

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of	:	CFTC DOCKET NO. 01-17
	:	
Mark A. Pennings	:	
10352 South Wood #1	:	
Chicago, IL 60643,	:	
	:	ORDER INSTITUTING PROCEEDINGS
	:	PURSUANT TO SECTIONS 6(c), 6(d) and 8a(4)
and	:	OF THE COMMODITY EXCHANGE ACT, AS
	:	AMENDED, MAKING FINDINGS AND
Clayton Caulkins	:	IMPOSING REMEDIAL SANCTIONS
9409 Drake Ave.	:	
Evanston, IL 60203,	:	
	:	
Respondents.	:	
	:	

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Mark A. Pennings (“Pennings”) and Clayton Caulkins (“Caulkins”) (collectively, the “Respondents”) have violated Sections 4b(a)(i) and (iii) and 4q(1) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 6b(a)(i) and (iii) and 6q(1) (1994),¹ and Commission Regulation 4.41(a), 17 C.F.R. §§ 4.41(a) (2000). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether Pennings and Caulkins engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

¹ The Act has recently been amended by the Commodity Futures Modernization Act of 2000 (“CFMA”), Appendix E to Pub. L. No. 106-554, 114 Stat. 2763 (2000). The CFMA did not amend the specific sections of the Act charged herein as having been violated.

II.

In anticipation of the institution of this administrative proceeding, Pennings and Caulkins have each submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Respondents Pennings and Caulkins acknowledge service of this Order Instituting Proceedings Pursuant to Sections 6(c), 6(d) and 8a(4) of the Commodity Exchange Act, As Amended, Making Findings and Imposing Remedial Sanctions (“Order”). Respondents each consent to the use of the findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.²

III.

The Commission finds that:

A. SUMMARY

From approximately January 1998 through October 1999 (the “relevant time period”), Pennings and Caulkins, associated persons (“AP”) of Global Telecom, Inc. (“GTI”), a registered commodity trading advisor (“CTA”), and of a registered futures commission merchant (“FCM”), used misleading or fraudulent advertising to solicit customers to buy trading signals from the CTA’s commodity futures trading system and to promote the purchase and sale of commodity futures through the FCM. They promised huge profits from the trading system and mischaracterized the performance record for the system. The trading system was supposed to provide customers with trading recommendations through signals on a beeper for one year. But

² Respondents do not consent to the use of the Offers or this Order, or the findings to which they have consented in the Offers, as the sole basis for any other proceeding brought by the Commission other than a proceeding brought to enforce the terms of this Order. They do not consent to the use of the Offers or this Order, or the findings to which they have consented to in their Offers, by any other person or entity in this or any other proceeding. The findings to which they have consented in their Offers, as contained in this Order, are not binding on any other person or entity named as a respondent or defendant in this or in any other proceeding.

many customers did not receive the full year of service and several only received one or two months of signals. No rebates were given to these customers.

B. RESPONDENTS

Clayton J. Caulkins ("Caulkins"), 47, who currently resides at 9409 Drake Avenue, Evanston, Illinois 60203, was registered as an AP of both GTI and an FCM beginning on March 27, 1998. He was treasurer and a 24% shareholder of GTI until September 30, 1999, when he sold his shares in GTI. He terminated his registration as an AP of GTI on October 5, 1999, but is still registered as an AP of an FCM. He also has been registered as an AP of, and is listed as a principal of, another CTA, Global Trading Information, Inc. ("GTII"), since May 19, 1999.

Mark A. Pennings ("Pennings"), 28, who currently resides at 10352 South Wood #1, Chicago, Illinois 60643, was registered as an AP of both GTI and an FCM beginning on March 27, 1998. He was vice-president and a 24% shareholder of GTI until September 30, 1999, when he sold his shares in GTI. He terminated his registration as an AP of GTI on October 5, 1999, but is still registered as an AP of an FCM. He also has been registered as an AP of, and listed as a principal of, another CTA, GTII, since May 19, 1999.

