

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of)	CFTC Docket No. 01-09
)	
MADISON FINANCIAL GROUP,)	ORDER MAKING FINDINGS AND
LLC, and RICHARD A. COHEN,)	IMPOSING REMEDIAL SANCTIONS
)	
Respondents.)	
)	
)	

I.

On June 6, 2001, the Commodity Futures Trading Commission (“Commission”) issued a Complaint and Notice of Hearing against Madison Financial Group, LLC (“Madison”) and Richard A. Cohen (“Cohen”). The Complaint charges that Madison and Cohen (“Respondents”) violated Section 4c(b) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 6c(b) (1994), and Sections 33.10 and 166.3 of the Commission's Regulations (“Regulations”), 17 C.F.R. §§ 33.10 and 166.3 (2001).

II.

Respondents have submitted a Joint Offer of Settlement (“Offer”), which the Commission has determined to accept. Respondents acknowledge service of this Order Making Findings and Imposing Remedial Sanctions (“Order”), and without admitting or denying the findings of fact or conclusions of law herein, consent to the use of the findings contained in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Madison and Cohen do not consent to the use of the Offer or this Order, or the findings consented to in the Offer as entered 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. Nor do they consent to the use of the Offer or this Order, or the findings consented to in the Offer as entered in this Order, by any other party in any other proceeding. The findings made in this Order are not binding on any other person or entity named as a defendant or respondent in this or any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

From May 1998 to the end of March 2001, respondent Madison, a registered introducing broker (“IB”), fraudulently solicited customers to open accounts with Madison to trade options on commodity futures contracts (“commodity options”). Madison used unregistered telemarketing assistants and registered associated persons (“APs”) to solicit customers by knowingly misrepresenting and failing to disclose material facts including, among other things: (i) the likelihood that a customer would realize large profits from commodity options trading; (ii) the risks involved in trading commodity options; and (iii) the performance record of Madison’s customers. Cohen trained Madison APs and instructed the sales force to “make up a story” to persuade customers to open accounts, including representations concerning how well Madison customers were doing. In contrast to the respondents’ representations to customers, over 97% of the approximately 2800 accounts opened between May 14, 1998 and February 28, 2001, lost money. The lack of any supervisory structure at Madison, and the overall failure of Madison and Cohen to supervise diligently allowed Madison APs to defraud customers.

B. RESPONDENTS

Madison Financial Group LLC is a California limited liability company, which had its principal place of business at 1964 Westwood Boulevard, Los Angeles, California 90025. Madison has been registered as an Introducing Broker (“IB”) since May 1998.

Richard A. Cohen, who resides in Los Angeles, California, has been the President, a principal, and a registered AP of Madison since May 1998.

C. FACTS

From May 1998 to March 2001, Madison employed approximately fifty APs who solicited members of the general public to open commodity option accounts. Cohen was a principal of Madison during that entire time. Many, if not most, of the Madison APs learned their trade while on the job at Madison, and all APs received training directly from Cohen upon being hired. Cohen trained APs to recommend that customers purchase inexpensive “deep out-of-the-money” commodity options. As a result, Madison sold more options, charging up to \$100 commission per option, and generated large commission revenue.

Madison APs generally recommended options based on the specific direction of Cohen, and inexperienced APs were required to trade based on Cohen’s specific direction. Madison APs generally did not use a set sales presentation when soliciting customers; rather, APs were encouraged and directed by Cohen to “make up a story” when soliciting customers in order to persuade customers to trade the commodity options being recommended.

Cohen was aware of the nature of the commodity options purchased and sold by Madison customers, as well as Madison's trading results. Cohen, among other things, personally conducted Madison's trade confirmation procedure in which he tape recorded his conversations with customers documenting the specific details of each customer order; listened to trade confirmations conducted by other Madison employees, and reviewed daily reports and monthly customer account statements that disclosed the option trades in Madison's customer accounts.

