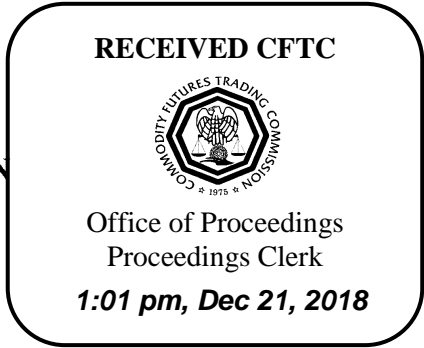


**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**



**In the Matter of:**

**Newport Private Capital LLC and  
Jonathan M. Hansen,**

**Respondents.**

**CFTC DOCKET NO. 19 – 04**

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO  
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING  
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

**I. INTRODUCTION**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from at least September 27, 2013, to at least January 15, 2014 (“Relevant Period”), Newport Private Capital LLC (“Newport”) and Jonathan M. Hansen (“Hansen”) (together, “Respondents”) violated Sections 4b(a)(1)(A) and (C), 4o(1)(A), and 4n(3)(A) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6b(a)(1)(A), (C), 6o(1)(A), 6n(3)(A) (2012), and Regulations 1.31(a) and 1.35(b)(5)(i), (iv), (v)(A) and (v)(B), 17 C.F.R. §§ 1.31(a), 1.35(b)(5)(i), (iv), (v)(A), (v)(B) (2013) of the Commission Regulations (“Regulations”) promulgated thereunder. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.<sup>1</sup>

---

<sup>1</sup> Respondents consent to the use of the findings of fact and conclusions of law in this 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. Respondents do not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondents do not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

## II. FINDINGS

The Commission finds the following:

### A. SUMMARY

On September 4, 2013, the National Futures Association (“NFA”) issued a Member Responsibility Action (“MRA”) restricting the operation of futures trading accounts controlled by Respondents, pending the repayment of a loan to another entity related to Hansen. Within weeks of the MRA, Hansen caused a trading account to be opened at a futures commission merchant (“FCM”) in the name of his spouse (“Spouse Account”). During the Relevant Period, Hansen, acting as an agent of Newport, engaged in a deceptive scheme in which he disproportionately allocated profitable trades in commodity futures contracts to the Spouse Account and unprofitable trades to customer accounts. This scheme benefitted the Spouse Account—and, therefore, Hansen personally—at the expense of Respondents’ customers.

During the Relevant Period, Respondents also failed to retain required records of orders allocated post-execution, including records sufficient to demonstrate the nature of Respondents’ allocation methodology, and that their allocation of commodity futures contracts was at all times fair and equitable.

Through this conduct, Respondents violated Sections 4b(a)(1)(A) and (C), 4o(1)(A), and 4n(3)(A) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C), 6o(1)(A), 6n(3)(A) (2012), and Regulations 1.31(a) and 1.35(b)(5)(i), (iv), (v)(A) and (v)(B), 17 C.F.R. §§ 1.31(a), 1.35(b)(5)(i), (iv), (v)(A), (v)(B) (2013).

### B. RESPONDENTS

**Newport Private Capital LLC** is a California limited liability company formed in November 2005. Prior to September 2009, Newport was known as Censura Futures Management, Inc. During the Relevant Period, Newport conducted business from its office in Newport Beach, California. From 2004 to 2014, Newport was registered with the Commission as a Commodity Trading Advisor (“CTA”) and a Commodity Pool Operator (“CPO”). Newport is not currently registered with the Commission.

**Jonathan M. Hansen** is a resident of Dana Point, California. During the Relevant Period, Hansen was Newport’s owner, president, principal, and controlling person and was responsible for managing Newport’s investment activities. From 2004 to 2014, Hansen was registered with the Commission as an Associated Person (“AP”) of Newport. Hansen is not currently registered with the Commission.

