



The Commission finds the following:

**A. SUMMARY**

During the Relevant Period, without registering as a commodity pool operator (“CPO”), Stein solicited and obtained approximately \$524,000 from at least 17 investors (“Pool Participants”) to participate in a commodity pool for the purpose of trading leveraged or margined off-exchange foreign currency contracts (“forex”). Of this amount, approximately \$83,000 was used to trade Forex, of which over \$80,000 was lost in Forex trading. Instead of reporting these losses to the Pool Participants, Stein created and distributed to the Pool Participants false account statements indicating that Stein was earning profits for the Pool Participants through forex trading. The remaining funds, approximately \$441,000, were misappropriated by Stein to pay fabricated “profits” and returns of principal to Pool Participants and for Stein’s personal expenses, such as car payments and retail purchases. Ten Pool Participants are still owed approximately \$244,400 in principal.

**B. RESPONDENT**

Jacob N. Stein is a resident of Hankins, New York. Stein was the President and owner of TEPdesign, Inc. and during the Relevant Period Stein also did business as TEPdesign, Inc. Neither Stein nor TEPdesign, Inc. has ever been registered with the Commission.

**C. FACTS**

During the Relevant Period, Stein solicited neighbors, friends and family, by electronic mail and other means, and received approximately \$524,000 from at least 17 Pool Participants, who were not eligible contract participants (“ECPs”) as defined in Section 1a(18) of the Act, 7 U.S.C. § 1a(18), for the purpose of trading leveraged, margined or financed off-exchange forex. During the Relevant Period, Stein was not registered as a CPO. Also, during the Relevant Period, Stein was not a financial institution, registered broker or dealer, insurance company, financial holding company, or investment bank holding company, nor was Stein an associated person of any of the foregoing.

Stein misappropriated approximately \$441,000 of the Pool Participants’ funds, which were used by Stein to make payments of principal and fabricated profits to Pool Participants and to pay Stein’s personal expenses, including his car payments and retail purchases. While Stein has made some repayments of principal to the Pool Participants, ten Pool Participants are still owed approximately \$244,400 in principal.

Only \$83,000 of the amount solicited and obtained was used to trade Forex. Of the \$83,000 used to trade forex, over \$80,000 was lost through Stein’s trading. Stein’s forex trading losses were in stark contrast to the consistent and significant profits he reported to Pool Participants. Stein created and distributed false account statements to the Pool Participants,

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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 does Respondent 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.

indicating that Stein was earning profits for the Pool Participants through forex trading. Stein sent these false account statements to the Pool Participants by e-mail and other means. The false account statements also contained the account's purported earnings and "weekly growth." The statements showed consistent positive weekly gains, typically in the neighborhood of 1% per week and never reported a single week with a net loss.

These account statements, however, did not reflect the results of actual forex trading conducted by Stein on behalf of Pool Participants. Rather, they were fabricated by Stein, who ignored actual losses he sustained in his limited forex trading. Stein has admitted to making statements and omissions that misled Pool Participants to believe that these account statements reflected actual trading he was conducting with the Pool Participants' funds.

At various times, Stein also made false statements to Pool Participants as to why he could not meet their withdrawal requests, including that he needed to maintain minimum account balances, that multiple requests for withdrawals had to be staggered, that he was in the process of transferring funds between accounts, that his account was undergoing an audit, and that the accounts had been frozen by regulators or banks. These statements by Stein were knowingly or recklessly false and misleading. As Stein well knew, he was unable to make payments to the Pool Participants because the purported earnings were fictitious and the Pool Participants' funds had been used earlier to make payments to investors, had been consumed by trading losses, or had been otherwise spent by Stein.

### III.

#### LEGAL DISCUSSION

##### **Stein 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 Respondent and offered to, or entered into with, non-ECPs on a leveraged, margined or financed basis, "as if" they were a contract of sale for a commodity for future delivery.<sup>2</sup> During the Relevant Period, Stein, 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. II 2009 & Supp. IV 2011).

By such fraudulent actions, from October 18, 2010 through September 2012, Stein also, through the use of the mails or other means or instrumentalities of interstate commerce and in or

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<sup>2</sup> The Commission has jurisdiction over Stein's 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).

in connection with retail forex transactions, cheated or defrauded or attempted to cheat or defraud Pool Participants; willfully made or caused to be made to Pool Participants false reports or statements or caused to be entered for such participants false records; and deceived or attempted to deceive such participants by any means whatsoever, in violation of Commission Regulations 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2012).

From July 16, 2011 through September 2012, Stein operated as a CPO, as defined in Section 1a(11)(A)(i)(II) of the Act, in that he 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.

Thus, by his fraudulent actions, from July 16, 2011 through September 2012, Stein, 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).

