

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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1:26 pm, Dec 03, 2014

In the Matter of:

**Pinnacle Forex Group, LLC, and
Christopher A. Engel,**

Respondents.

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) **CFTC Docket No. 15-09**
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT AND
MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about June 2011 through October 2012, Pinnacle Forex Group LLC (“Pinnacle”) and its principal, Christopher A. Engel (“Engel”) (collectively, the “Respondents”) violated Section 4b(a)(2)(A)-(B) of the Commodity Exchange Act (“CEA” or “Act”), 7 U.S.C. § 6b(a)(2)(A)-(B) (Supp. IV 2011), and Commission Regulations 5.2(b)(1)-(2) and 5.3(a)(2)(i), 17 C.F.R. §§ 5.2(b)(1)-(2) and 5.3(a)(2)(i) (2012); and from July 16, 2011 through October 2012, the Respondents also violated Sections 4o(1)(A)-(B) and 4m(1) of the Act, 7 U.S.C. §§ 6o(1)(A)-(B) and 6m(1) (2006 & Supp. IV 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 an Offer of Settlement (“Offer”), which the Commission has determined to accept. Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act and Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this 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 Offer, or the findings or conclusions in this Order consented to in the Offer, 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 this Order. Nor do Respondents consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

Between in or about June 2011 and in or about October 2012 (the “Relevant Period”), Engel made false and misleading statements to prospective investors that Pinnacle was registered with the CFTC as a retail foreign exchange (“Forex”) dealer and managed client accounts worth tens of millions of dollars. During the Relevant Period, the Respondents solicited and obtained approximately \$414,000 from at least 21 investors (“Pool Participants”) to participate in a commodity pool for the purpose of trading leveraged or margined off-exchange Forex contracts. However, Engel only deposited approximately \$137,000 into Forex trading accounts, which he later withdrew and misappropriated. Furthermore, Engel fabricated profit and commission information in statements and emails that he sent to Pool Participants in order to conceal his misappropriation of the Pool Participants’ funds, which he used to purchase automobiles, a natural foods store and other personal items. The total loss to the twenty-one Pool Participants was approximately \$405,378. Furthermore, between the period of in or about July 16, 2011 through in or about October 2012, Engel engaged in the above described conduct without registering himself or Pinnacle as a commodity pool operator (“CPO”).

B. RESPONDENTS

Engel is a resident of Glen Rock, Pennsylvania. Engel owned and operated Pinnacle, located in Glen Rock, Pennsylvania. Engel applied for registration as an associated person in June 2010, but withdrew that application in September 2010. Engel has never been registered with the Commission.

Pinnacle is registered as an LLC with the Pennsylvania Department of State. Pinnacle applied for registration as an Introducing Broker (“IB”) in January 2010, but withdrew that application in April 2010. Pinnacle applied again to be an IB in June of 2010 but withdrew that application in September 2010. Pinnacle has never been registered with the Commission.

C. FACTS

During the Relevant Period, acting for and on behalf of himself and Pinnacle, Engel falsely advertised Pinnacle on the internet as a “full scale” currency investment firm “that was in the top 1% of currency traders.” Engel falsely told prospective investors that Pinnacle was registered with the CFTC as a retail Forex dealer and managed client accounts worth tens of millions of dollars. Engel also falsely claimed to have substantial knowledge and expertise in the Forex markets and solicited investments from the public to engage in Forex trading on the investors’ behalf.

Pinnacle Pool Participants entered into a “client partnership agreement” whereby all accounts were to be charged a flat commission rate of 25% above the previous “billing watermark.” The watermark was defined to equal the net earnings on each Pool Participants’

account above the previous account balance. No commissions were to be charged if there were losses on the Pool Participants' account. All Pool Participant funds were to be invested in Forex products at the discretion of Engel.

Engel represented to Pool Participants that the funds they invested would be placed into a common trading pool and used by Engel to trade Forex on their behalf, with the Pool Participants receiving a pro-rata share of any profits earned by Engel's trading.

