

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC-SDNY
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ELECTRONICALLY FILED
DOC #:
DATE FILED: 10/25/17

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

FTS FINANCIAL, INC., KEVIN MICHAEL
SYMONS, and JERRY AUSTIN SIMMONS,

Defendants.

Case No. 16-CV-7513 (RA) (GWG)

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL
MONETARY PENALTIES AND OTHER EQUITABLE RELIEF AGAINST
DEFENDANTS FTS FINANCIAL, INC. AND KEVIN MICHAEL SYMONS**

I. INTRODUCTION

On September 26, 2016, Plaintiff U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against Defendant FTS Financial, Inc. (“FTS” or “Defendant FTS”), Defendant Kevin Michael Symons (“Symons” or “Defendant Symons”), and Defendant Jerry Austin Simmons, seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1-26 (2012), and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. §§ 1-190 (2017).

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Defendants FTS and Symons without a trial on the merits or any further judicial proceedings, Defendants FTS and Symons:

1. Consent to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalties and Other Equitable Relief Against Defendants FTS Financial, Inc. and Kevin Michael Symons ("Consent Order");
2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledge service of the summons and Complaint;
4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012);
5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1-26 (2012);
6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012);

7. Waive:

(a) Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2017), relating to, or arising from, this action;

(b) Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-74 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

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

(d) Any and all rights of appeal from this action;

8. Consent to the continued jurisdiction of this Court over them for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Defendant FTS or Defendant Symons now or in the future reside outside the jurisdiction of this Court;

9. Agree that they will not oppose enforcement of this Consent Order on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and hereby waive any objection based thereon;

10. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Consent Order,

or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendants FTS and Symons shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement;

11. Defendants FTS and Symons consent to the entry of this Consent Order without admitting or denying the allegations of the Complaint or any findings or conclusions in this Consent Order, except as to jurisdiction and venue, which they admit.

12. Defendants FTS and Symons consent to the use of the findings and conclusions in this Consent Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof.

13. Defendants FTS and Symons do not consent, however, to the use of this Consent Order, or the findings and conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party, other than a: statutory disqualification proceeding; proceeding in bankruptcy, or receivership; or proceeding to enforce the terms of this Order.

14. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 81 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against them, whether inside or outside the United States; and

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

III. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), as set forth herein. The findings and conclusions in this Consent Order are not binding on any other party to this action.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

The Parties To This Consent Order

16. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, 7 U.S.C. §§ 1-26 (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 – 190 (2017).

17. Defendant **FTS Financial, Inc.** is a California corporation with a principal place of business in Irvine, California. From at least in or around August 2012 and continuing through in or around November 2013 (the “Relevant Period”), FTS was in the business of marketing to clients and prospective clients (“Clients”) various financial services including the Real Time Trade Room (the “Room”). Defendant FTS has never been registered with the Commission in any capacity.

18. Defendant **Kevin Michael Symons** is an individual who resides in Foothill Ranch, California. Symons was owner of FTS and controlled its day-to-day operations.

Defendant Symons was not registered with the Commission in any capacity during the Relevant Period.

FTS Solicited Clients to Purchase Access to the Real Time Trade Room

19. During the Relevant Period, the Room was marketed as an online forum in which subscribers, for a fee, could observe an individual as he ostensibly traded futures contracts. FTS was retained to solicit members of the public to purchase access to the Room during the Relevant Period.

20. According to FTS's website:

At FTS Financial our mission is to provide a select clientele with best in class educational opportunities, mentoring, live trading rooms, and trade alerts. To achieve this mission we will scour the globe to find the very best educators, traders, and technicians; those with proven real time excellence in fundamental and technical analysis and a long history of verifiable success. As a firm that is fundamentally driven by research, education and technology we are determined to develop or procure the best of the best in our field. Above all we will strive consistently to be a vital and trusted partner to our clients and associates, providing a place where a select few can prosper and grow to reach their financial potential.

