UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

COMMODITY FUTURES TRADING COMMISSION, **Plaintiff,** **v.** **RASHAWN RUSSELL,** **Defendant.**	**Case No. 23-CV-02691-EK-TAM**

CONSENT ORDER FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF AGAINST DEFENDANT RASHAWN RUSSELL

I. INTRODUCTION

On April 11, 2023, Plaintiff Commodity Futures Trading Commission ("CFTC") filed its Complaint against Defendant Rashawn Russell ("Russell" or "Defendant") seeking injunctive and other equitable relief, as well as imposition of civil penalties, for violations of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1-26, and CFTC Regulations ("Regulations") promulgated thereunder, 17 C.F.R. pts. 1-190 (2023).

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Defendant, without a trial on the merits or any further judicial proceedings, Defendant:

1. Consents to the entry of this Consent Order for Permanent Injunction and Other Equitable Relief Against Defendant Rashawn Russell ("Consent Order");

2. Affirms that he has 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 CFTC or

any member, officer, agent or representative thereof, or by any other person to induce consent to this Consent Order;

3. Acknowledges service of the summons and Complaint;

4. Admits the jurisdiction of the Court over him and the subject matter of this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), and 28 U.S.C. §§ 1331, 1345;

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

6. Admits that venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e) and 28 U.S.C. § 1391(b);

7. Waives:

a. Any and all claims that he 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 CFTC 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 he 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. Agrees that for purposes of the waiver of any and all rights under the Equal Access to Justice Act specified in subpart (a) of Paragraph 7 above, Defendant is not the prevailing party in this action because the parties have reached a good faith settlement;

9. Consents to the continued jurisdiction of this Court over him 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 Defendant now or in the future resides outside of the jurisdiction of this Court;

10. Agrees that he 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. Agrees that neither he, nor any of his agents or employees under his 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 his: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the CFTC is not a party. Defendant shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents and employees under his authority or control understand and comply with this agreement;

12. Acknowledges that in *United States of America v. Rashawn Russell,* No. 23-CR-152 (E.D.N.Y.) (the "Criminal Action"), Defendant pleaded guilty on September 19, 2023 to one count of wire fraud (18 U.S.C. § 1343) and one count of access device fraud (18 U.S.C. § 1029(a)(3)), and that in connection with the plea to wire fraud admitted facts set out in his plea allocution. The facts admitted by Defendant in his plea allocution are admitted as if set forth in this Consent Order. Exhibit A, Excerpt of September 19, 2023 Transcript of Plea Hearing, pp. 47-49;

13. Consents to the use of the findings and conclusions in this Consent Order in this proceeding and in any other proceeding brought by the CFTC or to which the CFTC is a party or

claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof;

14. Does 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 CFTC or to which the CFTC is a party, other than: a statutory disqualification proceeding; a proceeding in bankruptcy or receivership; or, a proceeding to enforce the terms of this Order;

15. Agrees to provide immediate notice to this Court and the CFTC by certified mail, in the manner required by paragraph 88 of Section VII of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

16. Agrees 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 relief against him in any other proceeding.

III. 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 PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

The Parties to this Consent Order

17. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act and the Regulations.

18. Defendant **Rashawn Russell** is a resident of Brooklyn, New York. Russell has never been registered with the Commission in any capacity. Russell was previously registered with the Financial Industry Regulatory Authority, Inc. ("FINRA") as a broker from August 20, 2018 through December 13, 2021, during his prior employment at a large financial institution.

Summary

19. From at least November 2020 through August 2022 (the "Relevant Period"), Russell engaged in a fraudulent digital asset commodity trading scheme. Russell solicited retail investors to contribute to a purported proprietary digital asset trading fund and accepted contributions in the form of bitcoin, ether, and/or fiat currency. Russell guaranteed no loss to investors, and in some instances, guaranteed a minimum twenty-five percent return. In reality, Russell intentionally and/or recklessly made false and misleading statements to solicit and retain investors. Russell misrepresented the structure, size, and performance of the fund; traded little, if any, of the money and digital asset commodities contributed by investors as he represented he would; falsely promised investors that he would pay their withdrawal requests, including falsely promising to some investors that he would pay their withdrawal requests in the stablecoin USDC; and, misappropriated at least $1,522,494.95 in customer assets.

