

FILED  
U.S. DISTRICT COURT  
2014 JUN -6 3:08  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

U.S. COMMODITY FUTURES  
TRADING COMMISSION

Case No. 2:11CV00099 BSJ

Plaintiff,

v.

U.S. VENTURES LC, a Utah limited liability  
company, WINSOME INVESTMENT  
TRUST, an unincorporated Texas entity,  
ROBERT J. ANDRES and ROBERT L.  
HOLLOWAY,

~~[PROPOSED]~~ ORDER FOR ENTRY OF  
DEFAULT JUDGMENT, PERMANENT  
INJUNCTION, CIVIL MONETARY  
PENALTIES, AND ANCILLARY  
EQUITABLE RELIEF AGAINST  
DEFENDANTS U.S. VENTURES LC,  
WINSOME INVESTMENT TRUST,  
ROBERT J. ANDRES, AND ROBERT L.  
HOLLOWAY

Defendants.

**I. INTRODUCTION**

On January 24, 2011, Plaintiff U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against U.S. Ventures LC (“USV”), Winsome Investment Trust (“Winsome”), Robert J. Andres (“Andres”), and Robert L. Holloway (“Holloway”) (collectively, “Defendants”) seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 *et seq.* (2012) and the Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2013). Defendants USV and Holloway were served with the Complaint and the Summons on January 28, 2011. Pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 12(a)(1)(A)(i), USV’s and Holloway’s Answers were due on or before February 18, 2011. USV and Holloway failed to respond to the Commission’s Complaint within 21 days of service. On February 23, 2011, the Commission, pursuant to Fed. R. Civ. P. 55(a), filed its Request for

Clerk's Entry of Default against USV and Holloway. The Clerk of the Court entered defaults against USV and Holloway on February 28, 2011.

Holloway filed a motion to set aside his default in this matter on February 28, 2012, 365 days after the Court granted the Commission's Motion for Entry of Default. Holloway's grounds to set aside the default were that he "was never served with the Complaint in this matter and he did not understand the legal ramifications of that default until recently." Holloway characterized those grounds as "excusable neglect, inadvertence or surprise." On May 18, 2012, the Court denied Holloway's Motion to Set Aside Default Judgment. The Court found that Holloway failed to demonstrate good cause to set aside the Clerk of Court's Entry of Default, Holloway's default was the result of his culpable conduct, and Holloway failed to provide a valid excuse for not responding to the Commission's Complaint.

Defendants Winsome and Andres were served with the Complaint and the Summons on January 29, 2011. Pursuant to Fed. R. Civ. P. 12(a)(1)(A)(i), Winsome's and Andres' Answers were due on or before February 19, 2011. On February 28, 2011, Winsome and Andres filed a Motion seeking an extension of time until March 7, 2011 to file its Answer to the Complaint. On March 1, 2011, the Commission filed a Response to Winsome's and Andres's Motion stating that it would not oppose an extension of time until March 1, 2011. Defendants Winsome and Andres failed to respond to the Commission's Complaint by March 1, 2011, or at any time thereafter. On March 28, 2011, the Commission, pursuant to Fed. R. Civ. P. 55(a), filed its Request for Clerk's Entry of Default against Winsome and Andres. The Clerk of the Court entered default against Winsome and Andres on April 19, 2011.

The Commission has now submitted its Motion and Supporting Memorandum for Entry of Default Judgment, Permanent Injunction, Civil Monetary Penalties, and Ancillary Equitable Relief Against Defendants U.S. Ventures LC, Winsome Investment Trust, Robert J. Andres, and Robert L. Holloway (“Motion”) pursuant to Fed. R. Civ. P. 55(b)(2). The Court has reviewed the Commission’s Complaint, the allegations of which are well-pleaded and hereby taken as true, the Motion, and declarations and exhibits filed with the Court, and, being fully advised in the premises, hereby:

**GRANTS** the Commission’s Motion against USV, Winsome, Andres, and Holloway, enters the following Findings of Fact and Conclusions of Law relevant to the allegations in the Commission’s Complaint, and issues the following Order for Entry of Default Judgment, Permanent Injunction, Civil Monetary Penalties, and Ancillary Equitable Relief Against Defendants U.S. Ventures LC, Winsome Investment Trust, Robert J. Andres, and Robert L. Holloway (hereinafter “Order”).

