

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES  
TRADING COMMISSION,

Plaintiff,

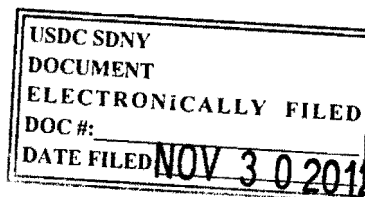
vs.

HIGHLAND STONE CAPITAL  
MANAGEMENT, L.L.C., FOREX  
CAPITAL TRADING GROUP, INC.,  
FOREX CAPITAL TRADING  
PARTNERS, INC., JOSEPH BURGOS,  
SUSAN G. DAVIS and DAVID E.  
HOWARD II

Defendants.

Civil Action No.: 11 CIV 05209 KBF

Judge Katherine B. Forrest



~~PROPOSED~~ ORDER OF DEFAULT JUDGMENT  
FOR PERMANENT INJUNCTION AND OTHER ANCILLARY RELIEF  
AGAINST DEFENDANTS HIGHLAND STONE CAPITAL MANAGEMENT, L.L.C.,  
FOREX CAPITAL TRADING GROUP, INC. and FOREX CAPITAL TRADING  
PARTNERS, INC.

On July 27, 2011, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against Defendants, Highland Stone Capital Management, L.L.C. (“Highland Stone”), Forex Capital Trading Group, Inc. (“Forex Group”), Forex Capital Trading Partners, Inc. (“Forex Partners”), Joseph Burgos (“Burgos”), Susan G. Davis (“Davis”) and David E. Howard II (“Howard”) (collectively “Defendants”) seeking injunctive and other equitable relief for violations of provisions of the Commodity Exchange Act (the “Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No.

110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.* and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. § 1.1 *et seq.* (2012).

Defendants Highland, Forex Group and Forex Partners were served pursuant to Fed. R. Civ. P. 4(e)(2), by personal service upon officers of Highland, Forex Group and Forex Partners.

Highland, Forex Group and Forex Partners all failed to appear and all failed to plead or otherwise defend against the Complaint within the time permitted by Fed. R. Civ. P. 12(a)(1). On October 14, 2011, this Court entered a default against Highland, Forex Group and Forex Partners pursuant to Fed. R. Civ. P. 55(a). (Dkt. Nos. 47, 49 & 50)

The Commission now moves for entry of default judgments finding that Highland, Forex Group and Forex Partners (hereinafter “Defaulting Defendants”) are liable for each cause of action alleged in the Complaint and should be permanently enjoined from violating the Act. Plaintiff also requests that this Court enter an order assessing disgorgement and civil monetary penalties against the Defaulting Defendants.

This Court has considered the CFTC’s Application for Default Judgment and Motion for an Order for Permanent Injunction and Other Ancillary Relief Against Defendants Highland, Forex Group and Forex Partners and the incorporated Memorandum of Law, the declarations and exhibits filed by Plaintiff, the Motion for Summary Judgment filed against

Defendants Davis, Howard and Burgos, and the supporting Memorandum of Law and all other papers filed herein, and being fully advised in the premises finds as follows.

**I. FINDINGS OF FACT**

**THE COURT FINDS:**

1. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such 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 thereunder.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e) (2006), in that the Defaulting Defendants transacted business in this district and the acts and practices in violation of the Act have occurred within this district.

3. Highland was served by delivering a copy of the summons and Complaint to its officer, Burgos, on August 10, 2011. (Dkt. No. 32)

4. Forex Group and Forex Partners were served by delivering copies of the summonses and Complaint to their officer, Davis, on July 28, 2011. (Dkt. No. 15 & 16).

5. The Defaulting Defendants have failed to timely answer or otherwise defend the CFTC's Complaint within the time permitted by Fed. R. Civ. P. 12

6. The allegations of the CFTC's Complaint are well-pled and hereby taken as true. This Order is also supported by the following facts.

**Plaintiff**

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

**Defendants**

8. Defendant **Highland Stone Capital Management LLC** (“Highland”) is a New Jersey Limited Liability Company registered on April 25, 2006. Highland has conducted business at 50 Broad Street, New York, New York. Its registered office is 31 E. Erie Ave., Rutherford, New Jersey. Highland has never been registered in any capacity with the CFTC.

9. Defendant **Forex Capital Trading Group** (“Forex Group”) was, at all relevant times, an active New York Corporation created on May 1, 2009. Forex Group became inactive pursuant to an Annulment of Authority issued on January 25, 2012 by the New York State, Department of State, Division of Corporations. Its registered address is 408 Bemet Ave, Staten Island, New York but it has also done business at 130 Williams Street, 6th Floor, New York, New York. Forex Group has never been registered in any capacity with the CFTC.

