UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of	:	CFTC Docket No. 04-20
WILLIAM ROGERS and MARIA TOCZYLOWSKI,	:	ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c), 6(d) and 8a(2) OF THE COMMODITY EXCHANGE ACT, AS AMENDED, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS
Respondents	:	

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that William Rogers ("Rogers") and Maria Toczylowski ("Toczylowski") have each violated § 4b(a)(2)(i)-(iii), 4d, 4g, and 4o(1) of the Commodity Exchange Act, as amended ("the Act"), 7 U.S.C. §§ 6b(a)(2)(i)-(iii), 6d, 6g, and 6o(1) (2002), and §§ 1.20, 1.22, 1.33, 1.35, 1.37, 32.6, and 166.2 of the Commission's Regulations, 17 C.F.R. §§ 1.20, 1.22, 1.33, 1.35, 1.37, 32.6, and 166.2, (2004), and that Rogers also failed to supervise in violation of Section 166.3 of the Regulations, 17 C.F.R. § 166.3 (2004). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether Rogers and Toczylowski ("Respondents") have engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of this administrative proceeding, Respondents have submitted Offers of Settlement ("Offers") that the Commission has determined to accept. Without admitting or denying the findings herein, Respondents acknowledge service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) and 8a(2) of the Commodity Exchange Act, as amended, Making Findings and Imposing Remedial Sanctions ("Order").

Respondents consent to the use of the findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.[1]

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[1] Respondents do not consent to the use of their Offers or the findings in this Order as the sole basis for any other proceeding brought by the Commission, other than a proceeding brought to enforce the terms of this Order. Respondents also do not consent to the use of their Offers or the findings in the Order by any other person or entity in this or any other proceeding. The findings made in the Order are not binding on any other person or entity, including, but not limited to, any person or entity named as a defendant or respondent in any other proceeding.

III.

The Commission finds that:

A. SUMMARY

From 1995 to 1999, Rogers was president of the futures division of Republic New York Securities Corporation ("RNYSC"). During that same time period, Toczylowski was a vice president of RNYSC's futures division. Between 1995 and 1999, Rogers and Toczylowski assisted Martin A. Armstrong ("Armstrong") and two entities that Armstrong wholly owned and controlled, Princeton Economics International Ltd. ("PEIL")[2] and Princeton Global Management Ltd. ("PGM")[3] ("the Princeton entities"), in carrying out a fraudulent scheme (generally referred to herein as "the Princeton Fraud"). Separately, another employee of Armstrong engaged in a fraudulent trade allocation scheme, also with the assistance of Rogers and Toczylowski.[4]

On September 13, 1999, the Commission filed an injunctive action in the United States District Court for the Southern District of New York ("SDNY") against Armstrong and the Princeton entities. The Commission's complaint alleges that Armstrong and the Princeton entities raised significant sums of money from the sale of Notes to Japanese institutional corporations and individuals ("Noteholders" or "investors"). It further alleges that Armstrong pooled the proceeds from the sale and used them to trade commodity futures and options at RNYSC. During the relevant time period, Armstrong and the Princeton entities incurred huge futures trading losses in excess of $600 million.[5] The complaint alleges that a number of deceptive and violative acts were committed in an attempt to conceal these massive losses.

On December 17, 2001, the Commission accepted an Offer of Settlement from RNYSC/HSBC USA, Inc.,[6] and entered into an Order Instituting Proceedings Pursuant To

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[2] PEIL is a limited liability company organized under the laws of the Turks and Caicos Islands, British West Indies, with the principal place of business located in Princeton, New Jersey. Armstrong and the employee serve as PEIL Directors.

[3] PGM is a limited liability company organized under the laws of the Turks and Caicos Islands, with its principal place of business located in Princeton, New Jersey. PGM is wholly owned by PEIL. Through PGM, PEIL owns companies, identified below as the PGM companies, that obtained the investor funds at issue.

[4] Simultaenously with this Order, the Commission is issuing a separate order finding that Harold Ludwig, an Armstrong employee, engaged in a fraudulent trade allocation scheme. Ludwig neither admitted nor denied the findings of fact contained in that Order by consenting to its entry. *See* Order Instituting Proceedings Pursuant to Section 6(c) and 6(d) of the Commodity Exchange Act, As Amended, Making Findings and Imposing Remedial Sanctions.

[5] Armstrong was incarcerated on January 14, 2000 for civil contempt stemming from his refusal to produce assets and records, and remains incarcerated at the date of this Order.

[6] Republic New York Corporation, then the parent of Republic New York Securities Corporation, merged with HSBC USA, Inc. on December 31, 1999, and the combined entity took the name HSBC USA, Inc. Republic New York Securities Corporation continued to be registered with the Commission until December 17, 2001, when its registration was revoked as the result of the settlement of a Commission enforcement action involving the same fraud.

Sections 6(c), 6(d) And 8a(2) Of The Commodity Exchange Act, As Amended, Making Findings And Imposing Remedial Sanctions (hereinafter referred to as the "December 17, 2001 Order"). In the December 17, 2001 Order, the Commission found that RNYSC aided and abetted the Princeton Fraud, engaged in a separate trade allocation fraud, failed to supervise, and violated segregation and record keeping obligations related to the handling of the Princeton accounts. Pursuant to the December 17, 2001 Order, RNYSC agreed to pay, and paid, a $5 million civil monetary penalty.

Rogers's and Toczylowski's conduct formed a substantial basis for the findings contained in the December 17, 2001 Order. During the relevant time period, Rogers, as President of RNYSC's Futures Division, and Toczylowski, as Vice President of the Division, provided services that were integral to the Princeton fraud. In particular, Rogers and Toczylowski executed NAV ("Net Asset Value") letters that they knew misrepresented the true values of the Princeton accounts. Rogers and Toczylowski, at Princeton's instruction, requested the movement of funds between the numerous accounts in furtherance of the fraudulent "shell game." Rogers and Toczylowski were aware of the trading losses sustained by the Princeton Noteholders and helped to deceive them.

Rogers and Toczylowski also knowingly assisted another Armstrong employee in a trade allocation scheme. As further discussed below, that employee allocated trades to his personal trading account to the detriment of Princeton accounts over which he also had trading authority. Rogers and Toczylowski assisted the unlawful trade allocation by, among other things, allowing the employee to delay the provision of account identification information on trading tickets until after trade execution, instead of at the time of order placement.

