



## II. FINDINGS

The Commission finds the following:

### A. SUMMARY

Between December 2014 and November 2015, Tresner solicited and accepted orders for transactions in commodity futures contracts from customers of a registered introducing broker (“IB”) when he was not registered with the Commission as an associated person (“AP”) of that IB or as a floor broker. Additionally, from at least December 2014 to November 2015 and from at least June 2016 to June 2018, Tresner acted, and held himself out to the public, as a commodity trading advisor (“CTA”) when he was not registered as such with the Commission. During that period, Tresner was paid for managing commodity futures trading accounts for seven clients, and for advising at least four additional clients on using commodity futures contracts to hedge.

From at least May 2016 to July 2018, Tresner solicited and received from three individuals at least \$55,000 to trade cattle futures on their behalf. None of the funds he received from these three clients were used by Tresner to trade cattle futures or deposited into a futures trading account. Instead, Tresner misappropriated the funds and used them to pay personal debts and living expenses.

In addition, during an interview with Commission staff, and again in response to a Commission subpoena, Tresner knowingly provided misleading information to staff by failing to identify all persons or entities from whom he had obtained funds to trade cattle futures.

### B. RESPONDENT

Tresner was registered with the Commission as a floor broker between October 2002 and October 2014 and between November 2015 and May 2016. Tresner was also registered as an AP and listed as a principal of various firms for non-continuous (some overlapping) periods between February 2001 and May 2016. He has not been registered in any capacity since May 2016.

On or about July 18, 2018, a Chicago Mercantile Exchange (“CME”) Business Conduct Committee hearing panel permanently banned Tresner from trading on CME markets or from being employed by, or associating with, any CME member firm.<sup>2</sup>

### C. FACTS

Tresner, as a registered floor broker, had customers for whom he performed floor brokerage services and who paid him commissions. In or around October 2014, the CME denied Tresner trading privileges after he failed to pay debit balances he owed his futures commission merchant (“FCM”). Since Tresner lacked trading privileges on any contract market, his floor

---

<sup>2</sup> CME Group, Notice of Disciplinary Action, CME-16-0398-BC (July 18, 2018), <https://www.cmegroup.com/notices/disciplinary/2018/07/cme-16-0398-bc-coby-d-tresner.html#pageNumber=1>.

broker registration ceased.

In September 2014, Tresner urged customers he had traded for as a floor broker to open new accounts at a different FCM (“FCM2”) and grant him power of attorney to trade on their behalf. Because Tresner also owed money to FCM2, the firm required Tresner to secure a guarantor who would pay Tresner’s debts to FCM2 if he should fail to pay them. A then-registered IB (the “Guarantor IB”) agreed to guarantee Tresner’s debts in exchange for a percentage of the commissions generated from Tresner’s customer business.

From at least December 2014 to November 2015, the Guarantor IB paid Tresner for soliciting or accepting orders to trade commodity futures from the Guarantor IB’s customers when Tresner was not registered with the Commission as an AP of the Guarantor IB or registered as a floor broker.

Further, during various periods between at least December 2014 and June 2018, Tresner managed commodity futures trading accounts for seven clients. Tresner provided commodity trading advice to one or more of these clients, described in more detail below, which was uniquely tailored to each client’s business and not incidental to his own business.

