

**UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

COMMODITY FUTURE TRADING)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	
)	
JOSHUA CHRISTIAN MCDONALD and)	
PERFECTION PR FIRM LLC,)	
)	
Defendants.)	

Case No. 4:20-cv-00261-AGF

**ORDER OF DEFAULT FINAL JUDGMENT, PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY, AND OTHER EQUITABLE RELIEF AGAINST
DEFENDANTS JOSHUA CHRISTIAN MCDONALD AND PERFECTION PR
FIRM LLC**

On February 14, 2020, the Commodity Futures Trading Commission (“Commission” or “Plaintiff”) filed a Complaint charging Defendants Joshua Christian McDonald (“McDonald”) and Perfection PR Firm LLC (“Perfection PR”) with violating Sections 2(c)(2)(C)(iii)(I)(cc), 4b(a)(2)(A)-(C), 4k(2), 4m(1), and 4o(1)(A) and (B) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6b(a)(2)(A)-(C), 6k(2), 6m(1), 6o(1)(A), (B) (2018), and Commission Regulations (“Regulations”) 4.20(a)-(c), 4.41(a), 5.2(b), and 5.3(a)(2)(i) and (ii), 17 C.F.R. §§ 4.20(a)-(c), 4.41(a), 5.2(b), 5.3(a)(2)(i)-(ii) (2019) . (ECF No. 1). On February 15, 2020, Defendants were properly served with the summons and Complaint pursuant to Rule 4 of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) by personal service. (ECF No. 5 at 2; ECF No. 6 at

2). Defendants have failed to appear or answer the Complaint within the time permitted by Fed. R. Civ. P. 12(a)(1). Accordingly, the Commission filed motions for entry of a clerk's default against Defendants and on April 20, 2020, the Clerk of this Court entered a default against Defendants. (ECF No. 10). The Commission has moved this Court to grant final judgment by default against Defendants, order permanent injunctive relief, and impose a restitution obligation and civil monetary penalty.

The Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Commission's memorandum in support of its motion,¹ and the record in this case. Having been fully advised in the premises,

IT IS HEREBY ORDERED that Plaintiff's original Motion for Default Judgment is **DENIED as moot**. (ECF No. 12).

IT IS FURTHER ORDERED that Plaintiff's Motion for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief against Defendants is **GRANTED**. (ECF No. 14). Accordingly, the Court enters the following findings of fact, conclusions of law, and Order of Final Judgment by Default for Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief ("Order") pursuant to Sections 6c and 6d of the Act, 7 U.S.C. § 13a-1 (2018), as set forth herein.

¹ The memorandum in support of Plaintiff's motion for final judgment included the declaration of Senior Futures Trading Investigator Dimitry Vilensky. (ECF No. 13-2). Vilensky works in the Division of Enforcement of the Commodity Futures Trading Commission and was assigned to investigate Defendants' actions. (*Id.* ¶¶ 4-5).

I. FINDINGS OF FACT

A. The Parties

1. Plaintiff **Commodity Futures Trading Commission** is an independent regulatory agency that is 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. pts. 1-190 (2019). (ECF No. 1 ¶ 14).

2. Defendant **Joshua Christian McDonald** is the founder and Chief Executive Officer of Defendant Perfection PR Firm LLC. McDonald currently resides in or around Georgetown, Texas. McDonald has never been registered with the Commission. (*Id.* ¶ 15; ECF. No. 13-2 ¶¶ 14-15).

3. Defendant **Perfection PR Firm LLC** is a Delaware limited liability company that McDonald formed on January 29, 2016, with a registered office in Newark, Delaware. McDonald is the sole member of Perfection PR and controls its operations, finances, accounts, and books and records. Perfection PR has never been registered with the Commission. (ECF No. 1 ¶ 16; ECF No. 13-2 ¶¶ 16-18).

B. Operation of the Pool and Solicitation of Participants

4. From August 2017 through July 2018 (“the Relevant Period”), McDonald, individually and acting as an officer, employee, or agent of Perfection PR, solicited and pooled \$445,960 from thirteen individuals or entities (“Pool Participants”), in connection with the trading of retail foreign exchange (“forex”) contracts. At the direction of McDonald, Pool Participants deposited their investment funds, primarily via wire transfer, into bank accounts in McDonald’s name at Citibank N.A. (“Citibank”) or in the

name of Perfection PR at Regions Bank (“Regions”). (ECF. No. 1 ¶ 17; ECF No. 13-2 ¶¶ 7-8, 22, 26).

