

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

NOTUS LLC d/b/a ROFX, et al.,

Defendants.

Case No. 1:22-cv-20291-DPG

**CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER STATUTORY AND
EQUITABLE RELIEF AGAINST DEFENDANT TIMOTHY F. STUBBS**

I. INTRODUCTION

On August 31, 2022, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed an Amended Complaint against Timothy F. Stubbs (“Stubbs” or “Defendant”), Jase Davis (“Davis”), Borys Konovalenko (“Konovalenko”), Anna Shymko (“Shymko”), Alla Skala (“Skala”) (hereinafter, “Facilitating Defendants”), individually and as the controlling persons of the interrelated companies Notus LLC d/b/a ROFX (“Notus”), Easy Com LLC d/b/a ROFX (“Easy Com”), Global E-Advantages LLC a/k/a Kickmagic LLC d/b/a ROFX (“GEA”), Grovee LLC d/b/a ROFX (“Grovee”), and Shopostar LLC d/b/a ROFX (“Shopostar”) (hereinafter, “Corporate Defendants”), for violations of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 6b(a)(2)(A), (C), 6d(a)(1), 9(1) and 17 C.F.R. §§ 5.2(b)(1), (3), and 180.1(a) (2023). The Court entered an Order of Preliminary injunction against Stubbs on September 22, 2023 (“Stubbs PI Order,” ECF No. 124). The Stubbs PI Order froze assets under Stubbs’

control, prohibited further violations of the Act and CFTC Regulations, permitted CFTC access to all of Stubbs' books and records, and prohibited the destruction of documents.

II. CONSENTS AND AGREEMENTS

To effect partial settlement of certain matters alleged in the Amended Complaint against Stubbs without a trial on the merits or any further judicial proceedings, Stubbs:

1. Consents to the entry of this Consent Order for Permanent Injunction and Other Equitable Relief ("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 Amended 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.
5. Admits the jurisdiction of the CFTC over the conduct and transactions at issue in this action pursuant to the Act.
6. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e).
7. Waives:
 - a. Any and all claims that he may possess under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 and 28 U.S.C. § 2412, and/or the rules promulgated by the CFTC in conformity therewith, Part 148 of the Regulations, 17 C.F.R. § 148.1 (2023), relating to, or arising from, this action.
 - b. Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act, Pub. L. 104-121, Subtitle B, Section 223, 110 Stat.

847, 857-74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), 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 Consent Order.

8. Solely for purposes of the waiver of any and all rights under the Equal Access to Justice Act and the Small Business Regulatory Enforcement Fairness Act of 1996, specified in Paragraph 7, Stubbs agrees that the CFTC is the prevailing party in this action.

9. Consents to the continued jurisdiction of this Court over him for the purpose of implementing and carrying out the terms and conditions of all orders and decrees, including orders setting the appropriate amounts of restitution, disgorgement and civil monetary penalty, that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of the Court, to assure compliance with this Consent Order and for any other purpose relevant to this action, even if Stubbs now or in the future resides outside the jurisdiction of this Court.

10. 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.

11. Agrees that neither he nor any of his agents or employees acting under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Amended Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating, or tending to create, the impression that the Amended Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect Defendant's: (a) testimonial obligations, or (b) right to take legal

positions in other proceedings to which the CFTC is not a party. Stubbs shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents or employees acting under his authority or control understand and comply with this agreement.

12. Consents to the entry of this Consent Order without admitting or denying the allegations of the Amended Complaint or any findings or conclusions in this Consent Order, except as to jurisdiction and venue, which he admits.

13. Consents to the use of findings and conclusions in this Consent Order in this proceeding, and in any other proceeding brought by the CFTC or to which the CFTC is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof.

14. Does not consent, however, to the use of this Consent Order, or the findings and conclusions herein, as the sole basis for any other proceeding brought by the CFTC or to which the CFTC is a party, other than: a statutory disqualification proceeding; proceeding in bankruptcy, or receivership; or, proceeding to enforce the terms of this Order.

15. Agrees to provide immediate notice to this Court and the CFTC by certified mail, in the manner required by paragraph 85 of Section VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States.

16. 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 Stubbs in any other proceeding.

17. Consents to pay restitution, plus post-judgment interest, in an amount to be determined upon subsequent consent order or motion by the CFTC and/or hearing before this Court.

18. Consents to pay disgorgement, plus post-judgment interest, in an amount to be determined upon subsequent consent order or motion by the CFTC and/or hearing before this Court; and

19. Consents to pay a civil monetary penalty, plus post-judgment interest, in an amount to be determined upon subsequent consent order or motion by the CFTC and/or hearing before this Court.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

20. 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 therefore directs the entry of the following Findings of Fact, Conclusions of law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein. The Findings and Conclusions in this Consent Order are not binding on any other party to this action.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

1. The Parties to this Consent Order

21. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act and Regulations.