Misrepresentations Overstating Madison's Performance Record

Madison APs, at the direction of Cohen, overstated Madison's performance record, by making material misrepresentations, including claims:

- (a) that Madison's APs achieved highly profitable results for their customers based on their trading strategy of analyzing fundamental market data;
- (b) that Madison's customers had various high success rates; and
- (c) that Madison's customers "are all making money here," or words to that effect, when in fact almost all Madison customers suffered trading losses in their accounts.

Misrepresentations Concerning the Likelihood of Profit

Madison APs, at the direction of Cohen, also misrepresented the likelihood of profiting from trading commodity options through Madison, by making material misrepresentations, including claims:

- (a) that a price move predicted by Madison would translate into large profits to the customer;
- (b) that the customer could, through specific trades, at least double his or her money in a matter of months or a comparable time frame;
- (c) that specific trading recommendations were "winners" or words to that effect; and
- (d) that APs traded for their own account and had been making money in the same markets that the AP was soliciting customers to trade;

when in fact they had no reasonable basis for such misrepresentations.

Misrepresentations and Omissions Minimizing Risk of Loss

Madison APs, at the direction of Cohen, also routinely failed to disclose adequately the risk of loss inherent in trading commodity options. Minimal references to risk were nullified by

Madison's high-pressure sales tactics and by its misrepresentations and omissions which falsely conveyed that while losses on commodity options were theoretically possible, purchasing commodity options with Madison was virtually risk free. Such misrepresentations and omissions include assertions:

- (a) that the customer "couldn't lose," or words to that effect;
- (b) that the customer's risk in buying options was lower than other forms of investment, or words to that effect; and
- (c) that Madison's strategy had a high success rate, thereby eliminating the risk in trading.

Trading Results

Madison customers did not make the profits which Madison APs misrepresented had been made by customers, nor did they make the profits they were led to believe were extremely likely. Approximately ninety-seven percent (97%) sustained losses in their accounts, and customer losses exceeded profits by a thirty-to-one ratio.

D. LEGAL DISCUSSION

Section 4c(b) of the Act and Commission Regulation 33.10 make it unlawful to cheat or defraud or deceive, or attempt to cheat or defraud or deceive, any person in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, exchange-traded commodity option transactions. Under these provisions, liability for solicitation fraud involving options is established when a person or entity is found to have made misleading statements of, or omitted to disclose, material facts with *scienter*. See In re Staryk, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,206 at 45,810 (CFTC Dec. 18, 1997) (*scienter* is a necessary element of options as well as futures fraud); see also Hammond v. Smith Barney, Harris Upham & Co., [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,657-36,659 (CFTC Mar. 1, 1990) (*scienter* is a necessary element to establish futures fraud).

1. Respondents Violated Section 4c(b) of the Act and Commission Regulation 33.10

In telephone sales solicitations, Madison APs, under the direction of Cohen, misrepresented and omitted material facts concerning, among other things, the likelihood and extent of profits to be made on commodity options, the risks inherent in such options, and the actual performance record in trading commodity options by Madison customers. These misrepresentations and omissions of material facts were made knowingly or with reckless disregard for the truth.

a. Madison APs Made Factual Misrepresentations to Customers

The representations by Madison APs, under the direction of Cohen, regarding the likelihood of customers profiting by trading options through Madison, the risks inherent in trading options, and Madison's performance record for customers were demonstrably false. Madison customers did not make anywhere near the profits touted by Madison APs in their telephone solicitations. Contrary to the claims of successful options trading, the total net losses of Madison customers exceeded their total gains by an overwhelming ratio -- 30 to 1. It is well established as a matter of law that promises of large and certain profits, like the promises made by Madison APs in their telephone solicitations, are fraudulent. Munnell v. Paine Webber Jackson Curtis [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,313, at 32,863 (CFTC Oct. 8, 1986) (statements that an investor could conservatively expect a profit of 32% per year amount to a guarantee of profitability and are inherently fraudulent).

