

III.

The Commission finds the following:

A. SUMMARY

From July 2011 to August 2011, Respondent aided and abetted Kevin G. White's ("White"), RFF GP, LLC's, and KGW Capital Management, LLC's (collectively, "the White entities") fraudulent solicitation of pool participants through his contributions to a fraudulent mass solicitation email sent by White to prospective pool participants. In May 2012, Respondent further aided and abetted White's fraudulent solicitation of pool participants by soliciting a pool participant to invest in a fraudulent foreign currency exchange ("forex") pool, Revelation Forex Fund, LP ("RFF"), which was operated by White.²

B. RESPONDENT

Brian Hinman was registered with the Commission as an associated person ("AP") of RFF's Futures Commission Merchant ("FCM") during the Relevant Period. At the same time, Respondent was also employed by White as a trader for RFF through an independent contractor agreement ("ICA"). Respondent is no longer registered with the Commission in any capacity.

C. FACTS

In July 2011, while White was in the process of forming the RFF pool, Respondent entered into the ICA with White. Under the ICA, Respondent contracted to trade the RFF account and meet with potential RFF customers, for which Respondent was to be compensated with a percentage of RFF's monthly performance fees, depending on actual trading results.

During this same period of time, Respondent assisted White by creating a false "audit" of RFF's trading results. Although RFF's first trading account was not opened by White until July 2011, the "audit" misrepresented that RFF had realized a 45.95% compound annual growth rate

² On July 9, 2013, the Commission filed a complaint in the U.S. District Court for the Eastern District of Texas that charged White with fraudulent solicitation and misappropriation of pool participants' funds while acting as a commodity pool operator in violation of Sections 4b(a)(2)(A) and (C), and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(2)(A) and (C), and 4o(1)(A) and (B) (2012). *CFTC v. RFF GP, LLC et al.*, No. 4:13-cv-382-RAS-DDB (E.D. Tex.). White was charged as a commodity pool operator because he operated and solicited funds for the RFF pooled investment vehicle. On March 30, 2015, the court entered a Consent Order for Permanent Injunction against defendants. The Consent Order ordered them to pay a \$4,150,000 civil monetary penalty and \$3,365,888 in restitution. It also imposed permanent registration and trading bans. In the parallel criminal case, White pled guilty to mail fraud and was sentenced to eight years in prison on February 18, 2015. *United States v. White*, No. 4:13-cr-00258-RAS-DDB (E.D. Tex.).

since January 2009.³ Further assisted by Respondent, and with Respondent's knowledge, White subsequently used the false audit results to fraudulently solicit pool participants through a mass solicitation email and during in-person solicitations. Respondent helped pay for distribution of the fraudulent solicitation email and was aware that the email contained misleading and false statements regarding RFF.

In May 2012, White and Respondent met with a prospective pool participant at White's office to solicit him to invest in RFF. During this meeting, Respondent made misrepresentations and omissions of material fact, including: (1) RFF was profitable when it was actually losing money; (2) RFF had been trading since 2009 when instead it had been trading since 2011; (3) Respondent was a full-time employee of White, who also employed two other RFF traders in addition to Respondent when, in fact, Respondent only traded part-time and was RFF's sole trader; and (4) Respondent failed to disclose that he was actually a full-time employee of RFF's FCM, where he worked in information technology and that he was trading the RFF account without his employer's knowledge.

Between July 2011 and on or about October 2012, when White became dissatisfied with Respondent's performance, White paid Respondent a total of \$1,138.12 as compensation for his work. Respondent has cooperated fully with the Commission's prosecution of the White entities.

IV.

LEGAL DISCUSSION

Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2012), prohibits all manner of fraud in, or in connection with, forex transactions, including fraudulent solicitation.⁴ Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), in relevant part, makes it unlawful for a commodity pool operator ("CPO"), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly: (A) to employ any device, scheme, or artifice to defraud any participant or prospective participant; or (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any participant or prospective participant.

During the Relevant Period, Respondent aided and abetted White's violations of Sections 4b(a)(2)(A) and (C), and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(2)(A) and (C), and 6o(1)(A) and (B) (2012), through his contributions to White's fraudulent solicitation email, which was transmitted in interstate commerce to prospective pool participants while White was

³ The "audited" trading results were actually derived from Respondent's personal trading account.