5. Pool Participants were introduced to McDonald by family members, friends, or acquaintances, some of whom were offered referral fees by McDonald. Following an introduction, McDonald communicated directly with existing and prospective Pool Participants via telephone, email, text message, social media, and video conferencing. In communications with prospective Pool Participants, McDonald touted his purported forex trading expertise and successful track record, promised returns of between 10% and 50% per month, and minimized the risk of loss. McDonald told at least one prospective Pool Participant that her invested funds would be pooled with the investment funds of other Pool Participants. (ECF. No. 1 ¶ 18).

6. In December 2017 and January 2018, McDonald sent to at least three prospective Pool Participants an email with the subject “Forex Investment Introduction” that stated: “Thank you for allowing us to show you this opportunity for investment in our Forex program. Please find the following document attached, of our past & current client’s portfolios & historical information.” Attached to the email was a PDF document named “Final Investment Proposal,” which made representations about the amount of profits Pool Participants could expect, among other things. The email also represented: “Commission Percentage – Fee is taken off profits made for you per month: - \$1k-\$25k Account – (40%) - \$25k or more account – (35%)”. In the email, McDonald identified himself as the “CEO” of Perfection PR. (ECF No. 1 ¶ 19; ECF. No. 13-4).

7. At the direction of McDonald, Pool Participants entered into a “Forex Investment Agreement” with Perfection PR. The agreement stated that “Perfection PR Firm LLC would like to offer investors a place in our Forex Trading Program” and that Perfection PR “offers said investment opportunity & return on investment through Forex trading.” The agreement stated that “the minimum goal is 20% return on investment per month. Yet the company’s goal is to secure as much profit as possible.” The term of the Forex Investment Agreement was typically between thirty and ninety days. McDonald signed the agreements on behalf of Perfection PR. (ECF No. 1 ¶ 20).

8. In December 2017, McDonald formed a second entity in Delaware, Perfection Forex LP (“Perfection Forex”). McDonald was the sole general partner of Perfection Forex. Via a website and social media accounts, McDonald and Perfection Forex solicited the public to deposit funds for forex trading training, trading signals, and managed accounts. Beginning in or about March 2018 and continuing through at least June 2018, McDonald commingled funds collected from Perfection Forex customers with Pool Participant funds in McDonald’s personal Citibank account. (*Id.* ¶ 21).

9. At least one Pool Participant was not an eligible contract participant (“ECP”) and the commodity pool operated by Defendants was not an ECP, as that term is defined in Section 1a(18) of the Act, 7 U.S.C. § 1a(18) (2018). (*Id.* ¶¶ 7, 22).

10. On May 4, 2018, McDonald sent an email message to one Pool Participant, M.B., stating that Perfection PR “regrets to inform you that the portfolio and trades made throughout the investment were not as successful as we had hoped, based off of market conditions and movements of trades the portfolio final overview and result was a loss...

With [current events] we continually fell behind with losses... At this time Perfection PR Firm LLC and the relationship with the client has come to an end, due to depletion of funds, based off loss.” (*Id.* ¶ 23).

11. McDonald eventually stopped responding to communications from all Pool Participants and has failed to return their remaining investment funds despite repeated requests. (*Id.* ¶ 24).

12. Although Perfection PR did not meet the requirements for exemption, on May 20, 2018, McDonald filed with the National Futures Association (“NFA”) a notice of exemption under Commission Regulation 4.13(a)(2), 17 C.F.R. § 4.13(a)(2) (2019), for a pool called “Perfection PR Firm Forex Investment Program.” The exemption notice was withdrawn on March 4, 2019. (*Id.* ¶ 25; ECF No. 13-2 ¶ 18).

