

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**U. S. COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

v.

**JEFFREY SLEMMER, SLEMMER
ENTERPRISES LLC d/b/a BERKLEY
HARD ASSET GROUP and BERKLEY
HARD ASSETS, CHRISTIAN DORRIAN,
DORRIAN ENTERPRISES, LLC d/b/a
BERKLEY RARE DIAMONDS, ADAM
ROTH, and ROTH INVESTMENT
GROUP LLC d/b/a BERKLEY HARD
ASSET GROUP,**

Defendants.

Case No: 9:16-cv-80867-WPD

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL
MONETARY PENALTY, AND OTHER EQUITABLE RELIEF AGAINST
DEFENDANTS JEFFREY SLEMMER, SLEMMER ENTERPRISES LLC
d/b/a BERKLEY HARD ASSET GROUP and BERKLEY HARD ASSETS,
CHRISTIAN DORRIAN, DORRIAN ENTERPRISES, LLC d/b/a
BERKLEY RARE DIAMONDS, ADAM ROTH, and ROTH INVESTMENT
GROUP LLC d/b/a BERKLEY HARD ASSET GROUP**

I. INTRODUCTION

On May 31, 2016, Plaintiff U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against Defendants Jeffrey Slemmer, Slemmer Enterprises LLC d/b/a Berkley Hard Asset Group, Christian Dorrian, Dorrian Enterprises, LLC d/b/a Berkley Rare Diamonds, Adam Roth, and Roth Investment Group LLC d/b/a Berkley Hard Asset Group (collectively “Defendants”) seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”),

7 U.S.C. §§ 1-26 (2012), and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. §§ 1.1-190.10 (2016). The five-count Complaint charged Defendants with engaging in a scheme to defraud individuals located throughout the United States in connection with contracts of sale of commodities in interstate commerce through entities known as Berkley Hard Asset Group, Berkley Hard Assets and Berkley Rare Diamonds (collectively “Berkley” or the “Berkley Enterprise”).

I. CONSENTS AND AGREEMENTS

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

1. Consent to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendants Jeffrey Slemmer, Slemmer Enterprises LLC d/b/a Berkley Hard Asset Group, Christian Dorrian, Dorrian Enterprises, LLC d/b/a Berkley Rare Diamonds, Adam Roth, and Roth Investment Group LLC d/b/a Berkley Hard Asset Group (“Consent Order”);

2. Affirm that they have, either individually or through their principals, 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 their consent to this Consent Order;

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

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

5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1-26 (2012);

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

7. 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), or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R.

§§ 148.1-30 (2016), 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 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 purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Defendants now or in the future reside outside the jurisdiction of this Court;

9. Agree that they will not oppose enforcement of this Consent Order on the ground, if any exists, 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 the Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect Defendants': (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 all of 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, Defendants neither admit nor deny the allegations of the Complaint or the Findings of Fact and Conclusions of Law in this Consent Order, except as to jurisdiction and venue, which they admit. Further, Defendants agree and intend that 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: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Defendants; (b) any proceeding pursuant to Section 8a of the Act, 7 U.S.C. § 12a (2012), or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 – 3.75 (2016); and (c) any proceeding to enforce the terms of this Consent Order. Defendants do not consent to the use of this Consent Order, or the Findings of Fact and Conclusions of Law in this Consent Order, as the sole basis for any other proceeding brought by the Commission;

12. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 74 of this Consent Order, of any bankruptcy

proceeding filed by, on behalf of, or against Defendants, 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 in any other proceeding.

III. FINDINGS AND CONCLUSIONS

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 (2012), as set forth herein.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

1. The Parties To This Consent Order

14. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency charged by Congress with administering and enforcing the Act, 7 U.S.C. §§ 1-26 (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1-190.10 (2016).

15. Defendant Jeffrey Slemmer (“Slemmer”) currently resides in Acton, Massachusetts and, prior to the fall of 2015, resided in Palm Beach, Florida. Slemmer was the sole owner and managing member of Slemmer Enterprises LLC, and was actively involved in the Berkley Enterprise’s operations, including the solicitation of customers, procurement of diamonds sold to customers, and acceptance of customer funds. Slemmer has never been registered with the Commission in any capacity.

16. Slemmer Enterprises LLC (“Slemmer Enterprises”) was a Florida limited liability company with its principal place of business in Boca Raton, Florida. In October 2012, Slemmer

Enterprises registered “Berkley Hard Assets” as a fictitious business name. The following month, it registered the fictitious name “Berkley Hard Asset Group.” Slemmer Enterprises has never been registered with the Commission in any capacity.

