UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

In the Matter of	:	CFTC Docket No. 02-03
REPUBLIC NEW YORK SECURITIES CORPORATION,	:	ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c), 6(d) AND 8a(2) OF THE COMMODITY EXCHANGE ACT, AS AMENDED, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS
Respondent	:	

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Republic New York Securities Corporation ("Republic") has violated Sections 4b, 4d(a)(2), and 4g of the Commodity Exchange Act, as amended ("the Act"), 7 U.S.C. §§ 6b, 6d(a)(2), and 6g, and Commission Regulations 1.20, 1.22, 1.33, 1.35. 1.37, 32.6, 33.10, 166.2 and 166.3, 17 C.F.R. §§ 1.20, 1.22, 1.33, 1.35. 1.37, 32.6, 33.10, 166.2 and 166.3 (2001). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether Republic has engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of this administrative proceeding, Republic has submitted an Offer of Settlement ("Offer") that the Commission has determined to accept. Without admitting or denying the findings herein, Republic acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c), 6(d) and 8a(2) of the Commodity Exchange Act, As Amended, Making Findings and Imposing Remedial Sanctions ("Order"). Republic consents to the use by the Commission of the findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.[1]

III.

[1]Republic does not consent to the use of the Offer or the findings in this Order as the sole basis for any other proceeding brought by the Commission, other than a proceeding brought to enforce the terms of this Order. Republic also does not consent to the use of the Offer or the findings in the Order by any other person or entity in this or any other proceeding. The findings made in the Order are not binding on any other person or entity, including, but not limited to, any person or entity named as a defendant or respondent in any other proceeding.

The Commission finds that:

A. SUMMARY

From November 1995 until August 1999 ("the relevant period"), Republic employees[2] aided and abetted a commodity futures trading fraud perpetrated by Martin Armstrong ("Armstrong") and Princeton Economics International Ltd. ("PEIL") and Princeton Global Management Ltd. ("PGM"), companies controlled by Armstrong (collectively referred to herein as "Princeton"). Through Princeton, Armstrong directed trading on behalf of a number of separately incorporated companies that were individually funded by primarily Japanese corporations. ("investors"). Armstrong hid trading losses from commodity futures and options trading through Republic of in excess of $550 million. Armstrong created the illusion that investor funds in the Princeton accounts were maintained in separate accounts at Republic and that those investments were performing within expectations promised by Armstrong. In fact, by combining and commingling investor funds, Armstrong concealed from investors the large trading losses; improperly charged "performance fees" based upon the false performance claims; repaid earlier investors in the manner of a Ponzi scheme, and made withdrawals for other improper disbursements. Investors incurred in excess of $700 million in out of pocket losses from funds deposited at Republic.[3]

Republic primarily assisted the Armstrong scheme by issuing more than 200 Net Asset Value letters ("NAV letters") to Armstrong, knowing that Armstrong then forwarded the NAV letters to the investors. The NAV letters purported to represent the funds available in specific accounts. However, Republic knew that the majority of the NAV letters materially overstated the funds available in the accounts, as detailed below.

As a result of Republic's participation in the fraudulent scheme, Republic's books and records overstated and misclassified assets in certain investor accounts, mis-identified (after the fall of 1998) true account owners and were therefore not current and correct as required by Commission regulations concerning FCM's. Separate from certain Republic officers' direct knowledge and participation in the fraud, Republic's supervisory employees failed to ensure adherence to Republic's internal compliance procedures which would have alerted it to the Armstrong fraud. Republic's supervisory employees also failed to act upon the information available to them which raised red flags about Armstrong's business.

Separately, Republic, at the direction of a Princeton principal, also allocated trades to the detriment of certain Princeton investor accounts. Republic attempted to conceal this activity by omitting and misclassifying the account numbers on trade order

[2] None of the employees involved in the scheme is currently employed by Republic, its parent or affiliates.
[3] Approximately $80 million in cash and several million more in real property, coins and antiquities have been recovered to date by the receiver appointed in connection with the related federal action brought by the Commission.

tickets until after trade execution. As a result, Republic did not follow Commission regulations pertaining to identification of trading accounts at the time of order placement.

The Princeton entities generated approximately $35 million in commissions for Republic from 1995 through August 1999. Collectively, the PGM company accounts represented Republic's largest source of business outside of transactions performed for Republic's affiliates.

