

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA

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U.S. COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

CASE NO. 3:11-cv-23-RJC

KEITH F. SIMMONS, et al.,

Defendants, and

LAWRENCE SALAZAR, et al.,

Relief Defendants.

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**CONSENT ORDER OF PERMANENT INJUNCTION, CIVIL  
MONETARY PENALTY, AND OTHER EQUITABLE RELIEF AGAINST  
DEFENDANTS KEITH F. SIMMONS AND BLACK DIAMOND CAPITAL  
SOLUTIONS, LLC**

**I. BACKGROUND**

On January 13, 2011, Plaintiff U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint for Permanent Injunction, Civil Monetary Penalties, and Other Equitable Relief (“Complaint”) against Defendants Keith F. Simmons (“Simmons”) and Black Diamond Capital Solutions, LLC (“BDCS”), among others, for violations of Sections 4b(a)(2)(A)-(C) of the Commodity Exchange Act (“CEA” or “Act”), 7, U.S.C. §§ 6b(a)(2)(A)-(C) (2012).

On February 11, 2011, the Court issued a Statutory Restraining Order against Simmons and BDCS, and on April 4, 2011, the Court issued an Order of Preliminary Injunction and Other Equitable Relief against Simmons and BDCS.

## II. CONSENTS AND AGREEMENTS

To effect settlement of this action without a trial on the merits or further judicial proceedings, Simmons and BDCS ("Settling Defendants"):

1. Consent to the entry of this *Consent Order of Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendants Keith F. Simmons and Black Diamond Capital Solutions, LLC* ("Consent Order");
2. Affirm that Simmons and the authorized representative of BDCS have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, 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 Consent Order;
3. Acknowledge service upon them of the summons and Complaint;
4. Admit the jurisdiction of the Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012);
5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to Section 6c of the Act, 7 U.S.C. §13a-1 (2012), and Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (2012);
6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. §13a-1(e) (2012);
7. Waive:
  - a. any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§148.1, *et seq.*

(2013), relating to, or arising from this action;

b. 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, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from this proceeding;

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 Consent Order; and

d. any and all rights of appeal from this action;

8. Consent to the continued jurisdiction of this Court over them for the purposes of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Simmons or BDCS now or in the future reside or operate outside the jurisdiction of this Court;

9. Agree that they will not oppose enforcement of this Consent Order on the grounds that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waive any objection based thereon;

10. 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 the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the

Commission is not a party. Settling Defendants shall undertake all steps necessary to ensure that their agents and/or employees under their authority or control understand and comply with this agreement;

11. By consenting to the entry of this Consent Order, neither admit nor deny the allegations of the Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, except as to jurisdiction and venue, which they admit. Further, Settling Defendants agree and intend that the allegations contained in the Complaint and all of the Findings of Fact and Conclusions of Law contained in this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Settling Defendants; (b) any proceeding pursuant to Section 8a of the Act, 7 U.S.C. § 12a (2012), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2013); and/or (c) any proceeding to enforce the terms of this Consent Order.

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

13. Agree that no provision of this 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 Settling Defendants in any other proceeding.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

14. 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 the following Findings of Fact, Conclusions of Law, permanent injunction

and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), as set forth herein.

**THE COURT HEREBY FINDS:**

**A. FINDINGS OF FACT**

**1. The Parties to this Consent Order**

15. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 et seq. (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 et seq. (2013).

16. Defendant Keith F. Simmons is currently incarcerated at USP Lee, Pennington Gap, Virginia 24277. Simmons is the President and CEO of BDCS. Simmons has never been registered with the CFTC in any capacity.

17. Defendant Black Diamond Capital Solutions, LLC is a Limited Liability Company organized in North Carolina and formed on July 6, 2005. During the relevant period here it was located at 522 S. Main St., West Jefferson, North Carolina 28640. BDCS has never been registered with the CFTC in any capacity and is not a financial institution, registered broker-dealer (or their associated person), insurance company, bank holding company or investment bank holding company.