## **II. FINDINGS OF FACT**

### **A. The Parties**

1. 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.* (2012), and the Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2013).

2. Defendant **US Ventures LC** is a Utah limited liability company. During the relevant period, USV had its principal place of business at 3899 East Parkview Drive, Salt Lake City, Utah 84124. USV was engaged in the business of operating an unnamed commodity futures

pool. USV operated a “fund of funds,” accepting and investing funds solicited by other commodity pools (e.g., Winsome). USV has never been registered with the Commission in any capacity.

3. Defendant **Winsome Investment Trust** is an unincorporated Texas entity. During the relevant period, Winsome had its principal place of business at 5644 Westheimer Road #452, Houston, Texas 77056. Winsome was engaged in the business of soliciting individuals to participate in an unnamed commodity futures pool. Winsome maintained a presence on the world-wide web at [www.winsometrusted.com](http://www.winsometrusted.com). Winsome has never been registered with the Commission in any capacity.

4. Defendant **Robert J. Andres** resides in Houston, Texas. He was engaged in the business of soliciting individuals to trade commodity futures via a commodity pool. Andres has never been registered with the Commission in any capacity.

5. Defendant **Robert L. Holloway** resides in San Diego, California. He was engaged in the business of operating an unnamed commodity futures pool. Holloway was the CEO, corporate secretary, manager, managing partner, member, program manager, resident agent, 50% shareholder and trading agent of USV. He has not held a seat on any commodity exchange. Holloway was registered with the Commission as a Commodity Trading Advisor (“CTA”) from November 29, 2007 through April 4, 2009. In June 2010, Holloway applied for registration with the Commission as a CTA. Holloway withdrew his CTA application in December 2010.

**B. Winsome and Andres Fraudulently Solicited Pool Participants**

6. Commencing in at least May 2005, and continuing at least through November 2008, Winsome and Andres, acting directly and/or through their agents, employees or officers,

solicited and accepted funds from individuals to participate in an unnamed Winsome commodity futures pool that they managed. Winsome, through its agents, employees or officers, including but not limited to Andres, thereafter deposited a portion of those pooled funds in an unnamed USV commodity futures pool managed by USV and Holloway.

7. Winsome and Andres and/or their agents, employees or officers, solicited prospective participants through meetings, telephone and electronic communications, a website, marketing materials, and third party marketers. Winsome and Andres, acting directly or through others, including but not limited to third party marketers, handed or e-mailed prospective participants a collection of documents that provided an overview of Winsome's trading program ("prospectus"). The prospectus claims that profits between 2% and 10% per day can historically be expected. The prospectus also asserts that daily program losses are limited to 2.5% and a participant's principal risk exposure is no more than 8-13% at any given time. It further states that "'Loss' days have been historically non-existent" and the program has only experienced one day of losses (of .7088%) since its inception. The prospectus includes purported copies of existing participants' account statements reflecting consistently profitable daily returns with no losses. Winsome and Andres provided participants in the "Guaranteed" program, with a prospectus that guaranteed participants that they would receive 10% profits per month.

8. The prospectus states that pool funds would be traded "at the Chicago Mercantile Exchange for E-mini S&P and, potentially, at the Chicago Board of Trade for electronic 30-year bond and 10-year note futures." According to the prospectus, participation is highly regulated and adheres to strict compliance with Chicago Mercantile Exchange ("CME") and SEC

regulations. The prospectus also informs prospective participants that Defendants' activities are not regulated.