Since disclosure of the false NAV letters to the Commission in late summer 1999, Republic, through its parent, Republic New York Corporation ("RNYC"), and RNYC's successor HSBC USA, Inc., have provided exemplary cooperation in the Commission's investigation of this matter. The Commission has also considered the fact that Republic is likely to pay substantial restitution in other related proceedings. The Commission has taken these factors into consideration in its decision to accept Republic's offer of settlement.

B. RESPONDENT

Republic New York Securities Corporation is a company incorporated in Maryland and headquartered in New York. Republic has been registered as an FCM since 1993 and a CTA since 1994. The company no longer transacts any business on behalf of public customers.

C. FACTS

1. ARMSTRONG'S VIOLATIONS, AS ALLEGED IN THE FEDERAL ACTION

On September 13, 1999, the Commission filed an injunctive action in the United States District Court for the Southern District of New York ("SDNY"), case number 99 Civ. 9669 (RO), against Armstrong and two entities which Armstrong wholly owned and controlled, Princeton Economics International Ltd. ("PEIL") and Princeton Global Management Ltd. ("PGM"). The Commission's complaint alleges that defendants raised significant sums of money from the sale of Notes to investors. Defendants allegedly pooled the proceeds from the sale and used them to trade commodity futures and options at Republic. During the relevant time period, defendants incurred huge futures trading losses that they attempted to, and did, conceal from the investors by, among other means, providing them with false NAV letters. The action alleges that the defendants, acting as commodity trading advisors and commodity pool operators, engaged in fraudulent conduct in violation of §4b(a) of the Act, 7 U.S.C. §6b(a) (1994), and §4o(1) of the Act,

7 U.S.C. §4o(1) (1994), and improperly acted without registration.[4]

2. REPUBLIC KNEW OF AND PARTICIPATED IN THE PRINCETON SCHEME.

a) Establishment of the PGM Company Accounts

Between 1995 and 1999, over 150 variously denominated Princeton Global Management (PGM) companies opened separate accounts and invested funds in those separate accounts at Republic. Armstrong then combined and commingled those investor funds in furtherance of his fraudulent scheme. When opening the initial accounts, Republic's credit committee determined that there were no cross-corporate guarantees between the accounts and that each PGM account "is a separate legal entity with all margins payments funded separately." From 1995 to November 1997, Armstrong conducted futures trading in the individual PGM company accounts. The Princeton entities traded futures in at least the following commodities: light crude, gold, silver, platinum, currency (yen, dollar, rubles, deutsche marks), and indexes (Nikkei, Matif, Dow Avg, IMM NASDAQ, and S&P 500). The Princeton entities also placed option trades in the various commodities primarily concentrating on the S&P 500 index.

In the fall of 1997, Princeton moved the futures trading to separately designated accounts. Instead of trading in each individual PGM company account, Armstrong used eight separately named Princeton accounts for trading, each devoted to a different commodity interest (e.g., Metals, Currency). From November 1997 through 1999, the Princeton entities' trading losses in these eight accounts totaled approximately $350 million. Trading and other withdrawals in the eight trading accounts, and in the subsequently created sub-accounts detailed below, were indiscriminately funded by PGM company accounts with available collateral. Therefore, the individual corporate accounts were used in what amounted to a "shell game," in which money was moved due to availability of funds and not based upon beneficial ownership.

In the fall of 1998, at Republic's insistence, Armstrong executed a cross-margining agreement (guaranty) in an attempt to use credit balances in 15 highly-capitalized PGM company accounts as collateral against debit balances, which included substantial trading losses, in the eight trading accounts. Shortly thereafter, Republic moved all of the credit balances from approximately 120 separate PGM accounts to mirror sub-accounts of a master account entitled PGM Ltd. Armstrong purportedly authorized these transfers in a series of letters on PEIL's letterhead. After the fall of 1998, new sub-accounts were created for additional investments.

[4] On September 13,1999, the Court entered a statutory restraining order against all defendants which, among other things, appointed a Receiver to locate and maintain assets under the control of the corporate defendants. On October 28, the Court entered a preliminary injunction against all defendants and on November 23, 1999 the Court entered a further Order effectuating the specific relief sought in the Commission's original application.