C. FACTS

1. Formation and Operation of the CTA

In or around January 1998, Caulkins and Pennings together with a third principal planned to form a CTA that was supposed to review the performance records of other CTAs and then recommend trades of those CTAs to the public. The three principals purchased an interest in a dormant corporation, GTI, to be the corporate structure for the new CTA. Caulkins and Pennings each held 24% of the stock in GTI.

In addition to being APs of GTI, the three principals went to work as APs of an FCM in March 1998. They conducted business from the offices of the FCM, including the solicitation of new customers for the purchase of the trading signals from GTI's trading system and for opening an account and trading pursuant to the system through the FCM, from March 1998 until October 1999.

GTI claimed in its promotional literature to have looked at thousands of trading systems. But, the only trading system GTI promoted and offered to the public from GTI's inception in March 1998 until October 1999 was a pork belly futures trading system referred to as the "Pro-Managed" system or account (the "pork belly trading system"), developed by the principals of GTI and a Florida-based registered CTA. The three GTI principals solicited customers for GTI from existing customers they had at the FCM and from the public through advertisements in trade magazines, the Internet and a series of free seminars in Florida in December 1998.

GTI had approximately 74 customers who purchased signals from the pork belly trading system in 1998 and 1999 at a cost of \$4,500 for the first year of service. GTI thus took in approximately \$333,000 from customers. Caulkins and Pennings would receive anywhere from \$1,200 to \$2,000 for each system they sold. Pennings was responsible for selling approximately 15 of the pork belly trading systems and earned \$27,194 from his sales, while Caulkins was responsible for selling approximately 18 of the pork belly trading systems and earned \$34,500.

GTI's customers were supposed to receive trading signals on a beeper. At least 44 of GTI's customers opened accounts and executed trades through that FCM; some of these customers granted Pennings and another AP of the FCM limited powers of attorney over their accounts. Occasionally, some customers let Pennings and Caulkins place trades into their

accounts, when the signals called for certain trades to be made, without first contacting the customer.

The Florida CTA experienced heavy trading losses in June and July 1999. As a result, it ceased providing trading recommendations at the end of July 1999. In August 1999, the Florida firm ceased functioning as a CTA.

At least 25 of GTI's customers did not get their full first year of service, some received only one or two months of trading recommendations. GTI did not notify customers that signals were no longer being generated after July 1999, and it has not provided any rebates to customers who purchased the pork belly trading system and did not get the full year's worth of recommendations. In October 1999, Caulkins and Pennings sold their shares in GTI to the third principal for \$1.00 each.

2. Misleading Advertisements

GTI placed ads concerning the pork belly trading system in the August, September, October, November and December 1998 and February and March 1999 issues of Futures Magazine, as well as in the October, November and December 1998 issues of Stocks and Commodities Magazine. In these advertisements, GTI overstated the performance of the pork belly trading system and omitted the identity of the actual person whose performance record was being presented. GTI also failed to disclose that the performance results it selected to use in the advertisements represented only a subset of the Florida CTA's overall actual trading results from which the extracted results were drawn, which were significantly worse than the advertised results. In addition, the ads stated, "we are a registered CTA with an outstanding track record." This implies that GTI was directing trading for customer accounts when in fact, aside from occasionally placing trades in some GTI customers' accounts pursuant to limited powers of

attorney, neither GTI nor any of its principals had ever previously directed trading for any customer accounts, and GTI was not registered as a CTA until March 1998. Furthermore, GTI maintained a proprietary account at an FCM beginning in August 1998, which lost money trading the pork belly trading system. It was opened in August 1998 with a \$10,000 deposit. The account lost money eight of the twelve months it was active, suffering trading losses in September, October and December 1998 and in February, March, April, June and July 1999. By July 1999, the account's balance had dropped to \$398.42. However, GTI did not disclose this information in its advertisements, nor to its customers or prospective customers.

