

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
NORTHWESTERN DIVISION

U.S. COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

AARON B. BUTLER and NEGUS CAPITAL  
INCORPORATED,

Defendants.

CIVIL ACTION NO. \_\_\_\_\_

Judge \_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE RELIEF, RESTITUTION,  
CIVIL MONETARY PENALTIES AND OTHER EQUITABLE  
RELIEF UNDER THE COMMODITY EXCHANGE ACT**

Plaintiff, U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”), by and through its attorneys, alleges as follows:

**I. SUMMARY**

1. From at least March 16, 2017 through February 21, 2018 (the “Relevant Period”), Negus Capital Incorporated (“NCI”), by and through its employee and principal, Aaron B. Butler (“Butler”), and Butler directly, (together, “Defendants”), fraudulently solicited at least \$300,000 from more than 65 members of the public to participate in one of two schemes concerning trading commodity interests in binary options, primarily involving foreign exchange traded currencies (“binary options”), on the North American Derivatives Exchange (“Nadex”).

2. In the first scheme, Defendants misrepresented that for customer deposits of between \$500 and \$5,000, Defendants would pool those customers’ funds in a single trading account at Nadex, and Butler, acting as the trader for the commodity pool operator (“CPO”),

NCI, would use those funds to trade binary options for the customers' benefit (the "Pool" or "Pooled Scheme"). In the second scheme, Defendants misrepresented that for each customer deposit of \$5,000 or more, Defendants would deposit those funds in separate customer trading accounts at Nadex. Butler, as a commodity trading advisor ("CTA"), would manage and trade those accounts on behalf of customers and use those funds to trade binary options for the customers' benefit (the "Managed Accounts" or "Managed Accounts Scheme").

3. Rather than trade customer funds as promised, Defendants misappropriated most, if not all, of customer funds for Butler's personal benefit, and then lied to customers in order to conceal Defendants' misappropriation.

4. In furtherance of the fraudulent schemes, Defendants made several material misstatements and omissions to customers in order to solicit customers as well as to perpetuate the schemes and hide Defendants' misappropriation.

5. For example, Defendants created and distributed to customers of both the Pooled Scheme and Managed Accounts Scheme false: (1) reports that purportedly showed that customer funds were growing at an exceptional rate; (2) Nadex statements that supposedly showed Defendants requesting that Nadex transfer hundreds of thousands of dollars from one of Defendants' Nadex accounts to one of Defendants' bank accounts; and (3) bank statements that purportedly showed Defendants paying hundreds of thousands of dollars from one of Defendants' bank accounts to supposedly other customers of Defendants as gains and profits on their trading with Defendants.

6. Additionally, although NCI was acting in the capacity of a CPO for the Pool during the Relevant Period, NCI failed to register with the Commission as a CPO. Similarly,

although Butler was acting as a CTA for the Managed Accounts Scheme during the Relevant Period, Butler failed to register with the Commission as a CTA.

7. By virtue of this conduct and the conduct further described herein, Defendants, directly, and Butler as a controlling persons of Negus, have engaged, are engaging, or are about to engage in acts and practices in violation of Sections 4c(b), 4m(1), and 4o(1)(A)-(B) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 6c(b), 6m(1), 6o(1)(A)-(B) (2012), and Commission Regulation (“Regulation”) 32.4, 17 C.F.R. § 32.4 (2019).

8. Unless restrained and enjoined by this Court, Defendants will likely continue to engage in acts and practices alleged in this Complaint and similar acts and practices, as described below.

9. Accordingly, the Commission brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), to enjoin Defendants’ unlawful acts and practices and to compel their compliance with the Act and the Regulations promulgated thereunder. In addition, the Commission seeks civil monetary penalties and restitution, and remedial ancillary relief, including, but not limited to, trading and registration bans, disgorgement, rescission, pre- and post-judgment interest, and such other and further relief as the Court may deem necessary or appropriate.

10. The acts and omissions described herein all have been done during the Relevant Period by Butler in the scope of his employment or office at NCI. Therefore, NCI is liable for all acts and omissions described herein, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2019).

