

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of

CFTC Docket No: 06-07

Eddie Holman Jr.
d/b/a C-THRU Inc.,

Respondent.

**ORDER INSTITUTING
PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(d) OF THE
COMMODITY EXCHANGE ACT,
MAKING FINDINGS AND IMPOSING
REMEDIAL SANCTIONS**

RECEIVED
 CFTC
 2006 JUN 7 A 11:15
 ORDER PROCEEDINGS
 CLERK

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Eddie Holman Jr. ("Holman"), doing business as C-THRU Inc. ("C-THRU"), has violated Section 4o of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6o (2002), and Commission Regulations ("Regulations") 4.13(c)(1) and (3) and 4.20(c), 17 C.F.R. §§ 4.13(c)(1) and (3) and 4.20(c) (2005). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether Holman engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent Holman has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Respondent acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Act, Making Findings and Imposing Remedial Sanctions ("Order"). Respondent, without admitting or denying the findings of fact or conclusions of law herein, consents to the use of the findings contained in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Respondent does not consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, as the sole basis for any other proceeding brought by the Commission other than a proceeding in bankruptcy, or to enforce the terms of the Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

Since at least September 2000, Holman, doing business as C-THRU, operated as a commodity pool and commodity pool operator ("CPO"). Holman misrepresented to one or more prospective participants the past performance of the pool. Holman failed to trade and misappropriated pool participants' investment funds. Holman also falsely represented to pool participants in email messages and periodic pool performance statements that profits were being generated by C-THRU's commodity futures trading. Finally, Holman failed to furnish monthly statements to pool participants, and failed to maintain for a period of five years all documents related to his operation of the commodity pool. By these actions, Holman violated Section 40 of the Act, 7 U.S.C. § 60 (2002), and Commission Regulations 4.13(c)(1) and (3) and 4.20(c), 17 C.F.R. §§ 4.13(c)(1) and (3) and 4.20(c) (2005).

II. SETTLING RESPONDENT

Eddie Holman Jr. is an individual who resides at 10320 SW Stephanie Way, Port St. Lucie, FL 34987. From November 1988 through August 2001, Holman was registered with the Commission as an Associated Person with several registered firms. Holman is not currently registered with the Commission in any capacity.

Since October 1998, Holman has done business in the name of C-THRU Inc. C-THRU was a business entity incorporated in the state of Florida in April 1997 but which was administratively dissolved in October 1998 for failure to file an annual report. C-THRU was never registered with the Commission in any capacity. In September 2000, Holman, using the name of C-THRU, filed a notice of exemption from registration pursuant to Commission Regulation 4.13(a)(2).

III. FACTS

Since at least September 2000, Holman has operated, under the name of C-THRU, both as a commodity pool as well as the CPO for that pool. Holman orally solicited for pool participants among individuals he advised or became acquainted with as an insurance agent for Northwestern Mutual Life Insurance and among friends and family of current participants. When new participants join the pool, Holman provides them with a "Disclosure Document," which is signed by the participant and operates as a participation agreement. The document states that C-THRU invests, via an account at Lind-Waldock, in exchange traded commodity futures and options on U.S. and foreign futures exchanges. It identifies C-THRU as the "managing partner" of the pool, Holman as president of C-THRU, and the pool participant as a "limited equity partner" in the pool. The document also states that C-THRU will deduct from

the net proceeds in the account an annual "Percent of Profits Management Fee" equal to 20% of "realized profits."

According to Holman, between January 2003 and February 2006, C-THRU collected a total of \$171,100 in investment funds from seven pool participants. Most of the participants' investment funds were deposited into bank accounts opened by Holman in C-THRU's name.

A. C-THRU's Trading Account

From September 2000 through the present, Holman maintained a commodity futures trading account in the name of C-THRU at Lind-Waldock. Holman has been at all times the sole authorized trader on the account. Although Holman collected approximately \$171,100 in investment funds from seven pool participants from September 2000 through September 2005, only \$76,900 was deposited into the trading account. In addition, a total of \$59,450.17 was withdrawn from the account.

From September 2000 through February 2001, and from January through April 2005, Holman made a substantial number of trades in crude oil, heating oil and unleaded gasoline futures contracts. At all other times there was no trading, except for a few contracts in May, June and December 2004, and September 2005. Holman's trading in the Lind-Waldock account was profitable in only five of fourteen months of trading. From September 2000, when the trading account was opened, through October 2005, when it was depleted, Holman sustained a net loss of \$16,976.52.

