

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION

CLERK'S OFFICE U.S. DIST. COURT  
AT ABINGDON, VA  
FILED

APR 16 2012

JULIA C. DUDLEY, CLERK  
BY: *J. Clark*  
DEPUTY CLERK

_____ )	
U.S. COMMODITY FUTURES TRADING )	
COMMISSION, )	
)	
Plaintiff, )	
)	
v. )	CASE NO. 1:10CV00009
)	
RONALD W. SMITH, JR. D/B/A )	
SAFEGUARD 3030 INVESTMENT CLUB, )	
an individual, )	
)	
Defendant, and )	
)	
ANGELA A. DUTY SMITH, an individual; )	
TIGRE SYSTEMS, INC., a Wyoming )	
corporation, )	
)	
Relief Defendants. )	
)	
_____ )	

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER OF FINAL JUDGMENT,  
PERMANENT INJUNCTION, CIVIL  
PENALTIES AND OTHER EQUITABLE RELIEF**

This matter is before the Court on Plaintiff U.S. Commodity Futures Trading Commission's ("CFTC" or "Commission") Motion for Default Judgment, Permanent Injunction, Civil Penalties and Other Equitable Relief ("Default Motion"). For the reasons stated below and good cause having been shown, the Default Motion is GRANTED.

**I. BACKGROUND**

On February 23, 2010, the CFTC filed a Complaint for Injunctive Relief, Civil Monetary Penalties, and Other Equitable Relief (the "Complaint) against Defendant Ronald W. Smith, Jr.

("R. Smith") doing business as Safeguard 3030 Investment Club ("Safeguard"), alleging that he operated a Ponzi scheme involving the trading of leveraged off-exchange foreign currency and charging him with violating the anti-fraud provisions of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2006), 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). The Complaint also named Angela A. Duty Smith ("A. Smith") and Tigre Systems, Inc. ("Tigre") as Relief Defendants, alleging that they had received a portion of Defendant R. Smith's ill-gotten gains.

On February 24, 2010, Defendant R. Smith and Relief Defendant A. Smith were properly served with the Complaint. Defendant R. Smith filed a motion to dismiss on March 9, 2010. The Court denied Defendant R. Smith's Motion to Dismiss on March 18, 2010. Defendant R. Smith and Relief Defendant A. Smith failed to answer or otherwise defend within the time permitted by Fed. R. Civ. P. 12(a). On May 6, 2010, the Clerk of this Court, pursuant to Fed. R. Civ. P. 55(a), entered a default against Defendant R. Smith and Relief Defendant A. Smith.

On February 25, 2010, Relief Defendant Tigre was properly served with the Complaint. Pamela P. Duty ("P. Duty") filed an answer on behalf of Relief Defendant Tigre on March 18, 2010. The Court granted the Commission's Motion to Strike Answer Filed by P. Duty on Behalf of Relief Defendant Tigre on May 24, 2010. Relief Defendant Tigre failed to appear, answer or otherwise defend within the time permitted by Fed. R. Civ. P. 12(a). On June 10, 2010, the Clerk of this Court, pursuant to Fed. R. Civ. P. 55(a), entered a default against Relief Defendant Tigre.

More than twenty-one months have passed since Defendant R. Smith's Motion to Dismiss was denied and the Clerk entered default against him and Relief Defendants. Defendant

and Relief Defendants have not sought to set aside their default, have not attempted to defend against the allegations in the Complaint, and have not otherwise appeared in this action, apart from Defendant R. Smith's appearance at the March 5, 2010 show cause hearing with respect to Plaintiff's motion for a preliminary injunction against him.

The Court has carefully considered the Complaint, the factual allegations of which are well-pleaded and hereby taken as true, the memorandum the Commission filed in support of its Default Motion and the exhibits thereto, and, being fully advised and familiar with the record in this matter, hereby enters findings of fact and conclusions of law, and hereby issues a final order of permanent injunction that also provides for restitution, disgorgement, a civil monetary penalty and ancillary equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), as set forth herein.

## **II. FINDINGS OF FACT**

### **A. Summary**

From at least January 2009 through February 2010 (the "relevant period"), Defendant R. Smith d/b/a Safeguard solicited and accepted \$1,408,060 from 74 individuals for the purpose of trading off-exchange foreign currency contracts ("forex" or "foreign currency"). Defendant R. Smith solicited customers through a website, [www.safeguard3030.com](http://www.safeguard3030.com) ("Safeguard website"), and a video posted on [www.youtube.com](http://www.youtube.com) ("Safeguard video"), among other means. In his Internet solicitations, Defendant R. Smith claimed experience and success in trading forex and lured prospective customers with the prospect of earning a 30% return every 30 business days. Defendant R. Smith, through Relief Defendant Tigre, provided Safeguard customers with periodic account statements representing that he was profitably trading for them. The account statements were false.

Defendant R. Smith did not deposit any of the funds he solicited from customers into an actual forex trading account or use those funds to trade foreign currency. Instead, Defendant R. Smith misappropriated all of the \$1,408,060 that customers provided him to invest on their behalf. Defendant R. Smith used customer funds to pay for his personal expenses, to make purported profit payments or principal returns to earlier customers in the manner akin to a Ponzi scheme, and to fund Relief Defendant Tigre's operations. Through the issuance of false periodic account statements and other communications to customers, Defendant R. Smith concealed and perpetuated his fraudulent scheme and misappropriation of customer funds.

**B. The Parties**

Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the provisions of the Act, as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1.1. *et seq.* (2011). The Commission maintains its principal office at Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, DC 20581.

Defendant **Ronald W. Smith, Jr.** d/b/a Safeguard resided in Vansant, Virginia during the relevant period. He also maintained a mailing address at P.O. Box 481, Davenport, Virginia, 24239. R. Smith d/b/a Safeguard was engaged in the business of soliciting and accepting funds for purportedly operating and trading managed accounts and/or a pooled investment in connection with agreements, contracts, or transactions in off-exchange forex that were margined or leveraged. During the relevant period, Safeguard maintained a website but was not a legal entity. R. Smith operated Safeguard from his home and held himself out as president of Safeguard. During the relevant period, R. Smith's main source of income was Safeguard.

Relief Defendant **Angela A. Duty Smith** is Defendant R. Smith's wife. During the relevant period, she resided at the same street address as her husband in Vansant, Virginia.

Relief Defendant **Tigre Systems, Inc.** is a corporation organized under the laws of Wyoming. According to the corporate records filed in Wyoming, Tigre's principal place of business was 13791 East Rice Place, Aurora, Colorado 80015. Tigre is also registered as a foreign corporation in Colorado. Tigre's annual report filed with Colorado in 2009 listed a street address at 123 West First Street, Suite 675, Casper, Wyoming 82601 and a mailing address at the same Davenport, Virginia address R. Smith used. Pamela P. Duty, the individual identified as president of Tigre in its corporate filings, was not affiliated with Tigre in any manner and was never an employee of Tigre. During the relevant period, Defendant R. Smith was the sole shareholder of Tigre and was its president and chief operating officer.

