

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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11:23 am, Sep 30, 2014

In the Matter of:

Scott A. Beatty, individually and
d/b/a Peak Capital Group, Inc.,
and Peak Capital Management
Group, Inc.,

CFTC Docket No. 14--34

Respondents.

ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, AS AMENDED,
MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that during the period January 2011 through April 2014 (the “Relevant Period”), Scott A. Beatty (“Beatty”), individually and d/b/a Peak Capital Group, Inc. (“PeakCap”), and Peak Capital Management Group, Inc. (“PCMG”) (collectively, “Respondents”) violated Sections 4b(a)(2)(A) and (C) and 4m(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6b(a)(2)(A), (C) and 6m(1) (2012), and Commission Regulations (“Regulations”) 4.41(b), 5.2(b)(1) and (3), and 5.3(a)(3)(i), 17 C.F.R. §§ 4.41(b), 5.2(b)(1), (3), and 5.3(a)(3)(i) (2014), and Beatty violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, as Amended, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.¹

¹ Respondents consent to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondents do not consent to the use of the Offer, or the

III.

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Respondents, without being registered, fraudulently solicited and accepted approximately \$825,000 from forty-nine (49) customers to trade off-exchange foreign currency contracts (“forex”) in individual managed accounts via the Respondents’ website at www.peakforex.com. Rather than direct customers to open individual customer accounts, Beatty opened a single trading account in the name of PCMG that suffered losses while Beatty misappropriated customer funds for his own personal use and returned some funds to customers as purported profits in excess of principal in the manner of a Ponzi scheme.

Further, in connection with the Commission’s investigation of Respondents, Beatty knowingly made false and misleading written statements to Commission staff on three separate occasions during the Relevant Period.

B. RESPONDENTS

Scott A. Beatty, individually and d/b/a PeakCap, resides in Roy, Utah. Beatty is the founder, incorporator, director, manager, officer, employee, and/or agent of PCMG, and the sole owner and signatory on all bank accounts in the name of PCMG and PeakCap, both of which accepted customer funds during the Relevant Period. Beatty is also the owner and only authorized trader on a trading account in the name of PCMG and the owner and operator of PeakCap’s website, www.peakforex.com (“the website”). Beatty is not, and has never been, registered with the Commission in any capacity.

Peak Capital Management Group, Inc. is an active Florida corporation formed by Beatty on March 22, 2011. Its principal place of business is in Ogden, Utah. PCMG received customer funds which were fraudulently solicited and misappropriated by Beatty, individually and d/b/a PeakCap. During part of the Relevant Period, Beatty maintained a futures, forex and equities trading account in the name of PCMG. PCMG has never been registered with the Commission in any capacity.

C. FACTS

1. Forex Trading

During the Relevant Period, Beatty, individually and d/b/a PeakCap, solicited customers by electronic mail, the website and other means, and received approximately \$825,000 from at

findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

least forty-nine (49) Japanese citizens, who were not eligible contract participants (“ECPs”) as defined in Section 1a(18) of the Act, 7 U.S.C. § 1a(18), to trade leveraged, margined or financed forex in individually managed accounts. During the Relevant Period, Beatty was not registered as a commodity trading advisor (“CTA”). Beatty also was not a financial institution, registered broker or dealer, insurance company, financial holding company, or investment bank holding company, or an associated person of any of the foregoing.

At all times during the Relevant Period, Beatty claimed to be an experienced and accomplished forex trading advisor earning returns as high as +43.9%. However, Beatty was not an accomplished forex trader. In fact, the trading results posted on the website by Beatty were false and did not reflect the results of actual forex trading conducted by Beatty on behalf of customers.

Rather than trade the customer funds in individual accounts as promised, in April 2011 Beatty opened a trading account in the name of PCMG with a registered Futures Commission Merchant (“FCM”) to trade futures, forex, options and stocks. During the Relevant Period, Beatty deposited \$125,000 into PCMG’s trading account using customer funds that were transferred by him from PeakCap’s bank account to PCMG’s bank account. Beatty’s trading of PCMG’s account resulted in cumulative net losses. Of the \$825,000 that Beatty accepted from customers, he lost \$71,000 trading, including commissions and fees, returned \$184,000 in principal and \$53,000 in excess payments to customers, and used the remaining \$517,000 to pay Beatty’s personal expenses, including car payments, retail purchases and travel.

