

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

PAUL M. EUSTACE, AND  
PHILADELPHIA ALTERNATIVE ASSET  
MANAGEMENT COMPANY, LLC

Defendants.

Case No. 05-CV-2973 (MMB)

FILED

MICHAEL E. KUNZ, Clerk  
By \_\_\_\_\_ Dep. Clerk

**SUPPLEMENTAL CONSENT ORDER SETTING JUDGMENT FOR RESTITUTION  
AND CIVIL MONETARY PENALTY AGAINST DEFENDANT PAUL M. EUSTACE**

On June 22, 2005, Plaintiff Commodity Futures Trading Commission ("Commission") filed an injunctive action against Defendants Paul M. Eustace ("Eustace") and Philadelphia Alternative Asset Management Company, LLC ("PAAM") seeking injunctive and other equitable relief, as well as the imposition of restitution and civil monetary penalties, for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.* (2002), and the Commission Regulations promulgated thereunder ("Regulations"), 17 C.F.R. §§ 1.1 *et seq.* (2004).

On June 23, 2005, the Hon. John R. Padova issued an *ex parte* statutory restraining order freezing assets under the control of the Defendants, prohibiting the destruction of documents and appointing a temporary Receiver. On July 8, 2005, the Hon. Paul S. Diamond amended the statutory restraining order to allow the liquidation of Defendant Eustace's personal trading account at Velocity Futures, LP.

On August 2, 2005, the Commission filed a First Amended Complaint against Defendants Eustace and PAAM, along with a Motion for a Preliminary Injunction and Second Amended Statutory Restraining Order. ("Complaint" shall refer to the Complaint and the First Amended Complaint collectively).

On September 22, 2005, the Hon. Michael M. Baylson entered a Consent Order of Preliminary Injunction and Other Equitable Relief, which continued the freeze of assets under the control of the Defendants and the prohibition of the destruction of documents, and also appointed a permanent Receiver, C. Clark Hodgson, Jr. ("Receiver"). On May 3, 2007, the Hon. Michael M. Baylson appointed Stephen J. Harmelin as Receiver *ad litem* ("Receiver *ad litem*") for all purposes in the pending action before the Court, Civil Action 06-1944, filed against Man Financial Inc., *et al.*

On July 13, 2007, this Court entered the Consent Order of Permanent Injunction and Other Equitable Relief Against Defendant Paul M. Eustace ("Consent Order") that enjoins Eustace from further violations of the Act and Regulations, as alleged in the Complaint, and permanently prohibits him from, among other things, engaging in any commodity-related activity, including but not limited to, soliciting managed accounts, engaging, controlling or directing the trading of commodity futures, options on futures, foreign currency options, and from seeking registration or claiming exemption from registration with the Commission in any capacity engaging in any activity requiring such registration or exemption from registration, or acting as a principal, agent or any other officer or employee or any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9).

The Consent Order also requires Eustace to pay restitution to participants in the Option Capital Fund, LP, Philadelphia Alternative Asset Fund, L.P., Philadelphia Alternative Feeder Fund, LLC, and Philadelphia Alternative Asset Fund Ltd., and a civil monetary penalty in amounts to be determined. This Supplemental Consent Order Setting Judgment For Restitution and Civil Monetary Penalty Against Defendant Paul M. Eustace ("Supplemental Consent Order") sets out the amount of restitution and civil monetary penalty to be paid by Eustace as consented to by Eustace.

I.

**CONSENTS AND AGREEMENTS**

1. To effect settlement of the matters alleged in the Complaint in this action without a trial on the merits or any further judicial proceedings, Defendant Eustace consents to the entry of this Supplemental Consent Order.

2. Eustace admits that this Court has jurisdiction over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such 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.

3. Eustace admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), in that certain of the acts and practices alleged in the Complaint occurred in this District.

4. Eustace waives: (a) any and all claims that he 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

Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2007), relating to, or arising from, this action; (b) the entry of findings of fact and conclusions of law in this action as provided by Rule 52 of the Federal Rules of Civil Procedure, except as provided below in Section II; (c) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and (d) any and all rights of appeal from this action.

5. Eustace agrees to relinquish and waives any right, title, interest or privilege he may have in: (1) any assets frozen by the Court or by the Ontario Securities Commission, including but not limited to funds in any trading or bank accounts in his name or under his direct or indirect control or management; (2) any assets purchased or obtained with funds relating to Philadelphia Alternative Asset Management Company LLC, the Option Capital Fund LP, Philadelphia Alternative Asset Fund, L.P., Philadelphia Alternative Feeder Fund, LLC, and Philadelphia Alternative Asset Fund Ltd.; and (3) any funds, assets or damages recovered, obtained or collected by the Receiver or Receiver *ad litem*.