### C. FACTS

#### 1. Post-Execution Allocation

During the Relevant Period, Newport, through Hansen, acted as a CPO and operated two commodity pools on behalf of customers. Newport, through Hansen, also acted as a CTA and

exercised discretionary trading authority over approximately thirty individual customer trading accounts (together with the commodity pools, the “Customer Accounts”), as well as several proprietary accounts. In this role, Newport, through Hansen, primarily placed bunched orders<sup>2</sup> through an electronic platform maintained at FCM 1 or through a floor broker (“Broker”) at FCM 2. Among other things, the bunched orders included round-turn<sup>3</sup> futures trades executed during the same trading session. Respondents did not employ a pre-determined methodology for the allocation of these bunched orders. Rather, Hansen often provided allocation instructions to the executing FCMs at or near the end of the trading session, after the positions had been closed or offset, which allowed him to determine whether those transactions were profitable before allocating them to a particular account or set of accounts. Furthermore, instead of allocating each bunched order to a group of accounts, Hansen routinely allocated bunched orders to only one account.

In general, upon receipt of a customer order, Regulation 1.35(b) requires FCMs and executing brokers to immediately prepare a written record of the order, identifying the customer account into which the order is to be placed. However, Regulation 1.35(b)(5) permits eligible account managers (“EAMs”), including CTAs, to “bunch” orders on behalf of multiple customers and allocate them to individual or pooled accounts no later than the end of the trading day. This procedure is known as “post-execution allocation,” and the goal is to provide better pricing and efficient execution of customer orders while ensuring that the allocation of those orders is fair and equitable. *See* Nat’l Futures Ass’n, Interpretive Notice 9029, NFA Compliance with Rule 2-10: The Allocation of Bunched Orders for Multiple Accounts, at 2 & n.2, <https://www.nfa.futures.org/rulebook/rules.aspx?RuleID=9029&Section=9> (“NFA Notice 9029”).

Regulation 1.35(b)(5)(i) requires that the EAM placing and directing the allocation of an order eligible for post-execution allocation have been granted written investment discretion with regard to participating customer accounts. In addition, EAMs may not use post-execution allocation to enter a bunched order on behalf of a single account. If an EAM is trading on behalf of only one account, the EAM must provide that account number at or before the time of order entry. *See* Account Identification for Eligible Bunched Orders, 68 Fed. Reg. 34,790, 34,792 (June 11, 2003); NFA Notice 9029, at n.3.

Orders eligible for post-execution allocation must be allocated as follows: (1) CTAs are required to provide FCMs with allocation instructions “as soon as practicable after the entire transaction is executed, but in any event no later than . . . sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade”; (2) allocations must be “fair and equitable,” with no accounts receiving consistently favorable or unfavorable treatment; and (3) the allocation methodology must be “sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology.” 17 C.F.R. § 1.35(b)(5)(iv)(A)-(C).

---

<sup>2</sup> Bunched orders are orders entered by an account manager on behalf of multiple customers, which are executed as a block and later allocated among participating customer accounts for clearing.

<sup>3</sup> A round-turn trade is a completed transaction involving both a purchase and a liquidating sale, or a sale followed by a covering purchase.

## 2. Fraudulent Allocation Scheme

On September 4, 2013, NFA issued an MRA against Respondents, requiring them to repay a loan to another entity operated and indirectly owned by Hansen. Among other terms, the MRA prohibited Respondents from soliciting funds for any managed accounts or commodity pools, or disbursing or transferring any funds from any trading accounts they controlled without prior approval from NFA.

On September 27, 2013, Hansen caused the Spouse Account to be opened at FCM 1. Although the account opening paperwork stated that the Spouse Account would not be managed by an authorized trader, family member, or CTA/CPO, Hansen routinely directed the trading in the Spouse Account, and the allocation of those trades. Throughout the Relevant Period, Hansen disproportionately allocated profitable round-turn day trades to the Spouse Account, totaling approximately \$300,000 in profits. Although the Spouse Account was only funded with one deposit of \$5,000, over \$270,000 was ultimately transferred out of the Spouse Account to a joint bank account in the name of Hansen and his spouse—a return on investment of over 5,000%.

During the same period, Hansen allocated round-turn day trades to over twenty Customer Accounts, not one of which generated a profit during the Relevant Period. In stark contrast to the performance of the Spouse Account, the Customer Accounts realized hundreds of thousands of dollars in losses, and were deprived of a fair opportunity to obtain a portion of the profitable trades that were preferentially allocated to the Spouse Account.

