

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:

David Shane and  
McGladrey & Pullen, LLP,

Respondents.

CFTC Docket No. 11-23

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

**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that David Shane (“Shane”) and McGladrey & Pullen, LLP (“M&P”) (collectively, “Respondents”) violated Commission Regulations 1.16(d)(1) and 1.16(e)(2), 17 C.F.R. §§ 1.16(d)(1) and 1.16(e)(2) (2011). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether the Respondents engaged in the violations and conduct set forth herein and to determine whether an order should be issued imposing remedial sanctions against the Respondents.

**II.**

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

<sup>1</sup> The Respondents consent to the entry of this Order and the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party. The Respondents do not consent to the use of their Offers or the findings in this Order as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents consent to the use of their Offers or this Order, or the findings consented to in their Offers or this Order, by any party in any other proceeding.

### III.

The Commission finds the following:

#### A. SUMMARY

M&P, a public accounting firm, and Shane, one of its partners, served as auditors for One World Capital Group (“One World”), a registered futures commission merchant (“FCM”), from its inception in October 2005. In December 2007, the CFTC filed an action against One World alleging that One World failed to demonstrate compliance with its net capital requirements. One World ceased doing business shortly thereafter.<sup>2</sup> For the year ending December 31, 2006, M&P issued an unqualified opinion that One World’s financial statements were free from material misstatements and a report stating that it had not identified any deficiencies in One World’s internal controls that it considered to be material inadequacies. In fact, the 2006 financial statements were materially misstated, and there were material inadequacies in One World’s internal controls as well.

Respondents failed to conduct the 2006 audit in accordance with generally accepted auditing standards (“GAAS”) and failed to report the existence of the material inadequacies in One World’s accounting system, internal accounting controls, and procedures for accounting for liabilities to customers in One World’s internal controls. The failure to conduct the 2006 audit in accordance with GAAS and failure to report on the existence of the material inadequacies violated Commission Regulations 1.16(d)(1) and 1.16(e)(2).

#### B. RESPONDENTS

David Shane is a certified public accountant licensed in Illinois and has been a partner at M&P since 2004. Shane was the engagement partner responsible for the audits

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<sup>2</sup> One World ceased operation in December 2007 after the Commission brought suit against it for failure to demonstrate compliance with minimum net capital requirements and failure to maintain books and records. *See CFTC v. One World Capital Group, LLC and John Edward Walsh*, Civil Action No. 07 CV 7002, (N.D. Ill. filed Dec. 13, 2007). *See* CFTC Press Release 5786-10. At the time it ceased operation, One World had over \$17 million in liabilities to over 3,000 customers, but possessed little over \$600,000 in funds to cover those liabilities. On January 6, 2009, the United States Attorney’s Office for the Northern District of Illinois filed a criminal complaint against Charles Martin, a *de facto* principal of One World, and One World’s president, John Walsh, charging wire fraud. The criminal complaint alleged that One World’s foreign exchange business operated as a Ponzi-like scheme and that customer money was used to sustain Martin’s and Walsh’s extravagant lifestyles. *See United States v. Charles G. Martin and John E. Walsh*, No. 09 CR 0005 (N.D. Ill. filed Jan. 6, 2009). Martin and Walsh pled guilty to the criminal charges on May 5 and May 12, 2011, respectively. Sentencing is scheduled for the fall of 2011.

of One World's financial statements. Shane continues to conduct audits in the financial services division at M&P.

McGladrey & Pullen, LLP is a public accounting firm and Iowa limited liability partnership that maintains an office at One S. Wacker Drive, Suite 800, Chicago, Illinois 60606. In October 2010, the Commission entered an order, pursuant to a settlement, finding M&P liable for the acts, omissions and failures of its employees who violated Commission Regulation 1.16(d)(1) and 1.16(e)(2). *See In re G. Victor Johnson, McGladrey and Pullen, LLP, and Altschuler, Melvoin & Glasser, LLP*, CFTC Docket No. 11-01 (CFTC Oct. 4, 2010); *CFTC Press Release* PR5916-10.

