

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

COMMODITY FUTURES TRADING COMMISSION,	:	Case No. 1:00-CV-913
	:	
Plaintiff,	:	Hon. David W. McKeague
	:	
v.	:	
	:	
JOHN O’HERRON and	:	
	:	
O’HERRON ASSET MANAGEMENT, INC.,	:	
a Michigan corporation,	:	
	:	
Defendants.	:	

**CONSENT ORDER OF PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF AGAINST DEFENDANTS
JOHN O’HERRON AND O’HERRON ASSET MANAGEMENT, INC.**

On December 14, 2000, plaintiff Commodity Futures Trading Commission (“Commission”) filed a Complaint against John O’Herron (“O’Herron”) and O’Herron Asset Management, Inc. (“OAM”) (collectively the “defendants”) seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 et seq. (2001), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2002). The Court entered a statutory restraining order against the defendants on December 21, 2000 and a preliminary injunction against the defendants on April 6, 2001.

I.

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint against O'Herron and OAM without a trial on the merits or any further judicial proceedings, defendants O'Herron and OAM:

1. Consent to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief Against Defendants O'Herron and OAM ("Order").

2. Affirm that O'Herron and OAM have agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.

3. Acknowledge service of the Summons and Complaint.

4. Admit jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).

5. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).

6. Waive:

- a. the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, except as set forth below;
- b. 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 Regulations, 17 C.F.R. § 148.1, et seq. (2002), relating to, or arising from, this action;

- c. 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
- d. all rights of appeal from this Order.

7. O'Herron and OAM consent to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this case.

8. Defendants acknowledge that the Court is not imposing civil monetary penalties, pursuant to Section 6(c) of the Act, 7 U.S.C. § 13a-1, based in part on the accuracy and completeness of O'Herron's sworn representations to the Commission concerning his financial condition and that of OAM as described in O'Herron's Financial Disclosure Statement dated August 6, 2002 and other evidence O'Herron provided regarding defendants' financial condition. Defendants further consent that if, at any time following the entry of this Order, the Commission obtains information indicating that O'Herron's representations to the Commission concerning their financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect at the time such representations were made, the Commission may, at its sole discretion and without prior notice to defendants, petition the Court for an order requiring defendants to pay civil monetary penalties. In connection with any such petition, the only issues shall be whether the financial information provided by O'Herron was fraudulent, misleading, inaccurate or incomplete in any material respect at the time such representations were made, and the amount of the civil monetary penalties to be imposed. In any such petition, the Commission may move the Court to consider all available remedies, including, but not limited to, ordering defendants to pay funds or transfer assets,

directing the forfeiture of any assets, or imposing sanctions for contempt of this Order, and the Commission may also request additional discovery. Defendants may not, by way of defense to such petition, challenge the validity of this Order, contest the allegations in the Complaint filed by the Commission, or assert that payment of civil monetary penalties should not be ordered.

II.

FINDINGS AND CONCLUSIONS

It further appearing to this Court that there is no just reason for delay, the Court being fully advised in the premises and the Court finding that there is just cause for entry of this Order that fully disposes of all issues in this matter, THE PARTIES AGREE AND THE COURT FINDS THAT:

1. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, in that the defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

The Parties

3. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the

provision of the Act, 7 U.S.C. §§ 1 *et seq.* (2001), and the Regulations promulgated thereunder, 17 C.F.R. § 1 *et seq.* (2002).

4. Defendant John O'Herron, age 46, currently resides at 220 Grand Ave., Manistee, Michigan 49660. He has been registered with the Commission as a commodity trading advisor ("CTA") since at least April 14, 1989, and as an associated person ("AP") of his CTA firm since at least September 18, 1989. O'Herron formed, and at all relevant times was the day-to-day decision-maker for, defendant OAM. O'Herron committed the acts alleged in this complaint individually and as an agent of OAM. O'Herron has never been registered with the Commission as a commodity pool operator ("CPO").

5. Defendant O'Herron Asset Management, Inc. is a Michigan corporation incorporated on August 30, 1999, and located at O'Herron's home at 8280 Zosel Street, Onekama, Michigan 49675. O'Herron is the president, secretary and treasurer of OAM. OAM is also a business name used by O'Herron to refer to the commodity pool he purported to operate. OAM has never been registered with the Commission in any capacity.

