

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Commodity Futures Trading
Commission,

Civ. No. 23-436 (JWB/JFD)

Plaintiff,

v.

**ORDER ON
MOTION FOR DEFAULT
JUDGMENT**

Richard Miller, Flip 2 Futures Trading
Company LLC, Justin Dendinger, and
Punch Drunk Marketing LLC,

Defendants.

Christine Ryall, Esq., and Julia Claire Colarusso, Esq., U.S. Commodity Futures Trading
Commission Division of Enforcement, counsel for Plaintiff.

On February 22, 2023, Plaintiff Commodity Futures Trading Commission (“Commission” or “Plaintiff”) filed a Complaint charging Defendants Richard Miller and Flip 2 Futures Trading Company LLC (“Flip 2 Futures”) with violating provisions of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6o(1), 6m(1), 6k(3), and Commission Regulations (“Regulations”) under 17 C.F.R. §§ 3.12(a), 4.30(a), 4.31(a), 1.31, 4.33. (*See generally* Doc. No. 1 (“Compl.”).) The Complaint also charged Defendant Punch Drunk Marketing LLC (“PDM”) with violating 7 U.S.C. §§ 6o(1), 6m(1), 6k(2), and 17 C.F.R. §§ 3.12(a), 4.20(c), 4.21(a)(1) (2023). (*Id.*)

The Commission also included charges against Defendant Justin Dendinger (“Dendinger”), the Managing Member of PDM. Dendinger passed away on September 23, 2023, and the Commission voluntarily dismissed the charges directed at Dendinger in

his individual capacity. (*See* Doc. No. 39.) Dendinger is no longer a party to this action.

On March 1, 2023, pursuant to Federal Rule of Civil Procedure 4(h)(1)(B), the Commission served PDM by delivering the applicable summons and the Complaint to Dendinger, who was also PDM's Registered Agent. (Doc. No. 7.) While Dendinger submitted an Answer on PDM's behalf in which PDM purported to be "self-represented," the filing was stricken because a limited liability company cannot represent itself in federal court. (Doc. No. 22.) PDM failed to otherwise respond to the Complaint, and no counsel has entered an appearance on its behalf. Accordingly, the Commission moved for the entry of default against PDM pursuant to Federal Rule of Civil Procedure 55(a), and the Clerk of Court entered default against PDM on June 6, 2023. (Doc. No. 25.)

On March 21, 2023, pursuant to Federal Rules of Civil Procedure 4(e)(2)(A) and 4(h)(1)(B), the Commission served Miller and Flip 2 Futures through personal service on Miller. (Doc. Nos. 9, 10.) Miller and Flip 2 Futures failed to appear or answer the Complaint within the time permitted by Rule 12(a)(1) and prior court orders in this matter. (Doc. No. 11.) Accordingly, the Commission moved for the entry of default against Miller and Flip 2 Futures, and the Clerk of Court entered default against them on May 16, 2023. (Doc. Nos. 19, 20.)

The Commission has now moved for default judgment, seeking permanent injunctive relief, a restitution obligation, and civil monetary penalties. (Doc. No. 42.) Federal courts may enter default judgment against a party who fails to plead or otherwise defend a lawsuit. Fed. R. Civ. P. 55. Upon default, all facts alleged in the complaint—except for those relating to damages—are admitted as true. Fed. R. Civ. P. 8(b)(6);

accord. Murray v. Lene, 595 F.3d 868, 871 (8th Cir. 2010). The factual allegations must amount to a legitimate cause of action, as a defaulting party does not admit legal conclusions. *Marshall v. Baggett*, 616 F.3d 849, 852 (8th Cir. 2010) (quoting *Murray*, 595 F.3d at 871). If the facts pled are legally sufficient to support a claim, the district court may enter default judgment, but only after ascertaining damages and other terms. *See, e.g., Hagen v. Sisseton-Wahpeton Cmty. Coll.*, 205 F.3d 1040, 1042 (8th Cir. 2000). A decision on default judgment falls within a district court's sound discretion. *Belcourt Pub. Sch. Dist. v. Herman*, 786 F.3d 653, 661 (8th Cir. 2015).

After reviewing the Complaint, considering the Commission's motion papers and oral argument, and examining applicable law, the Commission's motion is granted based on the following findings of fact and conclusions of law.

FINDINGS OF FACT

The following Findings of Fact are considered admitted as true based on the Commission's Complaint. To the extent that the Conclusions of Law include any Findings of Fact, they are incorporated here by reference.

A. The Parties

1. Plaintiff Commodity Futures Trading Commission is an independent regulatory agency charged by Congress with the administration and enforcement of the Commodity Exchange Act, 7 U.S.C. §§ 1–26, and the Regulations promulgated under the Act, 17 C.F.R. pts. 1.1–190.10. (Compl. ¶ 20.)

2. Defendant Flip 2 Futures Trading Company LLC was formed in Minnesota in December 2018. Although the company was administratively terminated in February

2020, claims against an administratively terminated entity are not barred. *See* Minn. Stat. § 322C.0706. Flip 2 Futures has never been registered with the Commission in any capacity. (Compl. ¶ 22; Doc. No. 45 (“Vilenskiy Decl.”) ¶¶ 11, 13.)

3. Defendant Richard “Rick” Miller, a Minnesota resident, was the sole owner and operator of Flip 2 Futures. Miller has never been registered with the Commission in any capacity. (Compl. ¶ 21; Vilenskiy Decl. ¶¶ 10, 12.)

4. Defendant Punch Drunk Marketing LLC was a limited liability company formed in Wisconsin in November 2010. Dendinger was the Managing Member and co-owner of PDM. Although the company was dissolved in January 2024, pursuant to Wis. Stat. § 183.0702(2)(b)(3), a dissolved limited liability company may “[p]rosecute and defend actions and proceedings, whether civil, criminal, or administrative.” PDM has never been registered with the Commission in any capacity. (Vilenskiy Decl. ¶¶ 17–18.)

