

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

<p>U.S. COMMODITY FUTURES TRADING COMMISSION,</p> <p>Plaintiff,</p> <p>v.</p> <p>THOMAS GILLONS,</p> <p>Defendant.</p>	<p>Civil Action No: 14-cv-09262</p> <p>Hon. Harry D. Leinenweber</p>
--	--

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL MONETARY
PENALTY, AND OTHER EQUITABLE RELIEF**

I. INTRODUCTION

On November 19, 2014, Plaintiff U.S. Commodity Futures Trading Commission the (“Commission” or “CFTC”) filed a Complaint for Injunctive and Other Equitable Relief and Penalties Under the Commodity Exchange Act (“Complaint”) (Docket No. 1) against Defendant Thomas Gillons (“Gillons”) 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. §§ *et seq.* (2012). The same day, after conducting an *ex parte* hearing, the Court entered a Statutory Restraining Order against Gillons (Docket No. 17). Subsequently, on December 9, 2014, the Court entered a Consent Order for Preliminary Injunction against Gillons (Docket No. 23).

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Defendant Gillons without a trial on the merits or any further judicial proceedings, Gillons:

Job
Date
Time

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendant Thomas Gillons (“Consent Order”);

2. Affirms that he has read and agrees 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. Acknowledges service of the summons and Complaint;

4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012);

5. Admits 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. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012);

7. Waives:

(a) Any and all claims that he 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 Commission Regulations (“Regulations”), 17 C.F.R. §§ 148.1 *et seq.* (2014), relating to, or arising from, this action;

(b) Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this 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. Consents to the continued jurisdiction of this Court over him 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 Gillons now or in the future resides outside the jurisdiction of this Court;

9. Agrees that he 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 waives any objection based thereon;

10. Agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or in this Consent Order, or the 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 his: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Gillons shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement;

11. By consenting to the entry of this Consent Order, Gillons neither admits nor denies the allegations of the Complaint or in this Consent Order, or the Conclusions of Law in this Consent Order, except as to jurisdiction and venue, which he admits. Further, Gillons agrees

and intends that the allegations contained in the Complaint and in this Consent Order, and all of the Conclusions of Law contained in this Consent Order, shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Gillons; (b) any proceeding pursuant to Section 8a of the Act, 7 U.S.C. § 12a (2012), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 – 3.75 (2014); and/or (c) any proceeding to enforce the terms of this Consent Order. Gillons does not consent to the use of this Consent Order as the sole basis for any other proceeding brought by the Commission;

12. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 1 of Part VII of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

13. Agrees 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 Gillons in any other proceeding.

III. SUMMARY

A. The Parties To This Consent Order

1. 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. §§ *et seq.* (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ *et seq.* (2014).

2. Defendant **Thomas Gillons** resides in Napa County, California. On or about June 19, 2013, Gillons was suspended from registration with the Financial Industry Regulatory Authority (“FINRA”), a self-regulatory organization responsible for registering securities

industry participants, for failure to comply with an arbitration award. Gillons has never been registered with the Commission as an FCM or in any other capacity.

B. Gillons' Securities Registration Suspension by FINRA

3. Between at least July 2007 and June 2012, Gillons was a broker registered with FINRA and employed by Morgan Stanley Smith Barney ("Morgan Stanley") or an affiliate. In July 2012, Morgan Stanley brought an action before FINRA against Gillons. The FINRA arbitrator ruled in Morgan Stanley's favor and ordered Gillons to pay \$175,206, plus interest.

4. Gillons failed to pay the arbitration award, and FINRA suspended him from associating with any FINRA member firm in any capacity, effective June 19, 2013. His suspension has not been lifted.

C. Factual Allegations Made by the Commission

5. Following his separation from Morgan Stanley and registration suspension by FINRA, Gillons continued to solicit funds from many of his former clients from Morgan Stanley and potential new clients.