Investor solicitation

6. In or around January 1998, O'Herron individually and as a agent of OAM began to solicit investment funds from members of the public. O'Herron told potential investors that he would trade commodity futures for them through his personal trading accounts at Cargill Investor Services, Inc. ("Cargill"), a registered futures commission merchant ("FCM").

7. In soliciting investors, O'Herron falsely represented that he had a successful track record trading U.S. Treasury Bond futures ("T-bonds") for a purported pool of commodity investors. O'Herron showed potential investors materials that portrayed the purported commodity pool's growth from approximately \$200,000 to \$2,000,000 in 24 months. In fact,

O'Herron's actual trading track record is not even remotely similar to what he has represented to investors and potential investors, losing money in almost every month he traded.

8. In soliciting some investors, O'Herron downplayed the risks of futures trading by stating that he could limit losses to 15 percent of the amount invested.

9. O'Herron also downplayed the risks of futures trading by stating to some investors that he could limit market risk through the use of a computerized futures trading program called "Trademate" which was owned by Op-Stock Trading Corporation, another company owned by O'Herron.

10. O'Herron further solicited some investors by representing that their funds would be put into futures accounts which he claimed would be traded for the investors by OAM.

11. O'Herron also solicited approximately \$1.1 million in what he referred to as "loans" from investors, stating that he needed the money to pay withdrawing investors. O'Herron falsely represented to investors that he did not want to pay withdrawing investors from the commodity futures trading account because the accounts were earning profits or that the funds were otherwise not available. These investors' funds were purportedly to take the place of earlier investors' funds.

12. Based on the representations above, investors invested a total of approximately \$2.7 million with O'Herron. All of O'Herron's investors, including those whose funds were designated by O'Herron as "loans," understood that O'Herron would trade the money for them in the commodity futures markets and that the return of principal and the amount of additional return that they would receive would be based on the success of O'Herron's commodity future trading.

13. In soliciting potential investors, O'Herron failed to distribute a risk disclosure document as required by Regulation 4.21. He did not provide accurate information about trading risks or his personal trading experience and performance record, required for such risk disclosures by Commission Regulations 4.24 and 4.25.

Use of Investor Funds

14. From approximately January 1998 to June 2000, O'Herron individually and as an agent of OAM collected approximately \$2.7 million from at least 27 investors for the purported purpose of investing in commodity futures.

15. Instead of putting investor funds into distinct accounts in the pool's name, O'Herron caused the money to be deposited in O'Herron's personal bank and trading accounts, thereby commingling pool funds with money belonging to himself and others.

16. O'Herron used only a small proportion of the investor funds the defendants accepted to actually trade in commodity futures. Between January 1998 and June 2000, O'Herron deposited only approximately \$898,000 of the approximately \$2.7 million he received from investors, into four Cargill trading accounts. Between January 1998 and June 2000, the Cargill trading accounts suffered approximately \$275,000 in trading losses. O'Herron withdrew the remaining funds, approximately \$623,000, and used some of those funds for other non-pool related purposes.

17. O'Herron improperly diverted substantial investor funds to his personal use and benefit. For example, in June 1999, O'Herron deposited \$467,144 of investor funds into his personal bank account. Without any other apparent source of income providing funds for this account, O'Herron then wrote a check totaling over \$65,472 for cash, a new car and other personal non-pool related expenses.

Maintenance of the Pool

18. O'Herron, individually and as an agent of OAM induced investors to maintain and add to their investments with him by concealing trading losses and exaggerating the true extent of his trading activities.

19. Such false representations were contained in weekly statements that O'Herron created and sent by facsimile to certain investors.

20. For example, O'Herron represented to investors that in each day he traded in August 1998 he traded 100 futures contracts. He claimed that this grew progressively to quantities exceeding 650 contracts per trading day during April and May 2000. In reality, the average trading by O'Herron in this period was approximately 20 contracts per day of trading.

21. O'Herron also represented to certain investors that the aggregate balance in the trading accounts was \$2,839,000 as of April 31, 2000, when, in fact, the aggregate balance in the trading accounts was only \$4,636.43 on that date.

22. Also, the fictitious accounting statements represented that investors' funds were growing, and that the pool rarely suffered any losses from April 1998 through June 2000. For example, in a false statement issued to certain investors on June 14, 2000, O'Herron represented that there was a balance of \$3.77 million in the Cargill accounts. The real trading records for the Cargill accounts revealed, however, that the combined value of all of O'Herron's accounts was only \$300.08 as of June 14, 2000.