B. Operation of the Pool and Solicitation of Participants

5. From at least July 2019 through November 2020 (the “Relevant Period”), PDM, by and through Dendinger, solicited and accepted \$400,000 from nine individuals residing in Minnesota and Wisconsin for the purpose of participating in a pooled investment vehicle trading in commodity futures contracts. (Compl. ¶ 6; Vilenskiy Decl. ¶¶ 21–25.) PDM and Dendinger pooled investor funds in accounts in their names and then transferred the funds to Flip 2 Futures and Miller for trading. (Compl. ¶¶ 6, 42, 46–48, 53, 55; Vilenskiy Decl. ¶¶ 7.a, 22, 26.)

6. Miller, individually and as the principal and agent of Flip 2 Futures, solicited funds from and engaged in discretionary trading on behalf of the pool

established by PDM and Dendinger without being registered as an associated person (“AP”) of a commodity trading advisor (“CTA”) as required by federal law. (Compl. ¶¶ 2, 4, 21, 32–34, 48–49, 57, 60, 64–71; Vilenskiy Decl. ¶¶ 10, 26–27, 30, 32; Ex. 1.)

7. At the same time, Flip 2 Futures acted as a CTA without being registered with the Commission in violation of federal law by soliciting funds from PDM to engage in discretionary futures trading and by soliciting the general public online to pay for trading advice. (Compl. ¶¶ 1, 22, 25–38; Vilenskiy Decl. ¶ 13; Ex. 1.)

8. In soliciting PDM, Miller also falsely represented that he was successfully trading and was managing a trading fund holding millions of dollars invested by multiple individuals. (Compl. ¶¶ 4, 32–34.) Flip 2 Futures and Miller then misappropriated \$13,724.21 of the funds provided by PDM for futures trading. (Compl. ¶¶ 4, 50, 61, 74; Vilenskiy Decl. ¶¶ 27, 28, 35.) Flip 2 Futures and Miller also illegally collected funds from the pooled investment vehicle in their own bank and trading accounts, failed to provide a required disclosure document to PDM, and failed to maintain required records. (Compl. ¶¶ 38, 48–49, 57, 60, 79–80.)

9. With respect to PDM, during the Relevant Period, the company acted as a commodity pool operator (“CPO”) without being registered with the Commission as required by federal law by soliciting funds for and operating the pooled investment vehicle at issue. (Compl. ¶¶ 6; 24, 39–55; Vilenskiy Decl. ¶¶ 18, 21–25; Ex. 1.)

10. In addition, PDM, by and through Dendinger, misappropriated \$20,595 of the investment funds contributed by pool participants by failing to transfer those funds to Flip 2 Futures and Miller for trading as provided in PDM’s agreements with pool

participants and by failing to return to pool participants funds repaid by Flip 2 Futures. (Vilenskiy Decl. ¶¶ 25–26, 29, 36.) PDM also illegally commingled pool participant funds with the funds of PDM and Dendinger and failed to provide pool participants with required disclosure documents. (Compl. ¶¶ 45–47, 55–56.)

C. Flip 2 Futures Held Itself Out as a CTA

11. During the Relevant Period, Flip 2 Futures, acting by and through Miller, held itself out as a CTA by soliciting members of the public via its website flip2futures.com, YouTube, Twitter, Craigslist, and/or Discord, to pay a monthly fee for access to a live trading room in which subscribers could watch Miller trade, listen to Miller discuss market conditions and his trading strategy, and simultaneously replicate trades purportedly executed by Miller. (Compl. ¶¶ 25, 27.) Miller registered the domain name “flip2futures.com” in June 2018, and the website was removed from public access sometime after June 11, 2020. (*Id.* ¶ 26.) For example, Flip 2 Futures’ website stated:

Our team has been trading for over 5 years. We are looking for roughly 150 traders form [sic] all over the world to form our futures trading room Trading Strategy Learn how to take the exact trades our team does and profit consistently!

(*Id.* ¶ 27.a.) Flip 2 Futures also solicited members of the public to deposit funds with the company to participate in the “Flip2 Futures Hedge Fund.” (*Id.* ¶ 28.)

12. Miller paid to post at least one advertisement on Craigslist in the “Financial Services” category for the Minneapolis, MN, area in which he represented that he owned and operated Flip 2 Futures and was “looking for 2 more investors” to contribute funds for trading. (*Id.* ¶ 29.) In addition, from January 2018 through June 2019, Flip 2 Futures

and/or Miller posted at least 72 videos to YouTube showing Miller's purported trading in the futures market and directing members of the general public to Flip 2 Futures' website, Twitter account, live trading room, and Discord channel. (*Id.* ¶¶ 30–31.)

D. Miller's Solicitation of PDM

13. By early 2019, Dendinger began paying a monthly fee for access to Flip 2 Futures' trading room. (*Id.* ¶ 32.)

14. Later, in or about July 2019, Dendinger met with Miller in person and discussed Miller's trading performance. (*Id.* ¶ 33.) Using his mobile phone, Miller showed Dendinger purported trading reports generated in a trading application. (*Id.*) The reports falsely represented that Miller's past futures trading generated substantial gains. (*Id.*) During this same meeting, Miller also falsely stated that he had been managing a trading fund holding millions of dollars invested by multiple individuals. (*Id.* ¶ 34.)