6. On many occasions when soliciting funds, Gillons falsely represented that he would invest client funds, including in commodity futures contracts and securities, and convinced his clients to write him personal checks by claiming that if they did, they could avoid being charged commissions. On other occasions, Gillons obtained funds from his former clients as ostensible "loans" to fund the trading company he claimed to be founding. In soliciting funds, Gillons failed to inform his former clients and potential new clients that his registration had been suspended by FINRA.

7. Between at least November 2009 and November 2014, Gillons fraudulently solicited at least \$1,550,432 from at least 30 victims in this manner.

8. Gillons deposited all of the funds he solicited into his own personal bank accounts, where the funds were commingled. He transferred a portion of these funds to his own personal futures trading account at AMP Global Clearing, a registered futures commission merchant ("FCM") located in Chicago, Illinois, where the funds were also commingled.

9. Gillons emailed several of his victims false account statements showing that their funds were being traded at Mirus Futures, a registered introducing broker and forex firm located in Chicago, Illinois. However, Gillons did not have an account at Mirus Futures, in his own name or otherwise.

10. Many of Gillons' victims eventually realized that his securities registration had been suspended, in some cases after requesting the return of their funds repeatedly but without success, and in other cases after learning of the Commission's fraud action against Gillons. Gillons has continued to make false representations to his victims about why he has not returned their funds, including that Morgan Stanley or FINRA had frozen his funds. To date, Gillons has returned only approximately \$556,364 to his victims, despite their repeated requests for the return of their funds and his false promises to repay them.

11. Gillons has further failed to disclose to his victims that he has misappropriated the bulk of their funds, a total of approximately \$994,068, on personal expenses.

12. As described, *supra*, Gillons accepted money from persons to margin, guarantee, or secure commodity futures trades without being registered with the Commission, but he has never been registered with the Commission as an FCM or in any other capacity.

13. Gillons neither admits nor denies these factual allegations.

IV. CONCLUSIONS OF LAW

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 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.

A. Jurisdiction and Venue

1. 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.

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

B. Fraud by Misappropriation

3. By the conduct described in paragraphs 1 through 13 of Part III above, Defendant Gillons cheated and defrauded, or attempted to cheat and defraud, and willfully deceived, or attempted to deceive, his clients by, *inter alia*, knowingly or recklessly misappropriating their funds for his own personal benefit and misrepresenting, orally and/or in writing, that he was a licensed broker, that he would trade their funds, and his reasons for not returning customer funds, in violation of Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2012).

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

C. Failure to Register as an FCM

5. By the conduct described in paragraphs 1 through 13 of Part III above, Defendant Gillons accepted funds from numerous individuals to margin, guarantee, or secure commodity futures trades without being registered with the Commission as an FCM, in violation of Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012).

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

V. PERMANENT INJUNCTION

IT IS HEREBY 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), Defendant Gillons is permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Cheating or defrauding, or attempting to cheat or defraud, and willfully deceiving, or attempting to deceive, other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery that is made, or to be made, for or on behalf of, or with, any other person in violation of Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2012); and

- b. Accepting any money, securities, or property (or extending credit in lieu thereof) to margin, guarantee, or secure any trades or contracts in connection with soliciting or accepting orders for the purchase or sale of a commodity for future delivery, in violation of Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012).

2. Defendant Gillons is 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 Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2014) for his own personal account or for any account in which he has a direct or indirect interest;
- c. Having any commodity interests traded on his 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2014)), 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014).

VI. RESTITUTION, DISGORGEMENT AND CIVIL MONETARY PENALTY

A. Restitution

1. Defendant Gillons shall pay restitution in the amount of nine hundred ninety-four thousand and sixty-eight dollars (\$994,068) (“Restitution Obligation”), plus post-judgment interest. Post-judgment interest shall accrue on the Restitution Obligation 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).

2. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendant Gillons’ clients, the Court appoints the National Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor shall collect restitution payments from Gillons 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.

3. Gillons shall make Restitution Obligation payments under this Consent Order to the Monitor in the name “Thomas Gillons – SETTLEMENT/RESTITUTION Fund” and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s, 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. Gillons 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 Stephanie Reinhart, Commodity Futures Trading Commission, 525 W. Monroe St., Suite 1100, Chicago, IL 60661.