Republic knew that the separate accounts that were opened by more than 150 PGM companies represented separate investments. Republic also knew that Armstrong was soliciting potential investors as a financial manager. In addition, the Republic account opening documentation for the PGM company accounts raised red flags, putting Republic on notice that PEIL and Armstrong were improperly commingling the invested funds of each separate PGM company account. Specifically, Republic was put on notice through a "Supplement to the Customer Agreement" ("Supplement"), which it negotiated with Armstrong at Armstrong's request, that each PGM account owner, through Armstrong, was establishing its own separate account at Republic in order to deposit funds in a purportedly segregated account. Accordingly, the Supplement also obligated Republic in each case to hold the segregated funds as a "fiduciary on behalf of the (PGM) company." In addition, the Supplement and attachments designated PEIL to receive advisory fees as the CTA. Other account documentation, including a power of attorney in favor of PEIL, denied PEIL the authority to withdraw any money, securities, or other property from the account. In addition, although the account opening documentation stated that the trading for the individual PGM accounts was for hedging purposes only, at the same time Republic's staff profiled Princeton's trading as speculative.

Separately, the account documentation and Republic's knowledge that the PGM accounts represented separate investors should have prohibited Republic from allowing PEIL to execute the guaranty or make inter-company transfers of PGM account funds. Regardless, Armstrong combined and commingled investor funds for use in a broad spectrum of futures and options trading. Republic knew or recklessly disregarded the fact that the guaranty between the 15 PGM company accounts and the trading accounts violated restrictions contained in the account opening documents. Similarly, the transfer of all of the funds from the numerous PGM company accounts into sub-accounts of PGM Ltd. also violated restrictions in the account opening documents. Republic also knew or recklessly disregarded that the movement of funds between PGM accounts and the eventual consolidation of those funds into the PGM Ltd. master account was inconsistent with the rationale for establishment of the separate accounts in the first place. These and other factors, of which Republic had actual knowledge, led to an obligation upon Republic to perform due diligence to confirm whether Armstrong was authorized to pledge the funds under the guaranty or move them between accounts. In fact, although senior Republic officials recognized that due diligence was necessary to confirm Armstrong's authorization, none was completed.[5]

b) Republic's participation in the scheme

Republic knew from the outset of its relationship with the Princeton entities that the funds deposited at Republic by the PGM companies primarily originated from Japanese investors. Republic knew that PGM Ltd. advertised itself as a conservative

[5] Had Republic conducted due diligence it would likely have led to the review of documents referred to as the PGM "Notes" which ultimately established the funding for each PGM company account. The "Notes" generally restricted each PGM company, absent consent from the investor, from incurring any indebtedness, consolidating or merging with any other company or giving any guaranty or indemnity.

financial manager that implemented a hedging strategy against exposure in fluctuations in currency exchange rates. Republic also came to know that the Princeton entities intended for the investors to believe, and those investors did believe, that the individual PGM company accounts were established at Republic as separate segregated accounts for their benefit.

Republic issued approximately 200 NAV letters which misrepresented the actual credit balance and the amount of securities on deposit in the account. Republic knew that the NAV letters failed to include any offset for trading losses, sales of securities, or other withdrawals attributable to the account, and to advise that the account balance included transfers from other accounts rather than interest accrual or other investment return. Certain Republic officers knew that Armstrong intended to and did send the NAV letters to the investors. The employees issuing the NAV letters failed to send copies of these letters to Republic's compliance department. In addition, on at least one occasion, at Princeton's direction and in violation of Republic's own internal compliance procedures, Republic moved funds into an investor's account from a separate account to justify the level of funds reported to the investor, and then showed the inflated balance to the investor's representatives during their visit to Republic's Philadelphia office.

Republic failed to apprise the New York Mercantile Exchange ("NYMEX"), the Designated Self Regulatory Organization for Republic, of Republic's knowledge about the Princeton business. NYMEX raised several questions about the Princeton business during its audits of Republic between 1995 and 1999. It does not appear that Republic advised NYMEX that an internal credit report in 1998 rated Republic as unsatisfactory because of the Princeton business. In affirmatively responding to a NYMEX inquiry concerning whether the accounts satisfied margin and deficit requirements, Republic claimed, without conducting adequate due diligence, that the PGM entities were re-incorporated as one entity. In addition, Republic did not advise NYMEX that it believed due diligence was necessary to confirm Armstrong's authorization to execute the guaranty which was established to fund the deficits in the trading accounts with cash balances from separately-owned PGM accounts before the purported re-incorporation. Moreover, although account documents, among other things, stated that PEIL was acting as a CTA, Republic advised NYMEX in 1996 and the fall of 1998 that the activities of Princeton Global Management did not require registration. Had it known these facts, NYMEX likely would have made further inquiries.

