

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ALABAMA
 NORTHWESTERN DIVISION**

U.S. COMMODITY FUTURES)
TRADING COMMISSION,)
)
Plaintiff,)
)
v.)
)
AARON B. BUTLER, et al.)
)
Defendants.)

Case No.: 3:19-cv-1792-LCB

ORDER

On November 4, 2019, Plaintiff Commodity Futures Trading Commission filed its Complaint for Injunctive Relief, Restitution, Civil Monetary Penalties, and Other Equitable Relief Under the Commodity Exchange Act alleging violations of certain antifraud and registration provisions of the Commodity Exchange Act (the Act), 7 U.S.C. §§ 1 *et seq.* (2018), and implementing regulations, 17 C.F.R. §§ 1 *et seq.*, against Defendants Aaron B. Butler and Negus Capital Incorporated (“NCI”).

PROCEDURAL HISTORY

On November 12, 2019, the Commission caused the original Summons and copy of the Complaint to be served upon NCI by personally serving Butler, Director of NCI, at a residence associated with him in Coconut Creek, Florida in accordance with Rule 4(h)(1)(B) of the Federal Rules of Civil Procedure. Thereafter, the Commission filed proof of such service, including the Affidavit of Process Server,

Ray Wilson, in which he attests that he personally served Butler as Director of NCI, with the Court on November 14, 2019 (Doc. 4–1). On December 3, the Commission and Butler, appearing *pro se*, jointly moved the Court for a 45-day extension for Butler to answer or otherwise respond to the Complaint. (Doc. 5). The motion was granted, and the deadline was extended to January 17, 2020.”¹ (Doc. 6). Although properly served with the Complaint, NCI did not answer or otherwise respond by the Court’s January 17, 2020 deadline. As of the date of this Order, NCI has failed to answer or otherwise defend this action.

Accordingly, the Commission requested entry of default against NCI (Doc. 14), and on June 17, 2020, the Clerk entered default against it in accordance with Fed. R. Civ. P. 55(a) (Dkt. No. 15).

In accordance with Fed. R. Civ. P. 55(b), the Commission now moves for Default Judgment and for Permanent Injunction, Restitution, Civil Monetary Penalty and Other Equitable Relief against Defendant Negus Capital Incorporated and Brief in Support Thereof. (Doc. 18).

The Court has considered the entire record in this matter, including the Commission’s Motion together with the Summary of Facts attached to the Motion

¹ While NCI, as a corporation, could not appear *pro se* and join the motion with the Commission and Butler, *see Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985), the Court on its own could extend the time for NCI to answer or otherwise respond under Fed. R. Civ. P. 6(b)(1)(A).

and upon which the Motion relies. Based upon the well-pleaded facts alleged in the Complaint and set forth in the Summary of Facts, as well as the Declaration of Commission Investigator Kevin Samuel (“Samuel Declaration”), attached to the Summary of Facts as Exhibit 1, the Court finds that good cause exists for entry of the relief requested.

Accordingly, for the reasons that follow, the Commission’s Motion is granted.

FACTS

1. The 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. pts. 1–190. (Doc. 1 at 4).

2. Butler is an individual who, from at least March 16, 2017 through February 21, 2018 (the “Relevant Period”), resided in Muscle Shoals, Alabama. Butler has never been registered with the Commission in any capacity. Butler is the sole founder, principal director and officer of NCI and, during the Relevant Period, he controlled and still controls all aspects of NCI, including the day-to-day operations, marketing and trading decisions. (Doc. 1 at 4–5).

3. NCI is an Alabama corporation that was formed on or about June 24, 2016 with the same principal address as Butler in Muscle Shoals, Alabama. NCI has never been registered with the Commission in any capacity. (Doc. 1 at 5).

I. NCI's Pooled and Managed Accounts Schemes

4. During the relevant period, NCI, by and through its employee and principal, Butler, fraudulently solicited \$294,545 from 70 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”), a U.S.-based, retail-focused, online binary options exchange. (Doc. 1 at 8–9; Doc. 18–2 at 9–10).

5. In the first scheme, NCI, through Butler, misrepresented that for customer deposits of between \$500 and \$5,000, NCI would pool those customers’ funds in a single trading account at Nadex, and Butler, acting as the trader for the commodity pool operator (“CPO”), NCI, would use those funds to trade binary options for the customers’ benefit (the “Pool” or “Pooled Scheme”). (Doc. 1 at 7–8).