22. Defendant Timothy F. Stubbs is a U.S. citizen who is a Certified Public Accountant residing in Atlanta, Georgia. Upon information and belief, Stubbs resided at one or both of the Brandon, Mississippi addresses provided on various Defendant Notus and Defendant Shopostar corporate filings with the Colorado Secretary of State. Stubbs represented himself as the manager of Grovee and was the signatory on a Grovee account at Bank of America ending in

9293 (“Grovee 9293 BOA Account”) into which \$153,000 in customer funds were deposited between November 18, 2020 and January 20, 2021. Stubbs has never been registered with the CFTC in any capacity.

2. Entities

23. Defendant Grovee LLC d/b/a ROFX is a Delaware limited liability company whose registered agent’s address is 3422 Old Capitol Trail, Suite 700, Wilmington, Delaware 19808. Grovee is an entity which accepted over \$1.2 million in ROFX customer funds between January 2018 through September 2021 (the “Relevant Period”). Grovee has never been registered with the CFTC in any capacity.

24. Defendant Easy Com LLC d/b/a ROFX is a New Hampshire limited liability company whose principal office address is 155 Fleet Street, Portsmouth, New Hampshire, 03801. Easy Com is an entity which accepted over \$15 million in ROFX customer funds during the Relevant Period. Shymko and Davis are, or were, owners and members of Easy Com. Easy Com has never been registered with the CFTC in any capacity.

25. Defendant Notus LLC d/b/a ROFX is a dissolved Colorado limited liability company whose former principal address was 3801 East Florida Avenue, Suite 400, Denver, Colorado 80210. Notus was previously formed in Oregon on August 16, 2013 by Borys Konovalenko and dissolved by Stubbs on April 28, 2015. Konovalenko subsequently re-formed Notus in Colorado using Stubbs’ residence as its principal place of business. Notus is an entity which accepted approximately \$22.5 million in ROFX customer funds during the Relevant Period. Konovalenko, Shymko, and Skala are, or were, owners or members of Notus. Notus has never been registered with the CFTC in any capacity.

26. Defendant Shopostar LLC d/b/a ROFX is a Colorado limited liability company whose principal office address is 7887 East Belleview Avenue, Suite 1100, Denver, Colorado 80011 and principal office mailing address is 6619 Brock Circle, Brandon, Mississippi 39042. Shopostar is an entity which accepted over \$13.5 million in ROFX customer funds during the Relevant Period. Konovalenko is, or was, an owner and manager of Shopostar. Shopostar has never been registered with the CFTC in any capacity.

27. ROFX is a fictitious, web-based entity that operated via the website www.ROFX.net, which was hosted in the U.S. Upon information and belief, ROFX is neither registered to conduct business in the U.S. nor is it a legally organized collective entity. Although the website contained representations that ROFX purportedly operated from offices in Miami, London, and Hong Kong, ROFX had no offices, no employees, and upon information and belief, was created solely to further Defendants' fraudulent common enterprise. ROFX has never been registered with the CFTC in any capacity.

3. Statutory Background

28. 7 U.S.C. § 2(c)(2)(C)(i)(I), in relevant part, applies to any agreement, contract, or transaction in, or in connection with, forex that is offered to, or entered into with, a person that is not an eligible contract participant ("ECP") "on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis," subject to certain exceptions not applicable here.

29. 7 U.S.C. § 1a(18)(A)(xi) defines an ECP, in relevant part, as an individual: (a) who has amounts invested on a discretionary basis, the aggregate of which exceeds \$10 million, or (b) \$5 million if the individual enters into 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.” Individuals who do not meet these criteria are non-ECPs.

30. For the purposes of trading forex, a futures commission merchant (“FCM”) is defined in 7 U.S.C. § 1a(28)(A), in relevant part, as “an individual, association, partnership, corporation or trust . . . engaged in soliciting or in accepting orders for . . . any agreement, contract, or transaction described in section 2(c)(2)(C)(i) [of the Act, i.e., “forex transactions”]” or “acting as a counterparty in any agreement, contract, or transaction described in section 2(c)(2)(C)(i) [of the Act]”; and, in or in connection with these activities “accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.”

31. 7 U.S.C. § 6d(a)(1) makes it unlawful for any person to act as an FCM unless such person is registered as such with the CFTC.

4. Controlling Person Liability Under the Act

32. Section 13(b) of the Act, 7 U.S.C. § 13c(b), provides that any person who, directly or indirectly, controls any person who has violated the Act, or the Regulations promulgated thereunder, may be held liable for such violations to the same extent as the controlled person. To establish liability as a controlling person pursuant to 7 U.S.C. § 13c(b), the CFTC “has the burden of proving that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.”