E. Flip 2 Futures Agrees to Trade on Behalf of PDM

15. On July 22, 2019, PDM and Flip 2 Futures entered an "Investment Agreement" providing, among other things, that PDM would pay to Flip 2 Futures \$150,000, which Flip 2 Futures would transfer to Miller's personal trading account at Dorman Trading LLC ("Dorman Trading"), and that Flip 2 Futures would retain 50% of any profits derived from the management of the funds. (Compl. ¶¶ 35.b, 35.c, 36.a, 36.b, 36.g; Vilenskiy Decl. Ex. 3 ¶¶ 1–2.) Dorman Trading is registered with the Commission as a Futures Commission Merchant. (Compl. ¶ 62; Vilenskiy Decl. ¶ 30.)

16. The Investment Agreement was signed by Miller on behalf of Flip 2 Futures and by Dendinger as "managing member" of PDM. (Compl. ¶ 37; Vilenskiy

Decl. Ex. 3.) Neither Flip 2 Futures nor Miller delivered to PDM a Disclosure Document as required by 17 C.F.R. § 4.31. (Compl. ¶ 38.)

F. PDM's 2019 Pool Participants

17. PDM and Dendinger did not deposit their own funds with Flip 2 Futures or Miller. (*Id.* ¶ 39.) Rather, in July 2019, Dendinger approached several acquaintances in Wisconsin and Minnesota to invest in a “futures trading opportunity” through PDM. (*Id.*)

18. During discussions with a group of prospective pool participants, Dendinger represented that the funds deposited with PDM would be transferred to a day trader based in Minnesota named Rick Miller. (*Id.* ¶ 40.) Dendinger stated that Miller would place the funds in his personal trading account and use the funds to trade oil futures. (*Id.*) Dendinger also promised that each participant would earn 6% monthly returns on his or her investment for a period of fourteen months. (*Id.*)

19. Relying on Dendinger's representations, in July 2019, one investor entered a promissory note pursuant to which PDM promised to repay him the \$25,000 of initial principal he invested plus 6% interest per month in twelve monthly payments. (*Id.* ¶ 41.)

20. That same month, three other individuals entered “Investor Agreements” with PDM that enlisted them in PDM's “14 Month/6% Monthly Program.” (*Id.* ¶ 43.) Pursuant to these Investors Agreements, PDM agreed, among other things, to “have [the] money deposited into Rick Miller[']s trading account for the purpose[] of placing trades in the futures market.” (*Id.*) The Investor Agreements further provided: “[PDM] will draw monthly on Rick Miller's account in the amount equal to 6% of the original invested amount. Payments of 6% of the original invested amount will be made to

Investor monthly,” with “[t]he last payment . . . in the amount equal to the original investment PLUS the two initial deferred monthly payments of 6%.” (*Id.*)

21. Neither PDM nor Dendinger delivered to the 2019 pool participants a Disclosure Document as described in 17 C.F.R. §§ 4.21, 4.24. (*Id.* ¶ 45.)

22. From July 8, 2019 through July 12, 2019, PDM accepted a total of \$150,000 from these four individuals for the purpose of a pooled investment in futures contracts to be traded by Miller. (*Id.* ¶ 46; Vilenskiy Decl. ¶¶ 21–23, 25.) PDM collected the funds in a bank account held in its name at US Bank (account **4501), the same account in which PDM held its own business funds and conducted its regular business financial transactions, including compensation payments to Dendinger and his partner. (Compl. ¶¶ 46–47; Vilenskiy Decl. ¶¶ 22–23.)

23. On July 23, 2019, PDM transferred \$150,000 by wire to a business bank account held in the name of Flip 2 Futures at Wells Fargo Bank (account **8004). (Compl. ¶ 48; Vilenskiy Decl. ¶ 26.)

G. PDM’s 2020 Pool Participants

24. In or about January 2020, Dendinger again approached acquaintances to invest in futures trading through PDM. (Compl. ¶ 51.) In communications with these prospective pool participants, Dendinger repeated representations made to him by Miller about Miller’s trading success and amount under management, and advised that he watched Miller engage in successful trading in the live trading room. (*Id.* ¶ 52.)

25. Relying on Dendinger’s representations, in January and February 2020, five additional individuals entered into “Investor Agreements” with PDM pursuant to which

they were enlisted in PDM's "14 Month/6% Monthly Program" and PDM agreed, among other things, to "have [their] money deposited into Rick Miller[']s trading account for the purpose[] of placing trades in the futures market." (*Id.* ¶ 54.) The Investor Agreements also provided: "[PDM] will draw monthly on Rick Miller's account in the amount equal to 6% of the original invested amount. Payments of 6% of the original invested amount will be made to Investor monthly . . . ,” with “[t]he last payment . . . will be in the amount equal to the original investment plus 18%.” (*Id.*)

26. Neither PDM nor Dendinger delivered to the 2020 pool participants a Disclosure Document as described in 17 C.F.R. §§ 4.21, 4.24. (*Id.* ¶ 56.)

27. Between January 28, 2020 and February 6, 2020, the five 2020 participants plus one of the 2019 participants collectively deposited, by check and wire transfer, a total of \$250,000 into PDM's US Bank account **4501, \$240,000 of which PDM transferred to Dendinger's personal bank account. (Compl. ¶¶ 53, 55, 57; Vilenskiy Decl. ¶¶ 21–22, 24–25.) Dendinger, in turn, wired \$234,000 from his personal bank account to Flip 2 Futures' Wells Fargo Bank account **8004. (Compl. ¶ 57; Vilenskiy Decl. ¶ 26.)

28. Also in February 2020, PDM, acting through Dendinger, paid two 2019 pool participants a total of \$3,000 from PDM's US Bank account **4501. (Compl. ¶ 58; Vilenskiy Decl. ¶ 29.) Accordingly, PDM and Dendinger retained \$13,000 of the \$250,000 provided by pool participants in January and February 2020. (Compl. ¶ 59.)