- From at least August 2015 to February 2016, Tresner convinced six friends and acquaintances to open trading accounts and grant him power of attorney to direct the trading in their futures accounts (the “managed accounts”). Tresner placed orders to trade futures for the managed accounts using the relevant FCM’s trading system. For certain of the managed accounts, clients agreed to pay Tresner a percentage of the profits earned from his trading. For others, clients paid him a negotiated fee for his trading services. For at least part of this period, Tresner was also paid a share of the commissions earned from the managed accounts by clients’ FCM. Tresner discussed the results of his trading with his customers by telephone.
- In or around February 2016, Tresner contacted a registered floor broker he knew, who traded cattle options (the “Options Trader”), and asked the Options Trader if he would fund a futures trading account for Tresner to trade on behalf of the Options Trader. The Options Trader funded an account at the Options Trader’s clearing firm in March 2016, and gave Tresner written authority to place orders directly with the CME using the clearing firm’s front end system to trade futures contracts for the account. Tresner and the Options Trader agreed to split the profits from Tresner’s trading in the account and agreed on a trading strategy of trading “back month / front month” cattle futures spreads (the “Spread Trading Strategy”). Tresner telephoned the Option Trader regularly to discuss market conditions, his trading strategy, and the results of his trading. Between May 2016 and July 2017, the Options Trader paid Tresner for his trading advice. The Options Trader revoked Tresner’s trading authority in December 2017, after Tresner lost over \$805,000.
- From at least December 2014 to at least June 2018, Tresner telephoned farmers and ranchers and provided them with market analysis and commentary to assist them in developing a tailored hedging strategy using futures. Tresner was paid for advising at least four additional clients (who were referred to him by various business associates) on

hedging using agricultural and livestock futures contracts traded on the CME.

From at least December 2014 to November 2015 and from at least June 2016 to June 2018, Tresner held himself out to the public as a CTA. For example, Tresner provided “market commentary” about commodity futures trading on his public Twitter feed and listed his occupation on his LinkedIn profile as “Independent Commodity Trader and Consultant.” His resume, which he provided to the Options Trader’s clearing firm, lists skills which include providing market advisory services to producers and end users of commodity products, and acting as a CTA.

From at least May 2016 to January 2018, Tresner continued to post “market commentary” on his public Twitter feed. During this period, Tresner had telephone conversations with several of his Twitter followers in which he solicited funds from them purportedly to trade cattle futures using the same Spread Trading Strategy discussed above. Tresner was to be paid a percentage of the profits earned for his trading advice. Tresner accepted at least \$55,000 from three individuals he successfully solicited from his Twitter feed (“Twitter Clients”). Contrary to what he told them, none of the funds he obtained from the Twitter Clients was used to trade cattle futures or deposited into a trading account. Instead, Tresner used the Twitter Clients’ funds to pay personal debts and his living expenses. Tresner has not repaid any of funds he misappropriated.

On March 19, 2018, Commission staff sent Tresner a subpoena requesting documents sufficient to identify persons or entities that gave funds to Tresner (or any entity that he owned or controlled) for the purpose of trading commodity interests.<sup>3</sup> In response to the subpoena, Tresner failed to produce any documents to the Commission. However, on April 12, 2018, Tresner sent an email to the Commission which identified one Twitter Client as the only person who had given Tresner money to trade commodity interests. Tresner knew the Commission was aware of this Twitter Client because Commission staff had previously questioned him about this Twitter Client. On July 26, 2018, Commission staff interviewed Tresner and he repeated the misleading information provided in his subpoena response. When confronted with the fact that Commission staff knew of two additional Twitter Clients whom Tresner had solicited and obtained funds from to trade cattle futures, Tresner admitted that he had in fact also received funds from those two individuals and had not responded to the Commission’s subpoena truthfully.

### **III. LEGAL DISCUSSION**

#### **A. Tresner Misappropriated Client’s Funds**

##### **1. Commodities Fraud**

Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2012), make it unlawful:

---

<sup>3</sup> Regulation 1.3 defines a “commodity interest,” in relevant part, as “any contract for the purchase or sale of a commodity for future delivery regulated under the Act and rules promulgated thereunder.” 17 C.F.R. § 1.3 (2018).

[F]or any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person . . . (A) to cheat or defraud or attempt to cheat or defraud the other person; [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for . . . the other person . . . .

“In order to establish liability for fraud, CFTC had the burden of proving three elements: (1) the making of a misrepresentation, misleading statement, or a deceptive omission; (2) scienter; and (3) materiality.” *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002). “[S]cienter is established if Defendant intended to defraud, manipulate, or deceive, or if Defendant’s conduct represents an extreme departure from the standards of ordinary care.” *Id.*; see also *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988) (holding that recklessness is sufficient to satisfy scienter requirement).

