

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
JOSEPH DEANGELIS, *et al.*, :

Plaintiffs, :

-against- :

JON S. CORZINE, *et al.*, :

Defendants. :

----- X

U.S. COMMODITY FUTURES TRADING  
COMMISSION, :

Plaintiff, :

-against- :

MF GLOBAL HOLDINGS LTD.,  
JON S. CORZINE, and EDITH O'BRIEN, :

Defendants. :

----- X

Civil Action No. 11-cv-7866  
(VM) (JCF) (USCFCTC)

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTY  
AND OTHER EQUITABLE RELIEF AGAINST DEFENDANT EDITH O'BRIEN**

**I. INTRODUCTION**

On June 27, 2013, Plaintiff U.S. Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint against MF Global Holdings Ltd. ("MFGH"), MF Global Inc. ("MFGI" or "MF Global"), Jon S. Corzine ("Corzine"), and Edith O'Brien ("O'Brien") (collectively, "Defendants") 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. §§ 1-26, and the Commission's Regulations ("Regulations") promulgated thereunder, 17 C.F.R. § 1.1 *et seq.* On November 8, 2013, this Court approved a settlement of all of the Commission's claims against MFGI. On December 6, 2013, the Commission filed an amended

Complaint against MFGH, Corzine, and O'Brien. On December 23, 2014, the Court approved a settlement of all of the Commission's claims against MFGH.

## II. CONSENTS AND AGREEMENTS

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

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendant Edith O'Brien ("Consent Order");
2. Affirms that she 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 the Complaint and amended Complaint;
4. Admits the jurisdiction of this Court over her and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012);
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. §§ 1-26 (2012);
6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012);

7. Waives:

a. Any and all claims that she may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. § 148.1 *et seq.* (2015), relating to, or arising from, this action;

b. Any and all claims that she 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 her 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 O'Brien now or in the future resides outside the jurisdiction of this Court;

9. Agrees that she will not oppose enforcement of this Consent Order on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and hereby waives any objection based thereon;

10. Agrees that neither she nor any of her agents or employees under her authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the amended Complaint or the Findings of Fact or Conclusions of Law in this

Consent Order, or creating or tending to create the impression that the amended Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect her: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. O'Brien shall undertake all steps necessary to ensure that all of her agents and/or employees under her authority or control understand and comply with this agreement;

11. By consenting to the entry of this Consent Order, O'Brien neither admits nor denies the allegations of the amended Complaint or the Findings of Fact and Conclusions of Law in this Consent Order, except as to jurisdiction and venue, which she admits. Further, O'Brien agrees and intends that the allegations contained in the amended Complaint and all of the Findings 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 current or subsequent bankruptcy proceeding filed by, on behalf of, or against O'Brien as a debtor; (b) any proceeding pursuant to Section 8a of the Act, 7 U.S.C. § 12a (2012), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 – 3.75 (2015); and/or (c) any proceeding to enforce the terms of this Consent Order. Defendant does not consent to the use of this Consent Order, or the Findings of Fact and Conclusions of Law in this Consent Order, as the sole basis for any proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Consent Order. Defendant does not consent to the use of this Consent Order or Findings of Fact and Conclusions of Law in this Consent Order by any other person or entity.;

12. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 35 of Part VII of this Consent Order, of any

bankruptcy proceeding filed by, on behalf of, or against her as a debtor, whether inside or outside the United States; and

13. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against O'Brien in any other proceeding, nor does any provision of this Consent Order render this Consent Order admissible in any proceeding not involving the Commission.

### **III. FINDINGS AND CONCLUSIONS**

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), as set forth herein. The findings and conclusions in this Consent Order are not binding on any other party to this action.

#### **THE COMMISSION AND O'BRIEN, THE PARTIES TO THIS CONSENT ORDER, AGREE AND THE COURT HEREBY FINDS:**

##### **A. Findings of Fact**

###### **The Parties to This Consent Order**

14. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, 7 U.S.C. §§ 1-26 (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 - 190.10 (2015).

15. Defendant **Edith O'Brien** (as defined above, "O'Brien") was the Assistant Treasurer of MFGI's Treasury Department during October 2011.

## **Background**

16. MFGI was a futures commission merchant (“FCM”) registered with the Commission.

### **MFGI’s Violations of Section 4d(a)(2) of the Act, 7 U.S.C. § 6d(a)(2) and CFTC Regulations 1.20, 1.22, and 1.23, 17 C.F.R. §§ 1.20, 1.22, and 1.23.**

17. During the last week of October 2011, in violation of U.S. commodity laws, MFGI unlawfully used nearly one billion dollars of customer segregated funds to support its own proprietary operations and the operations of its affiliates and to pay broker-dealer securities customers and pay FCM customers for withdrawals of secured customer funds.

