

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**



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**In the Matter of:** )  
 ) **CFTC Docket No. 17-10**  
 )  
 **John B. Oden and Oden Capital** )  
 **Management, LLC,** )  
 )  
 **Respondents.** )  
\_\_\_\_\_ )

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

**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that between April and November 2014, John B. Oden (“Oden”), while acting as the commodity pool operator (“CPO”) for Oden Currency Fund, LP (“OCF”), violated Section 4m(1) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6m(1) (2012), and Commission Regulations (“Regulations”) 4.13(a)(6), 4.13(c)(2), 4.20(c), 4.41(b), and 5.3(a)(2)(i), 17 C.F.R. §§ 4.13(a)(6), 4.13(c)(2), 4.20(c), 4.41(b), and 5.3(a)(2)(i) (2016). In addition, the Commission has reason to believe that between November 2014 and December 2015, Oden Capital Management, LLC (“OCM”), while acting as the CPO for Oden Currency Fund I, LP (“OCF I”), violated Regulations 4.7(b)(2), 4.22(h), and 4.41(b), 17 C.F.R. §§ 4.7(b)(2), 4.22(h), and 4.41(b). Further, because the Commission has reason to believe that Oden was the controlling person of OCM, he is liable for OCM’s violations of the Regulations, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Oden and OCM (collectively, “Respondents”) engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

**II.**

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and 6(d) of the

Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledge service of this Order.<sup>1</sup>

### III.

The Commission finds the following:

#### A. SUMMARY

Oden, acting as a CPO, operated OCF as a commodity pool between April and November 2014. During April to June of 2014, Oden was not registered as a CPO and Oden claimed an exemption from registration under Regulation 4.13(a)(2). Oden’s exemption claim, however, was invalid. As a result, Oden should have been registered as a CPO during April to June 2014 (he later registered in July 2014) and his failure to do so violated Section 4m(1) of the Act and Regulation 5.3(a)(2)(i). During the broader time period when OCF operated (April-November 2014), Oden also committed the following violations of the Regulations: (i) he failed to provide a required notice to prospective participants in OCF that he claimed an exemption from registration as a CPO and failed to include a description of the criteria pursuant to which he claimed such an exemption from registration; (ii) he failed to promptly furnish to each OCF pool participant a copy of monthly statements for the OCF pool that Oden received from the FCM and such supplemental statements as would have been necessary to show the net profit or loss on all commodity interests closed since the date of the previous statement; (iii) he improperly comingled OCF pool participant funds with his personal accounts, as well as accounts belonging to family members; and (iv) he improperly utilized promotional materials that showed trading returns based on hypothetical results without also including required disclosure language.

OCM, acting as a CPO, operated OCF I as a Regulation 4.7 exempt commodity pool during the time period of November 2014 to December 2015. During this time period, OCM committed the following violations of the Regulations: (i) OCM failed to send certain quarterly reports to OCF I pool participants; (ii) OCM failed to include the required oath or affirmation of accuracy and completeness in the quarterly reports it did send to OCF I pool participants; and (iii) OCM improperly utilized promotional materials that showed trading returns based on hypothetical results, without also including required disclosure language.

Finally, Oden controlled OCM and, as a controlling person who knowingly induced the underlying violations or failed to act in good faith, he is liable for OCM’s violations of the Regulations pursuant to Section 13(b) of the Act.

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<sup>1</sup> Respondents consent to the entry of this Order and to 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; provided, however, that Respondents do not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

## **B. RESPONDENTS**

**John B. Oden** is an individual that resides in Dallas, Texas. Oden was the CPO of OCF. Oden was the chief compliance officer, sole owner, and a registered principal and associated person of OCM from September 2014 until December 2015. Oden was also registered as a CPO from July to November 2014.

**Oden Capital Management, LLC** is a Texas limited liability company located in Dallas, Texas. Beginning in November 2014 and continuing until approximately December 2015, OCM was the CPO of OCF I. OCM has been registered as a CPO since September 2014.