6. Eustace acknowledges the Court's orders dated November 13, 2006, December 18, 2006 and February 15, 2008 authorizing the distribution of assets in the receivership estate, and that the remaining existing and future funds and assets of the receivership estate shall be distributed in accordance with a plan approved by and as ordered by the Court.

7. Eustace agrees that neither he nor any of his agents, servants, employees, contractors or attorneys shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in the Consent Order or Supplemental Consent Order or creating, or tending to create, the impression that the Complaint or the Consent Order or Supplemental Consent Order is without a factual basis; provided,

however, that nothing in this provision shall affect Eustace's (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Eustace shall take all necessary steps to ensure that all of his agents, servants, employees, contractors and attorneys understand and comply with this agreement.

8. Eustace agrees that he has read and agrees to this Supplemental Consent Order voluntarily and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Supplemental Consent Order, other than as set forth specifically herein.

9. Eustace consents to the continued jurisdiction of this Court in order to implement and carry out the terms of all orders and decrees that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and to assure compliance with the Consent Order and Supplemental Consent Order.

10. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Supplementary Consent Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law and a permanent injunction and ancillary equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), as set forth herein.

## II.

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 6c of the Act, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

2. Venue properly lies with this Court pursuant to Section 6c of the Act.
3. This Court has personal jurisdiction over Eustace, who has acknowledged service of the Complaint and consented to the Court's jurisdiction.
4. The Commission and Eustace have agreed to this Court's retention of continuing jurisdiction over Eustace for the purpose of enforcing the terms of the Order and the Supplemental Consent Order.
5. Eustace has waived and shall relinquish and not retain any right, title, interest or privilege he may have in: (1) any assets frozen by the Court or by the Ontario Securities Commission, including but not limited to funds located in any trading or bank accounts in his name or under his direct or indirect control or management; (2) any assets purchased or obtained with funds relating to Philadelphia Alternative Asset Management Company LLC, the Option Capital Fund LP, Philadelphia Alternative Asset Fund, L.P., Philadelphia Alternative Feeder Fund, LLC, and Philadelphia Alternative Asset Fund Ltd.; and (3) any funds, assets or damages recovered, obtained or collected by the Receiver or Receiver ad litem.
6. Based on principles of equity, there is good cause for entry of an order directing Eustace to make restitution to the participants in Option Capital Fund LP, Philadelphia Alternative Asset Fund, L.P., the Philadelphia Alternative Feeder Fund, LLC and the Philadelphia Alternative Asset Fund Ltd. in an amount totaling approximately \$279 million, plus post-judgment interest, for distribution to the pool participants in a manner approved by, and pursuant to the order of the Court.
7. There is good cause for entry of an order requiring Eustace to pay a civil monetary penalty of \$12 million.

**III.**

**EQUITABLE RELIEF**

**IT IS FURTHER ORDERED THAT:**

**A. RESTITUTION**

1. Eustace shall pay restitution totaling \$279,245,101.39, plus post-judgment interest, in the following amounts: to participants in the Option Capital Fund LP in the amount totaling \$2,971,402.40, plus post-judgment interest; to participants in the Philadelphia Alternative Asset Fund, L.P. in the amount totaling \$ 25,733,497, plus post-judgment interest; and to participants in the Philadelphia Alternative Feeder Fund, LLC and Philadelphia Alternative Asset Fund Ltd. in the amount totaling \$250,540,201.99, plus post-judgment interest.

2. Post-judgment interest shall accrue beginning on the date of entry of this Supplemental Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Supplemental Consent Order pursuant to 28 U.S.C. § 1961.

3. Eustace's obligation to make restitution shall be reduced by amounts already distributed to the pool participants, pursuant to the Court's orders dated November 13, 2006, December 18, 2006 and February 15, 2008 or subsequently distributed by the Receiver to the pool participants pursuant to further orders of this Court.

4. To the extent not already done, all funds frozen as a result of the Court's Statutory Restraining Order, as amended, and the Court's Consent Order of Preliminary Injunction shall be transferred into the control of the Receiver and made available for distribution to pool participants pursuant to further orders of the Court.

5. The provision of the Consent Order of Preliminary Injunction entered against Eustace on September 22, 2005 continuing a freeze on assets or funds in his name or under his management or control shall remain in full force and effect until such time as the Court orders otherwise pursuant to a request by the Receiver, Receiver ad litem or the Commission.

6. Eustace shall satisfy this restitution obligation under this Supplemental Consent by making payments to the Receiver. The Receiver shall distribute such payments to pool participant claimants whose claims are or have been allowed in the claims process.

7. In the event that Eustace has not fully satisfied his restitution obligation after entry of the Court's final order of distribution and the termination of the receivership estate, Eustace shall satisfy his restitution obligation by making payments to the National Futures Association as Monitor ("Monitor"). The Monitor shall collect restitution payments from Eustace and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, the Monitor shall not be liable for any action or inaction arising from his appointment as Monitor, other than actions involving fraud.