Holman did not provide to pool participants copies of each monthly account statement for the C-THRU trading account.

B. Misrepresentations About Pool Performance

Holman misrepresented the pool's performance when soliciting at least two prospective pool participants. In January 2004, Holman was handling one pool participant's insurance account with Northwestern Mutual Life Insurance. The participant obtained a bonus from his employer and asked Holman's advice about investing it. Holman suggested that he invest with C-THRU. Based on Holman's representations that the pool was "consistently beating the market" and earning 10-15% annual returns, the participant issued a check to C-THRU in the amount of \$2,500. Similarly, in early 2003, Holman told another pool participant that the pool was doing well. In fact, no trading had occurred since February 2001 and trading prior to that time had resulted in a net loss of over \$12,000. Therefore, Holman misrepresented the performance history of the pool.

Holman issued periodic performance statements to pool participants. The statements generally represented that the pool, and thus the participants' investments, were earning profits. For example, in March 2006, Holman delivered to one pool participant an account statement that showed nearly consistent profits of between 0.07% and 1.23% per month from January through December 2005. Other pool participants received similar statements. However, Holman's trading did not earn the returns depicted in the monthly statements since there was no trading from May through August 2005 or from October through December 2005. Moreover, in all but

one of the five months there was trading, C-THRU's account sustained losses ranging from approximately \$1,500 to \$2,900. Therefore, Holman misrepresented to pool participants the performance of the pool.

C. Misappropriation of Pool Funds

Holman failed to trade all of the pool participants' funds as represented, but rather used some of the funds to repay other participants and to pay his own personal expenses. While Holman claims to have collected \$171,000 from pool participants during the period of January 2003 through February 2006,² a total of only \$79,900 was deposited with Lind-Waldock during the life of C-THRU's trading account, from September 2000 and October 2005. Holman failed to transfer all of the pool participants' funds to the trading account at Lind-Waldock. Moreover, while some funds were transferred to Lind-Waldock, the transfers generally did not correspond in time or amount to deposits by pool participants.³

Often, funds deposited by one pool participant were used by Holman to pay returns to another participant. Additionally, Holman made numerous cash withdrawals from C-THRU's accounts and made expenditures for personal expenses, such as over \$3,300 for golfing and over \$12,000 for dining, groceries, clothing purchases, gasoline and movie rentals. Holman often depleted C-THRU's accounts, while he continued to issue checks to participants who requested the return of funds.⁴ Bank penalties were charged to C-THRU's accounts for the resulting insufficient funds ("NSF") checks.

Holman also assessed management fees on non-existent profits. The Disclosure Document signed by pool participants entitled C-THRU to allocate to itself on an annual basis 20% of the net profits generated by the performance of C-THRU's trading. In March 2006, C-THRU, through Holman, delivered to a participant a performance statement that showed returns between 0.07% and 1.23% per month from January through December 2005. Against these purported returns, C-THRU assessed "profit fees" of 5% per month, totaling \$126.10, and "administrative fees" of 0.25% each month, totaling \$324.93. Similar fees were assessed against other pool participants. However, C-THRU's trading did not earn the returns depicted in the monthly statements and it was not entitled to annual profit fees.

² During this time, only \$36,900 was deposited into C-THRU's trading account.

³ For example, no funds were deposited into the trading account in January 2004, when a participant invested funds with C-THRU, nor in January, July or August 2005, when another participant invested funds with C-THRU. In April 2005, when a participant invested \$8,000, only \$5,400 was deposited into C-THRU's trading account. Holman withdrew all funds in the trading account on April 21, 2005. Thereafter, there were no funds in C-THRU's trading account except for a \$3,000 deposit in September 2005, the remains of which were withdrawn in October 2005.

⁴ For example, in April 2005, a participant requested that C-THRU return his investment in the pool. A check issued to the participant from C-THRU's bank account was returned for insufficient funds. For months thereafter, the participant was unable to reach Holman. Eventually, after hiring an attorney and filing a complaint with the police department, the participant received a replacement check which he was able to cash.

D. Loans and Other Agreements and Payments From C-THRU's Bank Accounts

In addition to pool participants' funds, Holman deposited into the "C-THRU" bank accounts funds borrowed in C-THRU's name and funds obtained from one individual for an investment in meter reading route contracts with Florida Power and Light. Between 1999 and August 2003, in the name of C-THRU, Holman entered into agreements to borrow in excess of \$100,000 from three lenders at interest rates of 30% and 60% semi-annually. Of the funds borrowed, \$79,000 was deposited into the "C-THRU" bank account. Holman issued checks from C-THRU's bank account to these lenders in the amount of approximately \$65,000, in repayment of the loans.