**C. Defendant Fraudulently Solicited Customers to Trade Forex**

Throughout the relevant period, Defendant R. Smith, directly and through at least one other person, fraudulently solicited 74 individuals to become members of Safeguard and provide funds for him to trade forex on their behalf. Defendant R. Smith, directly and through at least one other person, told these customers that he would trade foreign currency for them. In his Internet solicitations, Defendant R. Smith promised enormous returns through forex trading, touted the extraordinary success of Safeguard's purported trading program, and minimized the significant risks of trading leveraged foreign currency.

On the Safeguard website, Defendant R. Smith advertised an "investment club" that promised prospective customers who became members and invested in Safeguard returns of "up to 30% in 30 days." According to the Safeguard website, "30 days refers to market days" excluding "Saturday or Sunday." The Safeguard website stated: "All investing has some layers

of inherent risk involved . . . however, our platform has 95.5% of the trades that are initiated are winning [sic] and only 4.5% are losses.” The Safeguard website also stated that customer funds were “managed by a team of investment experts and . . . [Safeguard] also utilize [sic] several automated systems that were developed to take advantage of economical trends.” All of these statements on the Safeguard website were false.

The Safeguard video opened with a statement by Defendant R. Smith that he would show “the power of the foreign currency market.” The Safeguard video displayed a purported statement from an individual trading account purportedly held at a foreign currency trading firm in R. Smith’s name that showed “a whopping 298% return in just a mere 17 trading days.” Defendant R. Smith claimed that he “applied . . . [Safeguard’s] trading program to this account.” Defendant R. Smith personally appeared in the Safeguard video and stated that Safeguard was designed “for the general investor to have a place to invest their money, to utilize the exact same platforms that the ultra-rich . . . use.” Defendant R. Smith further stated: “We’ve designed a program that wins 95.5% of the time. That means 95.5% of the trades that we initiate generate a profit.” Defendant R. Smith also claimed: “And with our money management techniques, we minimize our losses when we do lose that 4.5%. By choosing to create a club, that allows us to generate leverage. Leverage is something that traders use to give them more trading opportunities in the market.” Defendant R. Smith failed to disclose the risks of trading leveraged foreign currency, and his statements in the Safeguard video regarding the past performance, legitimacy, and high success rate of Safeguard’s trading program were completely false.

Defendant R. Smith failed to disclose to customers and prospective customers that his claims of experience and success in trading forex were false and there was no basis for his representations that customers could quickly earn enormous investment returns such as 30% in

30 business days. Defendant R. Smith further failed to disclose that he operated a Ponzi scheme designed to cheat and defraud Safeguard customers, misappropriated their funds, and was not engaged in any trading on their behalf. Customers and prospective customers relied on Defendant R. Smith's representations and omissions of fact in making their decisions to invest and reinvest with Defendant R. Smith.

**D. Defendant R. Smith Misappropriated Over \$1.4 Million of Customer Funds**

Lured by Defendant R. Smith's misrepresentations, customers provided \$1,408,060 for Defendant R. Smith to invest in forex during the relevant period. Defendant R. Smith instructed Safeguard customers to wire their funds directly to Tigre's corporate bank account or provide a check payable to Tigre. Certain Safeguard customers provided their investments in cash, which was also deposited into Tigre's corporate bank account. During the relevant period, Relief Defendant Tigre maintained a bank account at Branch Banking & Trust Company ("BB&T"). While Relief Defendant A. Smith was the sole signatory on the Tigre BB&T account, Defendant R. Smith had complete control over it and A. Smith's handling of customer funds deposited into the Tigre BB&T account.

Defendant R. Smith misappropriated all \$1,408,060 of Safeguard customer funds deposited into the Tigre BB&T account. Unknown to Safeguard customers, Defendant R. Smith did not use any of their funds to trade foreign currency. Defendant R. Smith never opened or funded an actual trading account in the name of Safeguard, R. Smith, Tigre, A. Smith, P. Duty, or customers, at any futures commission merchant ("FCM") registered with the Commission. In fact, during the relevant period, no actual trading accounts existed at any registered FCM in the name or control of Safeguard, R. Smith, Tigre, A. Smith, and P. Duty. During the relevant period Defendant R. Smith did not transfer any Safeguard customer funds from the Tigre BB&T

account to any account for the benefit of Safeguard or its customers at a bank, financial institution or other entity that indicated he traded foreign currency on behalf of customers. Instead, Defendant R. Smith used \$738,643 of customer funds to repay purported principal and pay purported profits to some Safeguard customers. Consistent with the operation of a Ponzi scheme, these payments to Safeguard customers were funded by deposits from subsequent customers – not profits Defendant R. Smith generated by trading forex.

Defendant R. Smith misappropriated \$450,259 of Safeguard customer funds to pay for his living expenses and those of his wife, Relief Defendant A. Smith. During the relevant period, Defendant R. Smith and his wife used the Tigre BB&T account as their own personal bank account and paid virtually all of their household and personal expenses from it. These expenses included:

- \$132,659 for merchandise such as cabinets, appliances, and home electronics;
- \$61,061 in cash withdrawals and checks payable to A. Smith;
- \$51,710 for a pool, pool house, and related expenses;
- \$32,468 for home furnishings;
- \$29,699 for a 2009 Dodge Journey automobile;
- \$18,500 for a 2008 Dodge Nitro automobile;
- \$16,898 for a 2009 Dodge Nitro automobile;
- \$12,673 for hotel stays, including multiple visits to the luxury Martha Washington Inn;
- \$11,107 for a variety of personal expenses, including groceries, gas, restaurants, convenience stores, and pharmacies; and
- \$10,477 for computers and a telephone system.



In total, Relief Defendant A. Smith withdrew or received the use and benefit of \$193,822 from the Tigre BB&T account. Deposits into the Tigre BB&T account from various sources, including a merchandise return and a payment from a family member, attributed to Relief Defendant A. Smith total \$4,980, which means that she received the use and benefit of \$188,842 in customer funds. Relief Defendant A. Smith was not entitled to the use and benefit of these funds that Safeguard customers provided Defendant R. Smith to trade forex. Relief Defendant A. Smith did not provide any legitimate services to Defendant R. Smith nor did she have any claim to any Safeguard customer funds she received from Defendant R. Smith and the Tigre BB&T account. Although Relief Defendant A. Smith was identified as treasurer of Tigre in account opening documentation, she was never an actual employee of the corporation. Relief Defendant A. Smith did not provide any legitimate services to Tigre and did not have any legitimate claim to the funds in its bank account.

Defendant R. Smith misappropriated \$1,242 of customer funds to finance Relief Defendant Tigre's operations, which included \$1,192 in payments for a "virtual office" based in Colorado. Relief Defendant Tigre did not provide any legitimate services to Defendant R. Smith and did not have any legitimate entitlement to any Safeguard customer funds it received from him.