⁴ The Commission possesses jurisdiction over Respondent's fraud in connection with off-exchange forex pursuant to Sections 6(c) and 2(c)(2)(C)(iv) of the Act, 7 U.S.C. §§ 9 and 2(c)(2)(C)(iv) (2012). Section 2(c)(2)(C)(iv) further provides that Section 4b shall apply to any forex agreement, contract, or transaction over which the Commission has jurisdiction "as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery."

acting as a CPO. Respondent also aided and abetted White's violation of Section 4b(a)(2)(A) and (C) of the Act by assisting White's fraudulent solicitation of a pool participant in May 2012.

A. Respondent Aided and Abetted White's Solicitation of Prospective Pool Participants

Fraudulent solicitation of customers violates Section 4b(a) of the Act. To establish solicitation fraud, the Commission must prove that: (1) misrepresentations, misleading statements, and/or deceptive omissions were made; (2) with scienter; and (3) the misrepresentations, misleading statements and/or deceptive omissions were material. *See CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328 (11th Cir. 2002).

Falsely leading customers to believe that they would make large profits trading volatile and risky instruments such as forex, and false representations to prospective customers concerning the profitability of previous trading are misrepresentations that violate Section 4b(a)(2) of the Act. *See, e.g., CFTC v. PMC Strategy*, No. 3:11-CV-73, 2013 WL 1349177, at *6 (W.D.N.C. Apr. 3, 2013); *CFTC v. Noble Wealth Data Info. Svcs.*, 90 F. Supp. 2d 676, 685 (D. Md. 2000), *aff'd in part, vacated in part sub nom. CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002). 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." *CFTC v. King*, No. 3:06-CV-1583-M, 2007 WL 1321762, at *2 (N.D. Tex. May 7, 2007) (quoting *R.J. Fitzgerald & Co.*, 310 F.3d at 1328).

"A statement is material if it is substantially likely that 'a reasonable investor would consider it important in deciding whether to make an investment.'" *PMC Strategy*, 2013 WL 1349177, at *5 (quoting *R.J. Fitzgerald & Co.*, 310 F.3d at 1328-29); *accord R & W Technical Svcs. v. CFTC*, 205 F.3d 165, 169 (5th Cir. 2000); *Noble Wealth Data Info. Svcs.*, 90 F. Supp. 2d at 686.

Section 13(a) of the Act holds responsible as a principal any person who willfully aids and abets the commission of a violation of the Act. 7 U.S.C. § 13c(a) (2012). Liability as an aider and abettor requires proof that: (1) the Act was violated; (2) the aider and abettor had knowledge of the wrongdoing underlying the violation; and (3) the aider and abettor intentionally assisted the primary wrongdoer. *See In re Rogers and Toczylowski*, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,808, at 56,367 (CFTC July 13, 2004). Although actual knowledge of the primary wrongdoer's conduct is required, knowledge of the unlawfulness of such conduct is not necessarily required to be demonstrated. *Id.*; *see also In re Global Minerals & Metals*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,686, at 48,249-51 (CFTC June 30, 1999) (aider and abettor had requisite knowledge because it "correctly concluded" that the primary wrongdoer's trading was not "motivated by any genuine commercial need"). Intentional assistance is demonstrated if the aider and abettor "knowingly participate[s] in the venture and seek[s] by his actions to make it succeed." *In re Rogers and Toczylowski*, ¶ 29,808, at 56,368.

While acting as a CPO, White violated Sections 4b(a)(2)(A) and (C), and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(2)(A) and (C), and 6o(1)(A) and (B) (2012), by fraudulently

soliciting pool participants, including through the means or instrumentalities of interstate commerce, by sending a fraudulent mass solicitation email to prospective pool participants. Respondent assisted White by helping to pay for distribution of the fraudulent mass solicitation email and by participating in the creation of a false audit of RFF's performance results that were featured in the email with Respondent's knowledge. Further, Respondent intentionally assisted White's fraudulent solicitation of a prospective pool participant in May 2012. By intentionally assisting White in soliciting prospective pool participants through the fraudulent mass solicitation email, and by intentionally assisting White's fraudulent solicitation of a prospective pool participant in May 2012, Respondent willfully aided, abetted, counseled, and worked in combination and in concert with White in White's wrongful conduct. Therefore, pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2012), Respondent is liable for White's violations of Sections 4b(a)(2)(A) and (C), and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(2)(A) and (C), and 6o(1)(A) and (B) (2012).