4. 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 Defendant Gillons' clients identified by the Commission 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 clients 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 Part V.B below.

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

6. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Gillons' 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.

7. The amounts payable to each client shall not limit the ability of any client from proving that a greater amount is owed from Gillons 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.

8. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each client of Gillons 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 restitution that has not been paid by Gillons to ensure continued compliance with any provision of this Consent Order and to hold Gillons in contempt for any violations of any provision of this Consent Order.

9. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Gillons' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

B. Civil Monetary Penalty

10. Defendant Gillons shall pay a civil monetary penalty in the amount of one million dollars (\$1,000,000) ("CMP Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation 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).

11. Gillons shall pay his 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
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, Gillons shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Gillons shall accompany payment of the CMP Obligation with a cover letter that identifies Defendant Gillons and the name and docket number of this proceeding. Gillons 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 Stephanie Reinhart, Commodity Futures Trading Commission, 525 W. Monroe St., Suite 1100, Chicago, IL 60661.

C. Provisions Related to Monetary Sanctions

12. Partial Satisfaction: Acceptance by the Commission or the Monitor of any partial payment of Gillons' Restitution Obligation or CMP Obligation shall not be deemed a waiver of his 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.

13. Asset Freeze: Pursuant to the Statutory Restraining Order entered on November 19, 2014, the Court entered an asset freeze order prohibiting the transfer, removal, dissipation and disposal of Gillons' assets, which was continued by the Consent Order for Preliminary Injunction against Gillons entered on December 9, 2014 (collectively, "Asset Freeze Order"). The court hereby lifts the Asset Freeze Order.

VII. MISCELLANEOUS PROVISIONS

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

Notice to the Commission:

Aitan Goelman, Director of Enforcement
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

and

Stephanie Reinhart, Senior Trial Attorney
U.S. Commodity Futures Trading Commission
525 W. Monroe St.
Chicago, IL 60661

Notice to Defendant Gillons:

Daniel Collins and Jeff Perconte
Counsel for Thomas Gillons
Drinker Biddle & Reath LLP
191 N. Wacker Dr., Suite 3700
Chicago, IL 60606

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

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

3. 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.

4. **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.

5. **Waiver:** The failure of any party to this Consent Order or of any client at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party 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.

6. **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 Gillons to modify or for relief from the terms of this Consent Order.

7. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Consent Order shall be binding upon Gillons, upon any person under his 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 Gillons.

8. **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

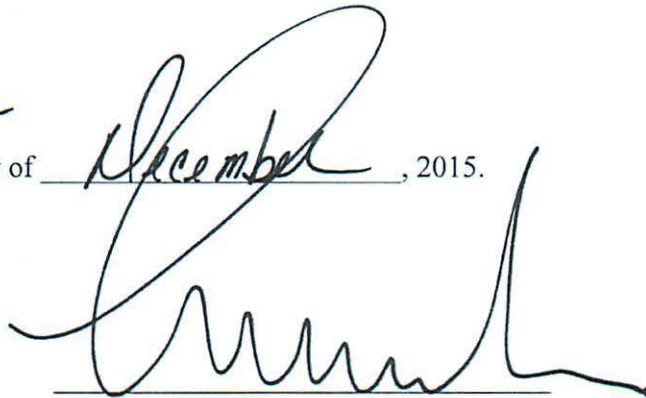
parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

9. Contempt: Gillons understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Consent Order.

10. Agreements and Undertakings: Gillons 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 Penalty, and Other Equitable Relief forthwith and without further notice

IT IS SO ORDERED on this 8th day of December, 2015.