**E. Defendant R. Smith Concealed His Fraud Through False Statements And False Account Statements**

Defendant R. Smith, directly and through Tigre, concealed his Ponzi scheme, his misappropriation, and his continued fraud through written communications and account statements that falsely represented he was actually and profitably trading forex on behalf of Safeguard customers. Defendant R. Smith, through Tigre, provided customers with periodic false account statements that consistently showed profitable returns on their investments with

Safeguard. The purported gains illustrated on these false account statements typically paralleled the returns of 30% every 30 business days that Defendant R. Smith promised Safeguard customers. Several customers decided to invest more money with Safeguard when they started to receive their periodic account statements that consistently reflected the profitable returns that Defendant R. Smith promised them.

Defendant R. Smith's fraudulent scheme began to unravel in September and October 2009 when certain Safeguard customers requested that Defendant R. Smith return their funds and he did not return their money to them. Defendant R. Smith sent e-mails to some customers to reassure them that he would return their funds within a specified time period. Defendant R. Smith employed a variety of false excuses for his failure to satisfy customer withdrawal requests. In an e-mail addressed to Safeguard members, Defendant R. Smith claimed that Safeguard could not return funds to them because of a purported investigation by the Securities and Exchange Commission ("SEC"). In another e-mail shortly thereafter, Defendant R. Smith announced that Safeguard was closing and promised his customers that their funds would be returned to them.

### **III. CONCLUSIONS OF LAW**

#### **A. Jurisdiction and Venue**

This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), which provides, in relevant part, that 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, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act. The Commission has jurisdiction over the forex transactions at issue in this case pursuant to Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), which grants the Commission jurisdiction over agreements, contracts, and transactions in forex. This Court has personal jurisdiction over the Defendants and Relief Defendants, all of whom reside and can be found in this District. Venue

properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), in that Defendant R. Smith is found, inhabits, resides, and/or transacts business in this District, and certain of the transactions, acts, practices, and courses of business in violation of the Act have occurred, are occurring, or are about to occur within this District.

**B. Defendant and Relief Defendants' Failure to Answer Warrants Entry of Default Judgment**

When a party against whom a default judgment is sought has failed to plead or otherwise assert a defense, and that fact has been documented, the clerk shall enter the party's default. Fed. R. Civ. P. 55(a). The party seeking the default shall then apply to the court for a default judgment. Fed. R. Civ. P. 55(b).

Entry of default judgment is left to the sound discretion of the trial court. *SEC v. Lawbaugh*, 359 F. Supp. 2d 418, 421 (D. Md. 2005)(citing *Dow v. Jones*, 232 F.Supp.2d 491, 494 (D. Md. 2002) (granting default judgment for permanent injunction, disgorgement and a civil monetary penalty where defendant failed to answer complaint alleging securities fraud and misappropriation). While the Fourth Circuit has a strong policy that cases should ordinarily be decided on the merits, see *United States v. Shaffer Equip. Co.*, 11 F.3d 450, 462 (4th Cir. 1993), default judgment is appropriate when the adversary process has been halted because of an unresponsive party. *Lawbaugh*, 359 F. Supp. 2d at 421 (citing *Jackson v. Beech*, 636 F.2d 831, 836 (D.C. Cir. 1980)).

More than twenty-four months have passed since Defendant R. Smith's Motion to Dismiss was denied on March 18, 2010, and he has not answered the Complaint or otherwise defended this case. On May 6, 2010, the Clerk entered a default against Defendant R. Smith for his failure to answer the Complaint. More than twenty-three months have passed since the Clerk's default was entered against Defendant R. Smith, and he has not sought to set aside his

default, has not defended against the allegations in the Complaint, and has not otherwise appeared in this action apart from his limited appearance at the March 5, 2010 show cause hearing with respect to Plaintiff's motion for a preliminary injunction against him.

More than twenty-one months have passed since the Clerk entered default against Relief Defendant Tigre for its failure to answer the complaint. Indeed, no attorney who is a member of the bar of this Court has entered their appearance on behalf of Tigre. More than twenty-two months have passed since the Clerk entered default against Relief Defendant A. Smith on May 6, 2010 for her failure to answer the Complaint or otherwise defend in this case. Relief Defendants Tigre and A. Smith have not sought to set aside their default, have not attempted to dispute or defend against the allegations in the Complaint, and have not otherwise appeared in this action.

Upon default, the well-pled allegations in the complaint are to be taken as true for purposes of establishing liability. *Lawbaugh*, 359 F. Supp. 2d at 422; *see also Holland v. New Country Mining, Inc.*, No. 01:06-0626, 2006 U.S. Dist. LEXIS 88372, at \*6 (S.D. W.Va. Dec. 6, 2006) (where defendant has not pled or otherwise defended himself in an action, all averments in the complaint are deemed admitted); *Ryan v. Homecomings Fin. Network*, 253 F.3d 778, 780 (4th Cir. 2001) (defaulting defendant admits plaintiff's well-pled allegations of fact).

Accordingly, entry of final judgment by default against Defendant and Relief Defendants is wholly appropriate in this case.

**C. Defendant Violated Section 4b(a)(2)(A)-(C) of the Act**

Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, makes it unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market -

(A) to cheat or defraud or attempt to cheat or defraud the other person;

(B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [or]

(C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person . . . .

Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C). Through his misrepresentations and omissions of material fact, misappropriation, and issuance of false account statements, the factual details of which are set forth above, Defendant R. Smith violated Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA.

**1. Fraud by Misrepresentations and Omissions**

To establish that Defendant R. Smith violated Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA, the Commission must prove that: (1) a misrepresentation, misleading statement, or deceptive omission was made; (2) with scienter; and (3) that the misrepresentation, misleading statement, or deceptive omission was material. *CFTC v. King*, No. 3:06-CV-1583-M, 2007 U.S. Dist. LEXIS 33338, at \*6 (N.D. Tex. May 7, 2007) (citing *CFTC v. R.J. Fitzgerald & Co., Inc.* 310 F.3d 1321, 1328 (11th Cir. 2002)). As shown below, Defendant R. Smith – through his intentional misrepresentations and deceptive omissions of material fact – violated Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA.

**a. Defendant Made Misrepresentations and Omissions**

Defendant R. Smith knowingly misrepresented to customers, among other things, that: (1) he was experienced in trading forex; (2) he had been successful in trading forex; (3) he could

earn large profits with returns such as 30% in 30 business days for customers by trading forex; and (4) he was profitably trading forex on behalf of customers, as reported on the false account statements he, through Tigre, delivered to them.

Defendant R. Smith omitted material facts by failing to disclose to customers that he did not deposit any of the funds he solicited from them into an actual forex trading account or use those funds to trade forex. Defendant R. Smith failed to disclose that he misappropriated all of the \$1,408,060 that customers provided him to invest on their behalf. Defendant R. Smith failed to disclose that any purported profits and returns on investment paid to his customers came from the funds of either existing Safeguard customers or new Safeguard customers. Defendant R. Smith knowingly made false statements to customers regarding a purported SEC investigation as an excuse for not repaying customers. Finally, Defendant R. Smith failed to disclose that he was operating a Ponzi scheme through which he misappropriated \$1,408,060 from his customers.