## **C. FACTS**

### **1. John B. Oden: CPO of OCF**

Oden, acting as a CPO, operated OCF from approximately April to November 2014. OCF traded retail forex contracts on behalf of four participants. Oden wound down the affairs of OCF in November 2014. During his tenure as CPO for OCF, Oden committed several violations of the Act and Regulations, as set forth herein.

During the months of April to June 2014, Oden, acting as OCF's CPO, was not registered as a CPO (he registered as a CPO in July 2014). During this period, Oden claimed an exemption from registration under Regulation 4.13(a)(2)<sup>2</sup>.

Eligibility for the exemptions claimed by Oden is subject to the requirement, set forth in Regulation 4.13(a)(6), that the person operating the pool provide prospective pool participants with a statement indicating that the person is exempt from registration and containing the basis for the person's claimed exemption from registration. Oden failed to provide this required communication. Because of Oden's noncompliance with 4.13(a)(6), he was not eligible for the 4.13 exemptions he claimed.

Also, under Regulation 4.13(c)(2), each person who has filed a notice of exemption from registration under Regulation 4.13(a)(2) must promptly furnish to each participant in the pool a copy of each monthly FCM statement for the pool and clearly show on that statement, or on an accompanying supplemental statement, the net profit or loss on all commodity interests closed since the date of the previous statement. Oden never sent any such statements to OCF pool participants.

In addition, Oden provided at least one potential OCF pool participant with a "Hedge Fund 1 Pager" and a PowerPoint presentation titled "Oden Currency Fund Presentation." These marketing materials claimed year-to-date investment returns of 18.9% and 19.0%, respectively. Both of these purported investment returns were based, in whole or in part, on hypothetical

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<sup>2</sup> Oden subsequently claimed exempt status under Regulation 4.13(a)(3) from August to March 2015. Only the first exemption claimed by Oden is relevant here, because Oden registered as a CPO in July 2014.

trading. Both of these marketing materials failed to include a specific disclaimer explaining the hypothetical nature of the results that was required pursuant to Regulation 4.41(b).

Finally, in May through July 2014, the funds of OCF pool participants were comingled with bank and trading accounts titled in the name of OCF, John Oden, and David and Bonnie Oden, in violation of Regulation 4.20.

## **2. Oden Capital Management, LLC: CPO of OCF I**

OCM operated OCF I as a Regulation 4.7 exempt commodity pool from approximately November 2014 until approximately December 2015. OCF I traded retail forex on behalf of 19 participants. OCF I wound down its affairs in December 2015, due to losses arising out of the insolvency proceedings of a foreign forex trading firm, where its trading capital was held. During its tenure as CPO for OCF I, OCM committed several violations of the Regulations, as set forth herein.

As the CPO of a Regulation 4.7 exempt pool, OCM was required to issue statements to pool participants (signed and affirmed in accordance with Regulation 4.22(h)) at least quarterly and within 30 days of the close of the reporting period. Regulation 4.7(b)(2). During its brief operation of OCF I, OCM did not always send the required quarterly statements to pool participants. For those statements it did issue, OCM did not comply with the requirements of Regulation 4.7(b)(2). Specifically, OCM did not include in its statements the net asset value of the exempt pool or the change in net asset value from the end of the previous reporting period. Finally, the quarterly statements OCM did send did not contain the oath or affirmation of accuracy and completeness as required by Regulation 4.22(h).

OCM also utilized certain marketing materials in its solicitations with prospective and actual OCF I pool participants. Among the materials OCM used were September and October 2014 OCF reports, which showed 39.4% and 42.7% year-to-date gross returns, respectively. These reports combined hypothetical and actual trading results, without including the required disclosure stated in Regulation 4.41(b). Similarly, a February 2015 “Investor Report Regarding January 2015” combined actual and hypothetical trading results for January 2015 and showed hypothetical returns over a ten-year period, both without including the required disclosure stated in Regulation 4.41(b).