17. Christian Dorrian (“Dorrian”) resides in Boynton Beach, Florida. Dorrian was the owner and managing member of Dorrian Enterprises, LLC. Along with Slemmer, Dorrian maintained bank accounts used by the Berkley Enterprise. Dorrian has never been registered with the Commission in any capacity.

18. Dorrian Enterprises, LLC (“Dorrian Enterprises”) was a Florida limited liability company with its principal place of business in Boca Raton, Florida. In June 2012, Dorrian Enterprises registered “Berkley Rare Diamonds” as a fictitious business name. Dorrian Enterprises has never been registered with the Commission in any capacity.

19. Adam Roth (“Roth”) resides in Boca Raton, Florida and was the owner and managing member of Roth Investment Group LLC. Roth has never been registered with the Commission in any capacity.

20. Roth Investment Group LLC (“Roth Investment Group”) was a Florida limited liability company with its principal place of business in Delray Beach, Florida. In June 2012, Roth Investment Group registered “Berkley Hard Asset Group” as a fictitious name. Roth Investment Group has never been registered with the Commission in any capacity.

2. Defendants’ Fraudulent Scheme

21. Defendants operated a common enterprise to defraud customers located throughout the United States in connection with contracts of sale of commodities in interstate commerce, specifically precious metals and diamonds. Defendants perpetrated this scheme through the Berkley Enterprise, which included entities known as Berkley Hard Asset Group, Berkley Hard Assets, and Berkley Rare Diamonds. Each was a fictitious business name

registered by Slemmer, Dorrian, or Roth, and each shared the same business address at 2701 NW 2nd Avenue, Boca Raton, Florida.

22. From at least June 2012 through May 2015, Defendants solicited customers and potential customers to invest in precious metals on both a fully-paid and financed, or leveraged, basis. During these solicitations, Slemmer, Dorrian, Roth, and others acting on behalf of the Berkley Enterprise, misrepresented the value and risk of investments in precious metals, as well as the expertise and experience of the “brokers” employed by the Berkley Enterprise.

Defendants also failed to disclose that, in light of the exorbitant fees and commissions charged to customers, precious metals would have to increase significantly in value for the customers to break-even on their investment.

23. Between July 20, 2012 and September 4, 2014, Defendants received at least \$2,769,218 from at least sixty customers for the purpose of investing in precious metals, but utilized only a portion of those funds to purchase precious metals as promised, and instead misappropriated the remaining customer funds for their personal benefit.

24. Defendants falsely represented that precious metals purchased by customers would be delivered to the customer or the customer’s appointed agent, or held for the benefit of the customer in a depository on a fungible basis with precious metals of other customers. In fact, Defendants rarely delivered precious metals to customers and failed to purchase and store sufficient precious metals to satisfy their obligations to Berkley customers. Defendants typically failed to provide customers with possession and control over purchased metals and, with limited exceptions, failed to store precious metals in the name of their customers.

25. Notwithstanding their failure to properly acquire precious metals with customer funds, Defendants provided customers with trade confirmations and periodic account statements

falsely representing that customers own a specified amount of precious metals purchased at a particular price. Defendants also charged customers storage fees and financing charges as if the full amount of precious metals had in fact been purchased and stored.

26. Defendants misappropriated the majority of customer funds through a “bait-and-switch” scheme in which Defendants pressured customers to exchange their investment in precious metals for physical, colored diamonds.

27. After customers provided funds to purchase precious metals, Slemmer, Dorrian, Roth, and others acting on behalf of the Berkley Enterprise, contacted customers and urged them to invest in diamonds instead. Defendants utilized high-pressure sales tactics during those calls and, at times, shifted customers’ investments to diamonds without authorization.

28. In connection with these solicitations, Defendants falsely represented the value of the diamonds sold to customers. Defendants also provided customers with purchase orders and appraisal documents that fraudulently misrepresented the diamonds’ fair market or resale value. Defendants did not purchase the diamonds for the amounts shown on the purchase orders and appraisals. Defendants knew or should have known that the fair market value of the diamonds was only a fraction of the amount that they represented to customers.

3. Defendants’ Misappropriated \$2,738,040 in Customer Funds

29. Over the course of the scheme, Defendants received \$2,769,218 from Berkley customers, and returned only \$31,179 to customers.