C. Trading and Misappropriation of Funds

13. In or about June 2017, McDonald opened a trading account in his own name at a retail foreign exchange dealer (“RFED”) registered with the Commission (“RFED personal account”) and, in August 2017, began depositing Pool Participants’ funds into the account. From August 2017 to February 2018, McDonald deposited a total of \$119,610 of Pool Participants’ funds and made withdrawals totaling \$135,502.28. McDonald engaged in leveraged or margined forex transactions in the account. By month, the RFED personal account showed the following profit and loss:

Month/ Year	Closed Trade Profit (Loss)
6/17	\$251.46
7/17	\$73.86
8/17	(\$902.77)
9/17	\$800.68
10/17	\$3,301.70
11/17	(\$10,469.21)
12/17	\$56,175.00
1/18	(\$33,975.74)
2/18	\$4,396.07
3/18	(\$8,678.46)
TOTAL	\$10,972.59

(ECF No. 1 ¶ 26; ECF No. 13-2 ¶¶ 36, 38).

14. Overall, McDonald had a cumulative profit of approximately \$15,890 in the RFED personal account for the ten months that it was traded. On March 6, 2018, McDonald withdrew all funds remaining in the RFED personal account (approximately \$106,000) and ceased trading in that account. (ECF No. 1 ¶ 27; ECF No. 13-2 ¶ 36).

15. In January 2018, McDonald opened a second trading account with the same RFED in the name of Perfection PR (“RFED corporate account”) and in the same month deposited a total of \$150,000 of Pool Participants’ funds. In February 2018, McDonald made withdrawals totaling \$105,513.81. McDonald engaged in leveraged or margined forex transactions in the account. By month, the RFED corporate account showed the following profit and loss:

Month/ Year	Closed Trade Profit (Loss)
1/18	(\$48,052.09)
2/18	\$4,054.00
TOTAL	(\$43,998.09)

(ECF No. 1 ¶ 28; ECF No. 13-2 ¶ 38).

16. Overall, the RFED corporate account suffered a cumulative loss of \$43,998.09 during the two months that it was actively traded. On February 27, 2018, McDonald withdrew all funds remaining in the RFED corporate account (approximately \$105,000) and ceased trading in that account. (ECF No. 1 ¶ 29; ECF No. 13-2 ¶ 38).

17. From December 2017 through May 2018, McDonald transferred via wire transfer a total of \$294,000—including \$165,000 of the funds withdrawn from the RFED accounts in February and March 2018—from Perfection PR's Regions account to a Bulgaria bank account in the name of a Belize-registered company that offers internet-based leveraged or margined forex trading. During the same period, McDonald returned a total of \$88,649 from the Belize forex firm to Perfection PR's Regions account. (ECF No. 1 ¶ 30; ECF No. 13-2 ¶ 30). The Belize forex firm is not registered with the Commission. (ECF No. 13-2 ¶ 41).

18. Although Pool Participants deposited funds with Defendants only for the purpose of forex trading, during the Relevant Period, McDonald transferred via wire transfer and ACH \$90,831.01 from his Citibank account and Perfection PR's Regions account to companies selling cryptocurrency or offering accounts for holding cryptocurrency. During that period, only approximately \$24,178.71 was returned from the cryptocurrency companies. (ECF No. 1 ¶ 31; ECF No. 13-2 ¶ 31).

19. While McDonald transferred a greater amount from the forex trading accounts and cryptocurrency companies back to the Citibank and Regions accounts during the Relevant Period, he returned only \$105,394.79 to the thirteen known Pool

Participants as redemptions or purported profits. This figure includes \$20,000 that was paid to one Pool Participant who had already redeemed the full amount of its initial investment. The other twelve Pool Participants suffered losses as a result of Defendants scheme, totaling \$360,565.21. McDonald used the remaining funds for personal expenses such as rent, food, travel, and shopping, paying by electronic funds transfers, debit card purchases, and checks. (ECF No. 1 ¶ 32; ECF No. 13-2 ¶¶ 9, 11, 26-28).

20. At all relevant times, McDonald was the sole signatory on the bank accounts at Citibank and Regions. He was also the sole person authorized to trade in the RFED accounts. McDonald transferred funds to and received funds from the Belize forex firm and provided at least one Pool Participant with a purported trade statement from the Belize forex firm. Accordingly, at all relevant times McDonald had personal knowledge of the total amount of funds transferred to him from Pool Participants, the disposition of those funds, the trades effected in the RFED accounts and the account(s) with the Belize forex firm, and the performance of his trading. (ECF No. 1 ¶ 34).

