

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
CASE No. 10-cv-21074-COOKE/TURNOFF**

---

|                                 |   |  |
|---------------------------------|---|--|
| U.S. COMMODITY FUTURES TRADING  | ) |  |
| COMMISSION,                     | ) |  |
|                                 | ) |  |
| Plaintiff,                      | ) |  |
|                                 | ) |  |
| v.                              | ) |  |
|                                 | ) |  |
| Claudio Aliaga, <i>et al.</i> , | ) |  |
|                                 | ) |  |
| Defendants,                     | ) |  |
|                                 | ) |  |
| and                             | ) |  |
|                                 | ) |  |
| Betty Aliaga, <i>et al.</i> ,   | ) |  |
|                                 | ) |  |
| Relief Defendants.              | ) |  |

---

**CONSENT ORDER OF PERMANENT INJUNCTION,  
CIVIL MONETARY PENALTY, AND FOR OTHER EQUITABLE  
RELIEF AGAINST DEFENDANTS CLAUDIO ALIAGA AND  
CMA CAPITAL MANAGEMENT, LLC AND DISMISSAL OF  
RELIEF DEFENDANT CMA GLOBAL INVESTEMENT FUND, LLC**

On April 6, 2010, Plaintiff U.S. Commodity Futures Trading Commission (the “Commission” or “Plaintiff”) filed a Complaint against defendants Claudio M. Aliaga (“Aliaga”) and CMA Capital Management, LLC (“CMA”) (collectively “Defendants”). The Complaint seeks injunctive and other equitable relief against Defendants for violations of the anti-fraud provisions of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 1 *et seq.* (2006 and Supp. III 2009), and the Commission Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2009). The Court entered an *ex parte* statutory restraining order (“SRO”) against Defendants pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), on April 9, 2010.

The Complaint also named as a relief defendant CMA Global Investement (*sic*) Fund, LLC (“CMA Global”), alleging that it received funds of defrauded customers and did not have any legitimate interest in these funds.

**I. CONSENTS AND AGREEMENTS**

To effect settlement of all charges alleged in the Complaint against Defendants and CMA Global without a trial on the merits or any further judicial proceedings, Defendants and Relief Defendant CMA Global:

1. Consent to the entry of this Consent Order of Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendants Claudio Aliaga and CMA Capital Management, LLC and for Dismissal of Relief Defendant CMA Global Investement Fund, LLC (“Consent Order”);

2. Affirm that Aliaga and the authorized representatives of CMA and CMA Global have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, 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 Consent Order;

3. Acknowledge service upon them of the summons and Complaint;

4. Admit the jurisdiction of the Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006);

5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to Section 6c of the Act, 7 U.S.C. §13a-1 (2006), and Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (Supp. III 2009);

6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the

Act, 7 U.S.C. §13a-1(e) (2006);

7. Waive:

a. any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§148.1, *et seq.* (2011), 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. 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 proceeding;

c. any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

d. any and all rights of appeal from this action;

8. Consent to the continued jurisdiction of this Court over them for the purposes of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if the Defendants or CMA Global now or in the future reside or operate outside the jurisdiction of this Court;

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

10. 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 the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (a) testimonial obligations, or (b) 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 their agents and/or employees under their authority or control understand and comply with this agreement;

11. By consenting to the entry of this Consent Order, neither admit nor deny the allegations of the 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 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 any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Defendants; any proceeding pursuant to Section 8a of the Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2011); and/or (c) any proceeding to enforce the terms of this Consent Order.

12. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against either of them whether inside or outside the United States; and

13. 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 Relief Defendant CMA Global in any other proceeding.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

14. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (Supp. III 2009), as set forth herein.

