

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII**

**COMMODITY FUTURES TRADING  
COMMISSION,**

**Plaintiff,**

vs.

**DAVID T. MARANTETTE, III and  
TROUBADOUR, INC.,**

**Defendants.**

**Civil Case No. CV99-00653 SOM LEK**

**CONSENT ORDER OF PERMANENT  
INJUNCTION AND RESTITUTION;  
FINDINGS OF FACT AND CONCLUSIONS  
OF LAW**

Defendants David T. Marantette ("**Marantette**") and Troubadour, Inc. ("**Troubadour**"), having signed their Consent to this Order of Permanent Injunction and Restitution; Findings of Fact and Conclusions of Law ("**Order**"), which Consent has been filed with the Court and is incorporated herein by reference, it appears to the Court that:

**I.**

**INTRODUCTION**

1. On September 22, 1999, Plaintiff Commodity Futures Trading Commission ("**the Commission**") filed a complaint against Marantette and Troubadour seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act, as amended ("**Act**"), 7. U.S.C. §§ 1 *et seq.* (1994), and the Commission Regulations promulgated thereunder ("**Regulations**"), 17 C.F.R. §§ 1 *et seq.* (2000).

2. On October 14, 1999, the Court entered a Consent Order of Preliminary Injunction and Other Equitable Relief which, *inter alia*, froze Defendants' assets, prohibited their destruction of

documents and preliminarily enjoined them from further violating the Act as alleged in the Complaint.

3. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a)(1994), 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 the Act or any rule, regulation, or order thereunder, the Commission may bring an action against such person in the proper District Court of the United States to enjoin such practice, to enforce compliance with the Act, to remove any danger of violation of the Act, and for civil penalties.

4. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e)(1994), in that Marantette and Troubadour are found in, inhabit and transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, and are likely to continue to occur within this district, among other places.

5. The Court finds that there is good cause for the entry of an order of permanent injunction and other relief against Marantette and Troubadour pursuant to Sections 6c and 6d of the Act, 7 U.S.C. § 13a-1 and 13a-2 (1994), and the Court directs the entry of Findings of Fact and Conclusions of Law, and the entry of a final judgment for permanent injunction, ancillary equitable relief and an award of contingent civil monetary penalties as set forth herein. This Order fully disposes of all controverted issues between Plaintiff Commission and Defendants in this action.

## **II.**

### **FINDINGS OF FACT**

This Court hereby makes the following Findings of Fact:

6. This is an enforcement action brought by the Commission against defendants Marantette and Troubadour for violations of the Act and Regulations. At all times relevant to this

action, Marantette and Troubadour resided in and transacted business in this judicial district, and the acts and practices in violation of the Act and Regulations occurred within this district, among other places.

7. Both Marantette and Troubadour have never been, and are not now, registered with the Commission as a commodity pool operator.

8. From 1974 through 1992, Marantette was subject to four administrative and injunctive proceedings brought by the Securities and Exchange Commission ("SEC"), including proceedings in which the SEC alleged that Marantette had engaged in fraudulent conduct. In 1992 orders were entered against Marantette in the SEC proceedings, *inter alia*, permanently enjoining him from violating the antifraud provisions of the securities laws and barring him from association with any broker, dealer, investment advisor, investment company or securities dealer.

9. Since approximately 1995, Marantette and Troubadour have published, for compensation, two weekly newsletters called the "Goldstock Letter," in which they recommend gold and silver futures contracts trades to subscribers, and the "Dear Dow Letter," in which they recommend S&P 500 futures contracts trades to subscribers.

10. In the course of soliciting subscriptions for their newsletters on their Internet website, Marantette and Troubadour falsely represented that by trading pursuant to the commodity futures trade recommendations published in the newsletters, Marantette had made actual, substantial and consistent profits. In fact, the trading results as represented in the newsletters were hypothetical, and Marantette did not actually make the trades listed in the newsletters. Marantette and Troubadour failed to accompany the trading results with the disclosure statement concerning hypothetical trading required by Regulation 4.41(b), 17 C.F.R. § 4.41(b)(2000).

11. In the course of soliciting subscriptions for their newsletters on their Internet website, Marantette and Troubadour also falsely represented that their two commodity futures trading

accounts made substantial gains due to their trading activity over the first six months of 1998, when in fact most of the gain was due to new capital contributions.

