

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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) )  
**In the Matter of:** ) )  
) )  
) )  
**PassThrough Investments, LLC a.k.a.** ) )  
**PassThrough Investments Group, LLC,** ) )  
**Stephen Brantley, and Dwayne Bryant** ) )  
**Dawson** ) )  
) )  
**Respondents.** ) )  
) )  
\_\_\_\_\_)

CFTC Docket No. 12-19

Office of  
Proceedings  
Procedures

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

**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about April 2010 through October 2010 (the “Relevant Period”), PassThrough Investments, LLC a.k.a. PassThrough Investments Group, LLC (“PTI”), Stephen Brantley (“Brantley”), and Dwayne Bryant Dawson (“Dawson”) (collectively “Respondents”) have violated provisions of the Commodity Exchange Act (the “Act” or the “CEA”), 7 U.S.C. §§ 1 et seq. (2006 and Supp. III 2009), specifically, Sections 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A), (C) (Supp. III 2009). The Commission, therefore, deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations set forth herein and to determine whether any order should be issued imposing a remedial sanction.

**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 and conclusions herein, Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Act,

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

### III.

The Commission finds the following:

#### A. Summary

From approximately April 2010 through October 2010 (the “relevant period”), PTI, by and through its officers and agents, Brantley and Dawson, fraudulently solicited at least \$2.6 million from at least 60 members of the general public for the purpose of participating in a pooled investment vehicle trading in off-exchange agreements, contracts or transactions in foreign currency (“forex”) on a leveraged or margined basis. In soliciting actual and prospective customers, Brantley and Dawson, knowingly or with reckless disregard for the truth thereof, omitted material facts and made material misrepresentations regarding the likelihood and amount of profits and the reliability and/or legitimacy of the individuals trading the pooled funds. In doing so, the Respondents violated Sections 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A), (C) (Supp. III 2009).

#### B. Respondents

**PassThrough Investment, LLC a.k.a. PassThrough Investment Group, LLC** is a Texas limited liability corporation whose primary business address is 27705 Buena Way, Spring, Texas 77386. PTI has never been registered with the Commission in any capacity. PTI has never been a financial institution, registered broker or dealer, insurance company, financial holding company, or investment bank holding company.

**Stephen Brantley**, who resides in Spring, Texas, is a managing member and a controlling person of PTI. He has never been registered with the Commission in any capacity. He is not an associated person of a financial institution, registered broker or dealer, insurance company, financial holding company, or investment bank holding company.

**Dwayne Bryant Dawson**, who resides in Spring, Texas, is a managing member and a controlling person of PTI. He has never been registered with the Commission in any capacity. He is not an associated person of a financial institution, registered broker or dealer, insurance company, financial holding company, or investment bank holding company.

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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 a proceeding in bankruptcy or to enforce the terms of this Order. Nor do the Respondents consent to the use of the Offer or this Order, or the findings or the conclusions in this Order, by any other party in any other proceeding.

### C. Facts

Brantley and Dawson, operating as PTI, solicited funds from members of the public to participate in a forex pool ("Pool"). They collected approximately \$2.6 million from PTI customers. The Respondents in turn deposited these funds, in PTI's name, with the Pool, which appears to have operated as a "Ponzi" scheme by paying so-called returns to customers with the customers' own money or the money of other customers. Brantley and Dawson provided actual and prospective PTI customers with PTI account agreements and payout schedules that promised returns of at least 200% and represented that the customer's funds were "in the market."

In soliciting actual and prospective customers, Brantley and Dawson omitted material facts and made material misrepresentations. For example, between approximately April and June 2010, in personal meetings Dawson represented to two prospective customers, who later opened a joint account, that the Pool operators found a "sweet spot" in the forex market where "they would make money if the market goes up or goes down" and the Pool's trading success would go until "Jesus returns."

