

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

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CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY  DEPUTY

U. S. COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

vs.

Steven Leigh Shakespeare,

and

Guardian Futures, Inc.

Defendants

Civil Action No: A-09-CV-260 -SS

**ORDER**

On April 8, 2009, Plaintiff United States Commodities Futures Trading Commission (“Plaintiff” or “Commission”) filed a Complaint in this civil action against defendants Steven Leigh Shakespeare (“Shakespeare”) and Guardian Futures, Inc. (“GFI”) (collectively the “Defendants”) seeking injunctive and other legal and equitable relief for violations of Sections 4b(a)(2)(i) and (iii) of the Commodity Exchange Act (the “Act” or “CEA”), 7 U.S.C. §§ 6b(a)(2)(i) and (iii), and Commission Regulation (“Regulation”) 166.2, 17 C.F.R. § 166.2 (2009). The Commission moved this Court to grant final judgment by default against Defendant GFI and order permanent injunctive relief, and impose a civil monetary penalty.

Based upon the Commission’s memorandum in support of its motion, the record in this case, and the Court being otherwise advised in the premises, it is hereby:

ORDERED that the Commission’s Motion for Final Judgment by Default, Permanent Injunction, and Ancillary Relief against Defendant GFI is granted and Judgment by Default and Order of Permanent Injunction and Civil Monetary Penalty as to Defendant GFI is hereby

entered and the Court hereby enters the following findings of fact and conclusions of law finding Defendant GFI liable as to all claims against it in the Complaint. Accordingly, the Court now issues the following Judgment by Default and Order of Permanent Injunction, and Civil Monetary Penalty as to Defendant GFI.

I.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore, further directs the entry of the following Findings of Fact and Conclusions of Law, and Order of Permanent Injunction and Civil Monetary Penalty, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), as set forth herein.

A. JURISDICTION

1. This Court has subject matter jurisdiction over this action and the allegations in the Complaint pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006).

2. This Court has personal jurisdiction over GFI pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006).

3. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e) (2006), because GFI resided in and transacted business in the Western District of Texas.

B. PARTIES

4. The Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 *et seq.* (2006), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2009).

5. Guardian Futures, Inc. is a Texas corporation founded by Shakespeare with its principal place of business at 3108 Wild Canyon Loop, Austin Texas 78732. Shakespeare is the president and the sole shareholder of GFI. GFI was registered to act as an introducing broker ("IB") on February 2, 2004. Its registration to act as an IB was withdrawn by Shakespeare on January 18, 2008.

C. FINDINGS OF FACT

6. On or about November 20, 2007, Shakespeare effected the following transactions in the non-discretionary account of Plains, account number xxx-xx050 at Alaron:

- a. Buy of 5 December Chicago Board of Trade ("CBOT") Wheat at 749.25;
- b. Sell of 20 March '08 CBOT Wheat at 770; and
- c. Sell of 29 March '08 Kansas City Board of Trade ("KCBOT") Wheat at 791.75.

None of the above transactions was authorized by Plains.

7. On November 21, 2007, the above transactions were transferred to the non-discretionary account of Evans by Shakespeare, account number xxx-xx324 at Alaron. Neither Plains nor Evans authorized Shakespeare to affect the transfer of the above positions from Plains' account to the account of Evans.

8. On or about November 26, 2007, Shakespeare effected the following transactions in the non-discretionary account of Evans, account number xxx-xx324 at Alaron:

- a. Buy of 20 March '08 CBOT Wheat – 5 at 847.75 and 15 at 848;
- b. Buy of 20 March '08 CBOT Wheat at 862;
- c. Sell of 40 March '08 CBOT Wheat – 4 at 838.75, 14 at 839, 2 at 839.25, 8 at 844.25, 11 at 844.5 and 1 at 844.75.
- d. Sell of 29 March '08 KCBOT Wheat at 859;
- e. Buy of 29 March '08 Wheat KCBOT Wheat at 880;
- f. Sell of 5 December CBOT Wheat – 1 at 832 and 4 at 832.25.

