



effort to settle this matter, Defendants and the Commission have agreed to entry of this Consent Order on the following terms and conditions.

## II. CONSENTS AND AGREEMENTS

Solely to effect settlement of the matters alleged in the Complaint and Amended Complaint in this action without a trial on the merits, any further judicial proceedings, or presentation of any additional evidence, Defendants:

1. Consent to the entry of this *Consent Order of Permanent Injunction, Civil Monetary Penalty and for Other Equitable Relief Against All Defendants* (the “Consent Order”);

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

3. Acknowledge proper service of the Summons and Complaint;

4. Admit that this Court has jurisdiction over them and the subject matter of this action pursuant to Section 6c of the of Act, 7 U.S.C. § 13a-1 (2012);

5. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012);

6. Waive:

- a. Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2012), relating to, or arising from, this action;
- b. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No.104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to or arising from this action;
- c. Any claim that they may possess 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. Any and all rights of appeal from this action;

7. Consent to the continued jurisdiction of this Court over them for the purpose of enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if they now or in the future reside outside the jurisdiction;

8. Agree that they will not oppose enforcement of the Consent Order on the ground that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waive any objections based thereon;

9. 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, the Amended Complaint or the Findings of Fact or Conclusions of Law contained in this Consent Order, or creating, or tending to create, the impression that the Complaint, the Amended Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect Defendants': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Defendants shall undertake all steps necessary to ensure that all of their agents and employees under their authority or control understand and comply with this agreement;

10. By consenting to the entry of this Consent Order, neither admit nor deny the allegations of the Complaint, the Amended Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, except as to jurisdiction and venue, which they admit. Further, Defendants agree and intend that the allegations contained in the Complaint, the Amended Complaint and all of the Findings of Fact and Conclusions of Law contained in this Consent Order shall be taken as true

and correct and be given preclusive effect, without further proof, in the course of:

(i) any current or subsequent bankruptcy proceeding filed by, or on behalf of, or against Defendants; (ii) any proceeding to enforce the terms of this Consent Order; and/or (iii) any proceeding pursuant to Sections 8a(1)-(2) of the Act, 7 U.S.C. §§ 12a(1)-(2) (2012), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2012).

Defendants shall provide immediate notice of any bankruptcy filed by, on behalf of, or against them and shall provide immediate notice of any change of address, telephone number, or contact information in the manner required by Part VI of this Consent Order; and

11. Agree that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Defendants or any other person in any other proceeding.

### **III. FACTS AND CONCLUSIONS OF LAW**

#### **A. Findings of Fact**

12. The Commission is a federal independent regulatory agency which is charged with the administration and enforcement of the CEA, 7 U.S.C. §§ 1 *et seq.*, (2012) and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2012)

13. Giddens is an individual who, at all times relevant to the Amended Complaint, resided in Fayetteville, Georgia.

14. Dutton is an individual who, at all times relevant to the Amended Complaint, resided in Peachtree City, Georgia.

15. Gomez is an individual who, at all times relevant to the Complaint, resided in Valrico, Florida, 33596.

16. In 2009, Giddens and Dutton invested in a company called Botfly L.L.C. (“Botfly”) that purportedly traded off-exchange foreign currency (“forex”) on behalf of investors.

17. Botfly primarily paid its investors a fixed return of ten percent per month, rather than the actual forex trading returns on the investors’ funds.

18. After Giddens and Dutton invested in Botfly, Botfly advertised that it would “manage” an investor’s account, and pay actual forex trading returns, if the investor’s account exceeded \$250,000.

19. Giddens and Dutton wanted “managed” accounts, but did not have sufficient funds to meet the \$250,000 required. As a result, Giddens and Dutton, along with several other people decided to pool their money to meet the \$250,000 minimum account requirement.

20. Pursuant to this plan, in November 2009, Dutton created Pinnacle Trade Group, LLC (“Pinnacle Trade”) as the vehicle for holding the pooled investments, and to serve as the Botfly accountholder. Giddens and Dutton were the members and managers of Pinnacle Trade, and they controlled Pinnacle

Trade's day-to-day operations.

