UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. HIGHRISE ADVANTAGE, LLC; BULL RUN ADVANTAGE, LLC; GREEN KNIGHT INVESTMENTS, LLC; KING ROYALTY LLC; SR&B INVESTMENT ENTERPRISES, INC.; AVINASH SINGH; RANDY ROSSEAU; DANIEL COLOGERO; HEMRAJ SINGH; and SURUJPAUL SAHDEO, Defendants.	Case No. 6:20-cv-1657-CEM-RMN

REPORT AND RECOMMENDATION[1]

This cause comes before the Court for consideration without oral argument on Plaintiff's Motion for Final Judgment by Default (Dkt. 177), filed on June 16, 2023. Upon consideration, it is respectfully recommended that Plaintiff's Motion be granted.

[1] This Report and Recommendation adopts some, but not all, language and provisions that were proposed by Plaintiff. *See* Dkt. 177-2.

I. BACKGROUND

On February 4, 2021, Plaintiff filed its Amended Complaint alleging that Defendants engaged in a fraudulent scheme to solicit and misappropriate money invested with Defendants beginning in or around February 2013. Dkt. 98 at ¶ 1. According to the Amended Complaint, Defendants solicited at least $57.9 million from more than 1,700 investors and misappropriated the funds by depositing them into Defendants' personal bank and trade accounts. *Id*.

Defendant Avinash Singh ("Singh") and Highrise Advantage, LLC ("Highrise") initially appeared through counsel who withdrew with the Court's consent on March 16, 2023. As a result of Court order (Dkt. 160), the Clerk entered default against Defendants Singh and Highrise. Dkts. 161, 162. Pursuant to Fed. R. Civ. P. 55(b)(2), Plaintiff now moves for entry of final default judgment. Dkt. 177. The matter is ripe for review.

II. LEGAL STANDARDS

The Federal Rules of Civil Procedure establish a two-step process for obtaining default judgment. First, when a party against whom a judgment for affirmative relief is sought fails to plead or otherwise defend as provided by the Federal Rules, the Clerk may enter default. Fed. R. Civ. P. 55(a). Second, after obtaining a clerk's default, the Plaintiff must move for default judgment. Fed. R. Civ. P. 55(b). Before entering default judgment, the Court must ensure

that it has jurisdiction over the claims and parties, and that the well-pled factual allegations, which are assumed to be true, adequately state a claim for which relief may be granted. *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975). If default judgment is warranted, then the court must next consider whether the Plaintiff is entitled to the relief requested. "A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings." *See* Fed. R. Civ. P. 54(c).

III. ANALYSIS

The Amended Complaint asserts seven causes of action against Singh and Highrise for violations of Sections 4b(a)(2)(A)-(C) and 4o of the Act (7 U.S.C. §§ 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b)).

A. Factual Findings

Specifically, the Amended Complaint (Dkt. 98) alleges the following, which the undersigned adopts as its findings of fact:

a. Defendant Highrise served as a "master fund" entity in a "master-feeder" fund structure. As the "master" fund ("Master Pool"), Highrise directly and indirectly through feeder funds ("Feeder Pools") solicited money from pool participants to trade forex. Dkt. 98 at ¶ 38.

b. Highrise pool participants deposited funds directly into Highrise or indirectly through one of four Feeder Pools (Bull Run, Green Knight, King Royalty, and SR&B), which deposited participant funds in Highrise. Highrise

pooled the funds together, and commingled the pool participant funds with other non-pool participant funds. Highrise then transferred a portion of the pool participants' funds into forex trading accounts in Highrise's own name. *Id.* at ¶¶ 38, 43.

c. Beginning on or around February 2013 and continuing until the SRO was entered on September 16, 2020 (the Relevant Period"), Singh and Highrise solicited pool participants to invest in forex trading. *Id.* at ¶ 39.

d. As a result of these solicitations, pool participants sent Highrise $57,901,423. Rather than trade all pool participant funds, Singh and Highrise misappropriated $25,558,594, which were used for Ponzi-type payments and personal expenses, in addition to payments to the Feeder Pools. *Id.*

e. To conceal its misappropriation, Highrise issued monthly account statements with false information and masked its misappropriation by making Ponzi-type payments. *Id.*

f. Singh marketed himself as a successful trader. During the Relevant Period, Singh instructed pool participants to sign contracts with Highrise. At least some contracts specified that the participants' funds would be "traded on FOREX only" and provided that the pool participant was required to pay to Highrise a fee of 50% of the individual pool participant's purported profit per positive trading month for reimbursement of Highrise's ordinary administrative expenses. *Id.* at ¶ 41.