9. The prospectus does not identify Holloway as the fund's program manager, but it describes him as an experienced member of the securities industry and as having held a seat on the CME. The prospectus also contains Andres's résumé wherein he claims to be an attorney, a Certified Public Accountant, and a holder of insurance and securities licenses.

10. In their solicitations, Winsome and Andres, acting directly or through others, did not provide participants with disclosure documents. In addition, Winsome, Andres, and their agents, employees and officers never obtained signed and dated acknowledgements from participants stating that they had received required disclosure documents.

11. After seeing the prospectus and receiving affirmations of the prospectus's claims from Winsome and Andres or their agents, employees or officers, many prospective participants committed to investing in the unnamed Winsome commodity pool. Some participants decided to invest with Winsome and Andres after learning of the purported profits earned by friends and relatives from Winsome and Andres's purportedly successful trading activities. Most participants understood that their money was being pooled to trade commodity futures contracts.

12. Winsome and Andres, acting directly or through their agents, employees and officers, instructed participants to wire funds for investment to Winsome bank accounts and to sign an agreement. The standard agreement provided for the distribution of net proceeds to the participant, Winsome, the individual or entity who solicited the participant, and occasionally, a purported charity. The standard agreement also guaranteed the return of a participant's principal investment at the conclusion of the investment's duration, or upon fifteen days notice following

the thirteenth week of the investment's duration. Participants in Winsome's "Guaranteed" program were provided with agreements that guaranteed monthly profits of 10% per month.

**D. Defendants Misappropriated Participant Funds**

13. At least 243 participants wired at least \$50.2 million to Winsome bank accounts controlled by Andres. Andres forwarded approximately \$24.8 million of participant funds from Winsome bank accounts to USV bank accounts controlled by Holloway. Holloway, his wife, his one-time USV partner, Arnel Cruz, and one of his USV employees, Bryan Bailey, were signatories on the USV banking accounts. Holloway maintained control over all but one of the bank accounts and over other signatories' use of the accounts.

14. Winsome and Andres used participant funds to make payments to other pool participants in a manner akin to a Ponzi scheme, to provide money to Andres' wife, and to invest in various unrelated and undisclosed businesses, including but not limited to using \$4.2 million of participant funds to purchase an aerospace consulting business. Winsome and Andres stopped forwarding funds to USV's bank accounts after April 2007. Regardless, Winsome and Andres continued to accept deposits from participants into the Winsome bank accounts up to at least November 2008.

15. USV and Holloway, through their agents, employees, or officers, pooled Winsome funds with at least \$4.5 million that they received from other participants in the unnamed USV commodity pool. From the USV bank accounts, Holloway deposited approximately \$26.4 million into commodity futures trading accounts held in USV's name and withdrew approximately \$15.7 million over the relevant period. Holloway used participant funds to pay for houses, cars, home furnishings, jewelry, lawn service, maid service, and credit card

bills in the name of Holloway's wife. Holloway also used participant funds to finance his wife's eBay business, Alcoy Enterprise, LLC.

**E. USV and Holloway Sustained Significant Overall Trading Losses**

16. Despite Winsome's and Andres's claims of past trading success, Holloway sustained consistent losses prior to the relevant period. From February 2005 through April 2005, USV and Holloway deposited approximately \$272,500 in USV commodity trading accounts and sustained net trading losses of approximately \$211,949.

17. Contrary to the consistent profits reported in participant account statements, USV and Holloway sustained significant trading losses during the relevant period totaling approximately \$10.7 million. The remainder of the money in the trading accounts (approximately \$15.7 million) was withdrawn by USV and Holloway throughout the relevant period.

**F. Defendants Used False Statements to Conceal Their Misappropriation and Trading Losses**

18. To shield their losses and misappropriation from discovery and to prolong their successful fraudulent solicitation of funds from prospective and existing participants, Winsome, through Andres, and USV, through Holloway, developed and implemented an elaborate plan whereby Winsome and Andres paid \$38.2 million of participant funds to participants as purported "profits" in a manner akin to a Ponzi scheme.