Oden was the chief compliance officer, principal, and sole owner of OCM. Among his other duties, Oden was responsible for the content and issuance of OCF I’s quarterly statements (or OCM’s failure to issue those statements in certain quarters) and was responsible for the content of OCM’s marketing materials.

## IV.

### LEGAL DISCUSSION

#### A. **Oden Violated Section 4m(1) of the Act and Regulation 5.3**

In 1974, Congress amended the Act to establish a more “comprehensive regulatory structure to oversee the volatile and esoteric futures trading complex.” *CFTC v. Schor*, 478 U.S. 833, 836 (1986) (quoting H.R. Rep. No. 93-975, p.1 (1974)). “Registration is the kingpin in ...[the Commission’s] statutory machinery, giving the Commission the information about participants in commodity trading which it so vitally requires to carry out its other statutory functions of monitoring and enforcing the Act.” *Flaxman v. CFTC*, 697 F.2d 782, 787 (7th Cir. 1983) (quoting *CFTC v. British Am. Commodity Options*, 560 F.2d 135, 139-40 (2d Cir. 1977)). The registration requirements ensure that persons dealing in commodities meet certain minimum financial and fitness requirements and enable the Commission to monitor the trading activities of market members. *Ping He (Hai Nam) Co. v. NonFerrous Metals (U.S.A.) Inc.*, 22 F.Supp.2d 94, 102-04 (S.D.N.Y. 1998) *opinion vacated in part on reconsideration*, 187 F.R.D. 121 (S.D.N.Y. 1999).

Section 4m(1) of the Act makes it unlawful for a person to act as a CPO, and use the mails or any instrumentality of interstate commerce in connection with one’s business as a CPO, without being registered with the Commission as such, subject to certain exceptions and exemptions. The registration requirement does not contain a “state of mind” limitation to liability. There is a “flat prohibition ... against using the facilities of interstate commerce to give commodity advice unless registered,” and “[w]hile fraud and misconduct may also be violations of the Act ... violations of § 6m alone are sufficient” to warrant the granting of an injunction. *British Am. Commodity Options*, 560 F.2d at 142; *accord CFTC v. Wilson*, 19 F. Supp. 3d 352, 361 (D. Mass. 2014) (involving investment company that failed to register as a CPO).

As set forth above, Oden operated OCF as a commodity pool from approximately April to November 2014. During April to June 2014, Oden was not registered as a CPO and was instead relying on a Regulation 4.13(a)(2) exemption from registration beginning in April 2014. Oden was ineligible for an exemption from registration because he failed to provide the communications required under Regulation 4.13(a)(6) to prospective pool participants. *See* Regulation 4.13(a)(6) (noting that eligibility for an exemption claimed under Regulation 4.13(a)(1), (a)(2), (a)(3), or (a)(4) is “subject to” the CPO providing the required disclosure described therein). As a result of the ineligibility of Oden for the exemption he claimed, Oden should have been registered as a CPO during April to June of 2014. Section 4m(1) of the Act. Additionally, because OCF traded retail forex contracts, Oden’s failure to register as a CPO also violated Regulation 5.3(a)(2)(i).

#### B. **Oden Violated Regulation 4.13(a)(6)**

Eligibility for a Regulation 4.13(a)(2) exemption is subject to the requirement that the person operating the pool provide prospective pool participants:

- (A) A statement that the person is exempt from registration with the Commission as a commodity pool operator and that therefore, unlike a registered commodity

pool operator, it is not required to deliver a Disclosure Document and a certified annual report to participants in the pool; and

(B) A description of the criteria pursuant to which it qualifies for such exemption from registration.

Regulation 4.13(a)(6). Oden operated under a claimed Regulation 4.13(a)(2) exemption during April to June 2014 (a period of time when Oden was not registered as a CPO). Oden failed to provide this required written communication to prospective pool participants of OCF. Accordingly, Oden violated Regulation 4.13(a)(6) by operating under a claimed Regulation 4.13(a)(2) exemption without meeting the eligibility conditions for that exemption.