None of the above transactions was authorized by Evans.

9. On or about November 27, 2007, Shakespeare effected the following additional transactions in the non-discretionary account of Evans, account number xxx-xx324 at Alaron:

- a. Buy of 20 March '08 CBOT Wheat – 6 at 832.75 and 14 at 836; and,
- b. Buy of 29 March '08 KCBOT Wheat at 855.5.

None of the above transactions was authorized by Evans.

10. Later on November 27, 2007, Shakespeare transferred all of the unauthorized positions he transacted on November 26, 2007 and November 27, 2007 from the non-discretionary account of Evans, account number xxx-xx324 at Alaron, to the GFI Error Account number xxx-xx989 at Alaron. The transfer of these positions from Evans' non-discretionary account was not authorized by Evans. By this time, Evans and Plains had sustained a combined loss of at least \$196,000 as a result of Shakespeare's unauthorized transactions.

11. On or about November 29, 2007, Alaron's Margin/Risk Department was conducting routine reviews of its Error Accounts, and recognized a debit of \$196,788.44 in the GFI Error Account number xxx-xx989. Alaron's Executive Vice President and Chief Operating Officer, President of Futures and Options, and Risk Manager called Shakespeare concerning this debit. Rather than admit to his conduct, Shakespeare falsely stated that a trading error had occurred in a single customer's account. Following this conversation with Shakespeare, Alaron conducted an internal investigation, which preliminarily revealed that: not one (1) but two (2) customer accounts were involved; and Shakespeare had engaged in fraudulent activity by moving positions from one account to another in an attempt to conceal losses.

12. In the course of Alaron's internal investigation of this matter, Alaron requested that Shakespeare provide it with an email detailing how the purported "trading error" claimed by Shakespeare occurred. In an email dated November 29, 2007, Shakespeare stated that the purported "error" was made when he attempted to roll trades in the Plains account from the

December to March contract for both the Chicago and Kansas City grain futures. Shakespeare misrepresented the trading activity to Alaron in that his trading was not in error or by mistake.

13. At all times relevant hereto, Shakespeare was acting as the employee and agent of GFI. Shakespeare is the founder, president, sole employee and registered AP of GFI. Shakespeare had actual knowledge that he was not authorized to effect the transactions for the non-discretionary accounts of Plains and/or Evans. Despite not being so authorized, Shakespeare intentionally effected the subject transactions, directly causing Evans and Plains to incur combined trading losses of at least \$196,000.

D. CONCLUSIONS OF LAW

i). Shakespeare Violated Sections 4b(a)(2)(i) and (iii) of the Act

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

15. Shakespeare's unauthorized transactions in the Plains' and Evans' non-discretionary accounts, and its false and deceptive representations and omissions concerning the Evans and Plains accounts at Alaron, violated of Sections 4b(a)(2)(i) and (iii) of the Act, resulting in customer losses of \$196,788.44.

16. Shakespeare's unauthorized trading in the customer accounts violates Section 4b(a) of the Act because the trades were executed by Shakespeare knowing that transactions were without the customers' permission or contrary to the customer's trading instructions. *See In re Interstate Securities Corp.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,295 at 38,955 (CFTC June 1, 1992); *Cange v. Stotler, Inc.*, 826 F.2d 581, 589 (7th Cir. 1987); ("Commodity Exchange Act prohibits the cheating or defrauding of investors, 7 U.S.C. § 6b, and the knowing and deliberate execution of unauthorized trades, even if not done out of an evil motive or intent to injure the customer, violates that prohibition."); *Silverman v. Commodity Futures Trading Comm'n*, 549 F.2d 28, 32-33 (7th Cir.1977); *Haltmier v. Commodity Futures Trading Comm'n*, 554 F.2d 556, 560, 562 (2d Cir.1977) ("violation of 7 U.S.C. § 6b even if trades were undertaken by agent, 'knowing them to be unauthorized but hoping that they would turn out profitably and thus pass muster with the client'").