**2. Settling Defendants Fraudulently Solicited Customers to Trade Forex Through Black Diamond**

18. From at least April 2007 through at least December 2009 ("relevant period"), Simmons, Individual 1, Individual 2, and Individual 3, acting through various corporate entities, fraudulently solicited and/or accepted at least \$35 million from at least 240 customers for the purported purpose of trading, via the Black Diamond trading platform, a pooled investment in

connection with agreements, contracts, or transactions in off-exchange foreign currency (“forex”) that are margined or leveraged.

19. At least certain of these customers, if not all, were individuals who had total assets of less than \$5 million.

20. Simmons first solicited Individual 1 to invest in forex through BDCS in April 2007, and subsequently entered into a joint venture with Individual 1 whereby she, acting through her own corporate entity, would market forex trading through BDCS to her customers. Simmons and Individual 1 would then split equally the joint venture’s share of profits achieved by any new customers brought to BDCS by Individual 1.

21. Simmons and Individual 1 subsequently solicited Individual 2 to invest in forex through BDCS in October 2007, and then entered into a three-way joint venture with Individual 2, whereby he, acting through his own corporate entity, would market forex trading through BDCS to his customers. Simmons, Individual 1, and Individual 2 would then split in equal thirds the new joint venture’s share of profits achieved by any new customers brought to BDCS by Individual 2.

22. According to the joint venture agreement, the joint venture was to be conducted under the name BDCS; but later Simmons, Individual 1, and Individual 2 changed the name to Black Diamond Holdings (“BD Holdings”). Regardless, Simmons, Individual 1, and Individual 2 continued to use the names BDCS, BD Holdings, and Black Diamond interchangeably in their forex materials, solicitations, and communications with customers.

23. Simmons, Individual 1, and Individual 2 jointly developed Black Diamond solicitation materials and provided them to the persons and entities they solicited. The Black Diamond solicitation materials used by Simmons, Individual 1, and Individual 2 claimed that

Black Diamond offered customers exclusive access to an automatic computerized trading system created by a group of software developers to trade forex, that the system had been trading forex for over 36 months, and that every month had exceeded the target of four percent gain per month. One version of the materials purported to show an actual three year trading history with consistently positive monthly returns, often in excess of ten percent, and a three year balance reflecting results of \$194,340.37 on an initial \$5,000 investment.

24. The Black Diamond solicitation materials assured customers that the risk of trading forex through Black Diamond was limited because automatic stop loss mechanisms would kick in should a customer's account ever drop ten percent (or, in some later versions, twenty percent) and would prevent any further trading without specific instructions from the customer. In addition, the materials assured customers that Black Diamond had no right to deplete or withdraw customer funds at any time other than for the purpose of engaging in actual trading.

25. To expand the reach of the Black Diamond scheme even farther, Individual 1 entered into "Co-Facilitator Agreements" with certain of her customers. These agreements authorized others, so-called "Facilitators," to solicit customers to trade forex through BDCS in exchange for a marketing service fee. If a Facilitator successfully solicited a customer to trade through BDCS, then Simmons and Individual 1 would further divide their portion of the customer's trading profits with the referring Facilitator. As a result of these Co-Facilitator agreements, the Black Diamond fraudulent scheme was extended to numerous individuals/entities across California, Colorado, Texas, and other states.

26. Individual 2 initially solicited customers as a Facilitator for Individual 1 pursuant to the Simmons-Individual 1 joint venture. By December 2007, after the Simmons-Individual 1-

Individual 2 joint venture was formed, Individual 2, acting through his own corporate entity, began soliciting customers to trade forex through Black Diamond pursuant to the joint venture agreement. By June 2008, Individual 2 established his own hedge fund to be the vehicle through which he solicited customers for Black Diamond.

27. In December 2007, Individual 2 solicited Individual 3 to open a forex trading account with Black Diamond on behalf of the customers of Individual 3's fund. Individual 2 also recruited individuals to create and manage "Hedge Funds" in order to solicit additional customers for the Black Diamond scheme. As a result of these Hedge Funds, the Black Diamond scheme was extended to numerous individuals/entities across the United States.

### **3. Settling Defendants Misappropriated Customer Funds**

28. Simmons never engaged in any trading of forex on behalf of Black Diamond customers. In fact, the so-called system developers and the Black Diamond trading platform never existed. Instead of investing customer funds into a forex trading platform operated by Black Diamond as promised, Simmons misappropriated those funds to pay purported profits or to return principal to Black Diamond customers. These payments accounted for at least half of the money brought in to Black Diamond, or approximately \$19 million.