B. RESPONDENTS

William Rogers, who resides in Berwyn, Pennlsylvania, was, until September 1, 1999, President of the Futures Division of RNYSC in its Philadelphia office. Rogers served as Armstrong's contact for the Princeton business at Prudential Securities, Inc. ("Prudential"), and at RNYSC. In the face of termination of his business by Prudential, Armstrong moved his business to RNYSC in early 1995. Rogers joined RNYSC shortly thereafter and served as RNYSC's primary contact for the Princeton business until the fraud was made public in September 1999. Rogers opened every PGM account, and, according to trading tapes, Rogers had several hundred conversations with Armstrong and the Princeton representatives during the time period of the fraud. Rogers was registered with the Commission as an associated person ("AP") of RNYSC from April 1995 to September 1999, and was also an AP of Prudential from March 1988 to March 1995.

Maria Toczylowski, who resides in Philadelphia, Pennsylvania, was Vice President of Futures Trading for RNYSC in its Philadelphia office. Toczylowski was intimately involved with the perpetration of the Princeton fraud. Her responsibilities included the oversight of trading in the Princeton accounts, and coordinating with RNYSC's back office concerning the movement of funds. Toczylowski spoke with Armstrong and other Princeton representatives nearly every day. Toczylowski was registered as an AP with RNYSC from April 1995 to April

2000. Toczylowski was also registered as an AP with Prudential from November 1994 to March 1995 and has been registered with Gartmore SA Capital Trust from May 6, 2002 to the present.

C. FACTS

1. Rogers' and Toczylowski's Participation in the Princeton Fraud

Between 1995 and 1999, over 150 variously denominated Princeton Global Management (PGM) companies opened separate accounts and invested funds in those separate accounts at RNYSC. Through RNYSC, Armstrong appeared to create separate accounts on behalf of each Princeton Noteholder. However, unbeknownst to the Noteholders, invested funds were combined and commingled primarily to fund futures and options trading by Armstrong, and to pay off other Noteholders. Therefore, the individual corporate accounts were used in what amounted to a "shell game," in which money was moved due to availability of funds and not based upon beneficial ownership.

Rogers and Toczylowski knew that the Princeton entities intended for the investors to believe, and those investors did believe, that the individual PGM company accounts were established at Republic as separate segregated accounts for their benefit. Rogers and Toczylowski knew of the trading losses in the PGM accounts because they handled the trades.

a. *Rogers and Toczylowski knowingly issued false NAV letters*

RNYSC issued approximately 200 NAV letters, which misrepresented the actual credit balance and the amount of securities on deposit in the particular account. The NAV letters were usually drafted, for Rogers' signature, at RNYSC's Philadelphia office by either Toczylowski or an office assistant. Rogers and Toczylowski knew that the NAV letters failed to include any offset for trading losses, sales of securities, or other withdrawals attributable to the account, and did not advise that the account balance included transfers from other accounts rather than interest accrual or other investment return. Rogers and Toczylowski knew that Armstrong intended to and sent the NAV letters to the investors.

b. *Rogers and Toczylowski knowingly participated in the shell game*

Rogers and Toczylowski knew that the separate accounts opened by more than 150 PGM companies represented separate investments that were not to be combined and commingled. However, Rogers and Toczylowski treated the separate accounts as one fund for trading and freely transferred monies between and out of accounts. Rogers and Toczylowski acted without regard for the separate status of each account.

Despite this knowledge, on March 17, 1999, nearly four years after the commingling began and after trading losses were already in the hundreds of millions of dollars, Rogers transmitted a letter regarding a PGM account stating that "[t]his account is segregated and not commingled with any other PGM account. Any hedging that Princeton does for its yen exposure takes place in its own account using its credit lines at the bank. No other trading appears in the fixed rate Note accounts." Thus, at the time that Rogers knew that the accounts had all been improperly consolidated under one master account and that all collateral within the accounts was being used to fund commodity trading, Rogers was advising others that the accounts were segregated from each other, not commingled, and, at least for the fixed accounts, trading was limited to currency hedge trading.

2. The Fraudulent Trade Allocation Scheme

The Armstrong employee, with Rogers and Toczylowski's assistance, wrongfully allocated winning trades to an account that he owned with his wife. The losing trades were allocated to Princeton accounts over which the employee had trading authority. The following sets forth the factual information concerning that fraudulent allocation scheme.

a. *The employee establishes his personal trading account*

The Armstrong employee was responsible for managing a few Princeton accounts, including the Princeton International Aggressive Fund (Princeton Aggressive Fund) account, and the Princeton Global Management K-5 (PGM K-5) account.[7] He received a bonus based on a percentage of the profits he made in these accounts.[8] In 1997, he used the bonus he earned from his apparently successful trading to open a trading account designated as the Blue Horizon account. This was his personal trading account, established as a Turks and Caicos Island unincorporated association in the name of Blue Horizon Trading, Ltd., which he owned and controlled.[9] He continued to manage the PGM K-5 and Princeton Aggressive Fund accounts while trading for the Blue Horizon account. Now, however, with the help of Rogers and Toczylowski, he began to allocate winning trades to the Blue Horizon account. These trade allocations functioned to siphon funds away from the Japanese investors for the employee's own benefit.

b. *Trading results confirm the allocation scheme*

An analysis of the trading results for day trades for the S & P 500 futures contracts in the accounts managed by the employee show widely disparate returns that favor his Blue Horizon account. According to account documents, between June 1997 and August 1999, the Blue Horizon account day traded S&P 500 futures contracts on 98 days. Blue Horizon traded

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[7] These accounts were funded with monies obtained by Armstrong from Japanese investors, but due to Armstrong's constant transfer of funds and the commingling of investors' monies, it is not possible to determine which investor's funds were in which account.

[8] The employee received a larger bonus for profits from the Princeton Aggressive Fund account. Although the Commission's claim in this instance only addresses the trade allocation to his personal account beginning in 1997, prior to that time Rogers and the employee allocated trades to enhance the employee's performance in the Princeton Aggressive Fund account.

[9] There were, in fact, two Blue Horizon accounts opened by the employee at RNYSC. The first account (no. 45143) was opened in February 1997 and traded for only a few days in June and July 1997. At the end of July, the cash equity was transferred to another account in the name of Blue Horizon, no. 45153.

profitably on 83 of the 98 days, which translates into an 85% profitability rate and the realization of some $4.5 million in profits. In contrast, the other two accounts over which the employee had control were profitable only approximately 40% of the time. The Princeton Aggressive Fund account day traded S&P 500 futures contracts on 275 days between June 1997 and August 1999, and the trades were profitable on 113 of those days, providing a 40% profitability rate. The Princeton Aggressive Fund account lost approximately $550,000 during that period. The PGM K-5 account day traded S&P 500 futures on 102 days between June 1997 and August 1999 and the trades were profitable on 41 days, providing a 39% profitability rate. While the PGM K-5 account profited overall by approximately $290,000 in trades involving the S&P 500 futures contracts, a substantial portion of this amount resulted from eight trades that were held overnight. When these eight trades are not considered in the calculation, the PGM K-5 account lost approximately $363,000.

