

ENTERED

November 22, 2024

Nathan Ochsner, Clerk

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

MARCUS TODD BRISCO, YAS
CASTELLUM LLC, YAS CASTELLUM
FINANCIAL LLC, TIN QUOC TRAN,
FRANCISCO STORY, FREDIRICK
SAFRANKO, a/k/a TED SAFRANKO,
SAEG CAPITAL GENERAL
MANAGEMENT LP, and MICHAEL
SHANNON SIMS,

Defendants.

Civil Case No. 4:23-cv-336

**CONSENT ORDER FOR
PERMANENT INJUNCTIVE RELIEF,
CIVIL MONETARY PENALTY, AND
OTHER EQUITABLE RELIEF
AGAINST DEFENDANTS MARCUS
TODD BRISCO, YAS CASTELLUM
LLC, AND YAS CASTELLUM
FINANCIAL LLC**

On January 31, 2023, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against Marcus Todd Brisco, Yas Castellum LLC, Yas Castellum Financial LLC, Tin Quoc Tran, Francisco Story, Fredirick Safranko, a/k/a Ted Safranko, SAEG Capital General Management, and Michael Shannon Sims, seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1–26, and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. pts. 1–190 (2023) (“Complaint” or “Compl.”). On February 3, 2023, the Court entered an *ex parte* Statutory Restraining Order (“SRO”) and appointed a Temporary Receiver (“Receiver”). On March 30, 2023, the Court entered a Consent Order of Preliminary Injunction and other Equitable Relief as to Defendants Marcus Todd Brisco, Yas Castellum LLC, and Yas Castellum Financial LLC.

I. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Marcus Todd Brisco, Yas Castellum LLC, and Yas Castellum Financial LLC (hereinafter, “Defendants”) without a trial on the merits or any further judicial proceedings, Defendants:

1. Consent to the entry of this Consent Order for Permanent Injunctive Relief, Civil Monetary Penalty, and Other Equitable Relief Against Defendants Marcus Todd Brisco, Yas Castellum LLC, and Yas Castellum Financial LLC (“Consent Order”).
2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent, or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledge service of the summons and Complaint;
4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;

5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act;

6. Admit that venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e);

7. Waive(s):

(a) Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2023), relating to, or arising from, this action;

(b) Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this action;

(c) Any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

(d) Any and all rights of appeal from this action;

8. Acknowledge that the Commission is the prevailing party in this action for purposes of the waiver of any and all rights under the Equal Access to Justice Act specified in subpart (a) of Paragraph 7;

9. Consent to the continued jurisdiction of this Court over them for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Defendants now or in the future reside outside the jurisdiction of this Court;

10. Agree that they will not oppose enforcement of this Consent Order on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and hereby waives any objection based thereon;

11. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any

allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendants shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement;

12. Consent to the entry of this Consent Order without admitting or denying the allegations of the Complaint or any findings or conclusions in this Consent Order, except as to jurisdiction and venue, which they admit;

13. Consent to the use of the findings and conclusions in this Consent Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof;

14. Do not consent, however, to the use of this Consent Order, or the findings and conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party, other than a: statutory disqualification proceeding, proceeding in bankruptcy, or receivership; or proceeding to enforce the terms of this Order;

15. Agree that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against them in any other proceeding.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein. The findings and conclusions in this Consent Order are not binding on any other party to this action.

THE COURT HEREBY FINDS:

A. Findings of Fact

1. The Parties to this Consent Order

16. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the responsibility of administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1–26, and the Commission’s Regulations promulgated thereunder, 17 C.F.R. pts. 1–190 (2023).

17. **Marcus Todd Brisco** (“Brisco”) is a resident of Wailuku, Hawaii. From December 4, 2020 to May 4, 2022, Brisco was registered with the Commission as an Associated Person (“AP”) of Yas Castellum LLC (“Yas 1”). He was also the CEO and a Principal of Yas 1 during this time period.