10. Defendant **Forex Capital Trading Partners** (“Forex Partners”) was, at all relevant times, an active New York corporation that was created on June 15, 2009. Forex Partners became inactive pursuant to an Annulment of Authority issued on April 25, 2012 by the New York State, Department of State, Division of Corporations. Its registered address is

130 Williams Street, New York, New York. Forex Partner's principal business address during the relevant time was 50 Broad Street, Suite 1437, New York, New York and it has also done business at 75 Broad Street, New York, New York. Forex Partners has never been registered in any capacity with the CFTC.

**A. Highland, Forex Group and Forex Partners Agree to Solicit Public Customers to Trade Forex Through Managed Accounts**

11. In 2008, Highland opened trading accounts to trade foreign currency contracts ("forex"). Between May 2008 and March 2010, Highland traded commodity futures contracts through sixteen different trading accounts at two different retail foreign exchange dealers ("RFEDs") and lost the vast majority of the trading accounts' net deposits.

12. Despite Highland's unsuccessful past forex trading experience managed account customers were told that Highland would manage their accounts. However, Forex Group and Forex Partners were also involved in managing customer accounts, which were traded through two foreign forex brokers.

13. On April 29, 2009, Forex Group, entered into an agreement with City Credit Capital (UK), Ltd. ("City Credit"), a forex broker located in the United Kingdom that began acting in the capacity of an RFED after October 18, 2010, to introduce retail customers to City Credit in exchange for compensation in the form of per trade rebates, mark-ups and commissions.

14. On June 14, 2010, Forex Partners, entered into an agreement with Windsor Brokers, Ltd. ("Windsor"), a forex broker located in Cyprus that began acting in the capacity of an RFED after October 18, 2010, to introduce retail forex accounts to Windsor in exchange for compensation in the form of per trade rebates, mark-ups and commissions.

**B. Highland, Forex Group and Forex Partners Solicited Managed Account Customers**

15. Forex Group, Forex Partners and Highland solicited customers in person, by cold telephone call or email and through the Forex Group, Forex Partners and Highland websites to open accounts at City Credit or Windsor.

16. Forex Group's and Forex Partners' customers were, with a possible few exceptions, individual customers or small corporate entities with limited asset holdings far less than \$10 million.

17. Forex Group, Forex Partners and Highland thereby solicited potential United States customers who are not Eligible Contract Participants ("ECPs"), as defined in Section 1a(18)(A)(xi) of the Act, 7 U.S.C. § 1a(18)(A)(xi), to open managed forex trading accounts with City Credit or Windsor acting as the counterparty to their transactions.

18. Through these means, Forex Group, Forex Partners and Highland successfully solicited and accepted orders from 106 retail forex customers who invested \$2,868,341.68.

19. From October 18, 2010 to July 2011, through their websites, Forex Group, Forex Partners and Highland solicited orders from United States customers who are not ECPs in connection with margined retail forex transactions with City Credit or Windsor acting as the counterparty to U.S. customers.

20. Neither City Credit nor Windsor, each of whom was acting in the capacity of an RFED, nor Forex Group, Forex Partners or Highland is a financial institution, registered broker dealer, insurance company, futures commission merchant, financial holding company, or investment bank holding company.

21. From October 18, 2010 to July 2011, the retail forex transactions City Credit and Windsor engaged in with non-ECP United States customers after those customers were solicited to engage in those transactions by Forex Group, Forex Partners and Highland neither result in delivery within two days nor create an enforceable obligation to deliver between a seller and a buyer who have the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these retail forex transactions remain open from day to day and ultimately are offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

22. Between August 2009 and April 2011, Forex Group earned \$202,868.62 in fees for introducing customer accounts to City Credit. However, City Credit paid some of these commissions to Forex Partners.

23. Between July 2010 and July 2011, Forex Partners earned more than \$247,895.85 in commissions for introducing customer accounts to Windsor.

24. Forex Group and Forex Partners paid Highland for its role in managing customer accounts.

25. Forex Group, Forex Partners and Highland never registered with the Commission as commodity trading advisors (“CTAs”) nor as introducing brokers (“IBs”).

**C. Customers’ Trading Losses were Extensive**

26. Forex Group’s and Forex Partners’ customers lost a significant portion of their investment principal soon after they commenced trading through their accounts at City Credit or Windsor. Between August 2009 and July 2011, 106 customers invested a total of

\$2,868,341.68, withdrew \$278,302.91 and lost \$2,417,179.39 through trading in their accounts.

