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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

4X SOLUTIONS, INC. and
WHILEON CHAY

Defendants.

Civil Action No. 1:13-cv-2287 (RMB)

ECF Case

~~PROPOSED~~ ORDER OF FINAL
JUDGMENT BY DEFAULT,
PERMANENT INJUNCTION, CIVIL
MONETARY PENALTY AND OTHER
STATUTORY AND EQUITABLE
RELIEF AGAINST DEFENDANTS 4X
SOLUTIONS, INC. AND WHILEON
CHAY

RMB

I. PRELIMINARY STATEMENT

On April 8, 2013, Plaintiff U. S. Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint for Injunctive and Other Equitable Relief and for Civil Monetary Penalty Pursuant to the Commodity Exchange Act ("Complaint") against Defendants 4X Solutions, Inc. ("4X") and Whileon Chay ("Chay") (collectively "Defendants"). (Docket Entry No. 1)

The Complaint alleges that from at least April 16, 2008 through at least November 2010 (the "Relevant Period"), Defendants orchestrated and operated a foreign currency trading Ponzi scheme. As alleged in the Complaint, Defendants, acting through Chay and one other individual: (i) fraudulently solicited approximately \$4.8 million from at least 19 individuals and entities for the purpose of participating in a pooled investment vehicle Chay controlled that traded off-exchange leveraged or margined foreign currency contracts ("forex" or "foreign currency"); (ii)

misappropriated pool participant funds; and (iii) concealed their fraudulent scheme by issuing false account statements and other documents purporting to show trading profits, all in violation of Section 4b(a)(2)(A)-(C) of the Commodity Exchange Act ("Act" or "CEA"), 7 U.S.C. § 6b(a)(2)(A)-(C) (2012).

The Commission's Complaint seeks to enjoin Defendants' unlawful acts and practices and to compel compliance with the Act. In addition, the Commission's Complaint seeks disgorgement, a civil monetary penalty and other ancillary equitable relief.

On April 15, 2013, Defendant 4X was properly served with the Summons and Complaint pursuant to Fed. R. Civ. P. 4(e)(1) via service upon the New York Secretary of State ("NYSOS"). (Docket Entry No. 9) By order of the Court, Plaintiff was authorized to serve Defendant Chay by publication and by other means. (Docket Entry Nos. 18 and 24) Service on Defendant Chay pursuant to Fed. R. Civ. P. 4(e) was completed on June 16, 2014. (Docket Entry Nos. 23 and 25)

Defendants failed to appear or answer the Complaint within the time permitted by Fed. R. Civ. P. 12(a)(1). Accordingly, on May 23 and July 9, 2014, Plaintiff requested entry of a clerk's default against 4X and Chay, respectively. (Docket Entry Nos. 22 and 26) On July 9, 2014, the Clerk of this Court entered defaults as to both Defendants. (Docket Entry Nos. 27 and 28) Defendants have not answered the Complaint or otherwise appeared in this action.

Pursuant to Fed. R. Civ. P. 55(b)(2) and Local Civil Rule 55.2, the Commission submitted its Application for an Order to Show Cause Why an Order of Final Judgment by Default, Permanent Injunction, Civil Monetary Penalty and Other Statutory and Equitable Relief Should not be Entered Against Defendants 4X and Chay ("Application") and a Memorandum of Law in support of final judgment by default.

The Court entered a Show Cause Order regarding the Commission's Application, which was served on Defendants as directed by the Court. Defendant 4X Solutions was served by delivery to the NYSOS on March 30, 2015; Defendant Chay was served by publication in the *New York Daily News* on March 23 and 30, 2015 and the *New York Post* on March 24 and 31, 2015, and by mailing to his known relatives in the United States.

The Court held a Show Cause hearing on April 15, 2015. Defendants did not appear at the hearing.