Also between approximately April and June 2010, in personal meetings Brantley represented to the same two prospective customers that the Pool operators had been engaged in profitable forex trading for a long time, the investment was "solid," and Brantley had "really checked the Pool operators out." In May 2010, in Spring, Texas, Brantley repeated to one of these prospective customers that he had "really researched" the Pool operators, that they were very successful and that the investment offered by them was "solid." In a personal meeting in or about May 2010, Brantley represented to two other prospective customers, a husband and wife, that Brantley had gone to Dallas several times to investigate the Pool operators and Brantley's investigation revealed that the Pool operators were "legitimate."

When Brantley and Dawson made the above representations regarding the Pool operators' experience and success in trading forex, they did so knowing the representations were false or made the representations with reckless disregard for the truth because they did little to nothing to confirm that the Pool operators had been successful for a long time, or were currently successful, in forex trading and therefore had no basis for making the representations.

Moreover, when Brantley made the above representations that he had investigated, "really checked out" and/or "really researched" the Pool operators, he did so knowing the representations were false or made them with reckless disregard for the truth because Brantley did little to nothing to confirm the Pool operators (1) actually traded the customers' investment funds; (2) had been successful at forex trading for a long time; and (3) were not misappropriating customers' investment funds, and therefore had no basis for making the representations.

Finally, despite conveying the message that customers were likely to generate a profit by depositing funds with the Pool, neither Brantley nor Dawson advised actual or prospective PTI customers that the Pool paid to PTI fees of 20% of the amount of the deposit for each new PTI customer whose funds were deposited with the Pool.

Brantley and Dawson controlled the operations of PTI. Brantley and Dawson were both managing members of PTI during the relevant period. Brantley was the signatory on PTI's bank accounts and he signed checks on behalf of PTI. Brantley and Dawson directly solicited customers on behalf of PTI and both signed investment agreements on behalf of PTI.

#### IV.

### LEGAL DISCUSSION

#### A. Respondents Violated Sections 4b(a)(2)(A) and (C) of the Act

Sections 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A), (C) (Supp. III 2009), make it unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market – (A) to cheat or defraud or attempt to cheat or defraud the other person;...[or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

To establish a violation of Sections 4b(a)(2)(A) and (C) of the Act, the Commission must prove that: (1) a misrepresentation or misleading statement was made, or deceptive omission occurred; (2) with scienter; and (3) that the misrepresentation, misleading statement, or deceptive omission was material. *CFTC v. King*, No. 3:06-CF-1583-M, 2007 WL 1321762, at \*2 (N.D. Tex. May 7, 2007) (citing *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328 (11th Cir. 2002)).

Scienter is established when an individual's "conduct involves intentional omissions or misrepresentations that present a risk of misleading customers, either known to the defendant or sufficiently manifest that the defendant must have been aware of the risk." *King*, 2007 WL 1321762, at \*2 (citing *R.J. Fitzgerald & Co.*, 310 F.3d at 1328) (internal quotations omitted). See also *Wasnick v. Refco, Inc.*, 911 F.2d 345, 348 (9th Cir. 1990) ("with knowledge of their nature and character"); *Lawrence v. CFTC*, 759 F.2d 767, 773 (9th Cir. 1985) ("intentional as opposed to accidental"). Reckless acts and/or omissions may also give rise to liability under Section 4b. See *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742,748 (D.C. Cir. 1998); *First Commodity Corp. of Boston v. CFTC*, 676 F.2d 1, 6-7 (1<sup>st</sup> Cir. 1982); *Goldstein v. MCI WorldCom*, 340 F.3d 238, 245-246 (5<sup>th</sup> Cir. 2003) (in securities fraud case, court held scienter may be established by showing severe recklessness); *Nathenson v. Zonagen, Inc.*, 267 F.3d 400, 408 (5th Cir. 2001) (defining recklessness as "limited to those highly unreasonable omissions or misrepresentations that involve not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and that present a danger of misleading

buyers or sellers which is either known to the defendant or is so obvious that the defendant must have been aware of it.”).