18. MFGI violated Section 4d(a)(2) of the Act, 7 U.S.C. § 6d(a)(2), and Regulations 1.20, 1.22, and 1.23, 17 C.F.R. §§ 1.20, 1.22, and 1.23, by failing to treat, deal with, and account for its FCM customers’ segregated funds as belonging to such customers; failing to account separately for, properly segregate, and treat its FCM customers’ segregated funds as belonging to such customers; commingling its FCM customers’ segregated funds with the funds of any other person; using its FCM customers’ segregated funds to fund the operations of MFGI and its affiliates, thereby using or permitting the use of the funds of one futures customer for the benefit of a person other than such futures customer; and withdrawing from its FCM customer segregated funds beyond MFGI’s actual interest therein.

### **O’Brien’s Liability Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a)**

19. As Assistant Treasurer of MFGI’s Treasury Department, O’Brien among other things:

- a. supervised MF Global’s Treasury Department, which handled the cash management of MF Global, and was responsible for directing, approving, and/or causing certain wire transfers and other payments into and out of MF Global’s customer accounts;

b. received and reviewed daily customer segregation reports and analyzed certain factors that affect the daily segregation calculation;

c. tracked the amount of certain funds sent from MF Global's customer accounts during the day to the broker-dealer division of MF Global and communicated with other MF Global employees with respect to these transfers and their effect on the customer segregated accounts;

d. had responsibility for investing customer segregated funds pursuant to CFTC rules;

e. liaised with other MF Global departments regarding cash transfers; and

f. was generally knowledgeable of CFTC rules regarding customer segregated funds.

20. Knowing that certain funds would be transferred from customer segregated accounts to MF Global's proprietary accounts, O'Brien, on Thursday, October 27, 2011 and Friday, October 28, 2011, directed, approved, and/or caused seven transfers of funds from customer segregated accounts to MF Global's proprietary accounts totaling hundreds of millions of dollars – more than MF Global had in excess segregated funds as last reported to O'Brien – that caused and/or contributed to a deficiency in the customer segregated accounts. By this conduct, O'Brien aided and abetted MF Global's segregation violations.

#### **B. Conclusions of Law**

21. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), 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.

22. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because the acts and practices in violation of the Act and CFTC Regulations occurred within this District.

23. Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), O'Brien is liable as an aider and abettor for violations of Section 4d(a)(2) of the Act and CFTC Regulations 1.20, 1.22, and 1.23.

#### **IV. PERMANENT INJUNCTION**

##### **IT IS HEREBY ORDERED THAT:**

24. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), O'Brien is permanently restrained, enjoined, and prohibited from directly or indirectly failing to treat, deal with, and account for FCM customer segregated funds as belonging to such customers; failing to account separately for, properly segregate, and treat FCM customer segregated funds as belonging to such customers; commingling FCM customer segregated funds with the funds of another person; using or permitting the use of the funds of one futures customer for the benefit of a person other than such futures customer; and withdrawing FCM customer segregated funds beyond the FCM's actual interest therein, in violation of Section 4d(a)(2) of the Act, 7 U.S.C. § 6d(a)(2) (2012), and CFTC Regulations 1.20, 1.22, and 1.23, 17 C.F.R. §§ 1.20, 1.22, and 1.23 (2015), and from willfully aiding or abetting the commission of the foregoing violations of the Act and Regulations in violation of Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2012).



**V. CIVIL MONETARY PENALTY**

**IT IS HEREBY ORDERED THAT:**

**A. Civil Monetary Penalty**

25. O'Brien shall pay a civil monetary penalty in the amount of five hundred thousand U.S. dollars (\$500,000) ("CMP Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning ten business days from 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 (2012).

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

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables  
DOT/FAA/MMAC/AMZ-341  
CFTC/CPSC/SEC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
(405) 954-7262 office  
(405) 954-1620 fax  
nikki.gibson@faa.gov

If payment by electronic funds transfer is chosen, O'Brien shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. O'Brien shall accompany payment of the CMP Obligation with a cover letter that identifies O'Brien and the name and docket number of this proceeding. O'Brien shall simultaneously transmit copies of the cover letter and the form of payment to (1) the Chief Financial Officer, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155

21st Street, NW, Washington, D.C. 20581 and (2) Manal M. Sultan, Deputy Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005.