2. False Statements to the Commission

In addition, Beatty made false and misleading written statements to Commission staff on June 13, 2013, July 13, 2013 and October 28, 2013. All three statements were contained in emails Beatty sent to Commission staff in response to subpoenas. In Beatty’s first two emails he claimed that PeakCap had been out of business since 2010 and that the company had made no attempt to solicit customers for any managed forex accounts or forex related products since then. In Beatty’s third email he claimed that he left the website online because he had intentions to return to the industry, but that the website is merely a template copy of the website for his construction company. As summarized by the information above, Beatty’s three statements to Commission staff were false and misleading.

IV.

LEGAL DISCUSSION

A. Beatty Violated Section 4b(a)(2)(A) and (C) of the Act and Regulation 5.2(b)(1) and (3)

Section 4b(a)(2)(A) and (C) of the Act prohibits all manner of fraud in or in connection with forex transactions, including fraudulent solicitation and misappropriation. Section 4b(a)(2)(A) and (C) provides that it is unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or 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) to cheat or defraud or attempt to cheat or defraud the other person . . . [or] (C) willfully to deceive or attempt 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), with the other person

Pursuant to Section 2(c)(2)(C)(iv) of the Act, Section 4b of the Act applies to the forex transactions conducted by Beatty and offered to, or entered into with, non-ECPs on a leveraged, margined or financed basis, “as if” they were a contract of sale for a commodity for future delivery.²

Effective October 18, 2010, Regulation 5.2(b) also prohibits fraud in or in connection with forex transactions. Regulation 5.2(b)(1) and (3) makes it unlawful: for any person, in or in connection with any retail forex transaction: (1) to cheat or defraud or attempt to cheat or defraud any person; . . . or (3) willfully to deceive or attempt to deceive any person by any means whatsoever.

During the Relevant Period, Beatty, in or in connection with the making of forex transactions made, or to be made, for or on behalf of, or with, non-ECP customers, cheated, defrauded or attempted to cheat or defraud such customers, and willfully deceived or attempted to deceive such customers by misappropriating their funds in violation of Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(2)(A), (C). By such fraudulent actions, Beatty, also through the use of the mails or other means or instrumentalities of interstate commerce and in or in connection with retail forex transactions, cheated or defrauded or attempted to cheat or defraud customers; and deceived or attempted to deceive such customers by misappropriating their funds in violation of Regulation 5.2(b)(1) and (3), 17 C.F.R. § 5.2(b)(1), (3) (2013).

To establish that a Respondent committed solicitation fraud in violation of Section 4b(a)(2)(A) and (C) of the Act, and Regulation 5.2(b)(1) and (3), the Commission must prove that (1) a misrepresentation has occurred; (2) with scienter; and (3) the misrepresentation was material. *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328-29 (11th Cir. 2002) *cert. denied*, 543 U.S. 1034 (2004); *CFTC v. PMC Strategy LLC*, 2013 WL 1349177 *5 (W.D.N.C. Apr. 3, 2013) (granting CFTC motion for summary judgment on Section 4b(a)(2) claims). “Whether a misrepresentation has been made depends on the overall message and the common understanding of the information conveyed.” *R.J. Fitzgerald & Co.*, 310 F.3d at 1328 (internal quotation marks and citation omitted). A statement or omission is material if “a reasonable customer would consider it important in deciding whether to make an investment.” *Id.* at 1328-29. In order to

² The Commission has jurisdiction over Beatty’s fraud in connection with forex transactions offered to, or entered into with, non-ECPs on a leveraged, margined or financed basis, pursuant to Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (2012).

