

I.

CONSENTS AND AGREEMENTS

1. To effect settlement of the matters alleged in the Complaint in this action without a trial on the merits or any further judicial proceedings, Defendants consent to the entry of this Consent Order of Permanent Injunction and Other Relief Against Defendants James Stephens, III and Trendsystems, Inc. (“Order”).

2. Defendants admit that this Court has jurisdiction over them and the subject matter of this action.

3. Defendants admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. §13a-1 (1994).

4. In addition, Defendants waive: (a) all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.*, to seek costs, fees and other expenses relating to, or arising from, this action; (b) the entry of findings of fact and conclusions of law in this action as provided by Rule 52 of the Federal Rules of Civil Procedure, except as provided below in Section II; (c) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and (d) all rights of appeal from this Order.

5. Defendants agree that neither they nor any of their agents, servants, employees, contractors or attorneys shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in the Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Defendants' (a) testimonial

obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendants shall take all necessary steps to ensure that all of their agents, servants, employees, contractors and attorneys understand and comply with this agreement.

6. Defendants agree that they have read this Order and agree to this Order voluntarily and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.

7. Defendants consent to the continued jurisdiction of this Court in order to implement and carry out the terms of all orders and decrees that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and to assure compliance with the Order.

8. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law and a permanent injunction and ancillary equitable relief, pursuant to § 6c of the Act, 7 U.S.C. § 13a-1 (1994), as set forth herein.

II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994).

3. This Court has personal jurisdiction over the Defendants, each of whom has acknowledged service of the Complaint and consented to the Court's jurisdiction over each of them.

4. The Commission and the Defendants have agreed to this Court's retention of continuing jurisdiction over each of them for the purpose of enforcing terms of this Order.

III.

ORDER FOR PERMANENT INJUNCTION

NOW THEREFORE, IT IS ORDERED THAT:

1. The Defendants shall be permanently restrained, enjoined and prohibited 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 persons, where such contract for future delivery was or could 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 or defrauding or attempting to cheat or defraud other persons;

ii. willfully making or causing to be made to other persons false reports or statements thereof, or willfully entering or causing to be entered for other persons false records thereof; and

iii. willfully deceiving or attempting to deceive other persons;

all in violation of Section 4b(a)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i), (ii) and (iii).

b. in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, commodity option

transactions,

- i. cheating or defrauding or attempting to cheat or defraud other persons;
- ii. making or causing to be made to other persons false reports or statements thereof, or willfully entering or causing to be entered for other persons false records thereof; and
- iii. deceiving or attempting to deceive other persons;

all in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10, 17 C.F.R. § 33.10.

- c. while acting as a CTA or as an AP of a CTA, employing a device, scheme or artifice to defraud clients or prospective clients, in violation of Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A).
- d. while acting as a CTA or an AP of a CTA, engaging in a transaction, practice or course of business which operates as a fraud or deceit upon clients or prospective clients, in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B).
- e. while acting as a CTA, soliciting, accepting or receiving from an existing or prospective client funds, securities, or other property in the Defendant's name (or extend credit in lieu thereof) to purchase, margin, guarantee or secure any commodity interest of the client, in violation of Regulation 4.30, 17 C.F.R. § 4.30.

2. The Defendants are further permanently restrained, enjoined and prohibited from:

- a. 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; and/or
- b. 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, 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). This includes, but is not limited to, soliciting, accepting, or receiving funds, revenue, or other property from any other person, giving commodity trading advice for compensation except as provided in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2000), or soliciting prospective customers related to the purchase or sale of commodity futures or options on commodity futures.

3. The Defendants are further enjoined, for a period of ten years, from 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 interests traded on their behalf.

4. The injunctive provisions of this Consent Order shall be binding upon the Defendants, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of any of the Defendants and upon any person who receives actual notice of this Consent Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with any Defendant.

IV.

ORDER FOR EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

A. STEPHENS TO PAY RESTITUTION TO TRENDSYSTEMS CLIENTS

1. Defendant Stephens is ordered to pay restitution of customer funds in the amount of \$62,448.19 (“Restitution Obligation”), which includes a principal amount of \$59,334.54 plus prejudgment interest in the amount of \$3113.65. Post-judgment interest shall accrue on the Restitution Obligation at the rate provided for by 28 U.S.C. § 1961, assessed pursuant to Part IV, Section A, Paragraph 5e below of the payment plan.

