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7
8 IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

9 U.S. COMMODITY FUTURES)
10 TRADING COMMISSION) Case No. SACV 11-1718-JVS
11)
Plaintiff,)
12 v.)
13 NATIONAL EQUITY HOLDINGS, INC., a)
California Corporation, ROBERT J.)
14 CANNONE, an individual, THOMAS B.)
BREEN, an individual, and FRANCIS)
15 FRANCO, an individual)
16 Defendants.)
17)

18 CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER STATUTORY AND
19 EQUITABLE RELIEF AGAINST
20 THOMAS BREEN

21 On November 8, 2011, Plaintiff U.S. Commodity Futures Trading Commission (the
22 “Commission” or “CFTC”) filed a Complaint against Defendants National Equity Holdings, Inc.,
23 (“NEH”), Robert Cannone (“Cannone”), Thomas Breen (“Breen”) and Francis Franco
24 (“Franco”) collectively (“Defendants”) for Permanent Injunction, Civil Penalties, and Other
25 Equitable Relief, for violations of the Commodity Exchange Act, as amended by the Food,
26 Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC
27 Reauthorization Act of 2008) (“CRA”), §§ 13101-13204, 122 Stat. 1651 (enacted June 18,
28 2008), to be codified at 7 U.S.C. § 1 *et seq.* (2008) and the Commission’s Regulations

1 (“Regulations”) promulgated thereunder, 17 C.F.R. § 1.1 *et seq.* (2011)]. On July 12, 2012, this
2 Court entered a partial Consent Order of Permanent Injunction against Defendant Franco.
3 (Docket # 32) On April 11, 2013, this Court entered a Consent Order of Permanent Injunction
4 and other Statutory and Equitable Relief against Defendants Cannone and National Equity
5 Holdings, Inc.. (Docket # 47)
6

7 **I.**

8 **CONSENTS AND AGREEMENTS**

9 To effect settlement of the matters alleged in the Complaint against Breen or (“Defendant
10 Breen”) without a trial on the merits or any further judicial proceedings, Defendant Breen:

11 1. Consents to the entry of this Consent Order of Permanent Injunction and Other
12 Relief Against Breen (“Consent Order”);

13 2. Affirms that Breen has read and agreed to this Consent Order voluntarily, and that
14 no promise, other than as specifically contained herein, or threat, has been made by the CFTC or
15 any member, officer, agent or representative thereof, or by any other person, to induce consent to
16 this Consent Order;

17 3. Acknowledges service of the summons and Complaint;

18 4. Admits the jurisdiction of this Court over Breen and the subject matter of this
19 action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1;
20

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

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

25 7. Waives:

26 (a) any and all claims that Defendant may possess under the Equal Access to
27 Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by
28

1 the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.*
2 (2011), relating to, or arising from, this action;

3 (b) any and all claims that Breen may possess under the Small Business
4 Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847,
5 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007),
6 relating to, or arising from, this action;

7
8 (c) any claim of Double Jeopardy based upon the institution of this action or the
9 entry in this action of any order imposing a civil monetary penalty or any other relief, including
10 this Consent Order; and

11 (d) any and all rights of appeal from this Consent Order;

12
13 8. Consents to the continued jurisdiction of this Court over Breen for the purpose of
14 implementing and carrying out the terms and conditions of all orders and decrees, including
15 orders setting the appropriate amounts of restitution, disgorgement and civil monetary penalty,
16 that may be entered herein, to entertain any suitable application or motion for additional relief
17 within the jurisdiction of the Court, to assure compliance with this Consent Order and for any
18 other purpose relevant to this action, even if Breen now or in the future resides outside the
19 jurisdiction of this Court;

20
21 9. Agrees that Breen will not oppose enforcement of this Consent Order by alleging
22 that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any
23 objection based thereon;

24 10. Agrees that neither Breen, nor any of his agents or employees under his authority
25 or control shall take any action or make any public statement denying, directly or indirectly, any
26 allegation in the Complaint, or creating or tending to create the impression that the Complaint
27 and/or this Consent Order is without a factual basis; provided, however, that nothing in this
28 provision shall affect their: (a) testimonial obligations, or (b) right to take legal positions in other

1 proceedings to which the Commission is not a party. Breen shall undertake all steps necessary to
2 ensure that his agents or employees under their authority or control understand and comply with
3 this agreement; and