Tresner violated Section 4b(a)(1)(A) and (C) of the Act by intentionally or recklessly misappropriating the funds he obtained from three Twitter Clients for the purpose of trading commodity interests. Tresner told these individuals that he would use their funds to trade cattle futures, when in fact Tresner used their funds to pay his personal debts and living expenses. Misappropriation constitutes “willful and blatant” fraudulent activity that violates the anti-fraud provisions of the Act. *CFTC v. Driver*, 877 F. Supp. 2d 968, 978 (C.D. Cal. 2012) (citation omitted), *aff’d*, 585 F. App’x 366 (9th Cir. 2014); see also *CFTC v. Morse*, 762 F.2d 60, 62 (8th Cir. 1985) (recognizing that a defendant’s personal use of customer funds that were deposited to trade futures violates Section 4b of the Act).

## 2. CTA Fraud

Section 4o(l) of the Act, 7 U.S.C. § 6o(1) (2012), in relevant part, makes it unlawful for CTAs by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, (A) to employ any device, scheme, or artifice to defraud any participant; or (B) to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any participant. *Id.*

Section 4o(l) of the Act applies to all CTAs whether registered, required to be registered, or exempted from registration. Regulation 4.15, 17 C.F.R. § 1.15 (2018). Section 1a(12) of the Act, 17 U.S.C. § 1a(12) (2012), defines a CTA as any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery or any commodity option.<sup>4</sup> “Courts interpret the definition of

---

<sup>4</sup> A floor broker is excluded from the definition of a CTA, but only if the furnishing of CTA services by such floor broker is solely incidental to the conduct of its business or profession. Section 1a(12)(B)(iii), (C) of the Act, 7 U.S.C. § 1a(12)(B)(iii), (C) (2012). A floor broker is

CTA liberally.” *CFTC v. Equity Fin. Grp.*, No. 04-1512, 2007 WL 1038754, at \*2 (D.N.J. Mar. 30, 2007).

During the period from at least May 2016 to July 2018, Tresner entered into agreements with the Twitter Clients through which he would purportedly use their funds to trade cattle futures on their behalf, in exchange for a percentage of the profits earned from his trading. *See Equity Fin. Grp.*, 2007 WL 1038754, at \*3 (holding that defendant was a CTA when it agreed to pool and deposit client funds into an account in its own name, made trading decisions for the pool, and kept a percentage of the profits from that trading as compensation). As such, Tresner acted as a CTA by engaging, for compensation or profit, in the business of advising the Twitter Clients as to the value of, or the advisability of, trading futures.

The elements required to establish a CTA fraud claim under Section 4o(1) are “essentially the same” as for a fraud claim under Section 4b(a)(1) of the Act. *See First Nat’l Monetary Corp. v. CFTC*, 819 F.2d 1334, 1340 (6th Cir. 1987). Unlike Sections 4b(a)(1) and 4o(1)(A) of the Act, however, the language of Section 4o(1)(B) does not require “knowing” or “willful” conduct as a prerequisite for liability. *Commodity Trend Serv., Inc. v. CFTC*, 233 F.3d 981, 993 (7th Cir. 2000). Section 4o(1) of the Act also differs from Section 4b(a)(1) of the Act in that it requires “the use of the mails or any means of instrumentality of interstate commerce.” This element is satisfied, among other reasons, because Tresner contacted his Twitter Clients by telephone.

Thus, the same underlying fraudulent conduct by Tresner described above in connection with Section 4b(a)(1), misappropriating the funds he obtained from three Twitter Clients, also violates Section 4o(1)(A) and (B) of the Act because Tresner engaged in the fraudulent conduct in his capacity as a CTA and so engaged by use of the mails or other means or instrumentality of interstate commerce.<sup>5</sup> *See In re R&W Tech. Servs. Ltd.*, CFTC No. 96-3, 199 WL 152619, at \*24-25 (Mar. 16, 1999), *aff’d in part*, *R&W Tech. Servs. Ltd. v. CFTC*, 205 F.3d 165 (5th Cir. 2000); *see also CFTC ex rel. Kelley v. Skorupskas*, 605 F. Supp. 923, 932-33 (E.D. Mich. 1985) (stating that the same conduct that violates Section 4b can violate Section 4o(1)).