H. Miller's Commodity Interest Trading Account

29. Once deposited into Flip 2 Futures' Wells Fargo Bank account **8004, Miller and Flip 2 Futures transferred all of the funds received from PDM in 2019 and

2020 to Wells Fargo Bank account **0711, which was held in the names of Miller and his wife and contained personal funds that Miller and his wife used to pay personal living expenses. (Compl. ¶¶ 49, 60; Vilenskiy Decl. ¶ 27.)

30. Of the \$384,000 in total funds received from PDM during the Relevant Period, Miller and Flip 2 Futures transferred \$380,850.02 from Wells Fargo Bank account **0711 (belonging to Miller and his wife) to Miller's personal account at Dorman Trading (account **402), which Miller opened in April 2018. (Compl. ¶¶ 48–50, 57, 60–62; Vilenskiy Decl. ¶¶ 27, 31.) Miller and Flip 2 Futures retained the remaining \$3,149.98 in PDM funds and failed to transfer them to any trading account. (Vilenskiy Decl. ¶ 27.)

31. With respect to Miller's trading in Dorman Trading account **402, from May 2018 through July 2019—before accepting funds from PDM—Miller traded in only nine out of fifteen months, executing trades in crude oil and E-mini S&P 500 futures contracts. (Compl. ¶ 63; Vilenskiy Decl. ¶ 31.) During this time, Miller's trading earned net profits in only three months and sustained net losses in the remaining six months. (*Id.*) Miller was the only authorized trader on the account. (Vilenskiy Decl. ¶ 30.)

32. From August 2019 through November 2020 (i.e., after accepting funds from PDM), Miller bought and sold futures contracts traded on CME, a designated contract market authorized by the Commission. (Compl. ¶ 64; Vilenskiy Decl. ¶ 32.) Over that same time period, Miller's trading in the account sustained net losses in all but one month. (Compl. ¶ 65; Vilenskiy Decl. ¶¶ 28, 33.) His trading earned \$3,035.95 net profits in July 2020. (*Id.*) In the other months, his net monthly trading losses ranged from

\$1,224.76 to \$128,139.69. (*Id.*)

33. On or about May 12, 2020, Miller wrote to Dendinger via email and stated:

Profits fell for the fund last month over 90% due to increased margins. Once again just like March we are seeing things I have never seen in the market. Regardless I am going to give it to you straight. March was down 12% I was able to recoup 8% in April so we are still down 4% as of fast Friday. Margins have increased to 11 x in CL. CL is where I make my money so this has severely impacted profits.

(Compl. ¶ 66.)

34. Despite these representations, for the month of March 2020, Miller's trading in Dorman Trading account **402 sustained net losses of over \$128,000, almost 50% of the account's monthly beginning balance. (Compl. ¶ 67; Vilenskiy Decl. ¶ 33.) In addition, for the month of April 2020, Miller's trading in Dorman Trading account **402 sustained net losses of over \$39,000, approximately 37% of the account's monthly beginning balance. (Compl. ¶ 68; Vilenskiy Decl. ¶ 33.)

35. Then, on May 19, 2020, Miller sent Dendinger an email with an attached Word document in which Miller stated: "[W]e are in a very bad spot right now. I took an ELE—Extinction Level Event We've lost 97% of our portfolio because of adding to losing trades" (Compl. ¶ 69.)

36. Miller and Dendinger decided to continue trading the remaining funds in an effort to recoup the losses. (*Id.* ¶ 70.) However, from June 2020 through November 2020, Miller's trading suffered overall losses, depleting the remaining funds from PDM. (*Id.*)

37. From August 2019 through November 2020, Miller's trading in Dorman Trading account **402 lost a total of \$329,666.38. (Compl. ¶ 71; Vilenskiy Decl. ¶ 34.)

I. Payments to PDM and Pool Participants

38. From October 2019 to June 2020, Miller and Flip 2 Futures returned a total of \$46,900 to PDM by transferring those funds from Dorman Trading account **402 directly to PDM's US Bank account **4501. (Vilenskiy Decl. ¶ 29.) During the same period, Miller transferred a total of \$12,092.20 from his Dorman Trading account to Flip 2 Futures' Wells Fargo Bank account **8004. (Compl. ¶ 72; Vilenskiy Decl. ¶ 28.) As set forth above, the Investment Agreement between Flip 2 Futures and PDM provided that Flip 2 Futures would retain 50% of all profits derived from its trading of the funds collected and transferred by PDM. (Compl. ¶ 35.c; Vilenskiy Decl. Ex. 3 ¶¶ 1–2.)

39. During the Relevant Period, Miller's trading in his Dorman Trading account earned net profits of \$3,035.95 in July 2020 and sustained net losses in all other months. (Compl. ¶ 65; Vilenskiy Decl. ¶¶ 28, 33.) Accordingly, pursuant to Flip 2 Futures' agreement with PDM, Flip 2 Futures and Miller were entitled to at most \$1,517.97 in profits from Miller's trading. (Compl. ¶ 73; Vilenskiy Decl. ¶ 28.) Miller retained the remaining \$10,574.23 in pool participant funds and failed to transfer the funds to PDM. (Compl. ¶ 74; Vilenskiy Decl. ¶ 28.)

40. From October 2019 through June 2020, pool participants each received partial payments from PDM, in amounts ranging from \$500 to \$1500, for a total of \$27,000. (Vilenskiy Decl. ¶ 29.) PDM has not returned any additional amounts to the pool participants despite their requests for payment. (Compl. ¶ 77.)

J. Flip 2 Futures' Records

41. On May 18, 2021, the Commission served a subpoena on Miller, requesting

documents related to Flip 2 Futures' activity as a CTA, including all trading account statements, all documents provided to any prospective customer, all account statements or performance statements prepared for any customer/investor, and all account statements for any bank or other financial account used to send, receive, or transfer funds in connection with futures trading. (Compl. ¶ 79.)

