

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT E.D.N.Y.  
★ OCT 05 2018 ★

BROOKLYN OFFICE

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

KEVIN SCOTT ANTONOVICH,

Defendant.

CIVIL ACTION NO. 1:18-cv-2383

~~PROPOSED~~ **CONSENT ORDER FOR PERMANENT INJUNCTION,  
CIVIL MONETARY PENALTY AND OTHER EQUITABLE RELIEF  
AGAINST DEFENDANT KEVIN SCOTT ANTONOVICH**

**I. INTRODUCTION**

On April 23, 2018, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against Defendant Kevin Scott Antonovich (“Antonovich” or “Defendant”), seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act” or “CEA”), 7 U.S.C. §§ 1-26 (2012), and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. § 1.1 *et seq.* (2018) [ECF No. 1].

**II. CONSENTS AND AGREEMENTS**

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

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendants (“Consent Order”);
2. Affirms that he has read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledges service of the summons and Complaint;
4. Admits the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012);
5. Admits the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1-26 (2012);
6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012);
7. Waives:
  - (a) Any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ pt. 148.1 (2018), relating to, or arising from, this action;
  - (b) Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-53, 110 Stat. 847, 857-74 (codified as amended in scattered sections of 5 and 15 U.S.C.), relating to, or arising from, this action;

(c) Any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

(d) Any and all rights of appeal from this action;

8. Consents to the continued jurisdiction of this Court over him for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Defendant now or in the future resides outside the jurisdiction of this Court;

9. Agrees that he will not oppose enforcement of this Consent Order on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and hereby waives any objection based thereon;

10. Agrees that neither he nor any of their agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect his : (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendant shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement;

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

12. Consents to the use of the findings of fact and conclusions of law in this Consent Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof.

13. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 91 of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States;

14. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Defendant in any other proceeding.

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

The Court, being fully advised, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction, and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), as set forth herein. The findings and conclusions in this Consent Order are not binding on any other party to this action.

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

##### **A. Findings of Fact**

###### **The Parties To This Consent Order**

15. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, 7 U.S.C. §§ 1-26 (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 – 190.10 (2018).

16. Defendant **Kevin Scott Antonovich** is an individual who resided either in Woodside, New York, or Ashville, North Carolina from September 29, 2015 through at least August 17, 2016 (“Relevant Period”). Antonovich has never been registered with the CFTC

17. During the Relevant Period, Antonovich fraudulently solicited and received approximately \$284,043 from at least 154 individuals (“pool participants”), who are not eligible contract participants (“ECPs”) as defined by Section 1a(18) of the Act, 17 U.S.C. § 1a(18) (2012). Antonovich solicited and received these funds in connection with pooled investments (hereinafter, the “group account”) in off-exchange commodity options, namely binary options (“binary options” or “options”). In doing so, Antonovich misappropriated approximately \$124,043 of pool participant funds for business expenses and his personal use, made false and misleading representations to pool participants, and fabricated documents purporting to show funds available for return to pool participants. Furthermore, at no time during the Relevant Period was Antonovich registered with the CFTC as a commodity pool operator (“CPO”).

#### **Origin and Structure of the Group Account**

18. In approximately mid-2015, Antonovich and a number of associates he met through internet trading chatrooms formed Bull and Bear IT Traders (“BBITT”) as an online business. The original purpose of BBITT was to provide trading signals and advice.

19. In or about August 2015, several people approached Antonovich and asked him to trade on their behalf in what Antonovich called a “group account.” Antonovich solicited participation in the group account via a Facebook group used by BBITT customers.

20. In a September 29, 2015 Facebook group message, Antonovich explained the group account as follows: “If you invest \$100, it will go into a trading account with everyones [sic] money and be traded until December 1st. I will be dividing all profits between everyone and sending out by December 15th.”

21. In soliciting participation in the group account, Antonovich offered “a 100% money back guarantee.” Antonovich told potential participants: “I take all the risk. The worst thing that can happen is you just get your money back. The goal is a 2-3% account increase or more per day, but I will be taking my time, not rushing anything.” Antonovich noted that “[i]f everyone who has approached me gets in, we will be well over \$10,000 to start our first journey together. That is amazing! Don’t lose out, we can do this together.”