g. Singh and Highrise instructed pool participants to write checks or wire funds directly to bank accounts in the name of Highrise, which Singh controlled, where pool participant funds were pooled and commingled, including with Singh's own funds. Singh used those accounts to pay for his own personal expenses, including pest control, house cleaning services, and medical costs. *Id.* at ¶ 42.

h. Commencing on or about December 13, 2016, Highrise opened eleven forex trading accounts with a retail foreign exchange dealer ("RFED"), RFED 1 in New York, in the name of Highrise. Singh transferred some of the pool participants' funds to RFED 1 and traded it there. Highrise also opened forex trading accounts with foreign RFEDs. *Id.* at ¶ 45.

i. From February 2013 to March 2020, Highrise solicited and accepted $57,901,423.57 from individual pool participants and from the Feeder Pools. Highrise used no more than $2,408,438.41 of participant funds for forex trading. *Id.*

j. Highrise and Singh misappropriated $25,558,594 of the pool participants' funds to pay for, among other things, Singh's personal expenses, Ponzi-type payments to pool participants, and payments to feeder fund entities. For example, just in one account over $1,500,000 was used to pay for transactions that are not directly related to forex trading including payments for travel, car costs, professional services, retail purchases, phone bills,

marketing, home and personal costs, events, dining, and other miscellaneous expenses. *Id.* at ¶ 44.

k. Highrise sent pool participants monthly account statements via e-mail (the "Monthly Statements"). A Pool Participant in the Master Pool who deposited funds directly with Highrise, "Pool Participant #2," received Monthly Statements. The Monthly Statements provided Pool Participant #2 with information including opening balance, profit, deposit, withdrawal, and account balance. The Monthly Statements did not provide the Master Pool's account activity, profits, losses, net balances, or the participation units of the participant. *Id.* at ¶ 75.

l. The statements Pool Participant #2 received were false. On at least eighteen occasions, they showed profits for a given month that were larger than the entire actual forex trading profits of the Master Pool or showed account balances that were larger than the forex account balances of the entire Master Pool. *Id.* at ¶ 76.

m. Highrise prepared Pool Participant #2's Monthly Statements knowing that they would be provided to Pool Participant #2, whom Highrise knew or should have known would rely upon the information included. *Id.* at ¶ 77.

n. Highrise intentionally issued Monthly Statements with false information to mislead and lull participants into continuing to deposit funds in the pool. *Id.* at ¶ 78.

o. Highrise also issued Monthly Statements to Defendants Green Knight, SR&B, King Royalty, and Bull Run. These Monthly Statements were also false. *Id.* at ¶ 79.

p. As the sole signatory on the Highrise bank accounts used to collect funds from pool participants and the Highrise accounts used for forex trading, Singh had personal knowledge of the amount of funds accepted from pool participants, the disposition of those funds, the losses in Highrise's trading accounts and the profits made from trades undertaken on behalf of pool participants. When Highrise issued Monthly Statements with false information, Singh knew that Highrise's representations were false. *Id.* at ¶ 80.

q. During the Relevant Period, Highrise acted as a commodity pool operator ("CPO") in that it solicited and accepted funds from pool participants for the purpose of pooling the funds in a commodity pool. Highrise solicited and accepted funds directly from its own pool participants and from Green Knight, Bull Run, SR&B and King Royalty to trade forex. Thus, Highrise acted as a CPO, but was not registered as required. *Id.* at ¶ 81.

r. On September 2, 2014, Singh filed a notice of exemption with the National Futures Association (NFA) on behalf of Highrise claiming it was exempt from the requirement to register as a CPO pursuant to CFTC Regulation 4.13 (a)(2), 17 C.F.R. § 4.13(a)(2) (2022). By filing for the exemption pursuant to 17 C.F.R. § 4.13(a)(2), Singh and Highrise affirmed that none of the pools operated by them had more than 15 participants at any time and that the total gross capital contributions the pool received for units of participation in all of the pools it operated or that it intended to operate did not in the aggregate exceed $400,000. Highrise collected more than $400,000 in gross capital contributions by at least September 20, 2016. Because Highrise did not fit both requirements of 17 C.F.R. § 4.13(a)(2), Highrise is not eligible for the exemption that it claimed and, therefore, should have been registered as a CPO no later than September 20, 2016. *Id.* at ¶ 82.