#### **Stein Acted as an Unregistered CPO**

From October 18, 2010 through September 2012, Stein acted as a CPO 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).<sup>3</sup> And from July 16, 2011 through September 2012, Stein acted as a CPO and made use of the mails or any means or instrumentality of interstate commerce in connection with his 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).

### **IV.**

#### **FINDINGS OF VIOLATION**

Based upon the foregoing, the Commission finds that: during the Relevant Period, Respondent violated Section 4b(a)(2)(A)-(B) of the Act; from October 18, 2010 through September 2012, Respondent violated Commission Regulations 5.2(b)(1)-(3) and 5.3(a)(2)(i); and from July 16, 2011 through September 2012, Respondent violated Sections 4o(1)(A)-(B) and 4m(1) of the Act.

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<sup>3</sup> 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 as defined in section 1a(18) of the Act, and that engages in retail forex transactions.

V.

**OFFER OF SETTLEMENT**

Respondent has submitted the Offer in which he, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits 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. Waives:
  - 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 he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2013), relating to, or arising from, this proceeding;
  - 7. any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this 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. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Consents, 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, Respondent violated Section 4b(a)(2)(A)-(B) of the Act; from October 18, 2010 through September 2012, Respondent violated Commission Regulations 5.2(b)(1)-(3) and

5.3(a)(2)(i), 17 C.F.R. § 5.2(b) and 5.3(a)(2)(i); and from July 16, 2011 through September 2012, Respondent violated Sections 4o(1)(A)-(B) and 4m(1) of the Act;

2. orders Respondent to cease and desist from violating Sections 4a(b)(2)(A)-(B), 4o(1)(A)-(B) and 4m(1) of the Act, and Commission Regulations 5.2(b)(1)-(3) and 5.3(a)(2)(i), 17 C.F.R. § 5.2(b) and 5.3(a)(2)(i);
3. orders Respondents to pay restitution in the amount of two hundred forty-four thousand four hundred dollars (\$244,400), plus post-judgment interest;
4. orders Respondent to pay a civil monetary penalty in the amount of one hundred thousand dollars (\$100,000), 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 Respondent 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 Respondent to comply with the conditions and undertakings consented to in the Offer and a set forth in Part VII of this Order.

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

## VI.

### ORDER

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

- A. Respondent 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), 6o(1)(A)-(B), and 6m(1) (2006 & Supp. II 2009 & Supp. IV 2011), and Commission Regulations 5.2(b), and 5.3(a)(2)(i), 17 C.F.R. §§ 5.2(b) and 5.3(a)(2)(i) (2012).
- B. Respondent shall pay restitution in the amount of two hundred forty-four thousand four hundred dollars (\$244,400) within thirty (30) days of the date of entry of this Order ("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).

To effect payment by Respondent and the distribution of restitution to Respondent's Pool Participants, the Commission appoints the NFA as "Monitor." The Monitor shall collect payments of the Restitution Obligation from Respondent 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.

Respondent shall make his payments of the Restitution Obligation under this Order in the name of the "Jacob N. Stein'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 Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The Monitor shall oversee Respondent's Restitution Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to the Respondent's 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 Respondent's Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this Order

- C. Respondent shall pay a civil monetary penalty of one hundred thousand dollars (\$100,000), plus post-judgment interest if the civil monetary penalty is not paid within thirty (30) days of the date of entry of this Order (the "CMP Obligation"). If the civil monetary penalty is not paid within thirty (30) days, of the date of the entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012). Respondent 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, Respondent shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The Respondent 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 21<sup>st</sup> Street, NW, Washington, D.C. 20581 and to the Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, 140 Broadway, 19<sup>th</sup> Floor, New York, NY 10005.

- D. Respondent is 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 privileges thereon.
- E. Respondent and his successors and assigns shall comply with the following conditions and undertakings set forth in the *Offer*:
1. Public Statements: Respondent agrees that neither he nor any of his successors and assigns, agents or employees under his 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 Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and his successors and assigns shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.
  2. Respondent agrees that he shall never, directly or indirectly:
    - i. 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 his own personal account or for any account in which he has a direct or indirect interest;
    - ii. have any commodity futures, options on commodity futures, commodity options, swaps, security futures products and/or forex contracts traded on his behalf;



- iii. 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;
- iv. 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;
- v. 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);
- vi. 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 1 a(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: Respondent shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondent's Pool Participants, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments. Respondent shall execute any documents necessary to release funds that he has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.
- G. Partial Satisfaction: Respondent understands that any acceptance by the Commission or the Monitor of partial payment of Respondent's Restitution Obligation or CMP Obligation shall not be deemed a waiver of his 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 Respondent satisfies in full his Restitution Obligation and CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

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

By the Commission.

A handwritten signature in black ink, appearing to read "Melissa D. Jurgens", written over a horizontal line.

Melissa D. Jurgens  
Chief, Executive Secretariat Branch  
Commodity Futures Trading Commission

Dated: August 11, 2014