Trading records also reveal that on 51 days during the period, the Blue Horizon account received profitable day trades while the PGM K-5 and Princeton Aggressive Fund accounts did not receive any trades. On most days when there were no profitable day trades in any of the accounts at issue, the Blue Horizon account did not trade but the PGM K-5 and Princeton Aggressive Fund accounts had losing day trades.

c. *Floor order tickets*

A review of the floor order tickets supports the trade allocation scheme. A random sample of original floor order tickets shows that account numbers for the Blue Horizon, PGM K-5 and Princeton Aggressive Fund accounts were added to the order tickets for day trades of S&P 500 futures contracts <u>after</u> the trades were executed. Many of the tickets show that the order instructions, <u>i.e.</u> the quantity, contract month, commodity and price instructions were in the same handwriting and writing instrument. Most of these orders indicated that the trades were placed for "Hal," which was the employee's nickname. Account numbers on these tickets were written in different colored ink and/or in different handwriting than the rest of the order, indicating that pertinent information was added at a different time and/or by a different person, most likely after the execution of the order. Other tickets with trades that were never executed have no account number at all, and only identify the customer as "Hal."

d. *Telephone conversations confirm the allocation scheme*

In recorded telephone conversations, the employee and Rogers discuss (1) whether specific trades could be allocated to the Blue Horizon account after having been executed, and (2) the procedure that should be followed when the employee placed bulk trade orders that would allow trades to be allocated after they were executed.

D. VIOLATIONS OF THE ACT AND COMMISSION REGULATIONS

Rogers and Toczylowski were participants in Armstrong's fraudulent Ponzi scheme and are therefore charged with aiding and abetting, among other things, Armstrong's improper funds transfers, unauthorized withdrawals, actions to mislead investors using the Republic account structure, and material misrepresentations and omissions contained in the false NAV letters.

Rogers and Toczylowski are also charged with aiding and abetting contemporaneous record keeping violations arising from the Armstrong fraud. Further, Rogers and Toczylowski participated in the fraudulent allocation scheme and are also charged with aiding and abetting that fraud. Finally, Rogers is charged with failing to supervise the conduct of the RNYSC employees in connection with the Princeton fraud and the fraudulent allocation scheme.

1. Aiding and Abetting the Princeton Fraud

Section 13(a) of the Act provides:

> [a]ny person who commits, or who willfully aids, abets, counsels, commands, induces, or procures the commission of, a violation of any of the provisions of th[e] Act [or Regulations], or who acts in combination or concert with any other person in any such violation, or who willfully causes an act to be done or omitted which if directly performed or omitted by him or another would be a violation of the [Act or Regulations], may be held responsible for such violation as a principal.
> 7 U.S.C. §13c(a) (2002).

Liability as an aider and abettor requires proof that (1) the Act was violated, (2) the named respondent had knowledge of the wrongdoing underlying the violation, and (3) the named respondent intentionally assisted the primary wrongdoer. In re Nikkhah [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28,129 at 49,888 n. 28 (CFTC May 12, 2000). The standard of proof necessary to establish liability as an aider and abettor is not an impossible obstacle to vigorous law enforcement. In the Matter of Lincolnwood Commodities, Inc. of California, [1982-84 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,986 at 28,255 (CFTC Jan 31, 1984). It is not necessary to prove that the aider and abettor knew that the principal's conduct was unlawful, id.,[10] or that the aider "participated in every phase of the criminal venture or that he had knowledge of the particular means by which the principal would carry out the criminal activity, or knew every last detail of the substantive offense." In re Richardson Securities, Inc., Comm. Fut. L. Rep. (CCH) ¶21,145 at 24,644 (CFTC Jan 27, 1981). The aider and abettor may do so without invitation or encouragement. He need not be invited to be a co-conspirator in order to be liable as an aider and abettor. Rather, it is enough that the aider and abettor knowingly participate in the venture and seek by his actions to make it succeed.

a. *The Act was violated*

In perpetrating the Princeton Fraud, Armstrong and the Princeton entities violated the Act and regulations promulgated thereunder. From 1997 through 1999, Armstrong and the Princeton entities incurred huge futures trading losses that they attempted to conceal from investors by,

[10] Lincolnwood further held that "[I]gnorance of the law is no more a defense for the aider and abettor than it is for the primary wrongdoer....This is especially true when the person charged with aiding and abetting a violation is himself an industry professional who operates in a highly regulated field that imposes duties on him that do not attach to the public at large." Id. at 28,255 (citations omitted).

among other means, improperly combining and commingling customer funds and providing investors with false NAV letters.

In the December 17, 2001 Order, the Commission found that RNYSC aided and abetted the Princeton fraud, engaged in a separate trade allocation fraud, failed to supervise, and violated segregation and record keeping obligations related to the handling of the Princeton accounts. These findings of violations of the Act and regulations promulgated thereunder were based on the activities of the RNYSC Futures Division, of which Rogers was President, and Toczylowski was a Vice President.

b. *Rogers and Toczylowski Knew of the Wrongdoing*

Direct evidence establishes that Rogers and Toczylowski knew that the Princeton entities were defrauding the Noteholders from 1995 to 1999. The individuals knew that Armstrong was using the Republic accounts structure to hide trading losses and to make improper transfers and unauthorized withdrawals. The Respondents also knew that investors were being misled about the true account structure at RNYSC. Rogers and Toczylowski knew that the NAV letters prepared by RNYSC contained some or all of the following misrepresentations or omissions: the represented account values in the letters were overstated because they did not account for trading losses and withdrawals, which occurred in separate trading accounts; the letters failed to disclose that account values sometimes increased due to temporary transfer of funds from other PGM accounts rather than from interest accrual or other investment return; and statements in some of the letters that the asset value was maintained in AAA government securities were false.

Rogers and Toczylowski assisted in the movement of funds between accounts and they also knew that all of the accounts were being pooled in order to fund Armstrong's trading losses. The trading tapes are replete with conversations involving Rogers and Toczylowski where they recognize the impropriety of the entire set-up of the accounts.

