

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

U.S. COMMODITY FUTURES TRADING COMMISSION,)	
)	
Plaintiff,)	
)	CASE NO. 3:11CV431-MOC-DCK
v.)	
)	
PRESTIGE CAPITAL ADVISORS, LLC, a Delaware Limited Liability Company, D2W CAPITAL MANAGEMENT, LLC, a North Carolina Limited Liability Company, and TOBY D. HUNTER, an individual,)	
)	
Defendants.)	

CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTY AND OTHER EQUITABLE RELIEF AGAINST TOBY D. HUNTER

I. INTRODUCTION

On September 6, 2011, Plaintiff Commodity Futures Trading Commission (“Commission”) filed a Complaint against Defendant Toby D. Hunter (“Hunter”) seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 *et seq.*, and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. § 1.1 *et seq.*, committed by Hunter from in or about April 2008 and continuing to at least September 2011 . The Court entered an *ex parte* statutory restraining order against Hunter on September 6, 2011 [D.E. 6] and a Consent Order of Preliminary Injunction against Hunter on September 20, 2011 [D.E. 10].

II. CONSENTS AND AGREEMENTS

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

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

2. Affirms that he has read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;

3. 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 (Supp. IV 2011);

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, *et seq.*;

6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006);

7. Waives:

(a) any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2012), 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 Hunter now or in the future resides outside the jurisdiction of this Court;

9. Agrees that he will not oppose enforcement of this Consent Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and 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 the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect his: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Hunter 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; and

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

that the allegations contained in the Complaint and all of the Findings of Fact and 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 Hunter; (b) any proceeding pursuant to Section 8a of the Act, 7 U.S.C. § 12a, (Supp. IV 2011) and/or Part 3 of the Regulations, 17 C.F.R. §§ 3 *et seq.* (2012); and/or (c) any proceeding to enforce the terms of this Consent Order.

12. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by Part VI 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 Hunter in any other proceeding.

III. 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 Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (Supp. IV 2011), as set forth herein.

A. Findings of Fact

1. The Parties

14. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

15. Defendant Prestige Capital Advisors, LLC (“Prestige”) is a Delaware Limited Liability Company with its principal place of business at 112 South Tryon Street, Suite 900, Charlotte, NC 28227. Prestige was formed in Delaware on April 12, 2010 and filed an Application for a Certificate of Authority for Limited Liability Company with the North Carolina Secretary of State’s office on February 23, 2011. Prestige registered with the National Futures Association (“NFA”) as a Commodity Trading Advisor (“CTA”) on July 2, 2010.

16. Defendant D2W Capital Management, LLC (“D2W”) was a North Carolina Limited Liability Company with its principal office listed as 218-5 Swing Road, Greensboro, NC 27409. D2W operated its business at 112 South Tryon Street, Suite 900, Charlotte, NC 28227. D2W was formed on April 16, 2008 as a single-manager limited liability company. D2W was administratively dissolved by the North Carolina Secretary of State on September 2, 2010 for failure to file an annual report. D2W registered with the NFA as a CTA on June 27, 2008.

17. Defendant Toby D. Hunter is an individual who resides in Fort Mill, SC. Hunter is a founder, principal, manager and officer of Prestige and D2W and was responsible for these companies’ acts. Hunter registered with the NFA as an Associated Person (“AP”) of Prestige and D2W on October 14, 2010. Hunter is the sole registered principal of Prestige and D2W.

2. Hunter and Prestige

18. Prestige was formed for the purpose of operating one or more commodity pools and offering interests in these pools to members of the general public. One of the pools established by Hunter and Prestige was Prestige Multi-Strategy Fund, LP, a Delaware Limited Partnership formed on April 12, 2010 (hereinafter, the “M-S Fund”).

19. In or about June 2010, Hunter and Prestige prepared a Private Placement Memorandum (“PPM”) that set forth the structure, purpose, and terms of participation in the M-S

Fund. According to the PPM, the MS-Fund was formed for the purpose of pooling participants' funds to invest in, among other things, "spot currencies, precious metals, other commodities, index options, futures contracts, and various other financial instruments and asset classes." Prestige was the General Partner and was primarily responsible for the management of the partnership, and the limited partners were to be the M-S Fund pool participants who invested funds in the M-S Fund and who would share in the profits and losses generated by the M-S Fund. According to the PPM, "[a]ll funds invested in the [M-S Fund] by [the M-S Fund participants] will be held in the [M-S Fund]'s name and the [M-S Fund] will not commingle its funds with any other party."