19. Andres and Holloway attempted to conceal the fraud by directing USV employees to falsify participant account records and by providing, or causing to be provided through others, e-mailed account statements to participants reflecting purported profitable returns for the



unnamed USV pool. The posted returns falsely represented that Holloway profitably traded pool funds – sustaining virtually no losses during the relevant period.

20. In addition, on several occasions, Holloway directed USV employees to use his “guesstimated” trading results for participant account statements.

21. As a result of Defendants’ false account statements, certain participants made additional investments in the unnamed USV pool through Winsome and persuaded others to invest with them. For example, after making an initial investment of \$100,000 in September 2006, and receiving account statements showing consistent profitable returns, one participant invested an additional \$350,000 with Winsome and Andres.

22. Winsome and Andres failed to reflect fees in the false account statements and failed to provide certain participants with monthly account statements.

**G. Holloway Controlled USV and was its Agent**

23. During the relevant period, Holloway was a controlling person of USV. Holloway acted as the CEO, corporate secretary, manager, managing partner, member, program manager, resident agent, 50% shareholder, and trading agent of USV. He held himself out as the CEO of USV at all relevant times including but not limited to when he opened and maintained commodity futures trading accounts with FCMs on behalf of USV.

24. As the CEO, corporate secretary, manager, managing partner, member, program manager, resident agent, and trading agent of USV, Holloway exercised control over USV’s day-to-day business operations. He managed the trading of participant funds in the unnamed USV commodity pool, and he was responsible for the content of the account statements distributed to participants. Holloway also monitored USV employees’ substantive communications with

participants.

**H. Andres Controlled Winsome and was its Agent**

25. Andres acted as the apparent sole manager, attorney, and trustee of Winsome. He held himself out as the attorney and trustee of Winsome at all relevant times, including but not limited to when he solicited and accepted funds for investment with Winsome.

26. As the apparent sole manager and trustee of Winsome, Andres exercised control over its day-to-day business operations. He entered into agreements on behalf of Winsome, directed the wire transfer of customer money into Winsome's bank accounts, directed others' solicitation of prospective participants, and was responsible for the content of the account statements distributed to participants.

**III. CONCLUSIONS OF LAW**

**A. Jurisdiction and Venue**

27. 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.

28. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because the Defendants are found in, inhabit, or transact business in this

district, and the acts and practices conducted in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

**B. Defendants Violated Sections 4b(a)(2)(i)-(iii) and 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006) and 7 U.S.C. § 6b(a)(1)(A)-(C) (2012)**

29. Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), makes it unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person... (i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made to such other person any false report or statement thereof... [or] (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person.

Similarly, Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012) makes it unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market- (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

30. During the relevant period, Defendants violated Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012), with respect to acts

occurring on or after June 18, 2008, by, among other things, knowingly, or with reckless disregard for the truth:

- (a) Soliciting prospective and actual participants to invest in commodity futures through fraudulent misrepresentations and omissions about Defendants' past and current trading performance and claiming that their trading of participants' funds was profitable;
- (b) Failing to disclose to participants that their funds were used for purposes other than trading, and in particular that their funds were used to make payments to other pool participants in a manner akin to a Ponzi scheme, to invest in various unrelated and undisclosed businesses, for Defendants' personal expenses;
- (c) Misappropriating participants' funds; and
- (d) Preparing and delivering to participants account statements falsely representing that their trading of participants' funds had been profitable when in fact, they were suffering consistent losses.

**C. Defendants Violated Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (2012)**

31. Section 4o(1) of the Act, 7 U.S.C. § 6o(1)(A) (2012), makes it unlawful for a Commodity Pool Operator ("CPO") or a Commodity Trading Advisor ("CTA") or their Associated Persons ("APs") to employ any device, scheme, or artifice to defraud any prospective or actual participant or client by use of the mails, and Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) (2012), makes it unlawful for a CPO or a CTA or their APs to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any prospective or actual participant or client by use of the mails.