UNITED STATES DISTRICT JUDGE

HARRY D. LEINENWEBER

CONSENTED TO AND APPROVED BY:

Defendant Thomas Gillons, individually

Date: _____

Stephanie Reinhart (IL ARDC No. 6287179)
Counsel for Plaintiff
U.S. Commodity Futures Trading Commission
525 W. Monroe St., Suite 1100
Chicago, Illinois 60661
(312) 596-0688 (phone)
(312) 596-0714 (facsimile)
sreinhart@cftc.gov

Approved as to form:

Daniel Collins
Jeff Perconte
Counsel for Thomas Gillons
Drinker Biddle & Reath LLP
191 N. Wacker Dr., Suite 3700
Chicago, IL 60606
(312) 569-1358 (Collins phone)
(312) 569-1361 (Perconte phone)
(312) 596-3000 (facsimile)
Daniel.Collins@dbr.com
Jeff.Perconte@dbr.com

Date: _____

Date: _____

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

U.S. COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. THOMAS GILLONS, Defendant.	Civil Action No: 14-cv-09262 Hon. Harry D. Leinenweber
--	---

**PROPOSED CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL
MONETARY PENALTY, AND OTHER EQUITABLE RELIEF**

I. INTRODUCTION

On November 19, 2014, Plaintiff U.S. Commodity Futures Trading Commission the ("Commission" or "CFTC") filed a Complaint for Injunctive and Other Equitable Relief and Penalties Under the Commodity Exchange Act ("Complaint") (Docket No. 1) against Defendant Thomas Gillons ("Gillons") 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. §§ *et seq.* (2012). The same day, after conducting an *ex parte* hearing, the Court entered a Statutory Restraining Order against Gillons (Docket No. 17). Subsequently, on December 9, 2014, the Court entered a Consent Order for Preliminary Injunction against Gillons (Docket No. 23).

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Defendant Gillons without a trial on the merits or any further judicial proceedings, Gillons:

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendant Thomas Gillons (“Consent Order”);

2. Affirms that he has read and agrees 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. Acknowledges service of the summons and Complaint;

4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012);

5. Admits 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. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012);

7. Waives:

(a) Any and all claims that he 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 Commission Regulations (“Regulations”), 17 C.F.R. §§ 148.1 *et seq.* (2014), relating to, or arising from, this action;

(b) Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this 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. Consents to the continued jurisdiction of this Court over him 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 Gillons now or in the future resides outside the jurisdiction of this Court;

9. Agrees that he 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 waives any objection based thereon;

10. Agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or in this Consent Order, or the 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 his: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Gillons shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement;

11. By consenting to the entry of this Consent Order, Gillons neither admits nor denies the allegations of the Complaint or in this Consent Order, or the Conclusions of Law in this Consent Order, except as to jurisdiction and venue, which he admits. Further, Gillons agrees

and intends that the allegations contained in the Complaint and in this Consent Order, and all of the Conclusions of Law contained in this Consent Order, shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Gillons; (b) any proceeding pursuant to Section 8a of the Act, 7 U.S.C. § 12a (2012), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 – 3.75 (2014); and/or (c) any proceeding to enforce the terms of this Consent Order. Gillons does not consent to the use of this Consent Order as the sole basis for any other proceeding brought by the Commission;

12. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 1 of Part VII of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

13. Agrees 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 Gillons in any other proceeding.

III. SUMMARY

A. The Parties To This Consent Order

1. 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. §§ *et seq.* (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ *et seq.* (2014).

2. Defendant Thomas Gillons resides in Napa County, California. On or about June 19, 2013, Gillons was suspended from registration with the Financial Industry Regulatory Authority (“FINRA”), a self-regulatory organization responsible for registering securities

industry participants, for failure to comply with an arbitration award. Gillons has never been registered with the Commission as an FCM or in any other capacity.

B. Gillons' Securities Registration Suspension by FINRA

3. Between at least July 2007 and June 2012, Gillons was a broker registered with FINRA and employed by Morgan Stanley Smith Barney ("Morgan Stanley") or an affiliate. In July 2012, Morgan Stanley brought an action before FINRA against Gillons. The FINRA arbitrator ruled in Morgan Stanley's favor and ordered Gillons to pay \$175,206, plus interest.

4. Gillons failed to pay the arbitration award, and FINRA suspended him from associating with any FINRA member firm in any capacity, effective June 19, 2013. His suspension has not been lifted.