GTI's flier for the December 1998 seminars it held in south Florida for the pork belly trading system touted a 341% annual return and stated, "LEARN HOW OUR TRADER EARNED OVER \$34,000 IN 12 MONTHS ON A \$10,000 INVESTMENT. YOU COULD HAVE MADE 700% WITH OUR TRADING SYSTEM." The performance history of the Florida CTA does not support these claims. Furthermore, neither the Florida CTA, GTI nor any of its customers ever made a 700% return with the pork belly trading system.

GTI also made misrepresentations and misleading statements on GTI's web site from May 1998 through October 1999. GTI's web page stated, "Learn how we can make you over 300% profit per year on a small investment." It stated that GTI has "an outstanding track record," but the Florida CTA's track record does not support the claim of 300% profit and the web site does not reflect that GTI's own proprietary account at the FCM lost money. In addition, as with GTI's magazine advertisements, the web site showed extracted performance results of the Florida CTA's trading, but did not include the overall actual trading results from which the extracted results were drawn, which were significantly worse than the extracted results.

D. VIOLATIONS OF THE ACT AND COMMISSION REGULATIONS

1. Pennings and Caulkins Cheated and Defrauded Investors Through Fraudulent Sales Practices and Misleading Advertisements

Sections 4b(a)(i) and (iii) of the Act prohibit any person from cheating, defrauding, or attempting to cheat or defraud or willfully deceiving or attempting to deceive another person in connection with the trading of futures contracts. In order to establish a violation under these provisions, the Division must show that Defendants (1) made a material misrepresentation or omission or made false statements or reports (2) with scienter (3) in connection with the making of a contract for the sale of any commodity for future delivery for or on behalf of any other person. In re Slusser, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,314 (CFTC 1999) aff'd in part and rev'd in part on other grounds, 210 F.3d 783 (7th Cir. 2000). Each of these elements is established here.

Misrepresentations and Omissions

Caulkins and Pennings engaged in fraudulent sales practices and acts of deceit to promote the purchase and sale of commodity futures through an FCM. Such practices included false and misleading advertisements that overstated profit potential, misrepresented the Florida CTA's track record as that of GTI, omitted the complete results the Florida CTA had using its trading program and omitted to state that the only record GTI itself had trading the pork belly trading system was a losing record. See Commonwealth Financial Group, Inc. v. National Futures Association, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,993 at 44,797 (CFTC March 18, 1997)(Commonwealth defrauded its customers regarding the profitability of trading certain commodity futures through deceptive radio ads and telephone solicitations); In re R&W Technical Services, Ltd., [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582 (CFTC March 16, 1999), aff'd in relevant part, 205 F.3d 165 (5th Cir. 2000) (in soliciting

customers to purchase a trading system, respondents violated Section 4b(a)(i) and 4b(a)(iii) by making material misrepresentations regarding profit potential and risk of loss). Such conduct falls within the scope of the activities prohibited by Section 4b(a).

Materiality

Pennings and Caulkins obtained funds from customers through false and misleading advertising which overstated profit potential, misrepresented the Florida CTA's track record as that of GTI, omitted the complete results the Florida CTA had using his trading program and omitted to state that the only record GTI itself had trading the pork belly trading system was a losing record. Misrepresenting material facts to investors in soliciting their funds violates Section 4b of the Act. Saxe v. E.F. Hutton & Co., Inc., 789 F.2d 105, 110-111 (2nd Cir. 1986). At no time did Pennings and Caulkins disclose GTI's actual trading record to customers. Because "there is substantial likelihood that a reasonable investor would consider [such statements] important in making an investment decision," Id. at 111, Pennings and Caulkins misrepresentations and omissions satisfy Section 4b's materiality requirement. See also Slusser, ¶ 27,701 at 48,312 ("the Commission . . . has held consistently that in an enforcement action, the elements of 4b fraud do not include either investor reliance or actual damages. In an enforcement case, the focus is whether the broker made misrepresentations or failed to disclose material information").

Scienter

The scienter requirement of Section 4b requires a respondent to know "the nature and character" of his actions. R&W Technical Services, Ltd ¶ 27,582 at 47,743. This requirement is satisfied where the defendant acted intentionally or in reckless disregard for his duties under the Act. Slusser, ¶ 27,701 at 48,314 (scienter established by showing actions were intentional or

done with reckless disregard for respondents' duties under the Act). Scienter can be based on inferences drawn from circumstantial evidence. Id. at 48,314.