2. The persons to whom restitution shall be made (“Trendsystems clients”) are identified in the attached Exhibit A filed under seal by Order of this Court concurrently herewith and incorporated herein by reference, which includes the names and last known addresses of those clients who sent funds directly to Trendsystems.

3. 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.

4. Upon the entry of this Order, the provisions of the Court's November 20, 2000 Consent Order of Preliminary Injunction and Other Equitable Relief entered against the Defendants continuing 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 the Trendsystems clients in accordance with the restitution plan outlined in Exhibit A.

5. Defendant Stephens shall pay the Restitution Obligation as follows:

- a. Within five days of the date of this Order, all financial institutions and other entities holding frozen funds or other property previously controlled by the Defendants shall relinquish possession of those funds to the Monitor. The Monitor shall distribute these funds, which total \$10,006.14 as restitution payments to the Trendsystems clients listed in Exhibit A. The Monitor will make such payments on a pro rata basis. In the event that the Monitor is not able to effect any payment to any Trendsystems client within 180 days of the date of this Order, the Monitor shall, within ten days thereafter, distribute that remaining amount to the remaining Trendsystems clients listed on Exhibit A on a pro rata basis.
- b. Stephens shall pay the remaining restitution amount, namely, \$52,442.45, as follows:
 - i. Stephens shall make an annual payment to an account designated by the Monitor on or before July 31 of each calendar year (the "Annual Restitution Payment"), beginning in calendar year 2002 and continuing for nine years thereafter. At the end of the ten-year payment period, Stephens' only remaining restitution obligation shall be pursuant to Part IV, Section A, Paragraph 1 and Part IV, Section B, Paragraph 5. The amount of Stephens' Annual Restitution Payment shall consist of a portion of: (1) his adjusted gross income (as defined by the Internal Revenue Code) earned or received by Stephens during the preceding calendar year, plus (2) all other net

cash receipts, net cash entitlements or net proceeds of non-cash assets received by Stephens during the preceding calendar year. The Annual Restitution Payment will be determined as follows:

Total Adjusted Gross Income plus Net Cash Receipts:	Percent of Total to be Paid by Stephens:
\$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

- c. Such funds shall be distributed as restitution payments to the Trendsystems clients 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 Restitution Payments has not been distributed, the Monitor at its sole discretion shall either distribute the funds in the account as restitution or apply the funds as payment to the civil monetary penalty obligation, as provided in Part IV, Section B, paragraphs 1-2, below.
- d. Stephens shall provide to the Monitor complete copies of his 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 he is required to submit to any state tax or revenue authority, on or before June 30 of each calendar year, commencing with June 30, 2002 and ending on June 30, 2011. If, during the same time period, Stephens elects to file a joint tax return, he shall provide all documents called for by this Part IV, Section A, Paragraphs 5d(i)-(iii), 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 Stephens income, that the "Adjusted Gross Income" section (currently lines 23-33 of

Form 1040) truly, accurately and completely identifies all deductions that Stephens 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 Stephens is entitled to claim on the joint tax return; provided, however that Stephens 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 Stephens does not file a return, he shall provide his sworn financial statements on June 30 and December 31 of each calendar year, starting on December 30, 2001, and continuing through and including June 30, 2011. The financial statements shall provide:

- i. A true and complete itemization of all of Stephens' rights, title and interest (or claimed in) any asset, wherever, however and by whomever held;
 - ii. An itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of Stephens over the preceding six-month interval; and
 - iii. A detailed description of the source and amount of all of Stephens' income or earnings, however generated.
- e. Based on the information contained in Stephens' tax returns (and, to the extent they are provided, his sworn financial statements), the Monitor shall calculate the Annual Restitution Payment to be paid by Stephens for that year and the specific amounts payable to each of the Trendsystems clients. If the Monitor determines that an Annual Restitution Payment is due, then the Monitor will increase the amount of the remaining restitution payments by post-judgment interest calculated to the date of payment based on the total remaining obligation pursuant to 28 U.S.C. § 1961. On or before July 31 of each year, the Monitor shall send written notice to Stephens with instructions to immediately pay the Annual Restitution Payment to the Monitor.
- f. Exhibit A, attached hereto, includes the names and last known addresses of the Trendsystems clients to whom restitution shall be made pursuant to this Part IV, Section A, Paragraphs 1-5, together with the amount of restitution payable by Stephens to each of them (not including required interest) and the pro-rata distribution percentage to which each Trendsystems client is entitled.

