

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA  
OMAHA DIVISION**

<b>U.S. COMMODITY FUTURES TRADING COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	Civil Action No.
	)	8:11-cv-00181-LSC-FG3
v.	)	
	)	
<b>JONATHAN W. ARRINGTON; MICHAEL B. KRATVILLE; MICHAEL J. WELKE; ELITE MANAGEMENT HOLDINGS CORP.;</b>	)	APPROVED
<b>and MJM ENTERPRISES LLC,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTY  
AND OTHER EQUITABLE RELIEF AGAINST  
DEFENDANT MICHAEL J. WELKE**

**I. INTRODUCTION**

On May 23, 2011, Plaintiff U.S. Commodity Futures Trading Commission (CFTC) filed a Complaint against Defendants Jonathan W. Arrington (Arrington), Michael B. Kratville (Kratville), Michael J. Welke (Welke), Elite Management Holdings Corp. (EMHC), and MJM Enterprises, LLC (MJM).<sup>1</sup> Against Welke, the complaint sought injunctive and other equitable relief, as well as the imposition of civil penalties, for his violations of anti-fraud and other provisions of the Commodity Exchange Act (Act), 7 U.S.C. § 1 *et seq.* (2006 & Supp. III 2009), and CFTC Regulations promulgated thereunder (Regulations), 17 C.F.R. § 1.1 *et seq.* (2011). Welke filed an answer to the complaint on June 30, 2011.

<sup>1</sup> Arrington, EMHC, and MJM never answered the complaint, and the clerk of the Court entered a default against them on June 23, 2011. [DE # 17]. The action is on-going against Kratville.

## II. CONSENTS AND AGREEMENTS

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

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendant Michael J. Welke (Consent Order);

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

3. Acknowledges service of the summons and Complaint;

4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006);

5. Admits the jurisdiction of the CFTC over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1, *et seq.* (2006 & Supp. III 2009);

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

7. Waives:

(a) any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006), and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the CFTC in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2011), relating to, or arising from, this action;

(b) any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868

(1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

(c) any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

(d) any and all rights of appeal from this action;

8. Consents to the continued jurisdiction of this Court over him for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Welke now or in the future resides outside the jurisdiction of this Court;

9. Agrees that he will not oppose enforcement of this Consent Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

10. Agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Stipulated Facts or Stipulated Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect his: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the CFTC is not a party. Welke 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;

11. By consenting to the entry of this Consent Order, neither admits nor denies the allegations of the Complaint or the Stipulated Facts and Stipulated Conclusions of Law in this Consent Order, except as to jurisdiction and venue, which he admits. Further, Welke agrees and intends that the allegations contained in the Complaint and all of the Stipulated Facts and Stipulated Conclusions of Law contained in this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Welke; (b) any proceeding pursuant to Section 8a of the Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII, §§701-774, 124 Stat. 1376 (enacted July 21, 2010) (the “Dodd Frank” Act), to be codified at 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1, *et seq.* (2011); and/or (c) any proceeding to enforce the terms of this Consent Order;

12. Agrees to provide immediate notice to this Court and the CFTC by certified mail, in the manner required by paragraph 75 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

13. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against him in any other proceeding.

### **III. STIPULATED FACTS AND CONCLUSIONS OF LAW**

14. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court—without making any findings as to the Stipulated Facts and Stipulated Conclusions of Law set forth herein—directs the entry of the Stipulated Facts, Stipulated Conclusions of Law, permanent

injunction, civil monetary penalty, and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

15. This Consent Order shall not bind any party who is not a signatory hereto.

#### **A. Stipulated Facts**

##### **Jurisdiction and Venue**

16. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the CFTC that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or the Regulations, the CFTC may bring an action in the proper district court of the United States against such person to enjoin such practice, or to enforce compliance with the Act, and the Regulations.

17. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because at least some of the acts and practices in violation of the Act and the Regulations have occurred within this District.

##### **The Parties to This Consent Order**

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

19. Defendant **Michael J. Welke**, a resident of Omaha, Nebraska, was an equal owner and vice president of Elite Management Holdings Corp. (EMHC) and vice president/managing partner of MJM Enterprises LLC (MJM). With Arrington and Kratville, Welke jointly operated or controlled (directly or indirectly) EMHC and MJM. Additionally, Welke was a self-identified trader for the various pools used by defendants. In association with both EMHC and MJM, Welke served as a partner, officer, employee, consultant, or agent in a

capacity that involved the solicitation of funds for participation in pools operated by EMHC and MJM. Welke has never been registered with the CFTC.