### III. LEGAL DISCUSSION

#### A. Trade-Practices Fraud and Improper Post-Execution Allocation

Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2012), makes it unlawful for any person, in or in connection with any order for future delivery that is made on or subject to the rules of a designated contract market, for or on behalf of any other person “(A) to cheat or defraud or attempt to cheat or defraud the other person; . . . [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever.”

The intentional allocation of trades to disadvantage one or more customers constitutes fraud under Section 4b(a) of the Act. *See In re GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at \*10 (Aug. 11, 1992), *aff’d sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993) (affirming ALJ’s finding that respondents directed profitable fills to favored accounts in violation of Section 4b of the Act, and noting that burden of explaining allocation methodology shifts to respondent after Commission presents *prima facie* case of fraudulent allocation); *In re Lincolnwood Commodities, Inc.*, CFTC No. 78-48, 1984 WL 48104, at \*21 (Jan. 31, 1984) (concluding that respondents fraudulently allocated winning day trades to their accounts and losing day trades to customers’ accounts in violation of Section 4b of the Act); *see also In re Nikkhah*, CFTC No. 95-13, 2000 WL 622872, at \*8-10 (May 12, 2000) (assessing the propriety of an allocation methodology for bunched orders).

In fact, even allocations that “arbitrarily deprive[] a customer of a profit opportunity amounts to fraud” under Section 4b(a) of the Act. *Nikkhah*, 2000 WL 622872, at \*8 (citing

*United States v. Ashman*, 979 F.2d 469, 477-78 (7th Cir. 1992)). This means that an EAM’s allocation methodology “must be predetermined and fair, such that no customer or group of customers receives consistently favorable or unfavorable treatment.” *Id.* at \*10 (quoting *GNP*, 1992 WL 201158, at \*9) (“The proper focus is whether the weight of the evidence shows that [Respondent] acted with intent by knowingly employing an allocation process that was neither predetermined nor fair to all his discretionary account customers . . .”).

A violation of Section 4b(a) requires that the wrongdoer act with scienter. *See Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988). Scienter “refers to a mental state embracing an intent to deceive, manipulate, or defraud.” *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 448 (D.N.J. 2000) (citing *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976)). Recklessness is sufficient to satisfy the scienter requirement of Section 4b of the Act. *See, e.g., Drexel*, 850 F.2d at 748; *Rosenberg*, 85 F. Supp. 2d at 448. The Commission can establish scienter by showing that a defendant made an extreme departure from the standards of ordinary care. *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002). Scienter cannot be avoided “by ignorance brought about by willfully or carelessly ignoring the truth.” *CFTC v. Savage*, 611 F.2d 270, 283 (9th Cir. 1979).

Hansen, through Newport, effected the allocation scheme by opening the Spouse Account (which was not subject to NFA monitoring under the MRA), allocating disproportionately profitable trades to the Spouse Account, and withdrawing the profits from the Spouse Account in contravention of the MRA. As a threshold matter, Respondents were not permitted to allocate trades after execution to the Spouse Account. Regulation 1.35(b)(5)(i), 17 C.F.R. § 1.35(b)(5)(i) (2018), requires that the EAM placing and directing the post-execution allocation of an order have been granted written investment discretion for all participating accounts, yet Newport did not have written discretion over the Spouse Account. Moreover, Newport’s use of post-execution allocation did not comply with Regulation 1.35(b)(5)(iv) because Newport, through Hansen, knowingly or recklessly failed to (1) use a predetermined and fair allocation methodology; (2) provide FCMs with allocation instructions “as soon as practicable” after the entire transaction was executed; and (3) fairly and equitably allocate favorable and unfavorable trades among all managed accounts. Hansen, through Newport, also knowingly—and improperly—allocated the majority of his bunched orders to a single account. This provided Hansen the opportunity to identify winning and losing trades before committing them to a particular account, even though the orders were ultimately allocated to only one account. Respondents’ post-execution allocation of bunched orders violated Section 4b(a)(1)(A) and (C) of the Act and Regulations 1.35(b)(5)(i) and (iv).