### **THE COURT HEREBY FINDS:**

#### **A. FINDINGS OF FACT**

15. **Plaintiff U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

16. **Defendant Claudio Aliaga** is an individual with a last known residence in Davie, Florida, and is the managing member and owner of CMA. Aliaga is a signatory on the bank accounts of CMA and has been the authorized trader on the forex trading accounts of CMA and CMA Global. Aliaga has never been registered with the Commission in any capacity. Aliaga is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company, and is not an associated person of such entities.

17. **Defendant CMA Capital Management, LLC** is a Florida limited liability company formed on May 1, 2006, with its principal place of business at 8100 Oak Lane, Suite 401, Miami Lakes, Florida. CMA has never been registered with the Commission. CMA is not

a financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company, and is not an associated person of such entities.

18. **Relief Defendant CMA Global Investement (sic) Fund, LLC** is a business entity organized in Florida on May 12, 2006. Its registered address is 8100 Oak Lane, Suite 401, Miami Lakes, Florida. CMA is listed in Florida corporate records as the managing member of CMA Global. According to a website ([www.cmafinancialgrp.com](http://www.cmafinancialgrp.com)) for CMA and various affiliated firms, CMA Global is purportedly a forex hedge fund for accredited investors and is managed by CMA. CMA Global has never been registered with the Commission in any capacity. CMA Global is not a financial institution, registered broker dealer, insurance company, financial holding. Julio Fabregat ("Fabregat") is the manager of CMA Global Investement Fund, LLC.

19. **Relief Defendant Betty Aliaga** is an individual with a last known residence in Davie, Florida, and is the wife of Defendant Claudio Aliaga. Betty Aliaga received funds of defrauded customers, which do not reflect payment for any legitimate services or represent any legitimate interest it holds in these funds.

#### **CMA's Operations**

20. From at least March 2007 and continuing through the present, Defendants solicited at least \$4.5 million from at least 125 members of the general public for the purported purpose of trading forex. From June 18, 2008 through the present, at least 80 retail investors deposited at least \$2.2 million in investment funds into bank accounts in the name of CMA and CMA Global. During the relevant period, CMA operated various businesses out of an office located in Miami Lakes, Florida, including a forex operation.

21. Aliaga is the managing member and registered agent of CMA. Neither CMA nor

Aliaga have ever been registered with the Commission in any capacity. Neither CMA nor Aliaga is a financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company, and is not an associated person of such entities. Aliaga is the sole signatory on three accounts at Bank of America (“BofA”) held in the name of CMA. Aliaga is also listed on trading records as the only authorized trader on both forex trading accounts held in the name of CMA and has trading authority on the trading account held in the name of CMA Global.

22. CMA’s customers typically learned about its forex operation through friends and/or family members. After learning about CMA, prospective customers met with Aliaga at CMA’s office, where he then personally solicited them to deposit funds with CMA, with the understanding that Aliaga would engage in forex trading and would pay the customers from his earnings therefrom. At these meetings, Aliaga guaranteed some prospective customers consistent monthly returns of 2-3% on their investments based on his forex trading. Aliaga also assured them that he was a successful trader and that there would be little to no risk to their principal investment.

23. Once prospective customers were convinced to invest, they deposited funds into bank accounts held in the name of CMA and/or CMA Global held at BofA. After depositing funds with CMA, prospective customers signed promissory notes which represented that CMA would guarantee monthly interest payments to depositors based on the stated amount loaned to CMA.

24. None of CMA’s customers maintained assets in excess of \$10 million or \$5 million and invested with CMA for the purpose of hedging any underlying risk associated with any asset they owned. No CMA customer ever took delivery of any foreign currency from CMA

or Aliaga. Furthermore, none of the forex contracts traded by Aliaga resulted in delivery of any foreign currency or created an enforceable obligation to deliver.

### **Fraud Through Material Omissions and Misrepresentations**

25. With regard to material omissions, from June 18, 2008, to the present, Aliaga failed to disclose to actual and prospective customers the following facts:

- a) that he misappropriated customer funds for personal use;
- b) that, contrary to assertions that he took customer funds and traded forex contracts on their behalf, he only traded a portion of customer funds; and
- c) that, contrary to assertions that he took customer funds and traded forex contracts on their behalf, he used customer funds to make payments to other customers.

