

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

COMMODITY FUTURES TRADING	)	
COMMISSION,	)	
	)	CIVIL ACTION NO.: 10-80738-
Plaintiff,	)	Civ – Hurley/Hopkins
	)	
v.	)	
	)	
PHILIP MILTON, WILLIAM CENTER,	)	
GREGORY CENTER, and TRADE, LLC. ,	)	
	)	
Defendants,	)	
	)	
BD, LLC, CMJ Capital, LLC, Center	)	
Richmond, LLC, and TWTT, LLC. ,	)	
	)	
Relief Defendants.	)	

**PLAINTIFF U.S. COMMODITY  
FUTURES TRADING COMMISSION AND DEFENDANT  
PHILIP MILTON'S SUPPLEMENTAL CONSENT ORDER  
SETTING JUDGMENT FOR RESTITUTION, DISGORGEMENT  
AND CIVIL MONETARY PENALTIES AGAINST PHILIP MILTON**

**I. BACKGROUND**

On June 22, 2010, Plaintiff U.S. Commodity Futures Trading Commission (the "Commission" or "CFTC") filed a complaint against Philip Milton ("Milton" or "Defendant"), William Center, Gregory Center, and Trade, LLC, and named BD, LLC, CMJ Capital, LLC, Center Richmond, LLC, and TWTT, LLC as relief defendants. The Complaint seeks permanent injunction, civil penalties, and other equitable relief, for violations of the anti-fraud provisions of Sections 4b(a)(2) and 4g(1) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 6(b)(a)(2) and 6g(1) (2006), and Section 4b(a)(1) of the Act, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008

("CRA"), § 13102, 122-Stat. 1651 (enacted June 18, 2008), 7 U.S.C. § 6(b)(a)(1)<sup>1</sup>. Further, Trade acted as a CPO of the pool without being registered with the Commission as such in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006). The Court entered an *ex parte* statutory restraining order against Milton, William Center, Gregory Center, Trade, LLC, BD, LLC, CMJ Capital, LLC, Center Richmond, LLC, and TWTT, LLC on June 22, 2010, and a Consent Order of Permanent Injunction, Civil Monetary Penalty and for Other Equitable Relief Against Philip Milton ("Consent Order of Permanent Injunction"), on April 15, 2011.

## II. CONSENTS AND AGREEMENTS

To resolve the remaining issues of the amounts of restitution, disgorgement, and civil monetary penalty (as provided in the Consent Order of Permanent Injunction, without any further judicial proceedings), Defendant Milton:

1. Consents to the entry of this Plaintiff U.S. Commodity Futures Trading Commission and Defendant Philip Milton's Supplemental Consent Order Setting Judgment for Restitution, Disgorgement, and Civil Monetary Penalties Against Philip Milton ("Supplemental Consent Order");
2. Affirms that he has read and agreed to this Supplemental Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the CFTC or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Supplemental Consent Order;
3. Acknowledges service of the summons and Complaint;

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<sup>1</sup> Subsequent to the filing of the complaint in this case, the Act was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), 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), to be codified at 7 U.S.C. §§ 1 *et seq.* Defendants' misconduct predates the enactment of the Dodd-Frank Act.

4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1 (2006 & Supp. IV 2011);

5. Admits the jurisdiction of the CFTC over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1, *et seq.*;

6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e) (2006 & Supp. IV 2011);

7. Waives:

(a) any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2012), relating to, or arising from, this action;

(b) any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

(c) any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Supplemental Consent Order; and

(d) any and all rights of appeal from this action;

8. Consents to the continued jurisdiction of this Court over him for the purpose of enforcing the terms and conditions of the Consent Order of Permanent Injunction and Supplemental Consent Order and for any other purpose relevant to this action even if Defendant now or in the future resides outside the jurisdiction of this Court;

9. Agrees that he will not oppose enforcement of this Supplemental Consent Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

10. Agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Supplemental Consent Order, or creating or tending to create the impression that the Complaint and/or this Supplemental Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect his: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the CFTC is not a party. Defendant shall undertake all steps necessary to ensure that his agents or employees under his authority or control understand and comply with this agreement;

11. By consenting to the entry of this Supplemental Consent Order, neither admits nor denies the allegations of the Complaint or the Findings of Fact and Conclusions of Law in this Supplemental Consent Order, except as to jurisdiction and venue, which he admits. Further, Defendant agrees and intends that the allegations contained in the Complaint and all of the Findings of Fact and Conclusions of Law contained in this Supplemental Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Defendant; (b) any proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a (2006), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2012); and/or (c) any proceeding to enforce the terms of this Supplemental Consent Order;

12. Agrees to provide immediate notice to this Court and the CFTC by certified mail, in the manner required by paragraph 30 of Part 5 of this Supplemental Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against them, whether inside or outside the United States; and

13. Agrees that no provision of this Supplemental Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Defendant in any other proceeding. The Court, being fully advised in the premises, finds there is good cause for entry of this Supplemental 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 Section 6c of the Act, 7 U.S.C. § 13a-1 (2006 & Supp. IV 2011), as set forth herein.

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

14. The Findings of Fact and Conclusions of Law contained in the Consent Order of Permanent Injunction are incorporated herein by reference and given preclusive effect as provided in the Consent Order of Permanent Injunction.

### **IV. RESTITUTION, DISGORGEMENT AND CIVIL MONETARY PENALTY**

IT IS HEREBY ORDERED that Defendant shall comply fully with the following terms, conditions, and obligations relating to the payment of restitution, disgorgement and civil monetary penalty:

#### **A. Restitution**

15. Defendant Milton shall, jointly and severally, pay restitution in the amount of ten million, eight hundred twelve thousand, two hundred eighty-eight dollars (\$10,812,288)

("Restitution Obligation"), plus post-judgment interest, within thirty (30) days of the date of the entry of this Supplemental Consent Order. Post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Supplemental Consent Order, and shall be determined by using the Treasury Bill rate prevailing on that date pursuant to 28 U.S.C. § 1961 (2006).

16. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendant's customers, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall collect restitution payments from Defendant and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

17. Defendant shall make Restitution Obligation payments under this Supplemental Consent Order to the Monitor in the name "PHILIP MILTON – RESTITUTION Fund" and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under a cover letter that identifies the paying Defendant and the name and docket number of this proceeding. Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

18. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendant's customers identified by the CFTC or may defer distribution until such time as the Monitor deems

appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible customers is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the CFTC following the instructions for civil monetary penalty payments set forth in paragraph 26, below.

19. Defendant shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant's customers to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendant shall execute any documents necessary to release funds that he has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

20. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' customers during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

21. Upon the termination of the receivership estate, the Receiver shall provide the Commission with a report detailing the disbursement of funds to Defendants' customers. The Receiver shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

22. The amounts payable to each customer shall not limit the ability of any customer from proving that a greater amount is owed from Defendant Milton or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law.

23. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Defendant Milton who suffered a loss is explicitly made an intended third-party beneficiary of this Supplemental Consent Order and may seek to enforce obedience of this Supplemental Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Defendant Milton to ensure continued compliance with any provision of this Supplemental Consent Order and to hold Defendant Milton in contempt for any violations of any provision of this Supplemental Consent Order.

24. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendant's Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

**B. Civil Monetary Penalty**

25. Defendant Milton shall pay a civil monetary penalty in the amount of seven million, six hundred fifty-seven thousand, seven hundred and thirteen dollars and forty-five cents (\$7,657,713.45) ("CMP Obligation"), plus post-judgment interest, within thirty (30) days of the date of the entry of this Supplemental Consent Order. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Supplemental Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Supplemental Consent Order pursuant to 28 U.S.C. § 1961 (2006).