21. During the Relevant Period, FTS marketed the Room primarily by mass telephone solicitations and on FTS's website, as an online forum in which subscribers could learn to trade futures contracts by observing a supposed trader (portrayed to Clients by FTS as a "professional trader"), as he supposedly traded "live" and in "real time."

22. FTS told Clients that they could make money by buying and selling the same futures contracts in their own accounts, following the trades that were purportedly being made live in the Room.

23. During the Relevant Period, FTS made between 700 and 1,000 cold calls daily to solicit prospective Clients around the United States to purchase access to the Room. During

FTS's telephone solicitations, FTS's salespeople directed prospective Clients to FTS's website, www.ftsfinancial.com.

24. FTS offered prospective Clients a money-back guarantee, pursuant to which FTS promised to refund a Client's purchase price if trading in the Room did not average a profit of \$200 or more per trading day during the first 10 days the Client had access to the Room.

25. FTS charged Clients a one-time fee ranging from \$4,995 to \$7,500 for six months of access to the Room (as well as access to various other videos and training materials). FTS kept approximately 75% of the purchase price and paid the remaining approximately 25% to the company affiliated with the person who supposedly traded in the Room.

26. After completing a sale to a Client, FTS provided instructions to Clients for downloading trading software that Clients could use to execute futures trades in their own trading accounts. FTS told Clients that this software was needed to participate in the Room and to execute the Clients' own trades.

FTS Acted as a Commodity Trading Advisor

27. During the Relevant Period, FTS, for compensation or profit, engaged in a business of advising others as to the value, or the advisability, of trading futures contracts, by promoting the Room and by receiving compensation from members of the public who purchased access to the Room.

FTS and Symons' Misrepresentations and Material Omissions Regarding the Room

28. FTS sales scripts, which were used by FTS salespeople to solicit Clients for the Room, referred to the person who ostensibly traded in the Room as a "professional Mentor/Trader with over 35 years of experience" and stated that "[i]n 1985, [the person who

ostensibly traded in the Room] realized a career goal by becoming a full-time professional trader.”

29. Similarly, FTS’s website described the person who ostensibly traded in the Room as a “professional trader.” Symons had ultimate responsibility at FTS for making decisions about the content on FTS’s website.

30. As Symons has admitted in sworn testimony, FTS, by and through its salespeople, told Clients that futures contracts were traded in the Room “live” with real money at risk. For example:

- a. FTS’s website stated that the “trader” in the Room “[t]rades live in real time,” that Room participants have the “ability to see . . . trades from start to finish . . . [f]rom entry to trade management to trade exit,” and that the Room “averages 3-5 live trades each day.”
- b. FTS’s sales scripts, which were used by FTS’s salespeople during telephone solicitations, stated that “[n]ow, the live trading room from where this is taught and traded is a very unique, online experience, where you will have complete access to [the “trader” in the Room] while he is teaching and trading live with his own capital the ENTIRE trading day.”
- c. FTS, by and through its employees or agents, told one Client by email on April 24, 2013 that “there is absolutely no reason you should feel uncomfortable, [the “trader” in the Room] is a highly respected veteran trader with tremendous consistency!” and that he “is trading live each day with a cash account....”

31. FTS's statements to Clients describing the "trader" in the Room as a "professional trader" and FTS's statements to Clients that he traded "live" in the Room were false because the "trader" never actually traded any futures contracts in the Room at all, much less earned his livelihood from futures contract trading profits.

32. When FTS told Clients that the "trader" in the Room was a "professional trader" and that he traded "live" in the Room with real money at risk, FTS by and through its principal Symons, knew that those statements were false or acted with reckless disregard as to the truth or falsity of those statements.

33. After completing sales of Room access to Clients, FTS provided Clients an agreement (referred to herein as the "Room Agreement") that the "trader" in the Room required new Clients to sign, stating that all trades in the Room were simulated. Consequently, FTS and Symons knew, or should have known, that trading in the Room was not "live" with real money at risk.

