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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

BRETT G. HARTSHORN,

Defendant.

No. 16-CV-9802

**CONSENT ORDER FOR PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF AGAINST DEFENDANT BRETT G. HARTSHORN**

I. INTRODUCTION

On December 20, 2016, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint (ECF No. 1) against Defendant Brett G. Hartshorn (“Hartshorn” or “Defendant”) 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. §§ 1–26 (2018), and the Commission Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. pts. 1–190 (2019).

II. CONSENTS AND AGREEMENTS

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

1. Consents to the entry of this Consent Order for Permanent Injunction and Other Equitable Relief Against Defendant Brett G. Hartshorn (“Consent Order”);
2. Affirms that he has read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the CFTC or

any member, officer, agent, or representative thereof, or by any other person, to induce consent to this Consent Order;

3. Acknowledges service of the summons and Complaint;

4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018);

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 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, 5 U.S.C. § 504 (2018) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the CFTC in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2019), relating to, or arising from, this action;

(b) Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 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 action;

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

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

10. Acknowledges that in *United States of America v. Brett G. Hartshorn*, Case No. 8:2020-CR-22-T-365PF (M.D. Fla., Tampa Division), Defendant pleaded guilty to violating 18 U.S.C. § 1001 (2012), and further acknowledges that in connection with that plea, Defendant admitted the facts set forth in his Plea Agreement (ECF No. 3, entered January 21, 2020), a copy of which is attached as Exhibit A to this Order, and Defendant admits to those same facts, as if set forth in this Consent Order. Defendant also admits to all of the findings made in this Consent Order;

11. Agrees to provide immediate notice to this Court and the CFTC by certified mail, in the manner required by paragraph 48 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

12. 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 Defendant in any other proceeding.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 (2018), as set forth herein.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

The Parties to this Consent Order

13. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act and the Regulations.

14. Defendant Hartshorn resides in Sarasota, Florida and has never been registered with the CFTC in any capacity.

Defendant's Fraudulent Solicitation and Misappropriation of Client Funds

15. From at least June 18, 2008, to in or around 2014 (the "Relevant Period"), Defendant fraudulently solicited at least thirteen individuals (all of whom were non-Eligible Contract Participants ("ECPs," as defined in Section 1a(18) of the Act, 7 U.S.C. § 1a(18) (2018)) including members of his church and individuals he met in his local community, to invest in off-exchange foreign currency (hereinafter, "forex" or "foreign currency") on a leveraged, margined, or financed basis and to give Defendant discretionary authority to trade forex on their behalf.

16. Defendant solicited and/or managed at least \$906,000 in client funds and misappropriated for his own personal benefit funds of at least two clients.

17. Defendant told most, if not all, clients and prospective clients (collectively, "clients") that he had profitably traded forex on behalf of himself and others. He told clients that they could expect substantial profits if they permitted Defendant to trade forex on their behalf (telling at least one client, for example, that Defendant would be able to double the client's money in a matter of months). Defendant also assured clients that he would limit the risk of loss to client funds. These statements were false.

18. Despite touting his skill and past success trading foreign currency on behalf of himself and others, and assuring clients that he would limit their risk of loss, the reality was far different. As Defendant well knew, Defendant had repeatedly employed risky trading strategies and suffered significant losses trading forex on behalf of others—often devastating single-day losses resulting from margin calls. Defendant never disclosed these losses to subsequent clients; rather, he told clients, falsely, that he had successfully traded forex for himself and for others.

19. For most, if not all, of his clients, Defendant proposed to be compensated by clients by splitting “profits” earned in his trading of client funds. The actual value (also known as the equity value) of a trading account consists of the account’s cash balance plus the value of any open positions in the account. However, when Defendant calculated his share of “profits,” he considered only the cash balance of the account, ignoring the fluctuating (and often declining) value of a client’s open trading positions. This resulted in Defendant collecting thousands of dollars in fees even as a client’s total equity was declining.

20. Defendant did not disclose that under this so-called “profit” sharing arrangement, he could be (and often was) compensated even as trading losses accumulated. Defendant failed to disclose material information to prospective clients, i.e., that he could be compensated even as clients’ investments lost money, and Defendant thereby engaged in conduct that operated as a fraud or deceit on his clients.