17. The required scienter element of a Section 4b violation is satisfied in the context of unauthorized trading where the defendant "acted deliberately, knowing that his acts were unauthorized and contrary to instructions." *Haltmier*, 554 F.2d at 562. Proof of an evil motive is unnecessary, and a showing that the defendant acted with reckless disregard for his duties under the Act is sufficient for a finding of fraud. *See Hammond v. Smith Barney Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659 (CFTC March 1, 1990).

18. Establishing violations of Sections 4b(a)(2)(i) and (iii) of the Act by misrepresentations and omissions requires proof that: (1) a misrepresentation, misleading statement, or deceptive omission was made; (2) with scienter; and (3) that the misrepresentation, misleading statement, or deceptive omission was material. *CFTC v. King*, No. 3:06-CF-1583-M,

2007 WL 1321762, at \*2 (N.D. Tex. May 7, 2007) (citing *CFTC v. R.J. Fitzgerald & Co.*, 310 F. 3d 1321, 1328 (11th Cir. 2002)).

19. During the relevant period, Shakespeare engaged in the following material and fraudulent representations, acts and omissions: falsely representing to Alaron that an “error” had occurred on one customer’s account; fraudulently omitting to advise Plains and Evans that he had effected transactions in their respective accounts without authorization; fraudulently omitting to advise Plains and Evans that he had transferred positions between the customer accounts and GFI Error Account without authorization and in an attempt to conceal prior unauthorized transactions; falsely representing to Alaron that the unauthorized transactions in the customer accounts were effected in “error”; and continuing to effect unauthorized transactions in the customer accounts to “get better fills” without authorization and to conceal prior fraudulent acts.

20. The scienter element is established when an individual’s “conduct involves intentional omissions or misrepresentations that present a risk of misleading customers, either known to the defendant or sufficiently manifest that the defendant must have been aware of the risk. *King*, 2007 WL 1321762, at \*2 (citing *R.J. Fitzgerald & Co.*, 310 F. 3d at 1328) (internal quotations omitted); *Wasnick v. Refco, Inc.*, 911 F.2d. 345, 348 (9th Cir. 1990) (citation omitted) (holding that scienter is established when an individual’s acts are performed “with knowledge of their nature and character”); *Lawrence v. CFTC*, 759 F. 2d 767, 773 (9th Cir. 1985) (providing that Commission must demonstrate only that a defendant’s actions were “intentional as opposed to accidental”).

21. Shakespeare made misrepresentations and omissions with the requisite scienter. Shakespeare acted with scienter because he knowingly or with a reckless disregard for the truth or falsity of such statements, knew that he did not possess the authority to effect the transactions

or transfer positions in the Plains and Evans non-discretionary accounts, as demonstrated by his November 29, 2007 email to Alaron. Further, Shakespeare's misrepresentations to Alaron further evidence his scienter.

22. A statement is material if "there is a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest." *R&W Technical Serv. Ltd. v. CFTC*, 205 F.3d 165, 169 (5th Cir. 2000); see *R.J. Fitzgerald*, 310 F.3d at 1328. Any fact that enables customers to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. *In re Commodities Int'l Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943 at 44,563-64 (CFTC Jan. 14, 1997); see also *Saxe v. E.F. Hutton & Co., Inc.*, 789 F.2d 105, 110 (2<sup>nd</sup> Cir. 1986) ("[M]aterial misrepresentations about the nature of the organization handling [an] account, the people [dealt] with, and the type of trading [the] funds were used for' would be sufficient to state a cause of action pursuant to the [Act].") (citing *Psimenos v. E.F. Hutton & Co. Inc.*, 789 F.2d 105 (2<sup>nd</sup> Cir. 1986)).