The Court has considered the Complaint, the allegations of which are well-pleaded and hereby taken as true; the Commission's Application and Memorandum of Law; and all oppositions thereto, and being fully advised in the premises, it is hereby:

ORDERED that the Plaintiff's Motion for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalty, and Other Statutory and Equitable Relief Against Defendants 4X and Chay is **GRANTED IN PART**. Accordingly, the Court enters findings of fact, conclusions of law, and an Order of Final Judgment by Default and Permanent Injunction, Civil Monetary Penalty, and Other Statutory and Equitable Relief ("Order") pursuant to Sections 6c and 6d of the Act, 7 U.S.C. § 13a-1 (2012), as set forth herein.

The matter is referred to Chief Magistrate Judge Maas for an inquest concerning the appropriate disgorgement amount and civil monetary penalty.

II. FINDINGS OF FACT

The Court incorporates by reference the well-pleaded facts alleged in the Complaint, which facts Defendants 4X and Chay have never contested by answer or other responsive pleading. These facts are taken as true. Fed. R. Civ. P. 8(d).

A. The Parties

1. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

2. Defendant **4X Solutions, Inc.** is a New York corporation that, during the relevant period, maintained its principal place of business in New York City. Chay and his spouse were the only officers and shareholders of 4X. Chay exercised nearly exclusive and complete control over 4X. 4X has never been registered with the CFTC. 4X is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment banking company, and is not an associated person of such entities.

3. Defendant **Whileon Chay** maintained an address in New York City during the relevant period. During the relevant period, Chay was the president of 4X. Chay has never been registered with the CFTC. Chay is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment banking holding company, and is not an associated person of such entities.

B. Defendants' Fraudulent Solicitation of Pool Participants

4. During the relevant period, Defendants directly and indirectly fraudulently solicited at least 19 individuals and entities to entrust funds to 4X and Chay for the purpose of participating in a pooled investment vehicle Chay controlled that traded forex ("forex pool").

5. Defendants solicited pool participants through oral and written solicitations by Chay and one other individual. These solicitations included, but were not limited to, false and

misleading claims of extraordinary historical trading successes and profits. For instance, in certain written solicitations, Defendants enticed prospective pool participants with the prospect of earning investment returns of 24% to 36% per year. Further, in certain written solicitations, Defendants claimed the ability to profit even in adverse market conditions, stating “[i]n times of great market turbulence such as we are now experiencing 4X has made money when most have lost and lost dearly.”

6. While luring prospective pool participants with claims of historical trading profits and the prospect of participating in the continuation of such profits, Defendants, through Chay and one other individual, minimized the risks of forex trading. For example, in certain written solicitations, Defendants claimed they had not suffered a single losing month in 14 years. Further, in certain written solicitations, Defendants claimed that 4X “provides a safe haven in our current financial environment.”

7. In their solicitations and communications throughout the relevant period, Defendants, through the omissions of at least Chay, failed to disclose to pool participants and prospective pool participants that Defendants’ claims of experience and success in trading forex were false, and that there was no basis for their representations that pool participants might achieve the trading profits and investment returns consistent with the purported historical trading success of Chay.

8. Defendants, through the omissions of at least Chay, further failed to disclose that Chay deposited only a portion of pool participants’ funds into forex trading accounts, operated a Ponzi scheme designed to defraud pool participants, and misappropriated pool participant funds to pay the personal expenses of Chay and to make payments to other pool participants, as further alleged below.

9. Defendants, through the acts and omissions of Chay, knowingly or with reckless disregard of the truth made and/or caused to be made the aforementioned material misrepresentations and omissions in order to induce pool participants to invest funds with the Defendants.

10. Pool participants and prospective pool participants relied on Defendants' representations and omissions of fact in making their decisions to invest with Defendants.

C. Defendants Traded Only Some Pool Participant Funds and Lost a Majority of Those Funds Trading

11. Lured by Defendants' misrepresentations and omissions, pool participants transferred \$4.8 million to 4X for foreign currency trading during the relevant period.

12. Defendants, through Chay and one other individual, instructed pool participants to provide checks payable to 4X, or wire funds directly to one of 4X's corporate bank accounts.