20. To entice members of the public to become participants in the M-S Fund, Prestige, by and through its agents including Hunter, referred prospective fund participants to a website called BarclayHedge (www.barclayhedge.com) ("BarclayHedge") for information on returns purportedly earned by the M-S Fund. BarclayHedge is a website whereby a fund manager, such as Prestige, could post its historical returns for prospective clients to see and compiles performance rankings of various funds based on the self-reported returns. The returns and other information posted on the BarclayHedge website by firms such as Prestige are not independently audited or verified by BarclayHedge. In addition to posting purported returns on BarclayHedge, Hunter sent a "Monthly Performance Update" to at least one prospective M-S Fund pool participant that contained purported returns earned by the M-S Fund from June to December 2010.

21. An analysis of Prestige's actual trading indicates that the returns posted on the BarclayHedge website and contained in the "Monthly Performance Update" were false. NFA confirmed the falsity of the posted returns in the course of conducting an audit of Prestige in June 2011. When questioned by NFA during the audit, Hunter admitted that some of the purported returns posted by Prestige on the BarclayHedge website were false, that he employed inconsistent

methodology to calculate returns, and that some of the posted returns were mere estimates that were never updated with the actual returns.

22. As a result of these representations, from April 2010 to September 2011, at least six pool participants provided a total of at least \$4,686,557 for investment in the M-S Fund, approximately \$380,000 of which was accepted in Prestige's name, rather than in the name of the M-S Fund. Approximately \$4,506,000 of the pool participants' funds was deposited in trading accounts at various financial institutions. The financial instruments traded in these accounts included futures, options on futures, off-exchange foreign currency ("forex"), securities, and options on securities. The trading of these brokerage accounts resulted in cumulative net losses, including commissions and fees, of approximately \$1,466,567. During this period, approximately \$528,616 was returned to M-S Fund pool participants. Approximately \$375,000 remains frozen in one of the brokerage accounts. The remaining approximately \$2,316,374 of M-S Fund pool participant funds was misappropriated by Prestige. In fact, bank and trading account records show multiple transfers of M-S Fund pool participants' funds from M-S Fund accounts to bank accounts owned or controlled by Prestige.

23. Prestige also issued false account statements to M-S Fund pool participants. These statements were provided through Prestige's website and by email and overstated the pool participants' balances in the M-S Fund.

3. Hunter and D2W

24. On April 16, 2008, Hunter formed D2W for the purpose of offering a managed account service to members of the general public. Under the terms of the managed account service, clients were to open accounts in their own names at a designated brokerage and authorize Hunter and D2W to trade forex contracts on behalf of the clients in exchange for commissions to be paid by the clients to D2W.

25. In order to entice members of the public to open accounts to be traded by D2W, Hunter referred prospective clients to BarclayHedge for information about D2W's performance history. An analysis of D2W's actual trading, however, demonstrates that the returns posted by Hunter on the BarclayHedge website were false. When questioned by NFA about this during its June 2011 audit of D2W, Hunter admitted that he had no data to support the purported returns posted on the BarclayHedge website.

26. As a result of these solicitations, 17 persons became clients of D2W. One of these clients provided a total of \$100,000 directly to D2W which Hunter placed in a brokerage account held in D2W's name. Throughout the life of the account, the client was instructed by Hunter to access its account information via Prestige's website. When the client accessed its account on June 17, 2011, the website indicated that the client's account balance as of June 3, 2011 was approximately \$94,000, but the actual trading records associated with this account showed an account balance of approximately \$14,750. According to the trading records, the trading in this client's account resulted in cumulative net losses, including commissions and fees, of approximately \$85,250. The remaining \$14,750 was ultimately returned by Hunter to the D2W client.

B. Conclusions of Law

1. Jurisdiction and Venue

27. This Court has jurisdiction over this action pursuant to Sections 2(c)(2) and 6c of the Act, 7 U.S.C. §§2(c)(2) and 13a-1 (Supp. IV 2011). Section 6c(a) of the Act authorizes the Commission to seek injunctive relief against any person 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.

28. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because the Defendant resides in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

2. Violation of the Act and Regulations

29. By the conduct described in Section III.A above, Hunter violated Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (Supp. II 2009), Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006) and Regulation 33.10, 17 C.F.R. § 33.10 (2011), in or in connection with futures contracts and commodity option transactions made for or on behalf of other persons.

30. Hunter engaged in the acts and practices described in Section III.A above knowingly or with reckless disregard for the truth.

31. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Hunter is liable as a controlling person for Prestige's violations of Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (Supp. II 2009), Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006) and Regulation 33.10, 17 C.F.R. § 33.10 (2011).