21. When Giddens told Botfly about the Pinnacle Trade pool and the investors' desire to open a "managed" account, Botfly responded that the minimum had increased, first to \$500,000 and then to \$1 million.

22. As a result, Pinnacle Trade did not retain Botfly to trade its pooled funds.

23. Instead, in January 2010, Giddens met Gomez, who was trading forex out of his home.

24. Giddens, along with other potential investors, met with Gomez to discuss Gomez's trading strategies and skills. At the meeting, Gomez represented that he could make ten percent per month trading forex by using a low risk strategy of investing only a small portion of an account at a time.

25. Giddens and Dutton retained Gomez to trade forex for Pinnacle Trade.

26. Gomez, Giddens, and Dutton reached an agreement to split the monthly forex investment returns in excess of ten percent, agreeing further that Gomez would receive half of the excess as a commission, and Giddens and Dutton would receive the other half.

27. Commissions would be determined on a monthly basis (*i.e.*, based on the profitability of the forex trading in the preceding month).

28. Gomez agreed to manage only one account, for Pinnacle Trade, rather

than separate accounts for Giddens, Dutton, and the other investors.

29. On January 26, 2010, Dutton created a new vehicle, Pinnacle Capital Partners, LLC (“Pinnacle Capital”), to pool his funds and the funds of others he solicited to invest in forex. Dutton was the member and manger of Pinnacle Capital, and he controlled Pinnacle Capital’s day-to-day operations.

30. Dutton solicited friends and co-workers to invest in Pinnacle Capital.

31. Dutton told some potential investors that he planned to use their money to trade forex with Gomez and that he believed Gomez could generate returns of at least ten percent per month. Dutton promised to pay the investors fixed returns of either five or ten percent per month.

32. Dutton created a website for Pinnacle Capital.

33. The website described the forex trading program as “an investment program that will guarantee you ‘5% interest – compounded monthly’ by harnessing the expertise of others in the Foreign Exchange market.” The website represented further that Pinnacle Capital had the “goal” of “design[ing] a turn-key system that would allow anyone to participate and earn 5% compounded monthly regardless of skill level or knowledge of currency trading.” In discussing what would happen if traders have a “bad month and lose money,” the website advised potential investors: “The accounts used to produce the 5% monthly guarantee are well funded and capable of absorbing short term draw downs. My traders can

easily overcome a ‘down day’ in the market using the hedging techniques and money management skills to eliminate the possibility of a ‘bad month.’”

34. The website did not disclose any risks associated with trading forex and did not disclose that past performance does not guarantee future results.

35. The website was publicly available for some period of time.

36. Twelve investors, including Dutton, invested in Pinnacle Capital.

37. Pinnacle Capital received \$50,000 from Dutton, and \$828,350 from other investors.

38. Dutton, on behalf of Pinnacle Capital, executed promissory notes to some investors.

39. The notes promised to repay to investors’ their “principal sum” plus interest of either five or ten percent per month.

40. The notes did not disclose any risk associated with forex trading.

41. Dutton understood that Gomez’s past performance did not indicate future success.

42. Once investors invested in Pinnacle Capital, Dutton provided them with access to a website for Pinnacle Capital, *www.pinnaclecapitalpartnersllc.com*, on which investors could access and view via the internet electronic account statements prepared by Dutton that showed the current net balance of their note from Pinnacle Capital.

43. Some of the investors of Pinnacle Capital viewed these electronic account statements.

44. On January 27, 2010, the day after Dutton created Pinnacle Capital, Giddens created a new vehicle, Currency Management Group L.L.C. (“Currency Management”), to pool his funds and the funds of others he solicited to invest in forex. Giddens was the member and manager of Currency Management, and he controlled Currency Management’s day-to-day operations.

45. Giddens solicited friends and co-workers to invest in Currency Management.

46. He told some potential investors that he planned to use their money to trade forex with Gomez and he believed Gomez could generate returns of at least ten percent per month. Giddens promised to pay the investors fixed returns of either five or ten percent per month.