**b. Defendant Acted With Scienter**

The scienter element is established when an individual's "conduct involves intentional omissions or misrepresentations that present a risk of misleading customers, either known to the defendant or sufficiently manifest that the defendant must have been aware of the risk." *King*, 2007 U.S. Dist. LEXIS 33338, at \*6 (citing *R.J. Fitzgerald & Co.*, 310 F.3d at 1328) (internal quotation marks omitted); *Wasnick v. Refco, Inc.*, 911 F.2d 345, 348 (9th Cir. 1990) (holding that scienter is established when an individual's acts are performed "with knowledge of their nature and character") (citation omitted); *Lawrence v. CFTC*, 759 F.2d 767, 773 (9th Cir. 1985) (providing that the Commission must demonstrate only that a defendant's actions were "intentional as opposed to accidental"). "Recklessness is [also] sufficient to satisfy Section 4b's

scienter requirement.” *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988).

Defendant R. Smith made misrepresentations and omissions of fact to Safeguard customers with the requisite scienter. When Defendant R. Smith made representations to Safeguard customers regarding his experience and success in forex trading and issued, through Tigre, account statements reflecting purported profitable returns, he clearly knew such representations and statements were false. Defendant R. Smith knew he was not trading forex, much less successfully trading forex. Defendant R. Smith also knew that he was using customer funds to pay purported profits and return principal to other customers, finance Tigre’s operations, and pay personal and household expenses for himself and his wife. Accordingly, Defendant R. Smith acted with the requisite scienter.

**c. Defendant’s Misrepresentations and Omissions Were Material**

A statement or omitted fact is material if “there is a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest.” *R&W Technical Serv. Ltd. v. CFTC*, 205 F.3d 165, 169 (5th Cir. 2000); see *R.J. Fitzgerald & Co.*, 310 F.3d at 1328-1329. Any fact that enables customers to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. *In re Commodities Int’l Corp.*, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943, 1997 CFTC LEXIS 8, at \*25 (CFTC Jan. 14, 1997); see also *Saxe v. E.F. Hutton & Co., Inc.*, 789 F.2d 105, 110 (2d Cir. 1986) (“[M]aterial misrepresentations about the nature of the organization handling [an] account, the people [dealt] with, and the type of trading [the] funds were used for’ would be sufficient to state a cause of action pursuant to the [Act].”) (citing *Psimenos v. E.F. Hutton & Co. Inc.*, 722 F.2d 1041, 1043-44 & n.5 (2d Cir. 1983)).

Defendant R. Smith's misrepresentations and omissions are material in that a reasonable customer would want to know, among other things, that Defendant R. Smith was not the experienced and successful forex trader he claimed to be, he was not even using any of their funds to trade forex, and any purported returns on investment were paid with funds he received from other Safeguard customers as part of a Ponzi scheme.

**2. Fraud by Misappropriation**

Defendant R. Smith violated Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA, by misappropriating customer funds. Defendant R. Smith used \$450,259 of the \$1,408,060 in Safeguard customer funds for his own personal and household expenses and those of his wife, Relief Defendant A. Smith, including: the pool and pool house at their residence in Vansant, Virginia; several automobiles; home furnishings; hotel stays, including multiple visits to the luxury Martha Washington Inn; and the entire spectrum of normal, everyday personal and household expenses. Defendant R. Smith used a small portion of the misappropriated funds to finance Relief Defendant Tigre's ongoing operations and \$738,643 of the misappropriated funds to repay principal and purported profits to some Safeguard customers in the manner of a Ponzi scheme. As discussed above, the Relief Defendants each received the use and benefit of a portion of the misappropriated funds.

Misappropriation of customer funds constitutes "willful and blatant" fraud in violation of Section 4b of the Act. *CFTC v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d 676, 687 (D. Md. 2000) (internal quotation marks and citation omitted) (finding that defendants misappropriated customer funds by diverting such funds for operating expenses and personal use, in violation of Section 4b(a)(2)(i), (iii) of the Act (the predecessor to 4b(a)(2)(A), (C) of the Act)), *aff'd in part, vacated in part on other grounds sub nom. CFTC v. Baragosh*, 278 F.3d 319



(4th Cir. 2002); *see also* *CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (holding that defendant violated Section 4b when she misappropriated pool participant funds by soliciting funds for trading and by trading only a small percentage of those funds, while disbursing the rest of the funds to other investors, herself, and her family); *CFTC v. Weinberg*, 287 F. Supp. 2d. 1100, 1106 (C.D. Cal. 2003) (finding that defendant misappropriated customer funds entrusted to him for trading purposes, in violation of Section 4b(a)(2)(i), (iii) of the Act); *In re Slusser*, [1998–1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701, 1999 CFTC LEXIS 167, at \*36–37 (CFTC July 19, 1999) (holding that respondents violated Section 4b of the Act by surreptitiously retaining money in their own bank accounts that should have been traded on behalf of pool participants), *aff'd in relevant part sub nom. Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000); *King*, 2007 U.S. Dist. LEXIS 33338, at \*8 (“King’s violation of section 4b(a)(2)(i), (iii) of the [Act] is further proven by his admitted misappropriation of customer funds for personal and professional use.”); *CFTC v. McLaurin*, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,768, 1996 U.S. Dist. LEXIS 9417, at \*9–10 (N.D. Ill. July 1, 1996) (concluding that defendant misappropriated customer funds by depositing those funds in accounts in which the customers had no ownership interest and by making unauthorized disbursements for his own use, in violation of Section 4b(a)(i) of the Act).

**3. Fraud by Issuing or Causing the Issuance of False Account Statements to Customers**

Defendant R. Smith violated Section 4b(a)(2)(B) of the Act, as amended by the CRA, by issuing or causing the issuance of false account statements to Safeguard customers that reported the existence of customer accounts, fictitious gains or profits, and account balances. Defendant R. Smith, through Tigre, provided periodic account statements via e-mail that showed Safeguard customers the purported value of their accounts and purported gains each 30-day period of their

investment cycle consistent with the returns Defendant R. Smith claimed he would achieve through forex trading.

Delivering or causing the delivery of false account statements to customers is a violation of Section 4b(a)(2)(B) of the Act, as amended by the CRA. *See, e.g., Noble Wealth*, 90 F. Supp. 2d. at 685-87 (defendants violated Section 4b(a)(i)-(iii) of the Act because they delivered false account statements, in addition to having engaged in other violative misconduct); *CFTC v. Sorkin*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,855, at 27,585-86 (S.D.N.Y. Aug. 25, 1983) (determining that distribution of false account statements which falsely report trading activity or equity is a violation of Sections 4b(B) and 4o of the Act).

**D. Relief Defendants Are Not Entitled to Ill-Gotten Gains**

“Federal courts may order equitable relief against a person who is not accused of wrongdoing” where that person: “(1) has received ill-gotten funds; and (2) does not have a legitimate claim to those funds.” *CFTC v. Kimberlynn Creek Ranch*, 276 F.3d 187, 191-92 (4th Cir. 2002) (citing *SEC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998)); *SEC v. George*, 426 F.3d 786, 798 (6th Cir. 2005) (same). As set forth below, the evidence establishes that A. Smith and Tigre each received ill-gotten funds from Defendant R. Smith to which they did not have a legitimate claim.