23. As demonstrated above, Shakespeare's misrepresentations and omissions are material in that a reasonable customer would want to know, among other things, that they were engaging in unauthorized trading, which resulted in losses to such customer accounts. Such information is material in that customer account balances, debits to their accounts balances, reduced available margin for authorized transactions, are important to such customers.

ii). Shakespeare Engaged in Unauthorized Trading in Violation of Regulation 166.2 and Section 4b of the Act

24. Regulation 166.2, 17 C.F.R. §166.2 (2009), in relevant part, prohibits the associated persons ("APs") of IBs from effecting a transaction in a customer's commodity interest account unless the customer (or the person designated by the customer to control the account) either



specified the transaction or authorized the AP in writing to effect transactions for the account without specific authorization.

25. During the relevant period, Shakespeare violated Regulation 166.2, 17 C.F.R. §166.2 (2009), in that he effected unauthorized transactions in the Evans and Plains accounts at Alaron, respectively, without the account holders' knowledge or consent. Even if one were to accept Shakespeare's tenuous claim that the initial transactions in the Evans and Plains accounts were the result of a purported "error," Shakespeare's subsequent transactions to "get better fills" and transfers of positions among the accounts were acts that were done intentionally by him, with specific knowledge that he was without authorization by Evans and/or Plains to effect such transactions.

26. Shakespeare's claim of a purported "error" would be more credible if he had contacted the account holders immediately after the November 20, 2007 transactions were effected, notified Plains and Evans of the "error," asked them how they wished to proceed, or even sought Plains' and Evans' respective authorizations as to how to proceed to correct the purported "errors" in these two non-discretionary accounts. This was never done. Instead, Shakespeare continued to effect unauthorized transactions in these non-discretionary accounts by entering trades and transferring positions.

iii). GFI is Liable for the Acts of its Agent, Shakespeare

27. Under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. §1.2 (2009), strict liability is imposed upon principals for the actions of their agents.<sup>1</sup> *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7<sup>th</sup> Cir. 1986); *Dohmen-Ramirez &*

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<sup>1</sup> Section 2(a)(1)(B) of the Act and Regulation 1.2 provide, in pertinent part: "The act, omission, or failure of any official, agent, or other person acting for an individual, association, partnership, corporation or trust within the scope of his employment or office shall be deemed the act, omission or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent or person."

*Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9<sup>th</sup> Cir. 1988). In the present case, the principal-agent relationship is manifest. Shakespeare is the founder, president, sole employee and registered AP of GFI. At all times throughout the relevant period, Shakespeare engaged in the acts constituting his violations of the Act and Regulations in his role as an employee and agent of GFI. Accordingly, GFI is strictly liable for Shakespeare's violations of the Act and Regulations described above, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. §1.2 (2009).

iv). Permanent Injunctive Relief Against GFI is Appropriate

28. Section 6c of the Act, 7 U.S.C. § 13a-1, authorizes and directs the Commission to enforce the Act and Regulations. In an action for permanent injunctive relief, the Commission is not required to make a specific showing of irreparable injury or inadequacy of other remedies which private litigants must make. *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978); *United States v. Quadro Corp.*, 928 F. Supp. 688, 697 (E.D. Tex. 1996) (citations omitted), *aff'd*, *U.S. v. Quadro Corp.*, 127 F.3d 34 (5th Cir. 1997); *CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 141-42 (2d Cir. 1977), *cert. denied* 438 U.S. 905 (1978).<sup>2</sup> Rather, the Commission makes the requisite showing for issuance of injunctive relief when it presents a *prima facie* case that the defendant has engaged, or is engaging, in illegal conduct, and that there is a likelihood of future violations. *CFTC v. American Bd. of Trade*, 803 F.2d 1242, 1250-51 (2d Cir. 1986); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979), *cert. denied*, 442 U.S. 921 (1979).