22. Antonovich subsequently admitted that his trading history prior to these solicitations did not include account increases of 2-3% or more per day.

23. Each person who joined the group account – that is, each pool participant – received an investment contract wherein Antonovich agreed “to take all responsibility in trading” the pool participant’s funds with a promise of returning at least the pool participant’s “initial investment.” The initial investment contracts reflected pool participants’ initial placement of funds in the group account. Further, during the Relevant Period, investment contracts beyond those showing only the initial deposit by a pool participant did not accurately reflect the status of each pool participant’s share of the group account.

24. Trading in the group account took place in multiple rounds during the Relevant Period. The initial round began October 1, 2015 and ran through December 1, 2015. Trading in the second and third rounds took place from November 30, 2015 to February 26, 2016, and from March 16, 2016 to June 17, 2016, respectively. The fourth round of trading was to occur from July 1, 2016 to September 30, 2016. Antonovich issued new investment contracts to pool participants in each round, including those who participated in multiple rounds.

25. During the Relevant Period, the majority of pool participants placed between \$100 and \$500 with Antonovich while others placed larger sums. The two largest placements by

individual pool participants were \$25,000 and \$28,000. The pool participants were not ECPs in that the aggregate amount that each individual invested on a discretionary basis was less than \$10 million and no participant participated in the pool in order to manage the risk associated with an asset owned or liability incurred, or likely to be owned or incurred, by the individual.

26. Initially, Antonovich accepted pool participants' funds into his personal bank account via Venmo, Paypal, and a GoFundMe page set up on behalf of his mother. In December 2015, Antonovich opened a bank account in the name of BBITT Services LLC ("BBITT Services") and began depositing pool participant funds into that account and transferring the funds from there to offshore binary option trading accounts held in Antonovich's name.

27. During the Relevant Period, Antonovich communicated with pool participants via electronic mail and various Facebook groups, among other means.

**Antonovich Misrepresented Where He Traded Pool Participant Funds**

28. Antonovich told pool participants he would be trading binary options on currencies on the Cantor Exchange, a CFTC-approved designated contract market. In fact, none of the trading Antonovich did on behalf of the pool participants took place on the Cantor Exchange. Rather, Antonovich transferred pool participant funds to three different offshore binary option trading accounts at various unregistered trading platforms. None of these off-shore entities was registered with the CFTC as a designated contract market, as provided for in Section 5(a) of the Act, 7 U.S.C. 7(a) (2012), and Part 38 of the Regulations, 17 C.F.R. pt. 38 (2018).

### **Antonovich Misrepresented the Performance of the Group Account**

29. During the Relevant Period, Antonovich issued numerous updates claiming that trading in the group account was profitable. All of these statements were false.

30. For example, on February 29, 2016, Antonovich informed pool participants via electronic mail that the second round of trading was complete. Antonovich told pool participants: “I was unable to grow as much as I wanted, but I did grow the account 65%. **Starting balance \$132,000, ending balance \$217,800**” (emphasis in original). Antonovich also offered pool participants the opportunity to “rollover” their accounts into a third round of trading and invited them to recruit new participants. Antonovich advised pool participants that “if you recommend someone, you will receive **10% of their initial investment added to your total payout**. This is a nice win win for everyone” (emphasis in original).

31. Antonovich’s February 29, 2016 statements about the balance of the group account and its profitability during the second round of trading were false. In reality, trading in the group account was not profitable during the second round of trading.

32. In response to Antonovich’s February 29, 2016 false statements and solicitation, some round two pool participants placed additional funds with Antonovich for trading in round three.

33. In an April 16, 2016 posting to the “BBITT Group Account” Facebook page, Antonovich extended the deadline to participate in the third round of trading and told pool participants that the group account was “up 11.5%.” Antonovich subsequently admitted that this statement regarding performance of the group account was false.

34. In a May 21, 2016 electronic mail message, Antonovich told pool participants that “we are up 21% with the current group account.” Antonovich noted that the group account

“hasn’t grown as much as I wanted, but I think because the account level is too high and the max I can trade is \$1,000.” Antonovich subsequently admitted that his statements that the current group account was “up 21%” and that the maximum amount he could trade was \$1,000 were both false.