Relief Defendant Tigre was a corporation controlled by Defendant R. Smith. It maintained a bank account at BB&T. While A. Smith was the sole signatory on that account, Defendant R. Smith had complete control over it and A. Smith’s handling of funds deposited into Tigre’s BB&T account. Both of them used that account to pay all manner of personal expenses. The vast majority of funds in the Tigre BB&T account came from Safeguard customers. Defendant R. Smith used \$1,242 of funds in the Tigre BB&T account to pay for expenses

associated with Tigre's operations. Relief Defendant Tigre thus received funds from Defendant R. Smith that were derived from his fraudulent acts and has been unjustly enriched thereby. Relief Defendant Tigre did not provide any legitimate services to Defendant R. Smith and did not have any legitimate claim to any Safeguard customer funds it received from him. Accordingly, Relief Defendant Tigre must disgorge \$1,242 of ill-gotten gains it received.

Relief Defendant A. Smith also received Safeguard customer funds from Defendant R. Smith and from the Tigre BB&T account totaling \$188,842. A. Smith did not provide any legitimate services to Defendant R. Smith and therefore does not have any legitimate claim to any Safeguard customer funds deposited in the Tigre BB&T account. A. Smith was the sole signatory on the Tigre bank account and paid for some of her personal expenses using funds from this account. A. Smith did not have any interest in or entitlement to the funds in the account, which consisted of funds that customers entrusted to Safeguard for forex trading. The \$188,842 in withdrawals or expenditures from the Tigre BB&T account constitutes ill-gotten gains, funds that have benefited and enriched A. Smith at the expense of Safeguard's victims. Accordingly, Relief Defendant A. Smith must disgorge \$188,842 of ill-gotten gains she received.

**E. Statutory and Equitable Relief are Appropriate Remedies in Commission Enforcement Actions**

The Commission has requested that the Court enter an Order that: permanently enjoins Defendant R. Smith from committing further violations of the Act as charged and from engaging in any commodity-trading-related activity; requires that Defendant R. Smith make restitution to the customers he defrauded; requires that Relief Defendants disgorge the customer funds they received from Defendant R. Smith; and imposes a civil monetary penalty ("CMP") against Defendant R. Smith.

The Commission's request is well-received. First, Section 6c of the Act, 7 U.S.C. § 13a-1, authorizes the Commission to seek permanent injunctive relief and CMPs, stating in relevant part:

(a) Whenever it shall appear to the Commission that any registered entity or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule, regulation or order, thereunder . . . the Commission may bring an action in the proper district court of the United States . . . to enjoin such act or practice, or to enforce compliance with this Act, or any rule, regulation or order thereunder . . .

(d) . . . the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation . . . a civil penalty in the amount of not more than the greater of \$100,000 or triple the monetary gain to the person for each violation . . . .

7 U.S.C. § 13a-1. Second, as explained below, restitution and disgorgement are ancillary equitable relief within the power of the district court to grant, and they are appropriate remedies for violations of the Act. *See, e.g., Co Petro Marketing Group, Inc.*, 680 F.2d 573, 583-84 (9th Cir. 1982).

**F. A Permanent Injunction Against Defendant R. Smith is Warranted**

The Commission must show *only two things* to obtain permanent injunctive relief in an action under Section 6c of the Act, 7 U.S.C. § 13a-1: (1) that a violation of the Act has occurred; and (2) that there is a reasonable likelihood of future violations. *See CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979) (finding that “[o]nce a violation is demonstrated, the moving party need show only that there is some reasonable likelihood of future violations” under Section 6c of the Act), *cert. denied*, 442 U.S. 921 (1979)(citing *SEC v. Management Dynamics, Inc.*, 515 F.2d 801 (2d Cir. 1975). To be sure, while past misconduct does not require the conclusion that there is a likelihood of future misconduct, it is “highly suggestive of the likelihood of future violations.” *Hunt*, 591 F.2d at 1220; *see also CFTC v. Am. Metals Exch. Corp.*, 693 F. Supp.

168, 191 (D.N.J. 1988) (“The likelihood of future violations may be inferred from past infractions based upon consideration of the totality of the circumstances to determine if the past infraction was an isolated occurrence as opposed to an indication of a systematic and continuous pattern of wrongdoing”) (citation omitted); *cf. SEC v. Zale Corp.*, 650 F.2d 718, 720 (5th Cir. 1981) (“[T]he [Securities and Exchange] Commission is entitled to prevail when the inferences flowing from the defendant’s prior illegal conduct, viewed in light of the present circumstances, betoken a ‘reasonable likelihood’ of future transgressions.”), *cert. denied sub nom. Underwood v. SEC*, 454 U.S. 1124 (1981) (citations omitted); *Hunt*, 591 F.2d at 1219-20 (reversing the district court’s denial of injunctive relief, and stating that a court of appeals should not hesitate “to reverse an order denying [injunctive] relief when it is evident that the trial court’s discretion has not been exercised to effectuate the manifest objectives of the specific legislation involved.”) (internal quotation marks and citations omitted).

In contrast with other civil litigation, in an action for permanent injunctive relief, the Commission is *not* required to make a specific showing of irreparable injury or inadequacy of other remedies which private litigants must make. *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978); *CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 141-42 (2d Cir. 1977) (same), *cert. denied*, 438 U.S. 905 (1978); *United States v. Quadro Corp.*, 928 F. Supp. 688, 697 (E.D. Tex. 1996) (“[T]he government need [not] prove ‘irreparable harm’ which is the standard in almost all common law injunction determinations”), *aff’d*, 127 F.3d 34 (5th Cir. 1997) (citation omitted).<sup>1</sup> Additionally, because enforcement proceedings under Section 6c of the Act,

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<sup>1</sup> The courts that have considered the “proper showing” standard for issuing a permanent injunction to prohibit future violations of a remedial statute have held that there must be (1) a showing that illegal activity has occurred and (2) a reasonable likelihood that the wrong will be repeated. *Kelley v. Carr*, 567 F. Supp. 831, 839-40 (W.D. Mich. 1983) (internal quotation marks and citation omitted); *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 454 (D.N.J. 2000) (“The District

7 U.S.C. §13a-1, involve the public interest rather than a private controversy, the equitable jurisdiction of the district court is not to be denied or limited in the absence of a clear legislative command. *Hunt*, 591 F.2d at 1222-23 (citing *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946)); *Kelly v. Carr*, 567 F. Supp. 831 (W.D. Mich. 1983) (granting default judgment for permanent injunction), *aff'd in part and rev'd in part*, 691 F.2d 800 (6th Cir. 1980). In such a proceeding, the court's equitable powers are broader and more flexible than in private controversies. *Hunt*, 591 F.2d at 1223 (citing *Porter v. Warner Holding Co.*, 328 U.S. at 398).

The egregious, systematic and widespread nature of Defendant R. Smith's fraudulent conduct warrants imposition of a permanent injunction against him. Accordingly, as specified in the Order below, Defendant R. Smith is permanently restrained, enjoined and prohibited from further violations of the Act as charged in the Complaint and from certain commodity-related activities, including but not limited to trading, solicitation and seeking registration.

