

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

COMMODITY FUTURES TRADING)	
COMMISSION,)	
Plaintiff,)	
)	
v.)	11-cv-10949
)	Hon. Mark A. Goldsmith/
ALAN JAMES WATSON, MICHAEL)	Hon. Mona K. Majzoub
POTTS and CASH FLOW FINANCIAL)	
LLC,)	
Defendants,)	
and)	
)	
THE JEDBURGH GROUP,)	
)	
Relief Defendant)	

**ORDER ON PLAINTIFF'S UNOPPOSED MOTION
FOR ENTRY OF DEFAULT JUDGMENT PURSUANT TO
RULE 55(B)(2) AS TO DEFENDANT CASH FLOW FINANCIAL,
LLC AND FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On March 10, 2011, the Commission filed a Complaint against Defendants Alan James Watson ("Watson" or "Employee 1"), Michael Potts ("Potts" or "Employee 2") and Cash Flow Financial, LLC, ("CFF"), alleging violations of the anti-fraud provisions of Sections 4b(a)(2) and 4o(1)(A) & (B) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6(b)(a)(2) and 6o(1)(A) & (B) (2006), and Section 4b(a)(1) 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”)), § 13102, 122 Stat. 1651 (enacted June 18, 2008), codified at 7 U.S.C. § 6b(a)(1). Additionally, the Commission alleges Watson violated Section 4m(1) of the Act, 7 U.S.C. § 6(m)(1) (2006) by operating his business as a commodity pool operator (“CPO”) of a commodity pool without being registered. The Commission also alleges that Potts acted as an associated person (“AP”) of a CPO without being registered in violation of Section 4(k)(2), 7 U.S.C. §6(k)(2) of the Act. Watson and Potts were acting as agents of CFF when they violated the Act. Therefore, as the principle, CFF is liable for the acts, omissions, and failures of Watson and Potts in violation of the Act pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. §2(a)(1)(B) (2006) and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010). The Complaint alleged violations of the Act from at least November 28, 2007 through March 10, 2011 (the “Relevant Period”) and sought, *inter alia*, a permanent injunction, disgorgement, and civil monetary penalties (“CMP”). Complaint, CFTC v. Watson, No. 11- 10949 (E.D. Mich. Mar. 10, 2011), ECF No. 2 (“ECF No. 2”).

Defendant CFF failed to answer the Complaint within the time permitted by Federal Rule of Civil Procedure 12(a)(1). Accordingly, on June 1, 2012, the Clerk of this Court entered a default against Defendant CFF pursuant to Federal Rule of Civil Procedure 55(a). Clerk’s Entry of Default, ECF No. 62.

The Commission moved this Court to grant final judgment by default against CFF, order permanent injunctive relief, and impose restitution and civil monetary penalties (“CM”). Based upon the Commission’s memorandum in support of its motion, the record in this case, and the Court being otherwise advised in the premises, it is hereby:

ORDERED that the Commission’s Motion for Entry of Default Judgment Pursuant to Rule 55(b)(2) Against Defendant Cash Flow Financial, LLC is **GRANTED** and judgment by default, permanent injunction, restitution and a civil monetary penalty is hereby entered. Accordingly, the Court enters the following findings of fact and conclusions of law finding Cash Flow Financial, LLC liable as to all claims alleged in the Complaint.

I. FINDINGS OF FACT

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact and Conclusions of Law, permanent injunction, and equitable relief pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1 (2012) as set forth herein.

A. The Parties

Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with administering and enforcing

the Act, as amended, 7 U.S.C. §§ 1 *et seq.* (2012), and the Regulations thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2015).

Defendant **Cash Flow Financial LLC** was registered as a Limited Liability Corporation in Michigan and operated out of Clinton Township, Michigan. CFF was never registered with the Commission as a CPO or in any other capacity. CFF is a corporate entity. ECF No. 2 ¶ 14. As such, CFF cannot be considered an infant or incompetent person, and cannot serve in the military. *See also*, ECF No. 61.

B. Formation of the Pool

On or about January 28, 2004, Employee 1 formed Cash Flow Financial as a Michigan limited liability company. ECF No. 2 ¶ 21. Employee 1 acted as CPO of the pool and owed a fiduciary duty to disclose all material information to his clients, the CFF pool participants. *Id.* ¶ 24. Defendant Employee 2 solicited pool participants and thereby acted as an AP of the pool. *Id.* ¶ 25. Both Employee 1 and Employee 2 owed a fiduciary duty to disclose all material information to their clients, the CFF pool participants. *Id.* ¶¶ 24-25. At all times relevant to the above captioned matter, and in regard to all conduct at issue, Employees 1 and 2 were agents of CFF and acted within the scope of their employment. *Id.* ¶ 7.