Other examples illustrate the Respondents' knowledge. Rogers told the branch office manager that the Princeton entities were operating a Ponzi scheme. RNYSC misled another investor, Nichimen, about the balance in its PGM company account by temporarily transferring funds into the account only to withdraw the funds soon after Nichimen viewed the balance. The Nichimen transaction and the transmittal of the NAV letters show that Rogers and Toczylowski knew that the Noteholders believed that their funds were segregated from other PGM company accounts when in fact they were not. Thus, the direct evidence shows the Respondents' knowledge of the fraud.

c. *The intentional assistance element*

Direct evidence supports the conclusion that the individuals knowingly intended to assist Armstrong's fraud. Rogers and Toczylowski prepared NAV letters that they knew were being forwarded to the Noteholders. Rogers and Toczylowski bypassed RNYSC's Compliance Department by failing to comply with the firm's requirement that the NAV letters be provided to the Department. Rogers prepared correspondence that falsely confirmed that the NAV letters were authorized and that the accounts were segregated from other accounts. In addition, Toczylowski artificially inflated and then backdated NAV letters. Rogers and Toczylowski also actively assisted in misleading Nichimen about the balance in its PGM letter company account. The individuals supported the unlawful enterprise because it was the largest source of income for the Futures Division outside of RNYSC's business with RNYC. Continuation of the Ponzi scheme by the individuals allowed them to continue to earn commission income from the enterprise.

Through these and other acts, Rogers and Toczylowski knowingly helped Armstrong misrepresent to investors and prospective investors alike that he had a tremendous amount of capital under management with a respected fiduciary, while he was in fact hiding extraordinary trading losses at RNYSC. Rogers and Toczylowski also facilitated the Ponzi scheme by transferring funds between PGM company accounts and knowingly issuing false NAV letters. Therefore the individuals' conduct satisfies all of the elements of a claim of aiding and abetting the Princeton fraud.

2. Aiding and Abetting Regulatory Violations

a. *Failure to separately maintain customer accounts*

Section 4d of the Act and Regulations 1.20(c), 1.22 and 32.6, 17 C.F.R. §§ 1.20(c), 1.22 and 32.6, set forth an FCM's obligations to separately maintain and account for customer funds. "[T]he commingling of customer funds with the FCM's funds or the use of a customer's funds to margin or guarantee the trades or contracts of another customer is strictly prohibited. See [§ 4d(2) of the Act]." (Bibbo v. Dean Witter Reynolds, 151 F. 3d 559, 562 fn. 6 (6th Cir. 1998)). Section 4d provides that one customer's funds shall not be used to margin or guarantee the trades or extend the credit of any other customer or person. Regulation 1.20(c) provides that funds of a commodity or option customer shall not be commingled with "any other person" and that customer funds shall not be "used to secure or guarantee the trades, contracts or commodity options, or to secure or extend the credit, of any person other than the one for whom the same are held." Regulation 1.22 prohibits FCM's from using or permitting others to use the funds of one customer to the benefit of another customer. Regulation 32.6 requires that money, securities and property of option customers shall be separately accounted for and segregated as belonging to the option customer and shall not be commingled with the money, securities or property of other persons.

Rogers and Toczylowski knew that each PGM company account at RNYSC was funded by a one-on-one investment made by an investor into the PGM company. Rogers and Toczylowski also knew that the account documentation furthered an appearance that each PGM company account was being maintained separately. Rogers and Toczylowski knew or through recklessness or careless disregard failed to know that the underlying PGM "Notes" for each PGM company account restricted each PGM company from incurring any indebtedness, consolidating or merging with any other company or giving any guaranty or indemnity. As a result of Rogers's and Toczylowski's actions and willful or careless disregard, RNYSC violated segregation provisions between 1995 and 1999 through a succession of means, including unauthorized inter-company transfers, placement of trades on behalf of all the PGM company accounts in the eight trading accounts, thus permitting Armstrong to execute a guaranty allowing cross-margining among all PGM company accounts, and consolidation of all PGM company funds in one account in the name of PGM Ltd.

b. *Recordkeeping Violations*

With the assistance of Rogers and Toczylowski, Armstrong improperly combined and commingled investor funds, concealed the large trading losses, charged improper fees, and made other inappropriate withdrawals. As such, Rogers and Toczylowski aided and abetted RNYSC's violation of its record keeping obligations by failing to ensure: 1) that account statements accurately reflected the status of trading losses and collateral attributable to the particular account; 2) that trade order tickets immediately recorded the customer's account identification number; and 3) that, following the fall of 1998, it carried the separate PGM company accounts in their own names, rather than through one omnibus account.

Regulation 1.33 obligates the FCM to furnish monthly account statements for each commodity customer. The statements must "clearly show" (1) all open futures contracts at the prices acquired; (2) the net unrealized profit or loss on all open futures contracts marked to the market; (3) all customer funds carried in the account; and (4) a detailed accounting of all financial charges and credits to the customer's account. Regulation 1.33(a)(1).[11] The individual account statements for the separately incorporated PGM accounts do not include the open futures positions, net unrealized profit and loss on the futures positions, a statement of the customer funds in the account, or a detailed accounting of the trading losses or other withdrawals attributable to the particular account. As such, Rogers and Toczylowski aided and abetted RNYSC's violation of Regulation 1.33.

Pursuant to Regulation 1.35(a-1), the FCM is obligated to record a customer's trade order, including the account identification and order number, immediately upon receipt thereof. Rogers and Toczylowski repeatedly prepared order tickets for trading by the employee that failed to identify the trading account until after the trade had been executed. The order tickets contain a number of revealing signs that they were altered to show appropriate account information after trade execution, including the use of different ink, different handwriting and unfilled orders referring only to "Hal" or the Princeton general trading account number. Rogers and Toczylowski allowed the practice to continue without reporting it to the compliance department as required. Consequently, Rogers and Toczylowski aided and abetted RNYSC's violations of §4g of the Act and Regulation 1.35.

Regulation 1.37 requires that each FCM "shall show for each commodity futures or option account carried or introduced by it the true name and address of the person for whom such account is carried...". Regulation 1.37. RNYSC, through the assistance of Rogers and Toczylowski, consolidated the PGM company accounts under one master account named PGM Ltd. in the fall of 1998. No due diligence was conducted to confirm that Armstrong was

[11] In the event of bona fide hedge transactions the account statement may omit items one and two. Regulation 1.33(c). According to the account opening documentation, a majority of the PGM company accounts were supposed to be bona fide hedge accounts. However, they were not treated as such by RNYSC or Princeton because funds from the PGM company accounts were used to engage in speculative trading in a variety of commodity futures contracts.

authorized to execute such a consolidation. In fact, as discussed above, Rogers and Toczylowski knew that the Noteholders believed that their accounts were separate from each other. Consequently, since the consolidation of accounts was improper, Rogers and Toczylowski aided and abetted RNYSC's violation of Regulation 1.37 because identification of the accounts as PGM Ltd. failed to show the true names of each of the PGM companies for which the accounts were being carried.