4 11. Admits to all of the allegations in the Complaint. Further, Breen agrees and
5 intends that the allegations contained herein and in the Complaint shall be taken as true and
6 correct and be given preclusive effect, without further proof, in the course of: (a) any current or
7 subsequent bankruptcy proceeding filed by, on behalf of, or against NEH and/or Breen; (b) any
8 proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a, and/or Part 3 of the
9 Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2011); and/or (c) any proceeding to enforce the terms of
10 this Consent Order.
11

12 12. Agrees to provide immediate notice to this Court and the Commission by certified
13 mail, in the manner required by paragraph 23 of Part V of this Consent Order, of any bankruptcy
14 proceeding filed by, on behalf of, or against Defendants, whether inside or outside the United
15 States, and
16

17 13. Agrees that no provision of this Consent Order shall in any way limit or impair
18 the ability of any other person or entity to seek any legal or equitable remedy against Breen in
19 any other proceeding.
20

21 II.

22 **THE PARTIES AGREE AND THE COURT HEREBY FINDS:**

23 **A. Findings of Fact**

24 **1. The Parties To This Consent Order**

25 14. Plaintiff Commodity Futures Trading Commission is an independent federal
26 regulatory agency that is charged by Congress with administering and enforcing the Act, as
27 amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et*
28 *seq.* (2011).

1 15. **Thomas Breen** was the corporate secretary and director of NEH, and, at all relevant
2 times, controlled the operations of NEH, an unregistered commodity pool operator (“CPO”). He
3 was responsible for key aspects of the operations of NEH, including soliciting and
4 communicating with participants and prospective participants, and creating and issuing account
5 statements concerning the pool’s trading to participants. At the time the complaint was filed,
6 Breen resided in San Juan Capistrano, California. Breen was previously registered with the
7 Commission as an AP of two Futures Commission Merchants but has not been registered in any
8 capacity with the Commission since March 1988.

10 **2. The Fraudulent Solicitation of Pool Participants**

11 16. Throughout the relevant period, NEH acted as a commodity pool operator (“CPO”)
12 by soliciting and/or accepting funds for the purpose of pooling funds to trade commodity futures.
13 NEH was never registered with the Commission in any capacity. NEH operated through the acts
14 and omissions of its agents, employees, and officers, including Breen. Breen, together with
15 Cannone and Franco, operated NEH together and conspired and schemed to defraud individuals
16 who became participants in the commodity futures pool Defendants operated. Each act or
17 omission by Cannone, Breen, or Franco in furtherance of the fraudulent scheme was done with
18 the knowledge or consent of the others, and was done knowingly or with reckless disregard for
19 the truth.

20 17. In approximately May 2009, NEH, through Breen and the other defendants began
21 soliciting individuals to participate in a commodity pool which would trade futures.

22 18. Cannone and Breen solicited most of the participants through personal meetings
23 or by telephone calls.

24 19. In their solicitations, Breen and the other defendants prepared and provided
25 prospective participants with a document entitled “Trading System Discussion Points” (“NEH
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1 Discussion Points”) which described the trading program to be employed by NEH and touted the
2 ability of the NEH trader, who was Franco. The document referenced NEH’s “experienced
3 futures trader with 7 years of hands-on, real-time experience” who “brings proven trading
4 success and a long track record of consistent performance in a very niche market – Future
5 Indices.” It also noted his “development of sophisticated technical models and proprietary
6 charts,” and referenced his successful, yet false track record.
7

8 20. In an effort to mislead prospective participants regarding the potential risks
9 associated with trading futures, the NEH Discussion Points represented that the “disciplined”
10 trading approach used by Franco was “characterized by capturing significantly high returns with
11 low principal risk” and that “[o]nce implemented, the National Equity trading method is
12 designed to and may substantially minimize overall equity risk and potentially increase the
13 trader’s returns.”
14

15 21. Accompanying the downplaying of risk in their solicitations, Defendants,
16 including Breen, promoted the likelihood of earning substantial profits. Specifically, in their
17 NEH Discussion Points, Defendants claimed that the trading strategy employed by Franco for
18 NEH “has proven to be exceptionally successful in both up and down markets.”
19

20 22. Drawing upon a false track record of largely hypothetical trading “practice,” the
21 NEH Discussion Points stated that “the data available has shown the system to produce
22 substantially high returns annually ... [and] a strong emphasis on preservation of capital with the
23 by-product being high returns.”