**Initial Corporate Structure and Plan**

20. In or around the late summer of 2005, Arrington, Kratville, and Welke met at Kratville's house and decided to form multiple investment pools that they would use to solicit money from others and invest with FX Investment Group (FXIG), who purportedly traded in the futures and spot markets for commodities, precious metals, and foreign currency (forex). To carry out their scheme, EMHC, an unregistered Commodity Pool Operator (CPO), and Arrington, Kratville, and Welke, unregistered Associated Persons (APs) of EMHC, initially used three pools—Elite Aggressive Growth Group, Elite Index Investment Group, and Elite Management Investment Fund (collectively, Elite Entities), which were all portrayed as investment clubs, formed as limited partnerships, in which pool participants supposedly would become partners.

21. EMHC was the general partner of the Elite Entities. Through their ownership of EMHC, Arrington, Kratville, and Welke exerted total control over the Elite Entities. For example:

- a. all three agreed that the Elite Entities' funds would be traded by FXIG;
- b. all three were signatories on the bank accounts for the Elite Entities; and
- c. all three actively solicited individuals to become pool participants of the Elite Entities.

22. Further, Arrington, Kratville, and Welke represented to pool participants and prospective pool participants that the three of them controlled the Elite Entities.

**Solicitations for the Elite Entities**

23. In or around late summer of 2005, Arrington, Kratville, and Welke began soliciting prospective pool participants to trade futures and forex through the Elite Entities. When soliciting prospective pool participants, EMHC—by and through Arrington, Kratville, and Welke—touted, among other things, their own extensive and successful experience trading futures and forex, the superior methodology of their program, the long and successful track record of their program, and their ability to greatly limit risk while delivering above average returns. Pool participants received a brochure that described the pools’ trading strategy and stated that “[t]his strategy has had many multi-million [sic] offers to buy the system, but the desire has been, and still is to help the small guy get his children through school and to remain entirely proprietary.”

24. Their solicitations often included a discussion of the Elite Entities’ return structure. Pool participant returns were to be capped based on the amount of funds the pool participant invested with the Elite Entities. For example, one then-prospective pool participant was told that if she invested between \$10,000 and \$25,000, her returns would be capped at four percent monthly, if she invested between \$25,000 and \$50,000, her returns would be capped at five percent monthly, and if she invested more than \$50,000, her returns would be capped at six percent monthly. The percentage caps also were referred to as the return goals or the target returns. Although representations about the required investment and percent returns varied, nearly every solicitation included a representation that the Elite Entities had met the target returns each and every month for several years.

25. The representations made by EMHC—by and through Arrington, Kratville, and Welke—were completely false. EMHC, Arrington, Kratville, and Welke did not have extensive, successful experience trading futures and forex, they did not have a program with a long

successful track record or one that could greatly limit trading risks, and there were no offers to buy their nonexistent, proprietary trading program. Further, the Elite Entities had not made their target return goals each and every month for several years, as claimed by defendants; rather: (1) trading had been occurring by or on behalf of the Elite Entities for only a few months; (2) the earliest Elite Entity was not even created until February of 2004; and (3) the earliest Elite Entity pool participant was solicited in or around the late summer of 2005. EMHC, Arrington, Kratville, and Welke knew these representations were false.

26. EMHC—by and through Arrington, Kratville, and Welke—told prospective pool participants and pool participants that EMHC (and Arrington, Kratville, and Welke via their ownership of EMHC) would not be compensated unless pool participants received their target returns. Their compensation was purported to be all trading returns in excess of the target returns (*i.e.*, if the purported monthly return was 10 percent, then their compensation would be the difference between 10 percent and the stated target return).

27. EMHC—by and through Arrington, Kratville, and Welke—also told prospective pool participants and pool participants that any expenses incurred by or for the Elite Entities would be paid by EMHC, rather than out of the pooled funds or the pool participants' share of the returns. Despite these promises, Arrington, Kratville, and Welke used pooled participant funds to operate the pool and to fund long trips to Europe for Arrington and Welke.