3. Rogers and Toczylowski Aided and Abetted the Allocation Fraud

a. *Sections §4b(a)(2)(i) and (iii) and Section 4o(1) Were Violated*

The Armstrong employee violated Sections 4b(a)(2)(i) and (iii) and 4o(1) of the Act for his conduct in fraudulently allocating trades among the Blue Horizon, PGM K-5 and Princeton Aggressive Fund accounts. He allocated profitable trades to the Blue Horizon account that he owned while allocating unprofitable trades to the PGM K-5 and Princeton Aggressive Fund accounts, which he managed but did not own. Such conduct constitutes an unlawful trade allocation scheme and violates sections 4b(a)(2)(i) and (iii) and 4o(1) of the Commodity Exchange Act (the Act) 7 U.S.C. §6b(a)(2)(i) and (iii) and 6o(1) (2002).

Sections 4b(a)(2)(i) – (iii):

Sections 4b(a)(2)(i) and (iii) of the act are violated when a party allocates trades in a way that consistently disadvantages a particular customer. GNP Commodities [1990-92 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,360, 39,214 (CFTC Aug. 11, 1992) (citing In re Lincolnwood [1982-84 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,986 (CFTC Jan. 31, 1984)). An associated person omits material facts in violation of the Act when he fails to inform his customer that he entered trades for the customer's account through bulk or block orders, placing orders to the floor without first completing an office ticket for the order, and allocating trades at his discretion after the fills had been reported back. Parciasepe v. Shearson, Hayden, Stone, Inc. [1984-86 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶22,646, 30,068 (CFTC Jan. 2, 1985). The proper question is whether the defendant acted with intent by "knowingly employing an allocation scheme that was neither predetermined nor fair to all his customers." In re Nikkhah, [Current Transfer Binder] Comm. Fut. L. Rep. ¶28,129, 49,887 (CFTC May 12, 2000). Regulation 166.2 is also violated if an AP enters trades without specific customer authorization. In re Heitschmidt [1994-96 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,263 at 42,204 (CFTC Nov. 9, 1994).

The mere failure to place account numbers on order tickets is not, in and of itself, a fraudulent act. GNP Commodities, at 39,214. But the failure to place account numbers on order tickets does provide the opportunity to direct profitable fills to favored accounts. Id. Therefore, the significance of the fact that trades were placed without account numbers "cannot be overstated." Id. at n. 8.

Where specific account identification is withheld from the order ticket at the time the order is communicated to the trading floor, the Commission has found that this fact "raise[s] serious questions about the allocation process . . . ." In re Nikkhah, Comm. Fut. L. Rep. ¶28,129, 49,885 (CFTC May 12, 2000). This is because it is consistent with the intent to eliminate the type of audit trail information that would impede post-execution allocation. Id. Additionally, the Commission has recognized that day trades are particularly susceptible to manipulation in furtherance of the kind of allocation scheme described above because day trades also reduce the evidence of ownership of a particular trade to a bare minimum. In re Lincolnwood, [1982-84 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,986, 28,226 (CFTC Jan. 31, 1984).

The wide disparity in profits among accounts that were commonly controlled, coupled with the controlling person's ability to allocate trades, is also highly indicative of an unlawful allocation scheme. See Lincolnwood, at ¶28,244-45 (comparing average profit per trade and account balances). Similarly, where account numbers on order tickets are written with different writing instruments or in different handwriting, and where a name appears in place of account numbers, such evidence indicates an unlawful allocation scheme. GNP Commodities, at 39,209.

The Armstrong employee violated Sections 4b(a)(2)(i) and (iii) of the Act because he knowingly employed an allocation scheme that was neither predetermined nor fair to all his customers, with the result that the allocation scheme consistently disadvantaged the PGM K-5 and Princeton Aggressive Fund accounts to the benefit of the Blue Horizon account. There are wide disparities in profits achieved by the Blue Horizon account in day trades of S&P 500 futures, as opposed to the profits achieved by the PGM K-5 and Princeton Aggressive Fund accounts. Further, the original trade tickets show that the fill orders and the account numbers were written with different writing instruments from the orders themselves.

Rogers and Toczylowski each had personal knowledge that the Armstrong employee was violating Sections 4b(a)(2)(i) and (iii) and intentionally assisted him in carrying out the scheme by wrongfully allocating profitable executed trades to the Blue Horizon trading account to the consistent detriment of the PGM letter company accounts, and by failing to disclose to investors that Armstrong's employee was engaging in a wrongful allocation scheme using their accounts. Recorded telephone conversations between Rogers and Armstrong's employee reveal their knowledge of and complicity in the allocation scheme. For example, Armstrong's employee and Rogers once discussed (1) whether specific trades could be allocated to the Armstrong employee's Blue Horizon account after having been executed, and (2) the procedure that should be followed when Armstrong's employee placed bulk trade orders that would allow trades to be allocated after they were executed. For her part, Toczylowski often placed or altered the account identification on order tickets only after the orders were filled, to direct profitable trades to the Blue Horizon account.

Rogers and Toczylowski therefore each aided and abetted violations of Sections 4b(a)(2)(i) and (iii) and 4o(1) of the Act and Commission Regulation 166.2.

Section § 4o(1)

A violation of Section 4o(1) of the Act is established by proof that the respondent party was (i) a CTA and (ii) either (a) employed any device, scheme, or artifice to defraud any client or prospective client, or (b) engaged in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. Section 4o(1) of the Act, which also requires the use of the mails or any means or instrumentality of interstate commerce, prohibits both registered and unregistered CTAs from defrauding their clients.

Under Section 1a(5) of the Act, in order to establish that someone is acting as a CTA, it must be shown that the person (i) advised another about the value or advisability of trading in futures contracts, (ii) "either directly or through publications, writings or electronic media," and (iii) for compensation or profit. Section 1a(5) of the Act, 7 U.S.C. § 1a(5). The Armstrong employee is a registered CTA and AP and gave commodity futures trading advice for compensation or profit to the corporations that owned the PGM K-5 and Princeton Aggressive Fund accounts.