5. Overview of Defendants’ Fraudulent Scheme

33. During the Relevant Period, Facilitating Defendants, individually and as the controlling persons of the interrelated Corporate Defendant companies, acting through, and/or in conjunction with, the web-based entity *www.ROFX.net* (“ROFX website”), acting as a common

enterprise, misappropriated at least \$58 million as part of a fraudulent scheme in, and/or in connection with, the offering of leveraged, margined, or financed agreements, contracts, or transactions in retail foreign currency (“forex”) to U.S. and international customers (“ROFX customers”) who were not eligible contracts participants (“ECPs”). Facilitating Defendants, individually and as the controlling persons of Corporate Defendants—operating through a maze of interrelated companies, shared managers and members—accepted funds from ROFX customers that were intended to be used to margin, leverage, or finance agreements, contracts, or transactions in forex as described on the ROFX website. Corporate Defendants and Facilitating Defendants (hereinafter, “Fraudulent Enterprise” or “Defendants”) acted as a single, integrated common enterprise and misappropriated all of the \$58 million they accepted from ROFX customers by immediately wiring said funds to offshore entities with no connection to forex trading.

34. The Fraudulent Enterprise utilized the ROFX website as a vehicle to solicit and obtain customers. The ROFX website claimed to offer and/or enter into retail forex agreements, contracts, or transactions on behalf of non-ECP customers by opening trading accounts on their behalf and purportedly utilizing an automated trading “robot” to profitably trade customers’ accounts. ROFX touted that it was the “best automated forex trading robot in the world,” and the only trading system that “guarantee[d] coverage of losses.” In addition to the ROFX website, some customers were introduced to ROFX via social media and referrals by friends and family who had invested with ROFX.

35. Facilitating Defendants, individually and collectively as Facilitating Defendants, and as specifically described herein, did business as ROFX via the ROFX website and used the website to conceal their participation in the scheme and acceptance of customer deposits and

wires, many of which were clearly identified as associated with ROFX and forex trading. No mention was made of any of the Defendants on the website. The ROFX website fraudulently represented that ROFX operated a legitimate and successful forex robot trading or “Bot” platform with purported offices in Miami, London, and Hong Kong. Facilitating Defendants, by accepting funds from defrauded customers into bank accounts they respectively controlled, knew or reasonably should have known that the ROFX website made false and misleading claims to defrauded customers, which included, but were not limited to the following:

- “ROFX is the best automated trading robot in the world.”
- “[T]he ROFX.net service is an exceptional service that guarantees your profits.”
- “The inbuilt algorithms and neural [sic] networks are in hand to place the perfect trade when opportunity presents itself. You do not have to make any intervention.”
- “When you use ROFX.net, the developers assure that you will make no losses.”
- “This platform is perhaps the only one that covers your losses.”
- “The stop-loss system blocks trading at the minimum loss (‘no loss forex robot’).”

36. ROFX made guarantees regarding the safety of investing and claimed to have specific “safeguards” in place to protect customers, including a “reserve fund,” which allegedly covered negative trading results, and a “stop-loss system,” which minimized trading losses on “bad days.” The ROFX website claimed, in pertinent part:

Your money is safe, because:
We guarantee the safety of your funds
Negative results of trading are covered by our reserve fund.

37. ROFX was a fictitious company with a website designed to defraud customers. ROFX never traded forex for customers, customers never had forex trading accounts, there was

no ROFX trading robot, and there were no ROFX domestic or international corporate offices as falsely advertised on the website.

38. Facilitating Defendants, individually and as Facilitating Defendants, knew or reasonably should have known that all of these representations were false. They knew or reasonably should have known that there was no automated trading bot and no “trading” or “investments” was occurring on behalf of ROFX customers. However, they accepted funds from ROFX customers into Corporate Defendants’ bank accounts they controlled. Certain ROFX customers’ wire transfers appeared on Corporate Defendants’ monthly bank account statements as “ROFX investment,” or with similar language. For example, and as discussed in further detail below, Stubbs solely controlled a Bank of America account ending in 9293 in the name of Grovee and one such wire notation from a defrauded customer stated: “THIS MONEY IS TO FUND ROFX ACCOUNT OF M*** N***.” Stubbs was aware that these funds were deposited into the Grovee 9293 BOA Account, accepted these funds, failed to use them to fund an ROFX account on behalf of this customer, and transferred the funds to another entity.

