

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

JAMES GIACOMO BRANDOLINO,

Respondent.

) CFTC Docket No. 12- 11
)
) **ORDER INSTITUTING**
) **PROCEEDINGS PURSUANT TO**
) **SECTIONS 6(c) AND 6(d) OF THE**
) **COMMODITY EXCHANGE ACT,**
) **AS AMENDED, MAKING FINDINGS**
) **AND IMPOSING REMEDIAL**
) **SANCTIONS**

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I.

The Commodity Futures Trading Commission (“Commission” or “CFTC”) has reason to believe that during the period between at least July 2006 to January 2011, James Giacomo Brandolino, *f/k/a* James Louis Brandolino (“Brandolino”), doing business as Lloyd Lewis Capital Inc. (“LLC”) and as Falcon Capital Partners LLC (“FCP”) (collectively, “Respondent”), violated: (i) Section 4b(a)(2)(i)-(iii) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008; (ii) Section 4b(a)(1)(A)-(C) 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”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008; and (iii) Section 4o(1) of the Act, to be codified at 7 U.S.C. § 6o(1). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Brandolino 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, Respondent 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, Respondent acknowledges service of this Order Instituting Proceedings Pursuant to Sections 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 entry of this Order and 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 or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce

III.

The Commission finds the following:

A. SUMMARY

Respondent, individually and doing business as LLC and FCP, conducted a fraudulent scheme through at least two successively operated commodity pools: the Lloyd Lewis Capital Fund (“LL Pool”) and the Falcon Stock Index Fund, LP (“Falcon Pool”). Respondent solicited participants to invest first in the LL Pool and later in the Falcon Pool to trade commodity futures, including, among other things, exchange traded futures contracts on equity indices such as the Standard and Poor’s (“S&P”) Equity Index contracts and US Treasury Notes. When soliciting and accepting participant funds, Respondent misrepresented the performance of the pools. Respondent subsequently issued false periodic statements to pool participants that failed to disclose significant trading losses and misrepresented the value of pool participants’ interests in the pools.

From July 2006 to January 2011, Respondent accepted approximately \$3.6 million from pool participants. Of those funds, Respondent misappropriated approximately \$1 million of pool funds for his own personal purposes, lost approximately \$781,000 trading futures, and used about \$1.3 million to pay principal and purported profit returns to existing pool participants in a manner typical of a Ponzi scheme.²

B. RESPONDENT

James Giacomo Brandolino is forty-two years old and previously resided in Joliet, Illinois. He has been registered with the Commission as a floor broker since February 2003 and as an associated person (“AP”) of numerous entities between 1997 and the present. As relevant here, he was registered as an AP of LLC from September 1999 through February 2004, and as an AP of FCP from February 2007 through September 2008. From 2003 to January 2011, Respondent did business as LLC and FCP, both of which became defunct corporations.

C. OTHER RELEVANT ENTITIES

Lloyd Lewis Capital Inc. was an Illinois corporation incorporated in 1999 and involuntarily dissolved in November 2003. Its principal place of business was Chicago, Illinois,

the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

² On January 3, 2011, Respondent issued refund checks to two Falcon Pool participants totaling \$466,241 that he knew would not clear. The checks were returned for insufficient funds, and on January 12, 2011, Respondent approached federal law enforcement and admitted his fraud. On August 9, 2011, Brandolino pled guilty to a criminal Information charging him with wire fraud pursuant to 18 U.S.C. § 1341 in connection with his fraudulent commodity pool scheme. He is currently in federal custody awaiting sentencing. *United States v. Brandolino*, 11-cr-00033 (N.D. Ill. filed Jan. 18, 2011).

and it did business both as LLC and “Lloyd Lewis Capital Management Inc.” Brandolino controlled its day to day operations before and after its corporate dissolution. It was registered with the Commission as an introducing broker (“IB”) from September 1999 until April 2001 and as a commodity trading advisor (“CTA”) from September 2002 until February 2004. LLC operated a commodity pool, the LL Pool.