**C. Oden Violated Regulation 4.13(c)(2)**

Pursuant to Regulation 4.13(c)(2), each person who has filed a notice of exemption from registration under Regulation 4.13(a)(2) must promptly furnish to each participant in the pool a copy of each monthly FCM statement for the pool and clearly show on that statement, or on a supplemental statement, the net profit or loss on all commodity interests closed since the date of the previous statement. Oden violated Regulation 4.13(c)(2) by failing to send any such statements to OCF pool participants.

**D. Oden Violated Regulation 4.20(c)**

Regulation 4.20(c) prohibits a CPO from commingling the property of any pool it operates with the property of any other person. During his operation of OCF, Oden violated Regulation 4.20 by comingling OCF pool participant funds with his personal accounts, as well as with accounts belonging to family members.

**E. Oden Violated Regulation 4.41(b)**

Regulation 4.41(b) requires the presentation of simulated or hypothetical performance data by a CPO to be accompanied by a specific disclaimer set forth in Regulation 4.41(b)(1)(i) or (ii). During his operation of OCF, Oden violated Regulation 4.41(b) when he provided at least one potential pool participant with a “Hedge Fund 1 Pager” and a PowerPoint presentation titled “Oden Currency Fund Presentation” that showed year-to-date returns of 18.9% and 19.0%, respectively. Both of these return figures were based, in whole or in part, on hypothetical trading and both lacked the required disclosures regarding hypothetical trading results. By this conduct, Oden violated Regulation 4.41(b). *See CFTC v. Vartuli*, 228 F.3d 94, 107 (2d Cir. 2000) (phrasing and placement of disclosure violated Regulation 4.41(b)).

**F. OCM Violated Regulation 4.7(b)(2)**

A CPO operating a Regulation 4.7 exempt commodity pool may claim relief with respect to certain periodic reporting requirements of Regulation 4.22(a) and (b), provided that it makes certain disclosures in a statement, signed and affirmed in accordance with Regulation 4.22(h), which is prepared and distributed to pool participants on a quarterly basis (within 30 calendar days after the reporting period). Regulation 4.7(b)(2). This required quarterly statement “must

be presented and computed in accordance with generally accepted accounting principles” and must indicate, among other things, such information as the net asset value of the exempt pool as of the end of the reporting period, the change in net asset value from the end of the previous reporting period, and the net asset value per outstanding unit of participation in the exempt pool as of the end of the reporting period. *Id.*

During its operation of OCF I, OCM did not consistently send these required quarterly statements to the OCF I pool participants. In quarters where it failed to send the required quarterly statements to pool participants, OCM violated Regulation 4.7(b)(2). Moreover, even for those statements it did issue, OCM did not comply with the content requirements of Regulation 4.7(b)(2). Specifically, OCM did not include in the OCF I quarterly statements the net asset value of the exempt pool, the change in net asset value from the end of the previous reporting period, or the net value of the participant’s interest in the exempt pool as of the end of the reporting period. Accordingly, OCM violated Regulation 4.7(b)(2).

**G. OCM Violated Regulation 4.22(h)**

Pursuant to Regulation 4.22(h) each account statement and annual report provided by a CPO pursuant to Regulation 4.7(b) must contain an oath or affirmation that, to the best of the knowledge and belief of the individual making the oath or affirmation, the information contained in the document is accurate and complete. In this case, the quarterly statements that OCM sent to OCF I pool participants did not contain the required oath or affirmation of accuracy and completeness. Accordingly, OCM violated Regulation 4.22(h).

