

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

v.

ALVIN GUY WILKINSON; CHICAGO
INDEX PARTNERS, L.P.; and WILKINSON
FINANCIAL OPPORTUNITY FUND, L.P.,

Defendants.

)
)
) **CIVIL ACTION NO: 16-CV-6734**
)
)

) **Hon. Virginia Kendall**
)
)
)
)
)
)
)
)

**PROPOSED INJUNCTION, CIVIL MONETARY PENALTIES, AND OTHER
STATUTORY AND EQUITABLE RELIEF**

On June 28, 2016, the Commodity Futures Trading Commission (“Commission” or “Plaintiff”) filed a Complaint charging Defendants Alvin Guy Wilkinson (“Wilkinson”); Chicago Index Partners, L.P. (“CIP”), and Wilkinson Financial Opportunity Fund, L.P. (“WFOF”) (collectively, “Defendants”) with violating Section 4b(a)(2)(i)-(iii) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006) for conduct before June 18, 2008, and Section 4b(a)(1)(A)-(C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A)-(C) (2012), for conduct occurring on or after June 18, 2008, and with violating Sections 4o(1), 6(c)(1), 4m(1), 4k(2), and 9(a)(4) of the Act, 7 U.S.C. §§ 6o(1), 9(1), 6m(1), 6(k)(2), and 13(a)(4) (2012), and Commission Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2016).

Wilkinson was served with a copy of the summons and complaint on July 7, 2016. [Dkt. 13]. CIP and WFOF were served with a copy of the summons and complaint on July 11, 2016. [Dkt. 13]. Defendants have failed to appear or answer the Complaint within the time permitted

by Fed. R. Civ. P. 12. Accordingly, the Commission filed a motion for entry of a clerk's default against Defendants. [Dkt. 19]. The Court entered default against CIP and WFOF on September 22, 2016 [Dkt. 24], and against Wilkinson on September 29, 2016 [Dkt. 29].

The Commission has moved this Court to grant final judgment by default against Defendants, order permanent injunctive relief, and impose a restitution obligation, disgorgement obligation, and a civil monetary penalty.

The Court having carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Commission's memorandum in support of its motion, the record in this case, and the Court being otherwise advised in the premises, it is hereby:

ORDERED that the Commission's Motion for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief against Defendants is **GRANTED**. Accordingly, the Court enters findings of fact, conclusions of law, and an Order of Final Judgment by Default for Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief ("Order") pursuant to Sections 6c and 6d of the Act, 7 U.S.C. § 13a-1 (2012), as set forth herein.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Findings of Fact

A. The Parties to This Order

1. Plaintiff 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. §§ 1-26 (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 – 190.10 (2016).

2. Defendant **Alvin G. Wilkinson** ("Wilkinson") is a resident of San Juan, Puerto Rico. Wilkinson was registered with the CFTC as an AP of Apercu International PR LLC

("Apercu"), a Commodity Trading Adviser ("CTA") registered with the CFTC, from February 2015 until June 1, 2016, when both registrations were suspended in connection with an NFA regulatory disciplinary action.

3. Defendant **Wilkinson Financial Opportunity Fund, L.P.** ("WFOF") is a limited partnership formed pursuant to the laws of Illinois in July 1999. WFOF's principal place of business is located in Sharon, Connecticut. The general partner of WFOF is Wilkinson Management, LLC, an Illinois limited liability company whose sole member is CIT Management Group, Inc., which in turn is wholly owned by Wilkinson. WFOF has never been registered with the Commission in any capacity.

4. Defendant **Chicago Index Partners, L.P.** ("CIP") is a limited partnership formed pursuant to the laws of Illinois in January 2005. CIP's principal place of business is located in Sharon, Connecticut. The general partner of CIP is CIP Management, LLC, an Illinois limited liability company whose sole member is Wilkinson. CIP has never been registered with the Commission in any capacity.

B. Defendants' Fraudulent Investment Pools

5. Between July 1999 and continuing to the filing of the Complaint (the "Relevant Time"), Defendants fraudulently solicited and accepted a total of \$11,017,774 from 30 investors for the purpose of trading in a portfolio of financial instruments, including securities, options on securities, and futures contracts, in the form of limited partnership interests in pooled investments.