Falcon Capital Partners LLC was an Illinois limited liability corporation established on December 31, 2007 and involuntarily dissolved on June 11, 2010. Its principal place of business was Chicago, Illinois, and it had previously been incorporated as Falcon Capital Partners, Inc. on September 22, 2006. Brandolino controlled its day to day operations before and after its corporate dissolution. It was registered with the Commission as a commodity pool operator (“CPO”) and a CTA from February 26, 2007 to September 12, 2008. Falcon Capital Partners LLC operated a commodity pool, the Falcon Pool.

D. FACTS

1. Formation and Operation of the Pools

Respondent established LLC in 1999 as an IB and operated LLC in that capacity until 2002, when he ceased its operation. In early 2003, an acquaintance expressed interest in having Respondent trade commodity futures on her behalf. Respondent accepted funds from the acquaintance that he deposited into LLC’s existing bank account, which he had never closed. Respondent used those funds to trade commodity futures in trading accounts in his own name at various futures commission merchants (“FCMs”). Respondent quickly lost those funds in trading. In order to disguise his losses, he sent his acquaintance false account statements showing significant returns. As a result, Respondent received referrals, solicited customers, and received additional funds that he pooled. In soliciting and accepting funds, Respondent did business both as LLC and as Lloyd Lewis Capital Management Inc., a fictitious entity never incorporated. In 2003, LLC began to operate a commodity pool by soliciting, pooling, and trading customer funds through accounts in Respondent’s name. Although LLC was involuntarily dissolved as a corporation in 2003, Respondent continued doing business as LLC and continued to accept pool participant funds for the LL Pool.

From at least 2003 through at least 2007, Respondent accepted funds from about twenty friends, family members, and other members of his community for the purpose of pooling investments for trading commodity futures, among other investments, through the LL Pool. At his direction, the LL Pool participants wrote checks to LLC. Respondent pooled and transferred some of their funds directly into his personal trading accounts, and also used the LLC bank account as his personal bank account.

By mid 2007, Respondent had either misappropriated or lost through his unsuccessful trading all but approximately \$150,000 to \$200,000 of the LL Pool participants’ funds. He then established the Falcon Pool, which FCP operated.

Respondent opened a Falcon Pool trading account and transferred the remaining LL Pool funds into it. He did not disclose this misappropriation of LL Pool funds to the pool participants; instead, he sent them false account statements to hide the misappropriation. Moreover, in

soliciting funds for the new Falcon Pool, Respondent told prospective participants that he had personally put up \$150,000 to \$200,000 into the pool, failing to disclose that he had stolen those funds from LL Pool participants.

Between 2007 and June 2008, Respondent accepted additional funds from additional pool participants for the purposes of pooling investments for trading commodity futures, among other investments, through the Falcon Pool.

By June 2008, the Falcon Pool's remaining funds totaled approximately \$550,000, and Respondent closed its trading account. Instead of returning the Falcon Pool's funds to the participants, Respondent misappropriated them. Respondent transferred the funds into his personal bank account, which he used to pay personal expenses. Respondent also used those funds to finance his personal trading, losing approximately \$275,000. Although he had closed the Falcon Pool trading account, Respondent continued accepting additional funds from prospective Falcon Pool participants. He concealed that he already had lost or misappropriated all of the Falcon Pool's funds.

2. Misrepresentations and False Statements Concerning the LL Pool

From at least 2003 through January 2011, Respondent knowingly misrepresented the performance of the LL Pool to pool participants and prospective pool participants and knowingly provided them with false performance tables and trading statements that misrepresented the pool's track record. From the inception of the LL Pool in 2003 to January 2011, Respondent created and sent the pool participants false account statements that consistently showed healthy rates of return.