12. Commencing in or about September 1995, Marantette and Troubadour, without being registered with the Commission as commodity pool operators, have solicited members of the public by mail, telephone, or other means of interstate commerce to participate in commodity pools known as Troubadour I, Troubadour II and Troubadour III ("Troubadour Pools").

13. As a result of such solicitations, Marantette and Troubadour have obtained at least \$2,070,000 from at least 100 investors and have pooled such funds for the purpose of trading commodity futures contracts and options on futures contracts.

14. In the course of soliciting participants for the Troubadour Pools, Marantette and Troubadour distributed "Private Offering Memoranda" to prospective pool participants that included the same the false trading records that they advertised on their Internet website.

15. Marantette and Troubadour failed to disclose to their Troubadour Pool participants and prospective pool participants that the Troubadour Pools were incurring regular and substantial trading losses, as follows:

(a) Troubadour I incurred in excess of \$340,000 in trading losses from its October 1995 inception through September 1999;

(b) Troubadour II incurred in excess of \$385,000 in trading losses from its June 1996 inception through September 1999;

(c) Troubadour III incurred in excess of \$375,000 in trading losses from its August 1996 inception through September 1999.

16. Marantette and Troubadour commingled Troubadour Pool funds with their own funds, misappropriated pool funds, and used the commingled and misappropriated funds for their own use and benefit.

17. Marantette and Troubadour failed to disclose to their Troubadour Pool participants and prospective pool participants that they were commingling pool funds with their own funds, misappropriating pool funds and using substantial amounts of the commingled and misappropriated pool funds for their own use and benefit.

18. Marantette and Troubadour prepared and sent periodic trading account statements to Troubadour Pool participants through the mails or by other means of interstate commerce. These statements reported fictitious profits from trading, when in fact, the trading had resulted in significant losses, not profits.

19. Marantette and Troubadour's misrepresentations of fact and omissions made to their commodity trading advisory service clients and commodity pool participants, and prospective clients and pool participants, as set forth above, were material.

20. Marantette and Troubadour knew that these misrepresentations of fact were false at the time they made them, and they knew that they were making material omissions of facts.

21. Marantette and Troubadour made these misrepresentations of fact and omissions with the intent to induce reliance by their commodity trading advisory service clients and commodity pool participants, and prospective clients and pool participants.

22. Marantette and Troubadour intended to deceive their commodity trading service advisory clients and commodity pool participants, and prospective clients and pool participants, by making these material misrepresentations and omissions.

23. Marantette and Troubadour's commodity trading advisory service clients and commodity pool participants did in fact justifiably rely on these misrepresentations and omissions to their detriment, in that they would not have invested funds with and purchased newsletter subscriptions from Marantette and Troubadour and maintained and supplemented their investments and subscriptions if Marantette and Troubadour had not made such

misrepresentations and omissions.

24. As a result of this reliance, Marantette and Troubadour's commodity trading advisory service clients and commodity pool participants were damaged by these fraudulent representations and omissions, trading losses, and by the commingling and misappropriation of Troubadour Pool funds. Out-of-pocket losses suffered by the Troubadour Pool participants as a result of this reliance amounted to \$1,817,065.88.

### **III.**

#### **CONCLUSIONS OF LAW**

Pursuant to the Findings of Fact, the Court makes the following Conclusions of Law:

25. From 1995 to August 1999, Marantette and Troubadour violated Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(i) and (iii) (1994), in that they cheated, defrauded and deceived or attempted to cheat, defraud or deceive their commodity trading advisory service clients and commodity pool participants by (1) falsely reporting profitable rates of return from commodity futures and options trading when, in fact, substantial losses had been incurred; (2) commingling and misappropriating commodity pool funds to their own use; (3) failing to disclose Marantette's adverse SEC history; and (4) failing to disclose the material facts that they were commingling commodity pool funds with their own funds and diverting substantial portions to their own use.

26. From 1995 to August 1999, Marantette and Troubadour violated Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii)(1994), in that they willfully made or caused to be made to their commodity pool participants false reports or statements, or willfully entered or caused to be entered false records, by knowingly delivering to them trading account statements which reported fictitious profits.