23. At no time did the Cargill accounts have a combined balance of more than \$266,615.40.

24. O'Herron knew his weekly trading statements were false and intended that investors would rely on those false statements in determining whether to maintain or add to their investments.

25. O'Herron also knew and intended that the direct recipients of the fictitious account statements would share the information with other investors and potential investors, who would rely on the false information in making their own investment decisions.

26. The false account statements purported to show the alleged number of futures contracts traded, profits, losses, account balances, and O'Herron's commission and fees, which were based on the amount of alleged profits.

27. In actuality, O'Herron did not trade the number of futures contracts or achieve the degree of profits shown on the statements. The relatively small amount of commodity futures trading actually done by O'Herron mostly resulted in losses.

28. Investors were told that they could receive a return of their funds with ten days notice, although many were urged to keep their funds invested for at least one year. Many investors who invested more than a year ago have asked for a return of their money but, despite repeated demands over several months, have not been repaid.

29. The acts and omissions described in these Findings of Fact were effected by use of the mails and other means or instrumentalities of interstate commerce, directly or indirectly.

30. The conduct of the defendants, as set forth above, was made in or in connection with orders to make, or the making of, contract of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any

transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

31. The defendants made each and every fraudulent misrepresentation and omission either knowingly or with reckless disregard for the truth and the defendants willfully made each and every false report or statement.

32. With respect to each and every Finding of Fact, the investors reasonably, justifiably and detrimentally relied on the defendants' acts, omissions, false reports and statements.

III.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Defendants O'Herron and OAM are permanently restrained, enjoined and prohibited from directly or indirectly:

- A. Cheating or defrauding or attempting to cheat or defraud and willfully deceiving or attempting to deceive other persons in or in connection with any order to make, or the making of, any contract or sale of any commodity for future delivery, made, or to be made, for or on behalf of any person if such contract for future delivery is or may be used for (i) hedging any transaction in interstate commerce in such commodity or the products or by products thereof; (ii) determining the price basis of any transaction in interstate commerce in such commodity; or (iii) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(i) and (iii) (2001);
- B. Willfully making or causing to be made to such other person any false report or statement thereof, in violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii) (2001);
- C. Acting as CPOs without being registered as such under the Act and using the mails or any means or instrumentality of interstate commerce in connection with their business as CPOs, in violation of Section 4m(1) of the Act, 7 U.S.C.

§ 6m(1) (2001);

- D. As CPOs, employing any device, scheme, or artifice to defraud any pool participant or prospective pool participant, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any pool participant or prospective pool participant, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2001);
- E. As CPOs, commingling the property of any pool they operate or intend to operate with the property of any other person, in violation of Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2002); and
- F. As CPOs, directly or indirectly, soliciting, accepting, or receiving funds, securities, or other property from prospective pool participants without delivering or causing to be delivered to the prospective participant a Disclosure Document containing the information set forth in 17 C.F.R. §§ 4.24 and 4.25, in violation of Commission Regulation 4.21, 17 C.F.R. § 4.21 (2002).

2. Defendants O'Herron and OAM are further permanently restrained, enjoined and prohibited, from directly or indirectly:

- A Trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);
- B Engaging in, controlling, or directing the trading of any commodity futures, security futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
- C Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2002), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2002). This includes, but is not limited to, soliciting, accepting, or receiving any funds, revenue or other property from any other person, giving commodity trading advice for

compensation, except as provided in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2002), or soliciting prospective customers related to the purchase or sale of commodity futures, security futures or options.

3. The injunctive provisions of this Order shall be binding on defendants O'Herron and OAM, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of the defendants, and upon any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in active concert or participation with defendants O'Herron and OAM.

IV.

ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

1. RESTITUTION: Defendant O'Herron shall pay restitution in the amount of \$1,420,359.18 plus pre-judgment interest thereon from December 14, 2000 to the date of this Order in the amount of \$190,986.24. Pre-judgment interest is calculated at the underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. § 662(a)(2). Interest after the date of this Order until the restitution is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961, assessed pursuant to paragraph IV. 2.e., below, of the payment plan. Attachment A, attached hereto, includes the names and last known addresses of the investors to whom restitution shall be made pursuant to this paragraph, together with the amount of restitution payable by O'Herron to each of them (not including required interest) and the pro-rata distribution percentage by which each investor shall be paid.