29. Simmons also used at least \$5.8 million in Black Diamond funds for cash withdrawals or to finance personal expenses for such things as real estate purchases and improvements, cars and lavish trips. In addition, Simmons used at least \$2 million of Black Diamond customer funds to start, advertise, and operate several side businesses. These side businesses were unrelated to the forex trading purportedly taking place through Black Diamond.



**4. Settling Defendants Concealed Their Misappropriation With False Account Statements and Misrepresentations**

30. To conceal the lack of trading and the misappropriation of customer funds, Simmons caused to be issued through Individual 1, Individual 2, Individual 3, and other Black Diamond agents false monthly account statements to customers consistently showing overwhelmingly positive returns from their alleged forex trading. In fact, Black Diamond never reported a losing month. Simmons prepared or reviewed some or all of these account statements before issuing them to customers, then delivered, or caused to be delivered, and/or reported the results of such statements to customers. Relying on the consistently profitable monthly account statements, existing customers decided to remain invested in Black Diamond and, in some cases, invested additional funds into Black Diamond. Additionally, prospective customers made the decision to invest in forex trading through Black Diamond after hearing of the consistently profitable monthly returns to existing customers.

31. By early 2009, Black Diamond and Simmons had insufficient funds to continue paying out customer withdrawal requests. Despite their lack of trading and lack of funds to meet customer demands, Black Diamond and Simmons continued to accept, and Individual 1, Individual 2, and Individual 3 continued to send, or caused to be sent, on behalf of their customers, additional funds from current customers as well as funds from new customers in an apparent effort to keep the fraudulent scheme going.

32. On March 19, 2009, Simmons sent an email to Individual 1, stating that Black Diamond would be shutting down for restructuring and, therefore, would be liquidating all customer accounts. In the email, Simmons also stated that all accounts, including all forex trading gains, would be paid out. At that point, however, there was only approximately \$600,000 remaining in the Black Diamond bank accounts. The alleged plan for restructuring was the first

in a series of excuses created by Simmons, which were repeated by – and, in some instances, crafted with the aid of – Individual 1, Individual 2, and Individual 3 to their customers to explain the failure to return funds to customers. These excuses included, but were not limited to, claims that: (1) the restructuring of Black Diamond required several accounting reviews and multiple paymasters and accountants before funds could be returned; (2) excessive withdrawal requests by customers were causing delays in the return of funds; (3) a non-existent German liquidity provider by the name of Klaus was attempting to provide \$120 million to Black Diamond to payout customers and replace Black Diamond on the purported platform, but his alleged transfer of funds was frozen by bank or regulatory procedures; (4) other bank interventions, such as banking requirements and restrictions, caused the Black Diamond accounts to be frozen; and (5) regulatory interventions by the Federal Reserve, the Treasury Department and the CFTC, for reasons unrelated to the operations of Black Diamond, purportedly resulted in the freezing of their funds.

33. Even as the excuses propounded by Simmons became more complex and outrageous, Individual 1, Individual 2, and Individual 3 continued to forward these excuses to their customers as if they were their own or as if they had full knowledge of what was alleged in the excuses. Simmons, in an instant message exchange with Individual 1 in July 2009, worked with Individual 1 to draft the excuse they would provide to customers regarding the closing of Black Diamond and the unavailability of funds for withdrawals. Simmons also worked with Individual 2 on an excuse that Individual 2 subsequently provided to his customers.

34. Simmons and Individual 2 threatened customers with additional delays in fund distribution if they attempted to interfere in the payout process or spoke to any financial regulators. Simmons also threatened certain customers that if they contacted the alleged

paymaster, Black Diamond would lose access to the paymaster services and the payout to customers would be jeopardized.

35. Simmons also provided to certain customers a list of real estate investments, claiming that these properties were security for the funds allegedly being traded in forex through Black Diamond. Simmons failed to disclose to these customers that these properties were purchased with misappropriated Black Diamond customer funds and the value of the real estate listed was insufficient to be adequate security for the funds sent in to Black Diamond, let alone any of the alleged forex trading gains.