18. **Yas Castellum LLC** was a limited liability company that was formed in Colorado. From December 4, 2020 to present, Yas 1 has been registered with the Commission as a Commodity Pool Operator (“CPO”), and from March 29, 2022 to August 18, 2022, Yas 1 was listed with the National Futures Association (“NFA”) as an approved forex firm.

19. **Yas Castellum Financial LLC** (“Yas 2”) is a limited liability company formed in Hawaii. Brisco is the CEO and manager of Yas 2. Yas 2 has never been registered with the Commission.

2. The Scheme

20. From at least October 2020 to May 2022, Yas 1 and Brisco engaged in a scheme to fraudulently solicit prospective pool participants to deposit funds for the ostensible purpose of participating in a commodity pool that would trade off-exchange leveraged or margined retail foreign currency exchange contracts (“forex”) or leveraged or margined gold to U.S. dollar pair

(“XAUUSD”) transactions (“leveraged or margined retail commodity transactions”). Yas 1 and Brisco worked with Defendant A to establish fund maintenance, fund transfer, and trading by Purported Trading Firm 2. Yas 1 and Brisco made material misrepresentations and omissions regarding where they would maintain pool participant funds, how they would trade those funds, who would do the trading, and Yas 1’s historical trading profits. Based upon these material misrepresentations and omissions, at least 43 pool participants deposited no less than \$470,780 with Yas 1 to participate in Yas 1’s commodity pool. Some, if not all, of the Yas 1 pool participants were not eligible contract participants, as defined in Section 1a(18) of the Act, 7 U.S.C. § 1a(18). Rather than directing any pool participant funds to a firm that trades forex or XAUUSD or maintaining funds in an account in the name of the commodity pool, the funds were instead transferred to bank accounts controlled by Defendant A and Purported Trading Firm 2. Further, Yas 1 provided pool participants with false weekly account statements that showed their purported trading profits. In addition, Yas 1 did not set up the commodity pool or receive pool funds in the manner required by the Commission’s Regulations, and commingled pool funds with non-pool property.

21. In March 2022, the NFA initiated an examination of Yas 1 and identified “serious concerns” about Yas 1’s “lack of oversight and control of investor funds.” In response to the NFA’s concerns, Brisco indicated that he would withdraw pool participant funds from Off-Shore Trading Firm, the entity where he claimed the funds were deposited. After waiting several weeks, Brisco received funds from a Canadian cryptocurrency business with no clear connection to Off-Shore Trading Firm. Brisco used the funds to repay Yas 1’s pool participants in amounts that equaled or exceeded their principal investments. On May 4, 2022, Brisco told the NFA that Yas 1

was ceasing operations and he was leaving the financial services industry to pursue another career path.

22. However, in June 2022, Brisco formed a new entity, Yas 2, to conduct a similar commodity pool. Yas 2 never registered with the Commission as a CPO and Brisco never registered as an AP of Yas 2. Between June 2022 and January 2023, Yas 2 and Brisco fraudulently solicited prospective pool participants to deposit funds for the ostensible purpose of participating in a commodity pool that would trade XAUUSD, managed by Purported Trading Firm 2. Yas 2 and Brisco made material misrepresentations and omissions regarding where they would maintain pool participant funds, how they would trade those funds, and Yas 2's historical trading profits. Based upon these material misrepresentations and omissions, at least 66 pool participants deposited no less than \$1,935,079 with Yas 2 to participate in Yas 2's commodity pool. Some, if not all, of the Yas 2 pool participants were not eligible contract participants, as defined in Section 1a(18) of the Act, 7 U.S.C. § 1a(18). Brisco returned approximately \$280,000 to Yas 2 pool participants through withdrawal payments. Yas 2 misappropriated pool participant funds by transferring approximately half of the funds to a bank account controlled by Defendant A, and by Brisco paying himself for trading profits that did not exist. In addition, Yas 2 did not set up the commodity pool or receive pool funds in the manner required by Commission Regulations.