A statement is material if “there is a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest.” *R&W Technical Serv. Ltd. v. CFTC*, 205 F.3d 165, 169 (5th Cir. 2000); *R.J. Fitzgerald*, 310 F.3d at 1328. Any fact that enables customers to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. *In re Commodities Int’l Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943 at 44,563-64 (CFTC Jan. 14, 1997).

The Respondents misrepresented material facts by providing actual and prospective customers with agreements and payout schedules that that promised returns of at least 200% and represented that the customer’s funds were invested “in the market.” Also in April and June 2010, Respondent Brantley represented to prospective customers that the Pool’s operators had been engaged in profitable forex trading for a long time, the investment was “solid,” and Brantley had “really checked [the Pool’s operators] out.” In addition, Respondent Dawson misrepresented material facts by telling prospective customers that Pool operators found a “sweet spot” in the forex market where “they would make money if the market goes up or goes down.” Brantley and Dawson made these representations while doing little to nothing to verify the truth of their representations. In fact, the Pool did not deposit all customer funds into forex trading accounts and what little trading it did was not profitable. A reasonable person would likely consider this information important in making their decision to deposit funds with PTI. Finally, Respondents omitted material facts by failing to disclose to their customers that the Pool paid fees to PTI for each new customer who invested. A reasonable person would likely consider this information important in making their decision to deposit funds with PTI.

The Respondents acted with scienter because they conducted no reasonable investigation to determine if the representations they were making to PTI customers were true. Neither Brantley nor Dawson sought or obtained any information to confirm the experience and performance history of the Pool or its operators. Moreover, Brantley affirmatively mislead prospective PTI customers by telling them that he had thoroughly investigated the Pool and its operators. Finally, neither Brantley nor Dawson disclosed to PTI customers the fact that they collected fees from the Pool for each new deposit made by PTI. At a minimum, such acts and omissions are reckless and therefore subject to liability under Sections 4b(a)(2)(A) and (C) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C).

**B. PTI is Vicariously Liable for Brantley's and Dawson's Violations**

The foregoing acts, omissions, and failures of Brantley and Dawson occurred within the scope of their employment, office, or agency with PTI; therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation ("Regulation") 1.2, 17 C.F.R. § 1.2 (2011), PTI is liable for Brantley's and Dawson's acts, omissions, and failures in violation of Sections 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A), (C) (Supp. III 2009).

**V.**

**FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that, during the Relevant Period, PTI, Brantley, and Dawson, violated Sections 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A), (C) (Supp. III 2009).

**VI.**

**OFFER OF SETTLEMENT**

Respondents have submitted the Offer in which they, without admitting or denying the findings 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 (2006) and 28 U.S.C. § 2412 (2006), and/or rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2011), 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. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and any claim of Double Jeopardy based upon the institution of this proceeding or the entry in 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 the Respondents have consented in the Offer; and
- 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 Respondents violated Sections 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A) and (C) (Supp. III 2009);
  2. orders Respondents to cease and desist from violating Sections 4b(a)(2)(A) and (C) of the Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 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) ("Dodd-Frank Act"), to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C);
  3. orders Respondents, jointly and severally, to pay restitution to their customers in the amount of seven hundred-one thousand, six-hundred and seventeen dollars (\$701,617) within ten (10) days of the date of entry of this Order;
  4. orders Respondents, each, to pay a civil monetary penalty in the amount of one hundred-forty thousand dollars (\$140,000) within ten (10) days of the date of entry of this Order; and
  5. appoints the National Futures Association ("NFA") as Monitor in this matter;
  6. orders that Respondents be permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (2006)) and all registered entities shall refuse Respondents trading privileges;
  7. orders Respondents and their successors and assigns to each comply with the conditions and undertakings consented to in the Offer and set forth in Part VI of this Order.