32. During the relevant period, USV and Winsome 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, and in connection therewith solicited, accepted, or received funds, securities, or

property from others for the purpose of trading in commodities for future delivery on or subject to the rules of any contract market and Holloway and Andres acted as their respective APs in that they knowingly, or with reckless disregard for the truth, solicited and accepted funds, securities, or property for USV and Winsome respectively.

33. During the relevant period, USV and Winsome, and Holloway and Andres, individually, and as the respective agents of USV and Winsome, violated Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (2012), by defrauding and deceiving participants by, among other things:

- (a) Soliciting prospective and actual participants to invest in commodity futures through fraudulent misrepresentations and omissions about Defendants' past and current trading performance and claiming that their trading of participants' funds was profitable;
- (b) Failing to disclose to participants that their funds were used for purposes other than trading, and in particular that their funds were used to make payments to other pool participants in a manner akin to a Ponzi scheme, to invest in various unrelated and undisclosed businesses, for Defendants' personal expenses;
- (c) Misappropriating participants' funds; and
- (d) Preparing and delivering to participants account statements falsely representing that their trading of participants' funds had been profitable when in fact, they were suffering consistent losses.

34. The above misrepresentations and omissions of fact that USV and Winsome, and Holloway and Andres, individually and on behalf of USV and Winsome, made to prospective and actual participants were made through use of the mails or other means or instrumentalities of interstate commerce, and they were made by USV and Winsome, each a CPO, and Holloway and Andres, as APs of the respective CPOs in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§6o(1)(A) and (B) (2012).

**D. USV and Winsome Violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012)**

35. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), provides that it is unlawful for any CPO, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as a CPO.

36. During the relevant time period, USV and Winsome acted as CPOs in that they solicited and received funds from participants for the purpose of investing in pools to trade commodity futures. Neither USV nor Winsome claimed exemption from registration, nor did USV or Winsome qualify for the exemptions identified in Commission Regulation 4.13, 17 C.F.R. § 4.13 (2013). Therefore, USV and Winsome violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

**E. Holloway and Andres Violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012)**

37. Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012), makes it unlawful for any person to be associated with a CPO as a partner, officer, employee, consultant, or agent or any person occupying a similar status or performing similar functions, in any capacity that involves: (i) the solicitation of funds, securities, or property for a participation in a commodity pool; or (ii) the supervision of any person or persons so engaged, unless such person is registered under the Act as an AP of the CPO. During the relevant period, Holloway and Andres acted as the APs of USV and Winsome by soliciting funds for the USV and Winsome pools. By failing to register as an AP of a CPO, Holloway and Andres violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012).

**F. USV and Winsome Violated Commission Regulations 4.20(a)(1) and (b), 17 C.F.R. §§ 4.20(a)(1) and (b) (2013)**

38. Commission Regulation 4.20(a)(1), 17 C.F.R. § 4.20(a)(1) (2013), requires a CPO to “operate its pool as an entity cognizable as a separate legal entity from that of the pool operator.” Commission Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2013), further provides that the CPO receive funds from existing or prospective participants in the pool’s name. During the relevant period, USV and Winsome violated Commission Regulation 4.20(a)(1) and Commission Regulation 4.20(b), 17 C.F.R. §§ 4.20(a)(1) and 4.20(b) (2013), by maintaining bank accounts in USV’s and Winsome’s names instead of the names of their respective pools and by receiving participants’ funds in USV’s and Winsome’s names, but not in the names of their respective pools.