3. Brisco Acted as a Controlling Person of Yas 1 and Yas 2

23. Brisco is the CEO and sole member of Yas 1. He executed pool participant agreements for Yas 1 in his capacity as CEO and "CPO Account Manager." He solicited pool participants for Yas 1 and was the only person who communicated with Yas 1 pool participants about the status of their funds. Further, Brisco was the sole signatory on Yas 1's bank accounts into which he accepted pool participant deposits.

24. Brisco is the CEO and manager of Yas 2. He executed pool participant agreements for Yas 2 in his capacity as CEO and "Account Manager." He solicited pool participants for Yas 2

and was the only person who communicated with Yas 2 pool participants about the status of their funds. Further, Brisco was the sole signatory on Yas 2's bank accounts into which he accepted pool participant deposits.

B. Conclusions of Law

1. Jurisdiction and Venue

25. This Court possesses 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). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), provides that the Commission may bring actions for injunctive relief or to enforce compliance with the Act or any rule, regulation, or order thereunder in the proper district court of the United States whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

26. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e) because certain defendants named in this action reside in this jurisdiction and the acts and practices in violation of the Act or Regulations occurred within this District.

27. Defendants' offering of or purported entering into leveraged or margined transactions involving currency pairs with non-eligible contract participants constitutes retail forex transactions under Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C). Defendants' offering of or purported entering into leveraged or margined transactions involving trading of a product, XAUUSD, where gold is one of the legs, with non-eligible contract participants are retail commodity transactions under Section 2(c)(2)(D) of the Act, 7 U.S.C. § 2(c)(2)(D).

28. Section 2(c)(2)(C)(ii)(I) of the Act, 7 U.S.C. § 2(c)(2)(C)(ii)(I), makes forex transactions, agreements, or contracts described in Section 2(c)(2)(C)(i) of the Act, 7 U.S.C.

§ 2(c)(2)(C)(i), and accounts or pooled investment vehicles described in Section 2(c)(2)(C)(vii) of the Act, 7 U.S.C. § 2(c)(2)(C)(vii), “subject to” Sections 4b and 4o of the Act, 7 U.S.C. §§ 6b and 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 forex described in Section 2(c)(2)(C)(i) of the Act, 7 U.S.C. § 2(c)(2)(C)(i). Section 2(c)(2)(D)(iii) of the Act, 7 U.S.C. § 2(c)(2)(D)(iii), makes leveraged or margined retail commodity transactions, agreements, or contracts described in Section 2(c)(2)(D)(i) of the Act, 7 U.S.C. § 2(c)(2)(D)(i), subject to Section 4b of the Act, 7 U.S.C. § 6b.

2. Violations of Sections 4b(a)(2)(A)–(C), 4o(1)(A)–(B), 4k(2), and 4m(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)–(C), 6o(1)(A)–(B), 6k(2), and 6m(1); and Regulations 4.20(a)(1), (b)–(c) and 5.2(b)(1)–(3), 17 C.F.R. §§ 4.20(a)(1), (b)–(c) and 5.2(b)(1)–(3)

29. By the conduct described above, Yas 1, by and through Brisco, and Brisco directly, in connection with pooled forex and leveraged or margined retail commodity transactions made material misrepresentations and omissions with scienter, distributed false account statements to pool participants, did not operate the commodity pool as a separate legal entity from the CPO, failed to receive funds in the name of the commodity pool, and commingled commodity pool funds with other property, in violation of Sections 4b(a)(2)(A)–(C) and 4o(1)(A)–(B) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)–(C) and 6o(1)(A)–(B), and Regulations 4.20(a)(1), (b)–(c), and 5.2(b)(1)–(3), 17 C.F.R. §§ 4.20(a)(1), (b)–(c), and 5.2(b)(1)–(3) (2023).