s. Likewise, Singh should have been registered as an associated person ("AP") of Highrise because he solicited funds or property for participation in a pooled investment vehicle that engaged in retail forex transactions. *Id.* at ¶ 84.

t. Highrise did not form a separate legal entity for its commodity pool, nor operate it as a separate legal entity and used bank accounts that hold participant funds for items not related to forex trading. *Id.* at ¶¶ 153–164.

u. Highrise failed to provide pool participants with required disclosures. The document it provided to its participants did not contain the risk disclosure required by 17 C.F.R. § 4.24. It also did not disclose the business background of the CPO or its manager for the past five years or the past performance of the Highrise Master Fund for the past five years, as required by 17 C.F.R. § 4.21. *Id.* at ¶ 174.

B. Defendants Committed Fraud in Violation of Sections 4b(a)(2)(A)-(C) and 4o of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) and Regulation 5.2(b), 17 C.F.R. § 5.2(b) by Misappropriation, Fraudulent Solicitation, and False Statements.

By the conduct described in paragraphs "d" through "s" above, Defendants cheated and defrauded, or attempted to cheat and defraud, and willfully deceived, or attempted to deceive their pool participants or prospective pool participants by, among other things, knowingly or recklessly, misrepresenting the performance of the Master Pool, issuing Monthly Statements to individual pool participants that deposited funds directly with Highrise and to the Feeder Pools that contained false information about the profits and balances of the individual pool participant's respective interests in the Master Pool and the Feeder Pool's respective interests in the Master Pool, and misappropriating pool participant funds, in violation of 7 U.S.C. § 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b).

Highrise and Singh, while acting as a CPO and an AP of a CPO respectfully, violated 7 U.S.C. § 6o(1)(A) and (B) by employing schemes or artifices to defraud pool participants and prospective pool participants and engaging in transactions, practices, or a course of business that operated as a fraud or deceit upon pool participants or prospective pool participants by using the mails or other means or instrumentalities of interstate commerce. The fraudulent acts include, but are not limited to, the following: (1) falsely representing that all of the funds deposited with Highrise were being traded by Highrise, which was not true; (2) issuing Monthly Statements to individual pool participants that deposited funds directly with Highrise and to the Feeder Pools that contained false information about the profits and balances of the individual pool participant's respective interests in the Master Pool and the Feeder Pools' respective interests in the Master Pool; and (3) failing to disclose that pooled funds had been misappropriated by Singh for his own personal use.

C. Highrise and Singh Violated the Act and Commission Regulations by Failing to Register as a CPO and AP of a CPO, Respectfully.

7 U.S.C. § 6m(1) makes it unlawful for any CPO to make use of the mails or any means or instrumentality of interstate commerce in connection with its business, unless it is registered with the CFTC. 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) also makes it unlawful for a CPO to operate a pooled investment in foreign currency whose participants are not eligible contract participants (ECPs"), as

defined by Section 1a(18) of the Act, 7 U.S.C. § 1a(18)(xi), ECPs without registration. 17 C.F.R. § 5.3(a)(2)(i) makes it unlawful for any CPO, as defined in Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2022), to be engaged in retail forex transactions without being so registered. During the Relevant Period, Highrise acted as a CPO for Highrise by soliciting and accepting funds, using instrumentalities of interstate commerce, for a pooled investment vehicle from pool participants who were not ECPs for the purpose of engaging in retail forex transactions while failing to register as a CPO, in violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), and 6m(1) and 7 C.F.R. § 5.3(a)(2)(i).

Additionally, it is unlawful for a person to be associated with a CPO as a partner, officer, employee, consultant, or agent, or a 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 retail forex pool unless registered with the Commission as an AP of the CPO pursuant to 7 U.S.C. § 6k(2) and 17 C.F.R. §§ 3.12, 5.3(a)(2)(ii). 7 U.S.C. § 6k(2) also makes it unlawful for a CPO to permit such a person to become or remain associated with the CPO in any such capacity if the CPO knew or should have known that the person was not registered as an AP. Singh violated 7 U.S.C. § 6k(2) and 17 C.F.R. §§ 3.12 and 5.3(a)(2)(ii) in that he acted as an AP of Highrise without the benefit of registration as an AP of a CPO.