## **B. Tresner Made False or Misleading Statements to the Commission**

Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012), in relevant part, provides that it is unlawful “for any person to make any false or misleading statement of material fact to the Commission. . . . or to omit to state in any such statement any material fact that is necessary to

---

defined in Section 1a(22)(A) of the Act, 7 U.S.C. § 1a(22)(A), in relevant part, as any person who is registered with the Commission as a floor broker. Because Tresner was a registered floor broker between November 2015 and May 2016, that period is excluded from CTA-related findings in this Order, based on the assumption for settlement purposes, but not a finding, that during that period Tresner furnished CTA services solely incidental to the conduct of his business or profession as a floor broker.

<sup>5</sup> This Order does not find that Tresner violated Section 4o(1) of the Act during the period when he was registered as a floor broker between November 2015 and May 2016. *See supra* note 4.

make any statement of material fact made not misleading in any material respect, if the person knew or reasonably should have known, the statement to be false or misleading.”

In responding to a Commission subpoena on April 12, 2018, and in a subsequent interview with Commission staff on July 26, 2018, Tresner knowingly omitted material information about who gave him (or any entity that he owned or controlled) funds to trade commodity interests, rendering the statements he made to Commission staff false or misleading because they purported to indicate all such sources of funds, but in fact concealed significant other sources of funds, namely funds received from two of his Twitter Clients. Tresner’s subsequent correction of the false or misleading statement does not absolve him of liability since his correction was prompted by further inquiry of Commission staff. *See CFTC v. Gramalegui*, No. 15-cv-02313, 2018 WL 4610953, at \*20 (D. Colo. Sept. 26, 2018) (recanting or correcting a false or misleading statement does not absolve liability if that action was the result of further inquiry of the government); *In re Butterfield*, CFTC No. 13-33, 2013 WL 9047200, at \*3 (Sept. 16, 2013) (consent order) (holding defendant liable for false and/or misleading statement to Commission even though she later corrected her false testimony after staff confronted her with evidence that contradicted it).

Tresner knew or reasonably should have known that his statements were false or misleading, since he personally solicited and received such funds from sources he did not disclose to Commission staff, deposited such funds into his personal bank account, and then misappropriated those funds to pay his personal debts and living expenses. Tresner’s statements were material since his statements had “a natural tendency to influence, or [be] capable of influencing” how the Commission conducts its investigation. *United States v. Gaudin*, 515 U.S. 506, 509 (1995). The revelation of other persons who gave Tresner funds to trade would have led to the discovery of other fraudulent conduct relevant to the Commission’s investigation. Therefore, Tresner violated Section 6(c)(2) of the Act. *See In re Beatty*, CFTC No. 14-34, 2014 WL 4965119 (Sept. 30, 2014) (consent order) (finding violation of Section 6(c)(2) for making false statements to the Commission in email responses to an investigative subpoena); *In re Obolensky*, CFTC No. 14-05, 2014 WL 795378 (Jan. 2, 2014) (consent order) (finding violation of Section 6(c)(2) for knowingly making materially false and misleading statements to Commission staff during an interview).

### **C. Tresner Failed To Register as an Associated Person**

Section 4k(1) of the Act, 7 U.S.C. § 6k(1) (2012), makes it unlawful for any person to be employed or act as an agent of an IB if that person acts in a capacity that involves (i) the solicitation or acceptance of customers’ orders or (ii) the supervision of any person who solicits or accepts customers’ orders, unless such person is registered with the Commission as an AP of the IB. Regulation 3.12(a), 17 C.F.R. § 3.12(a) (2018), is a corollary to Section 4k(1) in that it also makes it is unlawful for any person to be associated with an IB as an AP without being registered as such with the Commission. Tresner was not exempt from registration under any provision of the Act or Regulations. *See* Regulation 3.12(h).

