participants in a commodity pool that it operates or intends to operate a Disclosure Document for the commodity pool in violation of 17 C.F.R. §§ 4.21, 5.4 (2023);
- j. While acting as a CPO registered or required to be registered with the CFTC under the Act, failing to provide participants in a commodity pool with monthly Account Statements, presented in the form of Statements of Operations and Statements of Changes in Net Assets, in violation of 17 C.F.R. §§ 4.22, 5.4 (2023); and
- k. While acting as a CPO registered or required to be registered with the CFTC under the Act, failing to keep and maintain required books and records for a commodity pool, including, but not limited to: (1) an itemized daily record of each commodity interest transaction of the pool; (2) a general ledger; (3) Statements of Financial Condition; and (4) Statement of Income/Loss, in violation of 17 C.F.R. §§ 4.23, 5.4 (2023).

82. Robinson and QYUHI 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 7 U.S.C. § 1a(40));
- b. Entering into any transactions involving “commodity interests” (as that term is defined in 17 C.F.R. § 1.3 (2023)), for accounts held in the name of any Defendant or for any account in which any Defendant has a direct or indirect interest;
- c. Having any commodity interests traded on any Defendant’s 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 interests;
- e. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling of any commodity interests;
- f. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in 17 C.F.R. § 4.14(a)(9) (2023); and
- g. Acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a) (2023)), agent, or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(38)), registered, exempted from registration, or required to be registered with the CFTC except as provided for in 17 C.F.R. § 4.14(a)(9) (2023).

**B. Restitution**

83. 7 U.S.C. § 13a-1(d)(3)(A) authorizes the CFTC to seek, and the Court to impose, “on a proper showing, . . . restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses). . . .”

Restitution exists to restore the status quo and make the injured party whole.

*Porter v. Warner Holding Co.*, 328 U.S. 395, 402 (1946) (equitable restitution

consists of “restoring the status quo and ordering the return of that which rightfully belongs to the purchaser or tenant”). As such, restitution is calculated as the difference between the amount of pool participant funds Defendants received and the amount of funds returned to participants. *CFTC v. Marquis Fin. Mgmt. Sys., Inc.*, No. Civ.A. 03-74206, 2005 WL 3752232, at \*6 (E.D. Mich. June 8, 2005) (Zatkoff, J.) (calculating restitution in the amount of net pool participant deposits); *see also CFTC v. Winston Reed Investments, LLC*, No. 1:20-cv-42-MOC-WCM, 2021 WL 354422, at \*10 (W.D.N.C. Feb. 2, 2012) (finding that “the object of restitution is to restore the status quo and return the parties to the positions they occupied before the transactions at issue occurred”).

84. Defendants’ illegal conduct, as detailed herein, proximately caused participants to incur *net* losses totaling \$5,923,515.37, which reflects the \$7,196,363.37 Defendants received from 38 pool participants in connection with their fraudulent scheme, *less* Defendants’ payments totaling \$1,272,850 to certain participants. The remaining balance of \$5,923,515.37 (participant funds received less any funds returned to participants) represents the amount of pool participant losses that Defendants unjustly retained for themselves and their own personal benefit as a result of Defendants’ misappropriation and fraudulent scheme. Accordingly, Robinson and QYUHI shall pay restitution to defrauded customers, jointly and severally, in the amount of \$5,923,515.37, plus post-judgment interest.



85. If the Restitution Obligation is not paid immediately, post-judgment interest shall accrue on the Restitution Obligations beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

86. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendants' participants, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall receive restitution payments from Robinson and QYUHI 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 the NFA's appointment as Monitor, other than actions involving fraud.

87. Robinson and QYUHI shall make Restitution Obligation payments, and any post-judgment interest payments, under this Order to the Monitor in the name "CFTC v. Robinson – Restitution Fund" and shall send such payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies the paying Defendant and the name and docket number of this proceeding. The paying Defendant 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.

88. The Monitor shall oversee the Restitution Obligations and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendants' participants identified by the CFTC 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 minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible clients is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part C below.

89. Robinson and QYUHI shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendants' participants to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Robinson and QYUHI 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.

90. The Monitor shall provide the CFTC at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' participants 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 21st Street, NW, Washington, D.C. 20581.