**G. Winsome Violated Commission Regulations 4.21(a)(1) and (b), 17 C.F.R. §§ 4.21(a)(1) and (b) (2013)**

39. Pursuant to Commission Regulation 4.21(a)(1), 17 C.F.R. § 4.21(a) (2013), a CPO is required to provide a disclosure document to prospective participants prepared in accordance with Commission Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25 (2013), by no later than the time it delivers to the prospective participants a subscription agreement. In addition, Commission Regulation 4.21(b), 17 C.F.R. § 4.21(b) (2013) requires that, prior to accepting or receiving funds, a CPO receive from participants an acknowledgement signed and dated by the participants that they received the disclosure document. Winsome, acting through its agents, employees, or officers, solicited and accepted funds from participants without providing the required disclosure documents and failed to receive signed and dated acknowledgments from

the participants stating that they received the disclosure document in violation of Commission Regulations 4.21(a)(1) and (b), 17 C.F.R. §§ 4.21(a)(1) and (b) (2013).

**H. Winsome Violated Commission Regulation 4.22, 17 C.F.R. § 4.22 (2013)**

40. Commission Regulation 4.22, 17 C.F.R. § 4.22 (2013), requires that a CPO provide participants with a monthly Account Statement which must contain specific information, including, but not limited to, the total amount of commissions, fees and expenses. Winsome failed to provide monthly Account Statements to certain participants. Accordingly, Winsome violated Commission Regulation 4.22, 17 C.F.R. § 4.22 (2013).

**I. Holloway is Liable for USV's Violations, Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012)**

41. During the relevant period, Holloway was a controlling person of USV and failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting USV's violations described herein. Therefore, Holloway is liable for the unlawful conduct of USV and its violations of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

**J. Andres is Liable for Winsome's Violations, Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012)**

42. During the relevant period, Andres was a controlling person of Winsome and failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting the Winsome's violations described herein. Therefore, Andres is liable for the unlawful conduct of Winsome and its violations of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).



**K. USV is Liable for Holloway's Violations**

43. Holloway committed the acts and omissions described herein within the course and scope of his roles as the CEO, co-owner, manager, and trading agent of USV; therefore, USV is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. §2(a)(1)(B) (2012), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2013), for violations of the Act committed by Holloway.

**L. Winsome is Liable for Andres's Violations**

44. Andres committed the acts and omissions described herein within the course and scope of his roles as an officer and principal of Winsome; therefore, Winsome is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. §2(a)(1)(B) (2012), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2013), for violations of the Act committed by Andres.

**M. Injunctive Relief is Appropriate**

45. Under Section 6c of the Act, 7 U.S.C. § 13a-1(2012), injunctive relief is appropriate where there is a reasonable likelihood of future violations. The totality of the circumstances establish that, unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in the Commission's Complaint, or in similar acts and practices.

**III. PERMANENT INJUNCTIVE RELIEF GRANTED**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

46. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), Defendants USV, Winsome, Holloway, and Andres are permanently restrained, enjoined and prohibited from directly or indirectly engaging in conduct in violation of Sections 4b(a)(1)(A)-(C), 4o(1)(A) and (B), 4m(1), and 4k(2) of the Act, 7 U.S.C.

§§ 6b(a)(1)(A)-(C), 6o(1)(A) and (B), 6m(1), and 6k(2) (2012), and Commission Regulations 4.20(a)(1) and (b), 4.21(a)(1) and (b), and 4.22, 17 C.F.R. §§ 4.20(a)(1) and (b), 4.21(a)(1) and (b), and 4.22 (2013).

47. Defendants are also permanently restrained, enjoined and prohibited from:

a. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a);

b. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh)) (“commodity options”), security futures products, swaps (as that term is defined in Section 1a(47) of the Act, as amended, and as further defined by Commission Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx)) (“swaps”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for their own personal accounts or for any account in which they have a direct or indirect interest;

c. having any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts 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 futures, options on commodity futures, commodity options, security futures products, swaps 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, swaps and/or forex contracts;

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); and/or

g. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) 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).