By at least November 27, 2007, Employee 1 and Employee 2 began soliciting pool participants to participate in an “investment club” operated through CFF for the purpose of forming a commodity pool to be traded by a Florida-based entity called Trade LLC. ECF No. 2 ¶ 21. Employee 1 and Employee 2 solicited pool participants through instrumentalities of interstate commerce, including telephone lines, and received funds from such individuals through instrumentalities of interstate commerce, including the mail. Id. ¶ 26. Between November 27, 2007, and June 30, 2009, CFF had more than 600 pool participants throughout the United States and received at least \$45 million in funds for trading and investment. Id. ¶ 23.

The CFF Operating Agreement, which Employee 1 and each pool participant signed and which sets forth the agreement between all CFF pool participants, states that Employee 1 as CEO is granted the power and authority to open and manage one or more brokerage or investment accounts on behalf of CFF. ECF No. 2 ¶ 27. Notwithstanding this power and authority, such brokerage or investment accounts were to be managed in accordance with an investment strategy proposed by the CEO, and approved by two-thirds majority of the Members (“Investment Strategy”). Id. The “Investment Strategy” as agreed to by the pool participants and posted on the CFF website was to pool

funds to trade futures and equities on an intraday basis with the aid of a system developed by Trade LLC. Id. ¶ 28.

Employee 1, as CEO of CFF, provided trading advice to the pool regarding trading commodity futures and securities. ECF No. 2 ¶ 29. Under the agreement, all CFF expenses and any compensation to be paid to CFF and/or Employee 1, were to be paid from a 20% commission on all profits generated by the CFF pool's trading activity. Id. Although Employee 1 had represented that all pool participant funds would be traded using Trade LLC's program, Employee 1 provided only a portion of the pooled funds to Trade LLC for the purpose of trading futures and/or securities. Id. ¶ 30.

Contrary to the representation that all pool participants' funds would be traded using the Trade LLC program, Employee 1 actually deposited a portion of the pool's funds in his own personal accounts opened under his own name at Alaron Trading Corporation, Account No. 5250xxxx (the "Alaron Account") and at TradeStation Securities, Account No. 2107xxxx (the "TradeStation Account"). ECF No. 2 ¶ 31. Alaron and TradeStation are Futures Commission Merchants ("FCMs") registered with the CFTC. Id. Employee 1 traded commodity futures, specifically E-mini S&P 500 futures, with pool participant funds in his personal Alaron and TradeStation Accounts. Id. ¶ 32. Employee 1 also deposited a portion of pooled CFF funds in an account in CFF's name with TD Ameritrade,

Account No. 788-90xxxx (the “TD Ameritrade Account”), for the purpose of trading securities. Id. ¶ 32. Employee 1 executed trades for the TD Ameritrade Account himself without CFF pool participant approval or notice. Id.

Throughout the entire period Defendants accepted funds from pool participants, neither Defendant was registered in any capacity with the commission. ECF No. 2 ¶ 33.

C. Fraudulent Solicitations

During the period November 27, 2007 through June 30, 2009, Employee 1 and/or Employee 2 directly and indirectly solicited more than \$45 million from pool participants. ECF No. 2 ¶¶ 23, 34.

Employee 1 and Employee 2 directly solicited pool participants through monthly conference calls and/or webinars occurring on the first Wednesday of each month beginning at least by May 2008. ECF No. 2 ¶ 35. Employee 1 and Employee 2 directly solicited pool participants at an event held in Perrysburg, Ohio on or about September 5-6, 2008. Id. ¶ 36. Employee 1 and Employee 2 directly solicited pool participants at an open house hosted at Trade LLC’s headquarters in Palm Beach Gardens, Florida, on March 28, 2009 – more than 2 weeks after Employee 1 stopped depositing funds with Trade LLC. Id. ¶ 37. Employee 1 directly solicited pool participants via promotional materials posted on the CFF website. Id. ¶ 38.

Employee 1 and Employee 2 indirectly solicited pool participants through a series of “Executive Club Members” or “ECMs,” who acted under Employee 1 and Employee 2’s direction in identifying and soliciting new participants and were compensated in a manner similar to a multilevel marketing program. ECF No. 2 ¶ 39.