Engel provided the Pool Participants with emails and monthly trading invoices which were delivered over the internet via email. The emails and trading invoices purported to reflect his trading activity and the Pool Participants' account balances. The trading invoices also indicated commissions that were charged to each account in connection with the account's supposed earning for the month. Engel used the email address chris@pinnaclefx.com and info@pinnacleforexgroup.com to communicate with Pool Participants and deliver emails.

Contrary to representations made by Engel to the Pool Participants, Pinnacle was not registered with the CFTC, was not in the top 1% of currency traders and did not manage accounts worth tens of millions of dollars. Nor did Engel invest the Pool Participants' funds as promised. Instead, Engel failed to invest the majority of the Pool Participants' funds and misappropriated and converted the Pool Participants' funds to his personal use. To conceal this activity, Engel sent the Pool Participants monthly statements via email depicting fabricated earnings and emails regarding purported trading he had conducted in the account.

During the Relevant Period, Engel received approximately \$414,000 from twenty-one Pool Participants for the purpose of trading leveraged or margined off-exchange Forex contracts on behalf of the Pool Participants. During this period, however, Engel only deposited approximately \$137,000 into the Forex trading accounts. Moreover, Engel later withdrew these funds from the account, deposited the funds into bank accounts he controlled, and used the funds to pay his personal expenses.

Of the \$414,000 invested by the twenty-one Pool Participants, only \$8,622 was returned by Engel. Engel falsely claimed that he lost all the Pool Participants' money trading Forex, when in fact he converted the Pool Participants' funds to his personal use and purchased, among other things, automobiles, a natural foods store and other personal items. The total loss to the twenty-one Pool Participants was approximately \$405,378.

Further, between the period of in or about July 16, 2011 through in or about October 2012, Engel engaged in the above described conduct without registering himself or Pinnacle as a CPO.

IV.

LEGAL DISCUSSION

Respondents Defrauded Pool Participants

Pursuant to Section 2(c)(2)(C)(iv) of the Act, Section 4b of the Act applies to the Forex transactions conducted by Respondents and offered to, or entered into with, non-eligible contract participants (“non-ECP”) on a leveraged, margined or financed basis, “as if” they were a contract of sale for a commodity for future delivery.² During the Relevant Period, the Respondents, in or in connection with the making of Forex transactions made, or to be made, for or on behalf of, or with, non-ECP Pool Participants, cheated, defrauded or attempted to cheat or defraud such Pool Participants, and willfully made or caused to be made to such participants false reports or statements or willfully entered or caused to be entered for such participants false records, by knowingly or recklessly distributing false account statements to such participants by email and other means, and by misappropriating such participants’ funds, in violation of Section 4b(a)(2)(A) and (B) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(B)(Supp. IV 2011).

By such fraudulent actions, from June 2011 through October 2012, the Respondents also, through the use of the mails or other means or instrumentalities of interstate commerce and in or in connection with retail Forex transactions, cheated or defrauded or attempted to cheat or defraud Pool Participants, and willfully made or caused to be made to Pool Participants false reports or statements or caused to be entered for such participants false records, in violation of Commission Regulations 5.2(b)(1)-(2), 17 C.F.R. § 5.2(b)(1)-(2) (2012).

From July 16, 2011 through October 2012, the Respondents operated as a CPO, as defined in Section 1a(11)(A)(i)(II) of the Act, in that they engaged in a business that is in the nature of an investment trust, syndicate or similar form of enterprise, and in connection therewith, solicited, accepted or received funds, securities, or other property from others for the purpose of trading Forex as described in Section 2(c)(2)(C)(i) of the Act.³

Thus, by their fraudulent actions, from July 16, 2011 through October 2012, the Respondents, through the use of the mails or other means or instrumentalities of interstate commerce, while acting as a CPO, directly or indirectly employed a device, scheme, or artifice to defraud Pool Participants, or engaged in transactions, practices or a course of business which operated as a fraud or deceit upon such participants, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2006).