#### **IV. RESTITUTION AND CIVIL MONETARY PENALTY**

##### **A. Restitution**

48. Defendants shall be jointly and severally liable for, and shall pay, restitution in the amount of twelve million dollars (\$12,000,000) (“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 the entry of this Order pursuant to 28 U.S.C. § 1961 (2006).

49. Pursuant to the Court’s Order of January 25, 2011, R. Wayne Klein of Klein & Associates PLLC was appointed as Receiver for USV, Winsome, and all of the assets of Holloway and Andres (collectively, the “Receivership Entities”). Consistent with the power granted by the Court, the Receiver has taken possession of certain funds and assets of the Receivership Entities and continues to pursue the recovery of other funds on behalf of the Receivership estate. These funds, any funds derived from the sale or liquidation of assets in the Receivership estate, and any funds recovered by the Receiver in the future, along with any interest earned on these funds (minus any court-approved fees and expenses incurred or to be incurred by the Receiver), shall be used to satisfy, in full or in part, Defendants’ Restitution Obligation in accordance with a distribution plan approved by the Court. To the extent these funds are insufficient to satisfy Defendants’ Restitution Obligation, Defendants shall be responsible for the shortfall.

50. Defendants shall make payments under this Order to the Receiver in the name of “Winsome Investment Trust Restitution Fund” and shall send such payments by electronic funds

transfer, U.S. Postal money order, certified check, bank cashier's check, or bank money order to R. Wayne Klein, Klein & Associates PLLC, 10 Exchange Place, Suite 502, Salt Lake City, Utah 84111, 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 21<sup>st</sup> Street, N.W., Washington, D.C. 20581.

51. Any financial institution holding funds of Defendants is directed to liquidate and release all such funds, whether the funds are held in a single or joint account, or in any other capacity, and to convey them (minus any amounts to cover the financial institutions' administrative or wire transfer fees) by wire transfer to an account designated by the Receiver within thirty (30) days of receiving a copy of this Order. At no time during the liquidation, release, and /or wire transfer of these funds pursuant to this Order shall Defendants be afforded any access to, or be provided with, any of these funds. Defendants, and all financial institutions subject to this Order, shall cooperate fully with the CFTC and the Receiver in the liquidation, release, and wire transfer of these funds.

52. The National Futures Association ("NFA") is appointed as Monitor to effect payment of Defendants' remaining Restitution Obligation after the termination of the Receivership (to the extent such Restitution Obligation has not already been satisfied) and to effectuate the distribution of any Restitution Obligation payments paid by Defendants after the termination of the Receiver's duties, to be effective immediately upon any order entered by this Court terminating the Receiver's duties.

53. The Monitor is directed to collect Restitution Obligation payments from Defendants and to make distributions as set forth below. Because the Monitor is acting as an officer of the 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.

54. Defendants, to the extent their Restitution Obligation has not already been satisfied upon termination of the Receivership, are directed to make any remaining Restitution Obligation payments to the Monitor in the name of "Winsome Investment Trust Restitution Fund" and to send such payments to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under cover of a 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 21<sup>st</sup> Street, N.W., Washington, D.C. 20581.

55. The Monitor is directed to distribute any funds collected to the defrauded participants identified by the Receiver in an equitable manner that is consistent with the distribution plan approved by this Court. The Monitor shall oversee the distribution of funds from the Restitution Obligation payments by Defendants and shall have the discretion to defer distribution until such time as it may deem appropriate. In the event that the amount of Restitution Obligation payments made to the Monitor by Defendants are of a *de minimis* nature, such that the Monitor determines that the administrative costs of making a distribution to defrauded participants is impractical, the Monitor may, in its discretion, treat such Restitution

Obligation payments as civil monetary penalty payments, which the Monitor shall forward to the CFTC following the instructions for the civil monetary penalty obligation set forth below.