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

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

93. 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.

### **C. Civil Monetary Penalty**

94. 7 U.S.C. § 13a-1(d)(1)(A) and 17 C.F.R. § 143.8(b)(1) (2023) together authorize the CFTC to seek, and the Court to impose, a civil monetary penalty ("CMP") equal to the higher of triple a defendant's monetary gain from each violation of the Act and Regulations, or \$214,514 per violation.<sup>3</sup> Courts have broad discretion in fashioning an appropriate penalty. *See CFTC v. Levy*, 541 F.3d 1102, 1112 (11th Cir. 2008). In assessing CMPs, courts "consider[ ] the general seriousness of the violation as well as any particular mitigating or aggravating circumstances that exist." *CFTC v. Wilshire Inv. Mgmt. Corp.*, 531 F.3d 1339, 1346. "In determining how extensive the fine for violations of the Act ought to be, courts and the Commission have focused upon the nature of the violations." *CFTC v. Noble Wealth Data Info. Servs.*, 90 F. Supp. 2d 676, 694 (D. Md. 2000), *aff'd in relevant part sub nom.*, *CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002). Conduct that violates core provisions of the Act, including defrauding clients, should be

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<sup>3</sup> Pursuant to 17 C.F.R. § 143.8(b)(1), the allowable inflation-adjusted civil monetary penalty is \$214,514 per violation of the Act and Regulations (after November 2, 2015) for non-manipulation claims brought in civil injunctive actions under 7 U.S.C. § 13a-1 in federal district court.

considered “extremely serious.” *CFTC v. Capitalstreet Fin. LLC*, No. 3:09–cv–387–RJC–DCK, 2012 WL 79758, at \*15 (W.D.N.C. Jan. 11, 2012) (citing *JCC, Inc. v. CFTC*, 63 F. 3d 1557, 1571 (11th Circ. 1995)).

95. Robinson and QYUHI committed repeated violations of core antifraud provisions of the Act that caused significant monetary losses to participants. The multi-year scheme included omissions, the fabrication and issuance of fraudulent account statements showing fictional trades, and misappropriation of participants’ funds for unauthorized purposes.

96. Given the serious and prevalent nature of Defendants’ unlawful conduct, Defendants shall pay a civil monetary penalty, jointly and severally, in the amount of \$5,923,515.37 (“CMP Obligation”), plus post-judgment interest, which is equal to the net monetary gains to Defendants from their fraudulent scheme to defraud their pool participants.

97. Robinson and QYUHI shall pay the CMP Obligation and any post-judgment interest, 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 CFTC and sent to the address below:

MMAC/ESC/AMK326  
Commodity Futures Trading Commission  
Division of Enforcement  
6500 S. MacArthur Blvd.

HQ Room 181  
Oklahoma City, OK 73169  
Telephone: (405) 954-6569  
Fax: (405) 954-1620  
9-amc-ar-cftc@faa.gov

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

**D. Miscellaneous Provisions**

98. Partial Satisfaction: Acceptance by the CFTC or the Monitor of any 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 Order or a waiver of the CFTC's right to seek to compel payment of any remaining balance.

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

Notice to Commission:

Ian McGinley  
Director, Division of Enforcement  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

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

100. Change of Address/Phone: Until such time as Robinson and QYUHI satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Order, Defendants shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten calendar days of the change.

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

102. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Order shall be binding upon Robinson and QYUHI, upon any person under their authority or control, and upon any person who receives actual notice of this Order, by personal service, e-mail, facsimile or

otherwise insofar as he or she is acting in active concert or participation with any of the Defendants.

103. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Order and for all other purposes related to this action, including any motion by Defendants to modify or for relief from the terms of this Order.

**THERE BEING NO JUST REASON FOR DELAY**, the Clerk of the Court is hereby ordered to enter this Order for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalty, and Other Statutory and Equitable Relief Against Defendants Darren Robinson and The QYU Holdings Inc. forthwith and without further notice.

**IT IS SO ORDERED**, on this 23rd day of April, 2024.

s/ Linda V. Parker  
LINDA V. PARKER  
U.S. DISTRICT JUDGE

Dated: April 23, 2024