Similarly, claims of minimal risk in options trading are false as a matter of law even when combined with boilerplate pro forma risk disclosure. Keller v. First Nat'l Monetary Corp., [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,402 at 29,823 (CFTC Oct. 22, 1984) ("statements that lead investors to believe that a particular investment is risk free and will almost certainly yield a profit are not protected from claims of fraud simply because the broker has made pro forma disclosure of risk"). Madison's linking of disclosure of risks to representations of virtually certain profits also is fraudulent. See CFTC v. Commonwealth Fin. Group, 874 F. Supp. 1345, 1353 (S.D. Fla. 1994) (combining claims that risks are subject to certain limitations, with "predictions of profit [that] exceeded 'mere optimism'" violated § 4c(b) of the Act and § 33.10 of the Regulations); Levine v. Refco, Inc., [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,488 at 36,115 (CFTC July 11, 1989) ("bold predictions of significant profit coupled with claims that risks are subject to certain limitations amount to the type of guarantee of profits" that are prohibited).

Finally, Madison's performance claims were fraudulent. Contrary to the misrepresentations that Madison customers were making money or that Madison APs were successful for their customers, approximately 97% of Madison customers lost money. CFTC v. Commonwealth, 874 F. Supp. at 353-54 (misrepresentations regarding the trading record and experience of a firm or broker are fraudulent because past success and experience are material factors to reasonable investors).

b. The Misrepresentations and Omissions Were Material

A statement or omitted fact is material if it is substantially likely that a reasonable investor would consider the matter important in making an investment decision. In re Citadel Trading Co., [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,082, 32,187 (CFTC May 23, 1986). See R&W Tech. Serv., Ltd. v. Commodity Futures Trading Commission, 205 F.3d 165, 170 (5th Cir. 2000) ("[B]ecause extravagant claims understate the inherent risks in commodities trading, a reasonable investor would find [such] fraudulent misrepresentations to be material"); CFTC v. British Am. Commodity Options Corp., [1977-1980 Transfer Binder]

Comm Fut. L. Rep. (CCH) ¶ 20,662, at 22,701 (S.D.N.Y. 1978) ("[U]nsupported and unreasonable predictions [of price shifts] unmistakably implied the near-certainty of sizeable and immediate returns, and were thus materially misleading to potential investors"); CFTC v. Commonwealth Fin. Group, 874 F. Supp. at 353-54. Facts that would enable customers to assess independently the risk inherent in their investment and the likelihood of profit are material. See In re Commodities International Corp., [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943 at 44,563-44,564 (CFTC Jan. 14, 1997) (misrepresentations and omissions to customers were material and fraudulent because customers could not properly evaluate their circumstances with regard to risk of loss and opportunity for profit); see also Sudol v. Shearson Loeb and Rhoades, Inc. [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,748 (CFTC Sept. 30, 1985).

The misstatements and omissions made by Madison APs regarding: profit potential, risk of loss, performance record and specific facts relevant to transactions by Madison and Cohen were all material because a reasonable investor would have relied on these statements in determining whether to invest in the commodities markets with Madison.

c. Madison Made Misleading Representations and Omissions with Scienter

Scienter requires proof that the respondent committed the alleged wrongful acts "intentionally or with reckless disregard for his duties under the Act." Hammond v. Smith Barney, Harris Upham & Co., [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,657-36,659 (CFTC Mar. 1, 1990) (*scienter* is a necessary element to establish futures fraud); Do v. Lind-Waldock & Co. [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,516 at 43,321 (CFTC Sept. 27, 1995) (the conduct of a futures industry employee acting for a customer is reckless when the action departs so far from the standards of ordinary care that it is very difficult to believe the actor was not aware of what he was doing).