29. Unlike private actions, which are grounded in equity, a Commission request for injunctive relief has its basis in Section 6c of the Act, 7 U.S.C. § 13a-1. Under Section 6c, the

<sup>2</sup> The courts that have considered the "proper showing" standard for issuing a permanent injunction to prohibit future violations of a remedial statute have held that there must be (1) a showing that illegal activity has occurred and (2) a reasonable likelihood that the wrong will be repeated. *Kelley v. Carr*, 567 F. Supp. 831, 839-40 (W. D. Mich. 1983); *Rosenberg*, 85 F. Supp. 2d at 454 ("The District Courts also have jurisdiction to enter a permanent injunction 'upon a proper showing.'").

Commission must show only two things to obtain permanent injunctive relief: first, that a violation of the Act has occurred; and second, that there is a reasonable likelihood of future violations. *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978). Because enforcement proceedings under Section 6c of the Act, 7 U.S.C. §13a-1 involve the public interest rather than a private controversy, the equitable jurisdiction of the district court is not to be denied or limited in the absence of a clear legislative command. *CFTC v. Hunt*, 591 F.2d 1211, 1223 (7th Cir. 1979), cert. denied, 442 U.S. 921 (1979), (citing *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946)); see also *SEC v. Youmans*, 729 F.2d 413, 415 (6th Cir. 1984), cert. denied, 469 U.S. 1034 (1984) (availability of injunctive relief by statute eliminates the need for traditional equitable prerequisites in SEC actions); *Kelly v. Carr*, 442 F. Supp. 346 (W.D. Mich. 1977) *aff'd in part and rev'd in part*, 691 F.2d 800 (6th Cir. 1980) (granting default judgment for permanent injunction). In such a proceeding, the court's equitable powers are broader and more flexible than in private controversies. *Hunt*, 591 F.2d at 1211.

30. Actions for statutory injunctions need not meet the requirements for an injunction imposed by traditional equity jurisprudence. As noted previously, once a violation is demonstrated, the moving party needs show only that there is some reasonable likelihood of future violations. While past misconduct does not lead necessarily to the conclusion that there is a likelihood of future misconduct, it is "highly suggestive of the likelihood of future violations." *Id.* at 1220. See also *CFTC v. American Metals Exchange Corp.*, 693 F. Supp. 168, 191 (D.N.J. 1988). Cf. *SEC v. Zale Corp.*, 650 F.2d 718, 720 (5th Cir.), cert. denied, 454 U.S. 1124 (1981) ("[T]he Commission is entitled to prevail when the inferences flowing from the defendant's prior illegal conduct, viewed in light of the present circumstances, betoken a 'reasonable likelihood' of future violations.") (citations omitted). In *Hunt*, the Seventh Circuit reversed the district court's

denial of injunctive relief, stating: “[I]t is evident that the trial court's discretion has not been exercised to effectuate the manifest objectives of the specific legislation involved.” 591 F.2d at 1219-20.

31. The Court in *CFTC v. R. J. Fitzgerald* clearly articulated the principal that must guide this Court in determining that injunctive relief is appropriately imposed upon GFI herein:

we are guided by the principle that the CEA is a remedial statute that serves the crucial purpose of protecting the innocent individual investor – who may know little about the intricacies and complexities of the commodities market – from being misled or deceived. As the Fifth Circuit recently explained in *R & W*: ‘In 1974, Congress gave the [CFTC] even greater enforcement powers, in part because of the fear that unscrupulous individuals were encouraging amateurs to trade in the commodities markets *through fraudulent advertising*. Remedial statutes are to be construed liberally, and in an era of increasing individual participation in commodities markets, the need for such protection has not lessened.’”

*CFTC v. R.J. Fitzgerald*, 310 F. 3d 1321, 1329 (11<sup>th</sup> Cir. 2002) (citations omitted) (emphasis supplied).