In 2008, Respondent provided LL Pool participants with a Composite Performance Table for the LL Pool that falsely represented that the LL Pool experienced a total rate of return of 30.89% for the period January 2007 through December 2007. In fact, to the extent that Respondent traded any commodity futures accounts for or on behalf of the LL Pool, those accounts had sustained trading losses from the beginning of the LL Pool's existence. Moreover, by the end of 2007, Respondent had withdrawn the remaining \$150,000 to \$200,000 from the LL Pool and deposited those funds into the Falcon Pool. Similarly, in 2008, Respondent knowingly distributed a false Statement of Financial Condition ("Statement") for the LL Pool as of December 2007. This Statement falsely reported a balance of U.S. Treasury Securities at MF Global, a registered FCM, in the amount of \$40.7 million. In fact, when Respondent issued the Statement, the LL Pool trading account with MF Global had less than \$300,000 in it.

3. Misrepresentations and False Statements Concerning the Falcon Pool

From at least June 2008 through January 2011, after Respondent closed the Falcon Pool's trading account, Respondent knowingly misrepresented the performance of the Falcon Pool to pool participants and prospective pool participants and knowingly issued or caused to be issued false statements to the Falcon Pool participants.

For example, Respondent hosted "customer appreciation" cruises on Lake Michigan for participants in 2008 and 2009, giving them the impression that the Falcon Pool was doing very well. During the cruise in the fall of 2009, Respondent told potential and actual participants that

the Falcon Pool was doing well and had approximately 300 pool participants and \$300 to \$400 million in assets. Similarly, in 2010, Respondent told at least one prospective participant that the Falcon Pool was making an 18% return.

From at least June 2008 through January 2011, Respondent issued or caused to be issued false account statements to Falcon Pool participants to give the illusion that the pool was still in operation. For example, an account statement Respondent sent to at least one Falcon Pool participant falsely reported monthly profits for every month for the time period March 2007 through and including September 30, 2010, and falsely reported that the Falcon Pool's rate of return for that time period was 116.30%. In October 2010, the account statements Respondent mailed to Falcon Pool participants indicated that the Falcon Pool had a total equity of about \$7.5 million, when in reality the pool had shut down and had ceased trading.

4. Respondent Misappropriated Pool Participant Funds

From July 2006 to January 2011, Respondent received and accepted approximately \$3.6 million from participants. During this period, Respondent misappropriated approximately \$1 million of those funds for various personal expenses and purchases, including, but not limited to, a BMW, a Rolex watch, and a down payment on an unbuilt condominium in Greece. Respondent lost approximately \$781,000 while trading during this period. Respondent used approximately \$1.3 million to pay back principal and purported profit, as is typical of a Ponzi scheme.

E. LEGAL DISCUSSION

1. Respondent Violated Section 4b of the Act

It is a violation of the Act for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce (or for future delivery that is) made, or to be made, for or on behalf of any other person: (i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof; or (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person. Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C). The predecessor Section, Section 4b(a)(2)(i)-(iii), 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), applies to conduct before June 18, 2008 and contains similar prohibitions against cheating, defrauding, attempting to cheat or defraud, making or causing to be made any false report or statement, and deceiving or attempting to deceive in connection with futures contracts.

a. Misrepresentations and Omissions

To establish that a respondent violated Section 4b(a) of the Act through misrepresentations and/or omissions, the Commission need only show that: (1) the respondent misrepresented or failed to disclose certain information; (2) the misrepresentation or omission was "material"; and (3) the respondent acted with scienter. *CFTC v. R.J. Fitzgerald & Co., Inc.*,

310 F.3d 1321, 1328 (11th Cir. 2002) (citations omitted), *cert. denied*, 543 U.S. 1034 (2004); *see also In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,313 (CFTC July 19, 1999), *aff'd in relevant part sub nom. Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000); *Hammond v. Smith Barney Harris Upham & Co., Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659 (CFTC Mar. 1, 1990). All three elements are present in this matter, thus Respondent violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2006), with respect to acts occurring before June 18, 2008, and Section 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A) and (C), with respect to acts occurring on or after June 18, 2008.