28. EMHC—by and through Arrington, Kratville, and Welke—told prospective pool participants and pool participants there was little risk in investing with the Elite Entities because only 5-10 percent of their funds would be invested at any one time. Each of these statements was false.



29. In addition to the above, EMHC—by and through Arrington, Kratville, and Welke—made other representations to prospective pool participants and pool participants:

- Arrington told prospective pool participants and pool participants that the Elite Entities met the maximum target return of 6% for at least 42 consecutive months as of the fall 2005. He claimed the year-to-date returns, with compounding, in 2005 were 53.9% for customers at the 4% per month target-return level, 71.0% at the 5% per month target-return level, and 89.8% at the 6% per month target-return level. These statements were false;
- Some prospective pool participants and pool participants were referred to Welke by Arrington and Kratville. On those occasions, Welke acted as a reference for the Elite Entities, but did not disclose his interest and role with the Elite Entities. Rather, he posed as a like-minded pool participant with money invested in the Elite Entities for the long haul. He purported to provide an impartial reference vouching for Arrington's character; and
- Kratville told at least one then-prospective pool participant that he spent ten years developing and testing the trading program that the Elite Entities used and that the program had been making the target returns between four and five percent per month and sixty percent annually for the past forty months as of April 2006. Kratville also said that several companies offered to buy the program, but Kratville refused to sell it because the program was making so much money that there was no need to sell it. In addition, Kratville told the then-prospective pool participant that he was friends with Warren Buffet and that Warren Buffet's children invested with the Elite Entities. These statements were false. After the then-prospective pool participant decided to invest, Kratville referred him to Arrington to open the account.

30. EMHC—by and through Arrington, Kratville, and Welke—provided prospective pool participants and pool participants with written marketing materials describing the Elite Entities. These materials made several of the same misrepresentations described above, about the purported performance of the Elite Entities, target-return tiers, and purported excellent risk versus return.

#### **Elite Entities Pool Participant Statements**

31. EMHC—by and through Arrington, Kratville, and Welke—emailed pool participants a monthly newsletter that discussed the Elite Entities' previous month's trading results, year-to-date returns, and that the target returns had been achieved for a certain number of

consecutive months. For example, on November 7, 2005, Welke emailed an October 2005 newsletter to a pool participant that stated the Elite Entities hit the “maximum target goal of 6% for the 42nd consecutive month” and that the year-to-date returns at the three target return levels were 53.9% at the 4% target, 62.9% at the 5% target, and 79.1% at the 6% target. Each of these statements was false.

32. Elite Entities’ pool participants also logged into their individual accounts on the Elite Entities’ website (www.emholdings.com) to view, among other things, their account statements. In addition, at least one pool participant received his account statements by mail. The account statements purported to show pool participants’ investment growing by the percentage return goal, compounded every month. The online and mailed statements viewed by several of the Elite Entities’ pool participants showed purported gains every month from October 2005 through May 2006 that ranged from 2 percent to 6 percent. Each of these statements was false.

#### **The Elite Entities Become MJM and NIC**

33. On May 12, 2006, the State of Nebraska Department of Banking and Finance (Nebraska) sent EMHC a letter notifying EMHC that the sale of limited partnership investments implicated state law. Nebraska sought information from EMHC, including, among other things, to “identify the names and addresses of all officers of [EMHC], including the Executive Trader and trading group.” In the letter, Nebraska also stated that EMHC was prohibited from selling interests in the investment pool until the matter was resolved.

34. On May 26, 2006, in response to the letter from Nebraska, Kratville, as the attorney for and an owner of EMHC, made several representations, including that: (1) Arrington, Kratville, and Welke were the sole officers of EMHC; (2) Arrington, Kratville, and Welke were

the trading group; (3) Arrington was the senior or executive trader because of his past experience with investment clubs; and (4) Kratville and Welke “have extensive trading experience. . . .” EMHC also agreed not to make any further offers or sales of investments in the Elite Entities. Kratville and Welke, acting on behalf of the Elite Entities, also met with Nebraska and reiterated those representations. Nebraska insisted the Elite Entities shut down because the Elite Entities were not operated in accordance with state law.