By engaging in a fraudulent allocation scheme, Respondents also violated Section 4o(1) of the Act just as they violated Sections 4b(a)(i) and (iii) of the Act. In re R&W Technical Services, Comm. Fut. L. Rep. (CCH) ¶27,582 (CFTC March 16, 1999) ("Because we have found that [respondents] violated Section 4b(a) of the Act and that they acted as CTAs, further analysis is not needed to conclude that [respondents] also violated Section 4o(1) of the Act"), *aff'd in relevant part*, R& W Technical Services v. CFTC, 205 F.3d 165 (5th Cir. 2000).

Rogers and Toczylowski therefore each aided and abetted violations of Sections 4o(1) of the Act.

4. Rogers Violated Regulation 166.3

To determine whether a registrant has failed to supervise diligently, it must first be determined whether there existed a program of supervision designed to detect violations and, if so, whether the relevant policies and procedures were followed in practice. See In re GNP Commodities, Inc., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39, 219 (CFTC August 11, 1992) aff'd sub nom. Monieson v. CFTC, 996 F 2d. 852 (7th Cir. 1993). Section 166.3 imposes on the FCM an affirmative duty to supervise its employees by establishing an adequate supervisory structure and compliance programs and to diligently carry out such programs. In re Paragon Futures Assoc., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,266, 38,849-50 (CFTC Apr. 1, 1992). Evidence of underlying violations of the Act "is probative of a firm's failure to supervise, if the violations which occurred are of a type that should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly." Id. [1990-1992 Transfer Binder] 2 Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC April 1, 1992). Regulation 166.3 also mandates that each Commission registrant, except an AP who has no supervisory duties, is required to diligently supervise the handling of commodity interest accounts by its employees and agents.

Rogers failed to diligently enforce procedures for the establishment and maintenance of RNYSC accounts. RNYSC had compliance procedures in place prohibiting the front office from transmitting NAV letters. RNYSC procedures also required that all correspondence be forwarded to the compliance officer for review. In violation of these internal procedures, Rogers transmitted and directed the transmission of NAV letters and further failed to forward correspondence to the Compliance officer.

RNYSC also required that order tickets be immediately executed with appropriate account identification information, and that order tickets be reviewed to confirm that RNYSC was in compliance with order taking requirements. Rogers therefore failed to establish and diligently enforce procedures that would have prevented the employee's trade allocation, in violation of Commission Regulation 166.3.

IV.

OFFERS OF SETTLEMENT

The Respondents have submitted Offers in which they, without admitting or denying the findings herein: (1) acknowledge service of the Order (2) admit the jurisdiction of the Commission with respect to all matters set forth herein; (3) waive the service and filing of a complaint and notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offer, all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000) and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, et seq. (2004), relating to or arising from this action, and any claim of Double Jeopardy based upon institution of this proceeding or the entry of any order imposing a civil monetary penalty or any other relief; (4) stipulate that the record basis on which the Order may be entered shall consist solely of the Order and findings in the Order consented to in their Offers; and (5) consent to the Commission's issuance of this Order, which makes findings as set forth below and: (a) orders the Respondents to cease and desist from violating the provisions of the Act and Regulations that they each have been found to have violated; (b) directs that Respondents be permanently prohibited from trading on or subject to the rules of any contract market; (c) revokes certain registrations; (d) imposes civil monetary penalties; (e) assesses restitutions; and (f) orders the Settling Respondents to comply with certain undertakings set forth below.

V.

FINDING OF VIOLATIONS

Solely on the basis of Respondents' consents, as evidenced by the Offers, and prior to any adjudication on the merits, the Commission finds that (1) Rogers and Toczylowski each aided and abetted fraud in violation of § 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2002), aided and abetted trade allocation fraud in violation of §§ 4b(a)(2)(i) and (iii) and 4o(1)of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) and 6o(1)(2002), aided and abetted record-keeping violations contrary to §§ 4d and 4g and of the Act, 7 U.S.C. §§ 6d, and 6g (2002) and Rules 1.20, 1.22, 1.33, 1.35, 1.37, 32.6, and 166.2 of the Regulations, 17 C.F.R. §§ 1.20, 1.22, 1.33, 1.35, 1.37, 32.6, and 166.2 (2004), and that Rogers failed to supervise in violation of Rule 166.3 of the Regulations, 17 C.F.R. § 166.3 (2004).

VI.

<u>ORDER</u>

Accordingly, **IT IS HEREBY ORDERED THAT:**

A. Cease and Desist

1. Rogers shall cease and desist from violating Sections 4b(a)(2)(i)-(iii), 4d, 4g, and 4o(1) of the Act and Commission Regulations 1.20, 1.22, 1.33, 1.35, 1.37, 32.6, 166.2 and 166.3; and

2. Toczylowski shall cease and desist from violating Sections 4b(a)(2)(i)-(iii), 4d, 4g, and 4o(1) of the Act and Commission Regulations 1.20, 1.22, 1.33, 1.35, 1.37, 32.6, and 166.2;

B. Respondents are permanently prohibited from trading on or subject to the rules of any registered entity, and all registered entities are directed to refuse Respondents trading privileges, beginning on the third Monday after the date of the Order;

C. Registration Revocations

1. Toczylowski's registration as an associated person is revoked.

D. Restitution

1. Rogers shall pay restitution in the amount of $6,000,000 ("Roger's Restitution Obligation"), pursuant to a ten-year payment plan. Rogers agrees to pay an initial restitution payment of $900,000 towards the total restitution amount of $6,000,000, due within five (5) days from the date of this order, and the remainder is to be paid pursuant to a payment plan, as provided below.

i. Within five (5) days from the date of this order, Rogers shall make an initial restitution payment totaling $900,000 to an account designated by a monitor as determined by the Commission (the "Monitor"), and provide proof of payment to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, and to Stephen J. Obie, Regional Counsel, Commodity Futures Trading Commission, Division of Enforcement, Eastern Regional Office, 140 Broadway, New York, NY 10005.

Provided, however, that if Rogers can verify to the Monitor's satisfaction that he has paid an initial restitution payment pursuant to the Order from the United States District Court for the Southern District of New York in *U.S. v. William Rogers* ("SDNY Order"), his initial restitution payment shall be the difference between $900,000 and the amount he paid in restitution pursuant to the SDNY Order. Should the amount of initial restitution paid pursuant to the SDNY Order equal or exceed $900,000, no initial restitution payment shall be owed;

2. Toczylowski shall pay restitution in the amount of $400,000, ("Toczylowski's Restitution Obligation"), pursuant to a ten-year payment plan. Toczylowski agrees to pay an initial restitution payment of $50,000, and the remainder is to be paid pursuant to a payment plan, as provided below.

   i. Within five (5) days from the date of this order, Toczylowski shall make an initial restitution payment totaling $50,000 to an account designated by a monitor as determined by the Commission (the "Monitor"), and provide proof of payment to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, and to Stephen J. Obie, Regional Counsel, Commodity Futures Trading Commission, Division of Enforcement, Eastern Regional Office, 140 Broadway, New York, NY 10005.