2. REPUBLIC ALLOCATED TRADES

Commencing on or about August 1997, Republic agreed to and did allow a Princeton principal to allocate trades in favor of a third party account and to the detriment of the Princeton/investor accounts. An analysis of the trading results for day trades in the affected accounts show widely disparate returns among the affected accounts: 85% of trades placed in the Princeton principal's account earned money while only 40% of the trades placed in the other two accounts at Republic, one of which was an investor account, traded by the same person for the same commodity future earned money for the

same period. Original floor order tickets show that account numbers for the three accounts were added to the order tickets for day trades after the trades were executed.

3. REPUBLIC FAILED TO SUPERVISE

Republic's transmittal of NAV letters and the failure to send copies of the letters to the Compliance department violated corporate compliance guidelines. Compliance procedures concerning review of trade tickets and account opening documents were also ignored. Republic's "know your customer" ("KYC") policies were not implemented. The KYC policy required Republic personnel handling accounts to review the following activities: 1) an increase in level of customer activity; 2) change to a more speculative investment strategy; 3) accounts reflecting significant trading losses; and 4) accounts reflecting monetary transactions that are not consistent with trading activity (e.g. in and out wire transfers not supported by trading activity). All four of these activities were prevalent during the entire period that Princeton had accounts at Republic, yet it does not appear that Republic monitored the activities as required by its guidelines and procedures. Republic also failed to implement the required procedures concerning correspondence, trade tickets, account opening and account activity.

D. VIOLATIONS OF THE ACT AND COMMISSION REGULATIONS

1. Aiding and Abetting the Princeton Fraud

Section 13(a) of the Act provides:

> [a]ny person who commits, or who willfully aids, abets, counsels, commands, induces, or procures the commission of, a violation of any of the provisions of th[e] Act [or Regulations], or who acts in combination or concert with any other person in any such violation, or who willfully causes an act to be done or omitted which if directly performed or omitted by him or another would be a violation of the [Act or Regulations], may be held responsible for such violation as a principal.

7 U.S.C. §13c(a) (1994). Liability as an aider and abettor requires proof that (1) the Act was violated, (2) the named respondent had knowledge of the wrongdoing underlying the violation, and (3) the named respondent intentionally assisted the primary wrongdoer. In re Nikkhah, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) P 28,129 at 49,888 (CFTC May 12, 2000). It is not necessary to prove that the aider and abettor knew that

the principal's conduct was unlawful, Id.,[6] or that the aider "participated in every phase of the criminal venture or that he had knowledge of the particular means by which the principal would carry out the criminal activity, or knew every last detail of the substantive offense." Richardson, (CCH) ¶ 21,145 at 24,644 (citations omitted). The aider and abettor may do so without invitation or encouragement – he need not be invited to be a co-conspirator in order to be liable as an aider and abettor. Rather, it is enough that the aider and abettor knowingly participate in the venture and seek by his actions to make it succeed.

Direct evidence establishes all of the elements of an aiding and abetting claim concerning the fraud perpetrated on the investors between 1995 and 1999. As alleged in the federal action, Armstrong and Princeton violated Section 4b of the Act; they hid trading losses and other unauthorized withdrawals from the Investors, and misled the Investors about the true account structure at Republic. Republic knew that Armstrong and Princeton engaged in those fraudulent acts. Republic intentionally assisted those acts; Republic prepared NAV letters that it knew contained misrepresentations or omissions in the account values, did not account for trading losses and withdrawals which occurred in separate trading accounts, and that, in some instances, failed to disclose that account values sometimes increased due to temporary transfer of funds from other PGM accounts rather than from interest accrual or other investment return.