Aliaga was required to disclose such material information because he falsely conveyed to actual and prospective customers the impression that he traded customer funds successfully, and that such trading generated profits for CMA customers. Aliaga conveyed this false impression through the issuance of purported “promissory notes” to customers, through false monthly account statements issued to customers, and through representations concerning his purported success as a forex trader. Aliaga was required to disclose the truth about his misappropriation and the actual use of customer deposits at the time he met with actual and prospective customers, and every day that customers maintained an open account with CMA.

26. With regard to material misrepresentations, in September 2007, March 2008, August 2008, and September 2008, Aliaga told prospective customers that he had gained experience successfully trading forex for close friends and family and was now accepting funds to participate in a pool for which he managed the forex trading. In the same face-to-face meetings, Aliaga also guaranteed these prospective customers a 2 – 3% monthly return on their investment that would be based on profits from his forex trading. Furthermore, in the September

2007, March 2008, and September 2008 meetings, Aliaga guaranteed prospective customers that there would be no risk to their principal investment. For example, in September 2007, Aliaga told one prospective customer that the only risk to her investment would be if he ran off with her money.

27. Aliaga's representations to actual and prospective customers that he was a successful trader, he earned 2 – 3% per month in trading profits, and customer funds were not at risk, were false.

### **Aliaga's Forex Trading**

28. Aliaga's representations that he generated a 2 – 3% monthly return on customer investments through forex trading with no risk to principal were false because he did not generate net returns through forex trading and instead used customer funds to make monthly payments. While CMA customers deposited at least \$4.5 million with CMA during the relevant period for the purpose of trading forex, Defendants only deposited \$1,929,366.65 into three forex trading accounts held in the name of CMA and CMA Global at two registered futures commission merchants ("FCM"), OANDA Corporation ("OANDA") and Global Forex Trading ("GFT"), a division of Global Futures & Forex Ltd.

29. In the forex accounts held at these two FCMs, Aliaga, the person with trading authority, executed margined forex transactions in the name of CMA and CMA Global. None of the forex contracts executed in these trading accounts resulted in delivery of any foreign currency or created an enforceable obligation to deliver foreign currency.

30. In the first OANDA forex account Aliaga managed, from August 2006 through July 2008, Defendants deposited \$615,000 and withdrew \$125,599.55. Trading in this account was profitable in only 8 of 24 months of trading. The account sustained total trading losses of

\$495,780.51.

31. In the second OANDA forex account, which Aliaga managed, from February 2008 through February 2009, Defendants deposited \$630,000 and withdrew \$736,266.58. During the one year period, the account had an aggregate profit of \$112,829.97. However, there were net losses in 8 out of the 12 months in which trading actually occurred.

32. From August 2008 through December 2008, Aliaga also managed a forex trading account in the name of CMA at GFT. Defendants deposited \$684,366.65 into this account and withdrew \$394,192.70. The account sustained total trading losses of \$290,173.95.

33. At all times since August 2006, Aliaga has sustained cumulative trading losses every month in the three forex accounts that he managed, except in the month of August 2006. In total, from August 2006 thru February 2009, Aliaga sustained net trading losses across all accounts of approximately \$673,000.

#### **Misappropriation of Customer Funds**

34. During the relevant period, Aliaga misappropriated customer funds. While CMA customers deposited at least \$4.5 million with CMA during the relevant period for the purpose of trading forex, Aliaga deposited only \$1,929,366.65 into three forex trading accounts held in the name of CMA and CMA Global. Customer funds were used by Aliaga and CMA to pay purported returns to customers and pay business and personal expenses such as general office expenses, monthly office rent, monthly payments on a 2007 Cadillac DTS and a 2007 Cadillac Escalade, monthly mortgage payments, airline tickets and hotels, monthly loan and/or credit payments, food and clothing, gasoline, medical expenses for Aliaga, and \$247,000 in salary payments to employees of CMA and other businesses. Aliaga also withdrew cash, paid himself approximately \$438,000, and transferred nearly \$1 million to his wife, Betty.