42. On June 25, 2021, Miller sent an email to Commission staff in response to the subpoena. (*Id.* ¶ 80.) The only documents accompanying the response were a copy of the Investment Agreement with PDM and a copy of a form 1099B from Dorman Trading for the year 2020. (*Id.*)

CONCLUSIONS OF LAW

A. Jurisdiction and Venue

43. Under 7 U.S.C. § 13a–1(a), whenever it appears to the Commission that a person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Commodity Exchange Act or any rule, regulation, or order thereunder, the Commission may bring an action for injunctive relief in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or other thereunder.

44. Therefore, jurisdiction is proper in this matter pursuant to 28 U.S.C. § 1331 (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (providing district courts original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by an act of Congress).

45. Venue is also proper in this matter pursuant to 7 U.S.C. § 13a–1(e) because

Defendants reside or transacted business in this District, and because the acts and practices in violation of the Act and the Regulations occurred, are occurring, or are about to occur, within this District, among other places. In particular, Defendants solicited funds from and communicated with Pool Participants who resided within this District. (Compl. ¶ 6; Vilenskiy Decl. ¶ 21.)

B. Violations of 7 U.S.C. § 6o(1) by Flip 2 Futures and Miller

46. 7 U.S.C. § 6o(1) makes it unlawful for a commodity trading advisor (“CTA”) or an associated person (“AP”) of a CTA to use the mails or any other 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.

47. 7 U.S.C. § 6o(1) applies to all CTAs whether registered, required to be registered, or exempted from registration. *See* 17 C.F.R. § 4.15; *CFTC v. Vartuli*, 228 F. 3d 94, 103 (2d Cir. 2000) (unregistered CTA liable under 7 U.S.C. § 6o(1)); *CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (applying 7 U.S.C. § 6o(1) to activity by a defendant who was not registered with the Commission).

48. As set forth above, during the Relevant Period, Flip 2 Futures, through Miller, acted as a CTA by exercising discretionary trading authority over a commodity futures pool account for PDM. *See* 7 U.S.C. § 1a(12)(A)(i)(I). Miller, in turn, acted as an AP of Flip 2 Futures. *See* 17 C.F.R. § 1.3.

49. Flip 2 Futures, acting as a CTA, and Miller, acting as an AP of a CTA,

employed a device, scheme, or artifice to defraud PDM and/or Dendinger and engaged in transactions, practices, or a course of business which operated as a fraud or deceit upon them in violation of 7 U.S.C. § 6o(1) by (i) making false and misleading statements and otherwise deceiving PDM and/or Dendinger about the profitability of Miller's past trading and having other funds under management and (ii) misappropriating funds provided by PDM for futures trading.

50. Flip 2 Futures and Miller engaged in those acts and practices using instrumentalities of interstate commerce, including interstate wires for transfer of funds, email, and other electronic communication devices.

51. Flip 2 Futures and Miller engaged in the acts and practices described above knowingly, willfully, or with reckless disregard for the truth.

C. Violations of 7 U.S.C. § 6m(1) by Flip 2 Futures and Miller

52. 7 U.S.C. § 6m(1) makes it unlawful for any CTA, unless registered with the Commission, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CTA.

53. During the Relevant Period, Flip 2 Futures, which was not exempt from registration as a CTA, acted as a CTA and used instrumentalities of interstate commerce, such as emails and wire transfers, in connection with its business as a CTA by soliciting funds from and engaging in discretionary trading of futures contracts on behalf of a pooled investment vehicle and by soliciting members of the public through its website and social media posts to deposit funds with the company for trading. Flip 2 Futures engaged in this conduct without being registered with the Commission in violation of 7

U.S.C. § 6m(1).

D. Violations of 7 U.S.C. § 6k(3) and 17 C.F.R. § 3.12(a) by Flip 2 Futures and Miller

54. 7 U.S.C. § 6k(3) requires registration with the Commission for any person who is associated with a CTA as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves the solicitation of a client's or prospective client's discretionary account or the supervision of any person so engaged. 7 U.S.C. § 6k(3) further makes it unlawful for a CTA to permit such a person to become or remain associated with the CTA in any such capacity if the CTA knew or should have known that the person was not registered with the Commission.

55. 17 C.F.R. § 3.12(a) prohibits any person from being an AP of a CTA unless that person is registered with the Commission as an AP of the sponsoring CTA.

56. During the Relevant Period, Miller acted as an officer, employee, or agent of Flip 2 Futures in a capacity that involved soliciting others, including Dendinger, to provide funds for the purpose of investing in discretionary commodity futures trading. Miller engaged in this conduct without being registered with the Commission as an AP of Flip 2 Futures, in violation of 7 U.S.C. § 6k(3) and 17 C.F.R. § 3.12(a). Flip 2 Futures knowingly permitted Miller to become or remain associated with Flip 2 Futures without being registered and thereby violated 7 U.S.C. § 6k(3).

E. Violations of 17 C.F.R. § 4.30(a) by Flip 2 Futures and Miller

57. 17 C.F.R. § 4.30(a) prohibits a CTA from soliciting, accepting, or receiving

from an existing or prospective client funds, securities, or other property in the CTA's name to purchase, margin, guarantee, or secure any commodity interest of the client.

58. During the Relevant Period, Flip 2 Futures solicited, accepted, and received \$384,000 from PDM into a bank account in Flip 2 Futures' name and into a bank and trading account in Miller's name, to purchase, margin, guarantee or secure commodity futures trading for PDM in Miller's trading account. As a result, Flip 2 Futures violated 17 C.F.R. § 4.30(a).