## C. FACTS

### 1. Background of One World Capital Group

One World Capital Group, LLC was a New York Limited Liability Company with its principal place of business in Winnetka, Illinois. One World became registered with the Commission as a FCM on December 6, 2005, and as a commodity trading advisor on May 17, 2007, and remained registered in those capacities until March 4, 2010, when the Commission revoked its registrations. One World was also a forex dealer member ("FDM") of the National Futures Association ("NFA").<sup>3</sup> One World had three different types of customers: 1) a small number of futures customers, totaling no more than 60 at one time, whose trades were cleared through another FCM, 2) a small number of retail forex customers who traded through other forex dealers, and 3) approximately 3,000 retail forex customers who used MetaTrader, an electronic trading platform licensed to One World by Moneytec, to place trades for which One World was the counterparty. Over 90% of One World's customers fell in this third category.

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<sup>3</sup> The NFA is registered with the Commission as a futures association pursuant to Section 17 of the Act, to be codified at 7 U.S.C. § 21. It serves as an industry self-regulatory organization, and its membership is composed of FCMs, FDMs, and other futures professionals registered with the Commission. Under Commission oversight, NFA is responsible for certain aspects of the regulation of these entities. *See* Regulation 3.75, 17 C.F.R. § 3.75 (2011). NFA focuses primarily on the qualifications and proficiency, financial condition, retail sales practices, and business conduct of its members.

NFA created the FDM membership category to regulate members engaged in retail off-exchange foreign currency transactions in the years before 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), and 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), to be codified at 7 U.S.C. §§ 1 *et seq.*, authorized the creation of a registration category for retail foreign exchange dealers.

One World engaged M&P to conduct a required initial audit for registration purposes, and year-end audits for December 31, 2005 and December 31, 2006.<sup>4</sup>

In March of 2006, NFA commenced an examination of One World. The day after the examination was commenced, One World filed telegraphic notice with the CFTC that it had failed to maintain proper books and records as required by Commission Regulation 1.18(a), 17 C.F.R. § 1.18(a). As a result of its communications with NFA, One World hired a bookkeeper. The bookkeeper performed most of her duties outside of One World's office and relied upon One World for access to information, books and records. In connection with its examination, in April 2006, NFA sent a letter to One World's president that noted a number of concerns with the firm's record-keeping and stated that NFA found it "deeply troubling that an FCM would begin operations and accept customer funds without establishing appropriate accounting systems and controls."

## **2. FCM Auditing Requirements**

Commission Regulation 1.10(b), 17 C.F.R. § 1.10(b) requires that each FCM file with the Commission financial statements as of the close of its fiscal year that are certified by an independent public accountant in accordance with Commission Regulation 1.16, 17 C.F.R. § 1.16. As set forth in Regulation 1.16, the audit, among other things, must be in accordance with GAAS and must include a review and appropriate tests of the FCM's accounting system, its internal accounting control, and its procedures for safeguarding customer and firm assets. The audit must include all procedures necessary under the circumstances to enable the auditor to express an opinion on the FCM's financial statements and schedules taken as a whole. The scope of the audit and review must be sufficient to provide reasonable assurance that any material inadequacies existing as of the date of the audit in the FCM's accounting system, its internal accounting control, and its procedures for safeguarding customer and firm assets will be discovered.

In order to meet these requirements, One World engaged M&P to audit its financial statements in 2005 and 2006. As the registrant, One World was responsible for submitting, among other things, a statement of financial condition that identified assets, liabilities, and ownership equity, and an income statement, together with integral explanatory notes to assist the reader in understanding the financial statements. M&P, as the auditor, was responsible for submitting the independent auditor's report that opined on whether those financial statements were free of material misstatement.

## **3. M&P's Experience During the 2005 Audit of One World**

M&P's experience in auditing One World's financials for December 31, 2005 should have alerted the auditors that there were issues with One World's accounting systems and internal controls and, potentially, management integrity. The 2005 financial statements One World issued described One World as a company that "had not yet

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<sup>4</sup> M&P received \$2,000 in fees to conduct the audit required for registration purposes, \$8,500 in fees for the 2005 audit, including its restatement, and \$17,000 in fees for the 2006 audit.

commenced operations.” M&P issued an unqualified opinion that these financial statements were not materially misstated. M&P based its unqualified opinion on, among other things, One World’s president’s assertions that One World had not conducted any business in 2005 and that One World had only one bank account, which contained only the amount One World had contributed as the capital required for registration as an FCM. In fact, One World had commenced operations, taken in customer funds for forex trading in its capacity as counterparty, and had \$208,267 in liabilities and \$515,000 in total assets at the end of 2005.