39. Customers opened ROFX trading accounts by providing their name and driver’s license through the ROFX website. The online account opening application did not request information about prospective customers’ net worth and did not inquire as to whether a prospective customer qualified as an ECP or had assets in excess of \$5 million. ROFX permitted customers to fund an account with U.S. dollars (USD), Euros (EUR), or Bitcoin (BTC). Most of the ROFX customers were located in the U.S., including customers in this district.

40. After customers established an ROFX account, they typically received a purported “payment invoice” with a corresponding invoice number via email from *support@rofx.net* with instructions to deposit their funds in bank accounts in the name of

“Grovee,” “Notus,” “GEA,” “Shopostar,” and/or “Easy Com.” Pursuant to the ROFX payment invoice’s instructions, ROFX customers made a counter deposit via a cashier’s check payable to one of the Corporate Defendants or a wire transfer to one or more of the Corporate Defendants’ bank accounts. Throughout the Relevant Period, these bank accounts were opened and controlled by the Facilitating Defendants, who were aware of deposits into, and debits out of, the account(s) on which they were the signatory. By acting in common enterprise and utilizing the ROFX website to solicit or accept orders for retail forex agreements, contracts, or transactions and accepting ROFX customer funds in connection with these activities, Corporate Defendants acted as FCMs during the Relevant Period.

41. Stubbs and the Facilitating Defendants knew or reasonably should have known they were accepting funds from ROFX customers intended for forex trading. Notations on certain ROFX customers’ deposits and/or wire transfers appeared on Grovee’s and the other Corporate Defendants’ monthly bank account statements, bank wire records, and/or bank deposit records—all of which were received by Stubbs and the other Facilitating Defendants—as “ROFX account deposit,” “ROFX investment service,” “investment transfer to ROFX,” and “investment trading account,” among others. In some instances, Corporate Defendants’ monthly bank statements, bank wire records, and/or bank deposit records showed individual customer names with specific invoice numbers provided to customers by ROFX.

42. Once ROFX customers’ funds were accepted into the Fraudulent Enterprise’s various corporate bank accounts—opened and controlled by the Facilitating Defendants—ROFX customers were able to log into their accounts on the ROFX website via the Internet and view their purported profits and account balances. Through their online ROFX accounts, ROFX customers also had the ability to confirm that the deposits they made into Corporate Defendants’

bank accounts were credited to their ROFX forex trading account. ROFX customers' online account information regularly showed trading profits even though there was no trading and therefore no profits.

6. The Fraudulent Enterprise's Misappropriation of Customer Funds

43. Facilitating Defendants, individually and as controllers of the Corporate Defendants, none of whom were registered with the CFTC in any capacity, used the ROFX website to misappropriate at least \$58 million. Rather than use the customer funds to margin, secure, or guarantee forex transactions as promised, Defendants immediately transferred customer funds to various offshore entities as well as to the Facilitating Defendants' personal accounts. Indeed, the Corporate Defendants' bank accounts appear to have existed for the sole purpose of collecting and moving ROFX customer funds. The offshore entities that received most of the misappropriated funds are non-trading entities that have nothing to do with forex trading.

44. Facilitating Defendants also misappropriated ROFX customer funds by providing some customers with small withdrawals of purported "profits" via wires from one or more of the Corporate Defendants' bank accounts and/or offshore entities. Customers made repeated requests for withdrawals directly through the ROFX website and via email to "support@rofx.net." As no trading took place, and no profits were generated, any payments to customers of purported "profits" were in reality funds from later customers to earlier customers in the nature of a Ponzi scheme.

45. The majority of ROFX customers were unable to withdraw funds from their accounts despite the false representations on ROFX's website that ROFX customers could withdraw funds at any time with no withdrawal fees.

7. The Fraudulent Enterprise's Material Omissions of Facts

46. Facilitating Defendants, through the Corporate Defendants they respectively controlled, knowingly and/or recklessly failed to disclose material facts to actual and prospective customers while repeatedly accepting ROFX customer funds designated for trading, including failing to disclose that:

- a. There is no legal entity known as "ROFX," and ROFX does not utilize a forex "robot" or trade forex;
- b. The Fraudulent Enterprise never opened any trading accounts in customers' names and conducted no trading on their behalf via robot or otherwise;
- c. The Fraudulent Enterprise did not forward any of ROFX customers' deposits to a CFTC-registered FCM or RFED for forex trading on behalf of customers.
- d. The Fraudulent Enterprise misappropriated customer funds by accepting funds intended for trading into various bank accounts and then subsequently wiring those funds to offshore entities having nothing to do with forex trading; and
- e. Purported "returns" paid to some customers were in fact the principal deposits of other customers and were not generated by profitable trading.