35. At about the same time that Arrington, Kratville, and Welke purported to shut down EMHC and the Elite Entities, they started a new group of entities—NIC LLC (NIC) and MJM Enterprises LLC (MJM)—to continue their fraudulent scheme. Similar to the Elite Entities, NIC was the investment pool, in which pool participants invested, and MJM was the controlling member that managed NIC. Arrington, Kratville, and Welke equally owned MJM.

36. Through their ownership of MJM, Arrington, Kratville, and Welke exerted total control over NIC. Rather than tell Nebraska about NIC and MJM, Arrington, Kratville, and Welke led Nebraska into believing they were following Nebraska’s directive. While setting up NIC and MJM and to demonstrate that the Elite Entities were shutting down, Arrington, Kratville, and Welke asked each pool participant for a notarized signature acknowledging, falsely, that the Elite Entities had returned that pool participant’s funds. Arrington, Welke, and Kratville then convinced the Elite Entities’ pool participants into signing the documents, by among other things, lying about why Nebraska sought to shut down the Elite Entities. On the same day that Arrington, Kratville, and Welke sent the letter seeking a notarized signature from the Elite Entities’ pool participants, the three sent a second letter to the pool participants, in which they provided a purportedly “accurate rollover balance” and cautioned further that “[t]his is an internal document for you only. Do not provide this information to anyone.”

37. In August and September 2006, EMHC—by and through Kratville—forwarded to Nebraska the notarized documents with the Elite Entities’ pool participants’ acknowledgement that their funds had been returned. EMHC—by and through Kratville—also informed Nebraska that Arrington, Kratville, and Welke decided to dissolve EMHC and the Elite Entities. Arrington, Kratville, and Welke did not disclose to Nebraska that they had started MJM, an unregistered CPO (for which they were unregistered APs), and NIC.

**NIC and MJM Continued to Use Misrepresentations in Soliciting Customers**

38. Upon information and belief, from July 2006 until at least September 2007, MJM—by and through Arrington, Kratville, and Welke—made substantially similar representations to prospective pool participants and pool participants of NIC (as they had done to pool participants and prospective pool participants of the Elite Entities), including representations that pool participants’ funds would be traded in futures and forex, that investment pools they controlled had been extremely profitable and had met or exceeded target returns for several years, and that no more than 10 percent of a pool participant’s money would be at risk at any one time. MJM, Arrington, Kratville, and Welke each knew that each of these representations was false.

39. Further, MJM—by and through Arrington—represented the following to certain pool participants regarding NIC’s trading:

- that Arrington was NIC’s trader and that he developed the trading program that NIC used;
- that he tested the program for over a year using his father’s money to trade;
- that he was offered several million dollars to sell the program, but he refused because he could make more money using it himself; and
- that the program had never lost money.

Each of these representations was false.

40. MJM—by and through Arrington—also represented the following to certain pool participants:

- that Arrington used to do all of the trading himself, but became too busy handling other aspects of the business;
- that NIC employed traders, who traded 24 hours a day, seven days a week;
- that in the beginning, NIC employed six of the top ten traders in the world, but as of March 2007, NIC employed nine of the top ten.

Each of these statements was false.

#### **MJM and NIC Customer Statements**

41. Many NIC pool participants accessed their account statements through the NIC website ([www.nicllc.org](http://www.nicllc.org)) and at least one pool participant received statements via mail. The statements included, among other things, the principal contributed by the pool participants, the purported monthly returns expressed as both a percentage and dollar amount, and the ending balances. The statements provided to at least several NIC pool participants showed gains every month from January 2006 through June 2007 that ranged from 3.01% to 4.5%. The monthly returns as expressed in dollars and month-end balances also reflected these purported gains. These statements were all false.

42. Beginning in November 2006 and continuing through August 2007, NIC traded forex and options with newly acquired pool participant funds. NIC, Arrington, Kratville, and Welke, however, never told pool participants that their funds would be used to trade options. Moreover, contrary to the statements provided to pool participants, there were numerous months in which trading on behalf of NIC resulted in significant losses.

43. Further, the NIC statements provided to those NIC pool participants who were former Elite Entities' pool participants were false. The account balances and returns on the NIC statements did not reflect that the trading on behalf of the Elite Entities ultimately resulted in a total loss; instead, the NIC statements to former Elite Entities' pool participants purported to show principal (that, in fact, had already been lost) and consistent gains (that did not exist).