6. In the second scheme, NCI, through Butler, misrepresented that for each customer deposit of \$5,000 or more, NCI would deposit those funds in separate customer trading accounts at Nadex. Butler, as a commodity trading advisor (“CTA”), would manage and trade those accounts on behalf of customers and use those funds to trade binary options for the customers’ benefit (the “Managed Accounts” or “Managed Accounts Scheme”). (Doc. 1 at 8).

II. NCI's Acts, Misrepresentations and Omissions to Solicit Customers and Perpetuate the Two Schemes

7. In furtherance of the fraudulent schemes and during the Relevant Period, NCI, through Butler, made material misrepresentations and omissions and created fabricated financial statements in order to solicit customers, perpetuate the two schemes, and hide NCI's misappropriation. (Doc. 1 at 8).

A. NCI's Misrepresentations in Contract Guaranteeing to Return Principal If No Profit Earned Within First Six Months

8. First, NCI, through Butler, provided a contract to prospective customers. Depending on if the customer executed a six-month or twelve-month contract, NCI, 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. (Doc. 1 at 8).

8. For example, the six-month contract, entitled "Negus Capital," stated that 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 NCI did not have a profit, NCI "**will be required to return the [] investment to the [customer].**" (Doc. 1 at 8).

9. Many, if not all, of the customers for both the Pooled Scheme and Managed Accounts Scheme, executed these contracts. (Doc. 1 at 9).

10. Thereafter, NCI, through Butler, did not trade customer funds and no profit was realized even though six months or twelve months had passed since execution of the contracts. Therefore, NCI was obligated to return to customers their funds pursuant to the terms of the contracts. However, despite customer requests to NCI to return their funds at the expiration of the contracts, NCI did not return those funds. (Doc. 1 at 9).

B. NCI's Misrepresentations About Butler's Trading Experience and Track Record

11. Second, NCI, through Butler, misrepresented Butler's trading experience on Nadex and track record with respect to trading commodities and, in particular, binary options on Nadex. (Doc. 1 at 9).

12. For example, NCI, through Butler, represented to one or more customers that Butler 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 NCI's two fraudulent schemes were used to fund that account. Further, during this time, Butler traded and lost approximately \$720 in that account. (Doc. 1 at 9).

C. NCI's Misrepresentations About Profits

13. Third, NCI, through Butler, made numerous representations to customers about their supposed trading profits. (Doc. 1 at 9).

14. For example, when Butler was soliciting prospective customers for funds in both schemes, he told one or more 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 NCI's trading. NCI, through Butler, also posted supposed account statements showing purported payouts to prior customers of NCI on his private Facebook Group/Page. These account statements were fabricated and, upon information and belief, were created by Butler to induce customers to deposit funds with NCI. (Doc. 1 at 9–10).

D. NCI's Misrepresentations About Investment Growth

15. Fourth, NCI, through Butler, created and distributed false growth reports to customers that purportedly showed that the funds the customers had deposited with NCI were growing (i.e., profiting) at exceptional rates for both schemes. In reality, however, these growth reports were false since NCI did not use customer funds to trade binary options for either of the schemes; rather, NCI misappropriated them for Butler's personal benefit. (Doc. 1 at 10).

16. For example, on or about December 29, 2017, NCI, through Butler, provided a customer who had deposited \$10,000 with a growth report purportedly

showing the increase in value of his account with NCI. That growth report represented that his account had grown by \$13,000 in approximately two months. In reality, the growth report was false because NCI had not used the customer's funds to trade binary options. Instead, NCI misappropriated the customer's funds for Butler's personal benefit. (Doc. 1 at 10).

E. NCI's Misrepresentations Concerning Nadex Statements

17. Fifth, NCI, through Butler, created and distributed false Nadex statements to customers of both schemes that supposedly showed Butler requesting that Nadex transfer hundreds of thousands of dollars from NCI's Nadex accounts to NCI's bank accounts. In reality, however, NCI never had hundreds of thousands of dollars in accounts at Nadex. (Doc. 1 at 10).

F. NCI's Misrepresentations Concerning Bank Statements

18. Sixth, NCI, through Butler, created and distributed false bank statements to their customers of both schemes that purportedly showed NCI paying hundreds of thousands of dollars from these bank accounts to supposedly other of NCI's customers. These supposed payments were used by NCI to show that customers were making profits because of NCI's successful trading at Nadex. In reality, however, NCI never paid any such returns to its customers. (Doc. 1 at 11).