30. As to the remaining funds, Defendants transferred \$308,426 to AmeriFirst Management LLC, a defunct precious metals dealer found liable for illegal, off-exchange precious metals transactions and fraud in September 2013. *See CFTC v. AmeriFirst Mgmt., LLC*, 2013 U.S. Dist. LEXIS 1886711 (S.D. Fla. Sept. 17, 2013). Defendants transferred \$686,672 of customer funds to another precious metals dealer, and transferred \$178,316 to a diamond

wholesaler. The majority of customer funds were utilized by Defendants for their own purposes, including paying salaries and commissions for Defendants and their employees, as well as Defendants' personal living and entertainment expenses.

B. Conclusions of Law

1. Jurisdiction and Venue

31. 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 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.

32. The Commission has jurisdiction over the conduct and transactions at issue pursuant to Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012).

33. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Dorrian and Roth reside in this District; Slemmer, Slemmer Enterprises, Dorrian Enterprises, and Roth Investment Group resided in this District during the relevant time; the Defendants transacted business in this District; and the acts and practices in violation of the Act occurred within this District.

2. Engaging in a Scheme to Defraud

34. Defendants knowingly or recklessly engaged in a bait-and-switch ruse that involved soliciting customers into precious metals investments and, in connection with those solicitations, misrepresented the risk, cost, and profit potential of the investment; misrepresented the value of the precious metals accounts purportedly held on behalf of customers; and then

convinced customers to divest their metals holdings and acquire diamonds fraudulently overvalued by Defendants. Defendants also provided customers with trade confirmations and account statements that misrepresented customers' ownership of precious metals and value of those holdings, and appraisals that misrepresented the value of diamonds sold to customers.

35. By the conduct described in paragraphs 14 through 30 above, and in the Complaint, Defendants knowingly or recklessly used or employed manipulative or deceptive devices or contrivances in connection with contracts of sale of commodities in interstate commerce, specifically precious metals and diamonds, in violation of Section 6(c) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2016).

36. Each member of the Berkley Enterprise participated in the aforementioned unlawful acts and practices and is therefore jointly and severally liable for the violations of Section 6(c) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) committed by other members of the Berkley Enterprise.

3. Fraudulent Misrepresentations and Misappropriation of Customer Funds

37. Defendants falsely represented that precious metals purchased by customers were acquired and stored by Defendants at a depository. In fact, Defendants failed to use customer funds to purchase precious metals as promised, and instead misappropriated those funds for other purposes, including their own personal benefit.

38. Pursuant to Section 2(c)(2)(D)(iii) of the Act, 7 U.S.C. § 2(c)(2)(D)(iii) (2012), the retail commodity transactions engaged in by Defendants are subject to Section 4b of the Act, 7 U.S.C. § 6b (2012), as if they are contracts of sale of a commodity for future delivery.

39. By the conduct described in paragraphs 14 through 30 above, and in the Complaint, Defendants, either intentionally or with reckless disregard for the truth, have

(1) cheated or defrauded, or attempted to cheat or defraud, other persons, and/or (2) willfully deceived or attempted to deceive other persons, and done so in or in connection with retail commodity transactions in violation of Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(2)(A) and (C).

40. Each member of the Berkley Enterprise participated in the aforementioned unlawful acts and practices and therefore is jointly and severally liable for the violations of Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(2)(A) and (C), committed by other members of the Berkley Enterprise.

4. Issuing False Statements

41. Defendants prepared and issued to customers trade confirmations and account statements that misrepresented customers' ownership of precious metals and the value of customers' precious metals holdings.

42. Pursuant to Section 2(c)(2)(D)(iii) of the Act, 7 U.S.C. § 2(c)(2)(D)(iii), retail commodity transactions are subject to Section 4b of the Act, 7 U.S.C. § 6b, as if they are contracts of sale of a commodity for future delivery.

43. By the conduct described in paragraphs 14 through 30 above, and in the Complaint, Defendants have willfully made or caused to be made to customers false reports or statements in connection with retail commodity transactions Section 4b(a)(2)(B) of the Act, 7 U.S.C. § 6b(a)(2)(B) (2012).

44. Each member of the Berkley Enterprise participated in the unlawful acts and practices described in this Complaint and therefore is jointly and severally liable for the violations of Section 4b(a)(2)(B) of the Act, 7 U.S.C. § 6b(a)(2)(B), committed by other members of the Berkley Enterprise.