The CFF Operating Agreement stated that CFF pool participant funds would be traded using a trading program selected by the CEO and approved by a vote of two-thirds of the members. ECF No. 2 ¶ 40. The pool participants approved pooling their funds for trading in commodity futures and securities with Trade LLC. Id. In all of the materials, e-mails, meetings, and webinars that Employee 1 and Employee 2 used to solicit pool participants, they represented that all CFF pooled funds would be traded using one of two Trade LLC programs. Id. ¶ 41 – 42.

The “Loan Program” allowed pool participants to provide a short term “loan” (ranging from 3 to 9 months) to Trade LLC in return for a fixed rate of return of 2% to 4.5% each month. ECF No. 2 ¶ 42a. Funds deposited for the “Loan Program” were to be provided by CFF to Trade LLC to use for trading futures and/or securities until CFF could accumulate enough funds to begin actively trading in its own account. Id. Employee 1 represented to many of the

pool participants that participation in the “Loan Program” was necessary in order to comply with federal statutes regarding investment clubs. Id.

The “Trading Program” purportedly generated higher rates of return for pool participants (i.e., 8% to 10% monthly). ECF No. 2 ¶ 42b. Employee 1 represented that the funds deposited in the “Trading Program” would be placed in a CFF account at Alaron, and Trade LLC would be given authority to execute trades in futures and/or securities in the account. Id. Employee 1 further represented that Trade LLC would not be able to withdraw funds from the account. Id. This fact was emphasized as a way that pool participants could be assured that their money was actually being traded and could not be stolen by Trade LLC – a fact that was material to many CFF members who had previously been solicited by Employee 1 and lost substantial sums of money by investing in a Ponzi-like scheme involving a fraudulent scheme known as Safevest LLC. Id.

Many pool participants initially deposited funds in the “Loan Program” and when the return of the principal and purported profit became due and payable by Trade LLC, Defendants persuaded them to roll those funds over into the “Trading Program” with Trade LLC. ECF No. 2 ¶ 43.

At a minimum, Employee 1 and/or Employee 2 made the following false or misleading representations in his/their solicitations:

a. Employee 1 falsely claimed to be in compliance with CFTC registration requirements, when he was not. ECF No. 2 ¶ 44a;

b. Employee 1 and Employee 2 falsely claimed that all of the funds deposited into the CFF pool would be employed in either the “Loan Program” or “Trading Program” with Trade LLC, when it was not. Id. ¶ 44b;

c. Employee 1 falsely claimed that the funds deposited in the “Trading Program” would not be provided directly to Trade LLC, but instead would be put in a brokerage account at Alaron, and Trade LLC would be given access and authority to execute trades in the account. These assertions were false because: (i) to the extent any funds were traded using the Trade LLC program, it was given directly to Trade LLC, (ii) no account was ever opened at Alaron in CFF’s name, and (iii) Trade LLC was never given legal authority to access and execute trades in Employee 1’s personal Alaron account or any account in Employee 1’s or CFF’s names. Id. ¶ 44c;

d. Employee 1 falsely claimed that he was allowing Trade LLC to trade futures using his own money to test their program, when in fact he used CFF pool participant funds to trade futures in an account in his own name

and never legally gave Trade LLC discretionary trading authority over that account. Id. ¶ 44d;

e. Employee 1 falsely claimed that CFF was earning profits of at least 10% or more each month before fees, when it was not. Id. ¶ 44e;

f. Employee 1 falsely claimed in late May 2009 that he was going to stop accepting new pool participants effective June 1, 2009, because (i) he was in the process of hiring an accountant and needed a clean break to allow them to take over the books, (ii) he wanted more time to find bigger and better “bonus type deals,” and (iii) he wanted to prove once and for all that CFF was not a Ponzi scheme and could survive without additional infusions of cash. In fact, Employee 1 failed to provide an accounting to CFF pool participants and had started realizing the losses incurred through his various schemes and needed an immediate influx of cash before investors learned of his deception and stopped the money flow. Id. ¶ 44f.

