

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
NORTHWESTERN DIVISION

U.S. COMMODITY FUTURES  
TRADING COMMISSION,

Plaintiff,

v.

AARON B. BUTLER and NEGUS  
CAPITAL INCORPORATED,

Defendants.

3:19-CV-01792-LCB

**CONSENT ORDER FOR PERMANENT INJUNCTION, RESTITUTION,  
CIVIL MONETARY PENALTY, AND OTHER EQUITABLE RELIEF  
AGAINST DEFENDANT AARON B. BUTLER**

**I. INTRODUCTION**

On November 4, 2019, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed its Complaint for Injunctive Relief, Restitution, Civil Monetary Penalties and Other Equitable Relief under the Commodity Exchange Act (the “Complaint”) (Docket (“Dkt.”) No. 1) against Defendants Aaron B. Butler (“Butler”) and Negus Capital Incorporated (“NCI”) seeking injunctive and other equitable relief, as well as restitution and the imposition of civil monetary penalties, for violations of the Commodity Exchange Act (the

“Act”), 7 U.S.C. §§ 1-26 (2018), and the Commission’s Regulations (“Regulation”), 17 C.F.R. §§ 1-190 (2019).

## II. CONSENTS AND AGREEMENTS

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

1. Consents to the entry of this Consent Order for Permanent Injunction, Restitution, Civil Monetary Penalty and Other Equitable Relief Against Defendant Aaron B. Butler (“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 Commission 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 in this action;
4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018); and pursuant to 28 U.S.C. §§ 1331 and 1345 (2018);
5. Admits the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1-26 (2018);
6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2018);

7. Waives:

a. Any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018) and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2019), 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 (1996), (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. 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 Butler now or in the future resides outside the jurisdiction of this Court;

9. 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;

10. 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 Commission is not a party;

11. Agrees that he 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;

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

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 Commission or to which the Commission 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 Commission or to which the Commission is a party, other than: a proceeding in bankruptcy or receivership, or a proceeding to enforce the terms of this Consent Order;

15. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 78 of Part IV 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 remedy against him in any other proceeding.

### **III. FINDINGS AND CONCLUSIONS**

This 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, and equitable relief and, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), orders the entry of a permanent injunction, restitution,

and civil monetary penalty. The findings and conclusions in this Consent Order are not binding on any other party to this action.

**THE PARTIES AGREE AND THE COURT HEREBY FINDS:**

**A. FINDINGS OF FACT**

**1. The Parties To This Consent Order**

17. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1-26 (2018), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1-190 (2019).

18. Defendant **Aaron B. Butler** is an individual who, from at least March 16, 2017 through February 21, 2018 (the “Relevant Period”), resided in Muscle Shoals, Alabama. During the Relevant Period, Butler was the sole founder, principal director and officer of NCI, an Alabama corporation that Butler formed on or about June 24, 2016 with the same principal address as Butler in Muscle Shoals, Alabama. During the Relevant Period, Butler controlled all aspects of NCI including the day-to-day operations, marketing and trading decisions, and, at all times during the Relevant Period, Butler acted as the sole agent for NCI. In particular, during the Relevant Period, Butler, in his individual capacity as well as on behalf of NCI, solicited members of the public to participate in one of two schemes concerning trading commodity interests in binary options, primarily

involving foreign exchange traded currencies (“forex”), on the North American Derivatives Exchange (“Nadex”). Therefore, Butler held and exercised direct and indirect control over NCI. Butler and NCI have never been registered with the Commission in any capacity.

## **2. Butler’s Pooled And Managed Accounts Schemes**

19. During the Relevant Period, Butler, in his individual capacity as well as on behalf of NCI, solicited \$305,000 from more than 70 members of public to participate in one of two schemes concerning trading binary options on Nadex, a U.S.–based, retail–focused, online binary options exchange.

20. In the first scheme, Butler misrepresented that for customer deposits of between \$500 and \$5,000, Butler, in his individual capacity and on behalf of NCI, would pool that customer’s funds with other customer funds in a single trading account at Nadex (the “Pooled Scheme”). Butler, acting as the trader for the commodity pool operator (“CPO”), NCI, would use those funds to trade binary options for the benefit of the pool and its participants.