#### **G. Restitution and Disgorgement**

##### **1. Restitution and Disgorgement Are Appropriate Equitable Remedies in Commission Enforcement Actions**

As discussed above, Section 6c of the Act, 7 U.S.C. § 13a-1, authorizes the Commission to bring an action to enjoin violations of, and enforce compliance with, the Act. In a civil enforcement action brought pursuant to Section 6c, the district court may order ancillary equitable relief that it deems appropriate, including restitution and disgorgement. *Kimberlynn Creek Ranch*, 276 F.3d at 193 ("it is well settled that equitable remedies such as disgorgement are available to remedy violations of the [Act]"); *United States v. Universal Mgmt. Servs., Inc.*, 191 F.3d 750, 760 (6th Cir. 1999) ("[r]estitution and disgorgement are part of the court's traditional equitable authority"); *CFTC v. Co Petro Mktg. Group*, 680 F.2d 573, 584(9<sup>th</sup> Cir.

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Courts also have jurisdiction to enter a permanent injunction 'upon a proper showing.'") (citation omitted).

1982) (“unless a statute specifically or by inescapable inference commands the contrary, we are not to deny the inherent equitable powers of a court to afford complete relief”).

## 2. Restitution by Defendant

The purpose of restitution is to restore the status quo and return the parties to the positions they occupied before the transactions at issue occurred. *Porter v. Warner Holding Co.*, 328 U.S. at 402 (equitable restitution consists of “restoring the status quo and ordering the return of that which rightfully belongs to the purchaser or tenant”); *United States v. Long*, 537 F.2d 1151, 1153 (4th Cir. 1975) (restitution consists of restoring the injured party “to the position he formerly occupied either by the return of something which he formerly had or by the receipt of its equivalent in money”) (quoting Restatement of Restitution, § 1, Comment: a, at 12 (1937)); see also *SEC v. AMX Int’l, Inc.*, 7 F.3d 71, 74-75 (5th Cir. 1993) (“[r]estitution . . . has the goal of making the aggrieved party whole”); *First Penn Corp. v. FDIC*, 793 F.2d 270, 272 (10th Cir. 1986) (“[t]he object of restitution is to return the parties to the position that existed before the transaction occurred.”).

“Restitution is measured by the amount invested by customers less any refunds made by the Defendant.” *Noble Wealth*, 90 F. Supp. 2d at 693. See also *CFTC v. Marquis Fin. Mgmt. Systems, Inc.*, 2005 U.S. Dist. LEXIS 41438, at \*16 (E.D. Mich. June 8, 2005) (ordering restitution in the amount of net customer deposits); *Rosenberg*, 85 F. Supp. 2d at 455 (ordering restitution in amount of customer deposits). But see *CFTC v. Wilshire Inv. Mgmt. Corp.*, 531 F.3d 1339, 1343-45 (11th Cir. 2008) (holding, in a case involving fraudulent solicitation only, that the proper measure of restitution is the defendant’s unjust enrichment).

Defendant R. Smith solicited \$1,408,060 from customers. Of the total funds solicited, customers received back or otherwise recovered \$738,643. However, ten customers received

payments from Safeguard in excess of their deposits; the total of the excess payments to these ten customers is \$395,506. The difference between the amount Defendant R. Smith solicited (\$1,408,060) and the amount customers received back from Safeguard or otherwise recovered (excluding the ten customers who received a total of \$395,506 in overpayments by Safeguard) is \$1,064,923. Accordingly, as set forth in the Order below, Defendant R. Smith shall make restitution to Safeguard's customers in the amount of \$1,064,923, plus post-judgment interest.

**3. Disgorgement by Relief Defendants**

The Relief Defendants are not charged with violations of the Act, but equitable relief as to them is appropriate because they received ill-gotten funds, and they do not have a legitimate claim to those funds. *Kimberlynn Creek Ranch*, 276 F.3d at 191-93 (affirming the district court order freezing the assets of the relief defendants to preserve those assets for subsequent disgorgement); *SEC v. George*, 426 F.3d 786, 798-800 (6<sup>th</sup> Cir. 2005) (affirming the district court order of disgorgement as to the relief defendants). Relief Defendant A. Smith received a net amount of \$188,842 in ill-gotten gains over the course of Defendant's fraud, in funds she withdrew or funds spent for her benefit from the Tigre BB&T account. Accordingly, as set forth in the Order below, A. Smith shall disgorge \$188,842 in ill-gotten gains, plus post-judgment interest. Relief Defendant Tigre received \$1,242 in ill-gotten gains during the operation of Defendant R. Smith's fraudulent scheme. Accordingly, as set forth in the Order below, Tigre shall disgorge \$1,242 in ill-gotten gains, plus post-judgment interest.

**4. Post-Judgment Administration of Restitution and Disgorgement**

Because a mechanism should be in place to administer post-judgment payments by Defendant and Relief Defendants, the Court grants the request by the CFTC and appoints the National Futures Association ("NFA") as Monitor to administer the post-judgment restitution



and disgorgement discussed above, including the receipt, accounting, administration, and payment of all post-judgment restitution and disgorgement monies paid by Defendant and Relief Defendants.

The NFA is one of the independent self-regulatory organizations that together regulate the futures industry in the United States as authorized by the Act. *See* [www.nfa.futures.org](http://www.nfa.futures.org). Specifically, the NFA regulates firms and individuals that engage in futures trading with public customers. *Id.* As delegated by the Commission, the NFA also performs the registration functions of the Commission. *See* 17 C.F.R. § 3.2(a) (2011). As specified in the Order below, the duties of the Monitor include the post-judgment receipt, accounting, administration, and distribution of the aforementioned amounts of restitution and disgorgement, and the Monitor shall not seek compensation for its performance of these duties. In CFTC civil enforcement actions involving defrauded customers, district courts regularly appoint the NFA as Monitor under the terms. *E.g.*, *CFTC v. McCall Business Group, LLC*, No. 3:08-CV-00445-W, 2010 U.S. Dist. LEXIS 49148, at \*17–19 (W.D.N.C. Apr. 23, 2010); *CFTC v. Safevest, LLC*, No. SACV08-00474-JVS, 2009 U.S. Dist. LEXIS 75161, at \*28–34 (C.D. Cal. July 13, 2009); *CFTC v. Millennium Trading Group, Inc.*, No. 07-CV-11626, 2007 U.S. Dist. LEXIS 65784, at \*33–35 (E.D. Mich. Sept. 6, 2007).

