**UNITED STATES OF AMERICA**
**Before the**
**COMMODITY FUTURES TRADING COMMISSION**

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| **In the Matter of:** | ) | |
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| **IAG Capital Management, LLC** | ) | |
| **and William Patrick Kelly,** | ) | **CFTC Docket No. 12 –12** |
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| **Respondents.** | ) | |
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, AS AMENDED, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

**I.**

The Commodity Futures Trading Commission ("Commission") has reason to believe that IAG Capital Management, LLC ("IAG") and William Patrick Kelly ("Kelly") (collectively, "Respondents") have violated Sections 4b(a)(1)(A), (C), 4o(1), and 9(a)(4) of the Commodity Exchange Act (the "Act"), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (C), 6o(1), and 13(a)(4), and Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents 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, Respondents have submitted Offers of Settlement (the "Offers"), which the Commission has determined to accept. Without admitting or denying any of the findings herein, Respondents acknowledge service of this Order Instituting Proceedings Pursuant to Sections 6(c) And 6(d) of the Commodity Exchange Act, as Amended, Making Findings and Imposing Remedial Sanctions ("Order").[1]

[1] Respondents consent to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; *provided, however*, that Respondents do not consent to the use of the Offers, or the findings in this Order consented to in the Offers, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of

## III.

The Commission finds the following:

### A. Summary

From January 2008 to July 2010, Respondents solicited and obtained almost $6 million from approximately 80 members of the general public for the purpose of trading commodity futures contracts, among other transactions, on behalf of the IAG Multi Strategy Fund LP, a commodity pool operated by IAG ("the pool").

From October 2009 to December 2009 (the "2009 period") and then again in January 2010 (the "2010 period"), Respondents engaged in a series of unauthorized money transfers from the pool's accounts to the Respondents' accounts whereby they wrongfully used more than $320,000 of the pool participants' funds for Kelly's personal use and then returned those funds to the pool's accounts. Respondents did not disclose to pool participants their unauthorized withdrawals of funds from the pool for either the 2009 period or the 2010 period.

During the 2009 period and the 2010 period, Respondents commingled funds of the pool participants with funds in bank and trading accounts held and/or controlled by Respondents and did not have any legitimate entitlement to any of the pool participants' funds they received.

In January 2010, in furtherance of its official duties under the Act, the National Futures Association ("NFA") undertook an examination of IAG. As a result of this examination, NFA confronted Kelly about the 2009 period of unauthorized withdrawals of pool participants' funds. Kelly misrepresented to NFA staff that the 2009 period of unauthorized withdrawals was for the purpose of achieving a better return for the pool. This was not true since Kelly used some of those funds to pay his personal expenses. Kelly further misrepresented to NFA that he had not engaged in any additional instances of unauthorized withdrawals of pool participants' funds. This also was not true since Kelly used pool participants' funds again for his own purposes during the 2010 period.

### B. Respondents

**IAG Capital Management, LLC** is a limited liability company organized in Nevada in January 2008 and operates out of an office in Weston, Connecticut. IAG has been registered with the Commission as a Commodity Pool Operator since January 2008.

**William Patrick Kelly** resides in Weston, Connecticut and has been registered with the Commission as an Associated Person and Principal of IAG since January 2008.

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this Order. Nor do Respondents consent to the use of the Offers or this Order, or the findings in this Order consented to in the Offers, by any other party in any other proceeding.

## C. Facts

IAG began operating the pool in January 2008. IAG was the sole general partner of the pool and was located at the same address as the pool. Kelly is a founding member, owner, and employee of IAG and its sole principal since October 2008. From January 2008 until July 2010, Respondents solicited and obtained approximately $6 million from approximately 80 members of the general public for the purpose of managing and trading commodity futures contracts, among other contracts, on behalf of the pool participants.