   Provided, however, that if Toczylowski can verify to the Monitor's satisfaction that she has paid an initial restitution payment pursuant to the Order from the United States District Court for the Southern District of New York in *U.S. v. Maria Toczylowski* ("SDNY Order"), her initial restitution payment shall be the difference between $50,000 and the amount he paid in restitution pursuant to the SDNY Order. Should the amount of initial restitution paid pursuant to the SDNY Order equal or exceed $50,000, no initial restitution payment shall be owed;

3. Respondents shall make annual restitution payments, as calculated under the payment plan described below, on or before July 31 of each calendar year (the "Annual Restitution Payment"), starting in calendar year 2004 and continuing for ten years, or until the Respondent's Restitution Obligation is paid in full, or until satisfaction or other discharge of his or her Restitution Obligation pursuant to the SDNY Order, whichever occurs first. The ten-year restitution period shall run from the date of entry of this Order through December 31, 2013. Restitution payments for a calendar year shall take place by July 31 of the following year. Therefore, the final restitution payment in the year 2013 will occur on or before July 31, 2014. Each Annual Restitution Payment shall be made by electronic funds transfer or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies the respondent and the name and docket number of the proceeding. Copies of the cover letter and the form of payment shall be simultaneously transmitted to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, and to Stephen J. Obie, Regional Counsel, Commodity Futures Trading Commission, Division of Enforcement, Eastern

Regional Office, 140 Broadway, New York, NY 10005. Respondents shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor;

Provided, however, that if a Respondent can verify to the Monitor's satisfaction that during a particular calendar year he or she has paid restitution pursuant to that Respondent's SDNY Order, his or her Annual Restitution Payment shall be the difference between the amount of the Annual Restitution Payment calculated pursuant to the income-based schedule set forth below and the amount he or she paid in restitution pursuant to the Respondent's SDNY Order for the same calendar year. Should the amount of restitution paid by the Respondent pursuant to the Respondent's SDNY Order equal or exceed the amount of the Annual Restitution Payment owed pursuant to the income-based schedule, an Annual Restitution Payment shall not be owed that calendar year by the Respondent;

E. Civil Monetary Penalties

1. Rogers shall pay a civil monetary penalty ("CMP") in an amount of $2,000,000 (Rogers's "CMP Obligation"), pursuant to a payment plan, as provided below, commencing upon the satisfaction or other discharge of Rogers's Restitution Obligation. Therefore Roger's CMP Obligation will commence upon satisfaction or other discharge of his restitution obligation pursuant to the SDNY Order.

2. Toczylowski shall pay a civil monetary penalty ("CMP") in an amount of $240,000 (the "Toczylowski's CMP Obligation"), pursuant to a payment plan, as provided below, commencing upon the satisfaction or other discharge of Toczylowski's Restitution Obligation. Therefore Toczylowski's CMP Obligation will commence upon satisfaction or other discharge of her restitution obligation pursuant to the SDNY Order.

3. Each Respondent shall make his or her Annual Civil Monetary Penalty Payment ("Annual CMP Payment") as calculated pursuant to the terms of this Order by the Monitor on or before July 31 of each calendar year, starting in calendar year 2004 and continuing for ten years, or until the civil monetary penalty is paid in full, if that happens first. The ten-year payment plan shall run from the date of entry of this Order through December 31, 2013. Annual CMP payments for a calendar year shall take place by July 31 of the following year. Therefore, the final Annual CMP payment for the year 2013 will occur on or before July 31, 2014. Each Respondent shall make his or her Annual CMP Payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies the Respondent and the name and

docket number of the proceeding. Copies of the cover letter and the form of payment shall be simultaneously transmitted to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, and to Stephen J. Obie, Regional Counsel, Commodity Futures Trading Commission, Division of Enforcement, Eastern Regional Office, 140 Broadway, New York, NY 10005. The Respondent shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor;

F. Payment Plans

1. Respondents' Annual Restitution Payments and Annual CMP Payments (the "Annual Payments"), to be made pursuant to subparagraphs D and E above, shall consist of a portion of (1) the adjusted gross income (as defined by the Internal Revenue Code) earned or received by the Respondent during the course of the preceding calendar year, plus (2) all other net cash receipts, net cash entitlements or net proceeds of non-cash assets (collectively "Net Cash Receipts") received by the Respondent during the course of the preceding calendar year. The Annual Payments will be determined as follows:

Where Adjusted Gross Income Plus Net Cash Receipts Total:	**Percent of Total to be Paid by Respondent is:**
Up to $25, 000	0%
$25,001 - $50,000	20% of the amount above $25,000
$50,001 - $100,000	20% of the amount between $25,000 and $50,000, plus 30% of the amount above $50,000
Above $100,000	20% of the amount between $25,000 and $50,000, plus 30% of the amount between $50,000 and $100,000 plus 40% of the amount above $100,000

2. In the event that a Respondent does not make one or more Annual Payments as directed above, the Commission may bring a proceeding or an action to enforce compliance with this Order and at its option may seek payment of any one or more unpaid Annual Payments or immediate payment of the entire amount of the Restitution Obligation and CMP Obligation required above. The only issue the Respondent may raise in defense of such enforcement action is whether he or she has made the Annual Payments as directed by the Monitor. Any action or proceeding brought by the Commission compelling payment of the Annual Payments, due and owing as set forth above, or any portion thereof, or any

acceptance by the Commission of partial payment of the Annual Payments made by a Respondent, shall not be deemed a waiver of that Respondent's obligation to make further payments pursuant to the payment plans, or a waiver of the Commission's right to seek to compel payments of the remaining balance of the Restitution and Civil Monetary Obligation assessed against the Respondent;

3. The National Futures Association is hereby designated as the Monitor for a period of eleven years commencing from the date of this order. Notice to the Monitor shall be made to Daniel A. Driscoll, Esq., Executive Vice President and Chief Compliance Officer, or his successor, at the following address; National Futures Association, 200 West Madison Street, Chicago, IL 60606. For ten years, based on the information contained in Respondents' sworn financial statements, Respondents' tax returns and other financial statements and records provided to the Monitor, the Monitor shall calculate the total amount of Restitution Obligation or Civil Monetary Obligation to be paid by each Respondent for that year. On or before June 30 of each year and starting in the calendar year 2004 and concluding in the calendar year 2013, the Monitor shall send written notice to each Respondent with instructions to pay by no later than July 31 of that year the amount of the Restitution Obligation or Civil Monetary Obligation pursuant to the payment instructions provided above.