20. Russell began soliciting investors for his digital asset trading fund "R3 Crypto Fund" beginning at least as early as November 2020. Russell told prospective investors that he would pool investor contributions and use these contributions to trade digital asset commodities for the benefit of the fund. Russell told prospective investors that their contributions would be locked up in the fund for a three-month term. At the end of the three-month term, Russell would give investors the option either to receive their original investment plus any profits generated by Russell's trading or to roll their contribution plus profits into another three-month fund cycle.

21. Russell represented to investors that they had the option of receiving a flat twenty-five percent (25%) guaranteed return on their contribution at the end of the three-month term, with any profits above this amount going to Russell. Alternatively, Russell told investors they could elect to receive eighty percent (80%) of all profits, with twenty percent (20%) of these total profits going to Russell as a management fee (hereinafter referred to as the "80/20 split"). Under either option, Russell guaranteed the investor's original contribution.

22. Russell received contributions from investors either in fiat currency, via wire transfers to Russell's personal bank accounts or through third-party payment applications, or in bitcoin and ether, via transfers to digital wallets Russell controlled.

23. Throughout the scheme, Russell routinely represented to current and prospective investors that his trading for the fund was highly profitable, at times generating returns as high as fifty percent (50%) or more. These representations led many new investors to contribute to the fund and existing investors to choose to roll over their original investment and their purported profits into the next fund cycle. In some instances, Russell's representations regarding his trading performance led existing investors to make additional contributions to the next fund cycle, thus increasing the amount of their total contribution.

24. When investors sought to withdraw their contributions and purported profits, however, Russell made further misrepresentations to avoid making any payments to investors. Russell made a multitude of excuses to such investors, including misrepresentations that he was in the process of wiring money to them or that he would pay their contributions plus profits in the form of USDC to a digital wallet. Russell delayed his responses to repeated requests from investors and eventually stopped responding at all.

25. With limited exceptions, Russell's investors failed to recover any of their investment. During the Relevant Period, Russell received investor contributions to the fund in fiat currency, bitcoin, and ether. Rather than utilize these assets for digital asset trading as represented, Russell withdrew significant amounts of investor funds in cash from his bank, made Ponzi-like payments to current investors with new investor funds, paid for personal expenses, including food and ride-share costs, and paid or deposited the funds with gambling websites and/or establishments. In total, Russell misappropriated for his own benefit at least $1,522,494.95 from at least twenty-nine investors.

Defendant's Solicitations

26. Beginning at least as early as November 2020, Russell began soliciting investors to contribute to his digital asset trading fund, the "R3 Crypto Fund."

27. At that time, Russell was an investment banking associate at a large financial institution. Russell had graduated from Babson College a few years earlier and was a Gates Millennium Leadership Scholarship recipient.

28. Russell, who was approximately twenty-five years old at the time, utilized his educational background, work experience, and purported trading successes to convince several colleagues, college friends, and family members of friends to contribute to his fund.

29. Russell told prospective investors that he would use fund assets to trade various digital asset commodities, in particular exchanging bitcoin for so-called "altcoins," touting his ability to use technical analysis and his trading experience to predict when the prices of such "altcoins" would be likely to fall or rise relative to bitcoin.

30. For example, in or around November 2020, Russell represented to at least one prospective investor: "I've been actively trading crypto/altcoins for a while now and over the past few months I've been fine-tuning and implementing different trading strategies that have

proved to be extremely successful. . . . I've grown my investments from a little under 90k to 270k. I've decided to start raising equity from family/friends (have raised ~38k so far). I'm starting pretty small and goal is to raise 50k. Taking investments from 5k+ and I'm guaranteeing a ROI of 25% on your investment within 3 months . . ."