26. Defendant shall pay his CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be



made other than by electronic funds transfer, then the payment shall be made payable to the

Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables – 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 funds transfer is chosen, Defendant shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendant shall accompany payment of the CMP Obligation with a cover letter that identifies Defendant and the name and docket number of this proceeding. Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

**C. Disgorgement**

27. Defendant is not required to pay disgorgement.

**D. Provisions Related to Monetary Sanctions**

28. Partial Satisfaction: Any acceptance by the CFTC or the Monitor of partial payment of Defendant's Restitution Obligation or CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Supplemental Consent Order, or a waiver of the CFTC's right to seek to compel payment of any remaining balance.

**E. Cooperation**

29. Defendant shall cooperate fully and expeditiously with the CFTC, including the CFTC's Division of Enforcement, and any other governmental agency in this action, and in any

investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.

**V. MISCELLANEOUS PROVISIONS**

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

Notice to CFTC:

Notice to the Commission:  
David Meister, Director of Enforcement  
Commodity Futures Trading Commission  
Division of Enforcement  
1155 21<sup>st</sup> Street N.W.  
Washington, DC 20581

Notice to Defendant Milton:  
Lawrence U. Taubc, Esq.  
Law Offices of Lawrence U. Taube  
500 South Australian Avenue, Suite 630  
West Palm Beach, FL 33401

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

**31. Change of Address/Phone:** Until such time as Defendant satisfies in full his Restitution Obligation, Disgorgement Obligation, and CMP Obligation as set forth in this Supplemental Consent Order, Defendant shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

**32. Entire Agreement and Amendments:** This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Supplemental Consent Order in any respect whatsoever, unless:

(a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

33. **Invalidation:** If any provision of this Supplemental Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of this Supplemental Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

34. **Waiver:** The failure of any party to this Supplemental Consent Order or of any customer at any time to require performance of any provision of this Supplemental Consent Order shall in no manner affect the right of the party or customer at a later time to enforce the same or any other provision of this Supplemental Consent Order. No waiver in one or more instances of the breach of any provision contained in this Supplemental Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Supplemental Consent Order.

35. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action to ensure compliance with this Supplemental Consent Order and for all other purposes related to this action, including any motion by Defendant to modify or for relief from the terms of this Supplemental Consent Order.


36. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Supplemental Consent Order shall be binding upon Defendant, upon any person under his authority or control, and upon any person who receives actual notice of this Supplemental Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendant.

37. **Counterparts and Facsimile Execution:** This Supplemental Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each


of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Supplemental Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Supplemental Consent Order.

38. Defendant understands that the terms of the Supplemental Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Supplemental Consent Order.

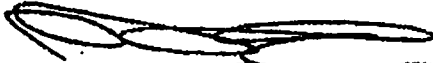
There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Supplemental Consent Order.

IT IS SO ORDERED on this 24<sup>th</sup> day of April, ~~2012~~ <sup>2013</sup>  
  
UNITED STATES DISTRICT JUDGE

Consented to and Approved by:

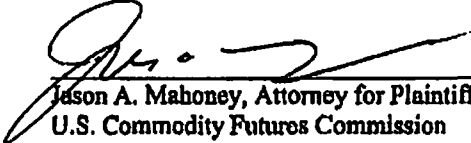
  
Philip Milton, Defendant

11/14/12  
Date

  
Counsel for Defendant Milton  
Lawrence U. Taube, Esq.  
Law Offices of Lawrence U. Taube  
500 South Australian Avenue, Suite 630  
West Palm Beach, FL 33401

11/17/12  
Date

Consented to and Approved by:



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Jason A. Mahoney, Attorney for Plaintiff  
U.S. Commodity Futures Commission  
1155 21st Street, N.W.  
Washington D.C. 20581  
Phone: 202-418-5289  
Facsimile: 202-418-5868  
Email: [jmahoney@cfic.gov](mailto:jmahoney@cfic.gov)

12/19/12

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Date