Following its spring 2006 examination of One World, NFA informed M&P that One World’s December 31, 2005 financial statements were inaccurate and that One World had conducted business in 2005. M&P was required to perform additional audit procedures for One World, at which point it discovered that One World had five bank accounts not previously disclosed by One World, some of which revealed the customer transactions that took place in 2005. As a result, One World restated and re-issued the 2005 financial statements and M&P issued a new opinion.

Based upon their experience in conducting the 2005 audit, Respondents should have approached the 2006 audit with heightened scrutiny. In conducting the 2005 audit, Respondents learned of, among other things, NFA’s concerns about One World; M&P’s audit staff summarized and retained copies in its work papers of One World’s March 2006 letter giving telegraphic notice of inadequate books and records, and NFA’s April 2006 letter expressing concerns about One World’s accounting controls. Additionally, M&P staff had difficulty obtaining information and documents from One World during the 2005 audit that One World was required to retain.

#### **4. One World’s Financial Statements for December 31, 2006 Were Materially Misstated**

As described below, despite M&P’s opinion that One World’s financial statements fairly presented One World’s financial position in all material respects, One World’s financial statements were materially misstated in 2006.

##### *i. Note 1 to the 2006 Financial Statements Was Materially Misstated*

Note 1 to the financial statements for year ending 2006 described One World as primarily engaged in the clearing and execution of futures and options, while also providing its customers access to the over-the-counter foreign currency market through other foreign currency dealers. During its entire existence, futures and providing its customers access to the over-the-counter foreign currency market through other foreign currency dealers accounted for less than 10% of One World’s overall business. One World served as the counter-party to its forex customers for over 90% of its business. Therefore, the 2006 financial statement materially misstated the nature of One World’s business.

*ii. One World's Liabilities to Customers in the 2006 Financial Statements Were Materially Misstated*

The 2006 Statement of Financial Condition states that liabilities payable to all customers were \$6,937,158. However, on December 31, 2006, One World's MetaTrader platform equity balance showed that it may have owed at least \$15 million solely to forex customers utilizing the MetaTrader platform for whom One World served as the counterparty. One World's 2006 financial statements thus understated its liabilities to customers, a clear material misstatement.

**5. One World had Material Inadequacies in Its Internal Controls**

One World's accounting system was materially inadequate in 2006. One World did not have a customer ledger, and its accounting system did not properly identify the number of forex customers or the amount of customer liabilities One World held. These material inadequacies reasonably could, and did, lead to material misstatements in One World's 2006 financial statements.

**D. The 2006 Audit**

**1. The 2006 Audit Was Deficient**

The Respondents' 2006 audit was deficient in several respects that related directly to their failure to detect the material misstatements in One World's financial statements and the material inadequacies in One World's internal controls. The deficiencies generally stemmed from the fact that Respondents misunderstood One World's business and relied on uncorroborated management assertions for their audit evidence, and directly related to Respondents' failures to follow GAAS.

*i. Audit Deficiencies in the December 31, 2006 Audit*

Throughout Respondents' relationship with One World, Respondents did not understand that One World's primary business was retail forex and that it served as the counter-party to over 90% of its customers' transactions. M&P also failed to give adequate weight to concerns expressed by NFA relating to One World's accounting system and acceptance of customer funds. The 2006 audit was deficient because Respondents improperly relied on uncorroborated management assertions, did not properly consider "red flags" that indicated problems at One World, and did not test customer payables properly.

*1. Respondents Improperly Relied on One World Management Assertions*

Despite the fact that Respondents learned prior to the 2006 audit that One World's management had failed to disclose material information about its business operations and financial accounts in 2005, Respondents relied on unsupported assertions by One World's management for supporting evidence in the 2006 audit. Respondents relied on One

World's assertions regarding the nature of One World's business, revenue, and, as described in more detail below, liabilities to customers.

M&P stated in its work papers that it had gained its understanding of One World's revenue and expense cycle through inquiries of management. One World's management asserted that a major source of revenue was rebates received from other FCMs or forex dealers called PIP rebates.<sup>5</sup> One World's general ledger contained \$600,000, which One World characterized as a PIP receivable that was received in January 2007 but earned during the 2006 calendar year. M&P's work papers note that audit staff tested the \$600,000 PIP receivable to support One World's assertion that the funds came from forex dealers by looking at a Citibank activity report that showed twelve transfers of \$50,000 each received from forex dealers. However, the referenced Citibank report actually shows that the \$600,000 consisted of intrabank transfers from One World's Forex Customer account to its Operating account, not transfers from forex dealers. M&P did not seek additional external verification for the transfers. Instead of relying on the audit evidence or seeking third-party verification, M&P accepted One World's assertion that the \$600,000 was rebates earned from forex dealers.