6. Wilkinson established WFOF in approximately July of 1999 and began soliciting and accepting funds for WFOF shortly thereafter. Wilkinson established CIP in approximately January 2005, and began soliciting and accepting funds for CIP shortly thereafter. Wilkinson told prospective participants that he would use their funds to trade a "volatility strategy" that

could generate returns trading futures and options on securities regardless of whether the market was moving up or down. Wilkinson distributed a private placement memorandum (“PPM”) for each fund, which described the purpose of the investments and how investor funds would purportedly be used.

7. During the Relevant Time, Wilkinson solicited and received \$6,212,799 from 24 participants located in this District, Connecticut, Maryland North Carolina, and other places, for limited partnership interests in WFOF.

8. Between January 2005 and at least 2014, Wilkinson solicited and received \$4,804,975 from eight participants located in this District, as well as Connecticut, New York, and other places, for limited partnership interests in CIP.

9. During the Relevant Time, Wilkinson returned \$6,890,371.60 to participants of WFOF and CIP as return of capital and purported profits in the manner of a Ponzi scheme.

C. Misappropriation and Fraudulent Solicitation of Funds

10. During his solicitations of participants, Wilkinson made material misrepresentations about WFOF and CIP. Crucially, Wilkinson falsely told participants that their funds would be used to trade options and futures contracts, when in fact Wilkinson misappropriated all or a significant portion of the funds.

11. Contrary to the terms of the PPMs and Agreements of Limited Partnership for WFOF and CIP, Wilkinson did not trade the funds that participants invested in WFOF and CIP. Instead, Wilkinson misappropriated participants’ investments, or used them to pay earlier investors as return of capital and purported profits in the manner of a Ponzi scheme.

12. Wilkinson also lied about risk and the returns participants could expect to receive if they invested in WFOF or CIP. Wilkinson falsely told at least one participant that investing in WFOF was risk free, that he would “guarantee” her initial investment. Wilkinson also falsely

told other participants to expect 20% to 30% annual returns from his trading, when in fact Wilkinson did not use participants' investments to trade and knew that WFOF and CIP would produce no actual returns.

D. False Account Statements and False Information about the Status of Participants' Investments

13. Despite the misappropriation of funds described above, Wilkinson misrepresented to pool participants that their funds had been invested in the volatility strategy and were retaining their value and generating profits, and that the funds were performing well.

14. Wilkinson also directed his accountant to issue Schedule K-1 forms to the limited partners of WFOF and CIP that falsely reported the value of participants' respective shares in the funds, and falsely reported that the funds were increasing in value year over year when in fact they were not.

15. Wilkinson told certain participants that WFOF's and CIP's assets were all invested in a promissory note to Australian financial firm Pengana Capital. However, no note from Pengana exists, and WFOF and CIP have virtually no assets.

16. Further, during the Relevant Time, Wilkinson also refused to permit participants to withdraw their limited partnership interests and return their capital, in direct contravention of the terms of the governing documents of WFOF and CIP. When participants demanded their capital, Wilkinson lied, telling participants that their money was safe but that he was restricted from returning their capital until certain conditions were met, such as his launching a new fund, a participant executing a release or other legal agreement, or similar event. Wilkinson gave a litany of excuses to other investors about why he could not return their capital when requested, but omitted to tell them the true reason why he could not do so -- that he had misappropriated their funds and their partnership interests were worthless.

E. Misrepresentations to and Omissions from NFA

17. In May 2016, NFA commenced an examination and investigation of Wilkinson and Apercu after receiving a phone call from an investor who represented that he invested \$775,000 in an investment vehicle that Wilkinson operated, but had been unable to obtain the return of his funds.

18. On or about June 3 and 6, 2016, Wilkinson provided certain documents to NFA during NFA's investigation. Certain financial records produced by Wilkinson reflected false and fraudulent information. Wilkinson produced a 2013 IRS Form 1065, U.S. Return of Partnership Income for CIP, reflecting that essentially all of CIP's equity was an "investment in WFOF" purportedly worth \$2.6 million. Wilkinson further produced a 2014 IRS Form 1065, U.S. Return of Partnership Income for WFOF, which reflected that essentially all of WFOF's equity was an investment in Wilkinson Management, LLC purportedly worth \$12.9 million. Finally, although Wilkinson had previously told the NFA exam team that Wilkinson Management, LLC had ceased operations in 2007, Wilkinson's production included a Balance Sheet as of December 31, 2013 for Wilkinson Management, LLC. The Balance Sheet contains an entry, "Pengana Note Receivable", under the heading, "Other Assets", with a corresponding amount of \$12,745,981.56.