#### **H. Civil Monetary Penalty**

Section 6c(d)(1) of the Act provides “the Commission may seek and the Court shall have jurisdiction to impose . . . on any person found in the action to have committed any violation . . . a civil penalty in the amount of not more than the greater of \$100,000 or triple the monetary gain to the person for each violation.” 7 U.S.C. §13a-1(d)(1). The Commission Regulations adjust the statutory civil monetary penalty of \$100,000 for inflation. *See* 17 C.F.R. § 143.8 (2011). For

the period at issue here, the statutory civil monetary penalty was \$140,000 per violation (for violations committed after October 23, 2008). *Id.*

The Court is free to fashion a civil monetary penalty appropriate to the gravity of the offense and sufficient to act as a deterrent. *Miller v. CFTC*, 197 F.3d 1227, 1236 (9th Cir. 1999). “In determining how extensive the fine for violations of the Act ought to be, courts and the Commission have focused upon the nature of the violations.” *Noble Wealth*, 90 F. Supp. 2d at 694. Conduct that violates the core provisions of the Act, such as customer fraud, should be considered extremely serious. *JCC, Inc. v. CFTC*, 63 F.3d 1557, 1571 (11th Cir. 1995). In *JCC, Inc.*, the U.S. Court of Appeals for the Eleventh Circuit upheld the district court order imposing a civil monetary penalty, finding that “[c]onduct that violates the core provisions of the Act’s regulatory system – such as manipulating prices or defrauding customers *should be considered very serious even if there are mitigating facts and circumstances.*” *Id.* at 1571 (internal quotation marks and citation omitted) (emphasis added). In this case, there are no mitigating facts or circumstances. Instead, R. Smith was blatant and malicious in his fraudulent conduct, enriching himself in the amount of at least \$669,417 at the expense of his 74 innocent victims.

In light of the conduct discussed above, the Court concludes that a serious and significant sanction is appropriate. Accordingly, Defendant R. Smith shall pay a civil monetary penalty of “triple the monetary gain to the person for each violation” pursuant to Section 6c(d)(1). *See CFTC v. Hayes*, [2005–2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,459, 2007 WL 858772, at \*5 (E.D. Va. Mar. 13, 2007) (imposing penalty of triple the monetary gain); *CFTC v. Premium Income Corp.*, No. 3:05-CV-0416-B, 2007 U.S. Dist. LEXIS 11430, at \*38–39 (N.D. Tex. Jan. 26, 2007) (imposing penalty of triple the monetary gain, “as measured by triple the amount of customer funds received by [defendants], less the funds returned to customers, plus

pre-judgment interest”). Defendant profited \$669,417 by virtue of his fraud. Three times that amount is \$2,008,251, which again is an appropriate penalty given the gravity of Defendant R. Smith’s offenses.

#### IV. ORDER

It is HEREBY ORDERED THAT:

1. The Commission’s Motion for Default Judgment, Permanent Injunction, Civil Penalties and Other Equitable Relief is GRANTED.

#### PERMANENT INJUNCTION

2. IT IS FURTHER ORDERED THAT Defendant Ronald W. Smith, Jr. is permanently restrained, enjoined and prohibited from:

- A. further violations of Section 4b(a)(2) 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)(2);
- B. 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) for his own personal account, for any account in which he has a direct interest or indirect interest, or for any other account for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- C. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2011)) (“commodity options”), swaps, 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 his own personal account or for any account in which he has a direct or indirect interest;
- D. having any commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts traded on his behalf;

- E. 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, and/or forex contracts;
- F. 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, and/or forex contracts;
- G. 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) (2011); and/or
- H. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, officer or employee of any person (as that term is defined in Section 1a(38) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(38)) registered, required to be registered, or exempted from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

#### RESTITUTION

3. IT IS FURTHER ORDERED THAT Defendant Ronald W. Smith, Jr. shall pay restitution in the amount of \$1,064,923, plus post-judgment interest (the “Restitution Obligation”), subject to the offset provisions of paragraph 4 immediately below. Post-judgment interest on the Restitution Obligation shall accrue commencing on the date of the entry of this Order and shall be determined using the Treasury Bill rate prevailing on the date of the entry of this Order pursuant to 28 U.S.C. § 1961. To the extent that Defendant Ronald W. Smith, Jr. or Relief Defendant Angela A. Duty Smith make payments in satisfaction of the restitution requirements imposed in the Judgment in *United States v. Smith et al.*, Crim. No. 1:10-CR-00026-JPJ-PMS (W.D. Va. Mar. 30, 2012), and such payments are made to the customers identified in Exhibit F to the Commission’s Memorandum filed in support of its Default Motion,

an excerpt of which is attached to this Order (the "Customer List"), such payment shall be offset against the Restitution Obligation.

#### DISGORGEMENT

4. IT IS FURTHER ORDERED THAT Relief Defendants Angela A. Smith and Tigre Systems, Inc. shall disgorge the ill-gotten gains they received from the Defendants, plus post-judgment interest (the "Disgorgement Obligations"). Relief Defendant Angela A. Smith shall disgorge \$188,842, plus post-judgment interest. Relief Defendant Tigre Systems, Inc. shall disgorge \$1,242, plus post-judgment interest. Any funds received in satisfaction of the Disgorgement Obligations shall offset the Restitution Obligation by an equivalent amount. Post-judgment interest on the Disgorgement Obligations shall accrue commencing on the date of the entry of this Order and shall be determined using the Treasury Bill rate prevailing on the date of the entry of this Order pursuant to 28 U.S.C. § 1961.

#### CIVIL MONETARY PENALTY

5. IT IS FURTHER ORDERED THAT Defendant Ronald W. Smith, Jr. shall pay a civil monetary penalty in the amount of \$2,008,251, plus post-judgment interest ("CMP Obligation"). Post-judgment interest on the CMP Obligation shall accrue commencing on the date of the entry of this Order and shall be determined using the Treasury Bill rate prevailing on the date of the entry of this Order pursuant to 28 U.S.C. § 1961.

6. Defendant Ronald W. Smith, Jr. shall pay his CMP Obligation by electronic funds transfer, or U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, Defendant shall make payment payable to the Commodity Futures Trading Commission and deliver it the following address:

Commodity Futures Trading Commission  
Division of Enforcement

ATTN: Accounts Receivables - AMZ 340  
E-mail Box: 9-AMC-AMZ-AR-CFTC  
DOT/FAA/MMAC  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169  
Telephone: (405) 954-5644

7. If payment is to be made by electronic funds transfer, Defendant Ronald W. Smith, Jr. shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall comply fully with those instructions. Defendant shall accompany the payment of the penalty with a cover letter that identifies the paying Defendant and the name and docket number of the proceeding. Defendant 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, N.W., Washington, D.C. 20581; and (b) Chief, Office of Cooperative Enforcement, at the same address.

APPOINTMENT OF MONITOR AND  
MATTERS RELATED TO PAYMENTS OF RESTITUTION,  
DISGORGEMENT AND CIVIL MONETARY PENALTIES

8. IT IS FURTHER ORDERED THAT the National Futures Association (“NFA”) is appointed as Monitor to effect payment by Defendant and Relief Defendants and the distribution of restitution and disgorged funds. The Monitor shall collect restitution payments from Defendant and disgorgement payments from Relief Defendants and make distributions to Defendant’s customers identified in the Customer List. 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.

9. Defendant and Relief Defendants shall make their required restitution and disgorgement payments under this Order in the name of the “Safeguard 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 Defendant or Relief Defendant and the name and docket number of the proceeding. The paying Defendant or Relief Defendant 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, at the same address.