In addition to making affirmative false statements, Employee 1 and/or Employee 2 omitted material facts from their clients, including but not limited to the following:

a. Employee 1 and Employee 2 failed to disclose that Employee 1 began investing CFF pool participant funds in a variety of unauthorized schemes other than Trade LLC as early as March 2008. ECF No. 2 ¶ 45a;

b. Employee 1 and Employee 2 failed to disclose none of the funds deposited into the CFF pool on or after March 12, 2009 were traded by Trade LLC and instead were used in unauthorized schemes or otherwise misappropriated. Notably, during the March 28, 2009 open house hosted at Trade LLC's headquarters in Florida, Employee 1 and Employee 2 failed to disclose to prospective and current pool participants that Employee 1 had stopped sending funds to Trade LLC two weeks earlier, or that he had previously filed a lawsuit on behalf of CFF in an attempt to recover funds invested in an unauthorized scheme wholly unrelated to Trade LLC. Id. ¶ 45b;

c. Employee 1 and Employee 2 failed to disclose that the CFF pool was losing money, both through Employee 1's unapproved investments and through Trade LLC. Id. ¶ 45c;

d. Employee 1 and Employee 2 failed to disclose the fact that Employee 2 was using pool participants' funds for his own personal use, including excessive salaries beyond the agreed upon 20% commission on pool participants' purported profits and for personal items and expenses. Id. ¶ 45d;

e. Employee 1 and Employee 2 failed to disclose the fact that Employee 1 was using pool participants' funds to pay principal and purported profit

returns to existing pool participants in a manner typical of a Ponzi scheme.

Id. ¶ 45e.

D. Misappropriation

Employee 1 misappropriated pool participant funds in a variety of ways. ECF No. 2 ¶ 46. Of the \$45 million solicited, only \$8.1 million was traded by Trade LLC. Id. The remainder was deposited in unapproved trading accounts or schemes, used to reimburse money lost by individuals in a prior Ponzi scheme involving Safevest LLC, used to reimburse current pool participants purported profits and principal without account for losses incurred by the pool, to pay excessive commissions to Employee 1, Employee 2 and other ECMs, and for Employee 1's and his family's day to day living expenses. Id.

For example, Employee 1 represented to existing and prospective pool participants that CFF would be paid a commission of 20% of the profits from the CFF pool's trading using the Trade LLC program. ECF No. 2 ¶ 47. CFF's operating expenses and compensation for Employee 1, Employee 2, and Executive Club Members, if any, was to be paid out of that 20% commission. Id. Employee 1, however, paid fees and commissions in excess of the 20% agreed upon to himself, Employee 2, and Executive Club Members, without respect to the profitability of CFF or the purported profitability of CFF pool funds. ECF

No. 2 ¶ 47. Employee 2 received at least \$165,000 from CFF pool participant funds. Id. ¶ 48.

Employee 1 paid his own personal expenses directly from the CFF bank account, including payments on the mortgage for his home, daily purchases of food and gas, regular ATM cash withdrawals, as well as purchases at places such as Smokers Express, Toys R Us, Kmart, and General RV Center. ECF No. 2 ¶ 49. Employee 1 has misappropriated at least \$1.1 million for his own use and that of his friends and family members. Id.

Employee 1 misappropriated pool participant funds when he used them to return other pool participants deposits and reimburse other pool participants purported profits when little or no actual profits had been generated. ECF No. 2 ¶ 50. Employee 1 misappropriated pool participant funds when he returned funds that had been invested and lost in a prior Ponzi scheme involving Safevest. Id. ¶ 51. Employee 1 distributed at least \$325,000 of pool participants' funds to non-pool participants as "return of principal" invested in Safevest. Id.

No futures accounts were ever funded and traded in CFF's name. ECF No. 2 ¶ 52. Employee 1 instead misappropriated CFF pool participant funds when he used them to open the Alaron and TradeStation accounts in his own name and for his own benefit. Id. ¶ 53. Employee 1 made investment decisions and actively traded futures in those accounts himself, as well as giving trading authority to

unauthorized persons including a company known as Temple FX, which is not registered with the Commission, and an individual named Stanley Williams, who were not approved by CFF pool participants as required by the CFF Operating Agreement. Id. Contrary to his representations and the marketing materials provided on the CFF website that all pool funds would be traded using the Trade LLC program, Employee 1 only provided a small amount of pool funds directly to Trade LLC to be traded in futures and/or securities. Id. ¶ 54.

Employee 1 misappropriated approximately \$10,500,000 of CFF pool participant funds through various unauthorized investment schemes, including, but not limited to the following:

- a. In July 2008, Employee 1 invested \$1 million of CFF pool participant funds in a California based scheme to invest in U.S. Treasury instruments with Blue Diamond Excavation, Olathe Mining Company and Sundial Investment Group LLC. ECF No. 2 ¶ 55a;
- b. In September 2008, Employee 1 invested \$650,000 of CFF pool participant funds in an Arizona based money leasing scheme operated by Charles Bruce Ferguson. Id. ¶ 55b;
- c. In October 2008, Employee 1 invested \$1 million of CFF pool participant funds in a California based money leasing scheme involving Soldado Corporation. Id. ¶ 55c;

d. Beginning in December 2008, Employee 1 invested \$4,850,000 of CFF pool participant funds in a money leasing scheme with Darlene Bishop and Paradise Funding Network in Texas. Id. ¶ 55d;

e. By at least June 2009, Employee 1 invested approximately \$3 million of CFF pool participant funds with a group of individuals and entities including Jason Meyer, M5 Enterprises LLC, Royal Sovereign Group, and 3 Hooligans Investment Properties in connection with a money leasing program for the purpose of ultimately investing in Treasury instruments. Id. ¶ 55e

Employee 1 did not begin disclosing the existence of these other investments until 2010, even though he initiated litigation on behalf of CFF to recover the funds as early as March 27, 2009. Id. ¶ 57.

E. Fraudulent Account Statements

From at least November 27, 2007, when Employee 1 began pooling CFF participant funds, until July 23, 2009, Employee 1 issued monthly account statements to participants. ECF No. 2 ¶ 58. Those statements falsely indicated that the pool participants were profiting at a rate of 10% per month as a result of participating in the Trade LLC Trading Program. Id. The statements reflected Promissory Note or Loan Program participation and “Trade” Program

participation, but failed to disclose the other investments made by Employee 1 with CFF pool participant funds. Id. ¶ 59.

Employee 1 knew that the account statements were untrue, or was reckless with regard to their truthfulness, because he was aware that (1) only a small portion of pool participant funds was actually traded using the Trade LLC program and (2) the pool was incurring significant losses as a result of Employee 1's investments in schemes unrelated to Trade LLC and was not profitable. ECF No. 2 ¶ 60. Employee 1 directed persons affiliated with Trade LLC to refrain from providing any statements directly to CFF pool participants and from providing information regarding the total amount deposited with Trade LLC by the CFF pool in order to hide the unauthorized investments and substantial losses incurred by Employee 1. Id. ¶ 61.

F. The Cover-Up – Additional False Statements Defrauding Pool Participants

Throughout July 2009, many CFF pool participants requested withdrawals of their funds and/or profits. ECF No. 2 ¶ 62. Employee 1 deflected those requests, claiming that he was unable to access CFF accounts because he was traveling with his family in an RV and driving cross-country. Id. During this same time period, however, Employee 1 charged his family's hotel stays at a Disney resort to the main CFF bank account, paid for RV expenses from the CFF bank account and executed wire transactions transferring more than \$1.2 million

out of the main CFF bank account to various sources. Id. ¶ 63. While Employee 1 was away on vacation, Employee 2 hosted the monthly meeting for pool participants and represented that everything was going fine and CFF's trading, which was being conducted by Trade LLC, was successful. Id. ¶ 64.

In April and May 2010, Employee 1 caused to be issued 2009 Schedule K-1's to CFF pool participants reflecting profits on investment through at least the end of May 2009, when he knew that CFF pool participants had not in fact profited, but instead had suffered substantial losses. ECF No. 2 ¶ 65. Employee 2 assisted Employee 1 with the preparation of the false 2008 Schedule K-1s. Id. Throughout April and May 2010, Employee 1 promised CFF pool participants a full accounting of pooled funds and repeatedly promised that funds would be returned in the near future. Id. ¶ 66.

II. CONCLUSIONS OF LAW

A. Jurisdiction and Venue

This Court has jurisdiction over this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a 1 (2006), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order there under.

Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e) (2006), because CFF is found in, inhabits, or transacted business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places.

B. Violations of the Act

1. CFF is Liable for Employee 1's Violations of Sections 4b(a)(2)(i), (iii) of the Act, 7 U.S.C. §§ 6(b)(a)(2)(i), (iii) (2006), and Section 4b(a)(1)(A), (C) of the Act as amended by the CRA, 7 U.S.C. § 6b(a)(1)(A), (C)

Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2006), make it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully deceive or attempt to deceive by any means whatsoever other persons in or in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the produce or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.

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), make it unlawful 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, on or subject to the rules of a designated contract market, for or on behalf of any other person – (A) to cheat or defraud or attempt to cheat or defraud the other person; or (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for the other person.

During the relevant period, Employee 1 knowingly, willfully or with reckless disregard for the truth, 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 in violation of 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, among other things, (1) issuing false statements, including falsely claiming that all funds invested with CFF would be invested in an account for which Trade LLC had trading authority, but not direct access; (2) omitting material information, including the fact that Employee 1 had invested more than half of CFF's funds in unauthorized schemes and had completely stopped sending any funds to Trade LLC on or after March 12, 2009; (3) misappropriating pool participant funds by using such funds to pay principal and purported returns to

other pool participants; and (4) misappropriating pool participant funds for personal use.