36. To further conceal and perpetuate the fraud and ease customer concerns, Simmons falsely informed certain customers on several occasions that Black Diamond held approximately \$77 million in U.S. Treasury Notes in an account at JPMorgan Chase Bank. Simmons attempted to prove the existence of the \$77 million by altering a JPMorgan Chase bank document from an account belonging to another entity (not owned by Simmons) to reflect this fictitious balance of \$77 million. In fact, neither Black Diamond nor Simmons held any such account at JPMorgan Chase.

37. Despite the complete lack of trading and more than eight months of delays in returning the unaccounted-for funds, Simmons, Individual 1, Individual 2, and Individual 3 still claimed to Black Diamond customers, through at least December 2009, that their funds would be returned. Throughout this time, Simmons, Individual 1, Individual 2, and Individual 3 continued to issue, or caused to be issued, to Black Diamond customers monthly account statements through November 2009 showing profitable results from Black Diamond's alleged forex trading.

**5. Simmons Controlled BDCS and Was Its Agent**

38. During the relevant period, Simmons held himself out as the principal of BDCS and in various documents and communications he was described as the owner and operator of BDCS. He controlled the bank accounts opened and maintained in the name of BDCS. He also was responsible for computing the monthly percentage return on the purported forex trading that was used to calculate the gains on Black Diamond customers' accounts.

**B. CONCLUSIONS OF LAW**

**1. Jurisdiction and Venue**

39. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), 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 any provision of the Act or any rule, regulation, or order promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

40. The Commission has jurisdiction over the forex solicitations and transactions at issue in this action pursuant Sections 6c and 2(c)(2)(C) of the Act, 7 U.S.C. §§ 13a-1 and 2(c)(2)(C) (2012).

41. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because during the Relevant Period Defendants Salazar and Life Plus transacted business in this district and the certain of the transactions, acts, practices, and courses of business in violation of the Act occurred within this District.

**2. Violation of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2012): Fraud in Connection with Forex Transactions**

42. Simmons and BDCS entered into transactions in foreign currency with persons who were not "eligible contract participants" as that term is defined in Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2012); therefore, pursuant to Section 2(c)(2)(C)(iv) of the Act, 7 U.S.C. § 2(c)(2)(C)(iv) (2012), Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2012), apply to Simmons's and BDCS's foreign currency transactions "as if" they were a contract of sale of a commodity for future delivery.

43. By the conduct described in paragraphs 18 through 38 above, Simmons and BDCS cheated or defrauded, or attempted to cheat or defraud, customers or prospective customers; willfully made or caused to be made false reports or statements to another person; willfully deceived or attempted to deceive customers or prospective customers by, among other things, knowingly or recklessly (i) fraudulently soliciting customers and prospective customers to trade forex through Black Diamond; (ii) minimizing and failing to fully disclose the risks of trading leveraged forex; (iii) misrepresenting forex trading activity that purportedly occurred on behalf of their customers, as well as purported returns the customers would and did receive on their forex investments; (iv) misappropriating customer funds for personal use; (v) failing to disclose that they were misappropriating customer funds; (vi) making and/or causing to be made and distributing statements to their customers that contained false account values, false returns on investment and other false information; and (vii) misrepresenting that there were sufficient funds on hand to return all of their customers' principal, all in violation of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2012).

44. Simmons controlled BDCS, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, BDCS's acts in violation of the Act; therefore,

pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Simmons is liable for BDCS's violations of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2012).

45. The foregoing acts, omissions, and failures of Simmons occurred within the scope of his employment, office, or agency with BDCS; therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2013), BDCS is liable for Simmons's acts, omissions, and failures in violation of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2012).

46. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Simmons and BDCS will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act.

#### IV. PERMANENT INJUNCTION

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

47. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), Simmons and BDCS are permanently restrained, enjoined, and prohibited from directly or indirectly violating Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2012).