34. The Room Agreement stated, in relevant part, that:

[t]here is no representation that the trading strategies, signals, or trades are executed with real money. While trade setups maybe [sic] discussed and described in a fashion suggesting real time execution, trade setup execution (entry, management, and exit) will be done in Simulation Mode There are no suggestions or implications any trade could have been executed real time in a fully funded account.

(Emphasis added.)

35. When some Clients expressed concern (after purchasing access to the Room) that the representations in the Room Agreement were inconsistent with FTS's representations about purported live trading in the Room, FTS and Symons downplayed the Room Agreement. For example:

- a. In an August 24, 2012 email, an individual who worked with Symons told him that a new Room Client “said he had just received the disclosures[, and h]e mentioned a ph[r]ase in the paper work that said some of the trades may not be real money or to that effect...*We cleared that up and he warmed up on the phone somewhat*” (emphasis added).
- b. In a September 24 and 25, 2012 email chain, a Client asked if an FTS representative could explain the sentence in the Room Agreement stating that: “There are no suggestions or implications any trade could have been executed real time in a fully funded account.” The FTS representative responded: “Wow. No, I can’t. *I thought [the “trader” in the Room] made live trades with real money usually . . . I’m told this is just standatd [sic] boiler plate language for these sorts of services . . .*” (emphasis added).

36. The difference between actual trading and hypothetical or simulated trading is significant because hypothetical or simulated trading does not involve trades that have actually been executed and therefore may under- or over-compensate for the impact of certain market factors such as lack of liquidity.

37. Moreover, because hypothetical or simulated trading does not involve actual trade execution, so-called performance results from such trading necessarily fail to reflect slippage costs, *i.e.*, the difference in price of an actual trade at the time the order is placed and the time the order is filled.

38. Symons conceded in sworn testimony that, unlike trading in an actual account with real money at risk, simulated trading results do not include slippage. Symons also stated in his sworn testimony that slippage “most times” has a negative effect on the profitability of a

trading account and that the distinction between live and simulated trading would be “most important” to a reasonable investor.

39. Nevertheless (and despite knowing that the Room Agreement stated that trading in the Room was entirely simulated), FTS, by and through its salespeople and on its website, told prospective Clients that trading in the Room was “live” with actual money at risk.

40. Not only did FTS tell Clients that the trading in the Room was “live,” but also that the trading had generated substantial profits. FTS claimed on its website that trading in the Room “[a]verages \$350-\$500+ in gains a day on two contracts,” *i.e.*, on a \$20,000 investment (which, if annualized, amounts to an average profit of 420% to 600%). FTS did not disclose that these supposed results were based on hypothetical or simulated trading. Nor did FTS provide any of the disclosures required in Commission Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2017), setting forth the limited value of hypothetical or simulated trading results.

41. FTS stated to a Client in a January 4, 2013 email that by following the trading in the Room, the Client’s profits could “turn out to be much more” than \$4,000 over 20 days on a \$20,000 investment and further stated “that there’s [a] great deal of money to be made over the course of one year in [the Room] and by God you will make it if you just try it.”

42. In a January 6, 2013 email to the same Client, FTS, by and through its employee or agent, stated that the Room is:

listed right on our website as one of the top ten trading rooms in the country at Futures Truth Magazine. There are numerous testimonials and you can even speak to a classmate to make you feel 100% comfortable . . . if you have ever had dream [sic] of financial independence while trading just a few hours a day, this is it and that’s the truth . . . I promise you.

43. In addition, in soliciting Clients, FTS and Symons provided Clients the following track record of supposed monthly trading profit in the Room for 2012:

Month	Profit
January	\$8,230
February	\$6,350
March	\$7,880
April	\$8,410
May	\$10,380
June	\$9,650
July	\$10,800
August	\$8,730
September	\$7,180
October	\$8,290
November	\$4,110
December	\$3,280

44. FTS's salespeople told Clients that the profits set forth above in paragraph 43 reflected a \$20,000 investment (which, for the claimed profits in 2012, would have amounted to an annual return of more than 460%).

45. All of these statements by FTS concerning supposed profitable past performance in the Room (including the profit claims on FTS's website described in paragraph 40, above, and the monthly profits disseminated by FTS described in paragraph 43, above) were false and misleading because there never were any futures contracts traded in the Room.