meet the scienter requirement, the Commission must demonstrate that a defendant committed the alleged wrongful acts “intentionally or with reckless disregard for his duties under the Act.” *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988) (finding that recklessness is sufficient to satisfy scienter requirement). To prove that conduct is intentional, the Commission need only show that a defendant’s actions were “intentional as opposed to accidental.” *Lawrence v. CFTC*, 759 F. 2d 767, 773 (9th Cir. 1985). To prove that conduct is reckless, the Commission must show that it “departs so far from the standards of ordinary care that it is very difficult to believe the [actor] was not aware of what he was doing.” *Drexel Burnham Lambert*, 850 F.2d at 748 (alteration in original) (internal quotation marks and citation omitted); *Do v. Lind-Waldock & Co.* [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,516, 1995 CFTC LEXIS 247, at *4 (CFTC Sept. 27, 1995) (determining that a reckless act is one that “departs so far from the standards of ordinary care that it is very difficult to believe the [actor] was not aware of what he was doing”) (quoting *Drexel Burnham Lambert*, 850 F.2d at 848); see also *CFTC v. Noble Metals Int’l, Inc.*, 67 F.3d 766, 774 (9th Cir. 1995) (“Mere negligence, mistake, or inadvertence fails to meet Section 4b’s scienter requirement.”).

In soliciting customer funds, Beatty knowingly misrepresented the profitability of his forex trading, failed to disclose material information about his lack of experience trading forex, and failed to disclose trading losses. Beatty’s overall message was that he was an established forex trader with no losses, and exceptionally high returns. Beatty failed to disclose that the trading results posted on the website were not the results of actual trading, but nonetheless presented such trading results as real.

Similarly, Beatty’s misappropriation of customers’ monies also violated Section 4b of the Act. See *In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701, 1999 CFTC LEXIS 167, at *36 (CFTC July 19, 1999) (respondents violated Section 4b of the Act by surreptitiously retaining money in their own bank accounts that should have been traded on behalf of the investors), aff’d in relevant part sub nom. *Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000); *CFTC v. Morse*, 762 F.2d 60, 62 (8th Cir. 1985) (recognizing that defendant’s use of customer funds for personal use violated Section 4b of the Act); *CFTC v. McLaurin*, No. 95-C-285, 1996 U.S. Dist. LEXIS 9417, at *10-12 (N.D. Ill. July 3, 1996) (by depositing customers’ monies into accounts in which they had no ownership interests and making unauthorized disbursements from those accounts for his own use, defendant violated Section 4b of the Act); *CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (same). By misappropriating approximately \$641,000 of customer funds, Respondents violated Section 4b(a)(1)(A) and (C), of the Act and Commission Regulations 5.2(b)(1) and (3).

B. Beatty Violated Section 4m(1) Of The Act And Regulation 5.3(a)(3)(i)

Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), provides that it is unlawful for any CTA, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with its CTA business. Section 1a(6) of the Act, 7 U.S.C. § 1a(6) (2012), in relevant part, defines a CTA as any person who for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility.

During the Relevant Period, Beatty solicited and accepted funds from customers, used instrumentalities of interstate commerce, including the internet and interstate bank wire transfers in connection with creating individual customers accounts to trade forex. Beatty was required to be registered as a CTA because he held himself out to the public as CTA. Additionally, Beatty obtained written authorization to exercise discretionary trading authority over accounts of customers who were not ECPs in connection with retail forex transactions. Unless a CTA restricts his clients to family, friends, and existing business associates, he is viewed as holding himself out to the public as a CTA. CFTC Interpretive Letter No. 97-26 [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,026 (March 26, 1997). As such, Beatty was required to register as a CTA and failed to do so, in violation of Section 4m(1) of the Act and Regulation 5.3(a)(3)(i).

C. Beatty Violated Regulation 4.41(b)

Regulation 4.41(b), 17 C.F.R § 4.41(b), prohibits CTAs from presenting the performance of any simulated or hypothetical commodity interest account, transaction or series of transactions unless the hypothetical disclaimer set forth in Regulation 4.41(b)(1)(i) or (ii) is prominently disclosed. During the Relevant Period, Beatty was not earning any profits from trading forex. However, the website never included a hypothetical disclaimer in its representations of Beatty's trading performance. By this conduct, Beatty violated Regulation 4.41(b), 17 C.F.R § 4.41(b). *CFTC v. Vartuli*, 228 F.3d 94, 107 (2d Cir. 2000) (phrasing and placement of disclosure appeared designed to mislead and violated Regulation 4.41(b)).