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent aided and abetted White's violations of Sections 4b(a)(2)(A) and (C), and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(2)(A) and (C), and 6o(1)(A) and (B) (2012), and is therefore liable for these violations.

VI.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which he, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. the filing and service of a complaint and notice of hearing;
 - 2. a hearing;
 - 3. all post-hearing procedures;
 - 4. judicial review by any court;

5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 6. 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 the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2015), relating to, or arising from, this proceeding;
 7. 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, 857-68 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
 8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulates that the record on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer; and
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that Respondent aided and abetted violations of Sections 4b(a)(2)(A) and (C), and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(2)(A) and (C), and 6o(1)(A) and (B) (2012), and is therefore liable for violating Sections 4b(a)(2)(A) and (C), and 4o(1)(A) and (B) of the Act;
 2. orders Respondent to cease and desist from violating Sections 4b(a)(2)(A) and (C), and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(2)(A) and (C), and 6o(1)(A) and (B) (2012);
 3. orders Respondent to pay a civil monetary penalty in the amount of \$140,000, plus post-judgment interest within thirty (30) days of the date of entry of this Order;⁵
 4. orders that Respondent be permanently prohibited from, directly or indirectly, engaging in 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)), and all registered entities shall refuse him trading privileges; and

⁵ Respondent's \$140,000 civil monetary penalty represents a significant discount based on the meaningful cooperation shown by Respondent during the Commission's investigation. If the Respondent had not shown such meaningful cooperation, the civil monetary penalty may have been significantly higher.

5. orders Respondent to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Sections 4b(a)(2)(A) and (C), and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(2)(A) and (C), and 6o(1)(A) and (B) (2012).
- B. Respondent shall pay a civil monetary penalty in the amount of one-hundred forty thousand dollars (\$140,000) (“CMP Obligation”), plus post-judgment interest, within thirty (30) days of the date of entry of this Order. If the CMP Obligation is not paid in full within thirty (30) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondent shall pay the 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 is to be made by electronic funds transfer, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent 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.

- C. Respondent is permanently prohibited from, directly or indirectly, engaging in 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)), and all registered entities shall refuse him trading privileges;
- D. Respondent shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondent 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 findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority and/or control understand and comply with this agreement.
 2. Respondent agrees that he shall never, directly or indirectly:
 - a. enter into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2015)) for Respondent's own personal account or for any account in which Respondent has a direct or indirect interest;
 - b. have any commodity interests traded on Respondent's behalf;
 - c. control or direct 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;
 - d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
 - e. apply for registration or claim exemption from registration with the Commission in any capacity, and engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2015); and/or
 - f. act as a "principal" (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2015)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)) registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2015).

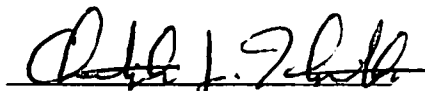
3. Respondent agrees to pay disgorgement in the amount of One Thousand One Hundred Thirty-Eight Dollars and Twelve Cents (\$1,138.12) (“Disgorgement Obligation”), plus post-judgment interest, within thirty (30) days of the date of entry of this Order. If the Disgorgement Obligation is not paid in full within thirty (30) days of the date of entry of this Order, then post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date of entry of this Order and shall be determined using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondent shall pay the Disgorgement 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 under cover letter that identifies Respondent, the name and docket number of this proceeding, and the name and docket number of the proceeding in the U.S. District Court for the Eastern District of Texas (*CFTC v. RFF GP, LLC*, Case No. 4:13-cv-382) to:

Kelly M. Crawford, Esq. (as receiver and Assignee acting for the benefit of the KGW Receivership)
Scheef & Stone, LLP
Lincoln Plaza – Suite 2700
500 N. Akard Street
Dallas, Texas 75201

- E. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent’s Disgorgement Obligation or CMP Obligation shall not be deemed a waiver of his obligation 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.
- F. Change of Address/Phone: Until such time as Respondent satisfies in full his Disgorgement Obligation and CMP Obligation as set forth in this Order, Respondent 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.

The provisions of this Order shall be effective as of this date.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: April 12, 2016