The Confidential Private Placement Memorandum ("CPPM") sent by Kelly on behalf of IAG to certain pool participants specifically states that pool participants' funds "are exclusively used for speculative trading" and that "[n]o loans, whether a direct loan, commercial paper issue, or any other form, will be made to entities affiliated with the [pool] or [IAG]. [IAG] will not commingle the property of any pool that it operates or intends to operate with the property of any other person or entity." In January 2010, as part of its official duties under the Act, NFA began an examination of IAG. During this examination, NFA discovered that during the 2009 period, Respondents engaged in a series of transactions whereby approximately $160,000 of the pool participants' funds were transferred to Respondents' accounts and used by Kelly for his personal trading and expenses.

Specifically, on October 1, 2009, during the 2009 period, Respondents transferred $100,000 from the pool's accounts to IAG's account, then to an account Kelly controlled, and finally to Kelly's personal checking account. On November 19, 2009, Respondents transferred another $60,000 from the pool's accounts to IAG and then incrementally to Kelly's personal checking account. Kelly wrongfully used this $160,000 of the pool participants' funds for personal uses, including writing checks for personal expenses and funding a personal trading account.

Respondents then transferred these funds back to the pool's accounts at the end of December 2009 so that the funds would be reflected in the year-end audit of the pool.

At the beginning of 2010, Respondents again engaged in the unauthorized transfer of funds from the pool for Kelly's personal use. On January 4, 2010, during the 2010 period, Respondents transferred just under $161,000 from the pool's accounts to IAG's account and then to an account Kelly controlled. On the same day, Kelly transferred $50,000 from this account he controlled to his personal checking account. The next day (January 5), Kelly transferred approximately $35,000 from this account he controlled to his personal checking account. The same day, Kelly transferred $47,000 from his checking account to his personal trading account. The next day (January 6), Kelly transferred an additional $32,000 from his personal checking account to his personal trading account. During the 2010 period, Respondents transferred a total of approximately $161,000 of the pool's funds to their personal accounts and/or accounts they controlled. Kelly used the approximately $161,000 of the pool participants' funds for personal uses.

On January 29, 2010, Kelly received a loan from his brother in the amount of $175,000, which he used to repay the approximately $161,000 Respondents had taken from the pool.

In total, during the 2009 period and the 2010 period, Respondents wrongfully used more than $320,000 of the pool participants' funds to which they had no legitimate entitlement. In addition, Respondents failed to disclose to pool participants these transfers of funds.

In late January 2010, NFA staff asked Kelly if he ever engaged in any other unauthorized transactions similar to those during the 2009 period. Kelly falsely responded that he had not. However, Respondents had, just weeks before, during the 2010 period, wrongfully used more than $160,000 of the pool's funds. Throughout NFA's examination of IAG, NFA staff repeatedly asked Kelly to explain the unauthorized withdrawals of the pool participants' funds during the 2009 period, and Kelly claimed that they were done to help the pool achieve a better return. However, this explanation was false as Respondents used some of this money to pay Kelly's personal expenses.

In March 2010, NFA brought a Member and Associate Responsibility Action ("MRA") against IAG, Kelly and another. Pursuant to the MRA, Kelly and IAG were prohibited from (1) soliciting or accepting any funds from customers, (2) soliciting investments for any commodity pools or other investment vehicles, (3) placing any trades on behalf of customers, commodity pools, or investors, and (4) disbursing or transferring any funds of customers, investors, pool participants, or commodity pools over which they exercised control. In July 2010, the pool was liquidated and funds remaining in the pool were distributed to the pool participants.

## IV. LEGAL DISCUSSION

### A. Section 4b(a)(1)(A), (C) of the Act: Fraud by Omissions

Section 4b(a)(1)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C), makes it unlawful to cheat or defraud, or to attempt to cheat or defraud, or willfully to deceive, or attempt to deceive, another person in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person.