21. Defendant solicited some clients to open forex trading accounts in their own names (or in the names of entities they owned and controlled), to deposit funds into those accounts, and to provide Defendant the username and password for the accounts so that Defendant could buy and sell forex in those accounts on behalf of clients. Using the usernames and passwords provided by clients, Defendant logged into his clients’ forex trading accounts and

bought and sold forex (including currency pairs involving the Euro, British Pound, and Japanese Yen) on behalf of those clients.

22. Defendant solicited other clients to deposit funds directly into Defendant's personal bank account. Defendant told these clients that he, Defendant, would deposit their funds into his own personal forex trading account, and that he would use those funds to trade forex on the clients' behalf. For these clients, Defendant deposited their funds (or a portion thereof) into his own personal trading account and used the funds to trade forex, making all trading decisions with respect to these clients' funds. Defendant had the authority to access these clients' funds, and he alone had the authority to transfer the funds from his forex trading account. Defendant did, in fact, on numerous occasions, transfer client funds from his forex trading account into his own personal bank account.

23. During the Relevant Period, Defendant misappropriated for his own personal benefit at least \$57,414 in client funds that clients transferred and entrusted to Defendant for the purpose of trading forex. Defendant never disclosed to his other clients that he had misappropriated for his own personal benefit funds that had been entrusted to him for the purpose of trading forex.

Defendant's Failure To Register as a CTA and Violation of CTA Regulations

24. In addition, Defendant, for compensation or profit, advised others as to the value of or advisability of trading in off-exchange retail forex on a leveraged, margined, or financed basis, and exercised discretionary trading authority over forex accounts for, or on behalf of persons that were not ECPs (as defined in 7 U.S.C. § 1a(18)), without registering as a Commodity Trading Advisor ("CTA"), and made use of the mails or any means or instrumentality of

interstate commerce (including the internet, telephone, and cell phone) in connection with his business as a CTA.

25. Defendant violated the Regulations by accepting client funds in the his own name, failing to distribute a disclosure document to clients, and failing to produce to the Commission, in response to an administrative subpoena, documents that were required to be maintained by Defendant in his capacity as a CTA.

B. Conclusions of Law

Jurisdiction and Venue

26. This Court possesses jurisdiction over this action pursuant to 28 U.S.C. § 1331 (2012) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (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). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2018), provides that the CFTC may bring actions for injunctive relief or to enforce compliance with the Act or any rule, regulation, or order thereunder in the proper district court of the United States whenever it shall appear to the CFTC that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

27. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because Defendant and his clients sent funds to open and maintain retail forex trading accounts with a futures commission merchant located in this District.

Fraud in Connection with Retail Forex Transactions (Violations of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2018) and Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2019))

28. By the conduct described in paragraphs 1 through 27 above, Defendant 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 clients, by willfully making false statements to clients, and by willfully deceiving or attempting to deceive clients.

**Fraud and Deceit by a CTA
(Violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2018))**

29. By the conduct described in paragraphs 1 through 27 above, Defendant violated 7 U.S.C. § 6o(1) by knowingly or recklessly employing schemes to defraud clients and engaging in transactions, practices, and courses of business that operated as a fraud or deceit upon clients.

**Failure To Register as a CTA
(Violations of Sections 2(c)(2)(C)(iii)(I)(bb) and 4m(1) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), 6m(1) (2018), and Regulation 5.3(a)(3)(i), 17 C.F.R. 5.3(a)(3)(i) (2019))**

30. By the conduct described in paragraphs 1 through 27 above, Defendant acted as a CTA by exercising discretionary trading authority over client accounts for compensation or profit, and by engaging 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 foreign currency contracts. By acting as a CTA without being registered with the CFTC as required, Defendant violated 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), 6m(1) and 17 C.F.R. 5.3(a)(3)(i).

**Failure To Comply with Relevant CTA Requirements
(Violations of Regulations 4.30, 4.31, and 5.4, 17 C.F.R. §§ 4.30, 4.31, 5.4 (2019))**

31. By the conduct described in paragraphs 1 through 27 above, Defendant, while acting as a CTA, violated 17 C.F.R. §§ 4.30, 4.31, and 5.4 by: (1) soliciting, accepting, or receiving from existing or prospective client funds in the CTA's name and (2) failing to deliver or cause to be delivered the required disclosure document to prospective clients.