56. 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 Receiver or to the Monitor for disbursement in accordance with the procedures set forth above.

**B. Civil Monetary Penalty**

57. Defendants shall be jointly and severally liable for, and shall pay, a civil monetary penalty of thirty-two million three hundred seventy thousand dollars (\$32,370,000), within ten (10) days of the date of entry of this Order ("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 (2006).

58. Defendants shall pay their 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/FANMMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, Defendants shall contact Linda Zurhorst 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 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.

59. All payments by Defendants pursuant to this Order shall first be applied to satisfaction of the Restitution Obligation, consistent with the authority granted the Receiver and the Monitor above. Upon full payment of the Restitution Obligation, payments by Defendants pursuant to this Order shall be applied to satisfy the CMP Obligation.

60. Any acceptance by the Commission or the Monitor of partial payment of Defendants' Restitution Obligation or CMP Obligation shall not be deemed a waiver of Defendants' obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

61. Defendants shall not transfer, or cause others to transfer, funds or other property belonging to Defendants to the custody, possession, or control of any members of their family or any other person or entity for the purpose of concealing such funds from this Court, the Commission, the Receiver, or the Monitor or any officer appointed by this Court.

#### **V. MISCELLANEOUS PROVISIONS**

62. All notices required by this Order shall be sent by certified mail, return receipt requested. Notices to the CFTC shall be sent to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW,

Washington, D.C. 20581. Defendants shall provide the CFTC and the Receiver with written notice of their contact telephone numbers and/or mailing addresses within thirty (30) calendar days of this Order. Until such time as Defendants satisfy their Restitution Obligation and CMP Obligation as set forth in this Order, Defendants shall provide written notice by certified mail to the CFTC and the Receiver and/or Monitor of any change to their telephone number and/or mailing address within ten (10) calendar days of the change(s).

63. Nothing in this Order shall be construed in any way to limit or abridge the rights of any participant that exist under state or common law.

64. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (a) reduced to writing; and (b) approved by order of this Court.

65. If any provision of this Order or if the application of any provision or circumstance is held invalid, the remainder of the Order and the application of its provisions to any other person or circumstance shall not be affected by the holding.

66. The injunctive and equitable relief provisions of this Order shall be binding upon Defendants, upon any person under their authority or control, 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.

67. This Court shall retain jurisdiction of this cause to assure compliance with this Order, the Restitution Obligation, the CMP Obligation, and for all other purposes related to this action. This Order shall be interpreted and enforced according to the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the District of Utah, and all

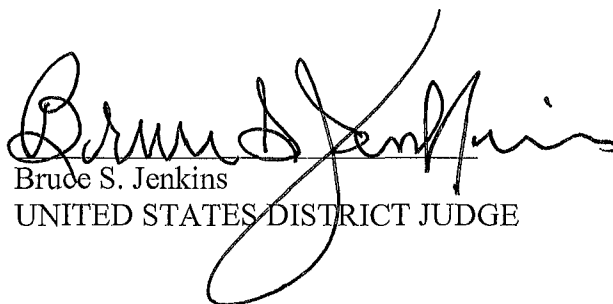


provisions of the Act and Commission Regulations relating or referring to the obligations hereunder.

68. Copies of this Order may be served by any means, including U.S. Mail, facsimile transmission, e-mail, United Parcel Service, and Federal Express, upon Defendants and any other entity or person that may be subject to any provision of this Order.

69. There being no just cause for delay, the Clerk of the Court is hereby directed to enter this *Order for Entry of Default Judgment, Permanent Injunction, Civil Monetary Penalties, and Ancillary Equitable Relief Against U.S. Ventures LC, Winsome Investment Trust, Robert J. Andres, and Robert L. Holloway.*

**DONE AND ORDERED** this <sup>th</sup> 6 day of June 2014, at Salt Lake City, Utah.

  
Bruce S. Jenkins  
UNITED STATES DISTRICT JUDGE