² The Commission has jurisdiction over Respondents’ fraud in connection with off-exchange Forex transactions offered to, or entered into with, non-ECPs on a leveraged, margined or financed basis, pursuant to Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (2012).

³ The relevant provision defining a CPO took effect on July 16, 2011.

The Respondents Acted as an Unregistered CPO

From June 2011 through October 2012, the Respondents acted as a CPO by soliciting funds from the Pool Participants for a purported pooled forex investment vehicle, without registering as a CPO as required, in violation of Commission Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2012).⁴ In addition, from July 16, 2011 through October 2012, Respondents acted as a CPO and made use of the mails or any means or instrumentality of interstate commerce in connection with operating the business as such CPO without registering as a CPO as required, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (Supp. IV 2011).

Principal-Agent and Controlling Person Liability of Pinnacle and Engel

While acting for and on behalf of Pinnacle as its owner and operator, Engel defrauded Pool Participants and acted as a CPO without registering as such. Therefore, Pinnacle is also liable, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2, for Engel's violations of the Act and Commission Regulations. In addition, Engel controlled Pinnacle, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Pinnacle's acts constituting the violations of the Act and Regulations. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Engel is liable as controlling person for Pinnacle's violations of the Act and Commission Regulations.

V.

FINDINGS OF VIOLATION

Based upon the foregoing, the Commission finds that, during the Relevant Period, Respondents violated Section 4b(a)(2)(A)-(B) of the Act and Commission Regulations 5.2(b)(1)-(2) and 5.3(a)(2)(i); and from July 16, 2011 through October 2012, Respondents violated Sections 4o(1)(A)-(B) and 4m(1) of the Act, 7 U.S.C. §§ 6o(1)(A)-(B) (2006).

VI.

OFFER OF SETTLEMENT

The Respondents have submitted the Offer in which they, admitting the findings and conclusions herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waive:

⁴ For the purposes of trading Forex, a "commodity pool operator" is defined in Commission Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2012), as "any person who operates or solicits funds, securities, or property for a pooled investment vehicle that is not an eligible contract participant."

1. the filing and service of a complaint and notice of hearing;
 2. a hearing;
 3. all post-hearing procedures;
 4. judicial review by any court;
 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 6. any and all claims that they 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 (2013), relating to, or arising from, this proceeding;
 7. any and all claims that they 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; and
 8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that, during the Relevant Period, Respondents violated Section 4b(a)(2)(A)-(B) of the Act and Commission Regulations 5.2(b)(1)-(2) and 5.3(a)(2)(i); and from July 16, 2011 through October 2012, Respondents violated Sections 4o(1)(A)-(B) and 4m(1) of the Act;
 2. orders Respondents to cease and desist from violating Sections 4(b)(2)(A)-(B), 4o(1)(A)-(B) and 4m(1) of the Act, and Commission Regulations 5.2(b)(1)-(2) and 5.3(a)(2)(i);
 3. orders Respondents, jointly and severally, to pay restitution in the amount of four hundred and five thousand, three hundred and seventy-eight dollars (\$405,378), plus post-judgment interest;
 4. orders Respondents, jointly and severally, to pay a civil monetary penalty in the amount of four hundred and fourteen thousand dollars (\$414,000), plus post-judgment interest, if the civil monetary penalty is not paid within thirty (30) days of the entry of this Order; and