**Failure To Produce Books and Records
(Violations of Regulation 1.31, 17 C.F.R. § 1.31 (2019))**

32. By the conduct described in paragraphs 1 through 27 above, Defendant failed to produce documents, or make documents available to the CFTC for reproduction, that he was required to maintain as a CTA, in violation of 17 C.F.R. § 1.31.

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

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

34. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), Defendant is permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Cheating or defrauding, or attempting to cheat or defraud other persons; issuing or causing to be issued false reports; and willfully deceiving or attempting to deceive other persons in connection with any order to make, or the making of, any foreign currency transaction that is made, or to be made, for or on behalf of, or with, any other person in violation of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2018), and Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2019);
- b. Using the mails or other means or instrumentalities of interstate commerce to directly or indirectly employ a device, scheme, or artifice to defraud clients or prospective clients, or engage in transactions, practices, or courses of business

which operate as a fraud or deceit upon clients or prospective clients, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2018);

- c. Acting as an unregistered CTA by exercising discretionary trading authority over client accounts for compensation or profit, and by engaging 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 foreign currency contracts, in violation of Sections 2(c)(2)(C)(iii)(I)(bb), 4m(1) of the Act, 7 U.S.C.

§§ 2(c)(2)(C)(iii)(I)(bb), 6m(1) (2018), and Regulation 5.3(a)(3)(i), 17 C.F.R.

§ 5.3(a)(3)(i) (2019);

- d. Soliciting, accepting, or receiving from existing or prospective clients funds in the Defendant's name and/or failing to deliver or cause to be delivered the required disclosure document to prospective clients, in violation of Regulations 4.30, 4.31, and 5.4, 17 C.F.R. §§ 4.30, 4.31, 5.4 (2019); and
- e. Failing to produce documents, or make documents available to the CFTC for reproduction, that Defendant is required to maintain as a CTA, in violation of Regulation 1.3, 17 C.F.R. § 1.31 (2019).

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

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018));
- b. Entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019), for his own personal account or for any account in which he has 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) (2019); and/or
- g. 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 (as that term is defined in 7 U.S.C. § 1a(38)), registered, exempted from registration or required to be registered with the CFTC except as provided for in 17 C.F.R. § 4.14(a)(9).

V. RESTITUTION

36. Defendant shall pay restitution in the amount of eight hundred ninety thousand dollars (\$890,000) (“Restitution Obligation”). If the Restitution Obligation is not paid immediately, post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

37. Defendant is currently the defendant in a criminal action in which he has admitted, among other things, to misconduct that is at issue in this matter, *United States of America v. Brett G. Hartshorn*, Case No. 8:2020-CR-22-T-365PF (M.D. Fla., Tampa Division).

For amounts disbursed to Defendant's clients as a result of satisfaction of any restitution ordered in the Criminal Action, the Defendant shall receive a dollar-for-dollar credit against the Restitution Obligation. Within ten days of disbursement in the Criminal Action to Defendant's clients, Defendant shall, under a cover letter that identifies the name and docket number of this proceeding, transmit to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, copies of the form of payment to those clients.

38. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendant's clients, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall receive restitution payments from Defendant and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

39. Defendant shall make Restitution Obligation payments, and any post-judgment interest payments, under this Consent Order to the Monitor in the name "Hartshorn, Brett G. – Settlement/Restitution Fund" and shall send such payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies the paying Defendant and the name and docket number of this proceeding. Defendant 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.

40. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendant's clients identified by the CFTC or may defer distribution until such time as the Monitor deems appropriate.

41. Defendant shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant's clients to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendant shall execute any documents necessary to release funds that he has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

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

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

44. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each client of Defendant who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Defendant to ensure continued

compliance with any provision of this Consent Order and to hold Defendant in contempt for any violations of any provision of this Consent Order.

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

A. Provisions Related to Monetary Sanctions

46. Partial Satisfaction: Acceptance by the CFTC or the Monitor of any partial payment of Defendant's Restitution Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the CFTC's right to seek to compel payment of any remaining balance.