27. From 1995 to August 1999, Marantette and Troubadour, while not registered with the Commission as a commodity pool operator, and without qualifying for an exemption from such

registration, made use of the mails or other means or instrumentality of interstate commerce by soliciting, accepting, or receiving funds from members of the public to participate in a commodity pool formed and operated for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1)(1994).

28. From 1995 to August 1999, Marantette and Troubadour, while acting in their capacities as commodity trading advisors and commodity pool operators, violated Section 4a(1)(A) and (B) of the Act, 7 U.S.C. § 6a(1)(A) and (B)(1994), in that they, by reason of having engaged in the conduct described herein, and by use of the mails or other means or instrumentalities of interstate commerce, directly or indirectly, employed a device, scheme, or artifice to defraud clients or pool participants or prospective clients or pool participants, or engaged in transactions, practices or a course of business which operated as a fraud or deceit upon such clients or participants.

29. From 1995 to August 1999, Marantette and Troubadour violated Regulation 4.20(c), 17 C.F.R. § 4.20(c)(2000), by commingling the property of their Troubadour Pools with the property of other persons, including, but not limited to, their own personal property.

30. From 1995 to August 1999, Marantette and Troubadour violated Section 4c(b) of the Act, 7 U.S.C. ¶ 6c(b)(1994), and Regulation 33.10(a), (b) and (c), 17 C.F.R. § 33.10(a), (b) and (c) (2000), in that, by reason of having engaged in the conduct set forth herein, they have directly or indirectly cheated or defrauded, attempted to cheat or defraud, deceived, or attempted to deceive, other persons, and have made or caused to be made false reports or statements to other persons, in or in connection with an offer to enter into, the entry into, the confirmation or the execution of, or the maintenance of, a commodity option transaction.

31. From 1995 to August 1999, Marantette and Troubadour violated Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2000), in that, while acting as commodity pool operators and commodity trading

advisors, they advertised in a manner which employed devices, schemes or artifices to defraud pool participants, prospective pool participants, clients, prospective clients, and newsletter subscribers. Further, Marantette and Troubadour violated Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2000), in that while acting as commodity pool operators and commodity trading advisors, they advertised in a manner which involved a transaction, practice or course of business which operated as a fraud or deceit upon pool participants, prospective pool participants, clients, prospective clients, and newsletter subscribers.

32. From 1995 to August 1999, Marantette and Troubadour violated Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2000), in that they presented the past hypothetical performance of the Goldstock Letter and Dear Dow Letter trade recommendations without accompanying such performance with the disclosure statement concerning hypothetical trading required by that Regulation.

33. Under the totality of the circumstances, there is a reasonable likelihood of future violations of the Act and Regulations by Marantette and Troubadour. Therefore, a permanent injunction should issue in this action.

34. Based upon principles of equity, there is good cause for entry of an order directing Marantette and Troubadour to make restitution to the Troubadour Pool investors in the amount of \$1,817,065.88, together with prejudgment interest in the amount of \$428,977.36, plus post-judgment interest at the statutory rate, for distribution to investors in a manner approved by the Court.

35. There is good cause for entry of an order requiring Marantette and Troubadour to pay a civil monetary penalty in an amount of not more than the higher of \$110,000 or triple the monetary gain to them for each violation of the Act.

#### **IV.**

## ORDER FOR PERMANENT INJUNCTION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

36. Defendants Marantette and Troubadour and any person insofar as he or she is acting in the capacity of officer, agent, servant, employer, and attorney of Marantette or Troubadour, and any person insofar as he or she is acting in active concert or participation with Marantette or Troubadour who receives actual notice of such order by personal service or otherwise, is permanently enjoined from directly or indirectly:

A. In or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (B) determining the price basis of any transaction in interstate commerce in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof;

(i) Cheating, defrauding or deceiving or attempting to cheat, defraud or deceive such other person, in violation of Section 4b(a)(i) of the Act, 7 U.S.C. § 6b(a)(i) (1994);

(ii) Willfully making or causing to be made to such other person any false report or statement thereof, or willfully entering or causing to be entered for such other person any false records thereof, in violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii) (1994);

(iii) Willfully deceiving or attempting to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person, in violation of Section 4b(a)(iii) of the Act, 7 U.S.C.