27. In the end, customers lost an aggregate percentage of more than 93% of their overall invested principal amount through forex trading.

28. During the same 23-month period, from August 2009 until July 2011, customers' accounts had losses in 80% of the months in which trading took place.

**D. Defaulting Defendants Repeatedly Touted False Performance Profits**

29. Forex Group's, Forex Partners' and Highland's websites displayed an identical chart showing a track record of high performance yields for managed accounts for the period from 2004 to 2010 ("Performance Chart") to entice prospective customers to invest in a Forex Group or Forex Partners managed account. Their Performance Chart is false and does not reflect the actual trading activity during those years. Highland had only proprietary trading accounts which lost substantial sums every year that they traded, namely in 2008 and 2009.

30. None of the Defaulting Defendants managed customer accounts until mid-2009, and, overall, the Forex Group's and Forex Partners' managed customer accounts suffered significant losses through July 2011 while Defaulting Defendants reported significant gains. For instance, in March 2010 the accounts lost a combined sum of \$42,447.98, but Defaulting Defendants reported a 6.33% positive rate of return for that month; in August 2010 the accounts lost \$56,085.95, but Defaulting Defendants reported a positive gain of 7.42% for the month. Similarly, for calendar year 2010, Forex Group's and



Forex Partners' customers lost a combined total of \$1,293,938.77, while the Defaulting Defendants reported gains of 51.94% for the calendar year.

31. Defaulting Defendants' Performance Chart shows specific monthly rates of return for their managed account customers which are discredited by the actual monthly rates of return experienced by their managed account customers. For instance:

- a) In October 2009, Defaulting Defendants reported a loss of 2.97% for the month, while Forex Group's and Forex Partners' managed account customers actually experienced a loss of at least 42.81% for the month;
- b) In February 2010, Defaulting Defendants reported a loss of 9.30% for the month, while Forex Group's and Forex Partners' managed account customers actually experienced a loss of at least 47.16% for the month; and
- c) In April 2010, Defaulting Defendants reported a profit of 10.24% for the month, while Forex Group's and Forex Partners' managed account customers actually experienced a profit of only 5.94% for the month.

32. Forex Group and Forex Partners sent the false Performance Chart to customers and Forex Group, Forex Partners and Highland published and continued to publish these same purported results on their respective websites and other marketing sites until this suit was filed in July 2011.

33. In September 2010, Highland submitted the same false Performance Chart to a firm that ranks the trading results of funds and publishes this data on its website. That firm removed the Highland data from its website because the results seemed too incredible and because Highland and Forex Partners were unable to provide an auditor's report verifying

these purported results. In fact, in an unsuccessful attempt to provide a verification, a fabricated so-called “Independent Auditor’s Report” was sent to the firm confirming Highland’s results.

34. Highland falsified proprietary account statements showing profitable trading and Forex Group and Forex Partners gave purported “verification” of those statements from the RFED to prospective customers to convince them of their past success in managing forex trading for customers. At least one prospective customer received false statements for purported Highland accounts showing profits that were from demo accounts and not actual funded trading accounts.

## **II. CONCLUSIONS OF LAW**

35. Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C), make 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 ... 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; (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

Sections 4b(a)(2)(A)-(C) of the Act apply to Defendants’ foreign currency transactions, agreements or contracts offered by Defendants.

36. From August 2009 through July 2011, in or in connection with foreign currency contracts, made, or to be made, for or on behalf of other persons, Highland Stone, Forex Group and Forex Partners, by and through their agents and employees, cheated or defrauded, or attempted to cheat or defraud, customers or prospective customers and willfully deceived or attempted to deceive customers or prospective customers by, among other things, knowingly or recklessly, fraudulently soliciting customers and prospective forex customers in violation of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C).

37. Forex Group and Forex Partners are two domestic companies that were controlled by the same individuals, shared office locations, overlapped their identities in dealings with others and commingled commission funds that they received for introducing customer investment accounts to the RFEDs. As such, there is no meaningful distinction between these entities which operated as a common enterprise.

38. Highland Stone, Forex Group and Forex Partners, by and through their agents and employees, engaged in these acts and practices knowingly or with reckless disregard for the truth.

39. Forex Group, Forex Partners and Highland are in the business of advising customers as to the advisability of retail forex trading and have managed and directed retail forex trading on behalf of their customers. Forex Group, Forex Partners and Highland hold themselves out as CTAs to the public. By such conduct, Forex Group, Forex Partners, and Highland acted as CTAs.