19. The tax returns and balance sheets that Wilkinson produced to NFA on June 3 and 6, 2016 were false, fictitious, and fraudulent statements, as the values reported in each of them were premised on the existence of the Pengana Note, which did not exist.

II. Conclusions of Law

A. Jurisdiction and Venue

20. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), which provides 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 or any rule, regulation, or order promulgated thereunder, the Commission 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.

21. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Defendants transacted business in this District, and certain of the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places.

B. Fraud by Misappropriation of Customer Funds and Misrepresentations – Count I

22. Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006) for conduct before June 18, 2008, and Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C) (2012) for conduct on or after June 18, 2008, make it unlawful for any person, in or in connection with any order to make or the making of any futures contract to cheat, defraud or willfully deceive, or attempt to cheat, defraud, or willfully deceive any 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 such other person.

23. By the conduct described in paragraphs 1 through 19 above, Defendants cheated and defrauded, or attempted to cheat and defraud, and willfully deceived, or attempted to deceive pool participants by, among other things, knowingly or recklessly: (a) misappropriating participants' funds; and (b) making material misrepresentations and omitting material facts to prospective and actual participants, including that: (i) participant funds would be used to trade a

portfolio of financial instruments, including securities, options, and futures contracts, (ii) investing in WFOF was a “no risk” investment, (iii) pool participants were guaranteed to earn profits of at least 10%, or to expect 20% to 30% annual returns, when Defendants did not use participants’ investments to trade and had no basis for making these statements, (iv) participants could withdraw their funds at any time after providing either 90 or 180-days’ notice, and (v) participants retained their equity in WFOF and CIP, which was invested in a nonexistent promissory note, all in violation of Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C) (2012).

C. Fraud by False Account Statements – Count II

24. Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006) for conduct before June 18, 2008, and Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b(a)(1)(B) (2012) for conduct on or after June 18, 2008, makes it unlawful for any person, in or in connection with any order to make or the making of any futures contract, to willfully make or cause to be made to another person a false report or statement.

25. By the conduct described in paragraphs 1 through 19 above, Defendants violated Section 4b(a)(1)(B) of the Act by causing false Schedule K-1s to be issued to participants in CIP and WFOF that reflected nonexistent equity and income.

D. Fraud by Deceptive Device or Contrivance – Count III

26. Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012) provides, in relevant part, that “[i]t shall be unlawful for any person, directly or indirectly, to use or employ or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate.” Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a)

(2016) provides in relevant part, that “[i]t shall be unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly: (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; [or] (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.”

27. By the conduct described in paragraphs 1 through 19 above, Defendants used or employed deceptive devices or contrivances, in connection with a contract of sale of a commodity in interstate commerce, including, but not limited to: (a) misappropriating participants’ funds; (b) making material misrepresentations and omitting material facts to prospective and actual participants, and (c) causing false Schedule K-1s to be issued to participants that reflected non-existent equity and income, all in violation of Section 6(c)(1) of the Act and Regulation 180.1(a). Defendants engaged in such acts, directly or indirectly, by the use of the mails and other means or instrumentalities of interstate commerce.

E. Fraud by a Commodity Pool Operator – Count III

28. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), prohibits any Commodity Pool Operator (“CPO”) or Associated Person (“AP”) from using the mails or any other means of interstate commerce to: (A) employ any device, scheme or artifice to defraud any client or participant or prospective client or participant; or (B) engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or participant or prospective participant.

29. By the conduct described in paragraphs 1 through 19 above, CIP and WFOF acted as CPOs in that they engaged in a business that is of the nature of an investment trust, syndicate or similar form of enterprise operated for the purpose of trading in commodity interests or commodity futures, and in connection therewith, solicited, accepted and received funds from others for the purpose of trading in commodity interests and commodity futures. Wilkinson acted as an AP of WFOF and CIP by soliciting funds for the pool and handling participant monies while being associated with WFOF and CIP as a partner, officer, employee, consultant, or agent (or person occupying a similar status or performing similar functions).