31. Russell further represented to this investor that there was "essentially no downside risk at all for my 1st raise really since no matter what you're getting 25% ROI." Russell told this investor that Russell was personally responsible for the investor's entire contribution.

32. Russell later represented to the same investor in connection with soliciting additional contributions that Russell had never had a loss of more than five percent (5%), that he always traded with a stop loss to limit risk, and that on an average day he made between six and eight percent (6%-8%) gains.

33. By January 2021, Russell had successfully solicited a number of investors to contribute to the fund bitcoin, valued at approximately $65,000 at the time investors sent it to Russell's digital wallet, and fiat currency of approximately $100,000, which investors transferred to Russell's personal bank account.

Written Investor Agreements

34. After successfully attracting several investors for his fund, Russell formalized his solicitation tactics in the Spring of 2021, creating written marketing materials and developing a written investor agreement.

35. Beginning by at least May 2021, Russell began entering into written investor agreements with his investors.

36. The written investor agreements set forth the amount of the investor's contribution to the fund and indicated that such contribution was a "Capital Investment for

[Russell] to use as part of [his] dry powder for [Russell's] actively traded cryptocurrency [fund]."

37. For those electing to invest under the 80/20 split option, the written agreement further provided that, "[Russell] guarantees that no less than the Client Capital Investment will be returned regardless of [fund] performance." Alternatively, for those investors that elected the guaranteed twenty-five percent return, the written agreement provided, "Russell agrees to return the Client's original investment plus the 25% return for a total of [investment plus 25%]."

38. By at least August 2021, Russell had also prepared a written overview of the R3 Crypto Fund, which he provided to some, if not all, of the fund's investors and potential investors in connection with his solicitations of initial or additional investment in the fund.

39. In the overview document, Russell described the R3 Crypto Fund, in part, as follows:

> R3 is essentially an actively managed cryptocurrency fund that focuses primarily on altcoins and take [sic] on a unique trading strategy that implements both fundamental and technical analysis to deliver proven returns for investors.
>
> * * *
>
> All R3 funds have a short investment time horizon of 3 months. Investors will receive back their initial investment within 3 months along with their return on their investment.
>
> * * *
>
> There are two options a potential Investor could choose from:
>
> 1. A guaranteed flat 25% return on investment within three months with no downside risk. However [sic] will not be able to capitalize on any of the additional upside beyond 25%.
>
> 2. A management based fee structure. Investors will get 80% of all the Funds return less a 20% management fee for services rendered.

> Investor is guaranteed to receive no less than their initial capital and is protected on the downside.

40. In various charts that Russell included in the overview document to illustrate his technical analysis of "altcoins," Russell indicated that he would be purchasing and selling such altcoins in exchange for bitcoin.

41. In the overview document, Russell claimed that he had been "actively trading in the cryptocurrency space since 2014" and that he had raised "$250,000 for the first fund back in November 2020."

42. By early 2022, Russell had updated the overview document to include purported historical fund size and performance. Russell distributed this updated overview to prospective investors, at least some of whom invested in the fund after receiving this document.

43. Specifically, the updated overview contained the following representations of prior performance:

> How have past R3 Crypto funds performed?
>
> – R3 Crypto Fund I (size $250K) – ~118% return
>
> – R3 Crypto Fund II (size $500K) – ~147% return
>
> – R3 Crypto Fund III (size $850K) – ~34% return

44. In total, Russell successfully solicited at least twenty-nine individuals to invest in at least one or more of eight purported three-month investment cycles (R3 Fund – R3 Fund VII).

Defendant's Misrepresentations of the Fund's Structure

45. Russell represented to prospective and current investors that he structured the fund to have specific investment cycles with beginning and end dates. Russell represented that the fund operated on a three-month investment cycle and that that he could not accept new contributions after the start date of a particular three-month cycle. Russell further represented

that at the end date of the three-month cycle, investors had the option to receive their original contribution plus profits or to roll this amount into the next three-month cycle. Russell made these representations in his written fund overview, written investor agreements, and in his one-on-one communications with investors and prospective investors.