§ 6b(a)(iii) (1994);

B. Offering to enter into, entering into, or confirming the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an “option,” “privilege,” “indemnity,” “bid,” “offer,” “put,” “call,” “advance guaranty,” or “decline guaranty,” contrary to any rule, regulation or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (1994);

C. Acting as a commodity pool operator, by making use of the mails or any means or instrumentality of interstate commerce, to solicit, accept, or receive funds from members of the public to participate in commodity pool(s) formed and operated for the purpose of trading commodity futures contracts on contract markets, while not registered as a commodity pool operator with the Commission, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (1994);

D. While acting as a commodity pool operator or commodity trading advisor, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, (A) employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant, or (B) engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (1994);

E. Commingling the property of a commodity pool which they operate or intend to operate with the property of any other person, in violation of Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2000);

F. While acting as a commodity pool operator or commodity trading advisor,

advertising in a manner which (i) employs any device, scheme or artifice to defraud any participant or client or prospective participant or client; or (ii) involves any transaction, practice or course of business which operates as a fraud or deceit upon any participant or client or any prospective participant or client; in violation of Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2000);

G. Presenting the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest of a commodity pool operator, commodity trading advisor, or any principal thereof, unless such performance is accompanied by either the mandatory disclosure statement set forth in Regulation 4.41(b)(i), 17 C.F.R. § 4.41(b)(i) (2000), or a disclosure statement which complies with Regulation 4.41(b)(ii), 17 C.F.R. § 4.41(b)(ii) (2000);

H. In or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction, (i) cheating or defrauding or attempting to cheat or defraud any other person, (ii) making or causing to be made to any other person any false statement thereof or causing to be entered for any person any false record thereof, or (iii) deceiving or attempting to deceive any other person by any means whatsoever, in violation of Regulation 33.10(a), (b) and (c), 17 C.F.R. § 33.10(a), (b) and (c) (2000);

I. Soliciting, receiving, or accepting any funds in connection with the purchase or sale of any commodity futures contract or option on a futures contract;

J. Controlling or directing the trading for any commodity futures or commodity options account for or on behalf of any other person or entity, directly or indirectly, whether by power of attorney or otherwise;

K. Applying for registration or seeking exemption from registration with the Commission in any capacity and engaging in any activity requiring such registration or exemption from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2000), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2000); and

L. Entering into any commodity futures or options transaction for their own personal account, for any account in which they have a direct or indirect interest and/or having any commodity futures or options interests traded on their behalf.

**V.**

**ORDER FOR PAYMENT OF RESTITUTION AND CONTINGENT  
CIVIL MONETARY PENALTIES**

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT:

37. Plaintiff is awarded judgment against Defendants Marantette and Troubadour for restitution of customer funds in the amount of \$2,246,043.24 (“Restitution Obligation”), which includes a principal amount of \$1,817,065.88 plus prejudgment interest in the amount of \$428,977.36. Post-judgment interest shall accrue on the Restitution Obligation at the rate provided for by 28 U.S.C. § 1961. Marantette and Troubadour shall be jointly and severally liable for payment of the Restitution Obligation.

38. The persons to whom restitution shall be made (“Investors”) are identified in the List of Investors filed under seal by Order of this Court concurrently herewith and incorporated herein by reference, which includes the names and last known addresses of the Troubadour Pool participants identified to date.

39. The National Futures Association shall be designated as Monitor ("Monitor") for the period beginning with the date of entry of this Order and continuing until distribution of the last payment called for by this Order.

40. Upon the entry of this Order, the provisions of the Court's October 14, 1999 Consent Order of Preliminary Injunction and Other Equitable Relief entered against Defendants Marantette and Troubadour, imposing a freeze on their assets, shall no longer be in effect. Upon being served with copies of this Order after entry by the Court, financial institutions and other entities holding frozen funds or other property previously controlled by Defendants shall tender same to the Monitor. Such funds shall be distributed to Investors in accordance with the plan of distribution to be submitted by the Commission, when approved by this Court.