Pennings and Caulkins sold the pork belly trading system knowing that their material representations and omissions made to customers, as described above, were false or that they had no reasonable basis to make such material representations or omissions in reckless disregard for the truth. Thus, the scienter requirement is satisfied.

“In Connection With” And “For Or On Behalf Of”

Pennings and Caulkins committed these violations within the scope of their employment as APs of both the FCM and GTI concerning the common customers of GTI and the FCM's, and while they were operating GTI out of the FCM's office space. The fraudulent solicitations of prospective customers to purchase the trading system directly led to the opening of trading accounts at RB&H and the trading of commodity futures through these accounts. The “in or in connection with any order to make, or the making of,” a futures contract “for or on behalf of any other person” requirement of Section 4b extends to fraud which relates both directly and indirectly to futures transactions. E.g., Slusser, ¶ 27,701 at 48,312, citing Saxe v. E.F. Hutton & Co., Inc., 789 F.2d 105, 111 (2nd Cir. 1986) (“[T]he legislative history indicates a progressive trend toward broader application of the CEA”); Hirk v. Agri-Research Council, Inc., 561 F.2d 96, 103-4 (7th Cir. 1977) (“[C]learly Congress has recognized through the years that fraudulent and deceptive conduct in connection with futures transactions can and does occur prior to the actual opening of a trading account and has intended to regulate it by including the “in connection with” language in Section 4b”). The fraud needs to concern the characteristics and attributes that would induce an investor to buy or sell a futures contract. Kearney v. Prudential-Bache Securities, 701 F. Supp. 416, 424 (S.D.N.Y. 1988). Here, the promise of profitability and

minimization of risk made in the written solicitations, coupled with the solicitation to open an account at the FCM to trade futures, satisfies the “in connection with” requirement of Section 4b. The purpose and function of the purchase of the pork belly trading system is to receive signals to execute futures transactions. The intended and direct link between the advertisements and the trading of commodity futures render the misrepresentations in the advertisements about the system, how it functions, and the risks involved, “in connection with” the suggested futures transactions. CFTC v. Vartuli, 228 F.2d 94, 101 (2nd Cir. 2000).

Further, since Caulkins and Pennings acted as APs of the FCM for the accounts traded by customers on the signals from the system, and earned commissions from such trading, their fraud on the sale of the system relates to, and satisfies, Section 4b’s “for or on behalf of” language. See Commodity Trend Service, Inc. v. CFTC, 233 F.3d 981, 992 (7th Cir. 2000)(broker or other agency relationship required to bring conduct under Section 4b’s “for or on behalf of” language).

2. As APs of GTI, Pennings and Caulkins Cheated and Defrauded Investors

Section 4o(1)(A) of the Act makes it unlawful for a CTA, or an AP of a CTA, to employ any device, scheme or artifice to defraud any client or participant or prospective client or participant by use of the mails or any means or instrumentality of interstate commerce. Similarly, Section 4o(1)(B) of the Act prohibits a CTA, or an AP of a CTA, from directly or indirectly engaging in any practice or course of business which operates as a fraud or deceit upon any client or participant by the use of the mails or any means or instrumentality of interstate commerce. The same conduct that constitutes violations of Section 4b can constitute violations of Section 4o(1). CFTC v. Skorupskas, 605 F. Supp. 923, 932-33 (E.D. Mich. 1985). See also Hirk, 561 F.2d at 103-04 (fraudulent inducement is covered by both Sections 4b and 4o of the Act); R&W Technical Services, Ltd., ¶ 27,582 at 47,745 (Because CFTC found that R&W

violated Section 4b(a) of the Act, further analysis was not needed to conclude that R&W also violated Section 4o(1)).