35. In a June 3, 2016 update to pool participants in the third round, Antonovich reported that the group account was “up a total of 28%.” Antonovich subsequently admitted that this statement was false.

36. In a June 18, 2016 post to the “BBITT Group Account” Facebook page, Antonovich informed pool participants that the group account “ended 32% up” at the conclusion of the third round of trading. Antonovich subsequently admitted that this statement was false.

**When Pool Participants Sought Payouts, Antonovich Made Further Misrepresentations to Cover Up His Trading Losses**

37. For those pool participants who did not wish to participate in the fourth round of trading, Antonovich promised payouts at the end of June 2016. Rather than make the promised payouts and to cover up his trading losses, Antonovich made numerous misrepresentations about the availability of funds for payouts.

38. In a July 1, 2016 update, Antonovich claimed that a transfer of funds from the group account to facilitate payouts had been approved, but was delayed: “I’m still waiting for the withdraw transfer to hit my account. They approved it beginning of week, but I’m guessing since it is the biggest withdraw they are taking their sweet time. As soon as it hits, I will be sending funds.” These statements were false. Antonovich subsequently admitted that, in reality, by July 1, 2016, nothing remained of the pool participants’ funds in the group account.

39. In a July 7, 2016 update, Antonovich claimed that the pending funds transfer of “close to \$200,000” had been flagged as suspicious and returned to the broker. Antonovich also

told pool participants: “My lawyers are working on this, as fast as they can.” Antonovich offered assurance to the pool participants: “All your money is still safe, there is no need to worry about that.” Antonovich subsequently admitted that each of these statements was false.

40. In a July 27, 2016 electronic mail message and an August 1, 2016 posting to the “BBITT Group Account” Facebook page, Antonovich told pool participants that payouts would be forthcoming in the first week in August. Antonovich subsequently admitted that both of these statements were false.

41. In an August 4, 2016 update, Antonovich claimed that payouts were delayed due to an Internal Revenue Service (“IRS”) investigation requiring him to consult with his attorneys and accountant. Antonovich told pool participants: “I cannot distribute any money until investigation is completed as my account is frozen.” Antonovich subsequently admitted that these statements were false. Neither Antonovich, nor BBITT, nor BBITT Services was subject to an IRS investigation or audit. Antonovich did not retain lawyers or accountants in connection with the group account. And finally, the accounts he controlled were never frozen.

42. In the August 4, 2016 update, Antonovich also told pool participants: “Over the past year, I have paid out \$75k to members of this group, making some money trading they never had before.” Antonovich subsequently admitted that this statement was false.

43. On or about August 5, 2016, in a letter he signed at the request of two pool participants, Antonovich repeated the false statements concerning the purported IRS investigation/audit, the frozen BBITT accounts, and the imminent release of funds.

44. On August 8, 2016, Antonovich informed the pool participants that the “group account is officially over.” Antonovich told the pool participants: “Those that were rolling over, your funds are still in the broker account. Once my account gets cleared and funds released, I

will begin payouts to everyone who had first requested and then make the withdrawal from the broker and pay everyone else out.” Antonovich subsequently admitted that these statements were false.

45. In an August 17, 2016 update, Antonovich told pool participants that “all funds should be released by October 1st at the latest.” He referred to lawyers and the purported audit/investigation. Antonovich subsequently admitted that these statements were false.

**Antonovich Fabricated Account Documents Purporting to Show Pool Participant Funds Were Available for Payouts and Distributed Investment Contracts that Did Not Accurately Reflect Participants’ Shares in the Group Account**

46. Antonovich attached two documents to his August 17, 2016 update. Antonovich explained the attachments as follows: “I have attached what I am allowed, which is what is in the business account being held [sic] and the broker.” The first attachment includes the Cantor Exchange logo and purports to show an account balance of \$239,728.41. The second attachment purports to show a bank balance of \$194,066.78. Antonovich subsequently admitted that he fabricated both attachments and that neither purported balance accurately reflects pool participant funds or funds available to pay pool participants.

47. Antonovich also admitted that he created both attachments to give pool participants the impression that funds were available to satisfy not only return of all principal funds, but also payment of all purported profits.