35. CMA Global's bank account was controlled by a CMA employee during the relevant period. Some customer funds were deposited directly into the bank account of CMA Global and funds flowed between the CMA and CMA Global accounts. There is no evidence that CMA Global was a CMA customer or any evidence that CMA Global provided CMA with any legitimate services for which it might have been compensated.

#### **Concealment of the Fraud**

36. Aliaga concealed the fraud by transmitting to customers account statements that made false representations and omitted material facts. By U.S. mail, Aliaga provided customers with monthly account statements representing that each customer was earning returns of 2 – 3% on their deposits without any loss to principal. The statements failed to reflect that not all customer investment funds were transferred into forex trading accounts, the trading accounts actually sustained net losses or that Aliaga was using customer deposits to pay monthly interest payments.

37. In March 2009 Defendants issued a letter to customers promising to return at least a portion of their funds. The letter acknowledged that CMA failed to make "interest" payments as promised and urged patience until Aliaga could resolve the problem. Aliaga told at least one customer that he was in London to take advantage of an opportunity to raise new capital and invest it to pay back the customers that were not receiving monthly interest payment or requesting redemption.

38. At all times relevant and in regard to all conduct alleged herein, Aliaga was an agent or employee of CMA and acted within the scope of his agency or employment.

#### **Deposit by Alfonz Maloschik**

39. On or about April 12, 2010, Alfonz Maloschik ("Maloschik"), who was unaware

of the SRO issued on April 9, 2010 by this Court, deposited three hundred eighty thousand (\$380,000) into the BofA account of Relief Defendant CMA Global (account no. xxxx3828).

## **B. CONCLUSIONS OF LAW**

### **Jurisdiction and Venue**

40. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), 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 in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

41. The Commission has jurisdiction over the forex solicitations and transactions at issue in this action pursuant to Sections 6c and 2(c)(2)(C) of the Act, 7 U.S.C. § 13a-1, 2(c)(2)(C) (2006 and Supp. III 2009).

42. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because during the Relevant Period Defendants resided and/or operated in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

### **Aliaga and CMA Violated the Act and Regulations**

43. By the conduct described in Section II.A. above, Aliaga knowingly, or with reckless disregard for the truth, violated Sections 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A) and (C) (Supp. III 2009), with respect to acts occurring on or after June 18, 2008, by, among other things, (1) omitting material information, including the fact that the Defendants were misappropriating customer funds; (2) misrepresenting the profitability of Aliaga's trading

and omitting material facts concerning the performance of Aliaga's trading; (3) issuing false statements to customers that misrepresented the balance of their accounts and the profitability of Aliaga's trading; and (4) by misappropriating customer funds for personal use.

44. As set forth in Section II.A. above, Aliaga also violated Section 4b(a)(2)(B) of the Act, 7 U.S.C. § 6b(a)(2)(B) (Supp. III 2009), with respect to acts occurring on or after June 18, 2008, by issuing or causing to be issued false account statements that misrepresented the value of customers' interests.

45. At all times relevant and in regard to all conduct alleged herein, Aliaga was an agent or employee of CMA and committed the acts and omissions described in Section II.A. above while acting within the scope of his agency or in the course of his employment with CMA. As such, CMA is liable for Aliaga's conduct in violation of the Act pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2009).

46. In connection with such conduct, Defendants used the mails or other means or instrumentalities of interstate commerce, directly or indirectly, to solicit customers and issue false account statements.