13. During the relevant period, 4X maintained several corporate bank accounts. Chay was a signatory on each of the 4X corporate bank accounts.

14. While Defendants received \$4.8 million from pool participants, Chay deployed only a portion of those funds for forex trading, depositing approximately \$2,995,000 million into 4X's trading accounts at futures commission merchants ("FCMs") registered with the Commission.

15. Chay opened numerous trading accounts in the name of 4X at several FCMs registered with the Commission. Chay identified himself as the president of 4X on the account opening documents associated with the various 4X trading accounts. Chay and his wife were the only individuals authorized to trade on behalf of 4X, except that, from time to time during the relevant period, Chay delegated his trading authority to several different unrelated third parties that he selected and engaged to manage and trade the 4X accounts. The 4X trading accounts

were corporate proprietary accounts and not trading accounts opened in the name of or on behalf of the forex pool.

16. Contrary to their representations, Defendants were not successful foreign currency traders. Of the approximately \$2,995,000 that Chay deposited into 4X's trading accounts, Chay lost approximately \$1,985,754 trading forex and forex options. Chay withdrew the remaining balance of approximately \$1 million.

17. The last of 4X's foreign currency trading accounts were closed on or around November 4, 2010, and the approximately \$11,854 remaining in the trading accounts was transferred to one of 4X's corporate bank accounts. Shortly thereafter, Chay transferred a similar amount, approximately \$11,785, from the 4X corporate bank account to his personal bank account, where he used those funds for his personal expenses.

18. Chay never reported the trading losses to pool participants and prospective pool participants. Further, Chay never disclosed to pool participants and prospective pool participants that only a portion of their funds would be deposited into forex trading accounts.

D. Defendants Misappropriated \$2,745,226 Million of Pool Participant Funds

19. During the relevant period, Defendants, through the acts of Chay, misappropriated \$2,745,226 million of pool participant funds to, among other things, pay for Chay's personal expenses, make purported profit or investment return payments to pool participants, trade securities, and fund 4X's operations.

20. In addition to being a signatory on the 4X corporate bank accounts, Chay controlled the handling and disposition of the pool participant funds deposited into the 4X corporate bank accounts.

21. Defendants, through the acts of Chay, used approximately \$1,731,600 of pool participant funds to pay purported profits and/or investment returns to some pool participants.

Consistent with the operation of a Ponzi scheme, these payments were funded by deposits from existing or subsequent pool participants, not by profits Chay generated by trading forex.

22. Defendants, through the acts of Chay, also misappropriated pool participant funds to pay Chay's personal expenses, including but not limited to luxury resorts, expensive restaurants, limousine service, and exotic car rentals.

E. Defendants Concealed Trading Losses and Misappropriation Through False Statements

23. Throughout the relevant period, Defendants, through the acts of Chay, concealed the unsuccessful forex trading, misappropriation, and fraudulent scheme through written and oral communications that falsely represented Defendants were profitably trading forex on behalf of pool participants.

24. Chay issued and/or caused to be issued 4X monthly account statements that, by reporting "earnings" and showing increased account values nearly every month, falsely represented that Defendants were profitably trading forex on behalf of pool participants. Specifically, Chay prepared the monthly account statements and he made them available online and had them delivered to the pool participants.

25. Chay issued checks to pool participants that were purported to consist of trading profits and/or investment returns. These checks were drawn from the 4X corporate bank accounts and were signed by Chay. Any trading profits and/or investment returns paid to pool participants were false. All or nearly all of the purported trading profits and/or investment returns that Defendants paid to pool participants came from the principal of other pool participants.

F. Chay Controlled 4X

26. During the relevant period, Chay was the president of 4X. He had virtually complete authority over, and day-to-day control of, 4X. He did not report to anyone. Chay controlled the disposition of all pool participant funds. He was responsible for the handling and disposition of pool participant funds in the 4X corporate bank accounts. He also controlled the trading of pool participant funds, except to the extent that he delegated his trading authority to unrelated third parties.