Madison APs and telemarketing assistants, at the direction of Cohen, "made up stories" for customers about profit potential, risk of trading, Madison's performance record, and other specific events. Cohen knew that both APs and telemarketing assistants were doing so and that they did not have a reasonable basis for the representations they were making. Accordingly, both Madison and Cohen acted with *scienter*.

As a principal of Madison, Cohen had access to and reviewed Madison's equity runs, as well as customer month-end account statements showing all open positions. These records showed whether option positions that had closed during the month were profitable or had expired worthless. Cohen and Madison APs therefore had information clearly showing the results of the option trades of their customers. Given that 97% of Madison's customers lost money, Madison and Cohen were either aware that the misrepresentations were false or were in reckless disregard of the truth at the time that these misrepresentations were made.

Accordingly, Madison APs and Cohen violated Section 4c(b) of the Act and Regulation 33.10.

d. Madison Is Liable For the Acts of Its Officers and Employees

Section 2(a)(1)(B)(iii) of the Act provides in pertinent part:

the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

7 U.S.C. § 4. Madison is strictly liable for the acts, omissions and failures of Cohen and other Madison employees which therefore may be charged against Madison. Stotler v. Commodity Futures Trading Commission, 855 F.2d 1288, 1292 (7th Cir. 1988) (Section 2(a)(1)(A)(iii) imposes vicarious liability on the principal for acts of the agent regardless of the principal's knowledge of its agent's acts); Clayton Brokerage v. Commodity Futures Trading Commission, 794 F.2d 573, 581 (11th Cir. 1986) (Section 2(a)(1)(A)(iii) provides respondeat superior and general principal-agent standards for imposing liability). Accordingly, Madison is liable for the violations of Section 4c(b) of the Act and Regulation 33.10

2. Cohen is Liable for Madison's Violations of Section 4c(b) of the Act and Regulations 33.10 by Aiding and Abetting Madison's Fraud and as a Controlling Person

a. Aiding and Abetting Liability

Cohen aided and abetted Madison's violations. 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, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,129 at 49,888 n.28(CFTC May 12, 2000).

Cohen was primarily responsible for training and supervising the Madison telemarketing assistants and the Madison APs, and for monitoring their customer solicitations. Cohen knew and indeed directed the telemarketing assistants, as well as the APs, to "make up stories" when soliciting customers, and monitored their solicitations to ensure that this happened. Cohen's participation in Madison's fraudulent solicitations was knowing and intentional. In re Grossfeld [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,921 (CFTC Dec.10, 1996) (Individuals who participated in the development of promotional materials and trained and monitored APs aided and abetted IB's fraudulent solicitation of customers). Pursuant to Section 13(a) of the Act, Cohen is liable for Madison's violations of the Section 4c(b) of the Act and Regulation 33.10.

b. Controlling Person Liability

Cohen is also responsible for Madison's violations as a controlling person of Madison. To be liable as a controlling person under Section 13(b) of the Act, a person must possess the requisite degree of control. Besides general control over the operations of the entity principally liable, Section 13(b) requires that a person be "possessed [of] the power or ability to control the specific transaction or activity upon which the primary violation was predicated, even if such power was not exercised." Monieson v. CFTC, 996 F.2d. 852, 860 (7th Cir. 1993). In addition, the Commission must prove that the controlling person "did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation." CFTC v. Sidoti, 178 F.3d 1132, 1136 (11th Cir. 1999). Cohen's conduct meets this test.

Cohen had the requisite power and control at Madison. Cohen exercised day-to-day authority over all of Madison's operations and performed all important managerial, administrative, and supervisory functions, including those related to compliance. Cohen set the commissions, salaries, and bonuses at Madison, and possessed the final authority in all hiring, disciplinary and firing decisions over APs and telemarketing assistants. *See also* CFTC v. Commonwealth Fin. Group, 874 F. Supp. at 1357 (Controlling person in charge of hiring and firing, negotiating contracts, company finances, and regulatory issues was liable as a controlling person for the statements of brokers).