**B. Provision Related to Monetary Sanctions**

27. Partial Satisfaction: Acceptance by the Commission of any partial payment of O'Brien's CMP Obligation shall not be deemed a waiver of her 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.

**VI. UNDERTAKINGS**

**IT IS HEREBY ORDERED THAT O'BRIEN SHALL COMPLY WITH THE FOLLOWING UNDERTAKINGS:**

28. O'Brien agrees that she shall not, directly or indirectly, act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2015)), agent or other officer, director, or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38)) registered, exempted from registration, or required to be registered with the Commission as a Futures Commission Merchant as that term is defined in Section 1a(28) of the Act, 7 U.S.C. § 1a(28), for a period of eighteen (18) months from the date of this Order.<sup>1</sup>

29. O'Brien agrees that she shall not apply for registration with the Commission in any capacity, nor engage in any activity requiring such registration with the Commission for a period of eighteen (18) months from the date of this Order.

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<sup>1</sup> If O'Brien becomes associated with any person registered or required to be registered with the Commission, neither this Consent Order nor anything set forth herein shall provide the sole basis for an action against such person pursuant to Section 8a(3)(L) of the Act, 7 U.S.C. § 12a(3)(L), provided, however, that such person, to the extent they are a person described in paragraph 28, shall not have associated with Defendant O'Brien for a period of eighteen (18) months from the date of this Consent Order.

## VII. MISCELLANEOUS PROVISIONS

30. Cooperation: O'Brien agrees that she shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any investigation, civil litigation, or administrative matter related to this Consent Order or the Amended Complaint, or any current or future Commission investigation related thereto.

O'Brien's counsel designated in paragraph 35 of this Part VII of this Consent Order is hereby designated as her agent for service of any subpoena issued by the Commission in connection with this action, and O'Brien agrees that she will comply with such a subpoena.

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

Notice to Commission:

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

Notice to Defendant O'Brien:

Edith O'Brien  
c/o Christopher J. Barber  
Williams Montgomery & John Ltd.  
Willis Tower  
233 South Wacker Drive, Suite 6100  
Chicago, IL 60606-6359

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

32. Change of Address/Phone: Until such time as O'Brien satisfies in full her CMP Obligation as set forth in this Consent Order, O'Brien shall provide written notice to the

Commission by certified mail of any change to her telephone number and mailing address within ten (10) calendar days of the change.

33. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the Commission and O'Brien (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 the Parties hereto; and (c) approved by order of this Court.

34. 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.

35. Waiver: The failure of any party to this Consent Order or of any 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.

36. 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 O'Brien to modify or for relief from the terms of this Consent Order.

37. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon O'Brien, upon any person under her

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 O'Brien.

38. 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 the 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.

39. Contempt: O'Brien understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings she may not challenge the validity of this Consent Order.

40. Agreements and Undertakings: O'Brien shall comply with all of the undertakings and agreements set forth in this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendant Edith O'Brien* forthwith and without further notice.

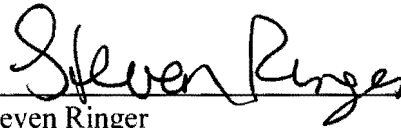
IT IS SO ORDERED on this 5<sup>th</sup> day of January 2017,

A handwritten signature in black ink, appearing to read "Victor Marrero", written over a horizontal line.

Hon. Victor Marrero, U.S.D.J.

CONSENTED TO AND APPROVED

BY: \_\_\_\_\_  
Edith O'Brien



\_\_\_\_\_  
Steven Ringer  
Chief Trial Attorney  
K. Brent Tomer  
Chief Trial Attorney  
Manal Sultan  
Deputy Director  
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*Attorneys for Defendant Edith O'Brien*

Date: \_\_\_\_\_

Date: 1/4/17

CONSENTED TO AND APPROVED

BY: Edith O'Brien  
Edith O'Brien

\_\_\_\_\_  
Steven Ringer  
Chief Trial Attorney  
K. Brent Tomer  
Chief Trial Attorney  
Manal Sultan  
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Date: \_\_\_\_\_

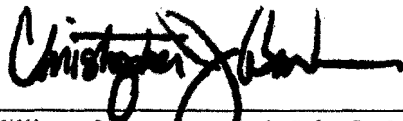
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CONSENTED TO AND APPROVED

BY: \_\_\_\_\_  
Edith O'Brien

\_\_\_\_\_  
Steven Ringer  
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*Attorneys for Defendant Edith O'Brien*

Date: 12/20/2016

Date: \_\_\_\_\_