30. By the conduct described above, Yas 2, by and through Brisco, and Brisco directly, in connection with pooled leveraged or margined retail commodity transactions misappropriated pool participant funds, made material misrepresentations and omissions with scienter, acted in an unregistered capacity, and did not operate a commodity pool as a separate legal entity from the CPO or receive funds in the name of the commodity pool, in violation of Sections 4b(a)(2)(A) and (C),

4k(2), 4m(1), 4o(1)(A)–(B) of the Act, 7 U.S.C. §§ 6b(a)(2)(A) and (C), 6k(2), 6m(1), and 6o(1)(A)–(B), and Regulation 4.20(a)(1), (b), 17 C.F.R. §§ 4.20(a)(1), (b) (2023).

31. Between October 2020 and January 2023, Brisco controlled Yas 1 and Yas 2, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Yas 1's and Yas 2's acts in violation of the Act and Regulations. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Brisco is liable for Yas 1's and Yas 2's violations of the Act and Regulations.

32. The foregoing acts, omissions, and failures of Brisco occurred within the scope of his employment, agency, or office with Yas 1 and Yas 2. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2023), Yas 1 and Yas 2 are liable for the acts, omissions, and failures of Brisco in violation of the Act and Regulations.

33. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Brisco, Yas 1, and Yas 2 will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

III. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

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

- a. Misappropriation, making material misrepresentations and omissions, distributing false statements, failing to operate a commodity pool as a legal entity separate from the CPO, commingling pool funds with non-pool property, failing to receive funds in the name of the pool, and acting in an unregistered capacity in connection with trading in futures, retail forex, and/or leveraged or margined retail commodity transactions in violation of Sections 4b(a)(2)(A)–(C), 4o(1)(A)–(B), 4k(2), and

4m(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)–(C) and 6o(1)(A)–(B), 6k(2), and 6m(1); and Commission Regulations 4.20(a)(1), (b)–(c) and 5.2(b)(1)–(3), 17 C.F.R. §§ 4.20(a)(1), (b)–(c) and 5.2(b)(1)–(3) (2023);

35. Defendants are also permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40));
- b. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2023)), for their own personal account or for any account in which they have a direct or indirect interest;
- c. Having any commodity interests traded on their behalf;
- d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests ;
- e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2023); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2023)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38)), registered, exempted from registration or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

IV. STATUTORY AND EQUITABLE RELIEF

A. Civil Monetary Penalty

IT IS HEREBY ORDERED THAT:

36. Defendants shall pay, jointly and severally, a civil monetary penalty in the amount of three hundred and fifty thousand dollars (\$350,000) (“CMP Obligation”). If the CMP Obligation is not paid in full immediately, then post-judgment interest shall accrue on the unpaid portion of the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

37. Defendants shall pay their 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 Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-AMC-AR-CFTC@faa.gov

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

B. Restitution

IT IS HEREBY ORDERED THAT:

38. Defendants shall pay, jointly and severally, restitution in the amount of one million six hundred fifty-five thousand dollars (\$1,655,000) (“Restitution Obligation”). If the Restitution Obligation is not paid immediately in full, post-judgment interest shall accrue on the unpaid portion of the Restitution Obligation beginning on the date of entry of the Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Damages Consent Order pursuant to 28 U.S.C. § 1961.

39. During the pendency of the receivership of the Defendants, distributions made by the Receiver to approved Claimants who were Defendants’ pool participants, shall be credited to the Restitution Obligation. At any point after resolution of this case, by settlement or final judgment, the Receiver or Defendants by motion to the court may seek to dissolve the Receivership.

40. To effectuate payment of the Restitution Obligation and the distribution of any restitution payments to Defendants’ pool participants after the termination of the Receiver’s duties, the Court appoints the NFA as Monitor (“Monitor”). The Monitor shall receive restitution payments from Defendants and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the Monitor shall not be liable for any action or inaction arising from NFA’s appointment as Monitor, other than actions involving fraud.