B. Cooperation

47. Defendant shall cooperate fully and expeditiously with the CFTC, including the CFTC's Division of Enforcement, in this action, and in any current or future CFTC investigation or action related thereto. Defendant shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.

VI. MISCELLANEOUS PROVISIONS

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

Notice to CFTC:

Manal M. Sultan, Deputy Director
Division of Enforcement
Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005

Notice to Defendant:

Brett G. Hartshorn

15176 Fruitville Road
Sarasota, FL 34240-9364

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

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

50. 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.

51. 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.

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

53. Waiver of Service, and Acknowledgement: Defendant waives service of this Consent Order and agrees that entry of this Consent Order by the Court and filing with the Clerk of the Court will constitute notice to the Defendant of its terms and conditions.

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

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

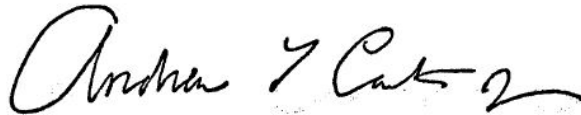
56. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, 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.

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

58. Agreements and Undertakings: Defendant shall comply with all of the undertakings and agreements set forth in this Consent Order.

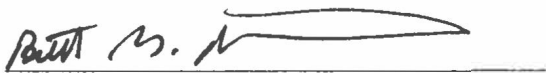
There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Consent Order for Permanent Injunction and Other Equitable Relief against Defendant Brett G. Hartshorn* forthwith and without further notice.

IT IS SO ORDERED on this 22nd day of May, 2020.



ANDREW L. CARTER, JR.
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:



Brett G. Hartshorn
15176 Fruitville Road
Sarasota, FL 34240-9364

Date: 2/10/20



R. Stephen Painter, Jr.
Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005
(646) 746-9815
spainter@cftc.gov

Dated May 12, 2020

EXHIBIT A

count for persons other than individuals, such as corporations. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offense(s), and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offense(s), or to the community, as set forth below.

3. Elements of the Offense(s)

The defendant acknowledges understanding the nature and elements of the offense(s) with which defendant has been charged and to which defendant is pleading guilty. The elements of Count One are:

First: The defendant made a statement as charged;

Second: The statement was false;

Third: The falsity concerned a material matter;

Fourth: The defendant acted willfully, knowing that the statement was false; and

Fifth: The false statement was made for a matter within the jurisdiction of a department or agency of the United States Government.

4. Indictment Waiver

Defendant will waive the right to be charged by way of indictment before a federal grand jury.

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

6. Discretionary Restitution to Victim of Offense of Conviction

Pursuant to 18 U.S.C. § 3663(a) and (b), defendant agrees to make full restitution to the individuals in the amounts listed in attachment A and to any other victims as determined by the Court.

7. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant

Defendant's Initials RA

complies with the provisions of USSG §3E1.1 (b) and all terms of this Plea Agreement, including but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.5., the United States agrees to file a motion pursuant to USSG §3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

8. Low End

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a sentence at the low end of the applicable guideline range, as calculated by the Court. The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Defendant's Initials MA

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (28 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. The special assessment is due on the date of sentencing.

The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense(s) to which the defendant is pleading provide(s) for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Immigration Consequences of Pleading Guilty

The defendant has been advised and understands that, upon conviction, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

4. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any

recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

5. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that his financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines,

Defendant's Initials *mt*

restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

6. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

7. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

8. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

9. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

10. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's

defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

11. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

FACTS

From 2007 to in or around 2014 (the "Relevant Period"), Hartshorn fraudulently solicited numerous clients to invest in off-exchange foreign currency on a leveraged, margined, or financed basis ("forex" or "foreign currency").

During the Relevant Period, Hartshorn fraudulently solicited more than \$900,000 from at least 13 individuals. Hartshorn accumulated trading losses of over \$794,000 for clients, and he received commissions totaling more than \$112,000 in connection with the fraud. Hartshorn also misappropriated more than \$57,000 of client funds.

Hartshorn typically met his victims at church or socially in his local community. Hartshorn willfully told his clients, falsely, that he had successfully traded foreign currency for both himself and others, but he never disclosed to clients that he had actually suffered losses – often large single-day losses – when trading foreign currency on behalf of other clients.