As described above, from at least December 2014 to November 2015, when he was not registered as an AP of the Guarantor IB, Tresner was paid by Guarantor IB to solicit and accept orders from Guarantor IB’s customers to trade commodity futures. During this period, Tresner

also was not registered with the Commission in any capacity that would provide him an exemption from registering as an AP. *See* Section 4k(1)(ii) of the Act; Regulation 3.12(h) (i). Tresner thus violated Section 4k(1) of the Act and Regulation 3.12(a) by failing to register with the Commission as an AP of Guarantor IB.

#### **D. Tresner Failed To Register as a CTA**

Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), makes it unlawful for a CTA, unless registered under the Act, to make use of the mails or instrumentalities of interstate commerce in connection with his business as a CTA. Section 4m of the Act does not apply to any CTA who, during the preceding twelve month period, has not furnished commodity trading advice to more than fifteen persons and has not held himself out generally to the public as a CTA. *Id.* Thus, if a person holds himself out generally to the public as a CTA, he must register as a CTA, and it is unnecessary to determine if he advised more than fifteen people within the preceding twelve months. *In re Tivon*, CFTC No. 18-22, 2018 WL 4502264, at \*3 (Sept. 14, 2018) (consent order) (holding that firm was required to register as a CTA where it represented itself as a provider of commodity trading advice services for compensation or profit through a publicly available website and the owner solicited eight prospective clients to obtain discretionary authority to trade options on futures contracts on their behalf).

As described above, from at least December 2014 to November 2015 and from at least June 2016 to June 2018, Tresner held himself out generally to the public as a CTA by soliciting clients and offering, for compensation or profit, futures trading advisory services, including the direction of clients' futures trading and management of clients' futures trading accounts. For example, Tresner promoted his advisory services on his public Twitter feed by commenting at various times on the advisability of purchasing or selling agricultural and livestock futures. He also stated in his LinkedIn profile and resume that he was a commodities trader who provided market advisory services to producers and end users of commodities. *See In re Armstrong*, CFTC No. 85-47, 1993 WL 38344, at \*6-7 (Feb. 8, 1993) (finding that an entity holds itself out to the public as a CTA through such conduct as promoting advisory services through mailings, directory listings, and stationery, or otherwise initiating contacts with prospective clients); *In re Mobius*, CFTC No. 18-18, 2018 WL 4502269, at \*2-3 (Sept. 14, 2018) (consent order) (holding that firm held itself out generally to the public as a CTA through a website that offered risk management services to eligible contract participants regarding commodities). Therefore, Tresner was not exempt from the requirement to register as a CTA under Section 4m(1) of the Act.

Since Tresner acted as a CTA while he was not registered as such from at least December 2014 to November 2015 and from at least June 2016 to June 2018, he violated of Section 4m(1) of the Act.

### **IV. FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that at various periods of time during the Relevant Period, Tresner violated Sections 4b(a)(1)(A) and (C), 4k(1), 4m(1), 4o(1)(A) and (B), and 6(c)(2) of the Act, 7 U.S.C. §§ 6b(a)(1)(A),(C), 6k(1), 6m(1), 6o(1)(A), (B), 9(2) (2012), and Regulation 3.12(a), 17 C.F.R. § 3.12(a) (2018).



## V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which he, without admitting or denying the findings and conclusions herein:

- A. Acknowledges service of the Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in the Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of the Order;
- C. Waives:
  - 1. The filing and service of a complaint and notice of hearing;
  - 2. A hearing;
  - 3. All post-hearing procedures;
  - 4. Judicial review by any court;
  - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of this Offer;
  - 6. Any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this proceeding;
  - 7. 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 proceeding; and
  - 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including the Order;
- D. Stipulates that the record basis on which the Order is entered shall consist solely of the findings contained in the Order to which Respondent has consented in this Offer; and
- E. Consents, solely on the basis of this Offer, to the Commission's entry of this Order that:
  - 1. Makes findings by the Commission that Respondent violated Sections