Cohen had the power to control the content of the Madison telephone solicitations and did so by training and supervising the unregistered telemarketing assistants and registered APs, including specific responsibility for monitoring sales solicitations. Knowing inducement requires a showing that "the controlling person had actual or constructive knowledge of the core activities that constitute the violation at issue and allowed them to continue." In re Spiegel, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24, 103 at 34, 767 (CFTC Jan. 12, 1988). Cohen knew that Madison's trading record for customers was poor and did not support the representations of profit and track record being made by the APs. Cohen therefore had actual knowledge of all of the core activities of the fraud.

In addition, Cohen failed to act in good faith. A controlling person fails to act in good faith if he does not maintain a reasonably adequate system of internal supervision and control over the controlled persons or does not enforce with any reasonable diligence such system. *See In re Apache Trading Corp.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,251, at 38, 794. Madison did not have an adequate system of internal controls, and Cohen made no effort to create or maintain an adequate system. Accordingly, pursuant to Section 13(b) of the Act, Cohen is responsible for Madison's violations of Section 4c(b) of the Act and regulation 33.10.

3. Respondents Violated Section 166.3 of the Commission's Regulations

a. Legal Standard

Commission Regulation 166.3 imposes on each Commission registrant, except associated persons with no supervisory duties, a duty to "diligently supervise the handling by its partners, officers, employees and agents . . . of all commodity interest accounts carried, operated, advised

or introduced the registrant, and all other activities ... relating to its business as a Commission registrant.” 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 Aug. 11, 1992) *aff’d sub nom.*, Monieson v. CFTC, 996 F.2d. 852, 859-860 (7th Cir. 1993). 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 Ass’n [1990-1992 Transfer Binder] 2 Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992). The Eleventh Circuit has found a violation of Section 166.3 where a firm and its principal “failed to establish or maintain meaningful procedures for detecting fraud by their employees” and the principal “knew of specific incidents of misconduct, yet failed to take reasonable steps to correct the problems.” See CFTC v. Sidoti, *supra*, at 1137.

b. Respondents Failed to Supervise Diligently Madison APs

No adequate system of supervision existed at Madison. Cohen was responsible for supervising the APs employed by Madison but failed to create or maintain meaningful procedures for detecting fraud by the APs. The only supervisory structure was to have the very same people who were training telemarketing assistants and APs to “make up a story” to support the solicitation of customers monitor those very solicitations. Cohen was aware that despite the fact that the vast majority of Madison customers were losing money, Madison APs were making misrepresentations concerning (1) the successful performance of Madison for its customers and (2) the likelihood that a customer would make profits trading through Madison, and never took any steps to correct the misrepresentations. Accordingly, Madison and Cohen violated Section 166.3 of the Regulations.

**IV.
OFFER OF SETTLEMENT**

Madison and Cohen have submitted a Joint Offer of Settlement in which, without admitting or denying the findings herein, they acknowledge service of the Complaint and receipt of this Order and admit the jurisdiction of the Commission with respect to the matters set forth in the Complaint and this Order; and waive: a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff’s participation in the Commission’s consideration of the Offer, 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, and 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, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commission Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2001), relating to, or arising from this action.

Madison and Cohen stipulate that the record basis on which this Order is entered consists solely of the Complaint and findings in this Order, the entry of which they have consented to in the Offer. They consent to the Commission's issuance of this Order, which makes findings, as set forth herein, and orders that: (1) Madison and Cohen cease and desist from violating the provisions of the Act and Regulations that they have been found to have violated; (2) their registrations be revoked; (3) Cohen be prohibited from trading on or subject to the rules of any registered entity; (4) Cohen pay restitution in an amount of \$890,000, plus prejudgment interest of \$71,765.38, pursuant to a ten year payment plan as provided below; (5) Cohen pay a contingent civil monetary penalty of up to \$110,000 pursuant to a ten year payment plan as provided below; and (6) Madison and Cohen comply with their undertakings as set forth in the Offer and incorporated in this Order including, but not limited to: (a) never to apply for registration or seek exemption from registration with the Commission in any capacity, except as provided for in Regulation 4.14(a)(9), and never to engage in any activity requiring registration or exemption from registration, unless such exemption is pursuant to Regulation 4.14(a)(9); and (b) not to take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or finding or conclusion in this Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis.