## **B. Fraud by CTAs and CPOs**

Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A) (2012), makes it unlawful for a CTA or a CPO, or their APs, to employ any device, scheme, or artifice to defraud any participant or prospective participant by use of the mails. The same conduct that violates Section 4b of the Act, described above, also violates Section 4o(1). *See, e.g., CFTC v. Driver*, 877 F. Supp. 2d 968, 978-79 (C.D. Cal. 2012); *First Nat’l Monetary Corp. v. Weinberger*, 819 F.2d 1334, 1340 (6th Cir. 1987).

Throughout the Relevant Period, Newport acted and was registered as a CTA and CPO, and Hansen acted and was registered as an AP of Newport. Therefore, Respondents' conduct in violation of Section 4b(a) of the Act, discussed above, also gives rise to violations of Section 4o(1)(A) of the Act.

**C. Failure To Maintain and Produce Records**

Section 4n(3)(A) of the Act, 7 U.S.C. § 6n(3)(A) (2012), and Regulation 1.31(a), 17 C.F.R. § 1.31(a) (2013), require registered CTAs and CPOs to keep and make available all records required under the Act or Regulations. In addition, Regulation 1.35(b)(5)(v)(A) and (B) require EAMs using post-execution allocation to keep and make available upon request records "sufficient to demonstrate that all allocations meet the standards" of Regulation 1.35(b)(5)(iii) and (iv). Commission registrants are strictly liable for recordkeeping violations, for which a showing of scienter is not required. *In re DiPlacido*, CFTC No. 01-23, 2008 WL 4831204, at \*37 (Nov. 5, 2008), *aff'd sub nom. DiPlacido v. CFTC*, 364 F. App'x 657 (2d Cir. 2009).

Newport did not create or keep records sufficient to demonstrate the methodology used to allocate trades after execution to the accounts it managed. Consequently, Newport was unable to establish that it allocated trades to these managed accounts fairly and equitably, as required by Regulation 1.35(b)(5). Newport's failure to maintain and produce records required under the Act and Regulations violated Section 4n(3)(A) of the Act, and Regulations 1.31(a) and 1.35 (v)(A) and (B).

**D. Agency and Controlling Person Liability**

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation ("Regulation") 1.2, 17 C.F.R. § 1.2 (2013), provide that "[t]he 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." The Act imposes strict liability on principals for the actions of their agents. *See, e.g., Dohmen Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988); *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *CFTC v. Byrnes*, 58 F. Supp. 3d 319, 324 (S.D.N.Y. 2014). The forgoing acts, omissions, and failures of Hansen occurred within the scope of his employment, office, or agency with Newport. Therefore, under Section 2(a)(1)(B) of the Act and Regulation 1.2, Newport is liable for Hansen's violations of 4b(a)(1)(A) and (C), 4o(1)(A), and 4n(3)(A) of the Act, and Regulations 1.31(a) and 1.35(b)(5)(i), (iv), (v)(A) and (v)(B).

Additionally, Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), provides that "[a]ny person who, directly or indirectly, controls any person who has violated any provision of this chapter or any of the rules, regulations, or orders issued pursuant to this chapter may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person." Under Section 13(b) of the Act, the Commission must establish that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation. Hansen was Newport's owner, president, principal, and trader responsible for managing Newport's investment activities. Hansen at all times controlled Newport and had the power and ability to control its operation and trading. In personally

conducting the fraudulent post-execution allocation scheme and failing to maintain required records, Hansen failed to act in good faith and knowingly induced Newport to violate the Act and Regulations. Hansen is therefore liable as a controlling person for Newport's violations of the Act and Regulations, pursuant to Section 13(b) of the Act.

#### **IV. FINDINGS OF VIOLATION**

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondents violated Sections 4b(a)(1)(A) and (C), 4o(1)(A), and 4n(3)(A) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C), 6o(1)(A), 6n(3)(A) (2012), and Regulations 1.31(a) and 1.35(b)(5)(i), (iv), (v)(A) and (v)(B), 17 C.F.R. §§ 1.31(a), 1.35(b)(5)(i), (iv), (v)(A), (v)(B) (2013).