Finally, Highrise violated 7 U.S.C. § 6k(2) in that, acting as a CPO, it allowed Singh to act as its AP when it knew or should have known that Singh was not registered as an AP.

D. Defendants Violated Regulations 4.2(a)(1), (b), 17 C.F.R. § 4.20(a)(1), (b) by Failing to Operate Highrise as a Separate Legal Entity.

Regulation 4.20(a)(1), 17 C.F.R. § 4.20(a)(1) (2022), requires a CPO to "operate its pool as an entity cognizable as a separate legal entity from that of the pool operator." Regulation 4.20(b), 17 C.F.R. §§ 4.20(b) (2022), further provides that the CPO must receive funds from existing or prospective participants in the pool's name. Regulation 5.4, 17 C.F.R. § 5.4 (2022), states that Part 4 of the Regulations, 17 C.F.R. pt. 4 (2022), applies to any person required to register as a CPO pursuant to Part 5 of the Regulations, 17 C.F.R. pt. 5 (2022), relating to forex transactions. Highrise received participants' funds in its name, rather than in separate pool accounts and did not maintain its pool as a separate legal entity. By such actions, Highrise failed to operate its pool as a separate legal entity and failed to properly deposit participants' funds in violation of Regulation 4.20(a)(1) and (b).

E. Defendant Highrise Failed to Provide Pool Participants with Required Pool Disclosures in Violation of Regulation 4.21.

Regulation 4.21(a)(1), 17 C.F.R. § 4.21(a)(1) (2022) requires that CPOs registered or required to be registered under the Act deliver a Disclosure

Document to prospective participants in a pool that complies with Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24, 4.25 (2022), which detail general disclosures required for pools and performance disclosures for different points in the pool's operating history, respectively. Highrise failed to provide prospective pool participants with a pool disclosure document in the form specified in Regulations 4.24 and 4.25. In violation of Regulation 4.21, Highrise did not provide account statements to its pool participants that showed the account activity of the Master Pool as a whole, its profits, losses, net balances or the participation units of a pool participant. Instead, account statements sent to pool participants falsely showed profits for the participant every month.

F. Liability

i. Principal Agent Liability

Section 2(a)(1)(B) of the Act, 7 U.S.C. 2(a)(1)(B) and Regulation 1.2, 17 C.F.R. § 1.2 (2022), provide that the "act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person." In determining liability under Section 2(a)(l)(B) of the Act and Regulation 1.2, the Eleventh Circuit applies a common law test for actual agency, either implied or express, which requires: (1) consent to the agency by

both principal and agent; and (2) the control of the agent by the principal. *CFTC v. Gibraltar*, 575 F. 3d 1180, 1188–89 (11th Cir. 2009).

Singh admitted that he was an agent of Highrise. He has also admitted that he was the founder, registered agent, principal member and manager of Highrise, opened at least 14 bank accounts in Highrise's name and is the sole signatory on the bank and trading accounts in Highrise's name. Singh necessarily caused the actions of Highrise and was Highrise's sole actor. Thus, the violative conduct of Singh, acting on behalf of Highrise occurred within the scope of his employment. Therefore, Highrise is liable for Singh's violations of the Act and Regulations pursuant to Section 2(a)(1)(B) and Regulation 1.2.

ii. Controlling Person Liability

Section 13(b) of the Act, 7 U.S.C. § 13c(b), provides that a defendant who possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an entity may be liable as a controlling person of that entity, provided that the defendant either knowingly induces, directly or indirectly, the violative acts or fails to act in good faith.

Singh exercised direct control over Highrise. He had signatory authority over the Highrise bank and trading accounts that held participant funds and transferred some of those funds to Highrise trading accounts or other Highrise or personal bank accounts. He solicited pool participants without registration and without registering Highrise. He sent false statements to Highrise's pool

participants. By virtue of his control over Highrise, there can be no doubt that he had actual knowledge of the fraudulent and unlawful conduct committed by Highrise and thus, knowingly induced its violations of the Act and Commission Regulations. Therefore, Singh controlled Highrise and is liable for Highrise's violations of the Act and Regulations to the same extent as Highrise itself.