Circumstantial evidence also confirms Republic's participation. Direct evidence of the aider and abettor's state of mind is not necessary; a court may draw from the surrounding circumstances. In re Premex Inc. , [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,992 at 28,361 (CFTC 1984), aff'd in part, rev'd in part sub nom. Premex, Inc. v. CFTC, 785 F. 2d 1403 (9th Cir. 1986). The aider and abettor's knowledge "need not be actual, direct, positive, or absolute, but may be constructive, implied, or circumstantial." In re Lincolnwood Commodities Inc. (CCH) ¶21,986 at 28,255 (quoting Costello v. United States 255 F. 2d 389, 400 (8th Cir.) cert. denied, 459 U.S. 991 (1982).

Separate from knowledge of the fraud by certain Republic officers, the facts and circumstances demonstrate that Republic was on notice of numerous facts that pointed to the fraudulent scheme. Republic knew the serial incorporation of offshore entities and serial creation of accounts at Republic created the impression that the accounts were separate from each other. While Republic helped Armstrong create the appearance of separate corporate accounts, Republic also assisted in the movement of funds between accounts and knew that all of the accounts were being pooled in order to fund Armstrong's trading losses. Republic also was on notice of actions brought by the Commission against Armstrong and firms controlled by Armstrong for fraud, among other things.

[6] Lincolnwood further held that "[I]gnorance of the law is no more a defense for the aider and abettor than it is for the primary wrongdoer….This is especially true when the person charged with aiding and abetting a violation is himself an industry professional who operates in a highly regulated field which imposes duties on him that do not attach to the public at large." Id. at 28,255 (citations omitted).

2) Republic's Allocation Fraud

Section 4b(a) of the Act is violated if an AP allocates trades in a way that consistently disadvantages a particular customer. In re GNP, [1990-92 transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,360, 39,214 (CFTC Aug. 11, 1992), aff'd in part and modified sub nom., Monieson v. CFTC, 996 F.2d 852 (7th Cir 1993). See also In re Shahrokh Nikkhah [Current Transfer Binder] Comm. Fut. L. Rep (CCH) P 28,219 at 49,885 (CFTC May 12, 2000), In re Lincolnwood, [1982-84 transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,986 (CFTC Jan. 31, 1984). Regulation 166.2 is also violated if an associated person ("AP") enters trades without specific customer authorization. In re Heitschmidt [1994-96 transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,263 at 42,204 (CFTC Nov. 9, 1994). Certain Republic APs knowingly allocated executed trades to benefit a Princeton principal to the consistent detriment of an Investor.

3) Regulatory Violations

a) Failure to separately maintain customer accounts

Section 4d of the Act and Regulations 1.20(c), 1.22 and 32.6, 17 C.F.R. §§ 1.20(c), 1.22 and 32.6, set forth an FCM's obligations to separately maintain and account for customer funds. "[T]he use of a customer's funds to margin or guarantee the trades or contracts of another customer is strictly prohibited. See [§ 4d(2) of the Act]." (Bibbo v. Dean Witter Reynolds, 151 F.3d 559, 562 fn. 6 (6th Cir. 1998)). Section 4d provides that one customer's funds shall not be used to margin or guarantee the trades or extend the credit of any other customer or person. Regulation 1.20(c) provides that funds of a commodity or option customer shall not be commingled with "any other person" and that customer funds shall not be "used to secure or guarantee the trades, contracts or commodity options, or to secure or extend the credit, of any person other than the one for whom the same are held." Regulation 1.22 prohibits FCMs from using, or permitting the use of, the customer funds of one customer to pay for or margin the trades of another customer. Regulation 32.6 requires that money, securities and property of option customers shall be separately accounted for and segregated as belonging to the option customer and shall not be commingled with the money, securities or property of other persons.

Republic knew that the separate corporate accounts were intended to benefit separate investors. Commission rules and regulations were violated because Republic failed to keep the PGM accounts separate. Republic's violations occurred between 1995 and 1999 through a succession of means, including inter-company transfers that were not properly authorized, placement of trades on behalf of all the PGM companies in the eight trading accounts, permitting Armstrong to execute a guaranty allowing cross-margining among all PGM company accounts, and consolidation of all investor funds in one account in the name of PGM Ltd. For example, based on the information available in the account opening documents, Republic had the fiduciary obligation to determine whether any request to transfer funds from the segregated account to an account not owned by the PGM company was appropriately authorized by the PGM company. However, Republic

never attempted to determine whether the transfers were authorized by the particular PGM companies affected. In addition, the power of attorney prohibited PEIL, the designated investment advisor over the PGM company accounts, from making withdrawals of cash or securities from those accounts. Another account form also only allowed transfers between accounts owned by the specific PGM company. Moreover, senior Republic employees recognized that due diligence should have been conducted to determine whether Armstrong could guarantee certain trading accounts with collateral from other accounts, or transfer all of the collateral from the PGM accounts into one master account, but no such due diligence was timely completed.