41. Defendants Marantette and Troubadour shall pay the Restitution Obligation as follows: an annual payment to an account designated by the Monitor on or before July 31 of each calendar year (the "Annual Payment"), beginning in calendar year 2001 and continuing for ten years thereafter. At the end of the ten-year payment period, Defendants' only remaining restitution obligation shall be pursuant to Paragraph 37. The amount of Defendants' Annual Payment shall consist of a portion of: (1) their adjusted gross income (as defined by the Internal Revenue Code) earned or received by Defendants during the preceding calendar year, plus (2) all other net cash receipts, net cash entitlements or net proceeds of non-cash assets received by Defendants during the preceding calendar year. The Annual Payment will be determined as follows:

<b>Total Adjusted Gross Income plus Net Cash Receipts:</b>	<b>Percent of Total to be Paid by Defendants:</b>
\$0 -- \$25,000	0%
\$25,000--\$50,000	20% of the amount above \$25,000
\$50,000 -- \$100,000	20% of the amount between \$25,000 and \$50,000 plus 30% of the amount between \$50,000 and 100,000
\$100,000 and up	20% of the amount between \$25,000 and \$50,000 plus 30% of the amount between \$50,000 and \$100,000 plus 40% of the amount above \$100,000

42. Such funds shall be distributed as restitution payments to the Investors in the amounts calculated by the Monitor unless, at its sole discretion, based upon the amount of funds available for distribution, the Monitor decides to defer distribution. If, at the end of the ten-year period, any part of the Annual Payments has not been distributed, the Monitor shall either distribute the funds in the account or make a recommendation to the Commission that the funds instead become a civil monetary penalty pursuant to Section 6(c) of the Act. In the event the Commission rejects the Monitor's recommendation, the funds shall be distributed as restitution.

43. Defendants shall provide to the Monitor complete copies of their signed income tax returns filed with the Internal Revenue Service ("**IRS**"), all IRS 1099 forms, and all other schedules and attachments (e.g., IRS Form W-2), as well as any filings they are required to submit to any state tax or revenue authority, on or before June 30 of each calendar year, commencing with June 30, 2001 and ending on June 30, 2010. If, during the same time period, Marantette elects to file a joint tax return, he shall provide all documents called for by this Paragraph 43, including the signed and filed joint tax return, plus a draft individual tax return prepared on IRS Form 1040

containing a certification by a licensed certified public accountant that the "Income" section (currently lines 7-22 of Form 1040) truly, accurately and completely reflects all of the Marantette's income, that the "Adjusted Gross Income" section (currently lines 23-33 of Form 1040) truly, accurately and completely identifies all deductions that Marantette has a right to claim, and that the deductions contained in the "Adjusted Gross Income" section are equal to or less than 50% of the deductions that Marantette is entitled to claim on the joint tax return; provided, however that Marantette may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely his. Such individual tax return shall include all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filings required to be submitted to any state tax or revenue authority. If Defendants do not file a return, they shall provide their sworn financial statements on June 30 and December 31 of each calendar year, starting on December 31, 2000 and continuing through and including June 30, 2001. The financial statements shall provide:

- a . A true and complete itemization of all of Defendants' rights, title and interest (or claimed in) any asset, wherever, however and by whomever held;
- b. An itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of Defendants over the preceding six-month interval; and
- c. A detailed description of the source and amount of all of Defendants' income or earnings, however generated.

44. Based on the information contained in Defendants' tax returns (and, to the extent they are provided, their sworn financial statements), the Monitor shall calculate the Annual Payment to be paid by Defendants for that year and the specific amounts payable to each of the

Investors. On or before July 31 of each year, the Monitor shall send written notice to Defendants with instructions to immediately pay the Annual Payment to the Monitor. Such restitution or disgorgement payments as may be made by Marantette or Troubadour to any other federal agency or to any Investor as a consequence of their activities in connection with any of the Troubadour Pools shall partially satisfy their Restitution Obligation under this Order, upon their making an adequate showing of such payments and the basis thereof to the Commission and the court.

45. Defendants Marantette and Troubadour shall pay a contingent civil monetary penalty in an amount of up to seven hundred thousand dollars (\$700,000), commencing upon their fulfillment of their Restitution Obligation as set forth in Paragraph 37 above. Marantette and Troubadour shall be jointly and severally liable for payment of the contingent civil monetary penalty.