The borrowed funds were commingled with the pool funds. Holman, d/b/a C-THRU, had little or no income from sources other than the pool with which to repay these loans.

E. Failure to Maintain Records

In response to a subpoena *duces tecum*, Holman identified seven pool participants for the period of January 2003 through February 2006.⁵ Of the seven, Holman was unable to produce participation agreements and disclosure documents for three participants, who joined the pool in January, February and May 2003, respectively. Holman was unable to produce email correspondence with one pool participant, who joined the pool in January 2004.

IV. LEGAL DISCUSSION

Holman, d/b/a C-THRU, is a CPO that is exempt from registration under Commission Regulation 4.13(a)(2), but is liable for fraud pursuant to Section 4o of the Act and Commission Regulation 4.15. Holman, d/b/a C-THRU, is a CPO, as defined in Section 1a(5) of the Act, because Holman solicits members of the general public to participate financially in an investment trust that will trade commodity futures contracts on registered U.S. exchanges on their behalf.⁶ Regulation 4.13(a)(2) provides an exemption from registration for CPOs that have less than 15 participants at any time and whose total gross capital contributions in all pools do not exceed \$200,000. Holman, d/b/a C-THRU, filed the appropriate notice of exemption in September 2000 and is therefore exempt from registration. However, Regulation 4.15 states that the anti-fraud provisions of Section 4o of the Act continue to apply to CPOs that are exempt from registration.

A. Holman Engaged In A Transaction Or Course Of Business Which Operated As A Fraud Or Deceit Upon Pool Participants

Through his actions, Holman violated Section 4o(1) of the Act by using the mails or any means or instrumentality of interstate commerce, directly or indirectly (A) to employ a device, scheme, or artifice to defraud pool participants, or (B) to engage in a transaction or course of business which operated as a fraud or deceit upon pool participants. Section 4o(1)(A) and (B) of

⁵ However, the disclosure document provided to the most recent participant, in December 2004, indicated that he was the twelfth pool participant.

the Act prohibits both registered and unregistered CPOs from making misrepresentations or omissions regarding futures and options transactions.⁷

To violate Section 4o(1)(A) of the Act, Holman must have made material misrepresentations or omissions with scienter. A statement is material if it is substantially likely that a reasonable investor would consider the matter important in making an investment decision.⁸ Generally, omissions and misrepresentations of fact concerning the likelihood of profiting from commodity futures and commodity options transactions and the performance of a pool are material and violate the antifraud provisions of the Act.⁹ Scienter requires proof that the respondent committed the alleged wrongful acts “intentionally or with reckless disregard for his duties under the Act.”¹⁰ Section 4o(1)(B) does not require proof of scienter, so long as the conduct operated as a fraud.¹¹

The evidence shows that Holman made affirmative misrepresentations, orally and in periodic performance statements delivered to pool participants via email, regarding the pool’s trading and trading results, and failed to disclose the pool’s actual trading results. Holman falsely represented in periodic statements that the pool funds were being traded and that the pool, and thus the participants’ investments in the pool, were earning generally consistent and positive returns. Holman failed to trade all of the participants’ funds, failed to trade for substantial periods of time, and the trades he did make were mostly unsuccessful. The representations

⁶ Section 1a(5) of the Act defines a “commodity pool operator” as “any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility,” 7 U.S.C. § 1(a)(5) (2002).

⁷ Cf. *In re R&W Technical Services, Ltd.*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582 (CFTC March 16, 1999), *aff’d in relevant part, R&W Technical Services, Ltd. v. CFTC*, 205 F.3d 165, 170 (5th Cir.), *cert. denied*, 531 U.S. 817, 121 S.Ct. 54, 148 L.Ed.2d 22 (2000) (prohibiting fraud by an unregistered CTA who sold trading systems to the public).

⁸ *Sudol v. Shearson Loeb Rhoades, Inc.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,748, at 31,119 (CFTC Sept. 30, 1985); *CFTC v. Int’l Fin. Servs.*, 323 F. Supp. 2d 482, 499 (S.D.N.Y., 2004); *CFTC v. Noble Wealth Data Info. Serv., Inc.*, 90 F.Supp.2d 676, 686 (D. Md. 2000), *aff’d in part, vacated in part, sub nom., CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002):

⁹ See e.g., *JCC, Inc., et al. v. CFTC*, 63 F.3d 1557, 1571 (11th Cir. 1995); *Saxe v. E.F. Hutton & Co., Inc.*, 789 F.2d 105, 110-11 (2nd Cir. 1986); *CFTC v. Commonwealth Financial Group, Inc.*, 874 F. Supp. 1345, 1353-54 (S.D. Fla. 1994); *CFTC v. U.S. Metals Depository Co.*, 468 F. Supp. 1149, 1161 (S.D.N.Y. 1979).