b) Record Keeping Violations

Section 4g of the Act, which requires an FCM to make reports and maintain records as required by the Commission, and Regulations 1.33, 1.35 and 1.37, 17 C.F.R. §§ 1.33, 1.35 and 1.37, imposes duties on the FCM concerning maintenance of its records. Regulation 1.33 obligates the FCM to furnish monthly account statements for each commodity customer. The statements must "clearly show" (1) all open futures contracts at the prices acquired; (2) the net unrealized profit or loss on all open futures contracts marked to the market; (3) all customer funds carried in the account; and (4) a detailed accounting of all financial charges and credits to the customer's account. Regulation 1.33(a)(1). Pursuant to Regulation 1.35(a-1), the FCM is obligated to record a customer's trade order, including the account identification and order number, immediately upon receipt thereof. Rule 1.37 requires that each FCM "shall show for each commodity futures or option account carried or introduced by it the true name and address of the person for whom such account is carried…." Regulation 1.37.

Through Republic, Armstrong improperly combined and commingled investor funds, concealed the large trading losses, charged improper fees, and made other inappropriate withdrawals. By providing assistance to Armstrong's unauthorized conduct, Republic did not recognize that each PGM account was separate from every other PGM account. As such, Republic violated its record keeping obligations by failing to ensure: 1) that account statements accurately reflected the status of trading, losses and collateral attributable to the particular account; 2) that trade order tickets immediately recorded the customer's account identification number; and 3) that, following the fall of 1998, it carried the separate PGM company accounts in their own names, rather than through one omnibus account.

c) Republic Failed to Supervise

To determine whether a registrant has failed to supervise diligently, it must first be determined whether there existed a program of supervision designed to detect violations and, if so, whether the relevant policies and procedures were followed in practice. See In re GNP Commodities, Inc., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39, 219 (CFTC August 11, 1992) aff'd sub nom. Monieson v. CFTC, 996 F 2d. 852 (7th Cir. 1993). Section 166.3 imposes on the FCM an affirmative duty to supervise its employees by establishing an adequate supervisory structure and

compliance programs and to diligently carry out such programs. In re Paragon Futures Assoc., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,266, 38,849-50 (CFTC Apr. 1, 1992). Evidence of underlying violations of the Act "is probative of a firm's failure to supervise, if the violations which occurred are of a type which should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly." In re Paragon Futures Association [1990-1992 Transfer Binder] 2 Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC April 1, 1992). Regulation 166.3 also mandates that each Commission registrant, except an AP who has no supervisory duties, diligently supervise the handling of commodity interest accounts by its employees and agents.

Certain Republic officers violated or otherwise ignored compliance and "know your customer" procedures concerning approval and transmittal of correspondence, evaluating new account applications, monitoring existing accounts, and for appropriately inputting trade orders. Republic's failure to ensure that those procedures were effectively carried out constitutes a failure to supervise.

IV.

OFFER OF SETTLEMENT

Republic has submitted an Offer of Settlement in which Republic, subject to the foregoing: 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 service and 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 the Offer; (5) all claims that Republic 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. (2001), 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.

Republic stipulates that the record basis on which the Order is entered consists of the Order and the findings in the Order consented to in the Offer. Republic consents to the Commission's issuance of this Order, which makes findings as set forth herein and orders that:

(1) Republic cease and desist from violating the provisions of the Act and the Commission Regulations Republic has been found to have violated;

(2) Republic pay a civil monetary penalty in the amount of five million dollars ($5,000,000 USD) within ten (10) business days of entry of the Order, in the manner set forth in this Order;

(3) Republic's registrations as a Futures Commission Merchant and Commodity Trading Advisor are revoked; and

(4) Republic comply with its undertakings as set forth in the Order and incorporated in this Offer.

V.