11. Butler was a controlling person of NCI throughout the Relevant Period. He did not act in good faith or knowingly induced, directly or indirectly, NCI’s violations of the Act and

Regulations described herein. Therefore, Butler is liable for NCI's violations of the Act and Regulations, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

## **II. JURISDICTION AND VENUE**

12. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2012) (federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (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). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice that violates any provision of the Act or any rule, regulation, or order promulgated thereunder.

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

## **III. THE PARTIES**

14. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1-26 (2012), and the Regulations promulgated thereunder, 17 C.F.R. pts. 1-190 (2019).

15. Defendant **Aaron B. Butler** is an individual who, during the Relevant Period, resided in Muscle Shoals, Alabama. Butler has never been registered with the Commission in any capacity. Butler is the sole founder, principal director and officer of NCI and, during the

Relevant Period, he controlled and still controls all aspects of NCI including the day-to-day operations, marketing and trading decisions.

16. Defendant **Negus Capital Incorporated** is an Alabama corporation that was formed on or about June 24, 2016 with the same principal address as Butler in Muscle Shoals, Alabama. NCI has never been registered with the Commission in any capacity.

#### **IV. BACKGROUND**

17. A “commodity pool” is defined in Section 1a(10) of the Act, 7 U.S.C. § 1(a)(10) (2012), as any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.

18. A “commodity pool operator” is defined in Section 1a(11) of the Act, 7 U.S.C. § 1(a)(11) (2012), as any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of trading in commodity interests.

19. A “commodity trading advisor” is defined in Section 1(a)(12) of the Act, 7 U.S.C. § 1(a)(12) (2012), as any person who for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any commodity option as well as any person who for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning the value of or the advisability of trading in any commodity option.

20. A “binary option” is a type of options contract in which the payout depends entirely on the outcome of a yes/no proposition, typically relating to whether the price of a

particular asset that underlies the binary option will rise above or fall below a specified amount. Unlike other types of options, a binary option does not give the holder the right to purchase or sell the underlying asset. When the binary option expires, the option holder will receive either a pre-determined amount of cash or nothing at all.

21. Section 2(c)(2)(B)(i)(I) and (II), 7 U.S.C. § 2(c)(2)(B)(i)(I), (II) (2012), provides in relevant part that the Act applies to, and the CFTC shall have jurisdiction over, an agreement, contract or transaction in foreign currency (“forex”) that is an option and is offered to, or entered into with, a person that is not an eligible contract participant (“ECP”), unless the counterparty, or the person offering to be the counterparty, of the person is one of the enumerated exceptions not applicable here.

22. An ECP is defined by 7 U.S.C. § 1a(18)(A)(xi), in relevant part, as an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$10,000,000, or \$5,000,000 and who enters into the agreement, contract or transaction to manage the risk associated with an asset owned or a liability incurred, or reasonably likely to be owned or incurred, by the individual.

## V. FACTS

### A. Butler’s Mentorship Program

23. Before and during the Relevant Period, Butler offered a program to U.S. citizens through social media companies, such as Facebook, on how to trade binary options, including those involving forex, for a fee. Specifically, to induce customers to join his program, Butler made social media posts on Facebook that advertised training and personal mentoring for trading binary options. For example, one of Butler’s posts to Facebook was titled “GRP [Get Rich

Program] Mentorship.” In that post, Butler advertised that for a one-time fee of \$300, he would provide the following:

- “Personal mentoring with direct access to mentor[;]”
- “Webinars[;]”
- “Nadex mastery course[;]”
- “Tax advice[;]”
- “Mobile alerts – never miss a setup[;]” and
- “Autotrading software – program will trade the current trend for you[.]”

24. In that same post Butler advertised that: “We don’t teach ‘strategies’[.] We teach you how to trade the structural nature that all assets follow! All students become eligible to accompany me on vacation for personal in-house trading sessions!”

25. As a result of Butler’s social media posts, at least 65 individuals located throughout the United States paid Butler an initiation fee to join his mentoring program for training on trading binary options and obtained access to a private Facebook Group/Page that Butler had created. Through this private group/page customers could, among other things, interact with Butler directly.

**B. Defendants’ Pooled and Managed Accounts Schemes**

26. During the Relevant Period, Defendants fraudulently solicited at least \$300,000 from more than 65 members of the private Facebook Group/Page to participate in one of two schemes concerning trading binary options on Nadex, a U.S.–based, retail–focused, online binary options exchange.