48. Antonovich also subsequently admitted that during the Relevant Period investment contracts beyond those showing only the initial deposit by a pool participant did not accurately reflect the status of each pool participant’s share of the group account.

**Antonovich Misappropriated Pool Participant Funds for Business and Personal Expenses and Commingled Pool Participants Funds with Other Business and Personal Funds**

49. In total, during the Relevant Period, Antonovich fraudulently solicited and accepted approximately \$284,043 from pool participants throughout the life of the group account. Of that amount, approximately \$160,000 was deposited into three trading accounts and lost trading, while approximately \$13,711 was returned to various pool participants.

50. Antonovich used the misappropriated funds to pay for business and personal expenses, and to make Ponzi-like payments in order to satisfy pool participant withdraw requests. Including the Ponzi-style payments, Antonovich misappropriated the remaining \$124,043 of pool participant funds. He also commingled pool participants' funds with funds from BBITT's other businesses, as well as his personal funds.

**B. Conclusions of Law**

**Jurisdiction and Venue**

51. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2012) (federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act, 7 U.S.C. § 13a-l(a) (2012), authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice that violates any provision of the Act or any rule, regulation, or order promulgated thereunder.

52. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-l(a) because Antonovich is found in, inhabits, or transacts business in this District, or the acts and practices in violation of the Act and Regulations occurred, or are occurring, or are about to occur within this District, among other places.

53. By virtue of the conduct described in paragraphs 1 through 50 above, Antonovich has violated the following provisions of the Act and Regulations promulgated thereunder: Sections 4o(1)(A) and (B), 4c(b), and 4m(1) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B), 6c(b), and 6m(1) (2012); and Regulations 32.4(a)-(c) and 4.20(c), 17 C.F.R. §§ 32.4(a)-(c) and 4.20(c) (2018).

**Solicitation Fraud and Misappropriation by a CPO**

54. 7 U.S.C. § 6o(1)(A), (B), make it unlawful for a commodity pool operator, or an associated person of a commodity pool operator by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly to: (A) employ any device, scheme, or artifice to defraud any client or participant or perspective client or participant; or (B) 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.

55. Section 1a(11) of the Act, 7 U.S.C. § 1a(11) (2012), defines a CPO as “any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or other similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds . . . for the purpose of trading in commodity interests.” Regulation 1.3, 17 C.F.R. § 1.3 (2018), in turn, defines commodity interest to include, among other things, options transactions subject to the Commission’s jurisdiction.

56. As set forth above, Antonovich solicited, accepted, and received funds from multiple pool participants and pooled them together into the group account for the purpose of trading in commodity interests. Antonovich therefore acted as a CPO with respect to the group account.

57. As set forth above, Antonovich violated by 7 U.S.C. § 6o(1)(A), (B), among other things: (i) misappropriating pool participant funds to pay for, among other things, business and personal expenses, and to make Ponzi-style payments to pool participants; (ii) making material misrepresentations regarding the handling of participant funds invested with him, the performance of the group account, and the availability of funds to satisfy payout requests; and (iii) issuing false account documents to pool participants.

58. Antonovich's misappropriation, misrepresentations, and issuance of false account documents to pool participants were done knowingly or with a reckless disregard as to their truth or falsity.

59. Each act of misappropriation, fraudulent misrepresentation or omission made, and/or issuance of false account documents to pool participants, including, but not limited to, those specifically enumerated herein, constitutes a separate and distinct violation of 7 U.S.C. § 6o(1)(A), (B).

#### **Options Fraud and Misappropriation**

60. 7 U.S.C. § 6c(b), makes it unlawful to "offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guarantee', or 'decline guarantee', contrary to any rule, regulation or order of the Commission prohibiting any such transaction or allowing such transaction under such terms and conditions as the Commission may prescribe."

61. 17 C.F.R. § 32.4(a)-(c), makes it unlawful for any person, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, directly or indirectly, to: (a) cheat or defraud or attempt to cheat or defraud

any other person; (b) 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) deceive or attempt to deceive any other person by any means whatsoever.