G. NCI's Omissions That It Would Not Trade Customer Funds or Misappropriate Funds

19. Seventh, NCI, through Butler, failed to disclose to customers that it would not use customer funds from the Pooled Scheme and Managed Accounts Scheme to trade binary options. NCI also failed to disclose to customers that it would misappropriate those funds for Butler's personal benefit. (Doc. 1 at 11).

III. Customers Provide Funds to NCI to Trade Binary Options

20. Once prospective customers decided to trade binary options through NCI, they were instructed to provide funds to NCI by sending the funds directly to Butler. (Doc. 1 at 11).

21. For example, some customers provided funds to 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 NCI which were deposited directly into Butler's bank accounts. (Doc. 1 at 11).

22. As a result of NCI's solicitations, 70 people, including but not limited to Alabama residents, provided NCI \$294,545 in amounts ranging from \$1,000 to \$25,000. These funds were to be used for the specific purpose of trading binary options. (Doc. 1 at 11; Doc. 18-2 at 9-10).

IV. NCI Did Not Trade Customer Funds But Rather Misappropriated Them for Butler's Personal Use

23. Despite receiving these funds from customers for the purpose of trading binary options, during the Relevant Period, NCI misappropriated those customers' funds for Butler's personal benefit. (Doc. 1 at 12).

24. For example, NCI, through Butler, spent most of the monies that 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. NCI, through Butler, also spent approximately \$1,800 purchasing Toys "R" Us gift cards. Additionally, NCI, through Butler, spent over \$11,000 at Apple stores during the time period. (Doc. 1 at 12; Doc. 18–2 at 8).

25. During the Relevant Period, several customers, who had provided funds to NCI to trade on their behalf, requested to make withdrawals from their accounts with NCI. NCI, through Butler, refused to return those funds. (Doc. 1 at 12).

V. NCI's Invention that Government Authorities Froze Its Accounts in Order to Perpetuate Fraud

26. As NCI failed to return customer funds, customers began to post messages to the Facebook Group/Page that were critical of NCI, questioning the validity of their representations and promises. (Doc. 1 at 12).

27. In response, Butler subsequently blocked on social media, including the Facebook Group/Page, those customers seeking a refund of their money and initiation fee and alleged that he was unable to make any refunds to those customers because NCI's bank and trading accounts had been "frozen" by government authorities including the Commission. (Doc. 1 at 12–13).

28. At no time during or any time after the Relevant Period has any government authority, including the Commission, frozen any of NCI's bank or trading accounts. (Doc. 1 at 13).

29. NCI's statements about the supposed freeze were made by NCI with the intent to deceive customers and conceal and perpetuate NCI's fraud. (Doc. 1 at 13).

DISCUSSION

I. NCI's Failure to Answer Warrants Entry of Default Judgment

Under Fed. R. Civ. P. Rule 55(b), the Court is authorized to enter a final judgment of default against a party who has failed to plead in response to a complaint. In light of the well-pleaded facts set forth in the Complaint and in the Commission's submissions in support of the Motion, entry of final judgment by default, permanent injunction, restitution, civil monetary penalty and other statutory and equitable relief against NCI is warranted.

Where the well-pleaded facts of the complaint establish liability, the Court must determine the appropriate amount of damages. *See* Fed. R. Civ. P. 55(b)(2). Where all essential evidence of damages is on record, no evidentiary hearing is required. *See SEC v. Smyth*, 420 F.3d 1225, 1232 n. 13 (11th Cir. 2005) (explaining that the language of Fed R. Civ. P. 55(b)(2) is permissive; a hearing is not required where essential evidence is in the record. Here, the Samuel Declaration provides sufficient evidence of damages such that no evidentiary hearing is required. (Doc. 18–2; Doc. 18–3).

Moreover, 7 U.S.C. § 13a-1(a) authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such 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.

II. NCI Committed Fraud in Connection with Binary Options Contracts

Title 7 U.S.C. § 6c(b) makes it unlawful for any person to

enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”, 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.

The provision's implementing regulation, 17 C.F.R. § 32.4, in turn provides:

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.

NCI, through Butler, 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 NCI's customers' behalf by, among other things, intentionally or recklessly: (1) misappropriating customer funds; (2) making material misrepresentations about Butler's trading experience, track record, profitability, and that NCI, through Butler, would actually trade binary options on Nadex; and (3) creating and distributing to customers fabricated financial statements.