44. By July 2007, NIC's forex and options trading had resulted in a total loss as well. MJM—by and through Arrington—informed NIC pool participants of this total loss beginning in or about October 2007. However, MJM—by and through Arrington—continued to falsely represent, as late as at least July 2008, the timing of the pool participants' losses.

45. In total, defendants lost almost \$3 million (including fees and commissions) trading futures, forex, and options on forex with the Elite Entities pool participants' and NIC pool participants' funds.

46. Through their fraudulent scheme, defendants misappropriated more than \$1.5 million in pool participant funds. They used, at a minimum, more than \$700,000 in pool participant funds to, among other things, pay for golf club memberships, travel, and dining for Arrington, Kratville, and Welke; cover various other expenses on behalf of all defendants; and pay themselves and their family members. In addition, defendants used more than \$850,000 in pool participant funds to make Ponzi payments to certain pool participants.

47. With respect to defendants' forex-related conduct on or after June 18, 2008, neither defendants nor the FCMs that were counterparties to the forex transactions entered into and /or contemplated by defendants and the pool participants were financial institutions, registered broker dealers (or their associated persons), insurance companies, bank holding companies, or investment bank holding companies.

48. Furthermore, neither defendants nor the pool participants who provided funds to the defendants were “eligible contract participants” as that term is defined in the Act. *See* Section 1a(12)(A) of the Act, 7 U.S.C. § 1a(12)(A) (Supp. III 2009), (an “eligible contract participant,” as relevant here, is “a corporation . . . that has total assets exceeding \$10,000,000 . . .” or an individual with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction “to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual”).

49. Finally, defendants traded foreign currency on a margined or leveraged basis in the trading accounts containing pool participants’ funds. The foreign currency transactions conducted by defendants neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these foreign currency contacts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

## **B. Stipulated Conclusions of Law**

### **Jurisdiction and Venue**

50. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the CFTC that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the CFTC may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

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

**Violations: Fraud in Connection with Futures and Forex, Fraud by Commodity Pool Operators, Fraud in Connection with Options, Failure to Register as an Associated Person of a Commodity Pool Operator**

52. By the conduct described in paragraphs 1 through 49 above, Welke, EMHC, and MJM cheated and defrauded, or attempted to cheat and defraud, and willfully deceived, or attempted to deceive, his pool participants by, among other things, knowingly or recklessly: (i) misappropriating pool participant funds; (ii) misrepresenting futures and forex trading activity that purportedly occurred on behalf of pool participants, as well as purported returns pool participants would and did receive by virtue of these futures and forex trades; (iii) making, causing to be made, and distributing reports and statements to pool participants or prospective pool participants that contained false futures and forex trading activity, false profits generated from such activity, and other misinformation; and (iv) making fraudulent misrepresentations about the risks of trading futures and forex—all in violation of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), for conduct occurring prior to June 18, 2008; Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (Supp. III 2009), for futures-related conduct occurring on or after June 18, 2008; and Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009), for forex-related conduct occurring on or after June 18, 2008.

53. From at least August 2005 until at least July 2006 for EMHC and from at least July 2006 until at least July 2008 for MJM, each entity acted as a CPO by soliciting, accepting, or receiving funds from others while engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in futures or commodity



options. During the respective periods, Welke, Arrington, and Kratville acted as APs of EMHC and MJM.

54. By the conduct described in paragraphs 1 through 49 above, Welke, EMHC, and MJM employed a device, scheme or artifice to defraud pool participants and prospective pool participants or engaged in a transaction, practice, or course of business which operated as a fraud or deceit upon the Elite Entities and NIC pool participants and prospective Elite Entities and NIC pool participants in violation of Section 40(1) of the Act, 7 U.S.C. § 60(1) (2006) and of Regulation 4.41(a)(1) and (2), 17 C.F.R. § 4.41(a)(1) & (2) (2011), by (i) misappropriating pool participant funds; (ii) misrepresenting pool trading activity (including futures, options, and forex activity) that purportedly occurred on behalf of pool participants, as well as purported returns pool participants would and did receive by virtue of the trading activity; (iii) making, causing to be made, and distributing reports and statements to pool participants or prospective pool participants that contained false futures, options, and forex trading activity, false profits generated from such activity, and other misinformation; and (iv) making fraudulent misrepresentations about the risks of trading futures, options, and forex.