C. Factual Allegations Made by the Commission

5. Following his separation from Morgan Stanley and registration suspension by FINRA, Gillons continued to solicit funds from many of his former clients from Morgan Stanley and potential new clients.

6. On many occasions when soliciting funds, Gillons falsely represented that he would invest client funds, including in commodity futures contracts and securities, and convinced his clients to write him personal checks by claiming that if they did, they could avoid being charged commissions. On other occasions, Gillons obtained funds from his former clients as ostensible "loans" to fund the trading company he claimed to be founding. In soliciting funds, Gillons failed to inform his former clients and potential new clients that his registration had been suspended by FINRA.

7. Between at least November 2009 and November 2014, Gillons fraudulently solicited at least \$1,550,432 from at least 30 victims in this manner.

8. Gillons deposited all of the funds he solicited into his own personal bank accounts, where the funds were commingled. He transferred a portion of these funds to his own personal futures trading account at AMP Global Clearing, a registered futures commission merchant ("FCM") located in Chicago, Illinois, where the funds were also commingled.

9. Gillons emailed several of his victims false account statements showing that their funds were being traded at Mirus Futures, a registered introducing broker and forex firm located in Chicago, Illinois. However, Gillons did not have an account at Mirus Futures, in his own name or otherwise.

10. Many of Gillons' victims eventually realized that his securities registration had been suspended, in some cases after requesting the return of their funds repeatedly but without success, and in other cases after learning of the Commission's fraud action against Gillons. Gillons has continued to make false representations to his victims about why he has not returned their funds, including that Morgan Stanley or FINRA had frozen his funds. To date, Gillons has returned only approximately \$556,364 to his victims, despite their repeated requests for the return of their funds and his false promises to repay them.

11. Gillons has further failed to disclose to his victims that he has misappropriated the bulk of their funds, a total of approximately \$994,068, on personal expenses.

12. As described, *supra*, Gillons accepted money from persons to margin, guarantee, or secure commodity futures trades without being registered with the Commission, but he has never been registered with the Commission as an FCM or in any other capacity.

13. Gillons neither admits nor denies these factual allegations.

IV. CONCLUSIONS OF LAW

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 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.

A. Jurisdiction and Venue

1. 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.

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

B. Fraud by Misappropriation

3. By the conduct described in paragraphs 1 through 13 of Part III above, Defendant Gillons cheated and defrauded, or attempted to cheat and defraud, and willfully deceived, or attempted to deceive, his clients by, *inter alia*, knowingly or recklessly misappropriating their funds for his own personal benefit and misrepresenting, orally and/or in writing, that he was a licensed broker, that he would trade their funds, and his reasons for not returning customer funds, in violation of Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2012).

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

C. Failure to Register as an FCM

5. By the conduct described in paragraphs 1 through 13 of Part III above, Defendant Gillons accepted funds from numerous individuals to margin, guarantee, or secure commodity futures trades without being registered with the Commission as an FCM, in violation of Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012).

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

V. PERMANENT INJUNCTION

IT IS HEREBY 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), Defendant Gillons is permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Cheating or defrauding, or attempting to cheat or defraud, and willfully deceiving, or attempting to deceive, other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery that is made, or to be made, for or on behalf of, or with, any other person in violation of Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2012); and

b. **Accepting any money, securities, or property (or extending credit in lieu thereof) to margin, guarantee, or secure any trades or contracts in connection with soliciting or accepting orders for the purchase or sale of a commodity for future delivery, in violation of Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012).**

2. **Defendant Gillons is 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 Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2014) for his own personal account or for any account in which he has a direct or indirect interest;**
- c. **Having any commodity interests traded on his 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014); and/or**
- g. **Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2014)), 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014).

VI. RESTITUTION, DISGORGEMENT AND CIVIL MONETARY PENALTY

A. Restitution

1. Defendant Gillons shall pay restitution in the amount of nine hundred ninety-four thousand and sixty-eight dollars (\$994,068) (“Restitution Obligation”), plus post-judgment interest. Post-judgment interest shall accrue on the Restitution Obligation 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).

2. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendant Gillons’ clients, the Court appoints the National Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor shall collect restitution payments from Gillons 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.

3. Gillons shall make Restitution Obligation payments under this Consent Order to the Monitor in the name “Thomas Gillons – SETTLEMENT/RESTITUTION Fund” and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s, 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. Gillons 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 Stephanie Reinhart, Commodity Futures Trading Commission, 525 W. Monroe St., Suite 1100, Chicago, IL 60661.

4. 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 Defendant Gillons' clients identified by the Commission 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 clients 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 Part V.B below.

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

6. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Gillons' 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.

7. The amounts payable to each client shall not limit the ability of any client from proving that a greater amount is owed from Gillons 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.

8. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each client of Gillons 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 restitution that has not been paid by Gillons to ensure continued compliance with any provision of this Consent Order and to hold Gillons in contempt for any violations of any provision of this Consent Order.

9. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Gillons' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

B. Civil Monetary Penalty

10. Defendant Gillons shall pay a civil monetary penalty in the amount of one million dollars (\$1,000,000) ("CMP Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation 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).

11. Gillons shall pay his 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
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, Gillons shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Gillons shall accompany payment of the CMP Obligation with a cover letter that identifies Defendant Gillons and the name and docket number of this proceeding. Gillons 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 Stephanie Reinhart, Commodity Futures Trading Commission, 525 W. Monroe St., Suite 1100, Chicago, IL 60661.

C. Provisions Related to Monetary Sanctions

12. **Partial Satisfaction:** Acceptance by the Commission or the Monitor of any partial payment of Gillons' Restitution Obligation or CMP Obligation shall not be deemed a waiver of his 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.

13. **Asset Freeze:** Pursuant to the Statutory Restraining Order entered on November 19, 2014, the Court entered an asset freeze order prohibiting the transfer, removal, dissipation and disposal of Gillons' assets, which was continued by the Consent Order for Preliminary Injunction against Gillons entered on December 9, 2014 (collectively, "Asset Freeze Order"). The court hereby lifts the Asset Freeze Order.

VII. MISCELLANEOUS PROVISIONS

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

Notice to the Commission:

Aitan Goelman, Director of Enforcement
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

and

Stephanie Reinhart, Senior Trial Attorney
U.S. Commodity Futures Trading Commission
525 W. Monroe St.
Chicago, IL 60661

Notice to Defendant Gillons:

Daniel Collins and Jeff Perconte
Counsel for Thomas Gillons
Drinker Biddle & Reath LLP
191 N. Wacker Dr., Suite 3700
Chicago, IL 60606

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

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

3. **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.

4. **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.

5. **Waiver:** The failure of any party to this Consent Order or of any client at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party 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.

6. **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 Gillons to modify or for relief from the terms of this Consent Order.

7. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Consent Order shall be binding upon Gillons, upon any person under his 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 Gillons.

8. **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.

9. Contempt: Gillons understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Consent Order.

10. Agreements and Undertakings: Gillons 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 Penalty, and Other Equitable Relief forthwith and without further notice


IT IS SO ORDERED on this ____ day of _____, 2015.

UNITED STATES DISTRICT JUDGE


CONSENTED TO AND APPROVED BY:


Defendant Thomas Gillons, individually

Date: 10-06-2015


Stephanie Reinhart (IL ARDC No. 6287179)
Counsel for Plaintiff
U.S. Commodity Futures Trading Commission
525 W. Monroe St., Suite 1100
Chicago, Illinois 60661
(312) 596-0688 (phone)
(312) 596-0714 (facsimile)
sreinhart@cftc.gov

Approved as to form:


Daniel Collins
Jeff Perconte
Counsel for Thomas Gillons
Drinker Biddle & Reath LLP
191 N. Wacker Dr., Suite 3700
Chicago, IL 60606
(312) 569-1358 (Collins phone)
(312) 569-1361 (Perconte phone)
(312) 596-3000 (facsimile)
Daniel.Collins@dbr.com
Jeff.Perconte@dbr.com

Date: 10/14/15

Date: 10/9/15