62. As set forth above, during the Relevant Period, Antonovich violated 7 U.S.C. § 6c(b) and 17 C.F.R. 32.4(a)-(c) by, among other things: (i) misappropriating pool participant funds to pay for, among other things, business and personal expenses, and to make Ponzi-style payments to pool participants; (ii) making material misrepresentations regarding the handling of participant funds invested with him, the performance of the group account, and the availability of funds to satisfy payout requests; and (iii) issuing, among other things, false account documents to pool participants.

63. Antonovich's misappropriation, misrepresentations, and issuance of false account documents to pool participants were done knowingly or with a reckless disregard as to their truth or falsity.

64. Each act of misappropriation and fraudulent misrepresentation, including, but not limited to, those specifically enumerated herein, constitutes a separate and distinct violation of 7 U.S.C. § 6c(b) and 17 C.F.R. 32.4(a)-(c).

65. Each issuance of false account documents to pool participants, including, but not limited to, those specifically enumerated herein, constitutes a separate and distinct violation of 7 U.S.C. § 6c(b) and 17 C.F.R. 32.4(a)-(c)

**Failure to Register as a CPO**

66. With certain specified exceptions and exemptions not applicable here, 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.

67. 7 U.S.C § 1a(11) defines a CPO as “any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or other similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds . . . for the purpose of trading in commodity interests.” 17 C.F.R. § 1.3, in turn, defines commodity interest to include options transactions subject to the Commission’s jurisdiction.

68. As set forth above, Antonovich acted as a CPO during the Relevant Period in that he conducted a business that solicited, accepted, and received funds from multiple pool participants and then pooled those funds together in the group account for purposes of trading in commodity interests.

69. As set forth above, Antonovich used the mails or other means or instrumentalities of interstate commerce in connection with its business.

70. Antonovich violated 7 U.S.C. § 6m(1), by engaging in these activities without having registered as a CPO.

71. Each use by Antonovich of the mails or any means or instrumentality of interstate commerce in connection with their business as a CPO without proper registration, including, but not limited to, those specifically enumerated herein, constitutes a separate and distinct violation of 7 U.S.C. § 6m(1).

#### **Commingling of Pool and Non-Pool Funds**

72. With certain specified exceptions and exemptions not applicable here, 17 C.F.R. § 4.20(c), requires that a CPO may not commingle the property of the pool with the property of any other person.

73. As set forth above, Antonovich violated 17 C.F.R. § 4.20(c), by commingling pool participant funds with non-pool participant funds.

74. Each instance of Antonovich commingling pool participant funds with non-pool participant funds, including, but not limited to, those specifically enumerated herein, constitutes a separate and distinct violation of 17 C.F.R. § 4.20(c).

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

#### IV. PERMANENT INJUNCTION

##### IT IS HEREBY ORDERED THAT:

76. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), Defendant is permanently restrained, enjoined and prohibited from directly or indirectly:

- a. in connection with the operation of a commodity pool, use of the mails or any means or instrumentality of interstate commerce, directly or indirectly: employing any device, scheme, or artifice to defraud any client or participant or perspective client or participant; or 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, in violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (2012);
- b. offering to enter into, entering into or confirming the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guarantee', or 'decline guarantee', contrary to any rule, regulation or order of the Commission prohibiting any such transaction or allowing such transaction under such terms and conditions as the Commission may prescribe, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012);
- c. in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, directly or indirectly: (a) cheating or defrauding or attempting to cheat or defraud any other person; (b) making or causing to be made to any other person any false report or statement thereof or causing to be entered for any person any false record thereof; or (c) deceiving or attempting to

deceive any other person by any means whatsoever, in violation of Regulation 32.4(a)-(c), 17 C.F.R. § 32.4(a)-(c);

- d. making use of the mails or any means or instrumentalities of interstate commerce while engaged in the business of a CPO, that is, a business that is of the nature of a commodity pool, investment trust, syndicate, or other similar form of enterprise, and, in connection therewith, soliciting, accepting, or receiving from others, funds for the purpose of trading in commodity interests, without having first registered with the CFTC as a CPO, in violation of Section 4m(1) of the Act 7 U.S.C. § 6m(1)(2012);
- e. commingling the property of the commodity pool with the property of any other person, in violation of Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2018).