During the relevant time, Pennings and Caulkins, acting as AP's of GTI, a CTA, violated Section 4o(1) of the Act by virtue of the same fraudulent acts, misrepresentations and omissions discussed above that violated Section 4b. Their activities were covered by Section 4o(1) because GTI was a CTA and Pennings and Caulkins were APs of GTI. Pennings and Caulkins engaged in those fraudulent acts, misrepresentations and omissions to convince customers to purchase trading signals generated by the pork belly trading system. In addition to the violations discussed above, Pennings and Caulkins failure to provide rebates to customers who purchased a year's worth of trading signals, but received less than a year's worth of service, operated as fraud upon these customers, in violation of Section 4o(1).

3. Pennings and Caulkins Defrauded Investors Through Misleading Advertisements

Commission Regulation 4.41(a) prohibits a CTA, or any principal thereof, from employing any device, scheme or artifice to defraud any participant or client or prospective participant or client in its advertising. Pennings and Caulkins defrauded investors through false and misleading advertisements, which overstated profit potential, misrepresented the Florida CTA's track record as that of GTI, omitted trades from the Florida CTA's overall trading record and omitted to state that the only GTI track record with the pork belly trading system was a losing one. See In the Matter of Martin A. Armstrong, [1994 - 1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,332 at 42,604 (CFTC March 10, 1995) (respondent violated Regulation 4.41(a) by publishing advertisements that misrepresented hypothetical performance results as actual trading).

IV.

OFFER OF SETTLEMENT

Pennings and Caulkins have each submitted an Offer of Settlement in which each neither admits nor denies the findings in the Order. Subject to the foregoing, each of the Respondents: acknowledges service of this Order and admits the jurisdiction of the Commission with respect to the matters set forth in this Order; waives: (1) the filing of a Complaint and Notice of Hearing; (2) a hearing and all post-hearing procedures; (3) judicial review by any court; (4) any objection to the staff's participation in the Commission's consideration of their Offer; (5) all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-232, 110 Stat. 862-63, and part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, et seq. (2000), relating to, or arising from this action; and (6) any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief.

The Respondents stipulate that the record basis on which this Order is entered consists of this Order and the findings to which Respondents consented to in their respective Offers, which are incorporated in this Order. The Respondents consent to the Commission's issuance of this Order, which makes findings as set forth herein and orders that: (1) the Respondents cease and desist from violating the provisions of the Act and the Commission Regulation they are found to have violated; (2) the Respondents' registrations as APs be suspended for a period of six months beginning the third Monday after the date of this Order; (3) Pennings pay a civil monetary penalty of \$27,194 and Caulkins pay a civil monetary penalty of \$34,500, pursuant to a ten year payment plan ("payment plan"); and (4) the Respondents comply with their undertakings as set forth in their respective Offers and incorporated in this Order.

V.

FINDING OF VIOLATIONS

Solely on the basis of Pennings and Caulkins consent, as evidenced by their Offers, and prior to any adjudication on the merits, the Commission finds that Respondents Pennings and Caulkins violated Sections 4b(a)(i) and (iii) and 4o(1) of the Act, 7 U.S.C §§ 6b(a)(i) and (iii) and 6o(1)(1994), and Commission Regulation 4.41(a), 17 C.F.R. §§ 4.41(a) (2000).

VI.

ORDER

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

1. Pennings and Caulkins shall cease and desist from violating Sections 4b(a)(i) and (iii) and 4o(1) of the Act and Commission Regulation 4.41(a);
2. All of Pennings' and Caulkins' registrations with the Commission as APs shall be suspended for a period of six months commencing on the third Monday after the date of this Order;
3. Pennings shall pay a civil monetary penalty ("CMP") in the amount of \$27,194 and Caulkins shall pay a CMP in the amount of \$34,500, pursuant to a payment plan. Pennings and Caulkins each shall make an annual CMP payment ("Annual CMP Payment") as directed by a monitor designated by the Commission (the "Monitor") on or before July 31 of each calendar year, starting in calendar year 2002 and continuing for ten years (or until the civil monetary penalty is paid in full, if that happens first).³ Pennings and Caulkins shall make each such

³ Pennings and Caulkins ten-year CMP period shall run from January 1, 2001 through December 31, 2010. Annual CMP payments for a calendar year shall take place by July 31 of the following year. Therefore, the final Annual CMP payment for the year 2010 will occur on or before July 31, 2011.