46. For example, Russell made statements to investors and prospective investors such as:

a. "If you can let me know by sometime next week that would be great looking to close new fund by next Friday." (April 30, 2021)

b. "Going to close the fund Aug 6th and then start sending across payouts to investors then." (July 20, 2021)

c. "I pushed the kickoff of the new fund to [November] 29th. I haven't sent a new agreement because I was still waiting for you to get back with what your uncle plans on doing." (Nov. 20, 2021)

d. "Hey man so normally the next round kickstart [sic] right after the other. I always leave 2 weeks in between ending and starting a new round. So this case new round starts 2/14 and have [sic] the same three months investment horizon." (February 1, 2022)

47. The written investor agreements also set forth the specific start and end dates for the particular three-month investment cycle in which the investor was participating. Each agreement further referenced a fund number, for example, "R3 Fund II" or "R3 Fund V," which created for investors and prospective investors the appearance that Russell structured the fund and his trading strategy and activity around these specific three-month investment cycles.

48. Russell's representations to investors and prospective investors regarding these three-month investment cycles were false. Russell made these false representations intentionally or recklessly to give the false appearance of structure and authenticity to his scheme.

49. For example, at least three different investors entered into written investor agreements with Russell that stated that these investors would be participating in "R3 Fund V." However, each of the three agreements set forth a different start date for the "R3 Fund V" three-month investment cycle, specifically, October 1, 2022, November 1, 2022, and November 22, 2022. Each of these three agreements also set forth a different end date for the "R3 Fund V" three-month investment cycle, specifically, January 1, 2022, February 1, 2022, and February 22, 2022, respectively.

50. In addition, Russell gave different investors different dates for the start and end of other purported three-month investment cycles which overlapped by days, months, or, in one instance, entirely. For example, Russell provided one investor with an investor agreement that stated that R3 Fund III's three-month investment cycle would begin August 20, 2021 and end November 20, 2021, and provided a different investor with an investor agreement that specified those same dates as the start and end dates of the three-month investment cycle for R3 Fund IV.

Defendant's Misrepresentations of Fund Size and Performance

51. Russell also routinely sent current and prospective investors information that falsely represented the size and performance of Russell's purported fund.

52. For example, on February 5, 2021, Russell falsely represented to one investor that Russell had sent $375,000 of fund assets to Russell's bank account, following the purported conclusion of a three-month investment cycle for which Russell claimed he had raised $300,000. In support of this, on February 8, 2021, Russell sent the investor a screen shot of his bank account balances, to "calm the nerves" of this investor. This screen shot purported to show that

Russell had a total of over $400,000 in two different bank accounts. In reality, at that time, Russell had less than $60,000 in both of these accounts, $50,000 of which consisted of money he had just received from this same investor.

53. On May 8, 2021, Russell provided a prospective investor with purported historical information for the fund, representing that between February 2, 2021 and April 15, 2021, the fund generated a +147.49% cumulative profit and loss ("P&L"), with an estimated balance of 15.547196615 bitcoin (equivalent to $922,331.06).

54. On or about May 11, 2021, Russell provided this same prospective investor with a purported screen shot of Russell's current bank balances, purporting to show that Russell had more than $1.4 million in two separate bank accounts. Specifically, the screenshot purported to show that the account, to which Russell was simultaneously directing the investor to send money to invest in the fund, had a balance of $1,310,300. In reality, this account had a balance of no more than $25,000 at any point during the entire month of May 2021.

55. Within days of receiving this information, this investor and two other members of the investor's family entered into written investor agreements and invested a total of $110,000 in Fund II.

56. Russell represented to investors that the starting value of Fund II, which purportedly began on May 18, 2021, was $910,000. On June 6, 2021, less than three weeks later, Russell represented to investors that the balance of the fund was an estimated 34.166041342 bitcoin, the equivalent of $1,226,578.62, with a cumulative P&L of +34.79%. A month later, on July 5, 2021, Russell claimed the fund was up 46%. And, on August 9, 2021, after representing that he had closed Fund II three days earlier, he represented to one or more investors that the

fund ended up approximately 34%, which after the 20% management fee, put total return to investors at approximately 27%.