V. FINDINGS OF VIOLATIONS

Solely on the basis of Madison's and Cohen's consent, as evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Madison and Cohen violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Sections 33.10 and 166.3 of the Commission's Regulations, 17 C.F.R. §§ 33.10 and 166.3.

VI. ORDER

Accordingly, it is hereby ordered that:

1. Madison and Cohen shall cease and desist from violating Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Sections 33.10 and 166.3 of the Commission's Regulations, 17 C.F.R. §§33.10 and 166.3..
2. The registrations of Madison as an IB and Cohen as an AP of Madison are revoked;
3. Cohen is prohibited from trading on or subject to the rules of any registered entity, and all registered entities shall refuse him all privileges;
4. Cohen shall pay restitution in an amount of up to \$890,000, plus prejudgment interest of \$71,765, pursuant to a payment plan as provided below, to those persons identified as investors and listed in Attachment A to the Offer. Cohen shall make annual restitution payments, as calculated under the payment plan set forth in paragraph 6, below, to an account designated by

a monitor designated by the Commission (the "Monitor")² on or before July 31 of each calendar year (the "Annual Restitution Payment"), starting in calendar year 2003 and continuing for ten years³ (or until full restitution is made, if that happens first). Such funds shall be distributed annually as restitution payments to those persons identified in Attachment A, in the amounts calculated by the Monitor, unless, based upon the amount of funds available for distribution, the Monitor decides to defer distribution. Provided, however, that if Cohen can verify to the Monitor's satisfaction that he has made payments to any of his customers listed on Attachment A to the Offer separate from the Annual Restitution Payment, Cohen's overall restitution obligation to that customer will be reduced by the amount of such separate payments. However, Cohen's Annual Restitution Payment will not be reduced by such separate payments and will continue until ten years have passed or full restitution is made, whichever happens first. If, at any time during the ten year period, the Annual Restitution Payment completely satisfies Cohen's restitution plus prejudgment interest obligations, any remaining amount of the Annual Restitution Payment as calculated under the annual payment plan set forth in paragraph 6, below, shall be applied immediately to payment of the contingent civil monetary penalty set forth in paragraph 5, below. If, at the end of the ten year payment period or upon full restitution being made or otherwise discharged, if that happens first, any of the Annual Restitution Payments have not been distributed, the Monitor shall either distribute the funds in the account or make a recommendation to the Commission that the funds instead be paid and applied as a payment on Cohen's civil monetary penalty obligation, as provided in paragraph 5 below. In the event that the Commission rejects the Monitor's recommendation, the funds shall be distributed as restitution;

5. Cohen to pay a contingent civil monetary penalty ("CMP") in an amount of up to \$110,000, pursuant to a payment plan, as provided below, commencing upon Cohen's fulfillment or discharge of his restitution obligation as set forth in paragraph 4 above. Cohen shall make an annual civil monetary penalty payment ("Annual CMP Payment"), as calculated under the payment plan set forth in paragraph 6 below, following Cohen's satisfaction of his restitution obligation, and continuing until July 31, 2012 (or until the civil monetary penalty is paid in full, if that happens first). Cohen shall make each 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 Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette

² Cohen agrees that the National Futures Association is hereby designated as the Monitor for a period commencing on the date of this Order. Notice to the Monitor shall be made to Daniel A. Driscoll, Esq., Executive Vice President, and 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 Cohen's sworn financial statements, tax returns and the other financial statements and records provided to the Monitor, the Monitor shall calculate the total amount of restitution or civil monetary penalty to be paid by Cohen for the year and the specific amounts of restitution payable to each person listed in Attachment A. On or before June 30 of each year and starting in calendar year 2004 and concluding in calendar year 2013, the Monitor shall also send written notice to Cohen with instructions to pay by no later than July 31 of that year the amount of restitution to an account designated by the Monitor, or, if Cohen's restitution obligation has been satisfied, the amount of civil monetary penalty to be paid in accordance with the payment instructions provided above in paragraph 4.