4b(a)(1)(A) and (C), 4k(1), 4m(1), 4o(1)(A) and(B), and 6(c)(2) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C), 6k(1), 6m(1), 6o(1)(A), (B), 9(2) (2012), and Regulation 3.12(a), 17 C.F.R. § 3.12(a) (2018);

2. Orders Respondent to cease and desist from violating Sections 4b(a)(1)(A) and (C), 4k(1), 4m(1), 4o(1)(A) and (B), and 6(c)(2) of the Act and Regulation 3.12(a);
3. Orders Respondent to pay restitution in the amount of fifty-five thousand dollars (\$55,000), plus post-judgment interest;
4. Orders Respondent to pay a civil monetary penalty in the amount of two hundred and fifty thousand dollars (\$250,000), plus post-judgment interest;
5. Orders that Respondent be permanently prohibited from, directly or indirectly, engaging in 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) (2012)), and all registered entities shall refuse him trading privileges; and
6. Orders Respondent to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

## **VI. ORDER**

### **Accordingly, IT IS HEREBY ORDERED THAT:**

- A. Respondent shall cease and desist from violating Sections 4b(a)(1)(A) and (C), 4k(1), 4m(1), 4o(1)(A) and (B), and 6(c)(2) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C), 6k(1), 6m(1), 6o(1)(A), (B), 9(2) (2012), and Regulation 3.12(a), 17 C.F.R. § 3.12(a) (2018);
- B. Respondent shall pay restitution in the amount of fifty-five thousand dollars (\$55,000) ("Restitution Obligation"). If the Restitution Obligation is not paid immediately, then 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 (2012).

To effect payment by Respondent and the distribution of restitution to Respondent's customers, the Commission appoints the National Futures Association ("NFA") as "Monitor." The Monitor shall receive payments of the Restitution Obligation and any post-judgment interest from Respondent and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, it shall not be liable for any action or inaction arising from its appointment as Monitor other than actions involving fraud.

Respondent shall make his payments of the Restitution Obligation and any post-judgment interest under this Order in the name of the “Coby Tresner’s Settlement Fund” and shall send such payments by electronic funds transfer, or U.S. postal money order, certified check, bank cashier’s check, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent 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 and Manal Sultan, Deputy Director, Commodity Futures Trading Commission, 140 Broadway, 19<sup>th</sup> Floor, New York, NY 10005.

The Monitor shall oversee Respondent’s Restitution Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to the Respondent’s customers or may defer distribution until such time as the Monitor may deem appropriate. In the event that the amount of payments of the Restitution Obligation to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a restitution distribution 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, as discussed below. To the extent any funds accrue to the U.S. Treasury for satisfaction of Respondent’s Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this Order.

- C. Respondent shall pay a civil monetary penalty in the amount of two hundred and fifty thousand dollars (\$250,000) (“CMP Obligation”) within thirty days of the date of the entry of the Order. If the CMP Obligation is not paid in full within thirty days of the date of entry of the Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961 (2012).

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the 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  
(405) 954-6569 office  
(405) 954-1620 fax  
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to (i) the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and (ii) Manal M. Sultan, Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, 140 Broadway, New York, New York 10005;

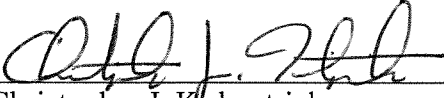
- D. Respondent is permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), and all registered entities shall refuse him trading privileges; and
- E. Respondent shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent 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 findings or conclusions in the Order or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.
  2. Respondent agrees that he shall never, directly or indirectly:
    - a. enter into any transactions involving commodity interests (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018)), for Respondent's own personal account or for any account in which Respondent has a direct or indirect interest;
    - b. have any commodity interests traded on Respondent's behalf;
    - c. control or direct 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;
    - d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
    - e. apply for registration or claim exemption from registration with the

Commission in any capacity, and engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2018); and/or

- f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2018)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act), registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9).
- F. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of his 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.
- G. Change of Address/Phone: Until such time as Respondent satisfies in full his CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten calendar days of the change.

**The provisions of this Order shall be effective as of this date.**

By the Commission.

  
\_\_\_\_\_  
Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: September 30, 2019