## *2. Respondents Did Not Properly Consider "Red Flags"*

Respondents did not properly consider certain facts and circumstances constituting "red flags" which indicated potential problems at One World. The red flags, which should have commanded closer scrutiny included, but were not limited to, information that: a) NFA had concerns about One World's accounting system particularly as it related to acceptance of customer funds; b) both M&P and the bookkeeper were having problems getting information from One World; and c) Respondents knew that the bookkeeper had difficulty reconciling One World's general ledger to the payable balances for forex customers set forth on MetaTrader reports One World gave her. M&P also did not properly give weight to the fact that during the 2005 audit, One World's management told M&P it had only one bank account, when it actually had five, including one that held customer funds. Each of these failures reasonably should have impacted Respondents' assessment of management integrity when conducting the 2006 audit.

Respondents also did not properly consider "red flags" concerning One World's customer ledger, a document that is required to be kept by an FCM and serves as the basis of support for, among other things, One World's liabilities to customers. During the 2006 audit, M&P had to ask One World on at least seven separate occasions over a five week period for its customer ledger. In response, One World supplied Respondents with multiple, conflicting customer lists and reports that One World generated from MetaTrader. Respondents were unable to match the equity balance in any of the lists to the customer liabilities balance in One World's general ledger. Respondents ultimately did not conduct further inquiry on One World's customer liabilities because the dollar difference in customer liabilities between the final list provided by One World and One World's general ledger fell below M&P's assessment of the audit materiality threshold.

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<sup>5</sup> A PIP (*i.e.*, percentage in point) is a spread earned between the bid/ask price on each forex trade.

Moreover, Respondents failed to properly consider the fact that the customer lists One World provided contained only one-third of the number of purported customer accounts that One World previously had indicated it carried. The customer list that Respondents ultimately relied on for testing liabilities to customers contained only 424 accounts, when One World stated and M&P work papers noted that One World had about 1,200 open accounts.

### *3. Respondents Improperly Tested Customer Payables*

Respondents also failed to properly test One World's customer payables – i.e., amounts that One World owed to its customers. Respondents sought to test customer payables using a positive confirmation process that required customers who received the confirmation request to respond to the customer balance inquiry.<sup>6</sup> If customers failed to respond, then Respondents planned to perform “alternative procedures” to obtain the necessary evidence. However, as executed, both parts of the confirmation process were ineffective.

Respondents decided to send confirmation requests to the 20 accounts with the highest customer balances. Respondents did not control the confirmation process as advised by auditing topic (“AU”) AU 330.28.<sup>7</sup> They permitted One World to email the requests for account balances to the selected forex customers while copying the M&P staff auditor on the emails. One World instructed the customers to respond to the M&P staff member. Respondents had no way of knowing whether the emails were sent to actual customers or whether any of the emails were undeliverable.

The customer account confirmation process also was ineffective because One World sent the request too late in the course of the audit to receive a response that Respondents could meaningfully evaluate before One World was due to issue its financial statements. In fact, Respondents anticipated that the customer confirmations would not be returned in time and commenced “alternative procedures” for the same 20 accounts prior to sending out the initial customer confirmation requests.

The alternative procedures also were ineffective. Under M&P's alternative procedures, the auditor was supposed to compare the ending balances on customers' December 2006 account statements to the beginning balances on their January 2007 account statements and look for any suspicious activity.

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<sup>6</sup> A “positive confirmation” is an auditing inquiry that asks the customer to respond to the auditor whether the customer's records do or do not correspond with the auditor's records. Negative confirmation, on the other hand, asks for a customer's response only if there is a discrepancy.

<sup>7</sup> AU 330.28 states, “During the performance of confirmation procedures, the auditor should maintain control over the confirmation requests and responses. Maintaining control means establishing direct communication between the intended recipient and the auditor to minimize the possibility that the results will be biased because of interception and alteration of the confirmation requests or responses.”