27. In the first scheme, Defendants misrepresented that for customer deposits of between \$500 and \$5,000, Defendants would pool that customer’s funds with other customer

funds in a single trading account at Nadex. Butler, acting as the trader for the CPO, NCI, would use those funds to trade binary options for the benefit of the pool and its participants.

28. In the second scheme, Defendants misrepresented that for each customer deposit of \$5,000 or more, Defendants would put the customer's funds in separate customer trading accounts at Nadex. Butler, as a CTA, would manage and trade binary options for each customer account. Further, Butler told one or more customers that he would take a percentage of the profits as compensation for managing and trading their funds.

**C. Defendants' Acts, Misrepresentations and Omissions To Solicit Customers and Perpetuate the Two Schemes**

29. In furtherance of the fraudulent schemes and during the Relevant Period, Defendants made material misrepresentations and omissions and created fabricated financial statements in order to solicit customers, perpetuate the two schemes, and hide Defendants' misappropriation.

**i. Defendants' Misrepresentations in Contract Guaranteeing To Return Principal If No Profit Earned Within First Six Months**

30. First, Defendants provided a contract to prospective customers. Depending on if the customer executed a six month or twelve month contract, Defendants, among other things, guaranteed to return the customers' initial deposit of funds if no profit was earned from trading at the end of the first six months or twelve months after execution of the contract.

31. For example, the six month contract which was entitled "Negus Capital," stated that Defendants were "required to present the [customer a] six-month trading [update]" on the profitability of their investment from the date the customer first invested, and that if, at the end of the first six months Defendants did not have a profit, Defendants "**will be required to return the [] investment to the [customer].**" (Emphasis original).



32. Many, if not all, of the customers for both the Pooled Scheme and Managed Accounts Scheme, executed these contracts.

33. Thereafter, Defendants did not trade customer funds and no profit was realized even though six months or twelve months had passed since execution of the contracts.

Therefore, Defendants were obligated to return to customers their funds pursuant to the terms of the contracts. However, despite customer requests to Defendants to return their funds at the expiration of the contracts, Defendants did not return those funds.

**ii. Defendants' Misrepresentations About Butler's Trading Experience and Track Record**

34. Second, Defendants misrepresented Butler's trading experience on Nadex and track record with respect to trading commodities and, in particular, binary options on Nadex.

35. For example, Defendants represented to one or more customers that Butler had been trading binary options for years on Nadex and was very profitable having made millions of dollars from his trading. In reality, however, Butler traded very little in the past on Nadex and was, for the most part, unprofitable. Specifically, Butler opened a Nadex account in his name in 2014. From 2014 and continuing through the Relevant Period, Butler funded that account with approximately \$910. During this time, no customer funds from Defendants' two fraudulent schemes were used to fund that account. Further, during this time, Butler traded and lost approximately \$720 in that account.

**iii. Defendants' Misrepresentations About Profits**

36. Third, Defendants made numerous representations to customers about their supposed trading profits.

37. For example, when Butler was soliciting prospective customers for funds in both schemes, he told one or more customers that depending on how much the customer deposited,

the customer could earn profits in the six- to seven-figure range as a result of Defendants' trading. Defendants also posted supposed account statements showing purported payouts to prior customers of Defendants on his private Facebook Group/Page. These account statements were fabricated and, upon information and belief, were created by Defendants to induce customers to deposit funds with Defendants.

**iv. Defendants' Misrepresentations About Investment Growth**

38. Fourth, Defendants created and distributed false growth reports to customers that purportedly showed that the funds the customers had deposited with Defendants were growing (i.e., profiting) at exceptional rates for both schemes. In reality, however, these growth reports were false since Defendants did not use customer funds to trade binary options for either of the schemes; rather, they misappropriated them for Butler's personal benefit.

39. For example, on or about December 29, 2017, Defendants provided a customer who had deposited \$10,000 with a growth report purportedly showing the increase in value of his account with Defendants. That growth report represented that his account had grown by \$13,000 in approximately two months. In reality, the growth report was false because Defendants had not used the customer's funds to trade binary options. Instead, Defendants misappropriated the customer's funds for Butler's personal benefit.