77. 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) (2012));
- b. entering into any transaction involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018), for Antonovich’s own personal or proprietary accounts or for any account in which Antonovich has a direct or indirect interest;
- c. having any commodity interest traded on Antonovich’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 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 in Regulation 4.41(a)(9), 17 C.F.R. § 4.41(a)(9) (2018);
- g. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2018)), agent, or other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)) registered, exempted from registration or required to be

registered with the CFTC, except as provided in Regulation 4.41(a)(9);  
and

- h. engaging in any business activities related to commodity interests;

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

### **A. Restitution**

78. Defendant shall pay restitution in the amount of Two Hundred Seventy Thousand, Three Hundred Thirty-two Dollars (\$270,332) (“Restitution Obligation”), plus post-judgment interest. Post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

79. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendant’s customers, the Court appoints the National Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor shall receive restitution payments from Defendant 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.

80. Defendant shall make Restitution Obligation payments under this Consent Order to the Monitor in the name “Kevin Scott Antonovich Restitution Fund” and 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 the paying Defendant and the name and docket number of this proceeding. Defendant 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.

81. 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 Defendant's customers 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 Paragraph 88 below.

82. Defendant shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant's customers to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendant 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.

83. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendant's customers 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.

84. The amounts payable to each customer shall not limit the ability of any customer 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 customer that exist under state or common law.

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

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

**B. Civil Monetary Penalty**

87. Defendant shall pay a civil monetary penalty in the amount of Two Hundred Eighty-four Thousand, Forty-three Dollars (\$284,043) ("CMP Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

88. Defendant shall pay the CMP Obligation 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.  
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, Defendant shall contact Marie Thorne or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendant shall accompany payment of the CMP Obligation with a cover letter that identifies Defendant and the name and docket number of this proceeding. Defendant 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.

**C. Provisions Related to Monetary Sanctions**

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

**D. Cooperation**

90. Defendant shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement ("Division"), in this action, and in any current or future Commission investigation or action related thereto. Defendant shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action. As part of such cooperation, Defendant agrees to assist the Division in identifying, collecting and recovering any assets related to this action.

## VI. MISCELLANEOUS PROVISIONS

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

Notice to Commission:

Rick Glaser  
Deputy Director  
Division of Enforcement  
U.S. Commodity Futures Trading Commission  
1155 21st Street, NW  
Three Lafayette Centre  
Washington, DC 20581  
202-418-5358  
rglaser@cftc.gov

Notice to Defendant:

Kevin Antonovich  
224 Beach Walk  
P.O. Box 4037  
Sayville, NY 11782-0998  
(347) 357-2164  
kevinscottantonovich@gmail.com

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

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

93. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

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

95. **Waiver:** The failure of any party to this Consent Order or of any customer at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or customer at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

96. **Waiver of Service, and Acknowledgement:** Defendant waives service of this Consent Order and agrees that entry of this Consent Order by the Court and filing with the Clerk of the Court will constitute notice to the Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty (30) days after this Consent Order is filed with the Clerk of Court, with an affidavit or declaration stating that Defendant have received and read a copy of this Consent Order.

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

98. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendant, upon any person under their authority or control, and upon any person who receives actual notice of this Consent Order, by

personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendant.

99. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

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

101. Agreements and Undertakings: Defendant shall comply with all of the undertakings and agreements set forth in this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Consent Order for Permanent Injunction, Civil Monetary Penalty And Other Equitable Relief Against Defendant Kevin Scott Antonovich* forthwith and without further notice.

IT IS SO ORDERED on this 3<sup>rd</sup> day of October, 2018.

s/I. Leo Glasser

I. Leo Glasser  
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:



Kevin Scott Antonovich  
224 Beach Walk  
P.O. Box 4037  
Sayville, NY 11782-0998  
(347) 357-2164  
kevinscottantonovich@gmail.com

Date: 7/19/18

KEVIN S ANTONOVICH



James A. Garcia  
Trial Attorney  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581  
(202) 418-5362  
(202) 418-5937 (facsimile)  
jgarcia@cftc.gov@cftc.gov

Date 10/02/2018