46. Defendants shall pay the contingent civil monetary penalty in annual installment payments ("Annual CMP Payment") following their satisfaction of their Restitution Obligation, and continuing until July 31, 2011 (or until the full civil monetary penalty is paid in full, if that happens first). The Annual CMP Payment shall be calculated by the Monitor in accordance with the payment schedule set forth in Paragraph 41 above. After satisfaction of the Restitution Obligation, should funds remain that same year pursuant to the restitution payment schedule, such funds shall immediately be paid as part of the civil monetary penalty payment. Defendants shall make each such Annual CMP Payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Defendants and

the name and docket number of the proceeding; Defendants shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor, and to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, NW, Washington, D.C. 20581.

47. Defendants shall cooperate fully with the Monitor and the Commission in explaining Defendants' financial income and earnings, status of assets, financial statements, asset transfers and tax returns, and shall provide such additional information and documents with respect thereto as may be requested by the Monitor or the Commission. Defendants shall also cooperate fully and expeditiously with the Monitor and the Commission in carrying out all other aspects of their obligations described in this Order.

48. Defendants shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any member of their family or any other person for the purpose of concealing such funds or property from the Court, the Monitor or the Commission.

49. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each Investor is explicitly deemed an intended third-party beneficiary of this Order, such that each Investor may seek to enforce any part of Defendants' Restitution Obligation imposed by the Order that is not satisfied at the end of the operation of the ten-year payment plan set forth in Paragraphs 41 through 44, to ensure continued compliance with any provision of this Order and to hold Defendants in contempt for past violations of any provision of this Order.

50. **Default:** Any failure by the Defendants to carry out any of the terms, conditions or obligations under any paragraph of this Order shall constitute an Event of Default. If any Event of Default occurs and, if capable of being cured, is not cured within ten (10) calendar days

following the Commission's (or its designee) mailing of notice of such Event of Default to the Defendants, the Commission (or its designee) shall be entitled to:

- a. an order requiring immediate payment of any unpaid Annual Restitution Payments and/or CMP Payments, or, at the Commission's option, the entire unpaid balance, or any unpaid portion, of the restitution amount and/or civil monetary penalty set forth above in Paragraphs 37 and 45 above; and/or
- b. move the Court for imposition of all other available remedies, including, but not limited to, an order holding Defendants in contempt for violation of this Order.

Upon the occurrence of an Event of Default based upon a claim or cause of action that Defendants failed to make any Annual Restitution Payments and/or Annual CMP Payments when due, defendants will be barred from asserting any defense, including expiration of any statute of limitations, waiver, estoppel or laches, where such defense is based on the alleged failure of the Commission to pursue such claims or causes of action during the pendency of this civil action, during the negotiation of the Defendants' Consent to this Order or while this Order remains in effect. The only issue that Defendants may raise in defense is whether they have made the Annual Restitution Payments and/or Annual CMP Payments as directed by the Monitor. Any motion by the Commission for entry of an order pursuant to this paragraph requiring payment of less than the full amount of the restitution and/or civil monetary penalty, set forth in Paragraphs 37 and 45 above, or any acceptance by the Commission of partial payment of the Annual Restitution Payments and/or Annual CMP Payments made by the Defendants, shall not be deemed a waiver of the Commission's right to require Defendants to make further payments pursuant to the payment plans set forth above, or, in the event of a further Event of Default, a waiver of the Commission's right to require immediate payment of the entire remaining balance,

or any unpaid portion, of the restitution amount and/or civil monetary penalty set forth in Paragraphs 37 and 45 above.