Annual CMP Payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, under cover of a letter that identifies Pennings or Caulkins and the name and docket number of the proceeding; Pennings and Caulkins shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor and to the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2) (1994), if Pennings and Caulkins fail to pay the full amount of their Annual CMP Payment within fifteen (15) days of the due date, they shall be automatically prohibited from trading on all “registered entities,” as defined in Section 1a(29) of the Act, as amended by the CFMA, 7 U.S.C. § 1a(29), and if they are registered with the Commission, such registration shall be automatically suspended until they show to the satisfaction of the Commission that payment of the full amount of the Annual CMP Payment with interest thereon to the date of payment has been made.

4. The amount of Pennings’ and Caulkins’ Annual CMP Payment shall consist of a portion of (1) the adjusted gross income (as defined by the Internal Revenue Code) earned or received by Pennings and Caulkins during the course of the preceding calendar year, plus (2) all other net cash receipts, net cash entitlements or net proceeds of non-cash assets received by Pennings and Caulkins during the course of the preceding calendar year. The Annual CMP Payment will be determined as follows:

Where Adjusted Gross Income Plus Net Cash Receipts Total:	Percent of Total to be Paid by Pennings and Caulkins is:
Up to \$50,000	0%
\$50,000 - \$100,000	30% of the amount above \$50,000
Above \$100,000	\$15,000 (30% of the amount between \$50,000 and \$100,000) plus 40% of the amount above \$100,000

5. In the event that Pennings and Caulkins do not make payments as directed in paragraphs 3 and 4, above, the Commission may bring a proceeding or an action to enforce compliance with this Order and at its option may seek payment of the unpaid Annual CMP payment(s) or immediate payment of the entire amount of the civil monetary penalty required by paragraph 3, above. The only issue Pennings and Caulkins may raise in defense of such enforcement action is whether Pennings and Caulkins have made the Annual CMP Payment(s) as directed by the Monitor. Any action or proceeding brought by the Commission compelling payment of the Annual CMP Payments, due and owing pursuant to paragraphs 3 and 4, above, or any portion thereof, or any acceptance by the Commission of partial payment of the Annual CMP Payments made by Pennings and Caulkins, shall not be deemed a waiver of Pennings' and Caulkins' obligations to make further payments pursuant to the payment plan, or a waiver of the Commission's right to seek to compel payments of the remaining balance of the civil monetary penalty assessed against Pennings and Caulkins.

6. The Commission notes that an order requiring immediate payment of the entire amounts of the civil monetary penalties against Pennings and Caulkins would be appropriate in this case, but does not impose it based upon Pennings' and Caulkins' financial conditions. Pennings and Caulkins acknowledge that the Commission's acceptance of their Offers is conditioned upon the accuracy and completeness of the sworn Financial Statements and other

evidence Pennings and Caulkins have provided regarding their financial conditions. Pennings and Caulkins consent that if at any time following the entry of this Order, the Division obtains information indicating that Pennings' and Caulkins' representations concerning their financial conditions were fraudulent, misleading, inaccurate or incomplete in any material respect at the time they were made, the Division of Enforcement may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Pennings and Caulkins provided accurate and complete financial information at the time such representations were made; (2) require immediate payment of the full amount of the civil monetary penalty required by paragraph 3 above; and (3) seek any additional remedies that the Commission would be authorized to impose in this proceeding if Pennings' and Caulkins Offers had not been accepted. No other issues shall be considered in connection with this petition other than whether the financial information provided by Pennings and Caulkins was fraudulent, misleading, inaccurate or incomplete in any material respect, and whether any additional remedies should be imposed. Pennings and Caulkins may not, by way of defense to any such petition, contest the validity of, or the findings in, this Order, assert that payment of a civil monetary penalty should not be ordered, or contest the amount of the civil monetary penalty to be paid. If in such proceeding, the Division petitions for, and the Commission orders, payment of less than the full amount of the civil monetary penalty, such petition shall not be deemed a waiver of Pennings' and Caulkins' obligations to pay the remaining balance of the civil monetary penalty assessed against them, pursuant to the payment plan; and