³ Cohen's ten year restitution period shall run from January 1, 2003 through December 31, 2012. Restitution payments for a calendar year shall take place by July 31 of the following year. Therefore, the final restitution payment for the year 2012 will occur on or before July 31, 2013.

Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover letter that identifies Cohen and the name and docket number of the proceeding; Cohen 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, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581;

6. The amount of Cohen’s Annual Restitution or CMP Payment shall consist of a portion of: (1) the adjusted gross income (as defined by the Internal Revenue Code) earned or received by Cohen 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 Cohen during the course of the preceding calendar year. Cohen has an obligation to pay prior taxes to State and Federal authorities amounting to approximately \$210,000.00 plus interest and other penalties. Any sum that Cohen pays to reduce this tax obligation along with accrued interest and penalties on such sum shall be deducted from items (1) and (2) above to determine his Annual Restitution or CMP Payment under this plan. The Annual Restitution or CMP Payment will be determined as follows:

Where Adjusted Gross Income plus Net Cash Receipts Total:	Percent of Total to be paid by Cohen is:
Up to \$25,000	0%
\$25,000 - \$50,000	20% of the amount above \$25,000
\$50,000- \$100,000	20% of the amount between \$25,000 and \$50,000 plus 30% of the amount between \$50,000 and \$100,000
Above-\$100,000	20% of the amount between \$25,000 and \$50,000 plus 30% of the amount between \$50,000 and \$100,000 plus 40% of the amount over \$100,000;

7. In the event that Cohen does not make payments as directed in paragraph 6, 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 Restitution or CMP payment(s) or immediate payment of the entire amount of the restitution or civil monetary penalty. The only issue Cohen may raise in defense of such enforcement action is whether he has made the Annual Restitution or CMP Payment(s) as directed by the Monitor. Any action or proceeding brought by the Commission compelling payment of the Restitution or Annual CMP Payments, due and owing pursuant to paragraph 6, above, or any portion thereof, or any acceptance by the Commission of partial payment of the Annual Restitution or CMP Payments made by Cohen, shall not be deemed a waiver of Cohen’s obligation to make further payments pursuant to the

payment plan, or a waiver of the Commission's right to seek to compel payment of the remaining balance of the restitution or civil monetary penalty assessed against Cohen.

8. The Commission notes that an order requiring immediate payment of restitution and the civil monetary penalty against Cohen would be appropriate in this case, but does not impose it based upon Cohen's financial condition. Cohen acknowledges that the Commission's acceptance of the Offer is conditioned upon the accuracy and completeness of the sworn Financial Statement Cohen has provided regarding his financial condition. Cohen consents that if at any time following entry of this Order the Division of Enforcement ("Division") of the Commission obtains information indicating that his representations concerning his financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect at the time they were made, the Division may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Cohen provided accurate and complete financial information at the time such representations were made; (2) require immediate payment of the full amount of the restitution and civil monetary penalty required in paragraphs 4 and 5 above; and (3) seek any additional remedies that the Commission would be authorized to impose in this proceeding if Cohen's Offer had not been accepted. No other issues shall be considered in connection with this petition other than whether the financial information provided by Cohen was fraudulent, misleading, inaccurate or incomplete in any material respect, and whether any additional remedies should be imposed. Cohen may not, by way of defense to any such petition concerning the financial information provided by him, 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 restitution or civil monetary penalty to be paid. If in such proceeding, the Division petitions for, and the Commission orders, immediate payment of less than the full amount of restitution and the civil monetary penalty, such petition shall not be deemed a waiver of Cohen's obligation to pay the remaining balance of the restitution and civil monetary penalty assessed against him, pursuant to the payment plan; and