55. By the conduct described in paragraphs 1 through 49 above Welke, EMHC, and MJM, from at least December 2006 until at least July 2008, cheated or defrauded or attempted to cheat or defraud the NIC pool participants and prospective pool participants by, among other things, knowingly or recklessly (i) misappropriating pool participant funds in connection with options; (ii) failing to disclose options trading activity that occurred on behalf of pool participants; (iii) misrepresenting purported returns pool participants would and did receive by virtue of these options trades; (iv) making, causing to be made, and distributing reports and statements to pool participants or prospective pool participants that omitted options trading

activity and that contained false profits and other misinformation; and (iv) making fraudulent misrepresentations about the risks of trading options, and other misinformation, all in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Regulation 33.10, 17 C.F.R. § 33.10 (2011).

56. By the conduct described in paragraphs 1 through 49 above, Welke, since at least August 2005, was associated with CPOs EMHC and MJM and was involved in the solicitation of funds for participation in the Elite Entities and NIC pools while failing to register as APs of the CPOs, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

**Control Person Liability of Welke**

57. Welke controlled EMHC and MJM, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, EMHC's and MJM's acts in violation of the Act and Regulations; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Welke is liable for EMHC's and MJM's violations of Sections 4b(a)(2)(i)-(iii), 4b(a)(1)(A)-(C), 4b(a)(2)(A)-(C), 4c(b), 4k(2), and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), 6c(b), 6k(2), & 6o(1) (2006) and 7 U.S.C. §§ 6b(a)(1)(A)-(C) & 6b(a)(2)(A)-(C) (Supp. III 2009); and Regulations 33.10 and 4.41, 17 C.F.R. §§ 33.10 & 4.41 (2011).

58. In violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), from at least August 2005 until at least July 2006 for EMHC and from at least July 2006 until at least July 2008 for MJM, each CPO used the mails or instrumentalities of interstate commerce, in or in connection with its business as a CPO, while failing to register as a CPO. Welke is liable for these violations of EMHC and MJM pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

59. In violation of Regulation 4.21, 17 C.F.R. § 4.21 (2011), EMHC and MJM failed to provide to prospective pool participants a pool disclosure document in the form specified by

Regulation 4.21, 17 C.F.R. § 4.21 (2010). Welke is liable for these violations of EMHC and MJM pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

#### IV. PERMANENT INJUNCTION

##### IT IS HEREBY ORDERED THAT:

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

- a. cheating or defrauding, or attempting to cheat or defraud, other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery or any forex contract (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by Dodd Frank, to be codified at 7 U.S.C. § 2(c)(2)(B) and 2(c)(2)(C)(i)) (forex contract) that is made, or to be made, for or on behalf of, or with, any other person in violation of Section 4b of the Act, as amended by Dodd Frank, to be codified at 7 U.S.C. § 6b;
- b. employing any device, scheme or artifice to defraud any participant or prospective participant or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective participant in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006) and Regulation 4.41(a)(1) and (2), 17 C.F.R. § 4.41(a)(1) & (2) (2011);
- c. cheating or defrauding, or attempting to cheat or defraud, other persons in or in connection with any order to make, or the making of, any commodity option transaction (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2011)) (commodity option), in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Regulation 33.10, 17 C.F.R. § 33.10 (2011); and
- d. engaging in any conduct in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006) including, but not limited to, being associated with a CPO as a partner, officer, employee, consultant, or agent, in any capacity that involves (i) the solicitation of funds, securities, or property for participation in a commodity pool or (ii) the supervision of any person or any persons so engaged unless such person is registered with the CFTC.

