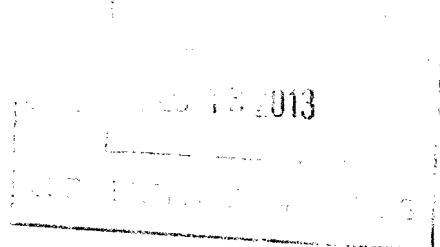


*Kaplan, J.*

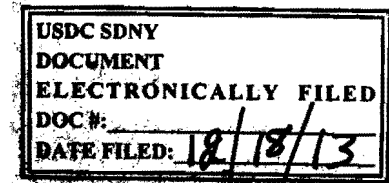


**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

U.S. COMMODITY FUTURES )  
TRADING COMMISSION )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
DAVID M. NUNN )  
 )  
Defendant. )

Civil Action No. 12 Civ. 7786 (LAK)(HBP)

ECF Case



**FINAL JUDGMENT AND CONSENT ORDER FOR PERMANENT INJUNCTION,  
CIVIL MONETARY PENALTY AND OTHER EQUITABLE RELIEF AGAINST  
DEFENDANT DAVID M. NUNN**

**I.  
INTRODUCTION**

On October 18, 2012, Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint against Defendant David M. Nunn ("Nunn" or "Defendant") seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act ("Act"), 7 U.S.C. § 1 *et seq.* (Supp. IV 2011), and the Commission's Regulations ("Regulations") promulgated thereunder, 17 C.F.R. § 1.1 *et seq.* (2011).

**II.  
CONSENTS AND AGREEMENTS**

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

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendant David M. Nunn ("Consent Order");
2. Affirms that he has read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledges service of the summons and Complaint;
4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1;
5. Admits the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1, *et seq.*;
6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e);
7. Waives:
  - (a) any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2011), relating to, or arising from, this action;
  - (b) any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

(c) any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

(d) any and all rights of appeal from this action;

8. Consents to the continued jurisdiction of this Court over him for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Nunn now or in the future resides outside the jurisdiction of this Court;

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

10. Agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Stipulations of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect his: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Nunn shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement; and

11. By consenting to the entry of this Consent Order, Nunn neither admits nor denies the allegations of the Complaint or the Stipulations of Fact and Conclusions of Law in this Consent Order, except as to jurisdiction and venue, which he admits. Notwithstanding the

preceding sentence, Nunn agrees and intends that the allegations contained in the Complaint and all of the Stipulations of Fact and Conclusions of Law contained in this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any claim by the Commission or adversary proceeding brought by the Commission in any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Nunn; (b) any proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2011); and/or (c) any proceeding to enforce the terms of this Consent Order.

12. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 50 of Part VII of this Consent Order, of any bankruptcy proceeding filed after this date by, on behalf of, or against him, and

13. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against him in any other proceeding.

14. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Stipulations of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, as set forth herein.

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

### **III. STIPULATIONS OF FACT**

#### **1. The Parties To This Consent Order**

15. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

16. Defendant Nunn was a registered floor broker with the Commission from November 26, 1997, through December 9, 2010.

#### **2. Nunn's Pre-Arranged Trading**

17. A "futures contract" is an agreement to purchase or sell a commodity for delivery, in the future, at a price determined at the initiation of the contract, that obligates each party to fulfill the contract at the specified price. Futures contracts are used to assume, or shift, price risk and may be satisfied by delivery or offset.

18. A "calendar spread" is the purchase of one delivery month of a given futures contract and simultaneous sale of a different delivery month of the same futures contract

19. Nunn traded coffee futures contracts and coffee futures calendar spreads at ICE Futures U.S. ("ICE"), a board of trade as defined by Section 1a(2) of the Act., 7 U.S.C. §1a(2). Nunn traded these contracts and calendar spreads through his personal account (the "Nunn Account") and also traded coffee futures contracts and coffee futures calendar spreads through other accounts set up in the name of another person (the "Other Account Holder") but which trading Nunn controlled (the "Other Accounts").

20. From at least July 2008 through September 2010 (the "Relevant Period"), Nunn conducted more than 1,300 trades between the Nunn Account and the Other Accounts.

21. In each instance, Nunn would execute a trade in which the two accounts traded with one another, thereby opening equal and opposite spread positions in coffee futures. Nunn would later conduct another trade between the accounts to close the positions.

22. At the beginning of the scheme, Nunn prearranged bids and offers by speaking with the Other Account Holder on the telephone prior to placing orders. After speaking with Nunn, the Other Account Holder placed orders in one of the Other Accounts by telephone. At some point during the Relevant Period, the Other Account Holder provided Nunn with the account online UserID and Password. Nunn then coordinated bids and offers by entering orders directly online in the Other Accounts.

23. During the Relevant Period, the vast majority of trades in the Other Accounts were made with the Nunn Account, and in every series of trades, the Other Account recognized a profit while the Nunn account recognized a loss.