8. Defendants Operated as a Common Enterprise

47. Corporate Defendants were interrelated shell companies serving no legitimate business purpose other than to defraud ROFX customers. They operated together as ROFX through the ROFX website, shared the same officers and purported business addresses, accepted ROFX customer funds into their various bank accounts, and transferred ROFX customer funds to common offshore entities.

48. Facilitating Defendants controlled Corporate Defendants during the Relevant Period, were all corporate officers of Corporate Defendants, and used Corporate Defendants' bank accounts to collect, transfer, and disburse ROFX customer funds. Together, Facilitating Defendants and Corporate Defendants used the ROFX website as a vehicle to solicit customers

and convey the false messaging of ROFX's purported successful forex trading robot. Facilitating Defendants created one or more of the Corporate Defendants in the United States and/or submitted corporate documents on behalf of Corporate Defendants utilizing common officers, addresses, and registered agents. Facilitating Defendants also opened U.S. bank accounts on behalf of one or more of the Corporate Defendants, controlled Corporate Defendants' bank accounts including the deposits to and withdrawals from these accounts, and transferred ROFX customer funds between and amongst themselves and to the same offshore entities. Throughout the Relevant Period, Stubbs was paid up to \$59,000 for facilitating the operations of the other Defendants.

9. Stubbs' Participation in Furtherance of the Fraudulent Enterprise Through Control and Operation of Grovee

49. Grovee is a Delaware limited liability formed on October 15, 2020. On or about October 15, 2020, Stubbs signed the Grovee Operating Agreement, identifying himself as the sole member of the limited liability company. The Operating Agreement empowered Stubbs with "the right and authority to manage the business and affairs of [Grovee]." As sole member, Stubbs took several actions on behalf of Grovee, including submitting a U.S. Postal Service application for delivery of mail through Grovee's Delaware agent, entering into a Mailbox Service Agreement, applying for and obtaining an employer identification number ("EIN") from the Internal Revenue Service for Grovee, and opening the Grovee 9293 BOA Account.

50. On or about November 18, 2020, Stubbs opened the Grovee 9293 BOA Account and was its sole signatory and identified himself in the account opening documents, which he alone signed, as the manager of Grovee. Stubbs further identified himself as the "manager" of Grovee on the account's signature card. Monthly statements and other associated correspondence for the Grovee 9293 BOA Account were sent to Stubbs at his residence in

Atlanta, Georgia. Pursuant to the Grovee Operating Agreement, Stubbs had sole control over Grovee and controlled the Grovee 9293 BOA Account which accepted certain funds clearly designated for ROFX investments.

51. As the sole member of Grovee, at that time, Stubbs had actual and legal control of all day-to-day business operations of Grovee beginning October 15, 2020, and exercised the ultimate choice-making power within Grovee regarding its day-to-day business decisions until he sold his interest in Grovee on or about January 19, 2021.

52. As the sole signatory of the Grovee 9293 BOA Account, and the sole person to whom all monthly account statements were mailed, Stubbs was on actual notice of all transactions that occurred within the account. Stubbs was also the sole person authorized to accept deposits into this account and was the sole person authorized to transfer funds out of this account.

53. As the sole person authorized to accept deposits into the Grovee 9293 BOA Account, Stubbs recklessly disregarded that defrauded ROFX customers were sending deposits to the Grovee 9293 BOA Account for the purpose of engaging in forex transactions.

54. As the sole person authorized to transfer funds out of the Grovee 9293 BOA Account, Stubbs was solely responsible for determining when funds were transferred out of the account, to whom the funds were transferred, and the amount of each such transfers. Accordingly, Stubbs was solely responsible for deciding to neither return said funds to customers nor use them to trade forex on behalf of customers.

55. After executing the account opening documents for the Grovee 9293 BOA Account, Stubbs funded the account with an initial deposit of \$100 on November 18, 2020. In total, during 2020, \$153,000 was deposited into the Grovee 9293 BOA Account which Stubbs

controlled and knew or reasonably should have known that these deposits were for the purpose of funding forex transactions on behalf of ROFX customers.

56. The customer deposits in the Grovee 9293 BOA Account were comprised of wires, counter deposits and personal checks, some of which were marked as funds for ROFX investments. Certain customer deposits included wires with notations appearing on the monthly account statements indicating that the deposits were for ROFX investments and/or with corresponding “invoice” numbers. The wire notation examples included, but were not limited to the following:

- December 9, 2020 wire of \$1,000 to the Grovee 9293 BOA Account from customer “ST”: “PMNT INVOICE 85147.10”;
- December 10, 2020 wire of \$1,000 to the Grovee 9293 BOA Account from customer “BS”: “ROFX/BNF/ROFX”; and
- December 15, 2020 wire of \$5,000 to the Grovee 9293 BOA Account from customer “MN”: “This money is to fund ROFX account of M*** N***.