D. Material Misrepresentations and Omissions to Pool Participants

21. In soliciting funds from existing and prospective Pool Participants during the Relevant Period, McDonald made material misrepresentations and omissions, orally and in writing, regarding his trading expertise, his trading track record, and the performance of Pool Participants' investments. (*Id.* ¶ 35).

22. For example, in or about early November 2017, in soliciting investment funds from Pool Participant M.B., McDonald represented via telephone that he had been very successful trading forex and that his firm was managing several million dollars in

client assets. McDonald also told M.B. that only 2% to 4% of his investment would be at risk and that the expected monthly rate of return for his investment was between 10% and 50%. (*Id.* ¶ 36).

23. In fact, in October 2017, Defendants had only one client who had invested \$10,000 in August 2017, and McDonald had transferred almost the entire \$10,000 to the RFED personal account. Additionally, at that point, McDonald's forex trading in the RFED personal account had earned only very modest monthly profits and had suffered an overall loss in August 2017. (*Id.* ¶ 37).

24. In or around November 2017, while soliciting investment funds from Pool Participant S.R., McDonald represented that her funds would be pooled with the funds of other participants and be used to trade forex; promised that she would receive a 20% to 50% monthly return on her investment, with a maximum risk of only 10% loss; and claimed that he had been trading forex for four years and had never suffered a loss. (*Id.* ¶ 38).

25. In reality, McDonald opened his first known forex trading account with an RFED in June 2017. In the application to open this account, McDonald stated that he had less than six months experience in trading futures, options, and forex. Moreover, McDonald's forex trading in that account had not earned consistent profits in the percentages promised to Pool Participants. (*Id.* ¶ 39).

26. In soliciting them to deposit investment funds, McDonald provided a PDF document called "Final Investment Proposal" to Pool Participants M.B. (in November 2017), K.B. (on December 24, 2017), and M.D. (on January 7, 2018), as well as

prospective Pool Participant P.D. (on December 13, 2017). The document stated, among other things:

- a) “We offer investment management by trading our client’s capital in the Forex Markets. (Foreign Exchange Market)”;
- b) “We have consistently brought a monthly return of 20% on our client’s investments.”;
- c) “‘Perfection Forex’ has had 100% success rate with all of our clients, we have brought a minimum monthly return of 20% or more in profits.”; and
- d) “With clients ranging from \$10,000 to \$1,000,000 Million plus.”

(*Id.* ¶ 40; ECF No. 13-4 at 9-10).

27. The “Final Investment Proposal” showed purported examples of returns earned by clients, including a \$1 million deposit that earned 226.5% profit in six months and a \$100,000 deposit that earned over 200% profit in two months. The “Final Investment Proposal” also displayed images of a trading account mobile phone application, which listed completed trades and showed large overall returns. (ECF No. 1 ¶ 41; ECF No. 13-4 at 10-11).

28. In fact, Defendants never had a client who deposited one million dollars—the largest total investment by any one Pool Participant was \$150,000—and McDonald’s trading results were inconsistent, with overall losses in some months. Additionally, the trades displayed in the images did not occur in the RFED trading accounts and no Pool Participant had earned the depicted large returns. (ECF No. 1 ¶ 42).

29. During the Relevant Period, McDonald, both orally and in written account statements or updates, periodically represented to Pool Participants that their investments

had increased in value due to his successful forex trading, when in fact in some months McDonald's forex trading produced losses. (*Id.* ¶ 43).

30. For example, in a Facebook Messenger conversation with Pool Participant R.P. on December 3, 2017, McDonald stated "you are at 20% for the first month." However, McDonald's trading in the RFED personal account actually produced overall losses exceeding \$10,000 in November 2017. (*Id.* ¶ 44).