57. Russell's representations of Fund II performance and size resulted in at least three investors in Fund II deciding to roll-over their investment and enter into new investor agreements with Russell for purported Fund III.

58. Russell continued to misrepresent fund size and performance to current and prospective investors with respect to subsequent three-month investment cycles for the fund. Russell's misrepresentations included that:

a. Fund III began trading August 23, 2021, and approximately a month later, on September 25, 2021, had a balance of 33.406927088 bitcoin, equivalent to $1,419,491.39, with a cumulative P&L of +13.56%;

b. On October 17, 2021, Fund III was performing "pretty well," with Russell providing an investor a screen shot of the Fund III's purported performance showing an estimated bitcoin balance of 29.252949001, equivalent to $1,783,018.32, and a cumulative P&L for the period of August 23, 2021 to October 17, 2021 of +42.64%;

c. Fund III's three-month investment cycle concluded in November 2021 with the fund earning cumulative P&L of +56%; and

d. On January 22, 2022, the fund had a total estimated balance of 57.068185084 bitcoin, equivalent to $2,212,615.93, with cumulative P&L since November 29, 2021, of -1.66%. Russell provided this information to an investor while touting the fact that the overall crypto market was down more than 40%

during recent months, but the fund was only down a few percent in comparison.

59. Russell made these misrepresentations intentionally or recklessly to convince investors and prospective investors to contribute assets to the fund or to remain invested in the fund for subsequent three-month investment cycles.

Defendant's Misappropriation of Investor Assets

60. Contrary to Russell's representations regarding fund size and performance, Russell used significant amounts, if not all, of the investors' contributions to the fund for various purposes completely unrelated to digital asset commodities trading.

61. For example, in less than two weeks following his receipt in his personal bank account of an investor's contribution of $230,000 on November 19, 2021, Russell withdrew more than $115,000 in cash and wired more than $77,000 to investors in the manner of a Ponzi scheme. Russell even wired $50,000 from this bank account back to the same investor who had contributed the $230,000, but represented this wire as a "withdrawal" of funds this investor had contributed prior to November 19, 2021. Russell also used part of the $230,000 contributed by this investor to fund a transfer of several thousand dollars to an entity associated with gambling activities as well as to pay personal expenses such as loans, food, and ride-share charges.

62. Similarly, on November 29, 2021, Russell received $200,000 in investor contributions in his personal bank account. Russell then withdrew approximately $68,000 in cash, transferred approximately $70,000 to entities associated with gambling activities, wired $50,000 to another investor in the manner of a Ponzi scheme, and paid for food, travel, and other personal expenses.

63. During the Relevant Period, Russell misappropriated at least $1,522,494.94 in investor assets in the form of fiat currency, bitcoin, and/or ether.

Defendant's Misrepresentations to Conceal His Fraudulent Scheme

64. When investors attempted to withdraw their assets from the fund at the end of a three-month investment cycle, Russell routinely engaged a pattern of evasive and misleading behavior. Russell delayed in responding to investor withdrawal requests, provided a variety of excuses to investors, including misrepresenting that payment was forthcoming, and then ultimately ceased responding to their requests.

65. Russell made numerous false excuses to investors for why he could not immediately honor their withdrawal requests, including:

a. He lost his phone and all contact information;

b. He was too busy trading and had not yet had time to initiate the transfer of funds;

c. He was consulting with an accountant regarding the exposure to and mitigation against realization of large capital gains for himself and/or the investor as a result of the funds significant profits;

d. He was out of town, including that he was on vacation in Hawaii in December 2021, or travelling for work in January and February 2022;

e. His bank had daily wire limits from his account limiting and extending the time it took for him to send out funds to his many investors;

f. His bank had flagged his account, due to the number and large amount of wires he was sending to and receiving from investors, and he was temporarily unable to access the funds until the bank's investigation was completed; and,

g. He had created a new bank account at a different bank due to these issues and it was taking time for the funds to reach his new account, and then later, that

he needed an active debit card so that he could wire funds from this new account.