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

III. NCI Committed CPO Fraud

Title 7 U.S.C. § 1a(10) defines a “commodity pool” as “any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.” A “commodity pool operator” is defined in Section 1a(11)(i) of the Act, 7 U.S.C. § 1a(11) (2018), as any person

engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of trading in commodity interests.²

During the relevant period, NCI acted as a CPO, as defined, in relevant part, by 7 U.S.C. § 1a(11), in that it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, operated for the purpose of trading in commodity interests and, in connection therewith, solicited, accepted, or received from others, funds, securities, or property, either directly or through

² Under 17 C.F.R. § 1.3, a “commodity interest” is:

- (1) Any contract for the purchase or sale of a commodity for future delivery;
- (2) Any contract, agreement or transaction subject to a Commission regulation under section 4c or 19 of the Act;
- (3) Any contract, agreement or transaction subject to Commission jurisdiction under section 2(c)(2) of the Act; and
- (4) Any swap as defined in the Act, by the Commission, or jointly by the Commission and the Securities and Exchange Commission.

capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including, in relevant part, commodity options authorized under Section 4c of the Act.

Title 7 U.S.C. § 6o(1)(A)-(B) prohibits CPOs, 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 any device, scheme or artifice to defraud any client or participant or prospective client or participant,” and from engaging “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.”

NCI, through Butler, violated 7 U.S.C. § 6o(1)(A) and (B) while acting in its capacity as a CPO because it intentionally or recklessly: (1) misappropriated customer funds; (2) made material misrepresentations about Butler’s trading experience, track record, profitability, and that NCI, through Butler, would actually trade binary options on Nadex; and (3) created and distributed to customers fabricated financial statements.

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).

IV. NCI Failed to Register as a CPO

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

During the relevant period, NCI engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests. Therefore, NCI constituted a CPO as defined by 7 U.S.C. § 1a(11).

During the relevant period, NCI, while using the mails or means of interstate commerce in connection with business as a CPO, was not registered with the Commission as a CPO. Thus, NCI acted as an unregistered CPO in violation of 7 U.S.C § 6m(1).

V. NCI Is Liable for Butler’s Violations Pursuant to 7 U.S.C. § 2(a)(1)(B), and 17 C.F.R. § 1.2

Butler committed the acts, omissions and failures described herein within the course and scope of his employment, agency, or office with NCI. Therefore, NCI is liable under 7 U.S.C. § 2(a)(1)(B), and 17 C.F.R. § 1.2, for Butler’s acts, omissions

and failures in violation of 7 U.S.C. §§ 6c(b), 6o(1)(A)–(B), 6m(1), and 17 C.F.R. § 32.4.

VI. Butler Is Liable for NCI’s Violations as a Controlling Person Pursuant to 7 U.S.C. § 13c(b)

Butler directly or indirectly controlled NCI and did not act in good faith. Further, Butler knowingly induced, directly or indirectly, the acts constituting NCI’s violations of the Act. Pursuant to 7 U.S.C. § 13c(b) (2018), Butler is liable for each of NCI’s violations of the Act.

PERMANENT INJUNCTION

Under Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), the Commission may seek civil injunctive relief and civil monetary penalties from a defendant found to have violated the Act. *CFTC v. Wilshire Inv. Mgmt. Corp.*, 531 F. 3d 1339, 1346 (11th Cir. 2008). 7 U.S.C. § 13a-1 provides in pertinent part:

(a) Action to enjoin or restrain violations Whenever it shall appear to the Commission that any registered entity or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule, regulation or order thereunder . . . the Commission may bring an action in the proper district court of the United States . . . to enjoin such action or practice, or to enforce compliance with this Act, or any rule, regulation or order thereunder. . .

(c) Writs or other orders Upon application of the Commission the district courts of the United States . . . shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding any person to comply with the provisions of this Act or any rule, regulation, or order of the Commission thereunder, including the requirement that such person take such action as is necessary to remove the danger of violation of this Act or any such rule, regulation, or order . . .

A court may issue a statutory injunction without considering traditional equitable factors such as inadequacy of other remedies or irreparable harm. *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978). In granting “an injunction ‘the ultimate test is . . . whether the defendant’s past conduct indicates that there is a reasonable likelihood of further violations in the future.’” *Wilshire Inv. Mgmt. Corp.*, 531 F.3d at 1346 (quoting *SEC v. Caterinicchia*, 613 F.2d 102, 105 (5th Cir. 1980)). The Court may infer a likelihood of futures violations based on NCI’s past illegal conduct. *See SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1322 (11th Cir.1982).