47. Dutton, on Giddens’s behalf, created a website for Currency Management.

48. The Currency Management website, which was controlled by Dutton and Giddens, was nearly identical to the Pinnacle Capital website. The website stated that, through trading forex, Currency Management guaranteed investors returns of five percent per month.

49. The website did not disclose any risk associated with trading forex

and did not disclose that past performance does not guarantee future results.

50. The website was publicly available for some period of time.

51. Twenty-eight investors invested in Currency Management.

52. From January 2010 through September 2010, Currency Management received \$635,101 from investors, including \$30,000 from Giddens and his wife.

53. Giddens, on behalf of Currency Management, executed promissory notes to some investors.

54. The notes promised to repay to investors' their "principal sum" plus interest of either five or ten percent per month.

55. The notes did not disclose any risk associated with trading forex.

56. Giddens understood that Gomez's past performance did not indicate future success.

57. Once investors invested in Currency Management, Giddens provided them with access to a website for Currency Management, *www.currencymanagementgroup.com*, on which investors could access and view via the Internet electronic account statements prepared by Giddens that showed the current net balance of their note from Currency Management.

58. Some of the investors of Currency Management viewed these electronic account statements.

59. Giddens and Dutton opened bank accounts in the name of Pinnacle

Trade (the “Pinnacle Trade Bank Accounts”).

60. The money invested with Currency Management and with Pinnacle Capital was transferred by Giddens and Dutton to the Pinnacle Trade Bank Accounts.

61. Pinnacle Trade thereafter transferred \$862,450 of the funds that it received from Currency Management and Pinnacle Capital to a bank account controlled by Gomez (the “Gomez Bank Account”).

62. From approximately January to October 2010, Gomez transferred Pinnacle Trade funds between the Gomez Bank Account and a trading account that Gomez controlled at FXDirectDealer, LLC, (“FXDD”), a domestic Retail Foreign Exchange Dealer futures commission merchant (the “Gomez Trading Account”).

63. Gomez traded forex using Pinnacle Trade funds in the Gomez Trading Account. The trading activity resulted in profitable and unprofitable months.

64. During the same period Gomez returned a total of \$546,490 from the Gomez Bank Account back to Pinnacle Trade

65. During the same period, a total of \$217,473.47 of the Pinnacle Trade pooled money that Gomez traded in the Gomez Trading Account was lost through Gomez’s forex trading.

66. Further Gomez traded forex using Pinnacle Trade funds in trading accounts in the name of Pinnacle Trade that Giddens and Dutton controlled at

Dukascopy Bank SA, a foreign forex counterparty(the “Pinnacle Trade Trading Accounts”).

67. Giddens and Dutton transferred Pinnacle Trade funds between the Pinnacle Trade Bank Accounts and the Pinnacle Trade Trading Accounts.

68. FXDD awarded periodic bonus credits into the Gomez Trading Account based on cash deposits and the number of trades placed in the Gomez Trading Account (the “Volumetric Bonuses”).

69. The amount of the Volumetric Bonuses was tied to the volume or amount of funds that were deposited into the Gomez Trading Account and traded.

70. During the relevant period, FXDD awarded \$20,360 into the Gomez Trading Account as trading bonuses resulting from Gomez’s forex trades.

71. During the relevant time period, at least \$64,001.34 was withdrawn by Gomez from the Gomez Bank Account, including the following amounts: \$41,908.91 that Gomez characterized as “expenses,” \$6,503.77 that Gomez characterized as “other expenses,” \$4,434.56 that Gomez characterized as “trading expenses,” \$854.10 that Gomez characterized as “bank charges” or “bank service charges,” and \$27,400 for a vehicle.

72. In June 2010, Currency Management paid, from its pooled funds, \$16,000 to Giddens’s wife.

73. From March to June 2010, Currency Management spent \$1,876.74 on

“retail purchases” at stores such as Best Buy, Cheesecake Factory, and Rite Aid.

74. From March to July 2010, Pinnacle Capital paid \$26,400 of pooled funds to Dutton.

75. From February to December 2010, Pinnacle Capital spent \$27,704.35 of pooled funds on “retail purchases” at stores such as Best Buy, Exxon Mobil, Home Depot, and Frank Kent Honda.