4. In the event that a Respondent does not make a payment as directed in this Order, the Commission may bring a proceeding or an action to enforce compliance with the Order and at its option may seek payment of the unpaid CMP Obligation or Restitution Payment(s) or immediate payment of the entire amount of the Restitution and Civil Monetary Obligation owed by the Respondent. The only issue the Respondent may raise in defense of such enforcement action is whether the Respondent has made the Annual Payment(s) as directed by the Monitor. Any action or proceeding brought by the Commission compelling payment of the Annual Payments, or any acceptance by the Commission of partial payment of the Annual Payments made by a Respondent, shall not be deemed a waiver of the Respondent's obligation to make further payments pursuant to the payment plans, or a waiver of the Commission's right to seek to compel payments of the remaining balance of the Restitution Obligation and CMP Obligation assessed against the Respondent.

G. The Commission notes that an order requiring immediate full payment of the Restitution Obligation and the CMP Obligation against Respondents would be appropriate in this case, but does not impose it based upon Respondents' financial conditions. Respondents have submitted sworn financial affidavits, and have provided other evidence regarding their financial condition and have asserted their current financial inability to pay the Restitution Obligation and the Civil Monetary Penalty, other than as provided in the payment plans set forth above. If at any time following entry of this Order, the Division of Enforcement ("Division") of the Commission obtains information indicating that any Respondent's representations concerning his or her financial condition was fraudulent, misleading, inaccurate or incomplete in any material respect at the time they were made, the Division may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether the Respondent provided accurate and complete financial information at the time such representations were made; (2) require immediate payment of the full amount of the Restitution Obligation and CMP Obligation required above; and (3) seek any additional remedies that the Commission would be authorized to impose in this proceeding if the Respondent's Offer had not been accepted. No other issues shall be considered in connection with this petition other than whether the financial information provided by the Respondent was fraudulent, misleading, inaccurate or incomplete in any material respect, and whether any additional remedies should be imposed. The Respondents may not, by way of defense to any such petition concerning the financial information provided, contest the validity of or the findings in this Order, assert that payment of the Restitution Obligation and CMP Obligation should not be ordered, or contest the amount of the Restitution Obligation and CMP Obligation to be paid. If in such proceeding the Division petitions for and the Commission orders immediate payment of less than the full amount of the Restitution Obligation or CMP Obligation, such petition shall not be deemed a waiver of the Respondent's obligation to pay the remaining balance of the Restitution Obligation and CMP Obligation assessed against him or her pursuant to the payment plan;

H. Respondents shall comply with the following undertakings:

1. <u>Reporting/Disclosure Requirements to be Reviewed by Monitor</u> Respondents shall provide sworn financial statements, CFTC Form 12, to the Monitor on June 30 and December 31 of each calendar year, starting on June 30, 2004, and continuing through and including December 31, 2014. The financial statement shall provide:

    i. a true and complete itemization of all of Respondents' rights, title and interest in (or claimed in) any asset, wherever, however and by whomever held;

    ii. an itemization, description and explanation of all transfers of assets with a value of $1,000 or more made by or on behalf of Respondents over the preceding six-month interval; and

    iii. a detailed description of the source and amount of all of Respondents' income or earnings, however generated.

2. Respondents shall provide the Monitor with complete copies of their signed, individual or joint federal income tax returns, including all schedules and attachments thereto (e.g., IRS Forms W-2 and Forms 1099), as well as any filings they are required to submit to any state tax or revenue authority, on or before June 30 of each calendar year or as soon thereafter as the same are filed. In the event that a Respondent moves his or her residence at any time, the Respondent shall provide written notice of the new address to the Monitor and the Commission within ten (10) calendar days thereof. If, during the same time period, a

Respondent elects to file a joint tax return, the Respondent shall provide all documents called for by this paragraph, including the signed and filed joint tax return, plus a draft individual tax return prepared on IRS Form 1040 containing a certification by a licensed certified public accountant that the "Income" section (currently lines 7-22 of Form 1040) truly, accurately and completely reflects all of the Respondent's income, that the "Adjusted Gross Income" section truly, accurately and completely identifies all deductions that the Respondent has a right to claim, and that the deductions contained in the "Adjusted Gross Income" section are equal to or less than 50% of the deductions that the Respondent is entitled to claim on the joint tax return; provided however that the Respondent may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely the Respondent's. Such individual tax return shall include all schedules and attachments thereto (e.g., IRS Forms W-2 and Forms 1099), as well as any filing required to be submitted to any state tax or revenue authority;

3. Respondents shall cooperate fully with the Commission and its staff in this proceeding and in any related inquiry, investigation or legal proceeding by, among other things:

   i. responding promptly, completely, and truthfully to any inquiries or requests for information;

   ii. authenticating documents;

   iii. testifying completely and truthfully; and

   iv. not asserting privileges under the Fifth Amendment of the United States Constitution.

4. Respondents shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all aspects of their Annual Payments. Respondents shall cooperate fully with the Monitor and the Commission in explaining their financial income and earnings, status of assets, financial statements, asset transfers, tax returns, and shall provide any information as may be required by the Commission. Respondents shall provide such additional information and documents with respect thereto as may be requested by the Monitor or the Commission. Furthermore, Respondents shall cooperate fully with and assist the Commission, the Office of the United States Attorney, and the Securities and Exchange Commission and the President's Corporate Fraud Task Force in the exercise of their authorities.

5. Respondents shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any member of Respondents' families or any other persons for the purpose of concealing such funds or property from the Monitor or the Commission.

6. Respondents shall never apply for registration or seek exemption from registration with the Commission in any capacity, and shall never engage in any activity requiring registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9), or act as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration, unless such exemption is pursuant to Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9); and

7. Respondents shall not, beginning on the date of the Order:

    i. directly or indirectly act as a principal, partner, officer, or branch office manager of any entity registered or required to be registered with the Commission; and

    ii. directly or indirectly act in any supervisory capacity over anyone registered or required to be registered with the Commission.

8. Respondents agree that neither Respondents nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegations, findings or conclusions in the Order or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision affects Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents will undertake all steps necessary to assure that all agents and employees under their authority or control understand and comply with this agreement.

9. Toczylowski shall notify Gartmore SA Capital Trust of her registration revocation, beginning on the third Monday following the date of this Order.

The provisions of this Order shall be effective on this date.

By the Commission:

Jean A. Webb

Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission

Dated: July 13, 2004 .