“Whether a misrepresentation has been made depends on the ‘overall message’ and the ‘common understanding’ of the information conveyed.” *R.J. Fitzgerald*, 310 F.2d at 1328 (citing *Hammond*, Comm. Fut. L. Rep. ¶ 24,617 at 36,657, n.12). The allegedly false or misleading representations should be viewed through the eyes of an objectively reasonable person interpreting their overall message. *R.J. Fitzgerald*, 310 F.3d at 1329. A statement or omitted fact is material if “a reasonable investor would consider it important in deciding whether to make an investment.” *R.J. Fitzgerald*, 310 F.3d at 1328-29; *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 447 (D. N.J. 2000) (same); *see also Saxe v. E.F. Hutton & Co., Inc.*, 789 F.2d 105, 110 (2d Cir. 1986) (“material misrepresentations about the nature of the organization handling [an] account, the people [dealt] with, and the type of trading [the] funds were being used for would be sufficient to state a cause of action pursuant to the CEA”) (quoting *Psimenos v. E.F. Hutton & Co. Inc.*, 722 F.2d 1041, 1043-44 (2d Cir. 1983); *CFTC v. Commonwealth Fin. Group, Inc.*, 874 F. Supp. 1345, 1353-54 (S.D. Fla. 1994) (misrepresentations regarding the trading record of a firm or broker are fraudulent because past success and experience are material factors which a reasonable investor would consider when deciding to invest).

The scienter element is established when an individual’s “conduct involves intentional omissions or misrepresentations that present a risk of misleading customers, either known to the defendant or sufficiently manifest that the defendant ‘must have been aware’ of the risk.” *CFTC v. King*, No. 3:06-CF-1583-M, 2007 WL 1321762, at *2 (N.D. Tex. May 7, 2007) (citing *R.J. Fitzgerald*, 310 F.3d at 1328) (internal quotations omitted); *Wasnick v. Refco, Inc.*, 911 F.2d 345, 348 (9th Cir. 1990) (citation omitted) (holding that scienter is established when an individual’s acts are performed “with knowledge of their nature and character”). In order to meet the scienter requirement, the Commission must demonstrate that the misrepresentations and omissions were made intentionally or recklessly. *See Drexel Burnham Lambert Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988) (recklessness is sufficient to satisfy scienter requirement); *see also CFTC v. Noble Metals Int’l, Inc.*, 67 F.3d 766, 774 (9th Cir. 1995) (discussing Section 4b’s scienter requirement). To prove that the conduct is intentional, the Commission must demonstrate that the actions of respondents were “intentional as opposed to accidental.” *Lawrence v. CFTC*, 759 F.2d 767, 773 (9th Cir. 1985). To prove that conduct is reckless, the Commission must show that it “departs so far from the standards of ordinary care that it is very difficult to believe the [actor] was not aware of what he was doing.” *Drexel Burnham Lambert*, 850 F.2d at 748 (alteration in original) (internal quotation marks and citation omitted).

Respondent knew the actual performance of the pools’ trading accounts but intentionally misrepresented the profitability of the pools and failed to disclose significant trading losses to prospective and actual pool participants. Accordingly, Respondent acted with the requisite

scienter. Moreover, the misrepresentations that the pools were profitable were material, because any reasonable pool participant would want to know the true profitability of the pool's trading and/or the true value of his or her interest in the pool, particularly since such information is important in making an investment decision. Through Respondent's misrepresentations and omissions of material fact, and issuance of false account statements, Respondent violated Section 4b(a)(2)(i), (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect to acts occurring before June 18, 2008, and he violated Section 4b(a)(1)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C), with respect to violations occurring on or after June 18, 2008.

b. Misappropriation

Respondent misappropriated customer funds to pay personal expenses as well as to make distributions to other participants as is typical of a Ponzi scheme. Misappropriation of customer funds constitutes "willful and blatant" fraud in violation of "Section 4b(a) of the Act." *CFTC v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d 676, 687 (D. Md. 2000), *aff'd in relevant part, vacated in part sub nom. CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002); *see also In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,315 (CFTC July 19, 1999) *aff'd in relevant part sub nom. Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000) (respondents violated Section 4b of the Act by surreptitiously retaining money in their own bank accounts that should have been traded on behalf of the investors).