21. In the second scheme, Butler misrepresented that for each customer deposit of \$5,000 or more, Butler, in his individual capacity and on behalf of NCI, would put the customer’s funds in separate customer trading accounts at Nadex (the “Managed Accounts Scheme”). Butler, as a commodity trading advisor (“CTA”), would manage and trade binary options for each customer account.

Further, Butler told customers that he would take a percentage of the profits as compensation for managing and trading their funds.

22. Rather than trade customer funds as promised, Butler misappropriated all customer funds for his personal benefit, and then mislead customers in order to conceal his misappropriation.

**3. Butler's Material Acts, Misrepresentations And Omissions To Solicit Customers And Perpetuate The Two Schemes**

23. In furtherance of the fraudulent schemes and during the Relevant Period, Butler made material misrepresentations and omissions and created fabricated financial statements in order to solicit customers, perpetuate the two schemes, and hide his misappropriation.

*i. Butler's Material Misrepresentations In Contract Guaranteeing To Return Principal If No Profit Earned*

24. First, Butler, in his individual capacity and on behalf of NCI, provided contracts to prospective customers. Depending on if the customer executed a six month or twelve month contract, Butler, among other things, guaranteed to return the customers' initial deposit of funds if no profit was earned from trading at the end of the first six months or twelve months after execution of the contract.

25. For example, the six month contract which was entitled "Negus Capital," stated that Butler, on behalf of NCI, was "required to present the [customer a] six-month trading [update]" on the profitability of their investment



from the date the customer first invested, and that if, at the end of the first six months Butler did not have a profit, he, on behalf of NCI, “**w[ould] be required to return the [] investment to the [customer].**” (Emphasis original).

26. Customers for both the Pooled Scheme and Managed Accounts Scheme executed these contracts.

27. Thereafter, Butler, in his individual capacity and on behalf of NCI, did not trade any customer funds and no profit was realized even though six months or twelve months had passed since execution of the contracts. Therefore, Butler, on behalf of NCI, was obligated to return to customers their funds pursuant to the terms of the contracts. However, despite customer requests to Butler to return their funds at the expiration of the contracts, Butler did not return those funds.

*ii. Butler’s Material Misrepresentations About His Trading Experience And Track Record*

28. Second, Butler, in his individual capacity and on behalf of NCI, misrepresented his trading experience on Nadex and track record with respect to trading commodities and, in particular, binary options on Nadex.

29. For example, Butler represented to customers that he had been trading binary options for years on Nadex and was very profitable having made millions of dollars from his trading. In reality, however, Butler traded very little in the past on Nadex and was, for the most part, unprofitable. Specifically, Butler opened a Nadex account in his name in 2014. From 2014 and continuing through the

Relevant Period, Butler funded that account with approximately \$910. During this time, no customer funds from Butler's two schemes were used to fund that account. Further, during this time, Butler traded and lost approximately \$720 in that account.

***iii. Butler's Material Misrepresentations About Profits***

30. Third, Butler, in his individual capacity and on behalf of NCI, made numerous material misrepresentations to customers about their supposed trading profits.

31. For example, when Butler was soliciting prospective customers for funds in both schemes, he told customers that depending on how much the customer deposited, the customer could earn profits in the six- to seven-figure range as a result of his trading. Butler also posted supposed account statements showing purported payouts to prior customers of Butler and NCI on a private Facebook Group/Page he controlled. These account statements were fabricated and, were created by Butler to induce customers to deposit funds with him and NCI.

***iv. Butler's Material Misrepresentations About Investment Growth***

32. Fourth, Butler, in his individual capacity and on behalf of NCI, created and distributed false growth reports to customers that purportedly showed that the funds the customers had deposited with Butler and NCI were growing (*i.e.*,

profiting) at exceptional rates for both schemes. In reality, however, these growth reports were false since Butler and NCI did not use customer funds to trade binary options for either of the schemes; rather, Butler misappropriated them for his personal benefit.

***v. Butler's Material Misrepresentations Concerning Nadex Statements***

33. Fifth, Butler, in his individual capacity and on behalf of NCI, created and distributed false Nadex statements to their customers of both schemes that supposedly showed Butler requesting that Nadex transfer hundreds of thousands of dollars from Butler's and NCI's Nadex accounts to Butler's and NCI's bank accounts. In reality, however, Butler and NCI never had hundreds of thousands of dollars in accounts at Nadex.

