**UNITED STATES OF AMERICA**
**Before the**
**COMMODITY FUTURES TRADING COMMISSION**

RECEIVED
CFTC
2012 FEB 22 AM 10: 50
Office of Proceedings

| | | |
|---|---|---|
| **In the Matter of:** | ) | **CFTC Docket No. 12-08** |
| | ) | |
| **Aaron Klein,** | ) | **ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, AS AMENDED, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS** |
| **Respondent.** | ) | |

## I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Aaron Klein ("Klein" or "Respondent") has violated Sections 6(c) and 9(a)(3) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 9 and 13(a)(3) (2006), and Commission Regulation 3.10, 17 C.F.R. § 3.10 (2011), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Klein engaged in the violations set forth herein, and to determine whether any order should be issued imposing remedial sanctions.

## II.

In anticipation of the institution of an administrative proceeding, Klein has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings and conclusions herein, Klein acknowledges service of this Order Instituting Proceedings Pursuant to Section 6(c) and 6(d) of the Commodity Exchange Act, As Amended, Making Findings and Imposing Remedial Sanctions ("Order").[1]

---

[1] Respondent consents to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the findings in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party in any other proceeding.

## III.

The Commission finds the following:

### A. Summary

From November 2006 through September 2008 ("relevant period"), Klein acted as an undisclosed controlling person and principal of a Commodity Trading Advisor ("the CTA") registered with the Commission. Pursuant to Commission Regulation 3.10(a)(2), 17 C.F.R. § 3.10(a)(2), the CTA was required in its registration application to disclose each natural person who is a principal of the applicant on a required form, Form 8-R, which was to be executed by each principal who is a natural person. The CTA did not disclose as part of its application or any time thereafter that Klein was a principal of the CTA, as defined by Commission Regulation 3.1(a). Accordingly, the CTA knowingly omitted a material fact required to be disclosed in its application in violation of Sections 6(c) and 9(a)(3) of the Act and Commission Regulation 3.10.

Because Klein was a controlling person of the CTA and failed to act in good faith or knowingly induced the violations of the CTA, Klein is liable for the CTA's violations, pursuant to Section 13(b) of the Act.

### B. Respondent

**Aaron Klein** is an individual residing in Rochester, New York. Klein has never been registered with the Commission in any capacity.[2]

### C. Facts

During the relevant period, the CTA had one main client, a pool which was comprised of Klein's family and a friend. The CTA had trading authority over the client's managed forex trading accounts. Since the beginning of and throughout the relevant period, Klein, acting through the sole disclosed principal of the CTA, exercised general control over the CTA and had the ability to control the day-to-day functions of the CTA. For example, through email communications and other means, Klein provided some trading instructions to the CTA. He also prepared responses to inquiries from Futures Commission Merchants concerning fee agreements, from third party marketers, and prospective clients, which the CTA would forward. Klein also directed responses to regulatory inquiries. In 2008, the National Futures Association ("NFA"), a registered futures association, conducted an audit of the CTA in furtherance of its official duties under the Act. Klein was at the CTA's offices during the on-site audit. Later, Klein drafted responses to NFA's audit questions and instructed the other principal of the CTA to provide them to NFA.

The CTA filed its application for registration with the Commission on November 6, 2006, and was approved as a CTA in February, 2007. The CTA filed an annual renewal of its registration on July 1, 2008. In its required filings, the CTA only disclosed a sole principal and

[2] In 2005, Klein pled guilty to a single count in violation of 18 U.S.C. § 371.

never disclosed that Klein was a principal of the CTA, as defined by Commission Regulation 3.1(a).[3]

## D. Legal Discussion

### 1. The CTA Knowingly Omitted In Its Registration Application Annual Renewals That Klein Was A Principal in Violation of Sections 6(c) and 9(a)(3) of the Act and Commission Regulation 3.10.

Section 9(a)(3) of the Act makes it unlawful for:

> Any person knowingly to make, or cause to be made, any statement in any application, report, or document required to be filed under this Act or any rule or regulation thereunder ... which statement was false or misleading with respect to any material fact, or knowingly to omit any material fact required to be stated therein or necessary to make the statements therein not misleading.

7 U.S.C. § 13(a)(3) (2006). Section 6(c) similarly authorizes the Commission to serve a complaint against any person who "has willfully made any false or misleading statement of a material fact in any registration application or any report filed with the Commission under this Act, or willfully omitted to state in any such application or report any material fact which is required to be stated therein ...."

Commission Regulation 3.10(a)(1) and (2) requires an applicant seeking to become registered as a CTA to file a Form 7-R with the NFA. The Form 7-R must be accompanied by a Form 8-R in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant. 17 C.F.R. § 3.10(a). The Forms 7-R and 8-R define a principal to include a person who "has the power to exercise a controlling influence over a registrant's activities that are subject to regulation by the Commission." *See also* 17 C.F.R. § 3.1(a)(1) (similarly defining the term "principal" for purposes of registering). The Forms 7-R and 8-R require disclosures of any criminal felony pleas or convictions. Commission Regulation 3.10(d) requires that a CTA shall on an annual basis, review and update registration information maintained with NFA on behalf of the Commission.