9. Cohen shall comply with the following undertakings as set forth in his Offer:

A. Reporting/Disclosure Requirements to be Reviewed by Monitor

Cohen shall provide his sworn financial statement, CFTC Form 177, to the Monitor on December 31 of each calendar year, starting on December 31, 2002, and continuing through and including December 31, 2012. The financial statement shall provide:

1. a true and complete itemization of all of Cohen's rights, title and interest in (or claimed in) any asset, wherever, however and by whomever held;
2. an itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of Cohen over the preceding 12-month interval; and
3. a detailed description of the source and amount of all of Cohen's income or earnings, however generated.

Cohen shall also provide the Monitor with complete copies of his signed, individual or joint federal income tax return, including all schedules and attachments thereto (e.g., IRS Forms W-2 and Forms 1099), as well as any filings he is required to submit to any state tax or revenue authority, on or before June 30 of each calendar year or as soon thereafter as the same are filed, beginning in 2003 and ending in 2012. In the event Cohen moves his residence at any time, he shall provide written notice of his new address to the Monitor and the Commission within ten (10) calendar days thereof.

If, during the same time period, Cohen elects to file a joint tax return, he shall provide all documents called for by this paragraph, including the signed and filed joint tax return, plus a draft individual tax return prepared on IRS Form 1040 containing a certification by a licensed certified public accountant that the "Income" section (currently lines 7-22 of Form 1040) truly, accurately and completely reflects all of Cohen's income, that the "Adjusted Gross Income" section truly, accurately and completely identifies all deductions that Cohen has a right to claim, and that the deductions contained in the "Adjusted Gross Income" section are equal to or less than 50% of the deductions that Cohen is entitled to claim on the joint tax return; provided however that Cohen may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely his. Such individual tax return shall include all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filing required to be submitted to any state tax or revenue authority.

B. Cooperation

Cohen shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all aspects of his Annual Payment, including providing sworn testimony, in explaining his financial income and earnings, status of assets, financial statements, asset transfers, tax returns, and shall provide any information concerning himself as may be required by the Commission. Furthermore, Cohen shall provide such additional information and documents with respect thereto as may be requested by the Monitor or the Commission.

C. Fraudulent Transfers

Cohen shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any member of the Cohen family or any other person for the purpose of concealing such funds or property from the Monitor or the Commission.

D. Registration With The Commission

Madison and Cohen shall never apply for registration or claim exemption from registration with the Commission in any capacity, and shall never engage in any activity requiring 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); or act as a principal, employee, agent or officer 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); and Madison and Cohen shall not, beginning on the date of the Order:

1. directly or indirectly act as a principal, partner, officer, or branch office manager of any entity registered or required to be registered with the Commission; or
2. directly or indirectly act in any supervisory capacity over anyone registered or required to be registered with the Commission.

E. Cooperation With The Commission

Madison and Cohen shall cooperate fully with the Commission and its staff in this proceeding by, among other things responding promptly, completely and truthfully to any inquires or requests for information, authenticating documents, providing interviews and testifying completely and truthfully at any hearing in this matter.

F. Public Statements

Madison and Cohen agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or finding or conclusion in the Order or creating, or tending to create, the impression that the Complaint or the Order is without a factual basis; provided, however, that nothing in this provision affects Cohen's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Madison and Cohen will undertake all steps necessary to assure that all of their agents and employees under their authority or control understand and comply with this agreement.

Unless otherwise specified, the provisions of this Order shall be effective on this date.

By the Commission.

Jean A. Webb
Secretary to the Commodity Futures
Trading Commission
Date: September 3, 2002