***vi. Butler's Material Misrepresentations Concerning Bank Statements***

34. Sixth, Butler, in his individual capacity and on behalf of NCI, created and distributed false bank statements to their customers of both schemes that purportedly showed Butler and NCI paying hundreds of thousands of dollars from these bank accounts to supposedly other of Butler's and NCI's customers. These supposed payments were used by Butler, in his individual capacity and on behalf of NCI, to show that customers were making profits because of Butler's and NCI's successful trading at Nadex. In reality, however, Butler and NCI never paid any such returns to their customers.

*vii. Butler's Material Omissions That He And NCI Would Not Trade Customer Funds Or Misappropriate Funds*

35. Seventh, Butler, in his individual capacity and on behalf of NCI, failed to disclose to customers that he and NCI would not use customer funds from the Pooled Scheme and Managed Accounts Scheme to trade binary options.

Butler, in his individual capacity and on behalf of NCI, also failed to disclose to customers that he and NCI would misappropriate those funds for Butler's personal benefit.

**4. Customers Provide Funds To Butler And NCI To Trade Binary Options**

36. Once prospective customers decided to trade binary options through Butler and NCI, they were instructed to provide funds to Butler and NCI by sending the funds directly to Butler.

37. For example, some customers provided funds to Butler and NCI by: (1) using PayPal; (2) wiring funds across state lines to bank accounts in the name of Butler; or (3) sending cashier's checks, personal checks, and cash to Butler and NCI which were deposited directly into Butler's bank accounts.

38. As a result of Butler's solicitations, in his individual capacity and on behalf of NCI, more than 70 people, including but not limited to Alabama residents located within this District, provided Butler and NCI \$305,000 in amounts ranging from \$1,000 to \$20,000. These funds were to be used for the specific purpose of trading binary options.

**5. Butler And NCI Did Not Trade Customer Funds But Rather Misappropriated Them For Butler's Personal Use**

39. Despite receiving these funds from customers for the purpose of trading binary options, during the Relevant Period, Butler, in his individual capacity and on behalf of NCI, misappropriated those customers' funds for Butler's personal benefit. For example, Butler spent most of the monies that he and NCI received on travel, entertainment, personal items, and jewelry in venues located in Alabama and other states for Butler's benefit. Such purchases included approximately \$34,833.13 at various jewelry stores in Alabama and other states. Butler also spent approximately \$1,800 purchasing Toys "R" Us gift cards. Additionally, Butler spent over \$11,000 at Apple stores.

40. During the Relevant Period, several customers, who had provided funds to Butler and NCI to trade on their behalf, requested to make withdrawals from their accounts with Butler and NCI. Butler, in his individual capacity and on behalf of NCI, refused to return those funds.

**6. Butler's Invention That Government Authorities Froze His And NCI's Accounts In Order To Perpetuate Fraud**

41. As Butler, in his individual capacity and on behalf of NCI, failed to return customer funds, customers began to post messages to the Facebook Group/Page Butler controlled that were critical of Butler and NCI, questioning the validity of their representations and promises.

42. In response, Butler subsequently blocked on social media, including the Facebook Group/Page, those customers seeking a refund of their money and alleged that he was unable to make any refunds to those customers because his and NCI's bank and trading accounts had been "frozen" by government authorities including the Commission.

43. At no time during or any time after the Relevant Period has any government authority, including the Commission, frozen any of Butler's and NCI's bank or trading accounts.

44. Butler's statements about the supposed freeze were made by him with the intent to deceive customers and conceal and perpetuate his fraud.

## **B. CONCLUSIONS OF LAW**

### **1. Jurisdiction and Venue**

45. The Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), which provides that whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the Commission may bring an action in the proper District Court of the United States against such person to enjoin such practice, or to enforce compliance with the Act, or any rule, regulation, or order thereunder. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (2018)

(codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (providing that 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).

46. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2018), because Butler, in his individual capacity and on behalf of NCI, transacted business in this District, and certain transactions, acts, and practices alleged in the Complaint occurred, are occurring, and/or are about to occur within this District.

## **2. Butler Committed Options Fraud**

47. Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2018), makes it unlawful for any person to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity regulated under the Act which is of the character of, or is commonly known to the trade as, inter alia, an “option”, “bid”, “offer”, “put”, or “call”, contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.