24 23. Attempting to instill confidence in the potential participants, when discussing
25 Franco’s approach to trading, the NEH Discussion Points maintained that Franco’s unique
26 trading methodology “allows for agility in managing the trading platform and is not market
27 performance driven.” Defendants, including Breen, claimed that implementation of stop losses
28 would limit the prospective pool participants capital exposure.

1 24. Breen, along with Cannone, reiterated and emphasized the information contained
2 in the NEH Discussion Points document through their oral solicitations, including touting
3 Franco's purported experience and success, the likelihood of substantial profits and the minimal
4 risks of trading futures.

5 25. Breen, along with Cannone, encouraged potential participants to invest in order to
6 avoid losing out on the unique opportunity to make money with NEH.
7

8 26. As part of the oral solicitations to further legitimize the scheme, Breen, along with
9 Cannone, introduced Franco to prospective participants and had him discuss his trading
10 methodology and use trader jargon to impress the prospective participants. Franco repeated the
11 claims about his experience and success and even traded in front of the prospective participants,
12 without disclosing the fact that he was trading a simulated account and not real money.
13

14 27. Franco was neither the experienced, nor the successful futures trader Defendants
15 claimed he was. As Breen, Cannone and Franco knew, Franco had very limited experience with
16 trading commodity futures and he had not been successful. Also, Defendants all knew Franco's
17 trading methodologies did not reduce the inherent risks of trading futures.

18 28. Breen and the other defendants failed to disclose to prospective participants that
19 NEH was not registered with the Commission as required to operate a commodity futures pool
20 and trade on behalf of others through a pool, and that Breen, Cannone, or Franco were
21 not registered as an Associated Person of NEH, as required to solicit prospective pool
22 participants.
23

24 29. In making their decisions to invest with Defendants, pool participants relied upon
25 these representations and omissions alleged above, including but not limited to the claims that
26 their funds were being traded by an experienced and successful trader, the promises of high
27 returns and low risk of loss, and the failure to disclose their lack of required registration.
28

1 30. Once pool participants decided to participate in the pool, Breen, along with
2 Cannone, provided participants with an informational questionnaire that asked for information
3 such as the customer's income, trading experience, and basic contact information. Several
4 participants said this added to the air of legitimacy of Defendants.
5

6 31. Between June 2009 and April 2010, Defendants successfully solicited and
7 accepted over \$1.4 million from individuals to trade commodity futures through the pool.
8 Cannone and Breen directed the pool participants to send their money to the NEH corporate bank
9 account.

10 32. Defendants required pool participants to execute a purchase agreement/
11 promissory note that committed their funds to the trading program. The note included language
12 that NEH was to make a monthly distribution to the holder of the note based upon the profits
13 earned through the trading for each month. Defendants, including Breen, encouraged
14 participants to have their monthly profit distributions reinvested, and most of the participants did
15 reinvest their purported monthly profit distributions. Some participants did receive monthly
16 distributions.
17

18 33. NEH pool participants understood that Cannone, Breen, and Franco, through
19 NEH, would pool their funds, use those funds to trade futures, and that they would participate or
20 share in the profits generated by the trading of futures.
21

22 34. Defendants made the monthly distribution payments to participants not from
23 trading profits, but rather from other participants' funds, in a manner akin to a Ponzi scheme.

24 **3. Defendants Concealed Trading Losses and Misappropriation**

25 35. During the relevant period, NEH opened commodity futures trading accounts at a
26 registered Futures Commission Merchant. In the account opening documents, NEH identified
27 the trading done by NEH as proprietary: trading on behalf of NEH only and not on behalf of any
28

1 pool of participants. Specifically, NEH represented that the funds in the account were corporate
2 funds.

3 36. In executing the account opening documentation, NEH represented that NEH was
4 not operating in any capacity that required registration.

5 37. NEH gave power of attorney to trade the NEH account to Franco.

6 38. Cannone funded the NEH proprietary trading account by wiring pool participant
7 funds from the NEH bank account into the trading account.

8 39. Defendants traded only a portion of the pool participants' funds in the proprietary
9 accounts and sustained overall and significant losses of approximately \$582,631.