7. Pennings and Caulkins shall comply with the following undertakings, as set forth in their respective Offers:

A. Reporting/Disclosure Requirements to be Reviewed by Monitor.

Pennings and Caulkins shall provide their sworn financial statements to the Monitor⁴ on June 30 and December 31 of each calendar year, starting December 31, 2001, and continuing through and including June 30, 2011. The financial statements shall provide:

- i. a true and complete itemization of all of Pennings' and Caulkins' rights, title and interest in (or claimed in) any asset, wherever, however and by whomever held;
- ii. an itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of Pennings and Caulkins over the preceding six-month interval; and
- iii. a detailed description of the source and amount of all of Pennings' and Caulkins' income or earnings, however generated.

Pennings and Caulkins shall also provide the Monitor with complete copies of their signed federal income tax returns, including all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filings they are required to submit to any state tax or revenue authority, on or before May 15 of each calendar year, or as soon thereafter, beginning in 2002 and ending in 2011. If Pennings and Caulkins move their residences at any time, they shall provide written notice of their new addresses to the Monitor and the Commission within ten (10) days thereof.

⁴ Pennings and Caulkins agree that the National Futures Association is hereby designated as the Monitor for a period of eleven years commencing from January 1, 2001. Notice to the Monitor shall be made to Daniel A. Driscoll, Esq., Executive Vice President, Chief Compliance Officer, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, IL 60606. For ten years, based on the information contained in Pennings' and Caulkins' sworn financial statements, tax returns and the other financial statements and records provided to the Monitor, the Monitor shall calculate the total amount of the civil monetary penalty to be paid by Pennings and Caulkins for the year. On or before June 30 of each year and starting in calendar year 2002, the Monitor shall also send written notice to Pennings and Caulkins with instructions to pay by no later than July 31 of that year the amount of the civil monetary penalty pursuant to the payment instructions provided in paragraph three and four.

B. Cooperation. Pennings and Caulkins shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all aspects of their Annual CMP Payment. They shall cooperate fully with the Monitor and the Commission in explaining their financial income and earnings, status of assets, financial statements, asset transfers, tax returns, and shall provide any information concerning themselves as may be required by the Commission. Furthermore, Pennings and Caulkins shall provide such additional information and documents with respect thereto as may be requested by the Monitor or the Commission. Finally, Pennings and Caulkins shall cooperate fully with the Division of Enforcement in this proceeding, and in any investigation, civil litigation and administrative proceeding related to this proceeding, by, among other things: 1) responding promptly, completely, and truthfully to inquiries or requests for information; 2) authenticating documents; 3) testifying completely and truthfully; and 4) not asserting privileges under the Fifth Amendment of the United States Constitution.

C. Fraudulent Transfers. Pennings and Caulkins shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any member of Pennings' and Caulkins' families or any other person for the purpose of concealing such funds or property from the Monitor or the Commission.

D. Registration With The Commission. All of Pennings' and Caulkins' registrations as APs with the Commission shall be suspended for a period of 6 months following the third Monday after entry of the Order. During that period, Pennings and Caulkins shall not apply for registration or claim exemption from registration with the Commission in any other capacity and they shall not engage in any activity requiring registration or exemption from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2000), or act as a principal, agent, officer or employee of any person registered, exempted from registration or

required to be registered, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2000); and

E. Public Statements. Neither Pennings, Caulkins nor any of their agents or employees under their authority or control, shall take any action or make any public statements denying, directly or indirectly, any finding 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 Pennings' and Caulkins' (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party.

The provisions of this Order shall be effective on this date, unless otherwise specified.

By the Commission:

Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission

Dated: July 18, 2001