5. appoints the National Futures Association (“NFA”) as Monitor in this matter;
6. orders that Respondents be permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. §1a(40) (Supp. IV 2011)), and all registered entities shall refuse him trading privileges; and
7. orders Respondents and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents and their successors and assigns shall cease and desist from violating Sections 4b(a)(2)(A)-(B), 4o(1)(A)-(B), and 4m(1) of the Act, 7 U.S.C § 6b(a)(2)(A)-(B) (Supp. IV 2011), 7 U.S.C. § 6o(1)(A)-(B) (2006) and 7 U.S.C. § 6m(1) (Supp. IV 2011), and Commission Regulations 5.2(b)(1)-(2), and 5.3(a)(2)(i), 17 C.F.R. §§ 5.2(b)(1)-(2) and 5.3(a)(2)(i)(2012).
- B. Respondents, jointly and severally, shall pay restitution in the amount of four hundred and five thousand, three hundred seventy-eight dollars (\$405,378) (“Restitution Obligation”). Post-judgment interest shall accrue on the Restitution 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). Any restitution amounts paid in satisfaction of restitution ordered in the corresponding criminal proceedings, including *United States v. Christopher A. Engel*, Case No. 1:14-CR-061 (M.D. Penn. March 3, 2014) shall be credited toward payment of the Respondents’ Restitution Obligation.

To effect payment by Respondents and the distribution of restitution to Respondents’ customers, the Commission appoints the NFA as “Monitor.” The Monitor shall collect payments of the Restitution Obligation from Respondents and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, it shall not be liable for any action or inaction arising from its appointment as Monitor other than actions involving fraud.

Respondents shall make payments of the Restitution Obligation under this Order in the name of the “Pinnacle Forex Group, LLC/Christopher A. Engel’s Settlement Fund” and shall send such payments by electronic funds transfer, or U.S. postal money order, certified check, bank cashier’s check, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800,

Chicago, Illinois 60606, under a cover letter that identifies the paying Respondents and the name and docket number of this proceeding. The paying Respondents 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.

The Monitor shall oversee Respondents' Restitution Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to the Respondents' Pool Participants or may defer distribution until such time as the Monitor may deem appropriate. In the event that the amount of payments of the Restitution Obligation to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a restitution distribution 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, as discussed below. To the extent any funds accrue to the U.S. Treasury for satisfaction of Respondents' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this Order.

- C. Respondents, jointly and severally, shall pay a civil monetary penalty of four hundred fourteen thousand dollars (\$414,000) (the "CMP Obligation"). 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, OK 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 Respondents and the name and docket number of this proceeding. The Respondents 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 and to the Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005.

- D. Respondents are permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40)(Supp. IV 2011)), and all registered entities shall refuse them privileges thereon.
- E. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondents agree that neither they nor any of their successors and 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.
 2. Respondents agree that they shall never, directly or indirectly:
 - a. enter into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Commission Regulation 1.3(hh), 17 C.P.R. § 1.3(hh) (2012) ("commodity options")); swaps (as that term is defined in Section 1a(47) of the Act, to be codified at 7 U.S.C. § 1a(47) and as further defined in Commission Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx) (2012) ("swaps")); security futures products and foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) ("forex contracts")), for Respondents' own personal account or for any account in which they have a direct or indirect interest;
 - b. have any commodity futures, options on commodity futures, commodity options, swaps, security futures products and/or forex contracts traded on their behalf;
 - c. control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, swaps, security futures products and/or forex contracts;
 - d. solicit, receive, or accept 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;
 - e. apply for registration or claim exemption from registration with the

Commission in any capacity, or engage 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) (2012);

- f. act as a principal (as that term is defined in Commission 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(38) of the Act, 7 U.S.C. § 1a(38)(Supp. IV 2011)) 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) (2012).

- F. Cooperation with Monitor: Respondents shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondents' Pool Participants, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments. Respondents shall execute any documents necessary to release funds that they have in any depository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.
- G. Partial Satisfaction: Respondents understand that any acceptance by the Commission or the Monitor of partial payment of Respondents' Restitution Obligation or CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
- H. Change of Address/Phone: Until such time as Respondents satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Order, Respondents shall provide written notice to the Commission by certified mail of any change to their telephone number(s) and mailing address(es) within ten (10) calendar days of the change.

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

By the Commission.



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

Dated: December 3, 2014