

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

-against-

JOHN AARON BROOKS

Defendant.

-----X
WOOD, U.S.D.J.:

The Court has reviewed the attached Final Judgment and Consent Order. The Court finds it fair and reasonable, and finds that the public interest would not be disserved by the requested injunctive relief. The Court thus enters the attached Final Judgment and Consent Order. See S.E.C. v. Citigroup Global Markets, Inc., 752 F.3d 285, 294 (2d Cir. 2014).

The Clerk of the Court is directed to close this case. Any pending motions are moot.

SO ORDERED.

Dated: New York, New York
July 31, 2014

Kimba M. Wood
Kimba M. Wood
United States District Judge

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DATE FILED: 8/1/14

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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U.S. Commodity Futures Trading)	
Commission,)	
)	Case No. 13 CV 6879 (KMW)
Plaintiff,)	
)	
v.)	ECF Case
)	
John Aaron Brooks)	
)	
Defendant.)	
)	
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**FINAL JUDGMENT AND CONSENT ORDER FOR PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY AND OTHER EQUITABLE RELIEF AGAINST
DEFENDANT JOHN AARON BROOKS**

I. INTRODUCTION

On September 27, 2013, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against Defendant John Aaron Brooks (“Defendant”) seeking injunctive and other equitable relief, as well as the imposition of civil monetary penalties, for violations of Sections 4b(a)(1)(A)-(C) and 6(c)(1) of the Commodity Exchange Act (“Act”) and Commission Regulation (“Regulation”) 180.1.

II. CONSENTS AND AGREEMENTS

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

1. Consents to the entry of this Final Judgment And Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendant (“Consent Order”);

2. Affirms that he has 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 Defendant's consent to this Consent Order;

3. Acknowledges service of the Summons and Complaint;

4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1;

5. Admits the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1, *et seq.*;

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

7. Waives:

(a) any and all claims that he 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.* (2013), relating to, or arising from, this action;

(b) any and all claims that he 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. Consents to the continued jurisdiction of this Court over him 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 Defendant now or in the future resides outside the jurisdiction of this Court;

9. Agrees that he will not oppose enforcement of this Consent Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

10. Agrees that neither he nor any of his agents or employees under his 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 his: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendant shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement;

11. By consenting to the entry of this Consent Order, Defendant neither admits nor denies 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

Defendant admits for purposes of settlement of this action. Defendant does not consent to the use of this Consent Order, or the Findings of Fact or Conclusions of Law therein, as the sole basis for any other proceeding brought by the Commission, other than (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Defendant; (b) any proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2012); and/or (c) any proceeding to enforce the terms of this Consent Order. Solely with respect to any bankruptcy proceeding relating to Defendant, any proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a, or any proceeding to enforce this Consent Order, Defendant agrees that the findings in this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof;

12. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 44 of Part VII of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

13. Agrees 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 Defendant in any other proceeding.

III. FINDINGS OF FACT

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, as amended, 7 U.S.C. § 13a-1, as set forth herein.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

a. The Parties to this Consent Order

14. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

15. From November 2010 through October 2011 (“the Relevant Period”), Defendant John Aaron Brooks was employed by Citicorp North America Inc. (“Citicorp”), whose principal place of business is New York, New York, and worked in the Houston, TX, offices of Citigroup Energy, Inc. (“Citi Energy”). Brooks served as a Director in the Commodities business of Citigroup, Inc. (“Citigroup, Inc.”, and together with Citi Energy, “Citi”), and traded, among other products, ethanol, soybeans, and cattle futures, and options on futures for an account of Citi.

16. Defendant currently resides in Houston, Texas. Defendant was previously registered as an associated person, floor broker, and floor trader, but has not been registered in any capacity since 2004.

b. Brooks’s Ethanol Futures Mismarkings

17. During the Relevant Period, Brooks was trading, among other things, New York Mercantile Exchange (“NYMEX”) Chicago Ethanol (Platts) Futures contracts (“NYMEX ethanol futures”) for Citi.

18. The NYMEX is a registered entity pursuant to Section 1a(29) of the Act with its principal place of business in New York, New York.

19. CU is the NYMEX symbol for the NYMEX ethanol futures which are subject to the NYMEX rules.

20. The CU contract is the NYMEX ethanol futures contract that Brooks falsely inflated.

21. During the Relevant Period, the positions Brooks established for an account of Citi incurred mark-to-market losses, most of which occurred in ethanol futures and ethanol forward contracts traded on the Chicago Board of Trade. As the losses grew over the Relevant Period, Brooks concealed his trading losses by knowingly inflating the value of NYMEX ethanol futures in Citi's trade booking and valuation computer software system and increasingly falsely inflated the value of the NYMEX ethanol futures that he was trading on behalf of Citi to camouflage the increasingly higher losses he experienced on his other positions.