The engagement team did not note any suspicious activity, despite the existence of unusual account activity. For example, one printout the engagement team reviewed showed a transfer of \$2 million out of one account on January 2, 2007 to an account that did not appear on the customer ledger One World provided to M&P. The same printout showed a \$1.5 million “clerical error” transfer on January 25, 2007. Another printout showed a total balance transfer of almost \$150,000 out of an account on January 5, 2007. A third printout showed a transfer of the customer’s entire balance of over \$130,000 and indicated it was “closed” on January 2, 2007. All of these transfers fall within M&P’s definition of suspicious activity – significant transfers in or out of the account near the closing of the books — that should have required follow-up by Respondents.

## **2. The Respondents’ Departures from GAAS**

GAAS includes ten audit standards divided into three areas: General Standards, Standards of Fieldwork and Standards of Reporting. Interpretation and practical guidance on the ten standards is provided in periodic Statements of Auditing Standards (“SAS”), which are grouped under auditing topics previously referred to as “AUs.” The Standards of Fieldwork refer to the practices and procedures that an auditor applies in performing an audit.

### *i. Respondents Failed to have the Proper Training to Conduct an Audit of an FCM that conducted both futures and forex business*

The First General Standard in GAAS states that the auditor must have adequate technical training and proficiency to perform the audit. AU 210.05 provides in relevant part that the auditor is retained to audit and report upon the financial statements of a business because, through his training and experience, he has become skilled in accounting and auditing and has acquired the ability to consider objectively and to exercise independent judgment with respect to the information recorded in books of account or otherwise disclosed by his audit. Respondents did not have the proper training and proficiency in the operations and financial reporting practices of an FCM that conducted both futures and forex business.

Respondents failed to understand One World’s core business as a forex dealer, and how that business differs from a traditional FCM business. That is, an FCM typically earns commissions and fees that its customers pay on each purchase or sale of commodity futures contracts or options on commodity futures contracts the FCM solicits and accepts for customers, and the FCM relies upon customer margin deposits to assure against losses on customer positions. By contrast, as a forex dealer, One World derived most of its income from PIPs it charged its customers for forex transactions in which One World served as the counterparty, and, as a counterparty, One World faced direct exposure to gain or loss on its customers’ forex positions. The improper testing of customer payables and inaccurate understanding of the total amount of liabilities to customers resulted from Respondents’ insufficient knowledge of One World’s forex business.

*ii. The Respondents Failed to Adequately Plan the Audits*

The First Standard of Field Work in GAAS states that the auditor must adequately plan the work and properly supervise any assistants. AU 311.03 provides in relevant part that obtaining an understanding of the entity and its environment, including its internal controls, is an essential part of planning and performing an audit in accordance with GAAS. Respondents failed to adequately plan One World's audits resulting in deficiencies in the 2006 audit of One World.

Respondents failed to adequately plan One World's audit because they failed to understand One World's business operation, forex trading and One World's customer base. Moreover, Respondents' audit plan did not give adequate weight to One World's acceptance of customer funds in 2005, NFA's concerns with One World's commencement of operations and acceptance of customer funds in 2005 before establishing appropriate accounting systems and controls, and the bookkeeper's inability to reconcile the "customer ledger" with the general ledger.

*iii. The Respondents Failed to Obtain Sufficient Competent Evidence to Support their Opinions*

The Third Standard of Field Work in GAAS requires that sufficient competent evidential matter be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit.

AU 326 on "Evidential Matter" provides guidance on what constitutes competent and sufficient evidence. In discussing the *competency* of evidential matter, AU 326 states that evidence is usually more reliable if it was obtained from an independent source, if the entity has effective internal controls and if the evidence was obtained directly by the auditor through physical examination, observation, confirmation, and inspection. In discussing the *sufficiency* of evidential matter, AU 326 states that while the auditor should exercise judgment in determining whether evidential matter is sufficient, the accumulation of evidence should be "persuasive." AU 326 also states that in evaluating evidential matter the auditor should be thorough, unbiased, recognize the possibility that the financial statements may not be fairly stated and should not form an opinion on the entity's financial statements until he or she has obtained sufficient evidence to "remove any substantial doubt about a material assertion."