**v. Defendants' Misrepresentations Concerning Nadex Statements**

40. Fifth, Defendants created and distributed false Nadex statements to their customers of both schemes that supposedly showed Defendants requesting that Nadex transfer hundreds of thousands of dollars from Defendants' Nadex accounts to Defendants' bank accounts. In reality, however, Defendants never had hundreds of thousands of dollars in accounts at Nadex.

**vi. Defendants' Misrepresentations Concerning Bank Statements**

41. Sixth, Defendants created and distributed false bank statements to their customers of both schemes that purportedly showed Defendants paying hundreds of thousands of dollars from these bank accounts to supposedly other of Defendants' customers. These supposed payments were used by Defendants to show that customers were making profits because of Defendants successful trading at Nadex. In reality, however, Defendants never paid any such returns to their customers.

**vii. Defendants' Omissions That They Would Not Trade Customer Funds or Misappropriate Funds**

42. Seventh, Defendants failed to disclose to customers that they would not use customer funds from the Pooled Scheme and Managed Accounts Scheme to trade binary options. Defendants also failed to disclose to customers that they would misappropriate those funds for Butler's personal benefit.

**D. Customers Provide Funds to Defendants to Trade Binary Options**

43. Once prospective customers decided to trade binary options through Defendants, they were instructed to provide funds to Defendants by sending the funds directly to Butler.

44. For example, some customers provided funds to Defendants by: (1) using PayPal; (2) wiring funds across state lines to bank accounts in the name of Butler; or (3) sending cashier's checks, personal checks, and cash to Defendants which were deposited directly into Butler's bank accounts.

45. As a result of Defendants' solicitations, more than 65 people, including but not limited to Alabama residents, provided Defendants at least \$300,000 in amounts ranging from \$1,000 to \$20,000. These funds were to be used for the specific purpose of trading binary options.

**E. Defendants Did Not Trade Customer Funds But Rather Misappropriated Them for Butler's Personal Use**

46. Despite receiving these funds from customers for the purpose of trading binary options, during the Relevant Period, Defendants misappropriated those customers' funds for Butler's personal benefit.

47. For example, from August 14, 2017 to March 5, 2018, Defendants, through Butler, received at least \$338,840.90 from customers and spent \$326,158.34 on themselves. Defendants spent most of the monies that they received on travel, entertainment, personal items, and jewelry in venues located in Alabama and other states for Butler's benefit. Such purchases included approximately \$34,833.13 at various jewelry stores in Alabama and other states. Defendants, through Butler, also spent approximately \$1,800 purchasing Toys "R" Us gift cards. Additionally, Defendants, through Butler, spent over \$11,000 at Apple stores during the time period.

48. During the Relevant Period, several customers, who had provided funds to Defendants to trade on their behalf, requested to make withdrawals from their accounts with Defendants. Defendants refused to return those funds.

**F. Defendants' Invention that Government Authorities Froze Their Accounts in Order To Perpetuate Fraud**

49. As Defendants failed to return customer funds, customers began to post messages to the Facebook Group/Page that were critical of Defendants, questioning the validity of their representations and promises.

50. In response, Butler subsequently blocked on social media, including the Facebook Group/Page, those customers seeking a refund of their money and initiation fee and alleged that

he was unable to make any refunds to those customers because Defendants' bank and trading accounts had been "frozen" by government authorities including the Commission.

51. At no time during or any time after the Relevant Period has any government authority, including the Commission, frozen any of Defendants' bank or trading accounts.

52. Upon information and belief, Defendants' statements about the supposed freeze were made by Defendants with the intent to deceive customers and conceal and perpetuate Defendants' fraud.

**VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT  
AND COMMISSION REGULATIONS**

**COUNT ONE**

**Violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and Regulation 32.4,  
17 C.F.R. § 32.4 (2019)  
(Options Fraud)**

53. Paragraphs 1 through 52 are realleged and incorporated herein by reference.

54. 7 U.S.C. § 6c(b) makes it unlawful for any person to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity regulated under the Act which is of the character of, or is commonly known to the trade as, inter alia, an "option", "bid", "offer", "put", or "call", contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.

55. 17 C.F.R. § 32.4 provides that, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, it shall be unlawful for any person, directly or indirectly: (a) to cheat or defraud or attempt to cheat or defraud any other person; (b) to make or cause to be made to any other person any false report or

statement thereof or cause to be entered for any person any false record thereof; or (c) to deceive or attempt to deceive any other person by any means whatsoever.