F. Violations of 17 C.F.R. § 4.31(a) by Flip 2 Futures and Miller

59. 17 C.F.R. § 4.31(a) requires each CTA registered or required to be registered under the Act to deliver or cause to be delivered to a prospective client a Disclosure Document prepared in accordance with Commission Regulations.

60. During the Relevant Period, Flip 2 Futures, which acted as a CTA, failed to deliver to PDM a Disclosure Document prepared in accordance with Commission Regulations, in violation of 17 C.F.R. § 4.31(a).

G. Violations of 17 C.F.R. §§ 1.31, 4.33 by Flip 2 Futures and Miller

61. Pursuant to 17 C.F.R. § 4.33, a CTA "registered or required to be registered under the Act must make and keep . . . [certain] books and records in an accurate, current, and orderly manner at its main business office" and in accordance with 17 C.F.R. § 1.31. Specifically, CTAs are required to make and keep books and records concerning clients and subscribers, including name and address, written agreements, records of commodity interest accounts and all transactions, and statements. 17 C.F.R. § 4.33.

62. 17 C.F.R. § 1.31 requires CTAs to retain those books and records and to

make them available to the Commission.

63. Flip 2 Futures, which acted as a CTA, failed to make, keep, and/or make available to the Commission required records in violation of 17 C.F.R. § 4.33 and 17 C.F.R. § 1.31, including trading account statements, documents provided to any prospective customer, account statements or performance statements prepared for any customer/investor, and account statements for any bank or other financial account used to send, receive, or transfer funds in connection with futures trading.

H. Violations of 7 U.S.C. § 6o(1) by PDM

64. The anti-fraud provisions of 7 U.S.C. § 6o(1), set forth in Section B, apply equally to commodity pool operators (“CPOs”) and APs of CPOs.

65. 7 U.S.C. § 1a(11)(A)(i), defines a CPO as, among other things, any person engaged in a business that is of the nature of a commodity pool and who solicits, accepts, or receives from others funds, securities, or property for the purpose of trading commodity interests.

66. An AP of a CPO is defined in 17 C.F.R. § 1.3, in relevant part, as any “partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves . . . the solicitation of funds, securities, or property for a participation in a commodity pool.”

67. During the Relevant Period, PDM acted as a CPO under Dendinger’s direction and control, and Dendinger acted as an AP of a CPO, by soliciting and accepting funds from others for the purpose of participating in a pooled investment vehicle trading in commodity futures contracts.

68. By the conduct described above, PDM, acting as a CPO, employed a device, scheme, or artifice to defraud the pool participants and engaged in transactions, practices, or a course of business which operated as a fraud or deceit upon them in violation of 7 U.S.C. § 6o(1) by misappropriating pool participant funds.

69. PDM engaged in the acts and practices described above using instrumentalities of interstate commerce, including but not limited to interstate wires for transfer of funds and email.

70. PDM engaged in the acts and practices described above knowingly, willfully, or with reckless disregard for the truth.

I. Violations of 7 U.S.C. § 6m(1) by PDM

71. 7 U.S.C. § 6m(1) makes it unlawful for any CPO, unless registered with the Commission, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO.

72. PDM never claimed any exemption from registration as a CPO.

73. As set forth above, PDM violated 7 U.S.C. § 6m(1) by using emails and wire transfers in connection with its business as a CPO to solicit and collect \$400,000 from nine individuals for investment in a commodity pool that engaged in commodity futures trading, without having registered with the Commission as a CPO.

J. Violations of 7 U.S.C. § 6k(2) and 17 C.F.R. § 3.12(a) by PDM

74. 7 U.S.C. § 6k(2) makes it unlawful for any person to be associated with a CPO as a “partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the

solicitation of funds, securities, or property for a participation in a commodity pool . . . unless such person is registered with the Commission” as an AP of the CPO.

75. 7 U.S.C. § 6k(2) also prohibits a CPO from permitting “such a person to become or remain associated with” the CPO in any such capacity if the CPO knew or should have known that the person was not registered with the Commission as an AP.

76. 17 C.F.R. § 3.12(a) prohibits any person from being an AP of a CPO unless that person is registered with the Commission as an AP of that sponsoring CPO.

77. During the Relevant Period, Dendinger acted as an officer, employee, or agent of PDM when he solicited \$400,000 from nine individuals for the pooled investment vehicle operated by PDM. Dendinger engaged in this conduct without being registered with the Commission as an AP of PDM, in violation of 7 U.S.C. § 6k(2) and 17 C.F.R. § 3.12(a). Further, PDM knowingly permitted Dendinger to become or remain associated with PDM without being registered in violation of 7 U.S.C. § 6k(2).

K. Violations of 17 C.F.R. § 4.20(c) by PDM

78. 17 C.F.R. § 4.20(c) prohibits a CPO from commingling the property of any pool that it operates or intends to operate with the property of any other person.

79. During the Relevant Period as described above, PDM, by and through the actions of Dendinger, violated 17 C.F.R. § 4.20(c) by commingling funds of the commodity pool with the funds of PDM and with Dendinger’s personal funds when it collected pool participants’ investment funds in PDM’s own bank account, Dendinger transferred pool participant funds to his personal bank account, and otherwise mixed pool funds with non-pool funds.

L. Violations of 17 C.F.R. § 4.21(a)(1) by PDM

80. 17 C.F.R. § 4.21(a)(1) requires each CPO registered or required to be registered under the Act to deliver or cause to be delivered to a prospective pool participant a Disclosure Document prepared in accordance with Commission Regulations.

81. During the Relevant Period, PDM, while acting as a CPO, failed to deliver to any of the nine pool participants a Disclosure Document prepared in accordance with the Commission's Regulations, in violation of 17 C.F.R. § 4.21(a)(1).