G. The Nature of the Transactions

27. Neither Defendants, nor the FCMs that were the counterparties to the forex transactions conducted by Defendants, were United States financial institutions, registered broker dealers, insurance companies, bank holding companies, or investment bank holding companies, or the associated persons of such entities.

28. At least some, if not all, of the pool participants were not “eligible contract participants” (“ECP”) as that term is defined in Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2012). An ECP, as relevant here, is an individual who has total assets in excess of (i) \$10 million or (ii) \$5 million and who enters into the transaction in order to manage risk.

29. The forex transactions Defendants conducted on behalf of the pool participants or the pool were entered into on a leveraged or margined basis. The forex transactions Defendants conducted neither resulted in the delivery of actual currency within two days nor created an enforceable obligation to deliver actual currency between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these forex contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an enforceable obligation to do so).

III. CONCLUSIONS OF LAW

Defendants' Failure to Answer Warrants Entry of Default Judgment

1. In light of the well-pleaded facts set forth in the Commission's Complaint and in the Commission's submissions in support of its Application, entry of final judgment by default, permanent injunction, civil monetary penalty and other statutory and equitable relief against Defendants 4X and Chay is warranted.

Jurisdiction and Venue

3. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), which provides, in relevant part, that wherever 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 the Act or any rule, regulation, or order thereunder, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

4. The Commission has jurisdiction over the forex transactions at issue in this case pursuant to Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (2012), which grants the Commission jurisdiction over agreements, contracts, and transactions in forex.

5. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because certain of the transactions, acts or practices, and courses of business alleged to have violated the Act occurred within this District.

Fraud by Misrepresentations, Omissions, Misappropriation of Pool Participant Funds and Issuance of False Statements

6. Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2012), makes it unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), 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;

(B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [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 contact for or, in the case of paragraph (2), with the other person

Section 4b(a)(2)(A)-(C) of the Act applies to the forex transactions, agreements, or contracts offered to or entered into by Defendants for or on behalf of pool participants as if they were contracts of sale of a commodity for future delivery. Section 2(c)(2)(C)(iv) of the Act, 7 U.S.C. § 2(c)(2)(C)(iv) (2012).

7. As set forth in detail above, during the relevant period, in or in connection with forex contracts, made, or to be made, for or on behalf of, or with, other persons, Defendants cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool participants and willfully deceived or attempted to deceive pool participants or prospective pool participants by, among other things, knowingly: (i) fraudulently soliciting pool participants and prospective pool participants by making material misrepresentations and/or failing to disclose material facts to them; (ii) misappropriating pool participant funds; (iii) misrepresenting the profitability of pool trading accounts; and (iv) failing to disclose that Defendants were operating

a Ponzi scheme and misappropriating pool participant funds, all in violation of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A), (C) (2012).

8. As set forth in detail above, during the relevant period, in or in connection with forex contracts, made, or to be made, for or on behalf of, or with, other persons, Defendants, through Chay and others, willfully made or caused to be made to the other persons false reports or statements by, among other things, knowingly issuing false monthly account statements and false profit checks to pool participants, in violation of Section 4b(a)(2)(B) of the Act, 7 U.S.C. § 6b(a)(2)(B) (2012).

9. Defendants engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

10. Chay controlled 4X and did not act in good faith or knowingly induced 4X's conduct constituting the violations alleged in this Complaint. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Chay is liable for 4X's violations of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2012).

11. The foregoing acts, omissions, and failures of Chay and one other individual occurred within the scope of their employment, office, or agency with 4X. Therefore, 4X is liable for these acts, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014).

IV. ORDER FOR RELIEF

IT IS HEREBY ORDERED THAT:

1. The Commission's Motion for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalty, and Other Statutory and Equitable Relief against Defendants is **GRANTED IN PART.**

IT IS HEREBY ORDERED THAT:

A. Permanent Injunction

2. Based on and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), Defendants 4X Solutions and Whileon Chay are permanently restrained, enjoined and prohibited from, directly or indirectly, 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, other than on or subject to the rules of a designated contract market for or on behalf of any other person –

- (a) cheating or defrauding or attempting to cheat or defraud the other person;
- (b) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; or
- (c) willfully deceiving or attempting to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2) of Section 5a(g) of the Act, with the other person

in violation of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2012);

3. 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)(2014)) , 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) (2014); and/or
- (g) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2014)), agent, 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) (2014).