¹⁰ *Hammond v. Smith Barney, Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,657-59 (CFTC March 1, 1990) (*scienter* is a necessary element to establish futures fraud); *Do v. Lind-Waldock & Co.*, [1994-1996 Transfer Binder] Comm. Fut., L. Rep. (CCH) 26,516 at 43,321 (CFTC Sept. 27, 1995) (a reckless act is one where there is so little care that it is difficult to believe the actor was not aware of what he was doing); *Stotler & Co. v. CFTC*, 855 F.2d 1288, 1290-91 (7th Cir. 1988) (*scienter* requirement of Section 4o(1)(A) is the same as that of Section 4b).

¹¹ *Commodity Trend Serv. v. CFTC*, 233 F.3d 981, 993 (7th Cir. 2000); see also *In re Kolter*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,262 at 42,198 (CFTC Nov. 8, 1994).

clearly were false. These representations are also material because a reasonable investor would find them important in making an investment decision.

Holman acted with scienter because he knew that the pool had suffered losses and that his representations to the contrary were false. Likewise, Holman knew that the performance statements he delivered to pool participants, which indicated that the pool was earning returns, were false.

Holman's knowing dissemination of false performance statements via email, oral misrepresentations regarding the pool's performance, and failure to disclose the true trading results for the pool violated Section 4o(1)(A). Additionally, Holman's dissemination of false account statements via email, oral misrepresentations of the pool's performance, failure to disclose the true trading results for the pool, and his failure to trade all of the participants' investment funds operated as a fraud or deceit on the pool participants in violation of Section 4o(1)(B).

B. Fraud by Misappropriation

Holman violated Section 4o(1) of the Act by misappropriating the funds of one or more pool participants. Holman failed to trade the full amount of funds entrusted to him and C-THRU for the purpose of trading in commodity futures and options. The failure to trade funds entrusted to a pool operator for the purpose of trading is fraud by misappropriation.¹² Additionally, Holman used some pool funds for purposes other than trading. Holman used pool funds to repay other participants and for his own personal expenses. Holman also charged pool participants management fees on the false profits he reported in the periodic statements. The diversion of funds entrusted to one for trading purposes is "willful and blatant fraudulent activity" that violates Section 4o(1) of the Act.¹³

C. Commingling Pool Funds

Regulation 4.20(c) states that "No commodity pool operator may commingle the property of any pool that it operates or that it intends to operate with the property of any other person." In this case, the pool participants deposited their funds into bank accounts in the name of C-THRU. These pool funds were commingled with funds of Holman, d/b/a C-THRU, which were acquired

¹² *CFTC ex rel Kelley v. Skorupskas*, 605 F. Supp. 923 (D.C. Mich. 1985) (defendant misappropriated customer funds entrusted to her by trading only a small percentage of funds, while disbursing the rest of the funds to other investors, herself, and to her family); *In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,315 (CFTC July 19, 1999), *aff'd in relevant part*, *Slusser v. CFTC*, 210 F.3d 783 (7th Cir.2000) (respondents violated Section 4b by surreptitiously retaining money in their own bank accounts that should have been traded on behalf of the investors).

¹³ *CFTC v. Weinberg*, 287 F. Supp. 2d 1100, 1106 (C.D. Cal. 2003); *Noble Wealth Data Info. Serv., Inc.*, 90 F. Supp. 2d at 676 (defendants defrauded investors by diverting investor funds for operating expenses and personal use); *In re Lincolnwood Commodities, Inc.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,986 at 28,255 (CFTC 1984) (Commission affirmed holding that respondent violated Section 4b when he "diverted to his own use funds entrusted to him by or on behalf of his customers").

through loans to C-THRU and the sale of another investment opportunity. Thus, Holman violated Regulation 4.20(c).

D. Failure To Furnish Monthly Statements to Pool Participants

Regulation 4.13(c)(3) requires an exempt CPO to promptly furnish to each pool participant a copy of each monthly statement for the pool that the CPO receives from a futures commission merchant and clearly show on such statement, or on an accompanying supplemental statement, the net profit or loss on all commodity interests closed since the date of the previous statement. Holman did not provide copies of monthly statements to the pool participants. Therefore, Holman violated Regulation 4.13(c)(3).