Respondents failed to obtain sufficient competent evidence to afford a reasonable basis for the opinions regarding the financial statements. Throughout the 2006 audit of One World, Respondents relied on unsupported management assertions regarding One World's customer base and the nature of its business, liabilities to customers, and revenues. Respondents failed to obtain sufficient competent evidence and properly test commissions received from forex dealers and instead relied on One World's assertions regarding the source of the funds. Respondents also relied on One World's assertions regarding customer liabilities, and they failed to properly test and did not have sufficient competent evidence to support One World's assertions regarding total customer

liabilities. Consequently, Respondents ultimately confirmed One World's assertion that customer liabilities were \$6.9 million when in fact the forex customer liabilities were at least \$15.7 million. Specifically, Respondents accepted One World's assertion regarding liabilities despite the fact that One World told M&P that it had "1900 open accounts with about one third as inactive," while at the same time providing M&P with a report that only noted 424 active accounts.

*iv. The Respondents Failed to Exercise Due Professional Care*

The Third General Standard requires that the auditor exercise due professional care in the performance of the audit and the preparation of the report.

AU 230.07 on "Due Professional Care in the Performance of Work" states in relevant part "due professional care requires the auditor to exercise *professional skepticism*." It defines professional skepticism as "an attitude that includes a questioning mind and a critical assessment of audit evidence." AU 230.09 states that "[i]n exercising professional skepticism, the auditor should not be satisfied with less than persuasive evidence because of a belief that management is honest."

Respondents did not exercise due professional care in conducting the 2006 audit of One World because they: a) failed to consider One World's failure to give M&P complete information about its assets and liabilities in 2005 in preparing for and conducting the 2006 audit; b) conducted an ineffective confirmation process; and c) failed to question the conflicting information they received from One World. For instance, Respondents failed to investigate the discrepancy in the number of One World's customer accounts, given that One World had represented that it had "1900 open accounts with about one third as inactive," while at the same time providing M&P with a report that only noted 424 active accounts.

*v. The Respondents Failed to Adequately Conduct the Customer Confirmation Process*

AU 330.15 on "The Confirmation Process" states in relevant part that "the auditor should exercise an appropriate level of professional skepticism throughout the confirmation process." AU 330.28 states that the auditor must maintain control over the confirmation process, including "establishing direct communication between the intended recipient and the auditor..." Respondents did not maintain an appropriate level of professional skepticism, did not maintain control over the customer confirmation process, sent the confirmation requests too late to receive a meaningful response and performed inadequate alternative procedures in the 2006 audit of One World.

**E. LEGAL DISCUSSION**

**1. The Respondents Violated Commission Regulation 1.16(d)(1)**

Commission Regulation 1.16(d)(1) requires that audits of Commission registrants be conducted in accordance with GAAS. Respondents failed to conduct the 2006 audit of

One World's financial statements in accordance with GAAS, and thereby violated Commission Regulation 1.16(d)(1). Specifically, they failed to assure that Respondents staff had the proper training and proficiency to conduct an audit of an FCM that conducted futures and forex business, failed to appropriately plan the audits, failed to obtain sufficient competent evidence to support financial statement assertions, failed to adequately conduct the confirmation process, and failed to exercise due professional care in the performance of the audits and the preparation of the auditor's reports. Auditors who fail to perform audits in accordance with GAAS violate Commission Regulation 1.16(d)(1). See *In re Johnson, et al. supra*; *In re Deloitte & Touche, LLP and Thomas D. Lux*, CFTC Docket No. 96-10 (CFTC Sept. 25, 1996) (speaking order).

## **2. The Respondents Violated Commission Regulation 1.16(e)(2)**

Pursuant to Commission Regulation 1.16(e)(2), if the independent public accountant determines that any material inadequacies exist in the accounting system, in the internal accounting control, in the procedures for safeguarding customer or firm assets, or as otherwise defined in Commission Regulation 1.16(d), he or she must call such inadequacies to the attention of the registrant, who in turn, must notify the Commission. If the registrant fails to notify the Commission, the accountant must do so.

One World had material inadequacies in its internal controls in 2006 in that One World's accounting systems did not properly identify the number of forex customers or the amount of its liabilities to customers. This was a material inadequacy because the failure to properly identify the number of forex customers or One World's liability to them substantially contributed to, or could reasonably be expected to result in, material misstatement of One World's financial statements. Respondents should have known of the existence of material inadequacies in One World's accounting system, internal accounting controls, and procedures for accounting for liabilities to customers but failed to report to One World (and ultimately the Commission and One World's designated self regulatory organization) the existence of the material inadequacies in the 2006 financial statements in violation of Commission Regulation 1.16(e)(2).