B. STEPHENS TO PAY A CIVIL MONETARY PENALTY

1. Defendant Stephens shall pay a contingent civil monetary penalty in an amount up to \$111,834.54, commencing upon his fulfillment of his Restitution Obligation as set forth in Part IV, Section A, Paragraphs 1-5 above.

2. Stephens shall pay the contingent civil monetary penalty in annual installment payments ("Annual CMP Payment") following his satisfaction or other discharge of his Restitution Obligation, and continuing until July 31, 2011 (or until the full civil monetary penalty is paid in full, if that happens first). Should the amount due under the payment plan for any Annual Restitution Payment be greater than the balance due on Stephens' restitution obligation, that amount shall constitute Stephens' first annual CMP payment and be paid in accordance with the payment schedule set forth in Part IV, Section A, Paragraph 5 above. The Annual CMP Payment shall be calculated by the Monitor in accordance with the payment schedule set forth in Part IV, Section A, Paragraph 5 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 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Stephens and the name and docket number of the proceeding; Stephens 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. Stephens' contingent civil monetary penalty obligation will terminate

at the end of the ten-year payment period.

3. Stephens shall cooperate fully with the Monitor and the Commission in explaining Stephens' 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. Stephens shall also cooperate fully and expeditiously with the Monitor and the Commission in carrying out all other aspects of his obligations described in this Order.

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

5. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each Trendsystems client is explicitly deemed an intended third-party beneficiary of this Order, such that each Trendsystems client 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 Part IV, Section A Paragraphs 1 through 5 above, to ensure continued compliance with any provision of this Order and to hold Stephens in contempt for past violations of any provision of this Order.

6. Any failure by Stephens 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, 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 Part IV, Section A, Paragraph 1 and Part IV, Section B, Paragraph 1 above; and/or

- b. move the Court for imposition of all other available remedies, including, but not limited to, an order holding Stephens in contempt for violation of this Order.

7. Upon the occurrence of an Event of Default based upon a claim or cause of action that Stephens failed to make any Annual Restitution Payments and/or Annual CMP Payments when due, Stephens 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 Stephens' Consent to this Order or while this Order remains in effect. The only issue that Stephens may raise in defense is whether he has 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 Part IV, Section A, Paragraph 1 and Part IV, Section B, Paragraph 1 above, or any acceptance by the Commission of partial payment of the Annual Restitution Payments and/or Annual CMP Payments made by the Stephens, shall not be deemed a waiver of the Commission's right to require Stephens 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 Part IV, Section A, Paragraph 1 and Part IV, Section B, Paragraph 1 above.

8. Based upon Stephens' sworn representations in his Financial Disclosure Statements and other evidence provided by Stephens to the Commission regarding his financial condition, the Commission has agreed that this Order would not require his 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 Stephens' Financial Disclosure Statements and other evidence provided by Stephens regarding his financial condition. If at any time following the entry of this Order, the Commission obtains information indicating that Stephens' representations to the Commission concerning his 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 Stephens to make immediate payment of his 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 Stephens 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 Stephens to pay funds or transfer assets or directing the forfeiture of any assets, and the Commission may also request additional discovery. Stephens may not, by way of defense to such motion, challenge the validity of his 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.

9. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order, and the application of the provision to any other

person or circumstance, shall not be affected by the holding.

10. Upon being served with copies of this Consent Order after entry by the Court, Defendant shall sign an acknowledgment of such service and serve such acknowledgment on the Commission within seven (7) calendar days.

11. This Court shall retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and to assure compliance with this Order.

V.

MISCELLANEOUS PROVISIONS

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

Notice to the Commission:

Karen Kenmotsu, Esq.
Division of Enforcement
Three Lafayette Centre
1155 21st St. N.W.
Washington, D.C. 20581

Notice to the Monitor:

Dan Driscoll
National Futures Association
200 West Madison Street
Chicago, IL 60606

Notice to the Defendants:

Michael A. Fennessy, Esq.
206 N. Prince St.
Americus, GA 31709

2. In the event that any of the Defendants change their residential or business telephone number(s) and/or address(es) at any time, they shall provide written notice of the new number(s) and/or address(es) to the Monitor and to the Commission within ten calendar days thereof.

SO ORDERED, this 17th day of August, 2001, at Albany, Georgia.

W. LOUIS SANDS
UNITED STATES DISTRICT JUDGE

Consented to and
approved for entry by:

Counsel for the Defendant:

Defendant:

Michael A. Fennessy, Esq.
206 N. Prince St.
Americus, GA 31709
(229) 924-6175

James E. Stephens, III

Counsel for the Plaintiff:

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