46. FTS and Symons provided Clients the past performance information even though the purported trading results were described to FTS and Symons as "unofficial" in emails dated August 2 and 8, 2012.

Symons Controlled FTS and Failed to Act in Good Faith or Knowingly Induced FTS's Violations

47. During the Relevant Period, Symons was the sole owner of FTS.
48. Symons was FTS's President and CEO.
49. Symons had authority to hire and fire FTS employees and contractors.
50. Symons was signatory on FTS's bank account.
51. Symons was responsible for training FTS's salespeople.

52. Symons controlled the content on FTS's website, which, as stated above, falsely stated, among other things, that futures contracts were traded in the Room "live" and in "real time" and that the trades had earned substantial profits.

53. Symons directed FTS's salespeople to tell Clients that trading in the Room was "live" with real money at risk.

B. Conclusions of Law

Jurisdiction and Venue

54. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), which provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

55. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because acts and practices in violation of the Act occurred within this District.

Fraud By Misrepresentations and Omissions

56. By the conduct described in paragraphs 16 through 55 above, FTS, acting as a commodity trading advisor, through the use of the mails or other means or instrumentality of interstate commerce (including by telephone, email, and FTS's website), violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2012), and Commission Regulation 4.41(a)(1) and (2), 17 C.F.R. § 4.41(a)(1) and (2) (2017), by making misrepresentations and material omissions to Clients, including by:

- a. Telling Clients in sales solicitation and on FTS's website that trading in the Room was "live in real time" with real money at risk when in fact all of the supposed trading was entirely simulated; and
- b. Telling Clients that the "trader" in the Room was a "professional trader" and that he earned consistent profits trading futures contracts (including by providing Clients the supposed track record set forth above in paragraph 43 and claiming on FTS's website that he "[a]verages \$350-\$500+ in gains a day on two contracts,") when in fact no futures contracts were ever traded in the Room.

57. By the conduct described in paragraphs 16 through 56 above, FTS and Symons employed a scheme or artifice to defraud Clients in connection with futures contracts traded on registered entities by making misrepresentations and material omissions to Clients, in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(c)(1) (2012), and Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2017), including by:

- a. Telling Clients in sales solicitation and on FTS's website that trading in the Room was "live" with real money at risk, when in reality all of the supposed trading was entirely simulated; and
- b. Telling Clients that the "trader" in the Room was a "professional trader" and that he earned consistent profits trading futures contracts (including by providing Clients the supposed track record set forth above in paragraph 43 and claiming on FTS's website that he "[a]verages \$350-\$500+ in gains a day on two contracts,") when in fact no futures contracts were ever traded in the Room.

Failure to Provide Required Disclosures

58. By the conduct described in paragraphs 16 through 57 above, FTS, through the acts of its employees and agents including Symons, violated Commission Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2017), in that FTS stated on its website that trading in the Room “[a]verages \$350-\$500+ in gains a day on two contracts,” but failed prominently to display in immediate proximity to this performance information prescribed disclosures relating to the inherent limitations of such simulated or hypothetical performance information.

59. Defendant Symons controlled Defendant FTS, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Defendant FTS’s act or acts in violation of the Act and Regulations; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Defendant Symons is liable for Defendant FTS’s violations of Sections 4o(1)(A) and (B) and 6(c)(1) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) and 9(c)(1) (2012), and Commission Regulations 4.41(a)(1) and (2), 4.41(b) and 180.1(a), 17 C.F.R. §§ 4.41(a)(1) and (2), 4.41(b) and 180.1(a) (2017).

60. The foregoing acts, omissions, and failures of Defendant Symons occurred within the scope of his employment, office, or agency with Defendant FTS; therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2017), Defendant FTS is liable for Defendant Symons’ acts, omissions, and failures in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(c)(1) (2012), and Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2017).

61. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants FTS and Symons will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

62. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), Defendants FTS and Symons are permanently restrained, enjoined and prohibited from directly or indirectly:

- a. as a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant, in violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2012), or Commission Regulation 4.41(a)(1) and (2), 17 C.F.R. § 4.41(a)(1) and (2) (2017);
- b. using or employing, or attempting to use or employ, any manipulative device, scheme, or artifice to defraud; making, or attempting to make, any untrue or misleading statement of a material fact or omitting to state a material fact necessary in order to make the statements made not true or misleading; or engaging, or attempting to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(c)(1) (2012) or Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2017); or

- c. presenting the performance of any simulated or hypothetical commodity interest account, unless a prescribed statement (stating, among other things, the inherent limitations of hypothetical or simulated performance data) is disclosed prominently and in immediate proximity to the simulated or hypothetical performance information being presented, as required by Commission Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2017).

63. Defendants FTS and Symons are also permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012));
- b. Entering into any transactions involving “commodity interests” (as that term is defined in Commission Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2017)) for their own personal account or for any account in which they have a direct or indirect interest;
- c. Having any commodity interests traded on their 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 interests;
- e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2017); and/or

- g. Acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2017)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)), 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) (2017).

V. DISGORGEMENT AND CIVIL MONETARY PENALTY

A. Disgorgement

64. Defendant FTS shall pay disgorgement in the amount of two million four hundred thousand dollars (\$2,400,000) (“FTS Disgorgement Obligation”), representing the gains received in connection with such violations, plus post-judgment interest.

65. Defendant Symons shall pay disgorgement in the amount of two hundred eighty-nine thousand dollars (\$289,000) (“Symons Disgorgement Obligation”), plus post-judgment interest.

66. Post-judgment interest shall accrue on the FTS Disgorgement Obligation and Symons Disgorgement Obligation (collectively, “Disgorgement Obligations”) beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

67. To effect payment of the Disgorgement Obligations and the distribution of any disgorgement payments to Defendant FTS and Defendant Symons’ clients, the Court appoints the National Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor shall receive

disgorgement payments from Defendants FTS and Symons and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

68. Defendants FTS and Symons shall make Disgorgement Obligation payments under this Consent Order to the Monitor in the name "*CFTC v. FTS Financial, et al. – Settlement/Disgorgement Fund.*" FTS and Symons shall send such Disgorgement Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies the paying Defendant and the name and docket number of this proceeding. Defendants FTS and Symons 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 and R. Stephen Painter, Jr., Chief Trial Attorney, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005. Payments noted as being made for the FTS Disgorgement Obligation shall be credited to the FTS Disgorgement Obligation, and payments noted as being made for the Symons Disgorgement Obligation shall be credited to the Symons Disgorgement Obligation.

69. The Monitor shall oversee the Disgorgement Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendant FTS and Defendant Symons' clients identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Disgorgement 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 clients is impractical, the Monitor may, in its discretion, treat such disgorgement 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 Part V.B. below.

70. Defendants FTS and Symons shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant FTS and Defendant Symons' clients to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Disgorgement Obligation payments. Defendants FTS and Symons shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Disgorgement Obligation.

71. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendant FTS and Defendant Symons' clients during the previous year. The Monitor 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.

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

73. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each client of Defendants FTS and Symons who suffered a loss is explicitly made an intended third-party

beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the disgorgement that has not been paid by Defendants FTS and Symons to ensure continued compliance with any provision of this Consent Order and to hold Defendants FTS and Symons in contempt for any violations of any provision of this Consent Order.

74. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendants FTS or Symons' Disgorgement Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

B. Civil Monetary Penalty

75. Defendant FTS shall pay a civil monetary penalty in the amount of two million four hundred thousand dollars (\$2,400,000) ("FTS CMP Obligation"), plus post-judgment interest.

76. Defendant Symons shall pay a civil monetary penalty in the amount of one hundred thousand dollars (\$100,000) ("Symons CMP Obligation"), plus post-judgment interest.