## **IV.**

### **FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that: Respondents violated Commission Regulations 1.16(d)(1) and 1.16(e)(2), 17 C.F.R. §§ 1.16(d)(1) and 1.16(e)(2) (2011).

## **V.**

### **OFFERS OF SETTLEMENT**

The Respondents have each submitted Offers in which, without admitting or denying the findings herein, they acknowledge receipt and service of this Order and admit the jurisdiction of the Commission with respect to the matters set forth in this Order and waive: (1) the service and filing of a complaint and notice of a hearing; (2) a

hearing and all post-hearing procedures; (3) judicial review by any court; (4) any and all objections to the participation by any member of the Commission's staff in consideration of the Offers; (5) any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-68 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; (6) any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2011), relating to, or arising from, this proceeding; and (7) any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief.

The Respondents stipulate that the record basis on which the Order is entered shall consist solely of the findings in this Order to which Respondents have each consented in their Offers. The Respondents consent to the Commission's issuance of this Order, which:

A. Makes findings by the Commission that Respondents each violated Commission Regulations 1.16(d)(1) and 1.16(e)(2), 17 C.F.R. §§ 1.16(d)(1) and 1.16(e)(2) (2011);

B. Orders Respondents to cease and desist from violating Commission Regulations 1.16(d)(1) and 1.16(e)(2);

C. Orders Shane to pay a civil monetary penalty in an amount of \$100,000 (One Hundred Thousand Dollars), plus post-judgment interest, within 10 days of the date of the entry of this Order. Shane shall not seek or accept indemnification, directly or indirectly, from M&P with regard to any civil monetary penalty amounts;

D. Orders M&P to pay a civil monetary penalty in the amount of \$250,000 (Two Hundred Fifty Thousand Dollars), plus post-judgment interest, within 10 days of the date of the entry of this Order;

E. Orders M&P to pay restitution to One World's customers in the amount of \$650,000 (Six Hundred Fifty Thousand Dollars); and

F. Orders Respondents to comply with the undertakings consented to in their Offers and set forth below in Section VI of this Order.

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

**VI.**  
**ORDER**

**Accordingly, IT IS HEREBY ORDERED THAT:**

A. Respondents shall cease and desist from violating Commission Regulations 1.16(d)(1) and 1.16(e)(2);

B. Shane shall pay a civil monetary penalty in the amount of \$100,000 (One Hundred Thousand Dollars), plus post-judgment interest, within ten (10) days of the entry of the Order. Should Shane not satisfy his civil monetary obligation within ten (10) days of the date of entry of this Order, post-judgment interest shall accrue on the civil monetary obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961. Shane shall not seek or accept indemnification, directly or indirectly, from M&P with regard to any civil monetary penalty amount;

C. M&P shall pay a civil monetary penalty in the amount of \$250,000 (Two Hundred Fifty Thousand Dollars), plus post-judgment interest, within ten (10) days of the entry of the Order. Should M&P not satisfy its civil monetary penalty obligation within ten (10) days of the date of entry of this Order, post-judgment interest shall accrue on the civil monetary obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Respondents shall pay their respective civil monetary penalties 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 by other than 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 Receivable - AMZ-340  
Email 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 transfer is chosen, the paying Respondent shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of their respective civil monetary penalties with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to: (1)

the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2) (2006), if either Shane or M&P fails to pay their civil monetary penalty within fifteen (15) days of the due date, the non-paying Respondent shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of the payment has been made;

D. M&P shall pay restitution in the amount of \$650,000 (Six Hundred Fifty Thousand Dollars), plus post-judgment interest, within ten (10) days of the entry of the Order. Should M&P not satisfy its restitution obligation within ten (10) days of the date of entry of this Order, post judgment interest shall accrue on the restitution obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

To effect payment by M&P and distribution of restitution, the Commission orders the appointment of NFA as Monitor. The Monitor shall collect the restitution payment from M&P, and distribute the payment pursuant to the instruction of the Commodity Futures Trading Commission and the United States Attorney's Office for the Northern District of Illinois.