Respondent received and accepted approximately \$3.6 million from participants. He then misappropriated approximately \$1 million of those funds for various personal expenses and purchases, and used approximately \$1.3 million to pay back principal and purported profit to participants as is typical of a Ponzi scheme. Through Respondent's misappropriation of participant funds, Respondent violated Section 4b(a)(2)(i), (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect to acts occurring before June 18, 2008, and Section 4b(a)(1)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C), with respect to violations occurring on or after June 18, 2008.

c. False Statements

Issuing or causing to be issued false statements to investors concerning the profitability of trading conducted on their behalf violates Section 4b(a)(2)(B) of the Act. *See CFTC v. FX Prof'l Intern. Solutions, Inc.*, No. 1:10-cv-22311-PCH, 2010 WL 5541050 at *6 (S.D. Fla. Nov. 29, 2010) (delivering false account statements to customers regarding transactions regulated by the Commission constitutes a violation of Section 4b(a)); *CFTC v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d 676, 686 (D. Md. 2000) (finding that defendants violated Section 4b(a) because they issued false account statements); *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 447-48 (D.N.J. 2000) (defendant violated the CEA's anti-fraud provisions by falsely stating that he would set up an account in the customer's name, reporting erroneous account balances, and preparing and sending false 1099 tax forms); *CFTC v. Skorupskas*, 605 F. Supp. 923, 932-33 (E.D. Mich. 1985) (defendant violated Section 4b(a) of the Act by issuing false monthly statements to customers).

During the relevant period, Respondent issued to participants false account statements. By knowingly issuing such false statements, Respondent violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006), with respect to acts occurring before June 18, 2008, and Section 4b(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(B), with respect to violations occurring on or after June 18, 2008.

2. Respondent Violated Section 4o(1) of the Act

Section 4o(1) of the Act broadly prohibits fraudulent transactions by CPOs and their APs. Section 4o(1)(A) makes it unlawful for a CPO or its APs to employ any device, scheme or artifice to defraud any participant or prospective participant by “use of the mails or any means or instrumentality of interstate commerce.” Section 4o(1)(B) of the Act makes it unlawful for a CPO or its APs to engage in any transaction, practice or course of business that operates as a fraud or deceit upon any participant or prospective participant by “use of the mails or any means or instrumentality of interstate commerce.” Section 1a(5) of the Act defines a CPO as:

any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market

Section 4o(1)(A), (B) of the Act applies to all CPOs, whether registered, required to be registered, or exempted from registration. *CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985); *CFTC v. Aurifex Commodities Research Co.*, 2008 U.S. Dist. LEXIS 7548, *20-21 (W.D. Mich. Feb. 1, 2008) (although they were not registered as such, defendants were acting as CPOs, and therefore their misappropriation of customer funds constituted a violation of Section 4o(1)); *see also*, *CFTC v. Vartuli*, 228 F.3d 94, 103 (2d Cir. 2000) (unregistered commodity trading advisor also liable under Section 4o(1)).

Respondent, while doing business as LLC, acted as a CPO. Respondent also acted as an AP of a CPO from December 31, 2007 to June 11, 2010, when FCP was a viable corporate entity, and Respondent solicited funds, securities, or property for FCP as its agent. While acting as a CPO and an AP of a CPO, Respondent used email and other instrumentalities of interstate commerce to communicate with pools participants. For these reasons, although Respondent was not registered as a CPO, Section 4o(1) applied to his activities because he was acting as a CPO. *See Skorupskas*, 605 F. Supp. at 932. As a result, Respondent violated Section 4o(1) of the Act.