48. Simmons and BDCS are also permanently restrained, enjoined and prohibited from directly or indirectly:

- a. 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 (2012));
- b. 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) (2012)) ("commodity options"), security futures products, swaps (as that term is

defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (2012), and as further defined by Commission Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx) (2013)) (“swaps”), 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) (2012)) (“forex contracts”) for their own personal accounts or for any account in which they have a direct or indirect interest;

c. having any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts traded on their behalf;

d. 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, swaps and/or forex contracts;

e. 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, swaps and/or forex contracts;

f. 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 17 C.F.R. § 4.14(a)(9) (2013); and/or

g. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2013)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (2012)) registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2013).

## V. RESTITUTION AND CIVIL MONETARY PENALTY

### A. Restitution

49. Simmons shall pay restitution in the amount of \$35,331,632 ("Restitution Obligation") in accordance with the criminal order in the matter styled *United States of America v. Keith Franklin Simmons*, Case No. 3:10-cr-00023-RJC-DCK (W.D. NC).

### B. Civil Monetary Penalty

50. Settling Defendants shall be jointly and severally liable for, and shall pay, a civil monetary penalty of seventy million dollars (\$70,000,000), within ten (10) days of the date of entry of this Order ("CMP Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006).

51. Settling Defendants shall pay their 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/FANMMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: (405) 954-5644

52. If payment by electronic funds transfer is chosen, Settling Defendants shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Settling Defendants shall accompany payment of the



CMP Obligation with a cover letter that identifies the paying Settling Defendant and the name and docket number of this proceeding. Settling Defendants 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.

53. Any acceptance by the Commission of partial payment of Settling Defendants' CMP Obligation shall not be deemed a waiver of Settling Defendants' obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

54. Settling Defendants shall not transfer, or cause others to transfer, funds or other property belonging to Settling Defendants to the custody, possession, or control of any members of their family or any other person or entity for the purpose of concealing such funds from this Court, the Commission, or any officer appointed by this Court.

#### VI. MISCELLANEOUS PROVISIONS

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

Notice to Commission:

Attention - Director of Enforcement  
Commodity Futures Trading Commission  
Division of Enforcement  
Three Lafayette Center  
1155 21st Street, N.W.  
Washington, DC 20581

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

56. Change of Address/Phone: Until such time as Settling Defendants satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Consent Order, they shall

provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

57. 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 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.

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

59. Waiver: The failure of any party to this Consent Order or of any customer at any time to require performance of any provision of this 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 Consent Order. No waiver in one or more instances of the breach of any provision contained in this 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 Consent Order.

60. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Simmons and/or BDCS to modify, or obtain relief from, the terms of this Consent Order.

61. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Settling Defendants, upon any person under their authority or control, and upon any person who receives actual notice of this Consent

Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Settling Defendants.

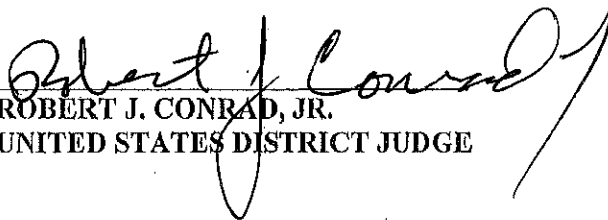
62. Authority: Simmons hereby warrants that he is the President and CEO of BDCS and that he is duly empowered to sign and submit this Consent Order on behalf of BDCS.

63. Counterparts and Facsimile Execution: This 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 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 Consent Order.

64. Settling Defendants understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this *Consent Order of Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendants Keith F. Simmons and Black Diamond Capital Solutions, LLC.*

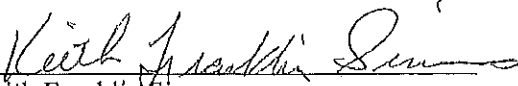
IT IS SO ORDERED on this 24 day of June, 2015


  
ROBERT J. CONRAD, JR.  
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:

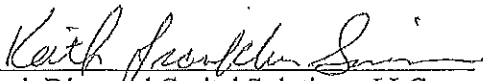
Defendants:

Plaintiff:

  
Keith Franklin Simmons

  
Alan Edelman  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581  
202-418-5000  
202-418-5987 (facsimile)  
aedelman@cftc.gov

Date: 7-8-2014

  
Black Diamond Capital Solutions, LLC  
By Keith Franklin Simmons, President & CEO

Date: 12/2/2014

Date: 7-8-2014