40. Furthermore, Forex Group, Forex Partners and Highland are not exempt from registration by virtue of City Credit or Windsor meeting any of the descriptions in sub-

paragraph (aa), (bb), (cc), (dd), (ee), or (ff) of Section 2(c)(2)(B)(i)(II) of the Act, 7 U.S.C. §2(c)(2)(B)(i)(II).

41. From October 18, 2010 to July 2011, Forex Group, Forex Partners and Highland exercised discretionary trading authority over the accounts of non-ECPs, in connection with forex transactions without the benefit of registration, in violation of Section 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3 (a)(3)(i) (2012).

42. Forex Group and Forex Partners are in the business of soliciting customers to invest in retail forex trading by arranging for them to open accounts at entities acting in the capacity of RFEDs. By such conduct, Forex Group and Forex Partners acted as IBs.

43. From October 18, 2010 to July 2011, Forex Group and Forex Partners solicited orders from non-ECPs in connection with forex transactions and acted as IBs without the benefit of registration, in violation of Section 2(c)(2)(C)(iii)(I)(aa), 7 U.S.C. §2(c)(2)(C)(iii)(I)(aa), and Regulation 5.3(a)(5)(i), 17 C.F.R. § 5.3 (a)(5)(i)(2012).

**Need for Permanent Injunction and Other Ancillary Equitable Relief**

44. Plaintiff has made a showing that the Defaulting Defendants have “engaged, are engaging, or are about to engage in acts and practices in violation of the Act and Commission Regulations.” Notwithstanding their default, the totality of the circumstances establish that, unless restrained and enjoined by this Court, there is a reasonable likelihood that the Defaulting Defendants will continue to engage in the acts and practices alleged in the Complaint, and in similar acts and practices in violation of the Act and Regulations.

45. Imposition of other ancillary equitable relief, including the payment of disgorgement, is required to comply with the basic objectives of the Act. Furthermore, the gravity of the Defaulting Defendants' violations and the need to deter others from committing similar violations of the Act and Regulations warrants the imposition of a civil monetary penalty against the Defaulting Defendants.

### **III. REMEDIES**

#### **ORDER OF PERMANENT INJUNCTION**

##### **A. Prohibition on Conduct in Violation of the Act**

**IT IS HEREBY ORDERED** that, based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, Highland, Forex Group and Forex Partners, their officers, agents, servants, employees, attorneys and all other persons who are in active concert with them are permanently restrained, enjoined and prohibited from directly or indirectly:

(1) cheating or defrauding or attempting to cheat or defraud other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery made, or to be made, for or on behalf of, or with, any other persons in violation of Section 4b(a)(2)(A) of the Act, 7 U.S.C. §§ 6b(a)(2)(A);

(2) willfully making or causing to be made to other persons any false report or statement or willfully to enter or cause to be entered for other persons any false records, in violation of Section 4b(a)(2)(B) of the Act, 7 U.S.C. §§ 6b(a)(2)(B);

(3) willfully deceiving or attempting to deceive any other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such persons in violation of Section 4b(a)(2)(C) of the Act, 7 U.S.C.

§§ 6b(a)(2)(C)

(4) engaging, directly or indirectly, in the exercise of discretionary trading authority or in obtaining written authorization to exercise discretionary trading authority over any account for or on behalf of any person that is not an eligible contract participant in connection with retail forex transactions without being registered as a commodity trading advisor or an associated person of a commodity trading advisor, in violation of Section 2(c)(2)(C)(iii)(I)(aa) and (bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) and (bb) and Sections 5.3(a)(3)(i) and (ii) of the Regulations, 17 C.F.R. §§ 5.3(a)(3)(i) and (ii) (2012); and

(5) engaging, directly or indirectly, in the solicitation or acceptance of orders from a customer that is not an eligible contract participant in connection with retail forex transactions without being registered as an introducing broker, in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) and Sections 5.3(a)(5)(i) and (ii) of the Regulations, 17 C.F.R. §§ 5.3(a)(5)(i) and (ii) (2012).

**B. Prohibition on Activities Related to Trading and Registration**

**IT IS FURTHER ORDERED** that Highland, Forex Group and Forex Partners are permanently enjoined and prohibited from engaging, directly or indirectly, in:

(1) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1(a);

(2) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2012)) (“commodity options”), security futures products, foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”), and/or 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), for their own personal account or for any account in which they have a direct or indirect interest;

(3) having any commodity futures, options on commodity futures, commodity options, security futures products and/or forex contracts traded on their behalf;

(4) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products and/or forex contracts;

(5) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products and/or forex contracts;

(6) 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

(7) 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 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).