Other factors the Court may consider include:

[T]he egregiousness of the defendant’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant’s assurances against future violations, the defendant’s recognition of the wrongful nature of his conduct, and the likelihood that the defendant’s occupation will present opportunities for future violations.

Wilshire Inv. Mgmt. Corp., 531 F.3d at 1346 (quoting *SEC v. Carriba Air*, 681 F.2d at 1322 (11th Cir. 1982)).

The scope of the injunctive relief can be tailored to meet the circumstances of the violations shown. *See, e.g., Wilshire Inv. Mgmt. Corp.*, 531 F.3d at 1346 (upholding the district court’s permanent injunction prohibiting defendants from “engaging in any commodity-related activity”) Under these standards, permanent

injunctive relief, including a comprehensive trading and registration ban, is clearly warranted against NCI.

Here, the Commission has made a showing that NCI engaged in acts and practices that violated 7 U.S.C. §§ 6c(b), 6m(1), 6o(1)(A), (B) (2018), and 17 C.F.R. § 32.4. Based on the egregiousness of the conduct in this matter, it is clear that, unless restrained and enjoined by this Court, there is a reasonable likelihood that NCI 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 in the future.

Based upon and in connection with the foregoing conduct, pursuant to 7 U.S.C. § 13a-1, NCI is hereby **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.

I. NCI 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 7 U.S.C. § 1a(40));

B. Entering into any transactions involving “commodity interests” (as that term is defined in 17 C.F.R. § 1.3), 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 17 C.F.R. § 4.14(a)(9) (2019); and
- G.** Acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a)), 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 17 C.F.R. § 4.14(a)(9).

RESTITUTION

Title 7 U.S.C. § 13a-1(d)(3) provides in pertinent part:

Equitable remedies In any action brought under this section, the Commission may seek, and the court may impose, on a proper showing, on any person found in the action to have committed any violation, equitable remedies including

- (A)** restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses).

The Commission is therefore entitled to seek, and the Court may grant, restitution to persons who have sustained losses proximately caused by NCI's violations.

The return of all funds is appropriate in cases where, as here, systematic fraudulent conduct is demonstrated. *See CFTC v. Sidoti*, 178 F.3d 1132 (11th Cir. 1999) (affirming district court's holding that the systematic and pervasive nature of fraud makes all funds received by defendants unlawful). Evidence of full restitution may be demonstrated by the pervasive nature of the unlawful conduct and testimony from all defrauded customers is not required. *See, e.g., FTC v. Figgie Int'l, Inc.*, 994 F.2d 595 (9th Cir. 1993) (interpreting Section 13 of the Federal Trade Commission Act, 15 U.S.C. § 53, and concluding that, based on the pervasive nature of the defendant's conduct, all of the company's customers did not need to testify to obtain restitution).

In this matter, NCI, through Butler, engaged in a pervasive pattern of deceit by fraudulently soliciting members of the general public to provide it with hundreds of thousands of dollars to trade binary options. Based on NCI's systematic fraudulent conduct, NCI should be required to make full restitution to the 70 victims of its fraudulent scheme.

Accordingly, NCI shall pay restitution in the amount of \$294,545.00 (“Restitution Obligation”), representing the gains it received in connection with the violations described herein, plus post-judgment interest.

NCI shall receive a dollar-for-dollar credit against this Restitution Obligation to the extent that Butler makes payment of any restitution in accordance with the restitution provisions contained in the June 16, 2020 Consent Order for Permanent Injunction, Restitution, Civil Monetary Penalty and Other Equitable Relief (“Consent Order”) (Doc. 13).

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.

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 NCI 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.

NCI shall make Restitution Obligation payments under this Order to the Monitor in the name “*CFTC v. Aaron B. Butler, et al. – Settlement/Restitution Fund.*” NCI 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. NCI 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 21st Street, N.W., Washington, D.C. 20581.

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 the following section.

NCI 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. NCI 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.

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 21st Street, N.W., Washington, D.C. 20581.

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 NCI 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.

In accordance with Fed. R. Civ. P. 71, each customer of Butler and NCI 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 that has not been paid by NCI.