Employee 1 acted as an agent of CFF when he violated the Act and was acting within the scope of his employment; therefore, CFF, as his principal, is liable for his acts, omissions and failures in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2006), with respect to conduct occurring before June 18, 2008, and in violation of 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 conduct occurring on or after June 18, 2008, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010).

2. CFF is liable for Employee 1's Violations of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006), and Section 4b(a)(1)(B) of the Act as amended by the CRA, 7 U.S.C. § 6b(a)(1)(B))

Section 4b(a)(2)(ii) of the Act, 7 U.S.C. §§ 6b(a)(2)(ii) (2006), makes it unlawful for any person to willfully make or cause to be made to other persons false reports or statements, or willfully enter or cause to be entered for other persons false records in or in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such

commodity, or the produce or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.

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), makes it unlawful 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, on or subject to the rules of a designated contract market, for or on behalf of any other person willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record.

During the relevant period, Employee 1 knowingly, willfully or with reckless disregard for the truth, 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 in violation of 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 acts occurring on or after June 18, 2008, the effective date of the CRA by, among other things using or causing to be issued false account statements and reports reflecting positive returns for the pool of 10%

or more each month as a result of the Trade LLC trading program and which failed to disclose the other investments made by Employee 1.

Employee 1 acted as an agent of CFF when he violated the Act and was acting within the scope of his employment; therefore, CFF, as his principal, is liable for his acts, omissions and failures in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006), with respect to conduct occurring before June 18, 2008, and in violation of 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 conduct occurring on or after June 18, 2008, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010).

3. CFF is liable for Employee 1's Violations of Section 4o(1)(A) & (B) of the Act, 7 U.S.C. § 6o(1)(A) & (B) (2006)

Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2006), makes it unlawful for a CPO, or an AP of a CPO, by using the mails or any means or instrumentality of interstate commerce, to directly or indirectly: (A) employ any device, scheme or artifice to defraud any existing or prospective client or participant, or (B) engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any existing or prospective client or participant.

By operating a business in the nature of an investment trust, syndicate or similar form of enterprise and by soliciting, accepting or receiving funds and pooling those funds in bank accounts for the purpose of trading commodity

futures or options, Employee 1 acted as a CPO pursuant to 7 U.S.C. § 1(a)(5) (2006).

During the relevant period, Employee 1 employed a device, scheme or artifice to defraud prospective and existing pool participants, or engaged in a transaction, practice or course of business that operated as a fraud or deceit upon prospective and existing pool participants in violation of Section 4o(1)(A) & (B) of the Act, 7 U.S.C. § 6o(1)(A) & (B) (2006), by (1) issuing false statements, including falsely claiming that all funds deposited with CFF would be traded in an account for which Trade LLC had trading authority, but not direct access; (2) omitting material information, including the fact that Employee 1 had invested more than half of CFF's funds in unauthorized schemes and had completely stopped sending any funds to Trade LLC on or after March 12, 2009; (3) using or causing to be issued false account statements and reports reflecting positive returns for the pool of 10% or more each month as a result of the Trade LLC trading program and which failed to disclose the other investments made by Employee 1; (4) misappropriating pool participant funds by using such funds to pay principal and purported returns to other pool participants; (5) misappropriating pool participant funds for personal use; and (6) issuing false statements in order to hide the true nature of his fraud, including representations that all pool participants' funds were the subject of the Florida state action

involving Trade LLC and could therefore not be returned until the conclusion of the litigation.

Employee 1 was acting as an agent of CFF within the scope of his employment when he violated the Act; therefore, CFF, as his principal, is liable for his acts, omissions and failures in violation of Section 4o(1)(A) & (B) of the Act, 7 U.S.C. § 6o(1)(A) & (B) (2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010).

4. CFF is Liable for Employee 2's Violations of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) (2006)

Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) (2006), makes it unlawful for a CPO, or an AP of a CPO, by using the mails or any means or instrumentality of interstate commerce, to directly or indirectly engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any existing or prospective client or participant.

By soliciting individuals to become pool participants in regard to a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in commodities for future delivery on or subject to the rules of a contract market, Employee 2 acted as an AP of a CPO pursuant to Commission Regulation 1.3(aa)(3), 17 C.F.R. § 1.3(aa)(3) (2010).