**C. Scope of Injunction**

The injunctive and other provisions of this Order shall be binding on each of the Defaulting Defendants and upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of any of the Defaulting Defendants and upon any person who receives actual notice of this Order by personal service or otherwise insofar as such person is acting in active concert or participation with any of the Defaulting Defendants.

**MONETARY SANCTIONS**

**A. Disgorgement**

(a) The Defaulting Defendants shall disgorge the ill-gotten gains they received in the amount of \$450,764.47, plus prejudgment interest of \$36,151.37, for a total of \$486,915.84.

(b) Post-judgment interest shall accrue commencing on the date of entry of this Order and shall be determined using the United States Treasury Bill rate prevailing on that date pursuant to 28 U.S.C. § 1961. The sum of \$486,915.84, plus post-judgment interest constitutes the “Disgorgement Obligation.”

(c) The Defaulting Defendants are jointly and severally liable for payment of the Disgorgement Obligation.



**B. Civil Monetary Penalty**

(a) Pursuant to Section 6c(d)(1) of the Act, the Court imposes, and the Defaulting Defendants shall pay a civil monetary penalty in the amount of \$1,352,293.41, plus post-judgment interest (the “CMP Obligation”).

(b) Post-judgment interest shall accrue on the CMP Obligation commencing on the date of entry of this Order and shall be determined by using the United States Treasury Bill rate prevailing on that date pursuant to 28 U.S.C. § 1961.

(c) The Defaulting Defendants are jointly and severally liable for payment of the CMP Obligation.

**C. Payment Procedures, Priority of Monetary Sanctions and Partial Payments**

(1) To effect payment by the Defaulting Defendants and the distribution of disgorgement to the Defaulting Defendants’ customers, the Court appoints the National Futures Association (“NFA”) as Monitor. The Monitor shall collect disgorgement payments from the Defaulting Defendants, and make distributions as set forth below. Because the Monitor is not being compensated for these services, and these services are outside the normal duties of the Monitor, it shall not be liable for any action or inaction arising from their appointment as Monitor, other than actions involving fraud.

(2) The Defaulting Defendants shall make their required disgorgement payments under this Order in the name of “Highland Stone Disgorgement Fund” and shall send such 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 of a

letter that identifies the paying Defendant and the name and docket number of the 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.

(3) The Monitor shall oversee the Defaulting Defendants' Disgorgement Obligation, and shall have the discretion to determine the manner for distribution of funds in an equitable fashion to Defaulting Defendants' clients, or may defer distribution until such time as the Monitor may deem appropriate. In the event that the amount of disgorgement payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative costs of making a distribution 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 in paragraph 5 below.

(4) The Defaulting 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.

(5) The Defaulting 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, 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  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, Defaulting Defendants shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Defaulting Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies them and the name and docket number of this proceeding. Defaulting 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.

(6) To the extent that any funds accrue to the U.S. Treasury as a result of the Disgorgement Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in paragraph 3 above.

(7) Any acceptance by the Commission and/or the Monitor of partial payment from Defaulting Defendants of the Disgorgement Obligation and/or CMP Obligation shall not be deemed a waiver of Defaulting Defendants' obligation to make further payments pursuant to this Order, or a waiver of the Commission's and/or Monitor's right to seek to compel payment from Defaulting Defendants of any remaining balance.

(8) Defaulting Defendants shall not transfer, or cause others to transfer, funds or other property to the custody, possession, or control of any members of their family or any

other person or entity for the purpose of concealing such funds from this Court, the Commission, or the Monitor until the Disgorgement Obligation and the CMP Obligation set forth above have been satisfied in full.

(9) All notices required by this Order shall be sent by certified mail, return receipt requested. Notices to the CFTC shall be sent to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. Defendants shall provide the CFTC with written notice of all changes to their contact telephone number(s) and/or mailing address(es) within ten (10) calendar days of the change(s).

(10) This Court shall retain jurisdiction of this cause to assure compliance with this Order, the Disgorgement Obligation and for all other purposes related to this action. This Order shall be interpreted and enforced according to the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Southern District of New York, and all provisions of the Act and Commission Regulations relating or referring to the obligations hereunder.

(11) Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer who suffered a loss is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience with this Order to obtain satisfaction of any portion of the Disgorgement Obligation that the Defaulting Defendants have not paid.

(12) There being no just cause for delay, the Clerk of the Court shall enter final judgment against Highland, Forex Group and Forex Partners in this action forthwith and

without further delay. There being no pending matters remaining in this matter, the case may be closed.

DONE AND ORDERED this 29<sup>th</sup> day of November 2012.



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Katherine B. Forrest  
United States District Judge

The Clerk of Court is directed to close the motion at Docket No. 132.