32. GFI's conduct clearly demonstrates the need for a permanent injunction to deter future violations of federal commodities laws. GFI's actions were not isolated to a single incident, but rather constitute a series of deceptive acts over several months. Accordingly, this Court should enter a permanent injunction ordering that GFI is permanently restrained, enjoined, and prohibited from, directly or indirectly, engaging in unauthorized trading, cheating or defrauding or attempting to cheat or defraud other persons and willfully deceiving or attempting to deceive other persons by making false, deceptive or misleading representations of material facts, by failing to disclose material facts, and by misappropriating customer funds in or in connection with orders to make, or the making of, contracts of sale of any option on commodities for future delivery, made or to be made for or on behalf of any other person in violation of

Sections 4b(a)(i) and (iii), 7 U.S.C. §§ 6b(a)(i) (2006), and Regulation 166.2, 17 C.F.R. §166.2 (2009).

vi). Civil Monetary Penalty Against GFI is Appropriate

33. A court may impose a civil penalty against any person, upon a proper showing, on any person found to have violated the Act "in the amount of not more than the higher of \$100,000 or triple the monetary gain to the person for each violation." *See* 7 U.S.C. § 13a-1(d)(1); *see also* 7 U.S.C. § 9(3). The Commission increased the maximum civil monetary penalty per violation to "not more than the greater of \$130,000 or triple the monetary gain to such person for each such violation" committed between October 23, 2004 and October 22, 2008. 17 C.F.R. §143.8(a)(2)(iii). Civil penalties should be imposed to act as a deterrent, but should be proportional to the gravity of the offenses committed. *See Miller v. CFTC*, 197 F.3d 1227, 1236 (9th Cir. 1999). The maximum civil penalty "is limited by the number of violations alleged in the complaint times the maximum fine per violation." *Slusser v. CFTC*, 210 F.3d 783, 786 (7th Cir. 2000).

34. The Complaint filed by the Commission repeatedly alleges that each material misrepresentation or omission, and each unauthorized transaction made during the relevant period by GFI's agent Shakespeare "is alleged as a separate and distinct violation" of the Act. *See, e.g.*, Complaint ¶¶ 35 & 41. The Commission's Complaint specifically requests this Court to enter:

an order directing Defendants to pay a civil monetary penalty in the amount of not more than the higher of (i) triple the monetary gain to each Defendant for each violation...or (ii) \$130,000 for violations occurring after October 23, 2004.

Complaint ¶ VII.F.

35. In this case, it is undisputed that GFI's agent made thirteen separate and distinct unauthorized transactions in violation of the Act. *See, supra* ¶ 6 (identifying three separate and

distinct unauthorized trades on November 20, 2007); ¶ 7 (identifying unauthorized transfer of the three unauthorized trades on November 21, 2007); ¶ 8 (identifying six separate and distinct unauthorized trades on November 26, 2007); ¶ 9 (identifying two separate and distinct unauthorized trades on November 27, 2007); ¶ 10 (identifying unauthorized transfer of all remaining unauthorized trading positions on November 27, 2007). It is also undisputed that GFI's agent fraudulently omitted to advise either Plains or Evans of either the trades or transfers, which amounts to thirteen separate and distinct fraudulent omissions in violation of the Act. *See id.* In addition, it is undisputed that GFI's agent fraudulently represented to Alaron that an "error" occurred in a single customer's account and falsely represented to Alaron that the trades were made by mistake. *See, supra* ¶ 11 (identifying a conversation where Shakespeare falsely represented to Alaron that the trading error occurred in a single account); ¶ 12 (identifying an email from Shakespeare to Alaron that falsely represented the "trading errors" were made in an attempt to roll trades).

36. The thirteen unauthorized transactions and the fifteen fraudulent representations and omissions amount to twenty-eight separate and distinct violations of the Act. Therefore, a civil monetary penalty of \$130,000 for each of the twenty-eight violations of the Act and the Regulations, or \$3,640,000, represents the maximum civil monetary penalty for which GFI is *potentially* liable.