Accordingly, Stubbs recklessly disregarded that ROFX customers were depositing funds into the Grovee 9293 BOA Account for forex transactions and investments.

57. As the manager of Grovee, Stubbs was in legal and day-to-day control of all business operations of Grovee between October 15, 2020 through January 19, 2021. He was aware of deposits in the Grovee 9293 BOA Account, controlled withdrawals of ROFX customer funds in this account, and determined to whom ROFX customer funds were sent. At no time did Stubbs return any ROFX customer funds to customers, nor did he send such funds to any FCM to trade forex on behalf of ROFX customers.

58. Stubbs was personally aware of all deposits made into the Grovee 9293 BOA Account because he received the monthly account statements and other correspondence associated with the Grovee 9293 BOA Account at his residence in Atlanta, Georgia. Customer

funds deposited into the Grovee 9293 BOA Account were never used for forex trading. Rather, Stubbs transferred certain customer funds offshore to non-trading corporate entities at the request of others. All such funds were therefore misappropriated.

59. Stubbs recklessly disregarded his role in the Fraudulent Enterprise and the misappropriation of customer funds. At a minimum, Stubbs deliberately or recklessly avoided obtaining knowledge about the fraudulent activities of Grovee and the other Corporate Defendants. As Stubbs is a CPA, it is reasonable to conclude that he either knew or recklessly disregarded the common fraudulent enterprise activity.

60. At no time during the Relevant Period did Stubbs, as the controlling person of Grovee, register Grovee as an FCM with the CFTC. Grovee acted as an FCM, while not lawfully registered as such with the CFTC, during 2020 and 2021, when it solicited or accepted orders for forex agreements, contracts, or transactions on behalf of ROFX customers and accepted funds from ROFX customers for such activities. Grovee further acted as an FCM, while not lawfully registered as such with the CFTC, when it acted as a counterparty to forex agreements, contracts, and/or transactions and, in connection with these activities accepted any money, securities, or property from ROFX customers to margin, guarantee, or secure any forex trades or contracts.

B. Conclusions of Law

1. Jurisdiction and Venue

61. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). In addition, Section 6c(a) of the Act, 7 U.S.C.

§ 13a-1(a), provides that district courts have jurisdiction to hear actions brought by the Commission for injunctive relief or to enforce compliance with the Act whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in, an act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

62. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Defendants transacted business in this jurisdiction, and certain transactions, acts, and practices alleged in the Amended Complaint occurred within this District.

2. Fraud in Connection with Forex

63. 7 U.S.C. § 6b(a)(2)(A) and (C) make 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, . . . 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; [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.”

64. Pursuant to 7 U.S.C. § 2(c)(2)(C)(iv), 7 U.S.C. § 6b applies to the forex agreements, contracts, or transactions described in 7 U.S.C. § 2(c)(2)(C)(i) “as if” they were contracts of sale of a commodity for future delivery. Further, 7 U.S.C. § 2(c)(2)(C)(ii)(I) makes forex agreements, contracts, or transactions “subject to” 7 U.S.C. § 6b. Finally, 7 U.S.C. § 2(c)(2)(C)(vii) makes clear the CFTC has jurisdiction over an account that is offered for the purpose of trading forex.

65. 17 C.F.R. § 5.2(b)(1) and (3) (2023) make it unlawful for any person, by use of the mails or by any instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction: (1) to cheat or defraud or attempt to cheat or defraud any person; or (3) willfully to deceive or attempt to deceive any person by any means whatsoever.

66. Stubbs engaged in such acts by the use of the mails or other means or instrumentality of interstate commerce.

67. Stubbs violated 7 U.S.C. § 6b(a)(2)(A), (C) and 17 C.F.R. § 5.2(b)(1), (3), by cheating or defrauding, or attempting to cheat or defraud other persons in or in connection with, the offering of leveraged, margined or financed retail forex transactions with non-ECPs, by, among other things: (i) failing to disclose material facts to actual and prospective customers, including that no forex trading was conducted on behalf of customers; and (ii) misappropriating customer funds.

68. Stubbs was a controlling person of Grovee and has failed to act in good faith, or has knowingly induced, directly or indirectly, the acts of Grovee constituting the violations of 7 U.S.C. § 6b(a)(2)(A), (C) and 17 C.F.R. § 5.2(b)(1), (3). Accordingly, Stubbs is liable for each and every violation of the Act committed by Grovee, pursuant to 7 U.S.C. § 13c(b), during the period he acted as its controlling person.

3. Fraud by Deceptive Device or Contrivance

69. 7 U.S.C. § 2(c)(2)(C)(ii)(I) makes forex agreements, contracts, or transactions “subject to” 7 U.S.C. § 9(1). Further, 7 U.S.C. § 2(c)(2)(C)(vii) makes clear the CFTC has jurisdiction over an account that is offered for the purpose of trading forex.