30. Defendants violated Section 4o(1) of the Act, in that Wilkinson, while acting as an AP of a CPO, and WFOF and CIP, while acting as CPOs, defrauded and deceived participants of WFOF and CIP, by among other things: (a) misappropriating participants' funds; (b) making material misrepresentations and omitting material facts to prospective and actual participants, and (c) causing false Schedule K-1s to be issued to participants that reflected non-existent equity and income. Defendants engaged in such acts, directly or indirectly, by the use of the mails and other means or instrumentalities of interstate commerce.

F. Failure to Register as a Commodity Pool Operator – Count V

31. With certain exemptions and exclusions not applicable in this case, Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012) requires all CPOs to be registered with the Commission.

32. By the conduct described in paragraphs 1 through 19 above, WFOF and CIP acted as CPOs and used the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as CPOs without being registered as such, all in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

G. Failure to Register as an Associated Person of a CPO, and Permitting Unregistered Associated Persons to Remain Associated with a CPO – Count VI

33. Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012), requires that Associated Persons (“APs”) of CPOs be registered with the Commission. Further, a CPO violates Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012), when it allows an unregistered AP to become or remain associated with the CPO when the CPO knew or should have known that the AP was not registered as such with the Commission.

34. By the conduct described in paragraphs 1 through 19 above, Wilkinson acted as an AP when he, without being registered with the Commission, solicited funds for the pool and handled participant monies while associated with CIP and WFOF as its partner, employee, or agent (or while occupying a similar status or performing similar functions), all in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012). WFOF and CIP violated Section 4k(2) of the Act, by allowing Wilkinson to act as unregistered AP when they knew or should have known that he was not registered with the Commission.

H. Misrepresentations to and Omissions From NFA – Count VII

35. Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4), makes it unlawful for any person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, or to make any false, fictitious, or fraudulent statements or representations, or to make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, swap data repository, or futures association designated or registered under the Act and acting in furtherance of its official duties under the Act.

36. By the conduct described in paragraphs 1 through 19 above, Wilkinson violated Section 9(a)(4) of the Act by willfully concealing material facts and/or making false, fictitious, or fraudulent statements or representations to NFA, a futures association registered under the

Act, in connection with an investigation and exam that NFA conducted of Wilkinson and Apercu in May and June 2016 in furtherance of NFA's official duties under the Act.

37. Specifically, during an official NFA investigation, Wilkinson knowingly produced to NFA financial documentation for WFOF, CIP, and Wilkinson Management, LLC that reported and/or were premised on the existence of the Pengana Note, which did not exist.

I. WFOF and CIP Are Liable for Wilkinson's Violations

38. Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2016) provide that the "act, omission, or failure of any official, agent, or other person acting for any [...] partnership [...] within the scope of his employment or office shall be deemed the act, omission, or failure of such [...] partnership"

39. Because Wilkinson committed the alleged violations while acting on behalf of WFOF and/or CIP, WFOF and CIP are liable for Wilkinson's violations of the Act alleged in Counts I, II, III, IV, and VI pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2.

J. Wilkinson's Controlling Person Liability

40. Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012) provides that a person who directly or indirectly controls any other person who violated the Act may be held liable for such violation to the same extent as such controlled person.

41. Wilkinson totally controlled both WFOF and CIP, and knowingly induced, directly or indirectly, all the conduct which constituted violations of the Act.

42. Unless restrained and enjoined by this Court, there is a reasonable likelihood that the Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

ORDER FOR RELIEF

IT IS HEREBY ORDERED THAT:

43. The Commission's Motion for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief against Defendants is **GRANTED**.

IT IS HEREBY ORDERED THAT:

A. Permanent Injunction

44. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), Defendants are 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 that is made, or to be made, for or on behalf of, or with, any other person in violation of Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C) (2012);
- b. Making or causing to be made false statements or reports to another person in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery that is made, or to be made, for or on behalf of, or with, any other person in violation of Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b (a)(1)(B) (2012);
- c. Intentionally or recklessly using or employing, or attempting to use or employ, any manipulative device, scheme, or artifice to defraud; making, or attempting to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or

misleading; or engaging, or attempting to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012) and Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2016);

- d. While acting as a CPO or AP, employing any device, scheme, or artifice to defraud any client or participant or prospective client or 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) (2012);
- e. Failing to register as a CPO in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012);
- f. Failing to register as an AP or permitting an AP to remain unregistered, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012); and
- g. Falsifying, concealing, or covering up by any trick, scheme, or artifice, a material fact, or making any false, fictitious, or fraudulent statements or representations, or making or using any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, to a registered entity, board of trade, swap data repository, or futures association designated or registered under the Act and acting in furtherance of its official duties under the Act, in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4).