76. In October 2010 Giddens and Dutton dissolved Currency Management, Pinnacle Capital and Pinnacle Trade.

77. Giddens and Dutton instructed Gomez to close out the Gomez Trading Account and to return Pinnacle Trade’s funds.

78. Further, Giddens and Dutton closed the Pinnacle Trade Trading Accounts.

79. By the time that Gomez closed the Gomez Trading Account and Giddens and Dutton closed the Pinnacle Trade Trading Accounts, Pinnacle Trade had lost approximately 80% of its value as a result of unprofitable trading by Gomez in the Gomez Trading Account and the Pinnacle Trade Trading Accounts.

80. In late October 2010, Pinnacle Trade transferred \$247,000 of the Pinnacle Capital-Currency Management pooled funds to a law firm.

81. The law firm accepted \$25,000 of these funds to represent Giddens and Dutton. The remaining \$222,000 was distributed to Pinnacle Capital and

Currency Management investors.

**B. Conclusions of Law**

82. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. 13a-1 (2012), which provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

83. The Commission has jurisdiction over this action pursuant to Sections 6c and 2(c)(2) of the Act, 7 U.S.C. §§ 13a-1 and 2(c)(2) (2012).

84. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), 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.

85. As a result of the conduct described in Paragraphs 12 to 81, Dutton and Giddens have violated Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2012).

86. As a result of the conduct described in Paragraphs 12 to 81 Dutton and Gomez have violated Section 4b(a)(2)(A), (C) of the Act, 7 U.S.C. §

6b(a)(2)(A), (C) (2012).

**IV. ORDER FOR PERMANENT INJUNCTION**

85. This Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and there is no just reason for delay. The Court therefore directs the entry of a permanent injunction and orders other statutory and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), as set forth herein. Accordingly,

**IT IS NOW HEREBY ORDERED THAT:**

86. Defendants are permanently restrained, enjoined, and prohibited from engaging, directly or indirectly in conduct in violation of Section 4b(a)(2)(A), (C) of the Act, 7 U.S.C. § 6b(a)(2)(A), (C) (2012).

87. Giddens and Dutton are permanently restrained, enjoined, and prohibited from engaging, directly or indirectly in conduct in violation of Section 4b(a)(2)(B) of the Act, 7 U.S.C. § 6b(a)(2)(B) (2012).

88. Defendants are 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(40)) (2012);
- b. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in

Regulation 32.1(b)(1) (2012)) (“commodity options”), swaps (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (Supp. V 2011), and as further defined by Commission Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx) (2012)) (“swaps”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (2012)) (“forex contracts”), for their own personal account or for any account in which they have a direct or indirect interest;

- c. having any commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts traded on their behalf;
- d. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts;
- e. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts;

- f. 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) (2012); and
- g. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

89. The injunctive provisions of this Consent Order shall be binding upon Defendants, upon any person who acts in the capacity of officer, agent, servant, employee, or attorney, successor and/or assign of Defendants, and upon any person who receives actual notice of this Consent Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with Defendants.

**V. ORDER OF RESTITUTION AND CIVIL MONETARY PENALTY**

90. Defendants shall comply fully with the following terms, conditions and obligations relating to the payment of restitution and civil monetary penalties. The equitable and statutory relief provisions of this Consent Order shall be binding upon Defendants and any person who is acting in the capacity of officer, agent,

employee, or servant of Defendants, and any person acting in active concert or participation with Defendants.

**A. Restitution**

91. Gomez is hereby ordered to pay restitution in the amount of \$68,000.00 (the “Gomez Restitution Obligation”), which payment shall be accomplished by means of the transfer of frozen funds as described more fully in paragraph 99 herein, which transfer, upon completion, shall satisfy in full the Gomez Restitution Obligation.