10 40. Defendants, acting together, misappropriated a significant portion of funds in order to
11 make payments of purported profits or returns of principal to pool participants, to forward funds
12 to others, and for personal use. Defendants returned approximately \$422,000 to pool participants
13 and transferred approximately \$356,707 to various unknown third parties, with several payments
14 noted as payments on promissory notes or quarterly payments. Defendants used approximately
15 \$272,825 for their personal use, with Breen receiving approximately \$86,625. Cannone also
16 transferred approximately \$14,8000 to a company named Desert Concepts—a business Cannone
17 and Breen started as their exit strategy from NEH.

18 41. Defendants never disclosed to the pool participants that their funds were being
19 used for these purposes.

20 42. To conceal the losses, the misappropriation and the Ponzi scheme, Breen
21 participated in and was aware of the issuance of false account statements via email that reflected
22 profitable trading and substantial overall gains on a daily and monthly basis. NEH sent the false
23 account statements to the NEH pool participants on a monthly basis through the relevant period.

24 43. A year after commencing their fraudulent scheme, Defendants had depleted the
25 pool participant funds through their trading losses and misappropriation. Cannone, on behalf of
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1 the Defendants, sent a letter to the pool participants notifying them of the complete loss of their
2 investments and blaming the trading losses on a wild market.

3 44. Personally, at meetings between Cannone, Breen and several of the pool participants,
4 Defendants made promises, and sometimes even gave written guarantees to return the funds
5 invested. To date, participants have not received the promised funds.
6

7 **B. Conclusions of Law**

8 **Jurisdiction and Venue**

9 1. This Court has jurisdiction over this action pursuant to Section 6c of the Act, as
10 amended, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the Commission
11 that any person has engaged, is engaging, or is about to engage in any act or practice constituting
12 a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder,
13 the Commission may bring an action in the proper district court of the United States against such
14 person to enjoin such act or practice, or to enforce compliance with the Act, or any rule,
15 regulation or order thereunder.
16

17 2. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended,
18 7 U.S.C. § 13a-1(e), because Breen resides in this jurisdiction and the acts and practices in
19 violation of the Act occurred within this District.
20

21 3. In or in connection with orders to make, or the making of, contracts of sale of
22 commodities for future delivery, made, or to be made, for or on behalf of any other persons,
23 where such contracts for future delivery were or could be used for the purposes set forth in
24 Sections 4b(a)(1)(A), (B) and (C) of the CEA, 7 U.S.C. §§ 6b(a)(1)(A), (B) and (C) (2008),
25 Breen cheated or defrauded or attempted to cheat or defraud other persons, and/or willfully
26 deceived or attempted to deceive other persons by: (1) misrepresenting the experience and
27 success of the designated trader for the pool; (2) misrepresenting the likelihood of profits and the
28 risks associated with trading commodity futures; (3) issuing false account statements; (4)

1 misappropriating participants' funds; (5) failing to disclose that they were not properly
2 registered; and (6) failing to disclose their intended uses of pool participant funds.

3 4. Breen, acting on behalf of and through NEH, engaged in the acts and practices
4 alleged above knowingly, willfully or with reckless disregard for the truth.

5 5. By knowingly or recklessly making material misrepresentations and omissions as
6 alleged above, Breen violated Section 4b(a)(1)(A) and (C) of the CEA, 7 U.S.C. §§ 6b(a)(1)(A)
7 and (C) (2008).

8 6. By knowingly or recklessly using funds solicited from participants to trade
9 commodity futures for personal benefit, to pay for personal expenses, and to make payments to
10 participants in a manner akin to a Ponzi scheme, Breen misappropriated funds and n violated of
11 Sections 4b(a)(1)(A) and (C) of the CRA, 7 U.S.C. §§ 6b(a)(1)(A) and (C) (2008).
12

13 7. By knowingly or recklessly issuing or causing to be issued false account statements
14 to pool participants in an attempt to hide Defendants' unsuccessful trading and misappropriation,
15 Breen violated Section 4b(a)(1)(B) of the CRA, 7 U.S.C. §6b(a)(1)(B)(2008).
16

17 8. NEH acted as a CPO by soliciting, accepting or receiving funds from others and
18 engaging in a business that is of the nature of an investment trust, syndicate, or similar form of
19 enterprise, for the purpose of trading in commodities for future delivery on or subject to the rules
20 of a contract market.