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

CIVIL MONETARY PENALTY

Title 7 U.S.C. § 13a-1(d)(1) provides in pertinent part:

In any action brought under this section, the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation (A) a civil penalty in the amount of not more than the higher of \$100,000³ or triple the monetary gain to the person for each violation

In determining the amount of a penalty under the Act, § 6(d) directs the Commission to, *inter alia*, consider “the appropriateness of such penalty to the net worth of the person charged, and the gravity of the violation.” *JCC, Inc. v. Commodity Futures Trading Comm'n*, 63 F.3d 1557, 1570 (11th Cir. 1995) (citing 7 U.S.C. § 9a). Conduct that violates the Act's core provisions, such as customer fraud, should be considered very serious. *See id.* In *JCC*, the Eleventh Circuit upheld the

³ For the time period at issue in this matter, the maximum CMP that may be ordered is \$185,242 for each violation of the Act or triple the monetary gain to the defendant, whichever is higher. *See* 17 C.F.R. § 143.8.

imposition of a civil monetary penalty finding that “[c]onduct that violates the core provisions of the Act’s regulatory system—such as manipulating prices or defrauding customers should be considered very serious even if there are mitigating facts and circumstances.” *Id.* at 1571–72.

Severe sanctions are particularly warranted when a defendant “knowingly and repeatedly violates the same statutory provision,” *In re Slusser*, CFTC Docket No. 94-14, 1999 WL 507574 at *18 (CFTC July 19, 1999), and the Commission may, as it did in this case, allege multiple violations in a single count, *CFTC v. Levy*, 541 F.3d 1102, 1110–11 (11th Cir. 2008). Civil monetary penalties “should reflect both the ‘abstract or general seriousness of each violation’” and “should be sufficiently high to deter future violations,” meaning that civil monetary penalties should make it financially detrimental to a defendant to fail to comply with the Act and Regulations so that the defendant would rather comply than risk a violation. *In re Crossfeld*, No. 89-23, 1996 WL 709219 (CFTC Dec. 10, 1996).

Further, the Complaint repeatedly alleges that each material misrepresentation or omission, and each willful deception made during the relevant period by NCI “is alleged as a separate and distinct violation” of the Act, (*see, e.g.*, Doc. 1 at 14, 16), and it specifically seeks an order imposing on NCI a civil penalty pursuant to Section 6c(d)(1) of the Act, 7 U.S.C. 13a-1 (2018) and Regulation 143.8, 17 C.F.R. § 143.8 for each violation, *id.* at 20.

Here, NCI engaged in widespread fraudulent activity—a core violation of the Act. *See In re Crossfeld*, CFTC No. 89–23, 1996 WL 709219, at *12–13 and n. 28 (Dec. 10, 1996). Thus, either a civil monetary penalty equal to the greater of \$185,242 for each violation of the Act or triple the monetary gain to NCI for each violation of the Act is appropriate.

NCI shall pay a civil monetary penalty in the amount of \$883,635.00 (“CMP Obligation”), which represents three times the monetary gain to NCI for its misconduct (\$294,545), plus post-judgment interest.

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.

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

If payment by electronic funds transfer is chosen, NCI shall contact Marie Thorne or her successor at the address above to receive payment instructions and shall fully comply with those instructions. NCI shall accompany payment of the CMP Obligation with a cover letter that identifies NCI and the name and docket number of this proceeding. NCI 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 21st Street, N.W., Washington, D.C. 20581.

I. Provisions Related to Monetary Sanctions

- A.** Partial Satisfaction: Acceptance by the Commission or the Monitor of any partial payment of NCI's 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.
- B.** Any payments received from NCI pursuant to this Order shall be applied first to satisfy its Restitution Obligation.

II. Miscellaneous Provisions

A. Notice: All notices required to be given by any provision in this 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 21st Street, N.W.
Washington, D.C. 20581

Notice to NCI:

Negus Capital Incorporated
c/o Aaron B. Butler, Director
butlerprofessional@icloud.com
899 Spring Valley Road
Tuscumbia, AL 35674

and

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.

B. Change of Address/Phone: Until such time as NCI satisfies in full its Restitution Obligation and CMP Obligation as set forth in this Order, NCI 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.

C. 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 provisions to any other person or circumstance shall not be affected by the holding.

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

E. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action, including any motion by NCI to modify or for relief from the terms of this Order. This Order shall be interpreted and enforced according to the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Northern District of Alabama, and all provisions of the Act and Commission Regulations relating or referring to the obligations hereunder.

F. Copies of this Order may be served by any means, including U.S. Mail, facsimile transmission, e-mail, United Parcel Service, and Federal Express, upon NCI and any other entity or person that may be subject to any provision of this Order.

DONE and **ORDERED** this March 31, 2021.

A handwritten signature in black ink, appearing to read "L.C. Burke", written over a horizontal line.

LILES C. BURKE
UNITED STATES DISTRICT JUDGE