92. Giddens is hereby ordered to pay restitution in the amount of \$29,759.49 (the “Giddens Restitution Obligation”), plus post-judgment interest. Post-judgment interest shall accrue on the Giddens Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

93. Dutton is hereby ordered to pay restitution in the amount of \$56,604.35 (the “Dutton Restitution Obligation”), plus post-judgment interest. Post-judgment interest shall accrue on the Dutton Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

94. Appointment of Monitor and Collection and Distribution of Restitution Obligations: To effect payment and distribution of the Gomez, Giddens and Dutton Restitution Obligations, the Court appoints the National Futures Association (“NFA”) as Monitor.

95. The Monitor shall collect restitution payments from Defendants and make distributions as set forth below. Because the Monitor is acting as an officer of the Court in performing these services, the Monitor shall not be liable for any action or inaction arising from its appointment as Monitor, other than actions involving fraud.

96. Gomez, Giddens and Dutton shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify the pool participants of Currency Management and Pinnacle Capital, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any payments received.

97. The payments toward the Gomez Restitution Obligation under this Consent Order shall be made in the name of the “Michael Gomez/Restitution Fund” from funds described in paragraph 99 herein, and shall be sent by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s check, or bank money order, made payable to and sent to the Office of Administration, National Futures Association, 300 S. Riverside Plaza, Suite 1800,

Chicago, Illinois 60606, under a cover letter by FXDD that identifies Gomez as payor and the name and docket number of this proceeding. FXDD shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, United States Commodity Futures Trading Commission, at the following address: 1155 21<sup>st</sup> Street, N.W., Washington, DC 20581, and to the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

98. The Monitor shall oversee the Gomez Restitution Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to the pool participants of Currency Management and Pinnacle Capital Partners as well as Intervenor-Plaintiff Freeman L. Walker (“Walker”).<sup>1</sup>

99. Frozen Accounts, Transfer of Funds, and Satisfaction of the Gomez Restitution Obligation: Upon the entry of this Consent Order, the Commission

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<sup>1</sup> On February 24, 2012, the Court allowed Walker to intervene and assert a separate claim against Gomez for breach of contract related to Gomez’s forex trading. Thereafter, the Commission and Walker agreed to assign Walker the status of an investor in the instant case and, as such, Walker would receive a *pro rata* portion of the distribution of funds returned to other investors. As a result of this agreement, the Court permitted Walker to receive \$20,598.52 of the funds frozen by the Court’s June 24, 2011 Statutory Restraining Order and authorizes the Monitor to have the discretion to make further pro-rata distributions to Walker to the extent applicable. However, nothing in this Consent Order resolves Walker’s separate claim against Gomez except that Gomez shall receive a dollar for dollar credit against any judgment in Walker’s favor for the funds he has already received as well as any additional funds distributed to Walker by the Monitor.

shall promptly provide each of the financial institutions identified in this paragraph with a copy of this Consent Order. Within thirty (30) days of receiving a copy of this Consent Order, each of the financial institutions identified in this paragraph are specifically directed to liquidate and release any and all funds in any account number identified below, in the manner directed below, that are held in the name of Gomez (individually or jointly) or in the name of Gomez' company, Elyon, L.L.C., and to convey by wire transfer as follows:

- a. FXDD shall transfer to the National Futures Association, to an account designated by the Monitor, as provided in paragraph 97 above, \$68,000.00 from the following FXDD accounts: Account Nos. XXX602 and XXX755. The transfer of such funds shall satisfy the Gomez Restitution Obligation set forth in paragraph 91 above.
- b. FXDD shall transfer any remaining balances in Account Nos. XXX602 and XXX755 to counsel for Gomez, David M. Messer of the firm Briskin, Cross & Sanford, LLC. FXDD shall contact Mr. Messer for wiring instructions to release the funds at:

David M. Messer  
dmesser@briskinlaw.com  
Briskin, Cross & Sanford, LLC  
1001 Cambridge Square, Suite D  
Alpharetta, GA 30009  
Telephone: (770) 410-1555  
Facsimile: (770) 410-3281.

100. At no time during the liquidation, release and/or wire transfer of these funds described in Paragraph 99 pursuant to this Consent Order shall Gomez be afforded any access to, or be provided with, any funds from these accounts. Gomez, as well as FXDD, shall cooperate fully and expeditiously with the Commission and Monitor in the liquidation, release and wire.