10. The Monitor shall oversee Defendant's Restitution Obligation and Relief Defendants' Disgorgement Obligations, and shall have the discretion to determine the manner and timing of distribution of funds to Defendant's customers. The Monitor shall distribute funds to the persons and entities on the Customer List on a pro rata basis, or in another appropriate equitable manner. Further, the Monitor may, in its discretion, defer distribution until such time as it may deem appropriate. In the event the amount of restitution payments and/or disgorgement payments to the Monitor are of a *de minimus* nature such that the Monitor determines that the cost of making a distribution to customers is impractical, the Monitor may, in its discretion, treat such restitution and/or disgorgement payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalties as set forth in paragraphs 5, 6 and 7 of this Order.

11. Any funds frozen pursuant to this Court's February 23, 2010 *Ex Parte* Statutory Restraining Order and the Court's Order of Preliminary Injunction issued on March 5, 2010, shall be transmitted by any repository, bank, investment or other financial institution to the Monitor to

satisfy Defendant's Restitution Obligation or Relief Defendants' Disgorgement Obligations as set forth in this Order. Defendant and Relief Defendants shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution wherever located, including any funds frozen pursuant to the Court's February 23, 2010 *Ex Parte* Statutory Restraining Order and the Court's Order of Preliminary Injunction issued on March 5, 2010, in order to make partial or total payment toward their respective restitution and disgorgement obligations set forth in this Order.

12. To the extent that funds accrue to the U.S. Treasury as a result of the Restitution Obligation and/or Disgorgement Obligations, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in paragraphs 9 and 10 of this Order.

13. Any acceptance by the Commission or the Monitor of partial payment from Defendant of his Restitution Obligation and/or CMP Obligation or from Relief Defendants of their Disgorgement Obligations shall not be deemed a waiver of Defendant's and/or Relief Defendants' obligations to make further payments pursuant to this Order, or a waiver of the Commission's and/or Monitor's right to seek to compel payment from Defendant and/or Relief Defendants of any remaining balance.

14. Pursuant to Fed. R. Civ. P. 71, customers of Defendant Ronald W. Smith, Jr., as identified on the Customer List, are explicitly made intended third-party beneficiaries of this Order and may seek to enforce obedience with this Order to obtain satisfaction of any portion of the restitution and/or disgorgement that Defendant and/or Relief Defendants have not paid. Nothing in this Order shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law.



15. To the extent that Defendant Ronald W. Smith, Jr. or Relief Defendant Angela A. Duty Smith make payments in satisfaction of the restitution requirements imposed in the Judgment in *United States v. Smith et al.*, Crim. No. 1:10-CR-00026-JPJ-PMS (W.D. Va. Mar. 30, 2012), Defendant Ronald W. Smith, Jr. or Relief Defendant Angela A. Duty Smith shall transmit copies of the cover letter and the form of payment to: the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606; and the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581.

MISCELLANEOUS PROVISIONS

IT IS FURTHER ORDERED THAT:

16. Prohibition on Transfer of Funds: Defendant shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any other person or entity for the purpose of concealing such funds or property from the Court, the Commission, the Monitor, or any officer that may be appointed by the Court until the Restitution Obligation and the CMP Obligation have been satisfied under this Order.

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

Notice to Commission:	Director Division of Enforcement Commodity Futures Trading Commission Three Lafayette Centre 1155 21st Street, NW Washington, DC 20581
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All such notices to the Commission shall reference the name and docket number of this proceeding.

18. Invalidation: If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order, and the application of the provision to any other person or circumstance, shall not be affected by the holding.

19. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

20. Notwithstanding paragraph 19 of the Order, this case is DISMISSED and the Clerk of Court is directed to CLOSE this case.

SO ORDERED, at Abingdon, Virginia, on this 16th day of April, 2012.

  
James P. Jones  
United States District Judge

**SAFEGUARD 30/30 CUSTOMER NET DEPOSITS LESS PAYMENTS RECEIVED**

<b>Customer Name</b>	<b>Net \$ Amount</b>
Abdullah, Salih	\$1,300.00
Abdulla, Sheila Malika	\$1,000.00
Anderson, Luther	\$10,000.00
Bangi, Ronald for Nald Bangi	\$400.00
Cutie Gifts LLC / Liu, Woah-Ping	\$5,000.00
Borden, Kenneth	\$12,000.00
Boyd, Joseph M. (Mainboard, LLC)	\$5,000.00
Brents, Lorraine	\$250.00
Brents, Jasmine	\$1,000.00
Brown, Cheryl	\$2,000.00
Bruce, Angela	\$500.00
Bush, Michael A.	\$5,000.00
Davis Jr. DDS, Robert L.	\$10,500.00
Duty, Charles	\$99,000.00
English, Wayne G. and Sarah M.	\$3,725.00
Evans, Sandra	\$5,503.00
Fowler, Willie	\$5,000.00
Gaither, Willie Edward	\$15,000.00
Geigenmiller, Kristin A. (Kristen Justice)	\$10,000.00
Hamilton, Ovell /Lewis, Curtis / Lewis, Chae	\$50,300.00
Hanson, Arlene	\$50,000.00
Hayden, William	\$13,800.00
Hayden, Dwayne & Alice	\$125,000.00
Hill, Jason	\$1,166.30
Jordan, Katherine	\$500.00
Karkela, Larry W.	\$5,000.00
Kitosi, Michelle	\$400.00
Lai, Cheng	\$3,800.00
Lewis, Leonard	\$7,500.00
Lim, Mindy	\$700.00
Long, Shirley	\$8,500.00
Mabin, Karen (Turnkey Acquisitions LLC)	\$38,389.41
Marable, Warner	\$8,000.00
Marecheau, Arthur H. & Iris R.	\$1,000.00
Martin, Arlecia (Life Stages Inc.)	\$14,000.00
Martin, Bishop Truman	\$50,000.00
Martin, Donald	\$5,000.00

**SAFEGUARD 30/30 CUSTOMER NET DEPOSITS LESS PAYMENTS RECEIVED  
(CONTINUED)**

<b>Customer Name</b>	<b>Net \$ Amount</b>
Martin, Leon	\$4,000.00
McFarland, Odell	\$500.00
Miller, Grace M.	\$500.00
Nasser, Shamba M.	\$15,000.00
Ng, Sheryl (Sheryl Skelton)	\$154,593.75
Phelps, Mark T.	\$5,000.00
Price, Lloyd	\$18,000.00
Prospertime Holdings, LLC (Thaddeus Murrell)	\$350.00
RMC Consulting and Financial Group (Thaddeus Murrell)	\$500.00
Saunders, Edris	\$1,000.00
Sevilla, Faisal	\$2,500.00
Sharpe, Rodney & Constance (Rite Divinic Family LP)	\$14,088.50
Simpson 3rd, Earl	\$1,000.00
Smith, Folicia Elaine	\$5,200.00
Smith, Rudolph	\$3,540.00
Squier, Monte	\$36,000.00
Taylor, Dorothy	\$7,500.00
Thomas, Antoine	\$2,000.00
Tonkins, Donald	\$1,000.00
Towler, Pamela	\$213,417.22
Vincent, Brent	\$500.00
West, Edward (Westcorp)	\$2,000.00
Whitley, Nikki	\$500.00
Wilson, Zachary	\$1,000.00
<b>Total</b>	<b>\$1,064,923.18</b>