5. Engaging in Illegal, Off-Exchange Transactions

45. Pursuant to Section 2(c)(2)(D)(i) of the Act, 7 U.S.C. § 2(c)(2)(D)(i), the Commission has jurisdiction, subject to certain exceptions, over “any agreement, contract, or transaction in any commodity” that is entered into with, or offered to, a person that is not an eligible contract participant (“ECP”) “on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.”

46. Defendants have offered to enter into, entered into, executed, confirmed, or conducted an office or business in the United States for the purpose of soliciting, accepting orders for, or otherwise dealing in agreements, contracts, or transactions in commodities on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis, with persons who are not ECPs or eligible commercial entities as defined by the Act, and who are not engaged in a line of business related to precious metals. Defendants’ retail commodity transactions were not made or conducted on, or subject to, the rules of any board of trade, exchange, or contract market.

47. Pursuant to Section 2(c)(2)(D)(iii) of the Act, 7 U.S.C. § 2(c)(2)(D)(iii), the retail commodity transactions are subject to Section 4(a) of the Act, 7 U.S.C. § 6(a), as if they are contracts of sale of a commodity for future delivery.

48. By the conduct described in paragraphs 14 through 30 above, and in the Complaint, Defendants have violated Section 4(a) of the Act, 7 U.S.C. § 6(a), by offering to enter into, entering into, executing, confirming the execution of, or conducting any office or business anywhere in the United States for the purpose of soliciting, accepting any order, or otherwise dealing in any transaction in, or in connection with retail commodity transactions,

other than on or subject to the rules of a board of trade that has been designated or registered by the Commission as a contract market.

49. Each member of the Berkley Enterprise participated in the unlawful acts and practices described in this Complaint and therefore is jointly and severally liable for the violations of Section 4(a) of the Act, 7 U.S.C. § 6(a), committed by other members of the Berkley Enterprise.

6. Acting as An Unregistered Futures Commission Merchant

50. Section 4d of the Act, 7 U.S.C. § 6d, provides that it shall be unlawful for any person or entity to act a futures commission merchant (“FCM”) unless such person or entity has registered with the Commission in that capacity. Slemmer Enterprises and Roth Investment Group, while doing business as Berkley Hard Asset Group or Berkley Hard Assets, acted as FCMs by soliciting and accepting orders for retail commodity transactions and by accepting customer funds. Slemmer Enterprises and Roth Investment Group failed to register with the Commission as FCMs.

51. By the conduct described in paragraphs 14 through 30 above, and in the Complaint, Slemmer Enterprises and Roth Investment Group acted as FCMs without being registered with the Commission in violation of Section 4d of the Act, 7 U.S.C. § 6d (2012).

52. Each member of the Berkley Enterprise participated in the unlawful acts and practices described in this Complaint and therefore is jointly and severally liable for the violations of Section 4d of the Act, 7 U.S.C. § 6d, committed by other members of the Berkley Enterprise.

7. Common Enterprise, Agency and Controlling Person Liability

53. Defendants conducted business through the Berkley Enterprise, an interrelated network of companies that had common control, ownership, business functions, employees, agents, and office space. Because the Defendants operated a common enterprise, they are jointly and severally liable for the unlawful acts and practices of the Berkley Enterprise described herein.

54. The acts, omissions, and failures of Slemmer, Dorrian, and Roth, and other officers, employees, or agents acting for Slemmer Enterprises described herein occurred within the scope of their employment, agency, or office, and are deemed to be the acts, omissions, and failures of Slemmer Enterprises by operation of 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.

55. The acts, omissions, and failures of Slemmer, Dorrian, and Roth, and other officers, employees, or agents acting for Dorrian Enterprises described herein occurred within the scope of their employment, agency, or office, and are deemed to be the acts, omissions, and failures of Dorrian Enterprises by operation of 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.

56. The acts, omissions, and failures of Slemmer, Dorrian, and Roth, and other officers, employees, or agents acting for Roth Investment Group described herein occurred within the scope of their employment, agency, or office, and are deemed to be the acts, omissions, and failures of Roth Investment Group by operation of 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.

57. Slemmer controlled Slemmer Enterprises throughout the relevant period and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting the

violations of Slemmer Enterprises described herein. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Slemmer is liable as a controlling person for Slemmer Enterprise's violations of the Act and Commission Regulations.