41. Defendants shall make Restitution Obligation payments, and any post-judgment interest payments, under the Consent Order to the Monitor in the name “BRISCO–SETTLEMENT/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, 320 South Canal Street, 24th Floor, Chicago, Illinois 60606 under cover letter that identifies the paying Defendants and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover

letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

42. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendants' pool participants identified by the CFTC and/or Receiver 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 pool participants is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the CFTC following the instructions for civil monetary penalty payments set forth in Part A, above.

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

44. The Monitor shall provide the CFTC at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' pool participants made 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.

45. The amounts payable to each pool participant shall not limit the ability of any pool participant from proving that a greater amount is owed from Defendants or any other person or

entity, and nothing herein shall be construed in any way to limit or abridge the rights of any pool participant that exist under state or common law.

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

47. 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. Provisions Related to Monetary Sanctions

48. Partial Satisfaction: Acceptance by the Commission 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 the Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

49. Asset Freeze: On February 3, 2023 the court entered an asset freeze order prohibiting the transfer, removal, dissipation and disposal of Defendants' assets ("Asset Freeze Order"). The Asset Freeze Order shall remain in effect, except as may be lifted by agreement of the Receiver, the Defendants, and the Plaintiff, when such agreement is approved by the Court.

V. MISCELANEOUS PROVISIONS

50. Until such time as Defendants satisfy in full their CMP and Restitution Obligations under this Consent Order, upon the commencement by or against Defendants of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Defendants' debts, all notices to creditors required to be furnished to the Commission under Title 11 of the

United States Code or other applicable law with respect to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, DC 20581

51. Notice: All notices required to be given by any provision in this Consent Order, except as set forth in paragraph 48, above, shall be sent certified mail, return receipt requested, as follows:

Notice to the Commission:

Rick Glaser Deputy Director, Division of Enforcement
Alison Wilson, Chief Trial Attorney
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, D.C. 20581
Telephone: (202) 418-5000

Notice to Defendant:

Evan Sullivan
Armstrong Teasdale LLP
7700 Forsyth Blvd., Suite 1800
St. Louis, MO 63105
Telephone (314) 552-6696

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

53. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

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

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

56. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action to ensure compliance with this Consent 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 Consent Order.

57. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Consent Order shall be binding upon the following persons who receive actual notice of this Consent Order, by personal service or otherwise: (1) Defendants; (2) any officer, agent, servant, employee, or attorney of the Defendants; and (3) any other persons who are in active concert or participation with any persons described in subsections (1) and (2) above.

58. **Authority:** Kelly Crawford hereby warrants that he is the Court-appointed Receiver for Yas 1 and Yas 2 and he has been duly empowered to sign and submit this Consent Order on behalf of Yas 1 and Yas 2.

59. **Counterparts and Facsimile Execution:** This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any

means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

60. Contempt: Defendants understand that the terms of the Consent Order are enforceable through contempt proceedings to the fullest extent of applicable law, and that, in any such proceedings he may not challenge the validity of this Consent Order.

61. Agreements and Undertakings: Defendants shall comply with all of the undertakings and agreements set forth in this Consent Order.

WHEREFORE, there being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Consent Order for Permanent Injunctive Relief, Civil Monetary Penalty, and Other Equitable Relief Against Defendants Marcus Todd Brisco, Yas Castellum LLC, and Yas Castellum Financial LLC* forthwith and without further notice.

CONSENTED TO AND APPROVED BY:

**PLAINTIFF COMMODITY FUTURES
TRADING COMMISSION**

Alison B. Wilson, *pro hac vice*
(Attorney-In-Charge)
Kelly Folks, *pro hac vice*
Sean Hennessy, *pro hac vice*
Sarah Wastler, *pro hac vice*
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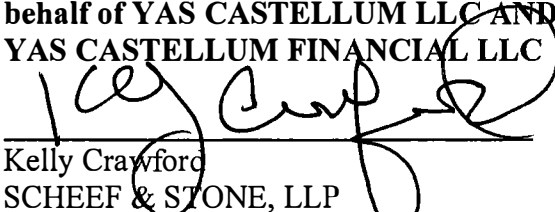
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