21 9. Breen acted as an AP of NEH by soliciting funds for participation in a pool or
22 supervising the solicitation of funds or participation in a pool.
23

24 10. Breen while acting as an AP of NEH, violated Section 4o(1) of the CRA, as
25 amended, to be codified at 7 U.S.C. § 6o(1), in that Breen directly or indirectly employed or are
26 employing a device, scheme, or artifice to defraud participants or prospective participants, or
27 have engaged or are engaged in transactions, practices or a course of business which operated or
28 operate as a fraud or deceit upon participants or prospective participants by using the mails or

1 other means or instrumentalities of interstate commerce. Breen's fraudulent acts consisted of,
2 among other things as alleged above, the fraudulent solicitation of participants, the issuance of
3 false account statements, and the misappropriation of participant funds.

4
5 11. In soliciting prospective participants, on behalf of NEH, Breen failed to register
6 as an AP of NEH which was acting as an unregistered CPO, in violation of Section 4k(2) of the
7 CRA, 7 U.S.C. § 6k(2) (2008).

8 12. Breen directly or indirectly, controlled NEH and did not act in good faith, or
9 knowingly induced, directly or indirectly, the acts constituting NEH's violations of Sections
10 4b(a)(1)(A), (B) and (C), and 4k of the CRA, 7 U.S.C. §§ 6b(a)(1)(A), (B) and (C), 6k (2008).
11 Breen is therefore liable for these violations pursuant to Section 13(b) of the CEA, 17 U.S.C. §
12 13c(b) to the same extent as NEH.

13
14 13. The foregoing misappropriation, fraudulent acts, misrepresentations, omissions
15 and false statements of Breen occurred within the scope of his employment, office or agency
16 with NEH, he is therefore liable for NEH's violations of Sections 4b(a)(1)(A), (B) and (C), 4o,
17 and 4m of the CRA, 7 U.S.C. §§ 6b(a)(1)(A), (B) and (C), 6o and 6m (2008), pursuant to Section
18 2(a)(1)(B) of the CRA, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

19 14. The Court, being fully advised in the premises, finds there is good cause for entry
20 of this Consent Order and that there is no just reason for delay. The Court therefore directs a
21 permanent injunction and ancillary equitable relief pursuant to Section 6c of the Act, 7 U.S.C. §
22 13a-1, as set forth herein.

23
24 **III.**
25 **ORDER FOR PERMANENT INJUNCTION**

26 **IT IS HEREBY ORDERED THAT:**

27 Based upon and in connection with the conduct alleged in the Complaint,
28 pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, Breen is permanently

1 restrained, enjoined and prohibited from directly or indirectly engaging in conduct in violation of
2 Sections 4b(a)(1)(A), (B) and (C), 4k(2), 4m, and 4o(1)(A), (B) of the Act, as amended, to be
3 codified at 7 U.S.C. §§ 6b(a)(1)(A), (B) and (C), 6k(2), 6m, and 6o(1)(A), (B).

4 Defendant is also permanently restrained, enjoined and prohibited from directly or indirectly:

- 5
- 6 a. Trading on or subject to the rules of any registered entity (as that term is
7 defined in Section 1a of the Act, as amended, 7 U.S.C. § 1(a);
- 8 b. Entering into any transactions involving commodity futures, options on
9 commodity futures, commodity options (as that term is defined in Regulation 1.3
10 (hh), 17 C.F.R. § 1.3(hh) (2011)) (“commodity options”), swaps, security futures
11 products, and/or foreign currency (as described in Sections 2(c)(2)(B) and
12 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)
13 (“forex contracts”) for his own personal account or for any account in which they
14 have a direct or indirect interest;
- 15
- 16 c. Having any commodity futures, options on commodity futures,
17 commodity options, swaps, security futures products, and/or forex contracts
18 traded on their behalf;
- 19
- 20 d. Controlling or directing the trading for or on behalf of any other person or
21 entity, whether by power of attorney or otherwise, in any account involving
22 commodity futures, options on commodity futures, commodity options, swaps,
23 security futures products, and/or forex contracts;
- 24
- 25 e. Soliciting, receiving or accepting any funds from any person for the
26 purpose of purchasing or selling any commodity futures, options on commodity
27 futures, commodity options, swaps, security futures products, and/or forex
28 contracts;