77. Post-judgment interest shall accrue on the FTS CMP Obligation and Symons CMP Obligation (collectively, "CMP Obligations") beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

78. Defendants FTS and Symons shall pay their CMP Obligations 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
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment by electronic funds transfer is chosen, Defendants FTS and Symons shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendants FTS and Symons shall accompany payment of the CMP Obligation with a cover letter that identifies the Defendant and the name and docket number of this proceeding. Defendants FTS and Symons 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, and R. Stephen Painter, Jr., Chief Trial Attorney, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005. Payments noted as being made for the FTS CMP Obligation shall be credited to the FTS CMP Obligation, and payments noted as being made for the Symons CMP Obligation shall be credited to the Symons CMP Obligation.

C. Provisions Related to Monetary Sanctions

79. Partial Satisfaction: Acceptance by the Commission or the Monitor of any partial payment of Defendants FTS and Symons' Disgorgement Obligation or CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

D. Cooperation

80. Defendants FTS and Symons shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement in this action, and in any current or future Commission investigation or action related thereto. Defendants FTS and Symons shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action.

VI. MISCELLANEOUS PROVISIONS

81. 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:

Manal M. Sultan, Deputy Director
Division of Enforcement
U.S. Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005

Notice to Defendant FTS and Symons:

Adam S. Miller, Esq.
Nicholas Joseph, Esq.
Kauff Laton Miller LLP
950 Third Avenue
New York, New York 10022

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

82. Change of Address/Phone: Until such time as Defendants FTS and Symons satisfy in full their Disgorgement Obligations and CMP Obligations as set forth in this Consent Order, Defendants FTS and Symons shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

83. **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.

84. **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.

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

86. **Waiver of Service, and Acknowledgement:** Defendants FTS and Symons waive service of this Consent Order and agree that entry of this Consent Order by the Court and filing with the Clerk of the Court will constitute notice to Defendants FTS and Symons of its terms and conditions.

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

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

89. Authority: Defendant FTS hereby warrants that Kevin Michael Symons is President, and that this Consent Order has been duly authorized by Defendant FTS, and Kevin Michael Symons has been duly empowered to sign and submit this Consent Order on behalf of Defendant FTS.

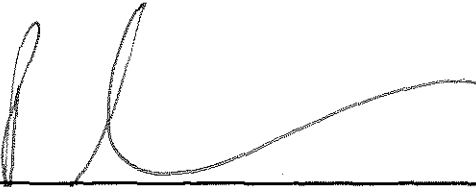
90. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail,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

91. Contempt: Defendants FTS and Symons understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

92. Agreements and Undertakings: Defendants FTS and Symons shall comply with all of the undertakings and agreements set forth in this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Consent Order for Permanent Injunction, Civil Monetary Penalties and Other Equitable Relief Against Defendants FTS Financial, Inc. and Kevin Michael Symons* forthwith and without further notice.


IT IS SO ORDERED on this 25th day of October, 2017.



RONNIE ABRAMS
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:

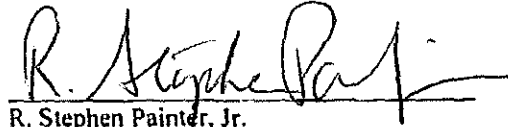
For FTS FINANCIAL, INC.:


Kevin Michael Symons
Title: *President*

Date: *Sept 14th 2017*


KEVIN MICHAEL SYMONS, individually

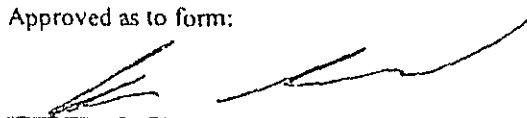
Date: *Sept 14th 2017*



R. Stephen Painter, Jr.
Chief Trial Attorney
Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005
(646) 746-9815 (office)
(646) 746-9739 (fax)
spainter@cftc.gov

Dated *10/24/17*

Approved as to form:


Adam S. Miller, Esq.
Nicholas Joseph, Esq.
Kauff Laton Miller LLP
950 Third Avenue
New York, New York 10022

Attorneys for FTS FINANCIAL, INC. and
KEVIN MICHAEL SYMONS