51. Based upon Defendants' sworn representations in their Financial Disclosure Statements and other evidence provided by Defendants to the Commission regarding their financial condition, the Commission has agreed that this Order would not require their immediate payment of the entire Restitution Obligation and civil monetary penalty. The Commission's determination not to require immediate payment of the entire Restitution Obligation and civil monetary penalty is contingent upon the accuracy and completeness of Defendants' Financial Disclosure Statements and other evidence provided by Defendants regarding their financial condition. If at any time following the entry of this Order, the Commission obtains information indicating that Defendants' representations to the Commission concerning their financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may move this Court for an order requiring Defendants to make immediate payment of their entire restitution obligation and/or civil monetary penalty, or of any portion thereof, the amount of which shall be determined by the Commission. In connection with any such motion, the only issues shall be whether the financial information provided by Defendants was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. In its motion, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendants to pay funds or transfer assets or directing the forfeiture of any assets, and the Commission may also request additional discovery. Defendants may not, by way of defense to such motion, challenge the validity of their Consent or this Order, or contest any of the findings of fact or conclusions of law set forth in this Order, assert that payment of restitution and/or a civil monetary penalty should not be ordered, or contest the amount of the restitution or

civil monetary penalty to be paid. If in such motion, the Commission moves for, and the Court orders, payment of less than the full amount of the restitution obligation or the full amount of civil monetary penalty, such motion will not be deemed a waiver of the Commission's right to require Defendants to make further payment pursuant to the payment plans set forth above.

## **VII.**

### **MISCELLANEOUS PROVISIONS**

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

**Notice to Monitor:**

Mr. Daniel A. Driscoll, or his successor  
Executive Vice President, Compliance  
National Futures Association  
200 West Madison Street  
Chicago, IL 60606

**Notice to Commission:**

Regional Counsel  
Division of Enforcement - Western Regional Office  
Commodity Futures Trading Commission  
10900 Wilshire Boulevard, Suite 400  
Los Angeles, CA 90024

**Notice to Defendants:**

David Marantette  
3647 Kaweonui Road,  
Princeville, Hawaii 96722

53. Notice of any change of the Monitor's address shall be given in writing to all parties. In the event that Defendant Marantette moves his residence at any time, he shall provide written notice of his new address (es) to the Monitor and the Commission.

54. The Commission shall have the right to enforce the provisions of this Order, including the seeking of a contempt order. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this 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 Order.

55. This Order shall inure to the benefit of and be binding upon the successors, assigns, heirs, beneficiaries and administrators of the parties.

56. By consenting to the entry of the Order attached hereto, Marantette and Troubadour 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 allegation in the Complaint or finding in the Order, or creating, or tending to create the impression that the Complaint or the Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Marantette and Troubadour shall take all steps necessary to ensure that their agents and employees comply with this provision.

57. Upon being served with a copy of this Order after entry by the Court, Defendant Marantette shall sign an acknowledgment of such service on behalf of himself and Troubadour and serve such acknowledgment on counsel for the Commission within seven (7) days.

58. This Court shall retain jurisdiction of this matter in connection with the anticipated motion to be filed by the Commission seeking the Court's approval of a plan of investor restitution as contemplated by Paragraph 40 above. Upon the entry of a final order of the Court in connection with such a motion pursuant to Paragraph 40, the case shall be closed. Provided, however, that the case may be reopened on a motion alleging violation of any provision of this Order or seeking to enforce any provision of this Order, or for any other purpose provided for under applicable law.

DONE AND ORDERED this 21st day of February, 2001.

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United States District Judge

Consented to and  
Approved for Entry by:

Dated: Los Angeles, California: \_\_\_\_\_

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John T. Wise  
Attorney for Plaintiff

Dated: Los Angeles, California: \_\_\_\_\_

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John W. Cotton  
Attorney for Defendants

MONITOR

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Mr. Daniel A. Driscoll  
Vice President, Compliance  
National Futures Association  
200 West Madison Street  
Chicago, IL 60606  
(312) 781-1300

Dated: \_\_\_\_\_

CFTC v. Marantette, et al.  
Civil No. 99-00653 SOM LEK  
"Consent Order of Permanent  
Injunction and Restitution;  
Findings of Fact and Conclusions of Law"

JOHN T. WISE  
Senior Trial Attorney  
Commodity Futures Trading Commission  
10900 Wilshire Boulevard, Suite 400  
Los Angeles, California 90024  
(310) 443-4700

STEVEN S. ALM  
United States Attorney  
District of Hawaii  
MICHAEL CHUN  
Chief, Civil Division  
6-100 PJKK Federal Building  
300 Ala Moana Boulevard  
Honolulu, HI 96850  
(808) 541-2850

Attorneys for Plaintiff  
COMMODITY FUTURES TRADING COMMISSION