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3/7/2015

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

MARK EVAN BLOOM AND NORTH HILLS
MANAGEMENT, LLC,

Defendants.

Case No. 09 CV 1751 (JGK)

SUPPLEMENTAL CONSENT
ORDER OF CIVIL MONETARY
PENALTY AND OTHER
EQUITABLE RELIEF

I. INTRODUCTION

On February 25, 2009, Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") filed this civil enforcement action against Defendants Mark Evan Bloom ("Bloom") and North Hills Management, LLC ("NHM"), seeking injunctive and other equitable relief, as well as the imposition of restitution and civil monetary penalties, for violations of the Commodity Exchange Act ("Act"), as amended, 7 U.S.C. §§ 1 *et seq.* (2006). Docket Entry ("DE") 1.

On February 25, 2009, pursuant to 7 U.S.C. § 13a-1, this Court issued an *Ex Parte* Statutory Restraining Order ("SRO") that froze assets under the control of the Defendants, among other things. DE 2.

On March 9, 2009, this Court issued an Order of Preliminary Injunction and Other Equitable Relief, which continued the provisions of the SRO, including the freeze of assets under the control of the Defendants, among other things. DE 51.

On June 11, 2010, this Court issued a Consent Order of Permanent Injunction and Other Statutory and Equitable Relief against Defendants Mark Evan Bloom and North Hills

Management, LLC ("Consent Order"). DE 79.

II. CONSENTS AND AGREEMENTS

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 Bloom and NHM:

1. Consent to the entry of this *Supplemental Consent Order of Civil Monetary Penalty and other Equitable Relief* ("Supplemental Order");
2. Affirm that they have agreed to this Supplemental 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 Supplemental Order;
3. Acknowledge proper service of the Summons and Complaint;
4. Admit that this Court has jurisdiction over them and the subject matter of this action pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e);
5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1, *et seq.*;
6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e);
7. Waive: (a) any and all claims which they 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 ("Regulations"), 17 C.F.R. §§ 148.1 *et seq.* (2012), 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. 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 proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including in this Supplemental Order; and (d) any and all rights of appeal from this action;

8. Consent to the continued jurisdiction of this Court for the purpose of implementing and carrying out the terms and conditions of all orders and decrees, including orders setting the appropriate amounts of restitution and civil monetary penalty, that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of the Court, to assure compliance with this Supplemental Order and for any other purpose relevant to this action, even if Defendants now or in the future reside outside the jurisdiction of this Court;

9. Agree that they will not oppose enforcement of this Supplemental Order by alleging 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 Bloom, NHM 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 the Consent Order or in this Supplemental Order, or creating or tending to create the impression that the Complaint, the Consent Order and/or this Supplemental Order is without a factual basis; provided, however, that nothing in this provision shall affect Bloom's and/or NHM's (a) testimonial obligations; or (b) rights to take legal positions in other proceedings to which the Commission is not a party. Bloom and NHM shall take all necessary steps to ensure that all of their agents and employees under their authority and control understand and comply with this agreement;

11. Neither admit nor deny the allegations of the Complaint and the Findings of Fact and Conclusions of Law contained in the Consent Order and this Supplemental Order, except as to jurisdiction and venue, which they admit. However, Defendants agree and intend that the allegations of the Complaint and the Findings of Fact and Conclusions of Law contained in the Consent Order and this Supplemental 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 Defendants; (b) any proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a and/or Part 3 of the Commission's Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2014); and/or (c) any proceeding to enforce the terms of this Supplemental Order;

12. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 22 of this Supplemental Order, of any bankruptcy filed by, on behalf of, or against either Defendant, whether inside or outside the United States; and,

13. Agree that no provision of this Supplemental Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Defendants in any other proceeding.

III. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Supplemental Order and that there is no just reason for delay. Therefore, the Court directs the entry of the following restitution, civil monetary penalty and equitable relief, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

THE PARTIES AGREE AND THE COURT FINDS:

14. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

15. Defendant Bloom resides in Monmouth Beach, New Jersey. He was the sole owner of NHM. On July 30, 2009, Bloom pled guilty to a five-count Superseding Information charging him with one count each of securities fraud, mail fraud, wire fraud, money laundering and corruptly endeavoring to obstruct and impede the due administration of the internal revenue laws. *U.S. v. Bloom*, Case No. 09-cr-367 (JGK) (S.D.N.Y.).