D. Derivative Liability

1. Beatty's Controlling Person Liability

Beatty controlled PCMG and, as a controlling person, is liable for PCMG's violations of the Act and Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), which provides that a defendant who fails to act in good faith or knowingly induces, directly or indirectly, acts constituting a violation of the Act may be liable as a controlling person of an entity if the defendant possesses, directly or indirectly, the power to direct and cause the direction of the management and policies of that entity. *See Monieson v. CFTC*, 996 F.2d 852, 858 (7th Cir. 1993); *R.J. Fitzgerald & Co.*, 310 F.3d at 1334. A "fundamental purpose" of the statute is "to reach behind the corporate entity to the controlling individuals of the corporation and to impose liability for violations of the Act directly on such individuals as well as on the corporation itself." *R.J. Fitzgerald*, 310 F.3d at 1334 (quoting *JCC, Inc. v. CFTC*, 63 F.3d 1557, 1567 (11th Cir. 1995)).

To establish controlling person liability under Section 13(b) of the Act, 7 U.S.C. § 13c(b), the Commission must show (1) control; and (2) lack of good faith or knowing inducement of the acts constituting the violation. *See In re First Nat'l Trading Corp.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,142, at 41,787 (CFTC July 20, 1994), *aff'd without opinion sub nom. Pick v. CFTC*, 99 F.3d 1139 (6th Cir. 1996). To establish control, a defendant must possess general control over the operation of the entity principally liable. *See R.J. Fitzgerald*, 310 F.3d at 1334. Beatty was an officer, founder, principal, and the only

authorized signatory on PCMG's bank account and trading account thereby indicating that he had the power to control PCMG. See *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103, at 34,767 (CFTC Jan. 12, 1988); see also *Apache Trading Corp.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,251, at 38,795 (CFTC Mar. 11, 1992) (finding that an individual controls a corporation where he "directs the economic aspects of the firm").

To establish the "knowing inducement" element of the controlling person violation, the Commission must show that "the controlling person had actual or constructive knowledge of the core activities that constitute the violations at issue and allowed them to continue." *JCC, Inc. v. CFTC*, 63 F.3d 1557, 1568 (11th Cir. 1995) (quoting *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103, at 34,767 (CFTC Jan. 12, 1988)). In this case, Beatty was an owner, manager and principal of PCMG and was responsible for PCMG's operations. Beatty fraudulently solicited customers, and directed and controlled all of PCMG's operations and knowingly induced, directly or indirectly, the conduct that constitutes a violation of the Act. Beatty clearly induced and directly engaged in all the fraudulent conduct. Consequently, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), he is liable for PCMG's violations of the Act.

2. PCMG's Liability for the Acts, Omissions and Failures of Beatty

During the Relevant Period, the foregoing acts, omissions, and failures of Beatty occurred within the scope of his employment, office, or agency with PCMG; therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2, PCMG is liable for Beatty's violations of Sections 4b(a)(2)(A) and (C) and 4m(1) of the Act and Regulations 4.41(b), 5.2(b)(1) and (3), and 5.3(a)(3)(i).

E. Beatty Violated Section 6(c)(2) Of The Act

Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012), provides that it is unlawful "for any person to make any false or misleading statement of a material fact to the Commission . . . or to omit to state in any such statement any material fact that is necessary to make any statement of material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading." In response to three Commission subpoenas, Beatty made false and misleading statements regarding, among other things, his operation and control of PeakCap, the website and PCMG and solicitation and acceptance of customer funds to trade forex in individual accounts. Beatty knew that his statements were both false and misleading, and that they were material because they went to the heart of the Commission's investigation of Respondents.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondents violated Sections 4b(a)(2)(A) and (C) and 4m(1) of the Act, 6b(a)(2)(A), (C) and 6m(1) (2012), and Regulations 4.41(b), 5.2(b)(1) and (3), and 5.3(a)(3)(i), 17 C.F.R. §§ 4.41(b), 5.2(b)(1), (3), and 5.3(a)(3)(i) (2013), and Beatty violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012).

VI.

OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waive:
 - 1. the filing and service of a complaint and notice of hearing;
 - 2. a hearing;
 - 3. all post-hearing procedures;
 - 4. judicial review by any court;
 - 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. 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 Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2013), relating to, or arising from, this proceeding;
 - 7. 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 proceeding; and

8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that Respondents violated Sections 4b(a)(2)(A) and (C) and 4m(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(A), (C) and 6m(1) (2012), and Regulations 4.41(b), 5.2(b)(1) and (3), and 5.3(a)(3)(i), 17 C.F.R. §§ 4.41(b), 5.2(b)(1), (3), and 5.3(a)(3)(i) (2013), and that Beatty violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012);
 2. orders Respondents to cease and desist from violating Sections 4b(a)(2)(A) and (C) and 4m(1) of the Act, 6b(a)(2)(A), (C) and 6m(1) (2012), and Regulations 4.41(b), 5.2(b)(1) and (3), and 5.3(a)(3)(i), 17 C.F.R. §§ 4.41(b), 5.2(b)(1), (3), and 5.3(a)(3)(i) (2013), and Beatty to cease and desist from violating Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012);
 3. orders Respondents, jointly and severally, to pay restitution in the amount of six hundred forty-one thousand Dollars (\$641,000), plus post-judgment interest;
 4. orders Respondents, jointly and severally, to pay a civil monetary penalty in the amount of one million Dollars (\$1,000,000), plus post-judgment interest;
 5. appoints the National Futures Association ("NFA") as Monitor in this matter;
 6. orders that Respondents be permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a), and all registered entities shall refuse them trading privileges; and
 7. orders Respondents and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VII.
ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents shall cease and desist from violating Sections 4b(a)(2)(A) and (C) and 4m(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(A), (C) and 6m(1) (2012), and Regulations 4.41(b), 5.2(b)(1) and (3), and 5.3(a)(3)(i), 17 C.F.R. §§ 4.41(b), 5.2(b)(1), (3), and 5.3(a)(3)(i) (2013), and Beatty shall cease and desist from violating Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012);
- B. Respondents, jointly and severally, shall pay restitution in the amount of six hundred forty-one thousand Dollars (\$641,000) (“Restitution Obligation”). Post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2006).

To effect payment by Respondents and the distribution of restitution to Respondents’ customers, the Commission appoints the NFA as “Monitor.” The Monitor shall collect payments of the Restitution Obligation from Respondents and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, it shall not be liable for any action or inaction arising from its appointment as Monitor other than actions involving fraud.

Respondents shall make their payments of the Restitution Obligation under this Order in the name of the “Peak Capital/Scott A. Beatty Settlement Fund” and shall send such payments by electronic funds transfer, or 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 a cover letter that identifies the paying Respondents and the name and docket number of this proceeding. The paying Respondent(s) shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The Monitor shall oversee Respondents’ Restitution Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to the Respondents’ customers or may defer distribution until such time as the Monitor may deem appropriate. In the event that the amount of payments of the Restitution Obligation to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a restitution distribution 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, as discussed below. To the extent any funds accrue to the U.S. Treasury for satisfaction of Respondents’ Restitution Obligation,

such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this Order.

- C. Respondents, jointly and severally, shall pay a civil monetary penalty in the amount of one million dollars (\$1,000,000) (the "CMP Obligation"). Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2006). Respondents shall pay the 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 other than by electronic funds transfer, then 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 Receivables --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- D. Respondents are permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a), and all registered entities shall refuse them trading privileges.
- E. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all

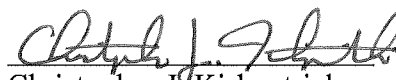
steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

2. Respondents agree that they shall never, directly or indirectly:
 - a. enter 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) (2013)) (“commodity options”), security futures products, swaps, (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (2012), and as further defined by Regulation 1.3(xxx), 17 C.F.R. § 1.3 (xxx)) (“swaps”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (“forex contracts”) for Respondents’ own personal account(s) or for any account(s) in which Respondents have a direct or indirect interest;
 - b. have any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts traded on Respondents’ behalf;
 - c. control or direct 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, swaps, and/or forex contracts;
 - d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts;
 - e. apply for registration or claim exemption from registration with the Commission in any capacity, and engage 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) (2013); and/or
 - f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2013)), agent, or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a (2012) 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) (2013).
3. Cooperation with Monitor: Respondents shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondents’ customers, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments. Respondents 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 the Restitution Obligation.

4. Cooperation with the Commission: Respondents shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.
5. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission or the Monitor of partial payment of Respondents' Restitution Obligation, or CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
6. Change of Address/Phone: Until such time as Respondents satisfy in full their Restitution Obligation, and CMP Obligation as set forth in this Order, Respondents shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

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



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 30, 2014