31. On or about February 12, 2018, McDonald sent to Pool Participant S.R. by email or text message an account update on Perfection PR and Perfection Forex letterhead, representing that the Defendants' forex trading was "providing 20% for your first month with us." The account update included no actual trade history report or statement. Similarly, on February 8, 2018, McDonald sent to Pool Participant K.B. via email a "Forex Earnings Report" on Perfection PR and Perfection Forex letterhead. The report represented that Defendants' forex trading had earned K.B. a 30% profit for the previous month. In truth, McDonald's trading in January 2018 produced overall losses of over \$33,000 in the RFED personal account and over \$48,000 in the RFED corporate account. (*Id.* ¶ 45; ECF No. 13-2 ¶ 38; ECF. No. 13-4 at 29).

32. During the Relevant Period, McDonald failed to disclose to Pool Participants that he suffered trading losses or the extent of those losses. He also failed to disclose that, rather than trade forex contracts, he used some pooled funds to purchase cryptocurrency and to pay for personal expenses such as rent, groceries, fast food, medical care, and shopping. (ECF No. 1 ¶ 46). In total, \$311,9669.21 of the Pool

Participants' investment funds were used for purposes other than making redemptions to participants and forex trading. (ECF No. 13-2 ¶ 11).

II. CONCLUSIONS OF LAW

A. Jurisdiction and Venue

33. This 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 a 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, the Commission may bring an action for injunctive relief in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or other thereunder.

34. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because the Defendants transacted business in this jurisdiction and the acts and practices in violation of the Act and Regulations occurred, are occurring or are about to occur within this District, among other places. In particular, Defendants solicited funds from and communicated with three Pool Participants who resided within this District. (ECF No. 1 ¶ 13; ECF No. 13-2 ¶ 21 (“Five of these known Pool Participants resided in Missouri, two of whom were located in Franklin County and one in Phelps County.”)).

B. Violations of 7 U.S.C. § 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b)

35. Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2018), makes it unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market—(A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [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 or, in the case of paragraph (2), with the other person[.]

36. Pursuant to Section 2(c)(2)(C)(iv) of the Act, 7 U.S.C. § 2(c)(2)(C)(iv) (2018), 7 U.S.C. § 6b applies to the forex transactions, agreements, or contracts offered and traded by Defendants as if they were contracts of sale of a commodity for future delivery.

37. Regulation 5.2(b), 17 C.F.R. § 5.2(b) (2019), makes it unlawful:

for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction: (1) To cheat or defraud or attempt to cheat or defraud any person; (2) Willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or (3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

38. As described herein, Defendants violated 7 U.S.C. § 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b) by cheating or defrauding, or attempting to cheat or defraud, other persons; issuing or causing to be issued false statements and records; and willfully deceiving or attempting to deceive other persons in connection with the offering of, or entering into, the off-exchange leveraged or margined forex transactions alleged herein, by, among other things: (i) fraudulently soliciting Pool Participants and prospective Pool

Participants by making material misrepresentations and omissions about Defendants' forex trading experience, Defendants' trading abilities and profits, Defendants' use of deposited funds, and Defendants' registration status; (ii) misappropriating Pool Participants' funds; and (iii) fabricating false records and account statements.

39. Defendants engaged in the acts and practices described above using instrumentalities of interstate commerce, including but not limited to: interstate wires for transfer of funds, telephone, e-mail, text messages, and other electronic communication devices.

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

41. The foregoing acts of fraudulent solicitation, misappropriation, and false statements by McDonald occurred within the course and scope of his employment, agency, or office with Perfection PR. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2 (2019), Perfection PR is liable for McDonald's violations of the Act and Regulations, as alleged in this count.

42. McDonald controlled Perfection PR, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Perfection PR's violations of the Act and Regulations alleged in this count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2018), McDonald is liable for Perfection PR's violations of the Act and Regulations, as alleged in this count.

C. Violations of 7 U.S.C. § 6o(1) and 17 C.F.R. § 4.41(a)

43. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2018), makes it unlawful for a commodity pool operator (“CPO”) or an associated person (“AP”)² of a CPO

by use of the mails or any other means or instrumentality of interstate commerce, directly or indirectly – (A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

44. Regulation 5.4, 17 C.F.R. § 5.4 (2019), states that Part 4 of the Regulations, 17 C.F.R. pt. 4 (2019), applies to any person required to register as a CPO pursuant to Part 5 of the Regulations related to off-exchange forex transactions, 17 C.F.R. pt. 5 (2019).

45. Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2019), makes it unlawful for any CPO, or any principal thereof, to publish, distribute, or broadcast, whether by electronic media or otherwise, any report, letter, circular, memorandum, publication, writing, advertisement, or other literature or advice that “(1) employs any device, scheme, or artifice to defraud any participant or client or prospective participant or client; or (2) involves any transaction, practice or course of business which operates as a fraud or deceit upon any participant or client or any prospective participant or client[.]”

² Regulation 5.1(d)(2), 17 C.F.R. § 5.1(d)(2) (2018), defines an associated person, for purposes of the Part 5 of the Regulations relating to forex transactions, as any natural person associated with a CPO as a partner, officer, employee, consultant, or agent that is involved in the solicitation of funds, securities, or property, or the supervision of any such person so engaged.

46. As alleged herein, Defendant Perfection PR was required to register as a CPO during the Relevant Period.

47. As set forth above, during the Relevant Period, Perfection PR, through McDonald, acted as a CPO by soliciting, accepting, or receiving funds from the public while engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of, among other things, trading in off-exchange leveraged or margined forex contracts. *See* 7 U.S.C. §1a(11) (2018). McDonald acted as an AP of Perfection PR. *See* 17 C.F.R. § 5.1(d)(2) (2019).

48. McDonald and Perfection PR, through McDonald, violated 7 U.S.C. § 6o(1)(A) and (B) and 17 C.F.R. § 4.41(a) in that by use of the mails or any other means or instrumentality of interstate commerce they employed or are employing a device, scheme or artifice to defraud prospective and existing Pool Participants or engaged or are engaging in transactions, practices, or a course of business which operated or operates as a fraud or deceit upon Pool Participants or prospective Pool Participants.

49. The foregoing acts and/or omissions by McDonald occurred within the scope of his employment, office, or agency with Perfection PR. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2 (2019), Perfection PR is liable for McDonald's violations of the Act and Regulations, as alleged in this count.

50. McDonald controlled, directly or indirectly, Perfection PR and did not act in good faith, or knowingly induced, directly or indirectly, Perfection PR to commit the acts and/or omissions alleged herein. Therefore, pursuant to Section 13(b) of the Act, 7

U.S.C. § 13c(b) (2018), McDonald is liable for Perfection PR's violations of the Act and Regulations, as alleged in this count.

D. Violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc) and 6m(1) and 17 C.F.R. § 5.3(a)(2)(i)

51. Section 2(c)(2)(C)(iii)(I)(cc) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (2018), prohibits any person from operating or soliciting funds, securities, or property for any pooled investment vehicle that is not an ECP in connection with agreements, contracts, or transactions in forex, unless registered with the Commission, with certain exceptions not applicable to Defendants.

52. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2018), makes it unlawful for any CPO, unless registered with the Commission, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO.

53. Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2019), requires any CPO engaged in retail forex transactions to register with the Commission. Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2019), defines a CPO as any person who “operates or solicits funds, securities, or property for a pooled investment vehicle . . . that engages in retail forex transactions[.]”

54. During the Relevant Period, Perfection PR, which was not exempt from registration as a CPO, acted as a CPO and made use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO by operating or soliciting funds for a pooled investment vehicle that is not an ECP and that engages in retail forex transactions. Perfection PR engaged in this conduct without being

registered with the Commission in violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc) and 6m(1) and 17 C.F.R. § 5.3(a)(2)(i).

55. McDonald controlled Perfection PR, directly or indirectly, and did not act in good faith and knowingly induced, directly or indirectly, Perfection PR to commit the acts and/or omissions alleged herein. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2018), McDonald is liable for Perfection PR's violations of the Act and Regulations, as alleged in this count.

E. Violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc) and 6k(2) and 17 C.F.R. §§ 3.12 and 5.3(a)(2)(ii)

56. Section 2(c)(2)(C)(iii)(I)(cc) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (2018), prohibits any person from operating or soliciting funds, securities, or property for any pooled investment vehicle that is not an ECP in connection with agreements, contracts, or transactions in forex, unless registered with the Commission, with certain exceptions not applicable to Defendants.

57. Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2018), and Regulation 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii) (2019), require registration with the Commission for any person who is associated with a CPO as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves the solicitation of funds, securities, or property for participation in a commodity pool or the supervision of any person or persons so engaged.

58. Regulation 3.12, 17 C.F.R. § 3.12 (2019), prohibits any person from being an AP of a CPO unless that person is registered with the Commission as an AP of the sponsoring CPO.

59. Regulation 5.1(d)(2), 17 C.F.R. § 5.1(d)(2) (2019), defines an associated person, for purposes of the Part 5 of the Regulations relating to forex transactions, as any natural person associated with a CPO as a partner, officer, employee, consultant, or agent that is involved in the solicitation of funds, securities, or property, or the supervision of any such person so engaged.

60. During the Relevant Period, McDonald acted as an AP of a CPO by (i) soliciting funds, securities, or property for participation in a commodity pool operated by Perfection PR, and (ii) operating or soliciting funds, securities, or property for the Perfection PR pooled investment vehicle, which was not an ECP, in connection with off-exchange leveraged or margined forex transactions. McDonald engaged in this conduct without being registered with the Commission as an AP or CPO Perfection PR, in violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc) and 6k(2) and 17 C.F.R. §§ 3.12 and 5.3(a)(2)(ii).

61. The foregoing acts by McDonald occurred within the scope of his employment, office, or agency with Perfection PR. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2 (2019), Perfection PR is liable for McDonald's violations of the Act and Regulations, as alleged in this count.

F. Violations of 17 C.F.R. § 4.20(a)(1), (b), and (c)

62. Regulation 4.20(a)(1), 17 C.F.R. § 4.20(a) (2019), requires a CPO to operate its pool as a legal entity separate from that of the CPO.

63. Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2019), requires that all funds, securities, or other property received by a CPO from a prospective or existing Pool Participant must be received in the commodity pool's name.

64. Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2019), prohibits a CPO from comingling the property of any pool it operates with the property of any other person.

65. As set forth above, during the Relevant Period, Perfection PR, acting through McDonald and while acting as a CPO, violated 17 C.F.R. § 4.20(a), (b), and (c) by: (i) failing to operate the commodity pool as a legal entity separate from Perfection PR, the CPO; (ii) receiving Pool Participant funds in the name of Perfection PR, rather than in the name of the commodity pool; and (iii) commingling the property of the commodity pool with the funds of McDonald and Perfection PR, including the proceeds of a separate business operated by McDonald.

66. McDonald controlled Perfection PR, directly or indirectly, and did not act in good faith and knowingly induced, directly or indirectly, Perfection PR to commit the acts and/or omissions alleged herein. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2018), McDonald is liable for Perfection PR's violations of the Act and Regulations, as alleged in this count.

G. An Injunction is Warranted

67. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants McDonald and Perfection PR will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

III. PERMANENT INJUNCTION

68. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), Defendants are permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Cheating or defrauding (or attempting to cheat or defraud) another person, willfully making a false statement to another person, or willfully deceiving (or attempting to deceive) another person by any means in connection with any retail forex transaction in violation of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C), and Regulation 5.2(b), 17 C.F.R. § 5.2(b);
- b. Employing a scheme to defraud or engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any pool participant or client while acting as a CPO and/or CTA in violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A), (B), and Regulation 4.41(a), 17 C.F.R. § 4.41(a);
- c. Operating or soliciting funds for a pooled investment vehicle for non-ECPs in connection with retail forex transactions, without being registered with the Commission as a CPO in violation of Sections 2(c)(2)(C)(iii)(I)(cc) and 4m(1) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc), 6m(1), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i);
- d. Acting in any capacity involving the solicitation of funds, securities, or property for participation in a commodity pool without being registered with the Commission as an AP in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2), and Regulations 3.12 and 5.3(a)(2)(ii), 17 C.F.R. §§ 3.12, 5.3(a)(2)(ii); and

- e. Operating improperly as a CPO by failing to operate a commodity pool as a separate legal entity from the CPO, failing to receive funds from Pool Participants in the pool's name, and commingling pool participant funds with the CPO's funds in violation of Regulations 4.20(a)(1), 4.20(b), and 4.20(c), 17 C.F.R. §§ 4. 4.20(a)(1), 4.20(b), 4.20(c).