101. To the extent that any funds accrue to the U.S. Treasury as a result of the Gomez Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

102. The Giddens and Dutton Restitution Obligations: The payments toward the Giddens Restitution Obligation and the Dutton Restitution Obligation under this Consent Order shall be made in the name of the “Louis J. Giddens, Jr./Restitution Fund” and “Anthony W. Dutton/Restitution Fund,” respectively, and shall be sent by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s check, or bank money order, made payable to and sent to the Office of Administration, National Futures Association, 300 S. Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter that identifies Giddens or Dutton as payor and the name and docket number of this proceeding. Giddens or Dutton as payor shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, United States Commodity Futures Trading Commission, at the following address:

1155 21<sup>st</sup> Street, N.W., Washington, DC 20581, and to the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

103. The Monitor shall oversee the Giddens Restitution Obligation and the Dutton Restitution Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to the pool participants of Currency Management and Pinnacle Capital Partners and clients identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Giddens Restitution Obligation or Dutton Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to the eligible pool participants and client is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part V.B. below.

104. Nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under federal, state, or common law to assert a claim for recovery against Defendants subject to any offset or credit that Defendants may be entitled to claim under the law governing that customer's claim. Subsequent to the entry of this Consent Order, Defendants shall provide the Commission and the Monitor with immediate notice of any filing or compromise

and settlement of any private or governmental actions relating to the subject matter of this Consent Order in the manner required by Part VI of this Consent Order.

**B. Civil Monetary Penalty**

105. Pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and Regulation 143.8(a)(1)(i), 17 C.F.R. § 143.8(a)(1)(i) (2012), this Court may impose an order directing Defendants to pay a civil monetary penalty (“CMP”), to be assessed by the Court, in amounts of not more than the greater of (1) triple the monetary gain to Defendants for each violation of the Act and Regulations; or (2) \$140,000 for each violation of the Act and Regulations occurring on or after October 23, 2008.

106. Gomez, Giddens and Dutton are hereby each assessed a CMP in the amount of \$75,000.00, \$100,000.00 and \$100,000.00, respectively, plus post-judgment interest (the “CMP Obligations”). The CMP Obligations are due on the tenth (10<sup>th</sup>) day after the entry of this Consent Order. Should Defendants not satisfy their respective CMP Obligation within ten (10) days of the date of entry of this Consent Order, post-judgment interest shall accrue on their respective CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

107. Defendants shall pay their respective CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, the payment shall be made payable to the United States Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables – AMZ 340  
DOT/FAA/MMAC  
6500 S. MacArthur Boulevard  
Oklahoma City, Oklahoma 73169  
Telephone: (405) 954-5644

If the payment is to be made by electronic funds transfer, contact Linda Zurhorst, or her successor, at the above address for payment instructions, and shall fully comply with those instructions. Defendants shall accompany the payment of their respective CMP Obligation with a cover letter that identifies the paying Defendant and the name and docket number of this proceeding. The paying Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, United States Commodity Futures Trading Commission, Three Lafayette Center, 1155 21<sup>st</sup> Street, N.W., Washington, DC 20581; and to the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

**C. Provisions Related to Monetary Sanctions**

108. Satisfaction: Upon full satisfaction of their respective Restitution Obligation and CMP Obligation, satisfaction of judgment will be entered as to that Defendant.

109. Partial Satisfaction: Any acceptance by the Commission and/or Monitor of partial payment of the Restitution Obligations or CMP Obligations ordered in this Consent Order shall not be deemed a waiver of Defendants' requirement to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

**VI. MISCELLANEOUS PROVISIONS**

110. Upon execution of this Consent Order by the Court, the SRO (Docket No. 16) and all other orders entered in this matter, including any modifications to the SRO, shall be superseded by this Consent Order and the asset freeze contained in the SRO is lifted and shall have no further force and effect with respect to all of Gomez's accounts, with the exception of those accounts described in paragraph 99 of this Consent Order.