70. 7 U.S.C. § 9(1) makes it “unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, 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” the Regulations.

71. 17 C.F.R. § 180.1(a) (2023), which the CFTC issued in 2011 pursuant to 7 U.S.C. § 9(1), provides:

It 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

72. Stubbs violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a) by, among other things, in connection with contracts of sale of commodities in interstate commerce: (i) omitting to state material facts necessary in order to make statements made not untrue or misleading, including omitting that no forex trading was conducted on behalf of customers; and (ii) misappropriating customer funds.

73. Stubbs controlled Grovee, directly and/or indirectly, at the time it violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a). At all such times, Stubbs did not act in good faith or knowingly induced, directly or indirectly, Grovee to commit the acts and/or omissions alleged as violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a). Pursuant to 7 U.S.C. § 13c(b), Stubbs is

liable as a controlling person for Grovee's violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a), during the period he acted as its controlling person.

74. Stubbs engaged in the acts and practices described above intentionally or recklessly.

75. Stubbs engaged in the acts and practices described above using instrumentalities of interstate commerce, including but not limited to: interstate wires for transfer of funds, email, websites, and other electronic communication devices.

4. Failure to Register as a Futures Commission Merchant

76. 7 U.S.C. § 6d(a)(1) provides that it shall be unlawful for any person to be an FCM unless such person is registered with the CFTC as an FCM.

77. An FCM is defined in 7 U.S.C. § 1a(28)(A), in relevant part, as "an individual, association, partnership, corporation or trust . . . engaged in soliciting or in accepting orders for . . . any agreement, contract, or transaction described in section 2(c)(2)(C)(i) [of the Act]," and in or in connection with these activities "accepts any money, securities, or property . . . to margin, guarantee, or secure any trades or contracts that result or may result therefrom."

78. During the Relevant Period, Grovee operated as an FCM, by (a) soliciting or accepting orders for retail forex transactions as described by 7 U.S.C. § 2(c)(2)(C)(i); and, (b) in or in connection with these activities, accepting any money, securities, or property to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

79. During the Relevant Period, Grovee violated 7 U.S.C. § 6d(a)(1) by failing to register with the CFTC as an FCM.

80. Stubbs is a controlling person of Grovee and has failed to act in good faith, or has knowingly induced, directly or indirectly, the acts of Grovee constituting the violations of

7 U.S.C. § 6d(a)(1). Pursuant to 7 U.S.C. § 13c(b), Stubbs is liable as a controlling person for Groves's violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a), during the period he acted as its controlling person.

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

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

- a. Cheating or defrauding or attempting to cheat or defraud any other person, or willfully deceiving or attempting to 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 person, 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, on or subject to the rules of a designated contract market, or otherwise violating 7 U.S.C. § 6b(a)(2)(A), (C) or 17 C.F.R. § 5.2(b)(1), (3) (2023).
- b. (1) Using or employing, or attempting to use or employ, any manipulative device, scheme, or artifice to defraud; (2) 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 (3) 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 violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a) (2023).
- c. Failing to register as an FCM, in violation of 7 U.S.C. § 6d(a)(1).

82. Timothy F. Stubbs 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(40) of the Act, 7 U.S.C. § 1a(40));
- b. Entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2022)), for their own personal accounts or for any account in which they have a direct or indirect interest;
- c. Having any commodity interests 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 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 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) (2023); and
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2023)), agent, or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38)), 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) (2023).

V. STATUTORY AND EQUITABLE RELIEF

83. Stubbs shall pay restitution, plus post-judgment interest, to each defrauded customer who deposited funds into the Grovee 9293 BOA Account.

84. Stubbs shall pay disgorgement, plus post-judgment interest to the CFTC, for all ill-gotten gains received by him as a Facilitating Defendant and as the controlling person of Grovee.

85. Stubbs shall pay a civil monetary penalty, plus post-judgment interest, to the CFTC.

86. The Court shall determine the amounts of restitution, disgorgement and civil monetary penalty and the procedures for payment and distribution of these monetary sanctions by further order upon: motion of the parties submitting to the Court a proposed supplemental consent order setting out their agreement on the amounts of restitution, disgorgement and civil monetary penalty to be paid by Stubbs in this matter; or by CFTC motion and, after notice and opportunity to be heard at a duly noticed hearing before this Court on such subsequent motion by

the CFTC. The CFTC does not oppose a hearing on any such motion filed by Stubbs. The parties have 120 days from the entry of this Consent Order to resolve these issues by the joint submission of a second proposed consent order. If these issues remain unresolved after 120 days from the entry of this Consent Order, the CFTC shall file an appropriate motion no later than 14 days following the expiration of the 120-day period.