24. For example, on August 13, 2010, at 1:37:01 P.M., Nunn entered in the Other Account an order to buy forty-three (43) September 2010 – September 2011 coffee calendar spreads (i.e. simultaneously buying September 2010 contracts and selling September 2011 contracts) at a limit differential price of one and six tenths of a cent (1.60¢). At 1:38:16 P.M., Nunn's account entered a sell order that matched with the Other Account's buy order into a trade with a differential price of one and six tenths cents (1.60¢), resulting in a long calendar spread position for the Other Account and short calendar spread position for Nunn's Account. At 1:50:46 P.M. the Other Account entered an order to sell forty-three (43) September 2010 – September 2011 coffee calendar spreads at a limit differential price of two and one tenth cents (2.10¢); at 1:51:32 P.M. the Nunn Account entered a buy order that matched with the Other Account's sell order into a trade with a differential price of two and five hundredths cents

(2.05¢). The trade subsequently offset the open positions of the two accounts, resulting in seven thousand, two hundred fifty-six dollars (\$7,256) of profits for the Other Account and an equivalent amount of losses to the Nunn Account.

25. That same day, at 1:53:44 P.M., the Other Account entered an order to sell forty-three (43) September 2010 – September 2011 coffee calendar spreads at a limit differential price of two and five hundredths cents (2.05¢); at 1:54:05 P.M. the Nunn Account entered a buy order that matched with the Other Account's sell order into a trade with a differential price of two and five hundredths cents (2.05¢), resulting in a short calendar spread position for the Other Account and long calendar spread position for the Nunn Account. At 1:56:01 P.M., the Other Account entered an order to buy forty-three (43) September 2010 – September 2011 coffee calendar spreads at a limit differential price of one and fifty-five hundredths cents (1.55¢); at 1:58:46 P.M. the Nunn Account entered a sell order that matched with the Other Account's buy order into a trade with a differential price of one and fifty-five hundredths cents (1.55¢). The trade subsequently offset the open positions of the two accounts, resulting in eight thousand, sixty-two dollars and fifty cents (\$8,062.50) of profits for the Other Account and an equivalent amount of losses to the Nunn account.

26. This distinct pattern of activity repeated itself for at least 1,300 calendar spread trades from July 2008 to September 2010, resulting in at least \$1.68 million being lost from the Nunn Account to the Other Accounts as a result of the illegal, prearranged, fictitious trades. As part of the scheme, the Other Account Holder returned approximately \$1 million of that money to Nunn.

27. Nunn directed how the Other Account Holder would return money to him. In order to return money to Nunn, the Other Account Holder wired money from the Other Accounts

to the Other Account Holder's bank account and then transferred money from that bank account to Nunn and to third-parties for Nunn's benefit.

28. Nunn caused the Other Account Holder to return money to Nunn by writing checks on the Other Account Holder's bank account to Nunn and to Nunn's wife.

29. Nunn caused the Other Account Holder to return money to Nunn by making payments for his benefit to pay his credit card bill.

30. Nunn also caused the Other Account Holder to return money to Nunn by paying the rent at an apartment in Battery Park City New York (the "BPC Apartment"), in which Nunn lived. The Other Account Holder rented the BPC Apartment in the Other Account Holder's name and paid the rent thereon, while Nunn resided in the BPC Apartment.

31. Nunn caused the Other Account Holder to return money to Nunn by paying for other of Nunn's living expenses, including Nunn's cell phone bill, Nunn's telephone bill, and Nunn's parking space rental.

32. The Other Accounts consistently showed profits from trading. The Other Account Holder reported trading income from the accounts on the Other Account Holder's personal income tax returns and used money from the Other Accounts to pay those taxes.

33. Nunn allowed the Other Person to keep some of the money when she and Nunn agreed that the Other Account Holder could withdraw money from the Other Accounts for the Other Account Holder's own use.

### **3. Nunn's False Answers and Material Omissions to ICE**

34. In September 2010, ICE representatives became aware that every trade made in one of the Other Accounts was profitable and that every trade was opposite Nunn's account.

35. On September 23, 2010, in furtherance of ICE's duties under the Act as a board of trade, ICE representatives conducted an interview of Nunn, during which they asked Nunn about



trading between his account and the Other Accounts. Nunn made false statements and omitted material information in order to hide his illegal scheme from the ICE representatives.

36. During the interview, the following exchanges occurred:

ICE Representative: Are you compensated in any way from the trading in [The Other Person's] account?

Nunn: No

And

ICE Representative: Would this be in any respect a facility for making payments or transferring funds or anything like that?

Nunn: No

37. Nunn's answers were false. In reality, profits from the Other account were transferred to Nunn as described above.

38. Nunn also omitted material facts in his interview with ICE representatives, including the fact that he controlled the trading in the Other Accounts.