111. Notice: All notices required to be given by any provision in this Consent Order shall be sent by email, facsimile, or certified mail, return receipt requested, as follows:

**Notice to CFTC:**  
Division of Enforcement

U.S. Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, NW,  
Washington, D.C. 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5531  
kbanar@cftc.gov, kbruno@cftc.gov and jdeacon@cftc.gov  
All such notices to the CFTC shall reference the name and docket number of this action.

**Notice to Defendant Gomez** shall be as follows:

David M. Messer  
dmesser@briskinlaw.com  
Briskin, Cross & Sanford, LLC  
1001 Cambridge Square, Suite D  
Alpharetta, GA 30009  
Telephone: (770) 410-1555  
Facsimile: (770) 410-3281

**Notice to Defendants Giddens and Dutton** shall be as follows:

Robert J. Mottern  
bmottern@investmentlawgroup.com  
Investment Law Group of Davis Gillett Mottern & Sims, LLC  
1230 Peachtree Street, N.E.  
Suite 2445  
Atlanta, GA 30309  
Telephone: (404) 607-6933  
Facsimile: (678) 840-2126

112. Change of Address/Phone: In the event that a Defendant changes telephone number(s) and/or address(es) prior to full satisfaction of his respective Restitution Obligation and CMP Obligation, that Defendant shall provide written notice of the new number(s) and/or address(es) to the Commission within ten (10) calendar days thereof.

113. Entire Agreements and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

114. The equitable relief provisions of this Consent Order shall be binding upon Defendants and any person who is acting in the capacity of officer, agent, employee, or servant of Defendants, and any person acting in active concert or participation with Defendants who receives actual notice of this Consent Order by personal service or otherwise.

115. Invalidation: If any provision of this Consent Order or if the application of any provisions or circumstances is held invalid, the remainder of the Consent Order and the application of the provisions to any other person or circumstance shall not be affected by the holding.

116. Waiver: The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or

continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

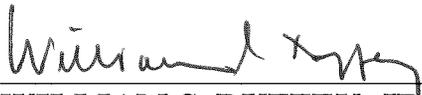
117. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this case to assure compliance with this Consent Order and for all other purposes related to this action, including any motion by Defendant to modify or for relief from the terms of this Consent Order.

118. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by facsimile or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this agreement that is delivered by facsimile or otherwise shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this *Consent Order Of Permanent Injunction And For Other Equitable Relief Against All Defendants.*

**ORDERED AND ADJUDGED.**

**DONE AND ORDERED** at Atlanta, Georgia, this 2nd day of October, 2013.

  
\_\_\_\_\_  
**WILLIAM S. DUFFEY, JR.**  
**UNITED STATES DISTRICT JUDGE**

Respectfully submitted,

SALLY QUILLIAN YATES  
UNITED STATES ATTORNEY

/s/ Lena Amanti

Lena Amanti  
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Northern District of Georgia  
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Telephone: (404) 581-6224  
Facsimile: (404) 581-6181

PLAINTIFF UNITED STATES  
COMMODITY FUTURES TRADING  
COMMISSION

/s/ Kim G. Bruno

Kathleen M. Banar, Chief Trial Attorney  
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Kim G. Bruno, Senior Trial Attorney  
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United States Commodity Futures Trading  
Commission  
Division of Enforcement  
1155 21<sup>st</sup> Street, NW,  
Washington, D.C. 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5531



DEFENDANTS LOUIS J.  
GIDDENS, JR. and ANTHONY  
W. DUTTON

DEFENDANT MICHAEL GOMEZ

/s/ Robert J. Mottern

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Louis J. Giddens, Jr.



Michael Gomez

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Anthony W. Dutton

DEFENDANTS LOUIS J.  
GIDDENS, JR. and ANTHONY  
W. DUTTON

DEFENDANT MICHAEL GOMEZ

/s/ Robert J. Mottern

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Michael Gomez



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W. DUTTON

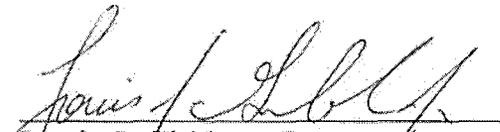
DEFENDANT MICHAEL GOMEZ

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\_\_\_\_\_  
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