E. Failure To Maintain Records

Regulation 4.13(c)(1) requires an exempt CPO to make and keep all books and records prepared in connection with its activities as a CPO for a period of five years. In response to a Division of Enforcement subpoena *duces tecum* issued January 12, 2006, Holman was unable to provide full documentation regarding pool activities during the period of January 2003 through February 2006. Therefore, Holman failed to maintain records as required by Regulation 4.13(c)(1).

V. OFFER OF SETTLEMENT

Respondent has submitted an Offer of Settlement (“Offer”) in which he, subject to the foregoing, acknowledges service and receipt of this Order; admits the jurisdiction of the Commission with respect to the matters set forth in the Order; waives a hearing, all post-hearing procedures, all rights of appeal, including judicial review by any court, any objection to the staff’s participation in the Commission’s consideration of the Offer, any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, and all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412 (2000), and Part 148 of the Commission’s Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2004) relating to, or arising from this action.

Respondent stipulates that the record basis on which this Order is entered consists solely of the Order and the findings consented to in the Offer which are incorporated in this Order. Respondent consents to the Commission’s issuance of this Order, which makes findings and orders that Respondent cease and desist from violating the provisions of the Act and Regulations he has been found to have violated; revokes Respondent’s registration as a CPO and bans him from trading; requires Respondent to pay restitution of \$146,600; requires Respondent to pay a civil monetary penalty of \$240,000; and orders that Respondent comply with his undertakings as set forth in his Offer and incorporated in this Order.

VI. FINDINGS OF VIOLATIONS

Solely on the basis of the consents evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Holman violated Section 4o of the Act, 7 U.S.C. § 6o (2002), and Commission Regulations 4.13(c)(1) and (3) and 4.20(c), 17 C.F.R. §§ 4.13(c)(1) and (3) and 4.20(c).

VII. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondent cease and desist from violating Section 4o of the Act, 7 U.S.C. § 6o (2002), and Commission Regulations 4.13(c)(1) and (3) and 4.20(c), 17 C.F.R. §§ 4.13(c)(1) and (3) and 4.20(c);
2. Respondent shall be permanently prohibited from trading on or subject to the rules of any registered entity, as that term is defined by Section 1(a)(29) of the Act, and all such registered entities shall refuse Respondent trading privileges, beginning on the third Monday after the date of entry of this Order;
3. Respondent pay restitution in the total amount of One Hundred Forty Six Thousand Six Hundred dollars (\$146,600), due within ten days of the date of the Order by delivering the restitution amounts described below to each of the following pool participants:
 - a. Yolanda Hunter (Jones) - \$10,000.00
 - b. Delores E. Lawrence - \$2,600.00
 - c. Cynthia Osborne - \$56,000.00
 - d. Elizabeth Smith - \$63,000.00
 - e. Kenneth Watford - \$15,000.00

Respondent shall pay these restitution amounts to each of these participants by certified check within ten (10) days of the date of the Order. Proof of payment shall be simultaneously transmitted to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington, D.C. 20581;

4. Upon satisfaction of the entire restitution obligation set forth in paragraph VIII.4., above, Respondent shall pay a civil monetary penalty in the amount of Two Hundred Forty Thousand dollars (\$240,000). Payment of the civil monetary penalty is to be made by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies the Respondent and the name and docket number of this proceeding.

Respondent shall simultaneously transmit a copy of the cover letter and the form of payment to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581;

4. Respondent shall comply with the following undertakings as set forth in his Offer:
- a. Holman shall never apply for registration or seek exemption from registration with the Commission in any capacity, except as provided for in Section 4.14(a)(9) of the Regulations, 17 C.F.R. § 4.14(a)(9), and shall never engage in any activity requiring such registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Regulations, or act as a principal, officer, agent or employee of any person registered with the Commission or required to be registered with the Commission, except as provided for in Section 4.14(a)(9) of the Regulations; this includes, but is not limited to soliciting, accepting or receiving funds, revenue or other property from any person, giving advice for compensation, or soliciting prospective customers, related to the purchase or sale of any commodity futures or option on commodity futures contracts; and
 - b. Neither Holman, nor any of his agents or employees under his authority or control, shall take any action or make any public statements denying, directly or indirectly, any finding 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 Holman's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party.

Unless otherwise specified, the provisions of this Order shall be effective on this date:

By the Commission



Eileen Donovan

Acting Secretary to the Commission
Commodity Futures Trading Commission

Dated: September 27, 2006