G. Remedy

Without seeking leave, Plaintiff submitted a proposed order containing the terms of its desired injunction. For the most part, I agree with Plaintiff that an injunction is an appropriate remedy for the conduct alleged in the Amended Complaint. But parts of the proposed order do not comply with Federal Rule of Civil Procedure 65(d), which requires that "[e]very order granting an injunction" must "state the reasons why it issued," "state its terms specifically," and "describe in reasonable detail—and not by referring to the complaint or other document—the act or acts sought to be restrained or required."

Rule 65(d)'s specificity requirement "prevent[s] uncertainty and confusion on the part of those faced with injunctive orders and . . . avoid[s] the possible founding of a contempt citation on a decree too vague to be understood." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (finding that because "an injunctive order prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice

of precisely what conduct is outlawed."). And so, injunctions must contain "an operative command capable of 'enforcement.'" *Int'l Longshoremen's Ass'n v. Phila. Marine Trade Ass'n*, 389 U.S. 64, 73–74 (1967). This is so because a "person enjoined by court order should only be required to look within the four corners of the injunction to determine what he must do or refrain from doing." *Hughey v. JMS Dev. Corp.*, 78 F.3d 1523, 1532 n. 12 (11th Cir. 1996).

I conclude that the injunction proposed by Plaintiff contains terms that are nothing more than a command to obey-the-law. *See Hughey*, 78 F.3d at 1531. In *Hughey* and other cases, the Eleventh Circuit has repeatedly held that such injunctions violate Rule 65(d) and are "incapable of enforcement as an operative command." 78 F.3d at 1531. I therefore recommend that any permanent injunction imposed by the Court in this case omit the bald, obey-the-law language proposed by Plaintiff.

In sum, I find that unless restrained and enjoined by this Court, there is a reasonable likelihood that Highrise and Singh will continue to engage in the acts and practices alleged in the Amended Complaint. On that basis, I respectfully recommend the Court issue an order enjoining Highrise and Singh as proposed, omitting the unenforceable obey-the-law language in the proposed order.

IV. CONCLUSION

Accordingly, it is respectfully recommended that the Court order as follows:

1. Plaintiff's Motion for Default Judgment (Dkt. 177) be **GRANTED**;

2. The Clerk should be **directed** to enter default judgment in favor of Plaintiff and against Defendants Avinash Singh and Highrise Advantage, LLC;

3. The Court should enjoin Defendants Singh and Highrise from directly or indirectly engaging in the following:

a. Cheating or defrauding or attempting to cheat or defraud any person, willfully making or causing to make to any person any false report or statement or cause to be entered for any person any false record or willfully deceiving or attempting to deceive any person by any means whatsoever in connection with retail forex transactions, contracts or agreements, accounts or pooled investment vehicles therein in violation of 7 U.S.C. § 6b(a)(2)(A)-(C), and Regulation 5.2(b), 17 C.F.R. § 5.2(b) (2022);

b. Employing any device, scheme or artifice to defraud any client or pool participant or engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or pool participant in connection with retail forex

transactions, contracts or agreements, accounts or pooled investment vehicles therein in violation of 7 U.S.C §§ 6o(1)(A) and (B);

c. Making use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO of a pooled investment in foreign currency whose participants are not ECPs without registration, 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)(2022);

d. Being associated with a CPO as a partner, officer, employee, consultant, or agent, or a 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 retail forex pool unless registered with the Commission as an AP of the CPO pursuant to 7 U.S.C. § 6k(2) and 17 C.F.R. §§ 3.12, 5.3(a)(2)(ii) or permitting such person to become or remain associated with the CPO in any such capacity if the CPO knew or should have known that the person was not registered as an AP in violation of 7 U.S.C. § 6k(2);

e. Failing to operate a retail forex pool as a legal entity separate from that of the pool operator in violation of 17 C.F.R. § 4.20(a)(l);

f. Failing to receive funds, securities, or other from a prospective or existing retail forex pool participant in the commodity pool's name in violation of 17 C.F.R. § 4.20(b); and

g. Failing to deliver or cause to be delivered to a prospective pool participant a Disclosure Document prepared in accordance with 17 C.F.R. §§ 4.24, 4.25, in violation of 17 C.F.R. § 4.21;

h. 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);

i. Entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018)), for their own personal account or for any account in which they have a direct or indirect interest;

j. Having any commodity interests traded on their behalf;

k. 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;

l. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;

m. 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) (2022); and/ or;

n. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)), 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).