**H. OCM Violated Regulation 4.41(b)**

As stated above, Regulation 4.41(b), requires the presentation of simulated or hypothetical performance data by a CPO to be accompanied by a specific disclaimer set forth in Regulation 4.41(b)(1)(i) or (ii). During its operations, OCM violated Regulation 4.41(b) when it solicited OCF I pool participants with various written materials, including September and October 2014 OCF reports, which showed 39.4% and 42.7% year-to-date gross returns, respectively. These reports combined hypothetical and actual trading results, without including the appropriate disclaimer regarding hypothetical results as required by Regulation 4.41(b). Similarly, OCM’s “Investor Report Regarding January 2015” violated Regulation 4.41(b) because it combined actual and hypothetical trading results for January 2015 and showed hypothetical returns over a ten-year period, both without proper disclaimers under Regulation 4.41(b). By this conduct, OCM violated Regulation 4.41(b). *See Vartuli*, 228 F.3d at 107 (phrasing and placement of disclosure violated Regulation 4.41(b)).

**I. Oden’s Controlling-Person Liability**

Oden controlled OCM and directly and knowingly induced OCM’s acts constituting violations of the Regulations. Therefore, pursuant to Section 13(b) of the Act, Oden is liable for OCM’s violations of the Regulations.

Section 13(b) of the Act provides that a person who, directly or indirectly, controls any person who has violated any provision of the Act, or any rule, regulation or order issued pursuant

to the Act, may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person. A “fundamental purpose” of the statute is “to reach behind the corporate entity to the controlling individuals of the corporation and to impose liability for violations of the Act directly on such individuals as well as on the corporation itself.” *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1334 (11th Cir. 2002) (quoting *JCC, Inc. v. CFTC*, 63 F.3d 1557, 1567 (11th Cir. 1995)).

To establish controlling-person liability under Section 13(b) of the Act, the Commission must show that the defendant (1) directly or indirectly controlled the person or entity that committed the violation; and (2) did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violation. *CFTC v. Baragosh*, 278 F.3d 319, 330 (4th Cir. 2002); *R.J. Fitzgerald*, 310 F.3d at 1334; *Monieson v. CFTC*, 996 F.2d 852, 858 (7th Cir. 1993). To establish the control element, a defendant must possess general control over the operation of the entity principally liable. *See, e.g., R.J. Fitzgerald*, 310 F.3d at 1334 (recognizing an individual who “exercised the ultimate choice-making power within the firm regarding its business decisions” as a controlling person). Control is “the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.” *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103, n.4 (CFTC Jan. 12, 1988). The Commission must also show that the defendant possessed specific control, which is “the power or ability to control the specific transaction or activity upon which the primary violation was predicated, even if such power was not exercised.” *CFTC v. Int’l Fin. Services, Inc.*, 323 F. Supp. 2d 482, 504 (S.D.N.Y. 2004) (quoting *Baragosh*, 278 F.3d at 330).

Oden was the chief compliance officer, sole owner, and a registered principal and associated person of OCM. As such, Oden had the requisite general control of OCM. *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103, at 34,767 (CFTC Jan. 12, 1988); *see also In re Apache Trading Corp.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,251, at 38,795 (CFTC Mar. 11, 1992) (finding that an individual controls a corporation where he “directs the economic aspects of the firm”). In addition, Oden was responsible for the content and issuance of OCF I’s quarterly statements (or OCM’s failure to issue those statements in certain quarters) and was responsible for the content of OCM’s marketing materials. Oden therefore possessed the specific control over the activities upon which OCM’s violation of Regulations 4.7(b)(2), 4.22(h), and 4.41(b) are predicated.