B. Disgorgement

4. Defendants 4X and Chay, jointly and severally, shall pay disgorgement in the amount approved by the Court following an inquest to be undertaken by Chief Magistrate Judge Maas (the "Disgorgement Obligation"), plus post-judgment interest. The disgorgement amount shall be due and owing and post-judgment interest on the Disgorgement Obligation shall accrue commencing on the date of the entry of the Court's Order following the inquest to be undertaken by Chief Magistrate Judge Maas and shall be determined using the Treasury Bill rate prevailing on the date of the entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

5. To effect payment of the Disgorgement Obligation and the distribution of any disgorgement payments to 4X pool participants, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The NFA is the self-regulatory organization associated with the futures trading industry and routinely serves as a court-appointed Monitor to facilitate distribution of any funds to pool participants. The Monitor shall collect disgorgement 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.

6. Defendants 4X and Chay shall make Disgorgement Obligation payments under this Order to the Monitor in the name "4X Solutions/Chay Fund" and shall send such Disgorgement Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies the paying Defendant and the name and docket number of this

proceeding. The paying 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, N.W., Washington, D.C. 20581.

7. The Monitor shall oversee the Disgorgement Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to 4X pool participants or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Disgorgement 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 pool participants is impractical, the Monitor may, in its discretion, treat such disgorgement payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth below.

8. Defendants 4X and Chay shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant's pool participants to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Disgorgement 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 Disgorgement Obligation.

9. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to 4X pool participants 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.

10. The amounts payable to each pool participant shall not limit the ability of any pool participant 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 pool participant that exist under state or common law.

11. Pursuant to Fed. R. Civ. P. 71, each pool participant who suffered a loss is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the Disgorgement Obligation that has not been paid by Defendants 4X and Chay to ensure continued compliance with any provision of this Order and to hold Defendants in contempt for any violations of any provision of this Order.

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

C. Civil Monetary Penalty

13. Defendants 4X and Chay shall, jointly and severally, pay a civil monetary penalty in the amount approved by the Court following the inquest to be undertaken by Chief Magistrate Judge Maas ("CMP Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of the entry of the Court's Order following the inquest to be undertaken by Chief Magistrate Judge Maas 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 (2012).

14. 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:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
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 applicable CMP Obligation with a 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.

D. Provisions Related to Monetary Sanctions

15. **Partial Satisfaction:** Any acceptance by the Commission or the Monitor of partial payment of Defendants' Disgorgement or CMP Obligations 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.

16. Any payments received from Defendants 4X or Chay pursuant to this Order shall be applied first to satisfy their Disgorgement Obligation.

E. Miscellaneous Provisions

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

Notice to Commission:

Aitan Goelman, Director
Division of Enforcement
U.S. Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Notice to NFA

Daniel Driscoll, Executive Vice President, COO
National Futures Association
300 South Riverside Plaza, Suite 1800
Chicago, IL 60606-3447

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

18. **Change of Address/Phone:** Until such time as Defendants satisfy in full their Disgorgement and CMP Obligations as set forth in this Order, Defendants shall provide written notice to the Commission by certified mail of any change to their telephone number(s) and mailing address(es) within ten (10) calendar days of the change.

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

20. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action to ensure compliance with this 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 Order.

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

**V. ORDER FOR AN INQUEST CONCERNING DISGORGEMENT
AND A CIVIL MONETARY PENALTY**

IT IS HEREBY ORDERED THAT:

1. This matter is referred to Chief Magistrate Judge Maas for an inquest concerning the appropriate disgorgement amount and civil monetary penalty.

IT IS SO ORDERED on this 17th day of April, 2015.

RMB
RICHARD M. BERMAN
UNITED STATES DISTRICT JUDGE

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