**THE PARTIES AGREE AND THE COURT HEREBY FINDS:**

#### **IV. CONCLUSIONS OF LAW**

##### **1. Jurisdiction and Venue**

39. This Court has jurisdiction over this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

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

41. By the conduct described in paragraphs 1 through 36 above, Nunn violated Section 4c(a) of the Act by entering into transactions that are of the character of, or are commonly known to the trade as, "wash sales" or "accommodation trades" or are fictitious sales involving the purchase or sale of a commodity for future delivery which transaction was used or may have been used to hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity; or to determine the price basis of any such transaction in interstate commerce in the commodity; or to deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

42. By the conduct described in paragraphs 1 through 38, Nunn violated Commission Regulation 1.38(a) by engaging in any posting of bids and offers for the purchase or sale of any commodity for future delivery, and of any commodity option, on or subject to the rules of a contract market, that are not executed openly and competitively.

43. By the conduct described in paragraphs 1 through 38, Nunn violated Section 9(a)(4) of the Act by willfully falsifying, concealing, or covering up by any trick, scheme, or artifice a material fact, making any false, fictitious, or fraudulent statements or representations, or making or using any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, or futures association designated or registered under this Act acting in furtherance of its official duties under this Act.

44. Unless restrained and enjoined by this Court, there is a reasonable likelihood that the 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.

**V.  
PERMANENT INJUNCTION**

**IT IS HEREBY ORDERED THAT:**

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

- a. entering into transactions that are of the character of, or are commonly known to the trade as, “wash sales” or “accommodation trades” or are fictitious sales involving the purchase or sale of a commodity for future delivery which transaction was used or may have been used to hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity; or to determine the price basis of any such transaction in interstate commerce in the commodity; or to deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction in violation of Section 4c(a) of the Act, as amended, 7 U.S.C. § 6c(a), including but not limited to engaging in conduct where he enters into pre-arranged bids and offers between accounts he controls.
- b. engaging in any posting of bids and offers for the purchase or sale of any commodity for future delivery, and of any commodity option, on or subject to the rules of a contract market, that are not executed openly and competitively, in violation of Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a), including but

**not limited to engaging in conduct where he enters into pre-arranged trades between accounts he controls.**

- c. willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, swap data repository, or futures association designated or registered under this Act acting in furtherance of its official duties under this Act, in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4), including but not limited to making misleading statements to officials of a board of trade.**

**46. Defendant is 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 of the Act, as amended, 7 U.S.C. § 1a);**
- b. 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) (2011)) (“commodity options”), security futures products, 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)), and/or 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”) for his own personal account or for any account in which he has a direct or indirect interest;**

- c. **Having any commodity futures, options on commodity futures, commodity options, security futures products, swaps and/or forex contracts traded on his 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 futures, options on commodity futures, commodity options, security futures products, swaps and/or forex contracts;**
- e. **Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, swaps and/or forex contracts;**
- 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) (2011); and/or**
- g. **Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).**

**VI.  
CIVIL MONETARY PENALTY**

**A. Civil Monetary Penalty**

**47. Nunn shall pay a civil monetary penalty in the amount of Six Hundred Thousand Dollars (\$600,000) (“CMP Obligation”), plus post-judgment interest. Post-judgment interest**

shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006).

48. Nunn shall pay his CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables – AMZ 340  
E-mail Box: 9-AMC-AMZ-AR-CFTC  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: (405) 954-5644

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

**B. Provisions Related to Monetary Sanctions**

49. **Partial Satisfaction:** Any acceptance by the Commission of partial payment of Nunn's CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

**VII.  
MISCELLANEOUS PROVISIONS**

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

**Notice to Commission:**

**Regional Counsel  
United States Commodity Futures Trading Commission  
Division of Enforcement  
140 Broadway, 19<sup>th</sup> Floor  
New York, NY 10005**

**Notice to Defendant:**

**David M. Nunn  
17 Upper French Hollow Road  
Bondville, VT 05340**

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

**51. Change of Address/Phone:** Until such time as Nunn satisfies in full his CMP Obligation as set forth in this Consent Order, Nunn shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

**52. Entire Agreement and Amendments:** This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

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

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

**55. Acknowledgements:** Upon being served with copies of this Consent Order after entry by the Court, Nunn shall sign acknowledgements of such service and serve such acknowledgements on the Court and the Commission within 14 calendar days.

**56. Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Nunn to modify or for relief from the terms of this Consent Order.

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

**58. Counterparts and Facsimile Execution:** This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent

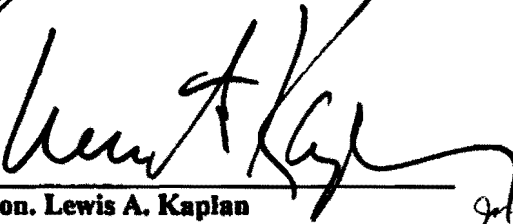


Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

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

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order.

IT IS SO ORDERED on this 17 day of Dec., 2013.

  
\_\_\_\_\_  
Hon. Lewis A. Kaplan  
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:



David M. Nunn

Date: 6-12-13



Manal Sultan  
David Acevedo  
David W. Oakland  
doakland@cftc.gov  
Michael Geiser  
mgeiser@cftc.gov  
Commodity Futures Trading Commission  
140 Broadway, 19<sup>th</sup> Floor  
New York, NY 10005  
(646) 746-9700

Dated 12/12/13