56. Defendants violated 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4 by, as alleged above, cheating and defrauding, or attempting to cheat and defraud, customers, in connection with Defendants' trading binary options on their customers' behalf by, among other things, intentionally or recklessly: (1) misappropriating customer funds; (2) making material misrepresentations about Defendants trading experience, track record, profitability, and that they would actually trade binary options on Nadex; and (3) creating and distributing to customers fabricated financial statements.

57. The foregoing acts, omissions, and failures by Butler occurred within the scope of his employment or office with NCI. Therefore, NCI is liable for Butler's acts, omissions, and failures in violation of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4 pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2019).

58. Butler held and exercised direct and indirect control over NCI and either did not act in good faith or knowingly induced NCI's violations of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4. As a controlling person of NCI, Butler is liable for NCI's violations of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4 pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

59. Each misappropriation, misrepresentation, omission of material fact, and false statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4.

## **COUNT TWO**

### **Violations of Section 4o(1)(A)-(B) of the Act, 7 U.S.C. § 6o(1)(A)-(B) (2012)** **(CPO and CTA Fraud)**

60. Paragraphs 1 through 52 are realleged and incorporated herein by reference.

61. During the Relevant Period, NCI acted as a CPO, as defined, in relevant part, by 7 U.S.C. § 1a(11) in that it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, operated for the purpose of trading in commodity interests and, in connection therewith, solicited, accepted, or received from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including, in relevant part, commodity options authorized under Section 4c of the Act.

62. 7 U.S.C. § 6o(1)(A)-(B), among other things, prohibits CPOs whether registered with the Commission or not, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, from employing devices, schemes or artifices to defraud any client or participant or prospective client or participant, or engaging in transactions, practices, or courses of business which operate as a fraud or deceit upon any client or participant or prospective client or participant.

63. 7 U.S.C. § 6o(1)(A)-(B), among other things, also prohibits CTAs whether registered with the Commission or not, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, from employing devices, schemes or artifices to defraud any client or participant or prospective client or participant, or engaging in transactions, practices, or courses of business which operate as a fraud or deceit upon any client or participant or prospective client or participant.

64. NCI directly violated 7 U.S.C. § 6o(1)(A)-(B) while acting in its capacity as a CPO because it, among other things, intentionally or recklessly: (1) misappropriated customer funds; (2) made material misrepresentations about Defendants trading experience, track record,

profitability, and that they would actually trade binary options on Nadex; and (3) created and distributed to customers fabricated financial statements.

65. Butler directly violated 7 U.S.C. § 6o(1)(A)-(B) of the Act while acting in his capacity as a CTA for the Managed Accounts Scheme, because he, among other things, intentionally or recklessly: (1) misappropriated customer funds; (2) made material misrepresentations about Defendants trading experience, track record, profitability, and that they would actually trade binary options on Nadex; and (3) created and distributed to customers fabricated financial statements.

66. The foregoing acts, omissions, and failures by Butler occurred within the scope of his employment or office with NCI. Therefore, NCI is liable for Butler's acts, omissions, and failures in violation of 7 U.S.C. § 6o(1)(A)-(B) pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2.

67. Butler held and exercised direct and indirect control over NCI and either did not act in good faith or knowingly induced NCI's violations of 7 U.S.C. § 6o(1)(A)-(B). As a controlling person of NCI, Butler is liable for NCI's violations of 7 U.S.C. § 6o(1)(A)-(B), pursuant to 7 U.S.C. § 13c(b).

68. Each misappropriation, misrepresentation, omission of material fact, and false statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6o(1)(A)-(B).

### **COUNT THREE**

#### **Violations of Section 4m(1) of the Act, 7 U.S.C § 6m(1) (2012), (Failure to Register as a CPO)**

69. Paragraphs 1 through 52 are realleged and incorporated herein by reference.



70. 7 U.S.C § 6m(1) makes it unlawful for any CPO, unless registered with the Commission, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO.

71. During the Relevant Period, NCI engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests. Therefore, NCI constituted a CPO as defined by 7 U.S.C. § 1a(11).

72. During the Relevant Period, NCI, while using the mails or means of interstate commerce in connection with business as a CPO, was not registered with the Commission as a CPO. Thus, NCI acted as an unregistered CPO in violation of 7 U.S.C § 6m(1).