M&P shall make restitution payments under this Consent Order in the name of the "One World Restitution Fund" and shall send such restitution payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to and sent to the Office of Administration, National Futures Association, 300 S. Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter that identifies M&P and the name and docket number of this proceeding. M&P shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, and to the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

E. Respondents shall comply with the following undertakings:

1. Neither Respondents nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect the Respondents' (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents shall undertake all steps necessary to ensure

that all of their agents and employees under their authority or control understand and comply with this Order;

2. **Independent Consultant:** M&P will retain, within thirty (30) days after the entry of this Order, an independent consultant (“Independent Consultant”) acceptable to the Commission staff. Specific to FCM and retail foreign exchange dealer (“RFED”) engagements, the Independent Consultant will assist in implementing a new mandatory continuing professional education (“CPE”) training program, review M&P’s audit program, and make recommendations to improve M&P’s audit program. M&P will cooperate fully with the Independent Consultant and will provide reasonable access to firm personnel, information, and records as the Independent Consultant may reasonably request for the Independent Consultant’s review and evaluation.
  - a. *Audit Program Review:* The Independent Consultant shall assist M&P with its review of the audit procedures specific to FCM and RFED engagements. The review shall focus on, among other things: (1) consideration by the engagement team of the client’s operations; (2) the protection of customer funds; and (3) the confirmation of customer payables and other liabilities. The review will assess the forgoing areas to determine whether M&P’s procedures are adequate and sufficient to ensure compliance with Commission regulations and with current auditing standards and rules, and be incorporated into the CPE described below in (b).
    - i. Within ninety (90) days of the date of the Order, M&P will issue a written report (“Report”) to Commission staff that includes: (a) a summary of the Independent Consultant’s review and evaluation of M&P audit procedures; (b) a description of the changes M&P plans to make to the audit programs; and (c) the plan for implementation of the new programs.
    - ii. Within sixty (60) days of issuance of the Report, M&P will certify to the Staff in writing that it has adopted and has implemented or will implement recommendations of the Independent Consultant (“Certification of Compliance”). The Certification of Compliance shall identify the implemented recommendations, identify any recommendations not implemented and provide a detailed explanation regarding the reasons for not implementing them, and provide written evidence of compliance in the

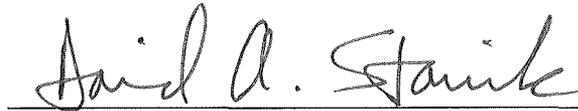
form of a narrative, and be supported by exhibits sufficient to demonstrate compliance, if necessary. Commission staff may make reasonable requests for further evidence of compliance, and M&P agrees to provide such evidence. The certification and supporting material shall be submitted to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, with a copy to the Regional Counsel, Division of Enforcement, Commodity Futures Trading Commission, 525 W. Monroe Street, Suite 1100, Chicago, IL 60661.

- b. *Continuing Professional Education:* The CPE training will address three main areas: (1) the applicable regulatory framework impacting audits of FCMs and RFEDs; (2) FCM and RFED operations, specifically addressing the varying ways in which these entities function, generate revenue, incur expenses and liabilities, and how that implicates the audit of such entities; and (3) issues and potential risks that auditors may encounter during such engagements, including identifying and evaluating fraud risks, and taking appropriate measures to address such risks as they arise.
- i. M&P shall administer the CPE training program to all M&P employees who, as part of their employment at M&P, will work on an FCM or RFED engagement; and
  - ii. M&P will implement the new CPE no later than November 30, 2011. Within thirty (30) days of completion of the training session(s), M&P and/or the Independent Consultant will provide confirmation to the CFTC staff, including: (1) the dates and locations of the sessions; and (2) the subject matter covered supported by exhibits sufficient to demonstrate compliance, if necessary. Confirmation and supporting material shall be submitted to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, with a copy to the Regional Counsel, Division of Enforcement, Commodity Futures Trading Commission, 525 W. Monroe Street, Suite 1100, Chicago, IL 60661.

3. Shane must undergo the updated CPE training program implemented by M&P.
  - a. Shane shall certify, in writing, compliance with the CPE training program undertaking set forth above. The certification and supporting material shall be submitted to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, with a copy to the Regional Counsel, Division of Enforcement, Commodity Futures Trading Commission, 525 W. Monroe Street, Suite 1100, Chicago, IL 60661, no later than sixty (60) days from the date of the completion of the undertaking.

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

By the Commission:



David A. Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: September 22, 2011