16. Defendant NHM was a New York limited liability company, which operated the North Hills Fund, a New York limited partnership. Bloom was the owner and the sole principal of NHM. At all relevant times, Bloom acted as an agent of NHM.

**IV. RESTITUTION, CIVIL MONETARY PENALTY AND
OTHER EQUITABLE RELIEF**

IT IS FURTHER ORDERED THAT:

A. Restitution

17. The Court finds that Defendant Bloom is likely to be obligated to pay restitution to victims of his fraudulent scheme in the concurrent criminal prosecution, *United States v. Mark Evan Bloom*, 09-cr-367 (JGK) (S.D.N.Y.). Accordingly, the Court will not enter a duplicative restitution obligation in this case.

B. Civil Monetary Penalty

18. Defendants shall pay a civil monetary penalty jointly and severally (including prejudgment and post-judgment interest) in the amount of twenty-six million

dollars (\$26,000,000) (the "CMP Obligation"). Pre-judgment interest shall accrue on the CMP Obligation commencing on February 25, 2009. Post-judgment interest shall accrue on the CMP Obligation commencing on the date of entry of this Supplemental Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Supplemental Order pursuant to 28 U.S.C. § 1961.

19. Defendants shall pay the CMP Obligation to the Commission 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 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
ATIN: Accounts Receivable -- AMZ-300
Email Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment is to be made by electronic transfer, Defendants shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies Defendants and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

C. Partial Payments and Satisfaction of Judgment

20. Partial Payments: Any acceptance by the Commission of partial payment of the CMP Obligation shall not be deemed a waiver of the requirement to make further payments pursuant to this Supplemental Order, or a waiver of the Commission's right to compel payment of any remaining balance.

21. Satisfaction of Judgment: Upon termination of the CMP Obligation, satisfaction of judgment will be entered as to Defendants.

V. MISCELLANEOUS PROVISIONS

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

Notice to the Commission: Director, Division of Enforcement
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Notice to Defendants
Bloom and NHM: Mark Evan Bloom
45 Ocean Avenue
Apartment 8I
Monmouth Beach, New Jersey 07750

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

23. Change of Address/Phone: Until such time as Defendant Bloom satisfies in full his CMP Obligation, he shall provide written notice to the Commission by certified mail of any change to his telephone number, email address or mailing address within ten (10) calendar days of the change.

24. Entire Agreement and Amendments: This Supplemental 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 Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

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

26. **Waiver:** The failure of any party to this Supplemental Order to require performance of any provision of this Supplemental Order shall in no manner affect the right of the party at a later time to enforce the same or any other provision of this Supplemental Order. No waiver in one or more instances of the breach of any provision contained in this Supplemental 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 Order.

27. **Continuing Jurisdiction of this Court:** 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 the Court, to assure compliance with this Supplemental Order and for any other purpose relevant to this action.

28. **Equitable Relief Provisions:** The equitable relief provisions of this Supplemental Order shall be binding upon Defendants, upon any person under their authority or control, and upon any person who receives actual notice of this Supplemental

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

29. Counterparts and Facsimile Execution: This Supplemental 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 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 Order.

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

31. Authority: Bloom hereby warrants that he is the sole principal of NHM and that this Supplemental Order has been duly authorized by NHM.

IT IS SO ORDERED, at New York, New York

on this 1ST day of March, 2015.



HON. JOHN G. KOELTL
UNITED STATES DISTRICT JUDGE

12-18-'14 17:25 FROM-

212-868-1271

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APPROVED FOR ENTRY BY:

PLAINTIFF U.S. COMMODITY FUTURES
TRADING COMMISSION

By: *Glenn Chernigoff*
Richard Glaser
Deputy Director
Alison Wilson
Chief Trial Attorney
Glenn Chernigoff
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Division of Enforcement
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Facsimile - (202) 418-5523
gchernigoff@cfto.gov

Dated: February 14, 2015

DEFENDANT MARK EVAN BLOOM

MEB

Dated: 12-16-14

DEFENDANT NORTH HILLS MANAGEMENT, LLC

By: *MEB*

Dated: 12-16-14

Title: Managing member