Klein had general control of the CTA and accordingly had the power to exercise controlling influence over the CTA's activities. As such, the CTA was required to disclose that Klein was a principal. However, in its required regulatory filings, the CTA knowingly did not disclose that Klein was a principal. Accordingly, the CTA violated Sections 6(c) and 9(a)(3) of the Act and Commission Regulation 3.10 by knowingly omitting a material fact required to be stated in its required application and its annual renewal to be registered as a CTA.

[3] As noted, the CTA's main client was a pool composed of Klein's family and a friend, who have not complained, and based on available evidence, there appears to be no related losses sustained by this client.

### 2. Pursuant to Section 13(b), Klein is Liable for the Violations of the CTA.

Section 13(b) provides that "[a]ny person who, directly or indirectly controls any person who has violated any provision of this Act or any of the rules, regulations, or orders issued pursuant to this Act may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person" if the "controlling person did not act in good faith or knowingly induced, directly, or indirectly, the act or acts constituting the violation." 7 U.S.C. § 13c(b).

Controlling person liability attaches if a person exercises general control over the entity held principally liable, and possesses the ability to control the activities upon which the primary liability is predicated, even if that ability was not exercised. *See Monieson v. CFTC*, 996 F.2d 852, 859 (7th Cir. 1993). All that is required to constitute "knowing inducement" under Section 13(b) of the Act is that the controlling person "had actual or constructive knowledge of the core activities that constitute the violation at issue and allowed them to continue." *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103 at 34,767 (CFTC Jan. 12, 1988).

As set forth above, Klein exercised general control over the CTA. Klein also did not act in good faith and had "actual or constructive knowledge" of the CTA's violations. Through the sole identified principal, Klein controlled trading decisions, dealt with broker issues and responded to regulatory inquiries by NFA. Klein knew he was acting as an undisclosed principal. Consequently, pursuant to Section 13(b) of the Act, as amended, to be codified at 7 U.S.C. §13c(b), Klein is liable for the CTA's violations of the Act and Commission Regulations to the same extent as the CTA.

## IV.

## FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that pursuant to Section 13(b), 7 U.S.C. § 13c(b), Respondent violated Sections 6(c) and 9(a)(3) of the Act, 7 U.S.C. §§ 9 and 13(a)(3) (2006) and Commission Regulation 3.10, 17 C.F.R. § 3.10 (2011).

## V.

## OFFER OF SETTLEMENT

Klein has submitted the Offer in which he, without admitting or denying the findings herein:

A. Acknowledges receipt of service of this Order;

B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order;

C. Waives: the filing and service of a complaint and notice of hearing; a hearing; all post-hearing procedures; judicial review by any court; any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer; 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 Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2011), relating to, or arising from, this proceeding; any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-68 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

D. Stipulates that the record upon which this Order is entered shall consist solely of the findings contained in this Order to which the Respondent has consented; and

E. Consents, solely on the basis of the Offer, to entry of this Order that:

1. makes findings by the Commission that pursuant to Section 13(b) of the Act, Klein violated Sections 6(c) and 9(a)(3) of the Act, 7 U.S.C. §§ 9 and 13(a)(3), and Commission Regulation 3.10, 17 C.F.R. § 3.10;

2. orders Klein to cease and desist from violating Sections 6(c) and 9(a)(3) of the Act, 7 U.S.C. §§ 9 and 13(a)(3), and Commission Regulation 3.10, 17 C.F.R. § 3.10;

3. orders Klein to pay a civil monetary penalty in the amount of Fifty Thousand U.S. Dollars ($50,000.00) within sixty (60) days of the date of the entry of this Order; and

4. orders Klein to voluntarily comply with the undertakings consented to in the Offer and set forth below in Part VI of this Order.

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

**VI.**

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

1. Klein shall cease and desist from violating Sections 6(c) and 9(a)(3) of the Act, 7 U.S.C. §§ 9 and 13(a)(3), and Commission Regulation 3.10, 17 C.F.R. § 3.10.

2. Klein shall pay a civil monetary penalty in the amount of Fifty Thousand U.S. Dollars ($50,000.00), plus post-judgment interest, within sixty (60) days of the date of the entry of this Order. If this civil monetary penalty is not paid within sixty (60) days of the date of the entry of this Order, then post-judgment interest shall accrue commencing on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this

Order pursuant to 28 U.S.C. § 1961. Klein shall pay this civil monetary penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts 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 transfer is chosen, Klein shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Klein shall accompany payment of the civil monetary penalty with a cover letter that identifies Klein and the name and docket number of this proceeding. Klein shall simultaneously submit copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2) (2006), if this amount is not paid in full within fifteen (15) days of the due date, Klein shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of the payment has been made; and

3. Respondent shall comply voluntarily with the following undertakings, as consented to and set forth in his Offer as specified:

(a) Respondent shall never apply for registration or claim exemption from registration with the Commission, in any capacity, and shall never engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

(b) Respondent shall never act as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, officer, or employee of any person registered, required to be registered, or exempted from registration with the

Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R § 4.14(a)(9) (2011).

(c) Respondent 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 findings or conclusions in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's (i) testimonial obligations or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.

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

By the Commission.

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

Dated: February 22, 2012