To prove that a respondent has violated Section 4b(a)(1)(A), (C) of the Act by omissions, the Commission need only show that: 1) the respondent omitted certain information; 2) the omission was material; and 3) the respondent acted with scienter. *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002) (citations omitted), *cert. denied*, 543 U.S. 1034 (2004); *see also In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,313 (CFTC July 19, 1999), *aff'd in relevant part sub nom. Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000); *Hammond v. Smith Barney Harris Upham & Co., Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659 (CFTC Mar. 1, 1990).

"Whether a misrepresentation has been made depends on the 'overall message' and the 'common understanding' of the information conveyed." *R.J. Fitzgerald*, 310 F.3d at 1328 (citing *Hammond*, Comm. Fut. L. Rep. ¶ 24,617 at 36,657, n.12). An omitted fact is material if "a reasonable investor would consider it important in deciding whether to make an investment." *Id.* at 1328-29; *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 447 (D.N.J. 2000) (same); *see also Madel*

*v. Anspacher & Assoc., Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,412 at 35,813 (CFTC Mar. 14, 1989) (citing *Sudol v. Shearson Loeb Rhoades, Inc.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,748 (CFTC Sept. 30, 1985)). Any fact that enables pool participants to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. *See In re Commodities Int'l Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943 at 44,463-64 (CFTC Jan. 14, 1997) (finding that misrepresentations and omissions to customers were material and fraudulent because customers could not properly evaluate their circumstances with regard to risk of loss and opportunity for profit).

In general, all manner of omissions concerning the likelihood of profit, the risk of loss and other matters that a reasonable investor would consider material to his or her investment decisions, are material. *See, e.g., First Nat. Monetary Corp. v. Weinberger*, 819 F.2d 1334, 1340 (6th Cir. 1987) (a statement is material if there is a substantial likelihood that a reasonable investor considers it important in making an investment decision); *R.J. Fitzgerald*, 310 F.3d at 1332-1333 (misrepresentations of profit and risk are material).

The scienter requirement is met 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-CF-1583-M, 2007 WL 1321762, at *2 (N.D. Tex. May 7, 2007) (citing *R.J. Fitzgerald*, 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"). In addition, the Commission must demonstrate that the misrepresentations and omissions were made intentionally or recklessly. *See Drexel Burnham Lambert Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988) (recklessness is sufficient to satisfy scienter requirement); *see also CFTC v. Noble Metals Int'l, Inc.*, 67 F.3d 766, 774 (9th Cir. 1995) (discussing Section 4b's scienter requirement). To prove that the conduct is intentional, the Commission must demonstrate that the actions of respondents were "intentional as opposed to accidental." *Lawrence v. CFTC*, 759 F.2d 767, 773 (9th Cir. 1985). To prove that conduct is reckless, the Commission must show that it "departs so far from the standards of ordinary care that it is very difficult to believe the [actor] was not aware of what he was doing." *Drexel Burnham Lambert*, 850 F.2d at 748 (alteration in original) (internal quotation marks and citation omitted).

Respondents represented to pool participants through the CPPM that their funds would be exclusively used for speculative trading for or on their behalves in commodity interests and other transactions, that no loans would be made to entities affiliated with the pool or IAG, and IAG would not commingle the pool's assets with those of any other person or entity. Respondents, however, failed to disclose to pool participants that their funds were, in fact, commingled with funds held in the Respondents' own bank or trading accounts. Further, Respondents took money from the pool for Kelly's personal benefit, not the pool's benefit, and failed to disclose the use of such funds to pool participants. Such omissions are material in that a reasonable investor would want to know that not all the pool participants' funds were used for the pool's trading, pool participants' funds were used as a bank for Respondents, and pool participants' funds were commingled with Respondents' funds and held in bank and trading accounts held and/or

controlled by Respondents. Through the intentional commingling of the funds, Respondents knew or recklessly disregarded that their omissions were misleading.

Accordingly, Respondents violated Section 4b(a)(1)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C).