4. The Court should **order** Defendants to pay restitution in the following manner:

a. to pay jointly and severally, in the amount of $25,585,594.00 ("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 any Court Order and shall be determined by using the Treasury Bill rate prevailing on the date of the Court's Order pursuant to 28 U.S.C. § 1961;

b. The Court should **appoint** the National Futures Association ("NFA") as Monitor ("Monitor") to receive restitution payments from Defendants, and **direct** that the funds frozen pursuant to the Court's Order of Preliminary Injunction (Dkt. 73) be transferred to the Monitor in the name "Highrise Restitution Fund" by financial

institutions holding such frozen funds in order for the Monitor to 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;

c. Defendants shall be **directed** to make Restitution Obligation payments, and any post-judgment interest payments, pursuant to the Court's Order to the Monitor in the name of "Highrise Restitution Fund" and shall be **directed** to 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, 320 South Canal Street, 24th Floor, Chicago, IL 60606, under cover letter that identifies the paying Defendant and the name and docket number of this proceeding. Defendants shall be **directed** to 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;

d. The Monitor shall be **directed** to oversee the Restitution Obligation and shall be given 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 should be allowed, 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 below;

e. Defendants shall be **directed** to 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 be **directed** to 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;

f. The Court should **direct** that any funds frozen pursuant to the Consent Preliminary Injunction (Dkt. 73) be transferred to the Monitor in the name "Highrise Restitution Fund" for disbursement in accordance with the procedures set forth above;

g. The Court should **direct** that the amount of $6,931.99 received from Highrise and Singh and deposited into the Court's Registry (Dkt. 163) be transferred to the Monitor in the name "Highrise Restitution Fund" in accordance with the procedures set forth above;

h. The Court should **direct** that at the beginning of each calendar year the Monitor is to provide the Commission a report detailing the disbursement of funds to Defendants' pool participants during each previous year. The Monitor shall be **directed** to 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;

i. The Court should **order** that the amount payable to each pool participant shall not limit the ability of any pool participant from 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;

j. To the extend that any funds accrue to the U.S. Treasury for satisfaction of Defendants' Restitution Obligation, the Court should **direct** that such funds be transferred to the Monitor for disbursement in accordance with the procedures set forth above;

5. The Court should **order** Defendants to pay a civil monetary penalty in the following manner:

a. to pay jointly and severally, in the amount of $76,675,782.00 ("CMP Obligation"). If the CMP Obligation is not paid immediately, post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of any Court Order and shall be determined by using the Treasury Bill rate prevailing on the date of the Court's Order pursuant to 28 U.S.C. § 1961;

b. The Court should **direct** that Defendants 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 payment shall be made payable

to the Commodity Futures Trading Commission and sent to the following address:

> 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, Defendants shall be **directed** to 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 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;

6. The Court should **order** that the Commission's acceptance of partial payment of Defendants' Restitution Obligation or CMP Obligation is not a waiver of Defendants' obligation to make further payments or a waiver of the Commission's right to seek to compel payment of any remaining balance;

7. The Court should **lift** the asset freeze contained in its Order on Preliminary Injunction (Dkt. 73) and **order** that such funds be transferred to the NFA for distribution to the pool participants identified by the Commission; and

8. The Court should **order** Defendants provide written notice to the Commission of any change of telephone number or mailing address within ten calendar days of the change to the following address: Robert Howell, Deputy Director, 77 West Jackson Blvd, Suite 800, Chicago, IL, 60606.[2]

NOTICE TO PARTIES

"Within 14 days after being served with a copy of [a report and recommendation], a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2). "A party may respond to another party's objections within 14 days after being served with a copy." *Id*. A party's failure to serve and file specific objections to the proposed findings and recommendations alters review by the district judge and the United States Court of Appeals for the Eleventh Circuit, including waiver of the right to challenge anything to which no specific objection was made. *See* Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1)(B); 11th Cir. R. 3-1.

[2] The Court should also **decline** to retain jurisdiction over this action to ensure compliance with the forthcoming Order on Default Judgment and any motion by Defendants to modify or be relieved from the terms of the Order.

DONE and **ORDERED** in Orlando, Florida, on September 11, 2023.

ROBERT M. NORWAY
United States Magistrate Judge

Copies to:

Counsel of Record