22. Given his experience as a senior ethanol trader, Brooks knew that he was responsible for entering the fair market value, as represented by the broker quotations and/or NYMEX settlement prices, of the NYMEX ethanol futures that he was trading on behalf of Citi into Citi's computer system. Brooks knew, received, and/or had access to fair market valuations of the NYMEX ethanol futures throughout the Relevant Period, including broker quotations and/or NYMEX ethanol futures settlement prices.

23. The amounts by which Brooks inflated the values of the NYMEX ethanol futures positions varied to correspond to the amount of losses in his other positions. In some instances, Brooks's valuations deviated from fair market value, as represented by broker quotations provided to Brooks and/or the daily NYMEX ethanol futures settlement prices, by more than two times.

24. At the end of each trading day during the Relevant Period, Brooks knew or recklessly disregarded the fact that he was entering false values for NYMEX ethanol futures into Citi's computer system and thus acted with scienter. The total losses to Citi as a result of Brooks's mismarking were approximately \$42.4 million.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

IV. CONCLUSIONS OF LAW

a. Jurisdiction and Venue

25. This Court has jurisdiction over this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, 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.

26. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e), because Defendant's acts and practices in violation of the Act occurred within this District.

b. Violations of Section 4b of the Act; Fraud in the Sale of Futures Contracts

27. As set forth above, in or in connection with futures contracts made, or to be made, for or on behalf of Citi, Brooks cheated and defrauded Citi by, among other things, knowingly offsetting and masking the losses in his other futures positions and misrepresenting his profits & losses to Citi by inflating and mismarking and/or causing to be inflated and mismarked the value of his position in NYMEX ethanol futures in Citi's

proprietary account. By virtue of the same conduct, Brooks also willfully made false reports and statements to Citi, willfully entered false records and willfully deceived or attempted to deceive Citi in violation of Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1) (A)-(C).

28. Each misrepresentation or omission of a material fact, deception, false report, false statement, or false record made during the Relevant Period, including but not limited to those specifically alleged in the Complaint constitutes a separate and distinct violation of Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C).

29. By this conduct, Brooks violated Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§6b(a)(1)(A)-(C).

30. Defendant Brooks acted with scienter and did not act in good faith.

c. Violations of Section 6(c) of the Act and Regulation 180.1; Manipulative or Deceptive Devices or Contrivances, Schemes or Artifices to Defraud

31. During the Relevant Period, Brooks used or employed manipulative or deceptive devices or contrivances, in connection with a contract of sale of any commodity in interstate commerce, including, but not limited to, making untrue or misleading statements of material facts, or omitting material facts necessary to make the statements not untrue or misleading, including, but not limited to, knowingly misrepresenting the values of NYMEX ethanol futures he traded for an account of Citi.

32. As set forth above, Brooks's conduct violated Section 6(c)(1) of the Act, 7 U.S.C. § 9, because Brooks directly employed a manipulative and deceptive device and contrivance in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

33. For those same reasons, Brooks's conduct also violated Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2011), because Brooks directly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, intentionally or recklessly (1) used or employed a manipulative device, scheme, or artifice to defraud; (2) made untrue or misleading statements of material fact or omitted to state material facts necessary in order to make the statements made not untrue or misleading; and (3) engaged in acts, practices, or courses of business, which operated as fraud or deceit upon Citi.

34. By this conduct, Brooks violated Section 6(c)(1) of the Act, 7 U.S.C. § 9, and Regulation 180.1(a), 17 C.F.R. § 180.1(a).

35. Brooks directly engaged in these acts knowingly or with reckless disregard for the truth.

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

V. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

37. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, Defendant is permanently restrained, enjoined and prohibited from directly or indirectly violating Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) by:

- a. cheating or defrauding, or attempting to cheat or defraud, other persons;

- b. willfully making or causing to be made to other persons any false report or statement or willfully entering or causing to be entered for other persons any false record; or
- c. willfully deceiving or attempting to deceive other persons 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 other persons 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 any other person in violation of Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (Supp. II 2009).

38. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, Defendant is permanently restrained, enjoined and prohibited from directly or indirectly violating Section 6(c)(1) of the Act, 7 U.S.C. § 9, by:

using or employing or attempting to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate.

39. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, Defendant is permanently

restrained, enjoined and prohibited from directly or indirectly violating Regulation 180.1(a), 17 C.F.R. § 180.1(a), by:

in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly (1) using or employing, or attempting to use or employ, any manipulative device, scheme, or artifice to defraud; (2) making or attempting to make, any untrue or misleading statement of a material fact or omitting to state a material fact necessary in order to make the statements made not untrue or misleading; or (3) engaging or attempting to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person in violation of Regulation 180.1(a), 17 C.F.R. § 180.1(a).

40. Upon the date of entry of this Order and for a period of seven (7) years thereafter, for or on behalf of others, Defendant is also 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, 7 U.S.C. § 1a);
- b. 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, swaps and/or forex contracts; and
- c. 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, swaps and/or forex contracts.

41. Upon the date of entry of this Order and for a period of five (5) years thereafter, and on behalf of himself, Defendant is also restrained, enjoined and prohibited from directly or indirectly:

- a. Trading ethanol products 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);
- b. Entering into any transactions involving ethanol commodity futures, ethanol 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”), ethanol swaps (as that term is defined in Section 1a(47) of the Act, as amended, and as further defined by Commission regulation 1.3(xxx), 17 C.F.R. 1.3(xxx)) (“swaps”) for his own personal account;
- c. Having any ethanol commodity futures, ethanol options on commodity futures, ethanol commodity options, ethanol swaps traded on his behalf;

42. Defendant is permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and/or

- b. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 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) (2012).

VI. CIVIL MONETARY PENALTY

43. Defendant shall pay a civil monetary penalty in the amount of five hundred thousand dollars (\$500,000.00) (“CMP Obligation”), plus post-judgment interest, within ten (10) days of the date of the entry of this Consent Order. If the CMP 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 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 (2006).

44. Defendant shall pay his 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 by electronic funds transfer is chosen, Defendant shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendant shall accompany payment of the CMP Obligation with a cover letter that identifies Defendant and the name and docket number of this proceeding. Defendant 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 and Manal Sultan, Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, New York 10005.

45. Partial Satisfaction: Any acceptance by the Commission of partial payment of Defendant's CMP Obligation shall not be deemed a waiver of his 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.

VII. MISCELLANEOUS PROVISIONS

46. 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:

Manal Sultan, Deputy Director
Division of Enforcement
Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, New York 10005

Notice to Defendant:

Through his Counsel:
Richard Reibman
Kenton Knickmeyer
Thompson Coburn LLP
One US Bank Plaza
St. Louis, Missouri 63101
P: 314.552.6064
F: 314.552.7064
kknickmeyer@thompsoncoburn.com
rreibman@thompsoncoburn.com

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

47. Change of Address/Phone: Until such time as Defendant satisfies in full his CMP Obligation as set forth in this Consent Order, Defendant 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.

48. 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.

49. 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.

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

51. 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 Defendant to modify or for relief from the terms of this Consent Order.

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

53. 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.

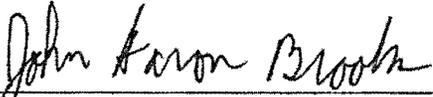
54. Defendant understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Consent Order.

55. There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Final Judgment And Consent Order For Permanent Injunction, Civil Monetary Penalty And Other Equitable Relief Against Defendant John Aaron Brooks.

IT IS SO ORDERED on this 31st day of July, 2014

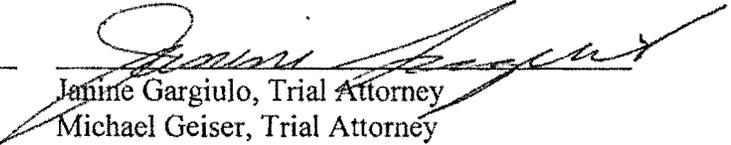
Kimba M. Wood
Kimba M. Wood
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:



John Aaron Brooks
Date: 6/24/14

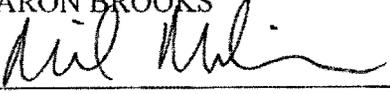
ATTORNEYS FOR PLAINTIFF U.S.
COMMODITY FUTURES TRADING
COMMISSION



Janine Gargiulo, Trial Attorney
Michael Geiser, Trial Attorney
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Manal Sultan, Deputy Director
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Phone: 646 746 9730
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Email: jgargiulo@cftc.gov
Date: 7/25/14

Approved as to form:

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