#### **V. OFFER OF SETTLEMENT**

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waive:
  - 1. The filing and service of a complaint and notice of hearing;
  - 2. A hearing;
  - 3. All post-hearing procedures;
  - 4. Judicial review by any court;
  - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
  - 6. Any and all claims that they 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 Commission's Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this proceeding;
  - 7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201-53, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and

8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer; and
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
  1. Makes findings by the Commission that Respondents violated Sections 4b(a)(1)(A) and (C), 4o(1)(A), and 4n(3)(A) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C), 6o(1)(A), 6n(3)(A) (2012), and Regulations 1.31(a) and 1.35(b)(5)(i), (iv), (v)(A) and (v)(B), 17 C.F.R. §§ 1.31(a), 1.35(b)(5)(i), (iv), (v)(A), (v)(B) (2013);
  2. Orders Respondents to cease and desist from violating Sections 4b(a)(1)(A) and (C), 4o(1)(A), and 4n(3)(A) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C), 6o(1)(A), 6n(3)(A) (2012), and Regulations 1.31(a) and 1.35(b)(5)(i), (iv), (v)(A) and (v)(B), 17 C.F.R. §§ 1.31(a), 1.35(b)(5)(i), (iv), (v)(A), (v)(B) (2013);
  3. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of three hundred and fifteen thousand dollars (\$315,000), plus post-judgment interest;
  4. Orders that Respondents be permanently prohibited from, directly or indirectly, engaging in 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)), and all registered entities shall refuse them trading privileges; and
  5. Orders Respondents and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

## **VI. ORDER**

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

- A. Respondents shall cease and desist from violating Sections 4b(a)(1)(A) and (C), 4o(1)(A), and 4n(3)(A) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C), 6o(1)(A), 6n(3)(A) (2012), and Regulations 1.31(a) and 1.35(b)(5)(i), (iv), (v)(A) and (v)(B), 17 C.F.R. §§ 1.31(a), 1.35(b)(5)(i), (iv), (v)(A), (v)(B) (2013).
- B. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of three hundred and fifteen thousand dollars (\$315,000) ("CMP Obligation") within ten (10) days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be



determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondents 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:

MMAC/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 is to be made by electronic funds transfer, Respondents shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent(s) and the name and docket number of this proceeding. The paying Respondent(s) 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, DC 20581.

- C. Respondents are permanently prohibited from, directly or indirectly, engaging in 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)), and all registered entities shall refuse them trading privileges.
- D. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
  - 1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, agents, or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

2. Respondents agree that they shall never, directly or indirectly:
  - a. enter into any transactions involving commodity interests (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018)), for Respondents' own personal accounts or for any accounts in which Respondents have a direct or indirect interest;
  - b. have any commodity interests traded on Respondents' behalf;
  - c. control or direct 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;
  - d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
  - e. apply for registration or claim exemption from registration with the Commission in any capacity, and engage 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) (2018); and
  - f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2018)), agent or any 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, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9).
  
3. Disgorgement: Respondents shall pay, jointly and severally, disgorgement in the amount of two hundred sixty-five thousand dollars (\$265,000) ("Disgorgement Obligation"), representing the gains received in connection with such violations, within ten (10) days of the date of the entry of this Order. If the Disgorgement Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the Disgorgement 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 (2012).

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

MMAC/ESC/AMK326  
Commodity Futures Trading Commission  
Division of Enforcement

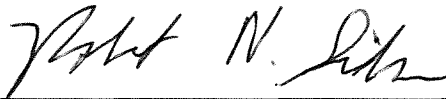
6500 S. MacArthur Blvd.  
HQ Room 181  
Oklahoma City, OK 73169  
(405) 954-6569 office  
(405) 954-1620 fax  
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondents shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the Disgorgement Obligation with a cover letter that identifies the paying Respondent(s) and the name and docket number of this proceeding. The paying Respondent(s) 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, DC 20581.

4. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' 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.
5. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligation as set forth in this Consent Order, Respondents shall provide written notice to the Commission by certified mail of any change to their telephone numbers and mailing addresses within ten (10) calendar days of the change.

**The provisions of this Order shall be effective as of this date.**

By the Commission.



Robert N. Sidman  
Deputy Secretary of the Commission  
Commodity Futures Trading Commission

Dated: December 21, 2018