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

## VII.

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

- A. Respondents shall cease and desist from violating Sections 4b(a)(2)(A) and (C) of the Act, as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C);
- B. Respondents, jointly and severally, shall pay restitution to their customers, in the amount of seven hundred and one thousand, six-hundred and seventeen dollars (\$701,617) (the "Restitution Obligation") within ten (10) days of the date of entry of this Order. Should the Respondent[s] not satisfy this Restitution Obligation in full within ten (10) days of the date of entry of the 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(2006).
  1. To effect payment by Respondents and distribution of restitution to Respondents' customers, the Commission appoints the NFA as "Monitor." The Monitor shall collect payments of the Restitution Obligation from the Respondents and make distributions as set forth below. Because the Monitor is not being specially compensated for these services and these services are outside the normal duties of the Monitor, the Monitor shall not be liable for any action or inaction arising from its appointment as Monitor, other than actions involving fraud.
  2. Respondents shall make their payments of the Restitution Obligation under this Order in the name of "PTI Settlement Fund" and shall send such payments by electronic funds transfer, 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 the paying Respondent and the name of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, United States Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington, DC 20581, and the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.
  3. The Monitor shall oversee Respondents' Restitution Obligation and shall have discretion to determine the manner for distribution of funds in an equitable fashion to Respondents' customers or may defer distribution until such time as the Monitor may deem appropriate. In the event that the amount of payments of the Restitution Obligation to the Monitor are of a

*de minimis* nature such that the Monitor determines that the administration costs of making a restitution distribution is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission, as discussed below. To the extent that any funds accrue to the U.S. Treasury for satisfaction of the Restitution Obligation, such funds shall be transferred to the Monitor for disbursement to customers in accordance with the procedures set forth in this Order.

4. Nothing herein shall be construed in any way to limit abridge the rights of any customer than exist under federal, state, or common law to assert a claim for recovery against Respondents subject to any offset or credit that the Respondents may be entitled to claim under the law governing customer's claim.

C. Respondents each shall pay a civil monetary penalty in the amount of one hundred-forty thousand dollars (\$140,000) ("CMP Obligation") within ten (10) days of the date of entry of this Order. Should any Respondent not satisfy their CMP Obligation in full within ten (10) days of the date of entry of the Order, post-judgment interest shall accrue on that Respondent's 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 (2006).

1. Respondents shall pay their respective CMP Obligations by making 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  
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 transfer is chosen, Respondents 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 the CMP Obligation with a cover letter that identifies Respondents and the name and docket number of this proceeding. Respondents shall simultaneously submit copies of the cover letter and the form of payment to: (a) 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 (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address.

- D. Respondents are permanently prohibited from, directly or indirectly, engaging, directly or indirectly, in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (2006)) and all registered entities shall refuse Respondents trading privileges;
- E. Respondents are directed to comply with the following undertakings set forth in the Offer:
1. Public Statements: Respondents agree that neither they nor any of their successors, assigns, or 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 positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns 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. Cooperation: Respondents agree to cooperate fully with the Commission's Division of Enforcement in this proceeding by, among other things:
    - (a) responding promptly, completely, and truthfully to any inquiries or requests for information;
    - (b) providing authentication of documents;
    - (c) testifying completely and truthfully; and
    - (d) not asserting privileges under the Fifth Amendment of the United States Constitution;
  3. Prohibited Activity: Respondents agree that they shall never engage, directly or indirectly, in:

- (a) 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, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (Supp. III 2009) (“forex contracts”) for Respondent[’s/s’] own personal account(s) or for any account(s) in which Respondent[s] [has/have] a direct or indirect interest;
  - (b) having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on Respondents’ behalf;
  - (c) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
  - (d) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
  - (e) 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
  - (f) 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 (Supp. III 2009) registered, required to be registered, or exempted 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
4. Cooperation with Monitor: Respondents shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondents’ customers, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments.

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

By the Commission.

A handwritten signature in cursive script, reading "David A. Stawick", positioned above a horizontal line.

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

Dated: April 26, 2012