48. Regulation 32.4, 17 C.F.R. § 32.4 (2019), provides that, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, it shall be unlawful for any person, directly or indirectly: (a) to cheat or defraud or attempt to cheat or defraud

any other person; (b) to make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or (c) to deceive or attempt to deceive any other person by any means whatsoever.

49. By the conduct described in paragraphs 17 through 44 above, Butler, in his individual capacity and on behalf of NCI, violated 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4 by cheating and defrauding, or attempting to cheat and defraud, customers, in connection with Butler's trading binary options on his customers' behalf by, among other things, intentionally or recklessly: (1) misappropriating customer funds; (2) making material misrepresentations about his trading experience, track record, profitability, and that he, in his individual capacity and on behalf of NCI, would actually trade binary options on Nadex; and (3) creating and distributing to customers fabricated financial statements.

50. By the conduct described in paragraphs 17 through 44 above, Butler held and exercised direct and indirect control over NCI and either did not act in good faith or knowingly induced any potential violations by NCI of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4.

51. Each misappropriation, misrepresentation, omission of material fact, and false statement, including but not limited to those specifically identified herein, is a separate and distinct violation of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4.



### **3. Butler Committed CTA Fraud**

52. Section 4o(1)(A)-(B) of the Act, 7 U.S.C. § 6o(1)(A)-(B) (2018), among other things, prohibits CTAs whether registered with the Commission or not, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, from employing devices, schemes or artifices to defraud any client or participant or prospective client or participant, or engaging in transactions, practices, or courses of business which operate as a fraud or deceit upon any client or participant or prospective client or participant.

53. By the conduct described in paragraphs 17 through 44 above, Butler, in his individual capacity and on behalf of NCI, violated 7 U.S.C. § 6o(1)(A)-(B) of the Act while acting in his capacity as a CTA for the Managed Accounts Scheme, because he, among other things, intentionally or recklessly:

(1) misappropriated customer funds; (2) made material misrepresentations about his trading experience, track record, profitability, and that he, in his individual capacity and on behalf of NCI, would actually trade binary options on Nadex; and (3) created and distributed to customers fabricated financial statements.

54. By the conduct described in paragraphs 17 through 44 above, Butler held and exercised direct and indirect control over NCI and either did not act in good faith or knowingly induced any potential violations by NCI of 7 U.S.C. § 6o(1)(A)-(B).

55. Each misappropriation, misrepresentation, omission of material fact, and false statement, including but not limited to those specifically identified herein, is a separate and distinct violation of 7 U.S.C. § 6o(1)(A)-(B).

**4. Butler Failed To Register As A CTA**

56. With certain specified exceptions and exemptions not applicable here, Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2018), makes it unlawful for any CTA to make use of the mails or any means or instrumentality of interstate commerce in connection with its business unless they are registered with the CFTC.

57. Section 1(a)(12) of the Act, 7 U.S.C. § 1a(12) (2018) defines a CTA, in relevant part, as “any person who, for compensation or profit, engages in the business that is of advising others , either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading” futures or options.

58. By the conduct described in paragraphs 17 through 44 above, Butler acted as a CTA when he, for compensation or profit, advised and directed the purported trading of the Managed Accounts Scheme’s customers.

59. By the conduct described in paragraphs 17 through 44 above, Butler used the mails or other means or instrumentalities of interstate commerce in connection with the Managed Accounts Scheme’s business.

60. By the conduct described in paragraphs 17 through 44 above, Butler violated 7 U.S.C. § 6m(1) by engaging in these activities without having registered as a CTA.

#### **IV. PERMANENT INJUNCTION**

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

61. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(2018), Butler is permanently restrained, enjoined, and prohibited from directly or indirectly engaging in conduct in violation of 7 U.S.C. §§ 6c(b), 6m(1), and 6o(1)(A)-(B) (2018) and 17 C.F.R. § 32.4 (2019).

62. Butler is also permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. Trading on or subject to the rules of any registered entity (as that term is defined by Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018));
- b. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019)), for accounts held in the name of Butler or NCI or for accounts in which Butler or NCI has a direct or indirect interest;
- c. Having any commodity interests traded on Butler’s or NCI’s behalf;

- d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
- e. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling of any commodity interests;
- f. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2019); and
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9).