- 1 f. Applying for registration or claiming exemption from registration with the
2 Commission in any capacity, and engaging in any activity requiring such
3 registration or exemption from registration with the Commission, except as
4 provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and/or
5
6 g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17
7 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person (as
8 that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a)
9 registered, exempted from registration or required to be registered with the
10 Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R.
11 § 4.14(a)(9) (2011).
12

13 **IV.**

14 **STATUTORY AND EQUITABLE RELIEF**

15
16 1. Breen shall pay restitution, plus post-judgment interest, to each defrauded Participant,
17 in accordance with the criminal order in the matter styled *U.S. v. Cannone*, SACR 11-263.

18
19 2. Defendant Breen shall pay a civil monetary penalty in the amount of Seven Hundred
20 Thousand Dollars \$700,000.00 (“CMP Obligation”), plus post-judgment interest, within thirty
21 (30) days of the date of the entry of this Consent Order. Post-judgment interest shall accrue on
22 the CMP Obligation beginning on the date of entry of this Consent Order and shall be
23 determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order
24 pursuant to 28 U.S.C. § 1961 (2006).

25
26 3. Defendant Breen shall pay his CMP Obligation by electronic funds transfer, U.S.
27 postal money order, certified check, bank cashier’s check, or bank money order. If payment is to
28 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:

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Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, Defendant shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendant Breen shall accompany payment of the CMP Obligation with a cover letter that identifies Defendant Breen and the name and docket number of this proceeding. Defendant Breen 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.

4. Breen shall cooperate fully and expeditiously with the CFTC, including the CFTC’s Division of Enforcement, in any current or future investigation, civil litigation or administrative matter related to the subject matter of this action. As part of such cooperation, Breen shall comply, to the full extent of his abilities, promptly and truthfully with any inquiries or requests for information including but not limited to, requests for production of documents and authentication of documents, shall provide assistance at any trial, proceeding, or investigation related to the subject matter of this action, including but not limited to, requests for testimony, depositions, and/or interviews. Should the CFTC file any additional action(s) related to the subject matter of this action, Breen is directed to appear in the judicial district in which such action(s) is pending, or in a suitable judicial district agreed to by the parties, to provide deposition testimony and trial testimony should such testimony be necessary.

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V.
MISCELLANEOUS PROVISIONS

1. 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:

Gretchen L. Lowe
Associate Director
U.S. Commodity Futures Trading Commission
1155 21st St, NW
Washington DC 20581

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

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

2. 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.
3. Invalidation: If any provision of this Consent Order or if 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.
4. Waiver: The failure of any party to this Consent Order or of any Participant at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or Participant at a later time to enforce the same or any other

1 provision of this Consent Order. No waiver in one or more instances of the breach of any
2 provision contained in this Consent Order shall be deemed to be or construed as a further
3 or continuing waiver of such breach or waiver of the breach of any other provision of this
4 Consent Order.

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6 5. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action in
7 order to implement and carry out the terms of all orders and decrees, including orders
8 setting the appropriate amounts of restitution, disgorgement and civil monetary penalty,
9 that may be entered herein, to entertain any suitable application or motion for additional
10 relief within the jurisdiction of the Court, to assure compliance with this Consent Order
11 and for any other purpose relevant to this action.

12
13 6. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions
14 of this Consent Order shall be binding upon Franco, upon any person under his authority
15 or control, and upon any person who receives actual notice of this Consent Order, by
16 personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active
17 concert or participation with Breen.

18
19 7. Counterparts and Facsimile Execution: This Consent Order may be executed in two or
20 more counterparts, all of which shall be considered one and the same agreement and shall
21 become effective when one or more counterparts have been signed by each of the parties
22 hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being
23 understood that all parties need not sign the same counterpart. Any counterpart or other
24 signature to this Consent Order that is delivered by any means shall be deemed for all
25 purposes as constituting good and valid execution and delivery by such party of this
26 Consent Order.

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8. Breen understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he 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 And Other Statutory And Equitable Relief Against Thomas Breen.*

IT IS SO ORDERED on this 5th day of November, 2013.


UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:

Thomas Breen

James H. Holl, III
Chief Trial Attorney
U.S. Commodity Futures Trading Commission
1155 21st St., NW
Washington, DC 20581
(202)418-5000

Date: _____

Dated _____