M. Miller is Liable under the Act for Flip 2 Futures's Violations

82. As the sole owner and operator of Flip 2 Futures, Miller controlled Flip 2 Futures, did not act in good faith, and knowingly induced Flip 2 Futures to commit the acts, omissions, and failures described above. Therefore, Miller is liable as a controlling person under 7 U.S.C. § 13c(b) for Flip 2 Futures' violations.

N. Flip 2 Futures and PDM are Liable under the Act for Miller and Dendinger's Violations

83. Miller and Dendinger's acts, omissions, and failures described above occurred within the course and scope of their employment, office, or agency at Flip 2 Futures and PDM, respectively. Therefore, pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2, Flip 2 Futures and PDM are therefore liable as principals for their agents' acts constituting violations of the Act and Regulations.

O. Injunctive Relief is Warranted against Miller and Flip 2 Futures

84. 7 U.S.C. § 13a-1 authorizes the Commission to seek an injunction against

any registered entity or other person that has engaged, is engaging, or is about to engage in any act or practice that constitutes a violation of the Act or Regulations. The test for whether to impose an injunction is whether the defendant's past conduct indicates a reasonable likelihood of violations in the future. violations *U.S. Commodity Futures Trading Comm'n v. Arrington*, No. 8:11CV181, 2014 WL 314480, at *13 (D. Neb. Jan. 28, 2014) (quotations omitted). Relevant factors to consider include the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations. *Id.* at *14.

85. Accepting the Commission's allegations as true, there is a reasonable likelihood that Defendants Miller and Flip 2 Futures will continue to engage in the acts and practices alleged in the Complaint that violate the Act and Regulations unless restrained and enjoined by court order. Although Flip 2 Futures is currently administratively terminated as an LLC in Minnesota, it can return to active status if Miller files renewal paperwork and pays a fee. *See* Minn. Stat. § 322C.0706. More important is that Miller not shown a willingness to abide by federal statutes and regulations, nor has he participated in this litigation or given assurances that he will no longer violate federal law. As there is nothing preventing Miller from repeating his wrongdoing in the future, an injunction will be entered that restrains Miller and Flip 2 Futures from committing future violations and from trading.

86. The Commission has not shown a reasonable likelihood that PDM will

continue to engage in the acts and practices alleged in the Complaint that violate the Act and Regulations. PDM is currently administratively dissolved, and its managing member is deceased. The Commission has not offered evidence that any of PDM's co-owners were involved with Dendinger's acts, might commit similar acts in the future, or intend to restore PDM to active status. As a result, no injunction will be entered against PDM.

P. Restitution is Authorized to Reimburse the Pool Participants' Lost Funds

87. 7 U.S.C. § 13a-1(d)(3)(A) authorizes a court to order any person found to have committed a violation to pay restitution to those who have sustained losses proximately caused by the violations, in the amount of such losses.

88. Restitution is meant to restore the status quo and make the injured party whole. *Porter v. Warner Holding Co.*, 328 U.S. 395, 402 (1946). Courts calculate restitution "as the difference between what [a defendant] obtained and the amount customers have already received back." *CFTC v. Ross*, No. 09-cv-5443, 2014 WL 6704572, at *3 (N.D. Ill. Nov. 26, 2014). Where a defendant engages in systematic and pervasive fraud, all funds obtained by the illegal enterprise may be included in the calculation. *See CFTC v. McDonnell*, 332 F. Supp. 3d 641, 726-27 (E.D.N.Y. 2018).

89. Defendants wrongfully obtained \$400,000 from the Pool Participants. (Vilenskiy Decl. ¶¶ 23-25.) Of those funds, \$27,000 was returned, and Dendinger agreed with one pool participant to deposit \$9,000 into a personal trading account held in Dendinger's name. (*Id.* ¶¶ 25, 29, 37.) Accordingly, restitution is warranted in the amount of \$364,000, which represents the total losses caused by Defendants' violations, less the amounts returned to the Pool Participants or transferred out of Defendants' possession.

O. A Civil Monetary Penalty is Justified

90. 7 U.S.C. § 13a-1(d)(1)(A) and 17 C.F.R. § 143.8(b)(1) authorize courts to impose a civil monetary penalty of triple a defendant's monetary gain or \$221,466 per violation, whichever is greater.

91. "Sanctions in CFTC enforcement proceedings should be determined with regard to the gravity of the offense and the need for deterrence." *Monieson v. CFTC*, 996 F.2d 852, 862 (7th Cir. 1993). Courts consider a variety of factors in assessing a civil penalty, and they have broad discretion to fashion an appropriate remedy that is rationally related to the charged offense or the need for deterrence. *See CFTC v. Yorkshire Grp., Inc.*, No. 1:13-cv-5323, 2016 WL 8256380, at *6 (E.D.N.Y. Aug. 19, 2016). Relevant factors include "(1) whether Defendants' illegal acts violated core provisions of the Act; (2) whether Defendants acted with scienter; (3) the consequences resulting from Defendants' violations; (4) the financial benefits to Defendants; and (4) the harm to Defendants' customers." *CFTC v. Cifuentes*, No. 2:16-cv-6167, 2018 WL 1904196, at *11 (D.N.J. Apr. 20, 2018).

92. The Commission requests the maximum penalty for each of Defendants' violations. Defendants violated core provisions of the Act by deceiving the public and those who trusted them with their money. Their lack of trading success does not excuse their wrongdoing or reduce the gravity of their offense. Defendants defrauded their investors by overstating Miller's trading expertise and skill, all without complying with the statutes and regulations designed to prevent that variety of fraudulent misconduct.