O'Herron's obligation to make restitution under this paragraph shall be reduced by any pro rata amounts paid to the investors listed in Exhibit A, attached hereto, pursuant to any

restitution ordered in United States of America v. John F. O'Herron, Case No. 1:02-CR-160 (Western District of Michigan).

2. PAYMENT OF RESTITUTION: Restitution shall be made as follows:
 - a. O'Herron shall make an annual restitution payment ("Annual Restitution Payment") according to the payment plan outlined in paragraph IV. 3., below, to an account designated by a Monitor of: a percentage of his adjusted gross income (as defined by the Internal Revenue Code) earned or received by him during the previous calendar year. The Annual Restitution Payment shall be made on or before July 31 of each calendar year, starting in calendar year 2003 and continuing for ten years or until his restitution amount is paid in full from any source, whichever occurs sooner.¹
 - b. O'Herron agrees that the National Futures Association is hereby designated as the Monitor for a period of eleven years commencing January 1, 2002. 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.
 - c. O'Herron shall provide the Monitor with a sworn Financial Disclosure Statement and complete copies of his signed and filed federal income tax returns, 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, for the preceding calendar year, on or before May 15 of each calendar year, or as soon thereafter as the same are filed, starting in calendar year 2003 and continuing for ten years or until the restitution amount is paid in full, whichever occurs first.
 - d. If, during the same time period, O'Herron elects to file a joint tax return, he shall provide all documents called for by this paragraph 2, 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 O'Herron's income, that the "Adjusted Gross Income" section truly, accurately and completely identifies all deductions that O'Herron has a

¹ The ten year restitution period shall run from January, 2002 through December 31, 2011. Restitution payments for a calendar year shall take place by July 31 of the following year. Therefore, the final restitution payment for the year 2011 will occur on or before July 31, 2012.

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 O’Herron is entitled to claim on the joint tax return; provided, however that O’Herron 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 filings required to be submitted to any state tax or revenue authority. If Defendant does not file a return, he shall provide his sworn financial statement on June 30 and December 31 of each calendar year, starting on December 31, 2002 and continuing through and including June 30, 2012. The financial statements shall provide:

1. A true and complete itemization of all of Defendant’s rights, title and interest (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 Defendant over the proceeding six-month interval; and
 3. A detailed description of the source and amount of all of Defendant’s income or earnings, however generated.
- e. Based on the information contained in O’Herron’s tax returns (and, to the extent they are provided, his sworn financial statements) and further instructions to be issued by this Court regarding the method of calculating distribution of any funds to investors, the Monitor shall calculate the Annual Restitution Payment to be paid by O’Herron for that year and the specific amounts payable to each investor. On or before June 30 of each year and starting in calendar year 2003, the Monitor shall send written notice to O’Herron with instructions to pay the Annual Restitution Payment on or before July 31 of that year to an account designated by the Monitor. If the Monitor determines that an Annual Restitution Payment is due, then the Monitor will increase the amount of the remaining restitution payment by post-judgment interest calculated to the date of the payment based on the total remaining restitution obligation, pursuant to 28 U.S.C. § 1961. The Monitor shall then disburse any payment by O’Herron to the investors in the appropriate amounts listed on Attachment A. Based upon the amount of funds available, the Monitor may decide to defer distribution.

3. ANNUAL PAYMENT: The Annual Restitution Payments for O’Herron shall

be calculated as follows:

a.	Where Adjusted Gross Income Plus Net Cash <u>Receipts Total:</u>	<u>Percent of total to be paid by O'Herron is:</u>
	Under \$25,000	0%
	\$25,000 up to and including \$50,000	20% of the amount between \$25,000 and \$50,000
	\$50,000 up to and including \$100,000	\$5,000 (20% of \$25,000) plus 30% of the amount between \$50,000 and \$100,000
	Above \$100,000	\$20,000 (20% of \$25,000 plus 30% of \$50,000) plus 40% of the amount above \$100,000

- b. O'Herron shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all duties with respect to the restitution payments. He will cooperate fully with the Monitor and the Commission in explaining his financial income and earnings, status of assets, financial statements, asset transfers and tax returns, and shall provide any information concerning himself as may be required by the Commission and/or the Monitor. Furthermore, O'Herron shall provide such additional information and documents with respect thereto as may be requested by the Commission and/or the Monitor.