## B. Section 4o(1) of the Act: Fraud by Commodity Pool Operators and Their Associated Persons

Section 4o(1)(A) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6o(1)(A), makes it unlawful for a commodity pool operator ("CPO") or an associated person ("AP") of a CPO to employ any device, scheme or artifice to defraud any pool participant or prospective pool participant. Section 4o(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6o(1)(B), makes it unlawful for a CPO or an AP of a CPO to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any pool participant or prospective pool participant.

Section 1a of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a, defines a CPO 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. . . .

Commission Regulation 1.3(aa)(3), 17 C.F.R. § 1.3(aa)(3) (2011), defines an AP of a CPO as any natural person who is associated with a CPO as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for participation in a commodity pool or (ii) the supervision of any person or persons so engaged.

Section 4o(1)(A), (B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6o(1)(A), (B), applies to all CPOs and their APs whether registered, required to be registered, or exempt from registration. *See Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985). IAG was acting as a CPO, and was registered with the Commission as a CPO, because it operated a business in the nature of an investment pool, syndicate or similar form of enterprise and solicited, accepted or received funds for the purpose of trading commodity futures. Kelly acted as an AP of IAG, and was registered with the Commission as an AP, because he solicited funds from others for the purpose of investing in a commodity pool to trade futures contracts. Accordingly, Respondents violated Section 4o(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6o(1).

In addition, the same fraudulent conduct that violates Section 4b(a) of the Act, as set forth above, also violates Section 4o(1). *Skorupskas,* 605 F. Supp. at 932-33. Moreover, unlike

Sections 4b(a) and 4o(1)(A) of the Act, the language of Section 4o(1)(B) does not require "knowing" or "willful" conduct as a prerequisite for establishing liability. In this regard, the Commission has held that "[a]lthough scienter must be proved to establish a violation of Section 4b and 4o(1)(A), it is not necessary to establish a violation of Section 4o(1)(B)." *In re Kolter*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,262 at 42,198 (CFTC Nov. 8, 1994) (citing *Messer v. E.F. Hutton & Co.*, 847 F.2d 673, 678-79 (11th Cir. 1988).

## C. Section 9(a)(4) of the Act: False Statements to NFA

Section 9(a)(4) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13(a)(4), in relevant part, makes it a violation of the Act for any person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, or futures association designated or registered under this Act acting in furtherance of its official duties under this Act.

As a registered futures association, NFA must "establish and maintain a program for the protection of customers..." and "prevent fraudulent and manipulative acts and practices. . . ." Commission Regulation 170.5, 17 C.F.R. § 170.5 (2011), and Section 17(b)(7) of the Act, to be codified at 7 U.S.C. § 21(b)(7). In furtherance of its official duties under the Act, NFA undertook an examination of IAG and requested documents and other information from IAG and Kelly. During the course of NFA's examination of IAG, Kelly misrepresented to NFA staff that he did not engage in any instances of unauthorized withdrawals of pool funds other than during the 2009 period. In fact, Kelly had, just weeks before, during the 2010 period, wrongfully taken another approximately $161,000 of pool funds. In addition, Kelly lied to NFA as to the reason why he had wrongfully taken approximately $160,000 of pool funds during the 2009 period. Kelly claimed that he took the pool funds in order to achieve a better return for the pool when, in fact, Kelly had used some of the funds to pay personal expenses.

Kelly's denial of the existence of the unauthorized withdrawal of pool funds during the 2010 period and misrepresentation as to the reason why he took pool participants' funds during the 2009 period were willful. Kelly was a founder of IAG, its sole principal during the 2009 period and the 2010 period, was aware of the pool's day-to-day business activities, and had control over the pool's funds.

Kelly's willful misrepresentations of facts to NFA while NFA was acting in furtherance of its duties under the Act violated Section 9(a)(4) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13(a)(4).