93. Restitution will address the direct harm to the Pool Participants, and the

need for specific deterrence is somewhat lessened by the fact that both Flip 2 Futures and PDM are currently defunct. To directly punish Defendants' violations and to show others that violating the Act carries financial consequences, a penalty of \$150,000 per violation will be imposed. *Cf. Arrington*, 2014 WL 314480, at *16 (imposing maximum civil penalty for "repeated and egregious nature" of fraudulent scheme); *CFTC v. Hays*, Civ. No. 09-259 (DWF/AJB), 2011 WL 311366, at *4 (D. Minn. Jan. 28, 2011) (imposing maximum civil penalty where violations were knowing, continuous, and involved over 100 customers). Accordingly, Miller and Flip 2 Futures must pay \$900,000 for their six violations, and PDM must pay \$750,000 for its five violations.

ORDER

Based on the foregoing, and on all the files, records, and proceedings in this case, **IT IS HEREBY ORDERED** that Defendant's Motion for Default Judgment (Doc. No. 42) is **GRANTED** as follows:

PERMANENT INJUNCTION

1. Based upon and in connection with the foregoing Findings of Fact and Conclusions of Law, pursuant to 7 U.S.C. § 13a-1, Defendants Miller and Flip 2 Futures are permanently restrained, enjoined, and prohibited from directly or indirectly:
 - a. Employing any device, scheme, or artifice to defraud or engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any pool participant or client while acting as a CTA and/or an AP of a CTA in violation of 7 U.S.C. § 6o(1)(A)–(B);
 - b. Soliciting funds from the public and/or any pooled investment vehicle

for the purposes of engaging in discretionary trading of futures contracts on their behalf, without being registered with the Commission as a CTA in violation of 7 U.S.C. § 6m(1);

- c. Act in any capacity involving the solicitation of a client's or prospective client's discretionary trading account without being registered with the Commission as an AP of a CTA in violation of 7 U.S.C. § 6k(3) and 17 C.F.R. § 3.12(a);
- d. Operating improperly as a CTA by soliciting, accepting, or receiving from an existing or prospective client funds, securities, or other property in the CTA's name to purchase, margin, guarantee, or secure any commodity interest of the client in violation of 17 C.F.R. § 4.30(a);
- e. Operating improperly as a CTA by failing to deliver to any prospective client a Disclosure Document prepared in accordance with Commission Regulations in violation of 17 C.F.R. § 4.31(a); and
- f. Failing to make, keep, and/or make available to the Commission required records in violation of 17 C.F.R. §§ 1.31, 4.33.

2. Miller and Flip 2 Futures are also permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. Trading on or subject to the rules of any registered entity, as defined in 7 U.S.C. § 1a(40);
- b. Entering into any transactions involving "commodity interests," as defined in 17 C.F.R. § 1.3, 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 in 17 C.F.R. § 4.14(a)(9); or
 - g. Acting as a principal, as defined in 17 C.F.R. § 3.1(a), agent, or any other officer or employee of any person, as defined in 7 U.S.C. § 1a(38), registered, exempted from registration, or required to be registered with the Commission, except as provided in 17 C.F.R. § 4.14(a)(9).

RESTITUTION AND CIVIL MONETARY PENALTIES

A. Restitution

3. Pursuant to 7 U.S.C. § 13a–1(d)(3)(A), Defendants shall pay, jointly and severally, restitution in the amount of \$364,000.00 (“Restitution Obligation”). If the Restitution Obligation is not paid within 60 days of this Order, post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this

Order pursuant to 28 U.S.C. § 1961.

4. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendants' pool participants, the National Futures Association ("NFA") is appointed as Monitor. The Monitor shall receive restitution payments from Defendants and make distributions as set forth below. Because the Monitor is acting as a court officer in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

5. Defendants shall make Restitution Obligation payments and any post-judgment interest payments to the Monitor in the name "Miller/Flip 2 Futures/PDM–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, IL 60606 under cover letter that identifies the paying Defendant(s) 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.

6. 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 Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a de 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 Commission following the instructions for civil monetary penalty payments set forth in Section B below.

7. 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 they have in any repository, bank, investment, or other financial institution, wherever located, to make partial or total payment toward the Restitution Obligation.

8. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' pool 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.

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

10. 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 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.

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

B. Civil Monetary Penalties

12. Pursuant to 7 U.S.C. § 13a–1(d)(1), Flip 2 Futures and Miller shall jointly and severally pay a civil monetary penalty of \$900,000.00, and PDM shall pay a civil monetary penalty of \$750,000.00 (collectively, "CMP Obligations").

13. Defendants shall pay their CMP Obligations 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
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. Defendants shall accompany payment of the CMP Obligations with a cover letter that identifies the payor 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, DC 20581.

C. Provisions Related to Monetary Sanctions

14. **Partial Satisfaction:** Acceptance by the Commission or the Monitor of any partial payment of Defendants' Restitution Obligation or CMP Obligations shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

MISCELLANEOUS PROVISIONS

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

Notice to Commission:

Paul G. Hayeck
Deputy Director
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Notice to Defendants Richard Miller and Flip 2 Futures Trading Company LLC:

12042 68th Cir. NE,
Otsego, MN 55330-4234

Notice to National Futures Association:

Daniel Driscoll, Executive Vice President, COO
National Futures Association
300 S. Riverside Plaza, Suite 1800
Chicago, IL 60606-3447

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

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

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

18. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Order shall be binding upon Defendants, upon any person under the authority or control of any of the Defendants, and upon any person who receives actual notice of this Order, by personal service, email, facsimile, or otherwise insofar as he or she is acting in active concert or participation with Defendants.

19. **Continuing Jurisdiction:** 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.

20. **Service of this Order:** The Commission must serve a copy of this Order on each Defendant and file proof of service upon doing so.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: December 3, 2024

s/ Jerry W. Blackwell

JERRY W. BLACKWELL

United States District Judge