Respondent also violated Section 4o(1) of the Act by the same conduct that violated Section 4b(a) of the Act (i.e., misrepresentations and omissions, misappropriation, and the issuance of false statements, all as set forth above). *Skorupskas*, 605 F. Supp. at 932-33. Moreover, unlike Sections 4b(a) and 4o(1)(A) of the Act, the language of Section 4o(1)(B) does not require “knowing” or “willful” conduct as a prerequisite for establishing liability. In this regard, the Commission has held that “[a]lthough scienter must be proved to establish a violation of Section 4b and 4o(1)(A), it is not necessary to establish a violation of Section 4o(1)(B).” *In re Kolter*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) 26,262, 1994 CFTC LEXIS308,

at *22 (CFTC Nov. 8, 1994), citing *Messer v. E.F. Hutton & Co.*, 847 F.2d 673, 678-79 (11th Cir. 1988).

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated: (i) Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008; (ii) Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008; and (iii) Section 4o(1) of the Act, to be codified at 7 U.S.C. § 6o(1).

V.

OFFER OF SETTLEMENT

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

- A. Acknowledges receipt of service of this Order;
- B. Admits to the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based upon violation of or enforcement of the 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 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; 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 Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2011), relating to, or arising from, this proceeding; and 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 proceeding;
- D. Stipulates that the record upon which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer; and

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

1. makes findings by the Commission that Respondent violated: (i) Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008; (ii) Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008; and (iii) Section 4o(1) of the Act, to be codified at 7 U.S.C. § 6o(1);
2. orders Respondent to cease and desist from violating Sections 4b(a)(1)(A)-(C) and 4o(1) of the Act, as amended by the CRA and 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. §§ 6b(a)(1)(A)-(C) and § 6o(1);
3. orders that Respondent be permanently prohibited from engaging, directly or indirectly, in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(40)), and all registered entities shall refuse them trading privileges;
4. orders Respondent to pay a civil monetary penalty in the amount of one million U.S. Dollars (\$1,000,000) within ten (10) days of the date of the entry of this Order; and
5. orders Respondent to comply with the undertakings consented to in the Offer and set forth below in Section VI of this Order.

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

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Sections 4b(a)(1)(A)-(C) and 4o(1) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C) and 6o(1);
- B. Respondent is permanently prohibited from engaging, directly or indirectly, in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(40)), and all registered entities shall refuse them trading privileges;

- C. Respondent shall pay a civil monetary penalty in the amount of one million U.S. Dollars (\$1,000,000), plus post-judgment interest, within ten (10) days of the date of entry of this Order. If the civil monetary penalty is not paid within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue beginning 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. Respondent shall pay the civil monetary penalty by an 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 an electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the following address:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables/AMZ 341
MARAD, IMLS, CFTC, GAO, CPSC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, then Respondent shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the civil monetary penalty with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent shall simultaneously submit copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address; and

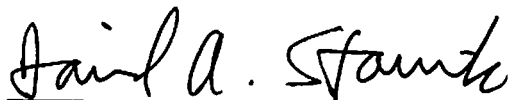
- D. Respondent shall comply with the following undertakings as consented to and set forth in the Offer:
1. Respondent agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any findings 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.
 2. Respondent agrees that he shall never engage, directly or indirectly, in:
 - a. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in

Commission Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2011)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for Respondent’s own personal account or for any account in which Respondent has a direct or indirect interest;

- b. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on Respondent’s behalf;
- c. 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, and/or forex contracts;
- d. 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, and/or forex contracts;
- e. 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and/or
- f. acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(38)) registered, exempted from registration, or required to be registered with the Commission except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

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 27, 2012