66. Russell also sent investors screen shots purportedly representing wire transfers that were in process, or in some cases, that were purportedly successfully sent to the investors as payouts on their investment. However, the majority of these payouts were never received. In some cases, Russell sent these screen shots knowing or with reason to know that he did not have sufficient funds in his bank account to fund the wire transfer.

67. For example, on July 5, 2022, Russell sent an investor who had requested to withdraw assets from the fund a screen shot depicting a purported pending wire transfer request to transfer $75,000 to the investor's bank account. The screen shot also purported to show $77,277.45 in available funds in Russell's bank account. In reality, on that date, this same account had a negative balance of $162.46. The wire was never received by the investor.

68. By mid-2022, many investors were seeking to withdraw their assets from the fund. On June 17, 2022, Russell sent an e-mail to investors purportedly detailing how and when he would honor withdrawal requests. In the e-mail, Russell falsely represented that he would make payments to investors in USDC and that he would begin making these payments at the end of July 2022. However, Russell never made these payments, and these investors lost all of the assets they contributed to the fund.

B. Conclusions of Law

Jurisdiction and Venue

69. 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 CFTC 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 CFTC 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.

70. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because Defendant transacted business in this District, and certain of the acts and practices in violation of the Act have occurred within this District. Venue is also proper under 28 U.S.C. § 1391(b) because Defendant resides in this District and a substantial part of the events giving rise to this action occurred in this District.

Fraud

71. Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), renders it unlawful for any person, directly or indirectly, to:

> use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate . . .

72. Regulation 180.1(a), 17 C.F.R. § 180.1 (2023), provides, in part:

> It shall be unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly:
>
> (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud;

> (2) Make or attempt to make, any untrue or misleading statement of material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; [or]
>
> (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person; . . . .

73. Certain digital assets, such as bitcoin, ether, and USDC, are encompassed in the definition of a "commodity" under Section 1a(9) of the Act, 7 U.S.C. §1a(9), and contracts for their sale are subject to the prohibitions of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1, 17 C.F.R. § 180.1 (2023).

74. As described above, Russell violated Section 6(c)(1) of the Act and Regulation 180.1, in connection with contracts of sale of commodities in interstate commerce, by, among other things, intentionally and/or recklessly falsely guaranteeing no loss of investment; misrepresenting that investor funds would be utilized to trade digital asset commodities; misrepresenting fund structure, size, and performance, including providing false bank account balances that misrepresented available funds; misrepresenting that payouts to investors were forthcoming, including sending copies of purported wire transfer requests, when Russell knew or should have known, such requests would not clear his bank account; and misappropriating investor assets.

75. Russell's misrepresentations and omissions were material. Investors made decisions on whether to invest, how much to invest, and whether to stay invested in the fund based on Russell's misrepresentations regarding fund structure, size and performance, as well as Russell's promise that their original investment was not at risk of loss. Russell failed to inform investors that he was utilizing their funds for his personal benefit.

76. Russell engaged in the acts and practices described above knowingly or recklessly.

77. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendant 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.

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

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

a. Using or employing, or attempting to use or employ, any manipulative device, contrivance, scheme or artifice to defraud; making or attempting to make, any untrue or misleading statement of material fact or omitting to state a material fact necessary in order to make the statements made not untrue or misleading; or engaging, or attempting to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1, 17 C.F.R. § 180.1 (2023).

79. Defendant also is restrained, enjoined and prohibited for a period of eight (8) years 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)), or digital asset commodities, including bitcoin, ether and USDC, for his own personal account or for accounts in which he has a direct or personal interest; and

c. Having any commodity interest or digital asset commodity, including bitcoin, ether and USDC, traded on his behalf.