45. Defendants are 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(40) of the Act, 7 U.S.C. § 1a(40) (2012));
- b. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2016)) for their personal account or for any account in which they have a direct or indirect interest;
- c. Having any commodity interests traded on their 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 interests;
- e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- f. 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) (2016); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2016)), agent or any other officer or employec of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)) registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2016).

B. Restitution

46. Defendants shall, jointly and severally, pay restitution in the amount of \$5,389,381 (five million, three hundred and eighty nine thousand, three hundred and eighty one dollars) (“Restitution Obligation”), plus post-judgment interest. 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 (2012).

47. To effect payment of the Restitution Obligation and the distribution of any restitution payments to pool participants, the Court appoints the National Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor shall collect restitution payments from Defendants 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.

48. Defendants shall make Restitution Obligation payments under this Order to the Monitor in the name “Wilkinson Restitution Fund” and shall send such Restitution 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 the paying Defendant and the name and docket number of this proceeding. Defendants 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.

49. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to the pool

participants identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution 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 eligible pool participants 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 following the instructions for civil monetary penalty payments set forth in below.

50. Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify pool participants to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendants 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.

51. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to 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, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

52. 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 Defendants 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.

53. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each pool participant who suffered a loss is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution that has not been paid by Defendants to ensure continued compliance with any provision of this Order and to hold Defendants in contempt for any violations of any provision of this Order.

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

C. Disgorgement

55. Defendants shall pay, jointly and severally, disgorgement in the amount of \$4,127,402.40 (four million, one hundred and twenty seven thousand, four hundred and two dollars and 40 cents) (the "Disgorgement Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on this Disgorgement 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).

56. Defendants shall pay their respective Disgorgement Obligations 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
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax

nikki.gibson@faa.gov

If payment by electronic funds transfer is chosen, Defendants shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the Disgorgement Obligation with a cover letter that identifies Defendants and the name and docket number of this proceeding. Defendants 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.

D. Civil Monetary Penalty

57. Defendants shall pay, jointly and severally, a civil monetary penalty of \$12,382,207.20 (twelve million, three hundred and eighty two thousand, two hundred and seven dollars and twenty cents), (the "CMP Obligation"), plus post-judgment interest. 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).

58. Defendants 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
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax

nikki.gibson@faa.gov

If payment by electronic funds transfer is chosen, Defendants shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies Defendants and the name and docket number of this proceeding. Defendants 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.

E. Provisions Related to Monetary Sanctions

59. Partial Satisfaction: Acceptance by the Commission/CFTC or the Monitor of any partial payment of Defendants' Restitution Obligation, Disgorgement Obligation, or CMP Obligation, shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission/CFTC's right to seek to compel payment of any remaining balance.

F. Miscellaneous Provisions

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

Notice to Commission:

Rosemary Hollinger
Deputy Director, Division of Enforcement
525 W. Monroe St.
Chicago, IL 60661

Notice to NFA:

Daniel Driscoll, Executive Vice President, COO
National Futures Association
300 S. Riverside Plaza, Suite 1800

Chicago, IL 60606-3447

All such notices to the Commission or the NFA shall reference the name and docket number of this action.

61. **Change of Address/Phone:** Until such time as Defendants satisfy in full the Restitution Obligation, Disgorgement Obligation, and CMP Obligation as set forth in this Order, Defendants shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

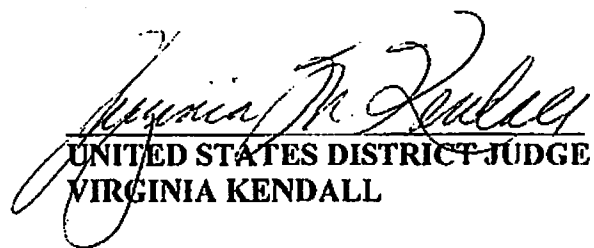
62. **Invalidation:** If any provision of this Order or if the application of any provision or circumstance is held invalid, then the remainder of this Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

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

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

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Order for Final Judgement by Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief* forthwith and without further notice.

IT IS SO ORDERED on this 22 day of November, 2016.


UNITED STATES DISTRICT JUDGE
VIRGINIA KENDALL