73. Butler held and exercised direct and indirect control over NCI and either did not act in good faith or knowingly induced NCI's violations of 7 U.S.C § 6m(1). As a controlling person of NCI, Butler is liable for NCI's violations of 7 U.S.C § 6m(1) pursuant to 7 U.S.C. § 13c(b).

#### **COUNT FOUR**

##### **Violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012)** **(Failure to Register as a CTA)**

74. Paragraphs 1 through 52 are realleged and incorporated herein by reference.

75. With certain specified exceptions and exemptions not applicable here, 7 U.S.C. § 6m(1) makes it unlawful for any CTA to make use of the mails or any means or instrumentality of interstate commerce in connection with its business unless it is registered with the CFTC.

76. 7 U.S.C. § 1a(12) defines a CTA, in relevant part, as “any person who, for compensation or profit, engages in the business that is of advising others , either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading” futures or options.

77. As set forth above, Butler acted as a CTA when he, for compensation or profit, advised and directed the purported trading of the Managed Accounts Scheme’s customers.

78. As set forth above, Butler used the mails or other means or instrumentalities of interstate commerce in connection with the Managed Accounts Scheme’s business.

79. Butler violated 7 U.S.C. § 6m(1) by engaging in these activities without having registered as a CTA.

## **VII. RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and pursuant to its own equitable powers:

A. Enter an order finding that Defendants violated Sections 4c(b), 4m(1), and 4o(1)(A)-(B) of the Act, 7 U.S.C. §§ 6c(b), 6m(1), 6o(1)(A)-(B) (2012), and Regulation 32.4, 17 C.F.R. § 32.4 (2019);

B. Enter an order of permanent injunction restraining, enjoining and prohibiting Defendants and any other person or entity in active concert with them, from engaging in conduct in violation of 7 U.S.C. §§ 6c(b), 6m(1), and 6o(1)(A)-(B) and 17 C.F.R. § 32.4;

C. Enter an order of permanent injunction prohibiting Defendants and any other person or entity in active concert with them from, directly or indirectly:

- 1) Trading on or subject to the rules of any registered entity (as that term is defined by Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012));

- 2) Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019)), for accounts held in the name of any Defendant or for accounts in which any Defendant has a direct or indirect interest;
- 3) Having any commodity interests traded on any Defendant’s behalf;
- 4) 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;
- 5) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling of any commodity interests;
- 6) 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) (2019); and
- 7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9);

D. Enter an order requiring Defendants, as well as any of their successors, to disgorge to any officer appointed by the Court all benefits received from acts or practices that constitute violations of the Act, as amended, and Regulations as described herein, including, but not limited to, salaries, commissions, loans, fees, revenues, and trading profits derived, directly

or indirectly, plus pre-judgment interest thereon from the date of such violations, plus post-judgment interest;

E. Enter an order requiring Defendants, as well as their successors, to make full restitution, pursuant to such procedure as the Court may order, to every person or entity who sustained losses proximately caused by Defendants' violations (in the amount of such losses), as described herein, plus pre-judgment interest thereon from the date of such violations, plus post-judgment interest;

F. Enter an order directing Defendants and any of their successors, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the customers whose funds were received by them as a result of the acts and practices which constituted violations of the Act and Regulations, as described herein;

G. Enter an order directing each Defendant to pay a civil monetary penalty, to be assessed by the Court, in an amount not to exceed the penalty prescribed by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1) (2012), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, 129 Stat. 584 (2015), title VII, Section 701, *see* Regulation 143.8, 17 C.F.R. § 143.8 (2019), for each violation of the Act and Regulations, as described herein.

H. Enter an order directing that Defendants, and any successors thereof, make an accounting to the Court of all of their assets and liabilities, together with all funds they received from and paid to investors and other persons in connection with commodity interests and all disbursements for any purpose whatsoever of funds received from commodity interests,

including salaries, commissions, interest, fees, loans, and other disbursement of money or property of any kind from at least March 16, 2017 to the date of such accounting;

I. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2413(a)(2) (2012); and

J. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: November 4, 2019

Respectfully submitted,

/s/ James W. Deacon

James W. Deacon

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(appearing pursuant to L.R. 83.1(c))

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