Hartshorn also willfully told clients, falsely, that he would trade their funds in a manner to limit the risk of loss, failing to disclose his actual pattern and history of employing risky trading strategies and incurring trading losses on behalf of clients.

Often, Hartshorn engaged in trading strategies that resulted in margin calls in client accounts because the account equity became too low to support the margin requirement for open positions resulting from trades placed by Hartshorn. When these margin calls occurred, the margin calls resulted in the liquidation of open trades and the realization of trading losses.

Hartshorn entered into a purported “profit” sharing arrangement with clients but failed to disclose to clients that under that arrangement, Hartshorn could earn fees even as the clients’ forex investments incurred losses.

Hartshorn willfully told multiple clients, falsely, that their accounts were performing profitably when Hartshorn knew that the clients’ funds had been depleted by trading losses, fees, and withdrawals by Hartshorn into Hartshorn’s personal bank account.

Hartshorn knew that all of the false statements referred to above were false at the time he made them to clients, and those statements were material in that a reasonable investor would have considered the statements important in deciding whether to invest.

In addition, Hartshorn misappropriated for his own personal benefit funds that had been entrusted to him by clients for the purpose of trading forex. Hartshorn never disclosed this misappropriation to his clients.

Hartshorn, for compensation or profit, advised others as to the value or advisability of trading forex and exercised discretionary trading authority over accounts for or on behalf of his individual clients in connection with retail forex transactions. Hartshorn held himself out to the public as a commodity trading advisor, including by soliciting clients to use their funds to trade foreign currency and to give Hartshorn discretionary authority to trade forex on their behalf.

Nevertheless, Hartshorn has never been registered with the U.S. Commodity Futures Trading Commission (CFTC) in any capacity (nor was he eligible for any registration exemption) and has not distributed disclosure documents to clients as required by CFTC Regulation 4.31, 17 C.F.R. § 4.31. In addition, Hartshorn solicited, accepted, or received funds from clients in Hartshorn's name, and failed to produce certain required records to the CFTC in violation of CFTC recordkeeping regulations.

None of the individual clients solicited by Hartshorn were eligible contract participants, as defined by Section 1a(18)(A)(xi) of the Commodity Exchange Act, 7 U.S.C. § 1a(18)(A)(xi).

On November 7, 2018, Hartshorn was interviewed by agents of the Federal Bureau of Investigation.

In that interview, Hartshorn stated that investor funds were always placed in their respective investment account by the investor.

Hartshorn further stated that while he had direct access to investor accounts for trading, he never had the ability to withdraw any of those funds for personal use.

Hartshorn further stated that he never misappropriated any investor money.

Moreover, Hartshorn stated that he never used any investor money for personal reasons.

These statements to the FBI were willful and materially false.

In fact, multiple clients entrusted Hartshorn with their funds for the purpose of trading foreign currency, rather than placing the funds in their own respective trading accounts.

Furthermore, Hartshorn placed the funds that had been entrusted to him by multiple clients into his personal bank account (and transferred the funds or a portion thereof into his personal trading account); consequently, Hartshorn did have the ability to withdraw those funds for personal use.

Moreover, Hartshorn did misappropriate the funds of certain clients.

12. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

13. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 22 day of October, 2019.

Brett G. Hartshorn
Defendant

Adam Allen
Attorney for Defendant

MARIA CHAPA LOPEZ
United States Attorney

Robert A. Mosakowski
Assistant United States Attorney

Jay G. Trezevant
Assistant United States Attorney
Chief, Economic Crimes

Attachment A

<u>Name</u>	<u>Restitution Amount</u> ¹
Josh Graber	\$75,000.00
Richard McCampbell	\$167,001.97
Kenneth Cornacchione	\$42,511.46
Eldon Johnson	\$84,452.86
Carol Fisch Edward Fisch	\$109,214.80
Alastair Haddow	\$91,671.22
Richard Bellucci	\$85,939.97
Frank Vorias	\$43,052.24
Christopher Kiritsis	\$37,928.96
David Harding Jacqueline Harding	\$208,103.01
Greg Sheller	\$20,124.82
TOTAL	\$965,001.31

¹ Calculated as total amount of trading losses, commissions paid to Hartshorn, and/or amounts misappropriated.