47. Unless restrained and enjoined by this Court, there is a reasonable likelihood that the Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

### **III. PERMANENT INJUNCTION**

#### **IT IS HEREBY ORDERED THAT:**

48. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), Defendants are permanently restrained, enjoined and prohibited from directly and indirectly, in or in connection with any order to make, or the making

of, any contract of sale of any commodity for future delivery that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market—

- a. Cheating or defrauding or attempting to cheat or defraud other persons; willfully making or causing to be made to the other person any false report or statement or willfully entering or causing to be entered for the other person any false record; [or] willfully deceiving or attempting to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2) [Section 4b(a) of the Act], with the other person in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

49. Defendants are 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 of the Act, as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a);;
- b. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2011)) (“commodity options”), security futures products and/or foreign currency (as described in Sections

2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for their own personal account, proprietary 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, security futures products, 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, security futures products, 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, security futures products, 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) (2011); and
- g. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. §

1a) 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) (2011).

#### **IV. RESTITUTION AND CIVIL MONETARY PENALTY**

##### **A. Restitution**

50. Aliaga and CMA shall be jointly and severally liable for and pay full restitution in the amount of one million one hundred thousand dollars (\$1,100,000) (“Restitution Obligation”) within ten (10) days of the date of entry of this Consent Order. If the Restitution Obligation is not paid in full within ten (10) days of the date of entry of this Consent Order, then post-judgment interest shall accrue on the 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.

51. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendants’ customers, the Court appoints the National Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor shall collect restitution payments from Defendants and make distribution as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA’s appointment as Monitor, other than actions involving fraud.

52. Defendants shall make Restitution Obligation payments under this Consent Order to the Monitor in the name “CMA Restitution Fund” and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s check, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter

that identifies the paying Defendant and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to: (a) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581; and (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

53. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendants' customers identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative costs of the making of a distribution to eligible customers 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 instructions for civil monetary penalty payments set forth in Part B below.

54. Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendants' customers to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendants shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward Restitution Obligation.

55. The amounts payable to each customer shall not limit the ability of any customer from proving that a greater amount is owed from Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that

exist under state or common law.

56. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Defendants who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the Restitution Obligation that has not been paid by Defendants to ensure continued compliance with any provision of this Consent Order and to hold Defendants in contempt for any violations of any provision of this Consent Order.

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

**B. Civil Monetary Penalty**

58. Aliaga shall be liable for and pay to the Commission a civil monetary penalty ("CMP") in the amount of three million three hundred thousand dollars (\$3,300,000) within ten (10) days of the date of this Consent Order. If Aliaga does not pay his CMP obligation in full within ten (10) days of the date of entry of this Consent Order, then post-judgment interest shall accrue on his 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.

59. CMA shall be liable for and pay to the Commission a civil monetary penalty in the amount of one million one hundred thousand dollars (\$1,100,000) within ten (10) days of the date of this Consent Order. If CMA does not pay its CMP obligation in full within ten (10) days of the date of entry of this Consent Order, then post-judgment interest shall accrue on its 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.

60. Defendants shall pay their respective CMP obligations 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 other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
Attn: Accounts Receivable – AMZ-340  
E-mail Box: 9-AMC-AMZ-AR-CFTC  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, Oklahoma 73169  
Telephone: 405-954-5644

If payment is to be made by electronic funds transfer, Defendants shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the penalty with a cover letter that identifies the Defendants and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and the Chief, Office of Cooperative Enforcement, at the same address.

**C. Provisions Related to Monetary Sanctions**

61. Satisfaction: Upon full satisfaction of the Defendants' Restitution Obligation and CMP Obligation, a satisfaction of judgment will be entered into as to the Defendants.

62. Partial Satisfaction: Any acceptance by the Commission or Monitor of partial payment of the Defendants' Restitution Obligation or respective CMP obligations shall not be

deemed a waiver of their obligation 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.