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

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (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 their own personal account or for any account in which they have a direct or indirect interest;
- c. Having any commodity interests traded on their behalf;
- d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
- e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2019); and/or
- 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 (as that term is defined in 7 U.S.C. § 1a(38)), registered, exempted from registration or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

IV. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution

70. 7 U.S.C. § 13a-1(d)(3)(A) (2018) authorizes the Commodity Futures Trading Commission to seek and the Court to order restitution to persons who have sustained losses proximately caused by Defendants' misconduct. *See U.S. Commodity Futures Trading Comm'n v. First Capitol Futures Grp.*, No. 1:09-00488-CV-W-DW, 2010 WL 1713617, at *11 (W.D. Mo. Feb. 18, 2010). Because the Court finds that Defendants' fraudulent conduct proximately caused the losses sustained by the thirteen known pool participants, Defendants shall pay, jointly and severally, restitution in the amount of **three hundred sixty thousand five hundred sixty-five dollars and twenty-one cents (\$360,565.21)** ("Restitution Obligation"). If the Restitution Obligation is not paid immediately, 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 (2018).

71. Defendant McDonald is currently the defendant in a criminal action charging him, in part, for the misconduct that is at issue in this matter. *See United States v. Joshua C. McDonald*, No. 4:20-CR-70 SRC/SPM (E.D. Mo., filed Feb. 12, 2020) ("Criminal Action"). For amounts disbursed to Defendant McDonald's Pool Participants as a result of satisfaction of any restitution ordered in the Criminal Action, the Defendants shall receive a dollar-for-dollar credit against the Restitution Obligation. Within ten days of disbursement in the Criminal Action to Defendants' Pool

Participants, Defendant McDonald 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 Centre, 1155 21st Street, NW, Washington, D.C. 20581, and the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, copies of the form of payment to those Pool Participants.

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

73. Defendants shall make Restitution Obligation payments, and any post-judgment interest payments, under this Order to the Monitor in the name "Perfection PR Firm Restitution Fund" and shall send such payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under cover letter that identifies the paying Defendants and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief

Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

74. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendants' Pool Participants identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible Pool Participants is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Paragraph 81 below.

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

76. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' Pool Participants during the previous year. The Monitor shall transmit this report under a

cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

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

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

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

B. Civil Monetary Penalty

80. 7 U.S.C. § 13a-1(d)(1)(A) (2018) authorizes the imposition of a civil monetary penalty ("CMP") equal to the higher of \$185,242 per violation³ or triple a

³ Pursuant to 17 C.F.R. § 143.8(b)(1) (2019), the allowable inflation-adjusted civil monetary penalty is \$185,242 per violation of the Act (effective Jan. 13, 2020) for non-manipulation claims brought in federal injunctive actions under 7 U.S.C. § 13a-1.

defendant's monetary gain from each violation of the Act or Regulations. Because the Court finds that Defendants' misconduct was serious and pervasive, Defendants shall pay, jointly and severally, a civil monetary penalty in the amount of **nine hundred thirty-five thousand nine hundred seven dollars and sixty-three cent (\$935,907.63)** ("CMP Obligation"). This is equal to three times the amount of funds not returned to investors and not lost to trading a registered RFED (\$311,969.21). If the CMP Obligation is not paid immediately, then post-judgment interest shall accrue on the CMP 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 (2018).

81. Defendants shall pay their CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
Telephone: (405) 954-6569
Fax: (405) 954-1620
9-AMC-AR-CFTC@faa.gov

If payment by electronic funds transfer is chosen, Defendants shall contact Marie Thorne or her successor at the address above to receive payment instructions and shall fully

comply with those instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies the payor and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

C. Provisions Related to Monetary Sanctions

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

V. MISCELLANEOUS PROVISIONS

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

Notice to Commission:

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

Notice to Monitor:

Office of Administration
National Futures Association
300 South Riverside Plaza, Suite 1800
Chicago, Illinois 60606-3447

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

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

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

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

87. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Order and for all other purposes related to this action, including any motion by Defendants to modify, or for relief from, the terms of this Order.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this June 8, 2020.