As alleged above, during the relevant period, Employee 2 engaged in

conduct that operated as a fraud or deceit upon prospective and existing pool participants in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) (2006), by (1) falsely representing that all of the funds deposited with CFF were being traded by Trade LLC, which was not true; (2) falsely representing that the CFF pool was generating profits including representing at the July 2009 monthly meeting that CFF was trading profitably with Trade LLC, which was not true; (3) videotaping Trade LLC personnel purportedly trading and arranging for the footage to be disseminated to pool participants and potential pool participants in order to induce additional deposits when CFF had stopped sending any funds to Trade LLC for trading; (4) failing to disclose that pooled funds had been misappropriated by Employee 1 for his own personal use and for use in unapproved schemes; (5) soliciting other members to act as ECMs in order to solicit additional pool participants and deposits and representing to ECMs that they would be compensated based on a proportion of the profits earned by any deposits they generated and arranging for payments to ECMs based on the purported profitability of investments they solicited even though no actual profits were generated; and (6) assisting Employee 1 with the preparation of the 2008 Schedule K-1's for pool participants, which falsely showed profits on deposits with CFF when in fact no profits were generated.

Employee 2 was acting as an agent of CFF within the scope of his

employment when he violated the Act and, therefore, CFF, as his principal, is liable for his acts, omissions and failures in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) (2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010).

5. CFF is Liable for Employee 1 and Employee 2's Violations of Sections 4k(2) and 4m(1) of the Act, 7 U.S.C. §§ 6k(2) & 6m(1))

Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), makes it unlawful for any CPO, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as a CPO. Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), makes it unlawful for any person to be associated with a CPO as a partner, officer, employee, consultant or agent in any capacity that involves the solicitation of funds for a participation in a commodity pool.

During the relevant period, Employee 1 acted as a CPO within the meaning of Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), and used the mails, telephone services, or other instrumentalities of interstate commerce in connection with his business as a CPO while failing to register as a CPO in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

During the relevant period, Employee 2 acted an agent for a CPO in a capacity involving the solicitation of participants for the pool, while failing to

register as an AP, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

Employee 1 and Employee 2 were acting as agents of CFF within the scope of their employment when they violated the Act and, therefore, CFF, as their principal, is liable for their acts, omissions and failures in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006) and Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010).

6. CFF is Liable for Employee 1 and Employee 2's Violations of the Act Pursuant to 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010).

Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006) and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010), a principle is liable for the act, omission, or failure of any official, agent, or other person acting for the principle within the scope of his employment or office. Employee 1 and Employee 2 were acting as agents of CFF when they violated the Act, and were acting within the scope of their employment, office, or agency.

Employee 1, while acting as an agent of CFF within the scope of his employment, solicited investors on behalf of CFF, entered contracts binding CFF, made investment decisions on behalf of CFF, managed CFF's finances, and

generally performed the day to day operations of the organization. Therefore, CFF, as Employee 1's principal, is liable for his conduct in violation of Sections 4b(a), 4m(1), and 4o(1) of the Act, 7 U.S.C. §§ 6(b)(a), 6m(1), 6o(1) (2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010).

Employee 2, while acting as an agent of CFF within the scope of his employment, solicited participants for CFF and assisted Employee 1 with the day to day operations of the CFF pool. Therefore, CFF, as Employee 2's principal, is liable for his conduct in violation of Sections 4k(2) and 4o(1) of the Act, 7 U.S.C. § 6k(2), 6o(1) (2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010).

III. ORDER FOR RELIEF

A. Violations

IT IS HERBY ORDERED, ADJUDGED AND DECREED that:

Defendant Cash Flow Financial, LLC, as Employee 1 and Employee 2's principal, violated Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006); Sections 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); and Sections 4o(1)(A) &(B), 4k(2), and 4m(1) of the Act, 7 U.S.C. §§ 6o(1)(A) & (B), 6k(2) and 6m(1) (2006), pursuant to Section

2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010).

B. Permanent Injunction

IT IS FURTHER ORDERED that:

1. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and its own equitable powers, CFF, its officers, agents, servants, employees, successors, assigns, and/or attorneys, and all persons in active concert or participation with CFF who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained, enjoined, and prohibited from directly or indirectly violating Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (2012), Section 4o(1)(A) & (B) of the Act, 7 U.S.C. § 6o(1)(A) & (B) (2012), Section 4k(2), 7 U.S.C. §§ 6k(2) (2012), Section 4m(1) of the Act, 7 U.S.C. §§ 6m(1) (2012), and/or Commission Regulation 1.2, 17 C.F.R. § 1.2 (2015).