To establish the “knowing inducement” element of the controlling-person violation, the Commission must show that “the controlling person had actual or constructive knowledge of the core activities that constitute the violations at issue and allowed them to continue.” *JCC, Inc. v. CFTC*, 63 F.3d 1557, 1568 (11th Cir. 1995) (quoting *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103, at 34,767 (CFTC Jan. 12, 1988)). In this case, Oden was directly responsible for the issuance of OCF I quarterly statements (as well as failing to issue those statements, at times), including the contents of those statements. Moreover, Oden was directly responsible for the solicitation materials utilized by OCM, including those materials that contained hypothetical trading results without presenting the required disclaimer under Regulation 4.41(b). Further, Oden knew that the trading results touted in OCM’s marketing materials were hypothetical and knew that no disclaimer accompanied those results. Accordingly, Oden knowingly induced, directly or indirectly, the conduct that constitutes OCM’s



violations of the Regulations. Consequently, pursuant to Section 13(b) of the Act, he is liable for OCM's violations of the Regulations.

## V.

### FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds: that Oden violated Section 4m(1) of the Act, Regulations 4.13(a)(6), 4.13(c)(2), 4.20(c), 4.41(b), and 5.3(a)(2)(i); that OCM violated Regulations 4.7(b)(2), 4.22(h), and 4.41(b); and that Oden is liable for OCM's violations of the Regulations pursuant to Section 13(b) of the Act.

## VI.

### OFFER OF SETTLEMENT

Respondents have submitted an Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waive:
  - 1. The filing and service of a complaint and notice of hearing;
  - 2. A hearing;
  - 3. All post-hearing procedures;
  - 4. Judicial review by any court;
  - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
  - 6. Any and all claims that they 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 Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2016), relating to, or arising from, this proceeding;
  - 7. 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, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and

8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Oden violated Section 4m(1) of the Act and Regulations 4.13(a)(6), 4.13(c)(2), 4.20(c), 4.41(b), and 5.3(a)(2)(i); that OCM violated Regulations 4.7(b)(2), 4.22(h), and 4.41(b); and that Oden is liable for OCM's violations of the Regulations pursuant to Section 13(b) of the Act;
  2. Orders Oden to cease and desist from violating Section 4m(1) of the Act and Regulations 4.13(a)(6), 4.13(c)(2), 4.20(c), 4.41(b), and 5.3(a)(2)(i); and Respondents, and any successors and assigns of OCM, to cease and desist from violating Regulations 4.7(b)(2), 4.22(h), and 4.41(b);
  3. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of \$100,000, plus post-judgment interest within ten (10) days of the date of entry of this Order; and
  4. Orders Respondents, and any successors and assigns of OCM, to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

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

## VII.

### ORDER

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

- A. Oden shall cease and desist from violating Section 4m(1) of the Act and Regulations 4.13(a)(6), 4.13(c)(2), 4.20(c), 4.41(b), and 5.3(a)(2)(i); and Respondents, and any successors and assigns of OCM, shall cease and desist from violating Regulations 4.7(b)(2), 4.22(h), and 4.41(b);
- B. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of one hundred thousand dollars, \$100,000 (“CMP Obligation”), plus post-judgment interest, within ten (10) days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP 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 (2012).

Respondents shall pay the 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 Receivable  
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

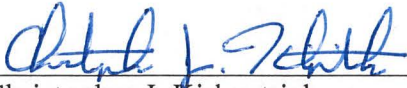
If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies 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 the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, as well as to Charles Marvine, Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, 4900 Main Street, Suite 500, Kansas City, MO 64112;

- C. Respondents, and any successors and assigns of OCM, shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondents agree that neither they, 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 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/or employees under their authority or control understand and comply with this agreement.
  2. Respondents agree that they shall, for a period of five (5) years after the date of entry of this Order, not directly or indirectly:
    - a. control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving "commodity interests" (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2016));
    - b. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
    - c. apply for registration or claim exemption from registration with the Commission in any capacity, and engage 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) (2016); and/or
    - d. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2016)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012) registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9).
- D. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

- E. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligation as set forth in this Consent Order, Respondents shall provide written notice to the Commission by certified mail to the attention of Charles Marvine (see paragraph VII.B. above) of any change to their telephone number and mailing address within ten (10) calendar days of the change.

**The provisions of this Order shall be effective as of this date.**

By the Commission.



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Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: February 9, 2017