80. Defendant is also permanently restrained, enjoined and prohibited from directly or indirectly:

a. 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 or digital asset commodities, including bitcoin, ether and USDC;

b. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests or digital asset commodities, including bitcoin, ether and USDC;

c. Applying for registration or claiming any 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14 (a)(9) (2023); and

d. 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 the registered with the CFTC, except as provided for in 17 C.F.R. § 4.14(a)(9) (2023).

V. RESTITUTION

81. Defendant shall pay restitution in the amount of one million five hundred twenty-two thousand four hundred ninety-four dollars and ninety-five cents ($1,522,494.95) ("Restitution Obligation"), representing the losses to investors in connection with Defendant's violations.

82. In the Criminal Action, Defendant has been sentenced to forty-one (41) months in prison, followed by three (3) years supervised release. Defendant was also ordered in the Criminal Action to pay $1,522,494.95 in restitution in connection with the misconduct at issue in this matter. Defendant shall receive dollar-for-dollar credit against the Restitution Obligation for any restitution paid in the Criminal Action. To receive credit, Defendant shall, under a cover letter that identifies the name and docket number of this proceeding, transmit to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington D.C. 20581, copies of the form of payment.

83. The amounts payable to each investor shall not limit the ability of any investor from proving that a greater amount is owned from Defendant or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any investor that exist under state or common law.

84. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each investor of Defendant who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce the obedience of this Consent Order to obtain satisfaction of any portion of the Restitution Obligation that has not been paid by Defendant to

ensure continued compliance with any provision of this Consent Order and to hold Defendant in contempt for any violations of any provisions of this Order.

85. To the extent any funds accrue to the U.S. Treasury for satisfaction of the Restitution Obligation, such funds shall be transferred to the Clerk of the Court, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201 for disbursement.

86. Acceptance by the CFTC of any partial payment of the Restitution Obligation shall not be deemed a waiver of Defendant's obligation to make further payments pursuant to this Consent Order, or a waiver of the CFTC's right to seek to compel payment of any remaining balance.

VI. COOPERATION

87. Defendant shall cooperate fully and expeditiously with the CFTC, including the CFTC's Division of Enforcement ("Division"), in this action, and in any current or future investigation or action related thereto.

VII. MISCELLANEOUS PROVISIONS

88. Until such time as Defendant satisfies in full his Restitution Obligation under this Consent Order, upon the commencement by or against Defendant of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Defendant's debts, all notices to creditors required to be furnished to the CFTC under Title 11 of the United States Code or other applicable law with respect to 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, NW
Washington, D.C. 20581

89. Notice: All notices required to be given by any provision in this Consent Order, except as set forth in paragraph 88, above, shall be sent certified mail, return receipt requested, as follows:

Notice to CFTC:

Charles Marvine
Deputy Director
Commodity Futures Trading Commission
2600 Grand Blvd., Ste. 210
Kansas City, MO 64108

Notice to Defendant:

Rashawn Russell (#10520-506)
FCI Lewisburg
Federal Correctional Institution
P.O. Box 1000
Lewisburg, PA 17837

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

90. Change of Address/Phone: Until such time as Defendant shall satisfy in full his Restitution Obligation as set forth in this Consent Order, he shall provide written notice to the CFTC by certified mail of any changes to his telephone number and mailing address within ten (10) calendar days of the change.

91. 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.

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

93. Waiver: The failure of any party to this Consent Order or of investor at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or of the investor 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.

94. 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 motions by Defendant to modify or for relief from the terms of this Consent Order.

95. 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) Defendant; (2) any officer, agent, servant, or attorney of the Defendant; and (3) any other persons who are in active concert or participation with any persons described in subsections (1) and (2) above.

96. 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 by each of the parties hereto 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.

97. Contempt: Defendant understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

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

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this Consent Order for Permanent Injunction and Equitable Relief Against Defendant Rashawn Russell forthwith and without further notice.

IT IS SO ORDERED on this 16 day of January, 2025.

/s/ Eric Komitee

United States District Court Judge

CONSENTED TO AND APPROVED BY:

Defendant Rashawn Russell

Date: 10/16/24

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Counsel for Plaintiff Commodity Futures Trading Commission

Date: 10/29/2024