4. THIRD-PARTY BENEFICIARIES: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the individuals identified in Attachment A is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution amount which has not been paid by O'Herron, to ensure continued compliance with any provision of this Order and to hold O'Herron in contempt for any violations of any provision of this Order.

5. COLLATERAL AGREEMENTS: O'Herron shall immediately notify the Commission if he makes or has previously made any agreement with any investor obligating him to make payments outside of this Order. O'Herron shall also provide immediate evidence to the Court and to the Commission of any payments made pursuant to such agreement. Upon

being notified of any payments made by O'Herron to investors outside of this Order, and receiving evidence of such payments, the Commission will have the right to reduce and offset O'Herron's obligation to specified investors, on an annual basis, and to make any other changes in the restitution distribution schedule that they deem appropriate.

6. TRANSFER OF ASSETS: O'Herron shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any other person for the purpose of concealing such funds from the Court, the Commission, the Monitor or any investor or until the Restitution Amounts have been paid in full.

7. DEFAULT: Any failure by O'Herron to carry out any of the terms, conditions or obligations under any paragraph of this Order shall constitute an Event of Default. If any Event of Default occurs the Commission (or its designee) shall be entitled to:

- a. an order requiring immediate payment of any unpaid Annual Restitution Payments or, at the Commission's option, the entire unpaid balance, or any unpaid portion, of the restitution amount set forth above in Paragraphs IV.1. through 3. above; and/or
- b. move the Court for imposition of all other available remedies, including, but not limited to, an order holding O'Herron in contempt for violation of this Order.

Upon the occurrence of an Event of Default based upon a claim or cause of action that O'Herron failed to make any Annual Restitution Payments when due, O'Herron will be barred from asserting any defense, including expiration of any statute of limitations, waiver, estoppel or laches, where such defense is based on the alleged failure of the Commission to pursue such claims or causes of action during the pendency of this civil action, during the negotiation

of O'Herron's consent to this Order or while this Order remains in effect. The only issue that O'Herron may raise in defense is whether he made the Annual Restitution Payments as directed by the Monitor. Any motion by the Commission for entry of an order pursuant to this paragraph requiring payment of less than the full amount of the restitution, set forth in paragraphs IV.1. through 3., above, or any acceptance by the Commission of partial payment of the Annual Restitution Payments made by O'Herron shall not be deemed a waiver of the Commission's right to require O'Herron to make further payments pursuant to the payment plans set forth above, or, in the event of a further Event of Default, a waiver of the Commission's right to require immediate payment of the entire remaining balance, or any unpaid portion, of the restitution amount set forth in paragraphs IV.1. through 3., above.

8. Based upon O'Herron's sworn representations in his Statement of Financial Condition dated August 6, 2002, and because the restitution ordered in the related criminal proceeding, United States of America v. John F. O'Herron, Case No. 1:02-CR-160 (Western District of Michigan), provides for additional restitution of approximately \$2 million to victims beyond those covered in the complaint in the instant matter, the Court herein is not ordering defendants to pay civil monetary penalties. This determination is contingent upon the accuracy and completeness of O'Herron's Statement of Financial Condition and other evidence provided by O'Herron regarding his and OAM's financial condition. If at any time following the entry of this Order, the Commission obtains information indicating that O'Herron's representations concerning his or OAM's financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to defendants, petition this Court for an order requiring O'Herron and OAM to pay

civil monetary penalties. In connection with any such petition, the only issues shall be whether the financial information provided by O'Herron was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of civil penalties to be imposed. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering O'Herron and OAM to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Order, and the Commission may also request additional discovery. O'Herron and OAM may not, by way of defense to such petition, challenge the validity of this Order, contest the allegations in the Complaint filed by the Commission, or assert that payment of civil penalties should not be ordered.

V.

MISCELLANEOUS PROVISIONS

A. ENTIRE AGREEMENT, AMENDMENTS and SEVERABILITY. This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and (3) approved by order of the Court. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.

B. SUCCESSORS AND ASSIGNS. This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries and administrators.

C. JURISDICTION. This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Equitable Relief Against O'Herron and OAM.

Done and ordered on this ___ day of _____, 2002.

UNITED STATES DISTRICT COURT JUDGE

Consented to and approved for entry by:

John O'Herron
Dated: _____

Mark Bretscher
Senior Trial Attorney
(Pro hac vice)

John O'Herron
President,
O'Herron Asset Management, Inc.
Dated: _____

Scott R. Williamson
Deputy Regional Counsel

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October 9, 2002