II.

ORDER OF PERMANENT INJUNCTION AND ANCILLARY RELIEF

IT IS HEREBY ORDERED THAT:

37. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), GFI is permanently restrained, enjoined, and prohibited, directly or indirectly, from engaging in the following activities:

- A. Trading on or subject to the rules of any registered entity, as that term is defined in 7 U.S.C. § 1a(29);
- B. Directly or indirectly engaging in misappropriation, misrepresentations, omissions, and/or the unauthorized trading of customers' accounts at any U.S. futures commission merchant without the customers' knowledge or consent, in violation of Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), and/or Regulation 166.2, 17 C.F.R. §166.2 (2009);
- C. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006));
- D. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Commission Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2009)) ("commodity options"), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) ("forex contracts") for their own personal account or for any account in which they have a direct or indirect interest;
- E. Having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;
- F. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;
- G. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;

- H. 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) (2009);
- I. Acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2009)), agent or any other officer or employee of any person 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) (2009);.

38. The injunctive provisions of this Order shall be binding upon defendant GFI, upon any person who acts in the capacity of an agent, employee, representative, and/or assign of defendant GFI and upon any person who receives actual notice of this Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with defendant GFI.

III.

ORDER OF CIVIL PENALTY AND OTHER EQUITABLE RELIEF

IT IS HEREBY ORDERED THAT:

39. Defendant GFI shall comply fully with the following terms, conditions and obligations relating to the payment of a civil monetary penalty. The equitable relief provisions of this Order shall be binding upon defendant GFI and any person who is acting in the capacity of officer, agent, employee, servant, or attorney of defendant GFI, and any person acting in active concert or participation with defendant GFI.

A. CIVIL MONETARY PENALTY

40. Good cause exists for the imposition of a civil monetary penalty ("CMP") upon defendant GFI.

41. Pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Regulation 143.8(a)(1)(i), 17 C.F.R. § 143.8(a)(1)(i) (2009), this Court may impose an order directing defendant GFI to pay a CMP, to be assessed by the Court, of not more than the greater of



\$130,000 for each violation of the Act and Regulations described herein, or triple the monetary gain to the defendant.

42. In determining the amount of the civil penalty to be paid by the defendant, the Court has considered the egregiousness, duration, and scope of the fraud and unauthorized trading. A proper showing having been made, defendant GFI is hereby assessed a total CMP in the amount of \$130,000, plus post-judgment interest.

43. Defendant GFI shall pay the CMP within ten (10) days of the entry of this Order. Post-judgment interest shall accrue beginning on the date of entry of this Order and will be calculated by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961. Defendant GFI shall pay the CMP 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 by other than electronic funds transfer, 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: Marie Bateman – AMZ-300  
DOT/FAA/MMAC  
6500 S. Macarthur Blvd.  
Oklahoma City, OK 73169

If the payment is to be made by electronic funds transfer, contact Marie Bateman at 405-954-6569 for instructions. Defendant GFI shall accompany the payment of the CMP with a cover letter that identifies him and the name and docket number of this proceeding. Defendant GFI shall simultaneously transmit a copies of the cover letter and the form of payment to: (a) Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; and (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address. .

C. PROVISIONS RELATED TO MONETARY SANCTIONS

44. Partial Payments: Any acceptance by the Commission of partial payment of defendant GFI's civil monetary penalty obligation shall not be deemed a waiver of its requirement to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

45. Satisfaction: Upon full satisfaction of the defendant GFI's CMP obligation, satisfaction of judgment will be entered as to defendant GFI.

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

ORDERED AND ADJUDGED:

DONE AND ORDERED in Chambers at Austin, Texas, this 17<sup>th</sup> day of March,  
2010.

  
\_\_\_\_\_  
Sam Sparks  
United States District Judge

cc: All counsel and *pro se* parties of record