32. By the conduct described in Section III.A above, Hunter violated Section 4b(a)(2)(B) of the Act, 7 U.S.C. §§ 6b(a)(2)(B) (Supp. II 2009), in or in connection with forex contracts made for or on behalf of other persons.

33. Hunter engaged in the acts and practices described in Section III.A above knowingly or with reckless disregard for the truth.

34. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Hunter is liable as a controlling person for D2W's violations of violated Section 4b(a)(2)(B) of the Act, 7 U.S.C. §§ 6b(a)(2)(B) (Supp. II 2009).

35. At all relevant times, Prestige operated as Commodity Pool Operator ("CPO") in that it engaged in a business that is of the nature of an investment trust, syndicate or similar form

of enterprise, and in connection therewith, solicited, accepted, or received funds, securities, or property from others for the purpose of trading in agreements, contracts, or transactions in futures and commodity options. Hunter acted as an AP of Prestige in that, as an agent of Prestige, he solicited and accepted funds, securities, or property for Prestige.

36. By the conduct described in Section III.A above, Hunter, acting as an AP of Prestige, through the use of the mails or other means or instrumentalities of interstate commerce (including through the use of telephone calls and electronic mail with pool participants and prospective pool participants), violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

37. Hunter engaged in the acts and practices described in Section III.A above knowingly or with reckless disregard for the truth.

38. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Hunter is liable as a controlling person for Prestige's violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

39. At all relevant times, Prestige operated as a CPO in that it engaged in a business that is of the nature of an investment trust, syndicate or similar form of enterprise, and in connection therewith, solicited, accepted, or received funds, securities, or property from others for the purpose of trading in agreements, contracts, or transactions in futures and commodity options.

40. By the conduct described in Section III.A above, Prestige, acting by and through Hunter, violated Regulations 4.20(b) and (c), 17 C.F.R. §§ 4.20(b) and (c) (2011).

41. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Hunter is liable as a controlling person for Prestige's violations of Regulations 4.20(b) and (c), 17 C.F.R. §§ 4.20(b) and (c) (2011).

42. At all relevant times, D2W operated as a CTA in that it engaged, for profit, in the business of advising others as to the value of or the advisability of trading in forex contracts and was registered as a CTA.

43. By the conduct described in Section III.A above, D2W, acting by and through Hunter, violated Regulation 4.30, 17 C.F.R. § 4.30 (2011).

44. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Hunter is liable as a controlling person for D2W's violations of Regulation 4.30, 17 C.F.R. § 4.30 (2011).

3. Need for Permanent Injunction

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

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

46. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (Supp. IV 2011), Hunter is permanently restrained, enjoined and prohibited from directly or indirectly:

a. Cheating or defrauding, or attempting to cheat or defraud, other persons, willfully making or causing to be made to the other person any false report or statement or willfully entering or causing to be entered for the other person any false record, or willfully deceiving or attempting to deceive such other person by any means whatsoever in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, option, or forex contract 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)-(C), 4b(a)(2)(B), 4c(b), and 4o(1) of the Act, 7

U.S.C. §§ 6b(a)(1)(A)-(C) and 6b(a)(2)(B), (Supp. IV 2011) and 7 U.S.C. §§ 6c(b), and 6o(1) (2006), and Regulation 33.10, 17 C.F.R. § 33.10 (2012);

b. Receiving funds in the name of a commodity pool and commingling those funds with the funds of any other person in violation of Regulations 4.20(b)-(c), 17 C.F.R. §§ 4.20(b)-(c) (2012); and

c. Accepting funds from CTA clients in the CTA's name in violation of Regulation 4.30, 17 C.F.R. § 4.30 (2012).

47. Hunter 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 of the Act, 7 U.S.C. § 1a (Supp. IV 2011));

b. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2012)) ("commodity options"), swaps (as that terms is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (Supp. IV 2011), as further defined by Regulation 1.3, 17 C.F.R. § 1.3 (2102)), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (Supp. IV 2011)) ("forex contracts") for his own personal account or for any account in which he has a direct or indirect interest;

c. Having any commodity futures, options on commodity futures, commodity options, swaps, security futures products, and/or forex contracts 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 futures, options

on commodity futures, commodity options, swaps, security futures products, and/or forex contracts;

e. 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, swaps, security futures products and/or forex contracts;

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) (2012); and/or

g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (Supp. IV 2011) 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) (2012).

V. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution

48. Hunter shall pay restitution in the amount of Forty Thousand Dollars (\$40,000) for his violations of the Act and Regulations in association with the operation of Prestige (the “Prestige Restitution Obligation”) plus post-judgment interest. Hunter’s Prestige Restitution Obligation shall be joint and several with the order of restitution entered against Prestige in this Court’s February 22, 2103 Order [D.E. 36]. Post-judgment interest shall accrue on the Prestige 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.

49. Hunter shall pay additional restitution in the amount of Eighty Five Thousand Two Hundred Fifty Dollars (\$85,250) for his violations of the Act and Regulations in association with the operation of D2W (the “D2W Restitution Obligation”) plus post-judgment interest. Hunter’s D2W Restitution Obligation shall be joint and several with the order of restitution entered against D2W in this Court’s February 22, 2103 Order [D.E. 36]. Post-judgment interest shall accrue on the D2W 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.

50. To effect payment of the Prestige Restitution Obligation and the D2W Restitution Obligation (collectively, the “Restitution Obligation”) and the distribution of any restitution payments to Prestige’s pool participant and client, the Court appoints the NFA as Monitor (“Monitor”). The Monitor shall collect restitution payments from Hunter 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.

51. Hunter shall make Restitution Obligation payments under this Consent Order to the Monitor in the name “Toby D. Hunter– 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 Toby Hunter as the paying Defendant and the name and docket

number of this proceeding. Hunter 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.

52. 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 Hunter's D2W client and Prestige's pool participants 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 victims 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 B. below.

53. Hunter shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify his D2W client and Prestige's pool participants to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Hunter 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.

54. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Hunter's D2W client and Prestige pool participants 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.

55. The amounts payable to Hunter's D2W client or each Prestige pool participant shall not limit the ability of any such person from proving that a greater amount is owed from Hunter or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any pool participant or client that exist under state or common law.

56. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each Prestige pool participant or D2W client of Hunter 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 Hunter to ensure continued compliance with any provision of this Consent Order and to hold Hunter in contempt for any violations of any provision of this Consent Order.

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

A. Civil Monetary Penalty

58. Hunter shall pay a civil monetary penalty in the amount of Two Hundred Eighty Thousand Dollars (\$280,000) ("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 (2006).

59. Hunter 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 – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

60. If payment by electronic funds transfer is chosen, Hunter shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Hunter shall accompany payment of the CMP Obligation with a cover letter that identifies Hunter and the name and docket number of this proceeding. Hunter 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.

B. Provisions Related to Monetary Sanctions

61. Partial Satisfaction: Any acceptance by the Commission or the Monitor of partial payment of Hunter's 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.

C. Cooperation

62. Hunter shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.

VI. MISCELLANEOUS PROVISIONS

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

Notice to Commission:

Rick Glaser
Associate Director
Division of Enforcement
1155 21st Street, N.W.
Washington, DC 20581

Notice to Defendant:

Toby D. Hunter
177 Bromley Village Drive
Unit #303
Fort Mill, SC 29708

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

64. Change of Address/Phone: Until such time as Hunter satisfies in full his Restitution Obligation and CMP Obligation as set forth in this Consent Order, Hunter 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.

65. 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.

66. **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.

67. **Waiver:** The failure of any party to this Consent Order or of any Prestige pool participant or D2w client at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party, Prestige pool participant, or D2W 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.

68. **Acknowledgements:** Upon being served with copies of this Consent Order after entry by the Court, Hunter shall sign acknowledgements of such service and serve such acknowledgements on the Court and the Commission within 10 calendar days.

69. **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 Hunter to modify or for relief from the terms of this Consent Order.

70. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Consent Order shall be binding upon Hunter, upon any person under his authority or control, and upon any person who receives actual notice of this Consent Order, by

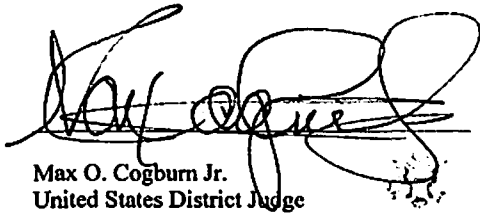
personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Hunter.

71. 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.

72. Hunter 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.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief.

Signed: June 12, 2013



Max O. Cogburn Jr.
United States District Judge

CONSENTED TO AND APPROVED BY:

/s/ Toby D. Hunter

Toby D. Hunter
177 Bromley Village Drive
Unit #303
Fort Mill, SC 29708

Defendant

Dated: 03/27/13

/s/ Eugenia Vroustouris

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Counsel for Plaintiff

Dated: 06/11/13