58. Dorrian controlled Dorrian Enterprises throughout the relevant period and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting the violations of Dorrian Enterprises described herein. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Dorrian is liable as a controlling person for Dorrian Enterprise's violations of the Act and Commission Regulations.

59. Roth controlled Roth Investment Group throughout the relevant period and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting the violations of Roth Investment Group described herein. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Roth is liable as a controlling person for Roth Investment Group's violations of the Act and Commission Regulations.

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

60. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), Defendants are permanently restrained, enjoined and prohibited from directly or indirectly from engaging in any conduct in violation of Sections 4(a), 4b(a)(2), 4d(a), and 6(c)(1) of the Act, 7 U.S.C. §§ 6(a), 6(b)(a)(2), 6d(a), and 9(1) (2012), and Commission Regulation 180.1, 17 C.F.R. § 180.1 (2016);

61. Defendants are also 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(40) of the Act, 7 U.S.C. § 1a(40) (2012));
- (b) Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2016)) for their own personal account or for any account in which they have a direct or indirect interest;
- (c) Having any commodity interests 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 interests;
- (e) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- (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) (2016); and/or
- (g) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2016)), agent, or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)), 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) (2016).

V. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution

62. Defendants shall pay, jointly and severally, restitution in the amount of two million, three hundred and thirty eight thousand, forty dollars (\$2,738,040) (“Restitution Obligation”), plus post-judgment interest. 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 (2012).

63. 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 distributions 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.

64. Defendants shall make Restitution Obligation payments under this Consent Order to the Monitor in the name “Berkley – 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, 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 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 Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

65. 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 cost of making 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 the instructions for civil monetary penalty payments set forth in paragraph 72, below.

66. Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant's 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 the Restitution Obligation.

67. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' customers during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

68. 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.

69. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each Berkley customer 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 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.

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

B. Civil Monetary Penalty

71. Defendants shall pay, jointly and severally, a civil monetary penalty in the amount of two million, three hundred and thirty eight thousand, forty dollars (\$2,738,040) of ("CMP Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the 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 (2012).

72. Defendants shall pay their 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:

U.S. Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment by electronic funds transfer is chosen, Defendants shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies 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 Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

C. Provisions Related to Monetary Sanctions

73. Partial Satisfaction: Acceptance by the Commission or the Monitor of any partial payment of Defendants' Restitution Obligation or CMP Obligation 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.

VI. MISCELLANEOUS PROVISIONS

74. Notice: 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 Commission:

James McDonald, Director Division of Enforcement
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St. NW
Washington, DC 20581

Notice to Defendants:

Nikolas S. Komyati
Bressler, Amery & Ross, P.C.
325 Columbia Turnpike, Suite 301
Florham Park, NJ 07932

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

75. Change of Address/Phone: Until such time as Defendants satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Consent Order, Defendants 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.

76. 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.

77. 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.

78. 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 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.

79. 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.

80. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendants, upon any person under their 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.

81. Authority: Jeffery Slemmer hereby warrants that he was the sole owner and manager of Slemmer Enterprises LLC and that this Consent Order has been duly authorized by Slemmer Enterprises LLC and he has been duly empowered to sign and submit this Consent Order on behalf of Slemmer Enterprises LLC.

82. Authority: Christian Dorrian hereby warrants that he was the sole owner and manager of Dorrian Enterprises, LLC and that this Consent Order has been duly authorized by Dorrian Enterprises, LLC and he has been duly empowered to sign and submit this Consent Order on behalf of Dorrian Enterprises, LLC.

83. Authority: Adam Roth hereby warrants that he was the sole owner and manager of Roth Investment Group and that this Consent Order has been duly authorized by Roth

Investment Group LLC and he has been duly empowered to sign and submit this Consent Order on behalf of Roth Investment Group LLC.

84. 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 party, 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.


85. Contempt: 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.

86. Agreements and Undertakings: Defendants shall comply with all of the undertakings and agreements set forth in this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendants Jeffrey Slemmer, Slemmer Enterprises LLC d/b/a Berkley Hard Asset Group, Christian Dorrian, Dorrian Enterprises, LLC d/b/a Berkley Rare Diamonds, Adam Roth, and Roth Investment Group LLC d/b/a Berkley Hard Asset Group* forthwith and without further notice.

The Clerk is **DIRECTED** to **CLOSE** this case and **DENY** any pending motions as moot.

IT IS SO ORDERED at Fort Lauderdale, Broward County, Florida this 15th day of
August, 2017.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies to:
All Counsel of Record