61. Defendant is also permanently restrained, enjoined and prohibited from directly or indirectly:

- a. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended by Dodd Frank, to be codified at 7 U.S.C. § 1a;
- b. entering into any transactions involving commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts for his own personal account or for any account in which he has a direct or indirect interest;
- c. having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on his behalf;
- d. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
- e. soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
- f. applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and/or
- g. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended by Dodd Frank, to be codified at 7 U.S.C. § 1a), registered, exempted from registration or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

## **V. DISGORGEMENT AND CIVIL MONETARY PENALTY**

### **A. Disgorgement**

62. Welke shall pay disgorgement in the amount of \$257,000 (Disgorgement Obligation), plus post-judgment interest. The Disgorgement Obligation is immediately due and owing. Post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

63. To effect payment of the Disgorgement Obligation and the distribution of any disgorgement payments to the Elite Entities and NIC pool participants, the Court appoints the National Futures Association (NFA) as Monitor (Monitor). The Monitor shall collect disgorgement payments from Welke and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

64. Welke shall make Disgorgement Obligation payments under this Consent Order to the Monitor in the name of EMHC/MJM Settlement Fund and shall send such Disgorgement Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies Welke and the name and docket number of this proceeding. Welke shall simultaneously transmit copies of the cover letter and the form of payment to: (a) the Chief Financial Officer, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (b) Charles Marvin, Chief Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 4900 Main Street, Suite 500, Kansas City, MO 64112.

65. The Monitor shall oversee the Disgorgement Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to the Elite Entities and NIC pool participants identified by the CFTC or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Disgorgement Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines

that the administrative cost of making a distribution to the Elite Entities and NIC pool participants is impractical, the Monitor may, in its discretion, treat such disgorgement payments as civil monetary penalty payments, which the Monitor shall forward to the CFTC following the instructions for civil monetary penalty payments set forth in Part V.B. below.

66. Welke shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify the Elite Entities and NIC pool participants to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Disgorgement Obligation payments. Welke 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 Disgorgement Obligation.

67. The Monitor shall provide the CFTC at the beginning of each calendar year with a report detailing the disbursement of funds to the Elite Entities and NIC pool participants during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

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

69. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each pool participant of Welke who suffered a loss is explicitly made an intended third-party beneficiary of this

Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the disgorgement that has not been paid by Welke to ensure continued compliance with any provision of this Consent Order and to hold Welke in contempt for any violations of any provision of this Consent Order.

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

**B. Civil Monetary Penalty**

71. Welke shall pay a civil monetary penalty in the amount of \$130,000 (CMP Obligation), plus post-judgment interest. The CMP Obligation is immediately due and owing. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006).

72. Welke shall pay his CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the U.S. 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 by electronic funds transfer is chosen, Welke shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those

instructions. Welke shall accompany payment of the CMP Obligation with a cover letter that identifies Welke and the name and docket number of this proceeding. Welke shall simultaneously transmit copies of the cover letter and the form of payment to: (a) the Chief Financial Officer, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (b) Charles Marvine, Chief Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 4900 Main Street, Suite 500, Kansas City, MO 64112.

**C. Provisions Related to Monetary Sanctions**

73. Partial Satisfaction: Any acceptance by the CFTC or the Monitor of partial payment of Welke's Disgorgement Obligation or CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the CFTC's right to seek to compel payment of any remaining balance.

**D. Cooperation**

74. Welke shall cooperate fully and expeditiously with the CFTC in this action and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future CFTC investigation related thereto.

**VI. MISCELLANEOUS PROVISIONS**

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

Notice to CFTC:

Division of Enforcement  
U.S. Commodity Futures Trading Commission  
4900 Main Street, Suite 500  
Kansas City, MO 64112



Notice to defendant Welke:

5716 N 167<sup>th</sup> Ave Circle  
Omaha, NE 68116

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

76. Change of Address/Phone: Until such time as Welke satisfies in full his Disgorgement Obligation and CMP Obligation as set forth in this Consent Order, Welke shall provide written notice to the CFTC by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

77. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

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

79. Waiver: The failure of any party to this Consent Order or of any pool participant at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or pool participant at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

80. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Welke to modify or for relief from the terms of this Consent Order.

81. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Welke, upon any person under his authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Welke.

82. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

83. Welke understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Consent Order.

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

IT IS SO ORDERED on this 12th day of February, 2013, ~~XXXX~~

s/Laurie Smith Camp  
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:



Michael J. Welke  
*Pro Se Defendant*

Date: 9/4/2012



Charles D. Marvine  
Missouri Bar No. 44906  
Christopher A. Reed  
Missouri Bar No. 59025  
Margaret P. Aisenbrey  
Missouri Bar Number 59560  
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Date: 1/22/2013