2. CFF, its officers, agents, servants, employees, successors, assigns, and/or attorneys, and all persons in active concert or participation with CFF who receive actual notice of this Order by personal service or otherwise, are hereby restrained, enjoined, and prohibited until further order of the Court, from directly or indirectly:

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a (2012));
- b. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Commission Regulation 1.3(hh), 17 C.F.R. §1.3(hh) (2015)) (“commodity options”), security futures products, swaps (as that term is defined in Section 1a(47) of the Act, as amended, and as further defined by Commission Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx) (2015)) (“swaps”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (2012)) (“forex contracts”), for its own personal accounts or for any accounts in which it has a direct or indirect interest;
- c. Having any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts traded or executed on its behalf;
- d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures,

commodity options, security futures products, swaps, and/or forex contracts;

- e. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling of any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts;
- f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2015); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2015)), agent, or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a (2012)) registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2015).

C. Restitution

IT IS FURTHER ORDERED that:

CFF shall make full restitution to every pool participant whose funds were received by it as a result of acts and practices which constitute violations of the Act, as described herein, in the amount of \$37,224,928.82, interest thereon from the date of such violations (“Restitution Obligation”). Interest 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 (2012).

To effect payment of the Restitution Obligation and the distribution of any restitution payments to CFF pool participants, CFF shall pay the Restitution Obligation to the Receiver appointed by the Court in this matter: Philip S. Stenger, Stenger & Stenger, P.C., 2618 East Paris Avenue, S.E., Grand Rapids, MI 49546-2425 (“Receiver Stenger”).

CFF shall make Restitution Obligation payments under this Order to Receiver Stenger and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s check, or bank money order, to Philip S. Stenger, Stenger & Stenger, P.C., 2618 East Paris Avenue, S.E., Grand Rapids, MI 49546-2425, under cover letter that identifies CFF as the paying Defendant and the name and docket number of this proceeding until the conclusion of the Receivership Estate. CFF 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.

The procedure for distribution of the Restitution Obligation by Receiver Stenger shall be separately determined by the Court.

If, upon the termination of the Receivership Estate, CFF has failed to fulfill its Restitution Obligation, the Court hereby appoints the National Futures Association as Monitor (“Monitor.”). The Monitor shall collect restitution payments from CFF and make distributions as set forth below. The Monitor shall act as an officer of this Court in performing these services.

The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to CFF pool participants identified by Receiver Stenger or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible pool participants is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in this Order.

CFF shall cooperate with Receiver Stenger and NFA as Monitor as appropriate to provide such information as Receiver Stenger deems necessary and appropriate to identify CFF's pool participants to whom Receiver Stenger may determine to include in any plan for distribution of any Restitution Obligation payments. CFF shall execute any documents necessary to release funds that it has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

Upon the termination of the receivership estate, Receiver Stenger shall provide the Commission and NFA with a report detailing the disbursement of funds to CFF's pool participants. Receiver Stenger shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The amounts payable to each pool participant shall not limit the ability of any pool participant from proving that a greater amount is owed from CFF or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any pool participant that exist under state or common law.

Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each pool participant of CFF who suffered a loss is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain

satisfaction of any portion of the restitution that has not been paid by CFF to ensure continued compliance with any provision of this Order and to hold CFF in contempt for any violations of any provision of this Order.

To the extent that any funds accrue to the U.S. Treasury as a result of CFF's Restitution Obligation, such funds shall be transferred to Receiver Stenger for disbursement in accordance with the procedures approved by the Court.

D. Civil Monetary Penalty

IT IS FURTHER ORDERED that:

CFF shall pay a civil monetary penalty in the amount of twenty-seven million dollars (\$27,000,000), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation 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 (2012).

CFF shall pay its CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

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

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

E. Miscellaneous Relief

IT IS FURTHER ORDERED that:

CFF and any successors thereof, shall rescind, all contracts and agreements, whether implied or express, entered into between them and any of the clients they solicited or accepted orders from as a result of the acts and practices which constitute violations of the Act, as described herein.

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

Notice to Commission:

Director of the Division of Enforcement
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 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 CFF satisfies in full its restitution and civil monetary penalty obligations as set forth in this Order, CFF shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

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

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

Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Order shall be binding upon CFF, upon any person under its authority or control, and upon any person who receives actual notice of this Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with CFF.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order.

SO ORDERED.

Date: August 26, 2015
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on August 26, 2015.

s/Johnetta M. Curry-Williams
Case Manager