87. In connection with any CFTC motion for restitution, disgorgement and/or civil monetary penalties, and at any hearing held on such motion: (a) Stubbs will be precluded from arguing that he did not violate the federal laws as alleged by the Amended Complaint; (b) Stubbs may not challenge the validity of his consents and agreements herein or this Consent Order; (c) solely for the purposes of such motion, the allegations of the Amended Complaint and the Findings of Fact and Conclusions of Law in this Consent Order shall be accepted as and deemed true by the Court except as to any amounts subject to Court adjudication; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, witness testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the CFTC's motion for restitution, disgorgement and/or civil monetary penalties, the parties may take discovery, including discovery from appropriate non-parties.

88. Stubbs shall reasonably cooperate fully and expeditiously with the CFTC, including the CFTC's Division of Enforcement, in this action. As part of such cooperation, Stubbs shall reasonably comply, to the full extent of his abilities, promptly and truthfully with any inquiries or requests for information including but not limited to, requests for production of documents and authentication of documents, shall provide assistance at any trial, proceeding, or

investigation related to the subject matter of this action, including but not limited to, requests for testimony, depositions, and/or interviews. Reasonable costs associated with Mr. Stubbs' cooperation shall be reimbursed.

VI. CONTINUATION OF ASSET FREEZE PURSUANT TO PRELIMINARY INJUNCTION ORDER, PROHIBITING STUBBS FROM WITHDRAWING, TRANSFERRING, REMOVING, DISSIPATING, OR OTHERWISE DISPOSING OF ANY ASSETS

89. The asset freeze order pursuant to the Court's Order Granting Motion for Preliminary Injunction ("Injunction Order," ECF No. 124) shall remain in full force and effect until further order of the Court. However, those portions of the Injunction Order that authorize the CFTC to have immediate access to and inspection of Stubbs' records, including those contained on any devices, such as those contained on paragraphs 4-7 on pages 15 and 16 of the Injunction Order, are hereby suspended, pending further order of the Court. Stubbs shall continue to preserve all documents and records referenced in the Injunctive Order until further order of the Court. Upon entry of an order ruling on restitution, disgorgement and civil monetary penalties against Stubbs, the parties shall jointly file a motion to vacate the Injunction Order.

VII. MISCELLANEOUS PROVISIONS

90. Until such time as Stubbs satisfies in full his Restitution, Disgorgement, and CMP obligations that may be imposed in this action, upon the commencement by or against Stubbs of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of Stubbs' debts, all notices to creditors required to be furnished to the CFTC under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy, or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of the General Counsel
Commodity Futures Trading Commission
1155 21st Street, N.W.

Washington, DC 20581

91. Notice: All notices required to be given by any provision in this Consent Order, except as provided in paragraph 90 above, shall be sent certified mail, return receipt requested, as follows:

Notice to CFTC:

Paul G. Hayeck
Deputy Director
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, DC 20581

Notice to Timothy F. Stubbs:

Daniel S. Newman
Nelson Mullins Riley & Scarborough
2 South Biscayne Blvd, 21st Floor
Miami, FL 33131

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

92. 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.

93. 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.

94. Waiver: The failure of any party to this Consent Order or of any customer at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or customer 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.

95. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees, including orders setting the appropriate amounts of restitution, disgorgement and civil monetary penalty, that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of the Court, to ensure compliance with this Consent Order and for any other purposes related to this action, including any motion by Stubbs to modify or for relief from the terms of this Consent Order.

96. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Stubbs, 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 Stubbs.

97. 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.

98. Contempt: Stubbs understands that the terms of this Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

99. Agreements and Undertakings: Stubbs shall comply with all of the undertakings and agreements set forth in 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 and Other Statutory and Equitable Relief Against Defendant Timothy F. Stubbs*.

DONE AND ORDERED in Chamber at Miami, Florida on this 15th day of December, 2023.



DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:

Tim F. Stubbs
Defendant Timothy F. Stubbs, individually

Date: 11/30/2023

Danielle Karst
Timothy J. Mulreany, Chief Trial Attorney
Danielle Karst, Chief Trial Attorney

**COMMODITY FUTURES TRADING
COMMISSION**
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
(202) 418-5306

Date: 12/18/2023

Approved as to form:
Daniel S. Newman

Daniel S. Newman, Esq.
Attorney for Defendant, Timothy Stubbs
Nelson Mullins Riley & Scarborough
One Biscayne Tower, 21st Floor
2 South Biscayne Boulevard
Miami, FL 33131
(305) 373-9467

Date: 11/30/23