## **V. RESTITUTION AND CIVIL MONETARY PENALTY**

### **A. Restitution**

63. Butler shall pay restitution in the amount of three hundred and five thousand dollars (\$305,000.00) (“Restitution Obligation”), representing the gains he received in connection with the violations described herein, plus post-judgment

interest. However, should NCI be found liable in connection with the Complaint and is ordered to pay restitution for its misconduct, then the Restitution Obligation in this Consent Order will become joint and several with any restitution ordered against NCI.

64. Post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2018).

65. To effect payment of the Restitution Obligation and the distribution of any restitution payments to customers of Butler and NCI, the Court appoints the National Futures Association (“NFA”), a self-regulatory organization for the U.S. derivatives industry that the CFTC designated as a registered futures association, as Monitor (“Monitor”). The Monitor shall receive restitution payments from Butler and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA’s appointment as Monitor, other than actions involving fraud.

66. Butler shall make Restitution Obligation payments under this Consent Order to the Monitor in the name “*CFTC v. Aaron B. Butler, et al. – Settlement/Restitution Fund.*” Butler shall send such Restitution Obligation

payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies him as the paying Defendant and the name and docket number of this proceeding. Butler 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 James Deacon, Senior Trial Attorney, Commodity Futures Trading Commission, Division of Enforcement, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581.

67. 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 customers of Butler and NCI 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 customers is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part V.B. below.

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

69. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to customers of Butler and NCI 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 21<sup>st</sup> Street, N.W., Washington, D.C. 20581.

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

71. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Butler and NCI who suffered a loss is explicitly made an intended

third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Butler.

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

### **B. Civil Monetary Penalty**

73. Butler shall pay a civil monetary penalty in the amount of four hundred fifty thousand dollars (\$450,000.00) ("CMP Obligation"), plus post-judgment interest.

74. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

75. Butler 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:

MAC/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

76. If payment by electronic funds transfer is chosen, Butler shall contact Marie Thorne or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Butler shall accompany payment of the CMP Obligation with a cover letter that identifies Butler and the name and docket number of this proceeding. Butler shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and James Deacon, Senior Trial Attorney, Commodity Futures Trading Commission, Division of Enforcement, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581.

### **C. Provisions Related to Monetary Sanctions**

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

## VI. MISCELLANEOUS PROVISIONS

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

Notice to Commission:

Richard A. Glaser, Deputy Director  
Division of Enforcement  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

Notice to Butler:

Aaron B. Butler  
4838 N.W. 58th Place  
Coconut Creek, Fl. 33073

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

79. Change of Address/Phone: Until such time as Butler satisfies in full his Restitution Obligation and CMP Obligation as set forth in this Consent Order, Butler shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

80. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the Commission and Butler 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.

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

82. **Waiver:** The failure of any party to this Consent Order or of any customer of Butler and NCI at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or customer 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.

83. **Waiver of Service, and Acknowledgement:** Butler waives service of this Consent Order and agrees that entry of this Consent Order by the Court and filing with the Clerk of the Court will constitute notice to him of its terms and conditions.

84. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all

other purposes related to this action, including any motion by Butler to modify or for relief from the terms of this Consent Order.

85. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Butler, upon any person under his authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile, or otherwise insofar as he or she is acting in active concert or participation with Butler.


86. 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 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.

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

88. Agreements and Undertakings: Butler 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, Restitution, Civil Monetary Penalties, and Other Equitable Relief Against Defendant Aaron B. Butler forthwith and without further notice.

**DONE** and **ORDERED** this June 16, 2020.



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**LILES C. BURKE**  
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:

For Plaintiff Commodity Futures Trading Commission


/s/ James W. Deacon  
James W. Deacon  
DC Bar No. 476216  
(appearing pursuant to L.R. 83.1(c))

Richard A. Glaser  
NY Bar No. 2404432  
(appearing pursuant to L.R. 83.1(c))

Date: March 23, 2020

U.S. Commodity Futures Trading Commission  
Division of Enforcement  
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For Defendant Aaron B. Butler, Individually

  
Defendant Aaron B. Butler  
(appearing *pro se* pursuant to L.R. 83.1(d))

Date: 03/24/20

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