**V. RELEASE OF FUNDS AND DISMISSAL OF RELIEF DEFENDANTS**

63. Upon entry of this Consent Order, the asset freeze imposed on assets of Defendants and Relief Defendants [D.E. 12] shall be modified for the limited purpose of permitting the return of funds in the amount \$380,000 belonging to Maloschik from CMA Global's bank account at BofA (account no. xxxx3828). Within ten (10) business days of the entry of this Consent Order, BofA shall release \$380,000 held in account no. xxxx3828 to the trust account of Gerald J. Houlihan, Esq., counsel for Maloschik, at SunTrust Bank, N.A. for credit to the Houlihan & Partners Trust Account No. xxxx66026.

64. Within four (4) business days of the return to counsel for Maloschik of the funds referenced in Paragraph 63 of this Consent Order, Plaintiff shall file a certification with the Court confirming the return of these funds. The Parties shall also, within four (4) business days of the return of funds to counsel for Maloschik, file a joint stipulation for dismissal with prejudice of relief defendants CMA Global and Betty Aliaga pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure.

**VI. MISCELLANEOUS PROVISIONS**

**IT IS FURTHER ORDERED THAT:**

65. Notices: All notices required to be given by any provision in this Consent Order shall be sent certified mail, return receipt requested, as follows:

Notice to the Commission:

Attention - Director of Enforcement  
Commodity Futures Trading Commission  
Division of Enforcement

1155 21st Street N.W.  
Washington, DC 20581

Notice to Defendants Claudio Aliaga and CMA Capital Management, LLC:

Claudio Aliaga  
C/O Jonathan H. Rosenthal, Esq.  
Malman, Malman & Rosenthal  
3107 Stirling Road, Suite 101  
Fort Lauderdale, Florida 33312-8500

Notice to Relief Defendant CMA Global Investement Fund LLC:

CMA Global Investement Fund, LLC  
C/O Alan G. Geffin, Esq.  
Hermelee & Geffin, LLC  
101 N.E. 3<sup>rd</sup> Avenue, Ste. 1110  
Fort Lauderdale, Florida 33301

All such notices to the Commission shall reference the name and docket number of this action.

66. Change of Address: Until such time as Defendants satisfy in full their Restitution Obligation and respective CMP obligations as set forth in this Consent Order, Defendants shall provide written notice to the Commission by certified mail of any change in their mailing address within ten (10) calendar days of the change.

67. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

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

69. Waiver: The failure of any party to this Consent Order or of any customer at any

time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or customer 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 or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

70. Acknowledgements: Upon being served with copies of this Consent Order after entry by this Court, Defendants shall sign an acknowledgment of service and serve such acknowledgment on this Court and the Commission within seven (7) calendar days.

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

72. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendants, upon any person under Defendants' authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendants.

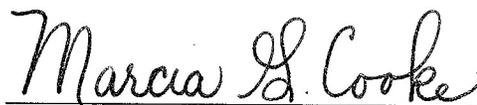
73. Authority: Aliaga hereby warrants that he is the managing member and owner of CMA, and that this Consent Order has been duly authorized by CMA and he has been duly empowered to sign and submit this Consent Order on behalf of CMA. Fabregat hereby warrants that he is the manager of CMA Global, and that this Consent Order has been duly authorized by CMA Global and he has been duly empowered to sign and submit this Consent Order on behalf of CMA Global.

74. 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 hereto and delivered (by facsimile, e-mail, or otherwise) to the other parties, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

75. Defendants understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this *Consent Order for Permanent Injunction, Civil Monetary Penalty, and For Other Equitable Relief Against Defendants Claudio Aliaga and CMA Capital Management, LLC and for Dismissal of Relief Defendant CMA Global Investment Fund, LLC.*

**DONE and ORDERED** in chambers at Miami, Florida, this 26<sup>th</sup> day of September 2012.

  
\_\_\_\_\_  
MARCIA G. COOKE  
United States District Judge

Copies furnished to:  
*William C. Turnoff, U.S. Magistrate Judge*  
*Counsel of record*