## D. Commission Regulation 4.20(c): Commingling Pool Funds

Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011), states that "[n]o 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." Respondents deposited pool participants' funds into bank accounts in their own names and then transferred them into Kelly's personal

commodity trading account. Accordingly, IAG, as the commodity pool operator, violated Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011).

**E. Sections 2(a)(1)(B) and 13(b) of the Act: Respondents' Derivative Liability for Each Other's Violations**

The acts, omissions, and failures of Kelly in violation of the Act, as discussed above, occurred within the scope of his employment or office with IAG. Therefore, IAG is liable for Kelly's acts, omissions, and failures in violation of the Act pursuant to Section 2(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2011).

Kelly, as the sole principal of IAG, controlled IAG and did not act in good faith and knowingly induced, directly or indirectly, the acts constituting IAG's violations of the Act and Regulations, as discussed above. Consequently, pursuant to Section 13(b) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §13c(b), Kelly is liable for IAG's violations of the Act and Regulations to the same extent as IAG.

## V. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondents violated Sections 4b(a)(1)(A), (C), 4o(1), and 9(a)(4) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (C), 6o(1), and 13(a)(4), and Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011).

## VI. OFFERS OF SETTLEMENT

Respondents have submitted the Offers in which, without admitting or denying the findings herein, and prior to any adjudication of the issues of fact or law by the Commission, they each:

A. Acknowledge receipt of service of this Order;

B. Admit to 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 upon violation of or enforcement of this Order;

C. Waive: (i) the service and filing of a complaint and notice of hearing; (ii) a hearing; (iii) all post-hearing procedures; (iv) judicial review by any court; (v) any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offers; (vi) any claim 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; (vii) any and all claims that Respondents 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 Commission's

Regulations, 17 C.F.R. §§ 148.1-30 (2011), relating to or arising from this proceeding; and (viii) any and all claims that Respondents 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 proceeding;

D. Stipulate that the record basis on which this Order is entered consists solely of the findings in this Order to which Respondents consented to in the Offers;

E. Consent, solely on the basis of the Offers, to entry of this Order that:

1. makes findings that Respondents violated Sections 4b(a)(1)(A), (C), 4o(1), and 9(a)(4) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (C), 6o(1), and 13(a)(4), and Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011);

2. orders Respondents to cease and desist from violating Sections 4b(a)(1)(A), (C), 4o(1), and 9(a)(4) of the Act, as amended by the CRA and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (C), 6o(1), and 13(a)(4), and Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011);

3. orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of two hundred eighty thousand dollars ($280,000) plus post-judgment interest;

4. orders that Respondents be permanently prohibited from engaging, directly or indirectly, in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a), and all registered entities shall refuse them trading privileges;

5. orders Respondents to comply with their undertakings consented to in the Offers and set forth below in Section VII of this Order.

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

## VII.

**Accordingly, IT IS HEREBY ORDERED THAT:**

1. Respondents shall cease and desist from violating Sections 4b(a)(1)(A), (C), 4o(1), and 9(a)(4) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (C), 6o(1), and 13(a)(4), and Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011).

2. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of two hundred eighty thousand dollars ($280,000) within ten days of the date of entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid within ten 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 (2006). Respondents 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 --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, Oklahoma 73169
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, Respondents shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit 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, NW, Washington, DC 20581; and (b) Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address;

3. Respondents are permanently prohibited from engaging, directly or indirectly, in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a), and all registered entities shall refuse them trading privileges;

4. Respondents shall comply with the following conditions and undertakings set forth in the Offers:

(a) Respondents agree that neither they nor any of their successors or assigns, agents or employees under their 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 Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement;

(b) Respondents shall never engage, directly or indirectly, in:

1. 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) (2011)) ("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 and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) ("forex contracts") for their own personal accounts or for any account in which they have a direct or indirect interest;

2. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalves;

3. 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;

4. 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;

5. 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) (2011); and/or

6. acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a) registered, required to be registered, or exempted from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R § 4.14(a)(9) (2011).

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

By the Commission.

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: February 28, 2012