FINDING OF VIOLATIONS

Solely on the basis of Republic's consent, as evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Republic violated Sections 4b, 4d(a)(2), and 4g(a) of the Act as amended, 7 U.S.C. §§ 6b, 6d(a)(2), and 6g(a) (1994), and Commission Regulations 1.20, 1.22, 1.33, 1.35, 1.37, 32.6, 33.10, 166.2 and 166.3, 17 C.F.R. §§ 1.20, 1.22, 1.33, 1.35, 1.37, 32.6, 33.10, 166.2 and 166.3 (2001).

VI

ORDER

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

A. Republic shall cease and desist from violating Sections 4b, 4d(a)(2), and 4g(a) of the Act and Commission Regulations 1.20, 1.22, 1.33, 1.35, 1.37, 32.6, 33.10, 166.2 and 166.3.

B. Republic shall pay a civil monetary penalty in the amount of Five Million Dollars ($5,000,000), within ten (10) business days of the entry of the Order by electronic funds transfer to the account of the Commission at the United States Department of Treasury or by certified check or bank cashier's check 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, 1155 21st Street, N.W., Washington, D.C. 20581. Such payment shall be made in a manner authorized by the Commission and in accordance with the United States Treasury regulations and shall be accompanied by a letter that identifies Republic and the name of this proceeding. A copy of the cover letter and proof of payment to the United States Treasury shall be simultaneously transmitted to Phyllis Cela, the Acting Director of the Division of Enforcement ("Division") of the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. If payment is not made in accordance with the requirements of this paragraph, this Order shall be vacated and the proceedings reinstated as to Republic.

C. Republic's registrations as a Futures Commission Merchant and a Commodity Trading Advisor are revoked.

D. Republic shall comply with the following undertakings:

1. Cooperation with the Commission. Republic shall cooperate fully and expeditiously with the Commission, and its staff, including the Division, in this proceeding and any investigation, civil litigation, or administrative matter related to the subject matter of this proceeding. Republic agrees that this undertaking includes the respondent in this proceeding and its parent, HSBC USA, Inc. and any subsidiary or affiliate within its control . As part of such cooperation, Republic agrees to comply fully, promptly, and truthfully to any inquiries or requests for information including but not limited to (1) requests for authentication of documents; (2) requests for any documents within Republic's possession, custody, or control, including inspection and copying of documents; (3) requests for agents and employees of Republic to testify completely and truthfully to the Division; (4) requests to produce any current (as of the time of the request) officer, director, or employee of Republic, regardless of the employee's location, for interviews, depositions, or testimony, and to provide testimony or assistance at any trial related to the subject matter of this proceeding; and (5) requests for assistance in locating and contacting any prior (as of the time of the request) officer, director, or employee of Republic. Republic also agrees that it will not undertake any act which would limit its ability to fully cooperate with the Commission. Republic designates David Brodsky, Esq. of the Cleary, Gottlieb, Steen & Hamilton firm to receive all requests for information pursuant to this undertaking. Should Republic seek to change the designated person to receive such requests, notice shall be given to the Division of such intention 14 days before it occurs. Any person designated to receive such request shall be located in the United States.

2. Registration With The Commission. Beginning on the date of this Order, Republic shall never: apply for registration or seek exemption from registration with the Commission in any capacity, and shall never engage in any activity requiring such registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Commission Regulations, 17 C.F.R. § 4.14(a)(9); act, directly or indirectly as a principal, officer or director of any person registered, exempted from registration or required to be registered with the Commission, unless such exemption is pursuant to Section 4.14(a)(9) of the Commission Regulations, 17 C.F.R. § 4.14(a)(9); act, directly or indirectly, in a supervisory capacity over any person employed by any person registered, required to be registered or exempted from registration, unless such exemption is pursuant to Section 4.14(a)(9) of the Commission's Regulations. This paragraph applies only to Republic, and does not affect HSBC USA, Inc. or any of its affiliates, except as otherwise provided by law.

3. Public Statements. By neither admitting or denying the findings of fact, Republic agrees that neither Republic, HSBC USA, Inc., nor any of the agents or employees under their authority and control shall take any action or make

any public statement denying, directly or indirectly, any findings or conclusions in the Order or creating, or tending to create, the impression that the Order is without factual basis; provided, however, that nothing in this provision shall affect Republic's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Republic and its parent, HSBC USA, Inc., will undertake all steps necessary to assure that all of their agents, and employees under their authority and control understand and comply with this agreement.

The provisions of this Order shall be effective on this date.

By the Commission:

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

Dated: December 17, 2001