8. Eustace shall make restitution payments to the Monitor in the name "Philadelphia Alternative Asset Management Company – Restitution Fund" and shall send such restitution payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to Office of Administration, National Futures Association, 200 W. Madison Street #1600, Chicago, Illinois 60606-3447 under cover letter that identifies Eustace and the name and docket number of the proceeding. Eustace shall simultaneously transmit copies of the cover letter and the form of payment to (a) the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW,



Washington, D.C. 20581, and (b) the Chief, Office of Cooperative Enforcement, at the same address.

9. The Monitor shall oversee Eustace's restitution obligation and shall have discretion to determine the manner for distribution of funds in an equitable fashion to the pool claimants whose claims are or have been allowed in the claims process, or may defer distribution until such time as it deems appropriate. In the event that the amount of restitution payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative costs of the making a restitution distribution is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission.

10. To the extent that any funds accrue to the U.S. Treasury as a result of the restitution obligation in this Supplemental Consent Order, such funds shall be transferred to the Monitor for disbursement to pool claimants in accordance with the procedures set forth in the preceding paragraph.

11. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each pool participant subject to the Court's orders of distribution of assets is explicitly made a third party beneficiary of this Order and may, after termination of the Receivership, seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution which has not been paid by Eustace.

**B. CIVIL MONETARY PENALTY**

12. Eustace shall pay a civil monetary penalty in the amount of \$12 million, plus post judgment interest.

13. Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

14. Eustace shall pay this civil monetary penalty by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commission and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
Attn: Marie Bateman-AMZ-300,  
DOT/FAA/MMAC  
6500 S. Macarthur Blvd.  
Oklahoma City, OK 73169  
Telephone: 405-954-6569

If payment is to be made by electronic funds transfer, Eustace shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Eustace shall accompany payment of the penalty with a cover letter that identifies Eustace and the name and docket number of the proceedings. Eustace shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and the Chief, Office of Cooperative Enforcement, at the same address.

**C. PRIORITY OF MONETARY SANCTIONS AND PARTIAL PAYMENTS**

15. All payments by Eustace pursuant to this Order shall first be applied to satisfaction of their restitution obligations, consistent with the authority granted the Monitor in

Part V.2., above. After satisfaction of their restitution obligation, payments by Defendants pursuant to this Order shall be applied to satisfy Defendants' civil monetary penalty obligations.

16. Any acceptance of partial payment of Eustace's restitution obligations and/or civil monetary penalty shall not be deemed a waiver of Eustace's requirement to make further payments pursuant to this Order, or a waiver of the Plaintiff's right to seek to compel payment of any remaining balance.

#### IV.

#### MISCELLANEOUS PROVISIONS

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

2. Upon being served with copies of this Consent Order after entry by the Court, the Defendant shall sign an acknowledgment of such service and serve such acknowledgment on the Commission within seven (7) calendar days.

3. This Court shall retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees, including orders setting the appropriate amounts of restitution and civil monetary penalty, that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and to assure compliance with the Consent Order and Supplemental Consent Order.

4. The failure of any party to this Supplemental Consent Order at any time to require performance of any provision of this Supplemental Consent Order shall in no manner affect the right of the party or investor to enforce the same or any other provision of this Supplemental

Consent Order at a later time. No waiver in one or more instances of the breach of any provision contained in this Supplemental Consent Order shall be deemed or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Supplemental Consent Order.

5. All notice required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to the Commission:

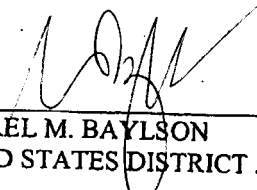
Glenn I. Chernigoff, Esq.  
Commodity Futures Trading Commission  
1155 21st Street, NW  
Washington, D.C. 20581

Notice to the Defendant:

Paul M. Eustace  
102 Lakeshore Road East  
Oakville, ON L6J 6N2

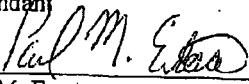
6. In the event that the Eustace changes his residential or business telephone number(s) and/or address(es) at any time, they shall provide written notice of the new number(s) and/or address(es) to the Commission within ten calendar days thereof.

SO ORDERED, this 13 day of August, 2008.

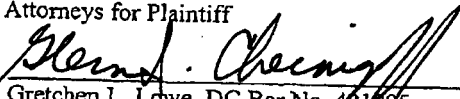
  
\_\_\_\_\_  
MICHAEL M. BAYLSON  
UNITED STATES DISTRICT JUDGE

Consented to and  
approved for entry by:

Defendant

  
Paul M. Eustace, *pro se*  
102 Lakeshore Road East  
Oakville, ON L6J 6N2

Attorneys for Plaintiff

  
Gretchen L. Lowe, DC Bar No. 421995  
Glenn I. Chernigoff, DC Bar No. 488500  
Division of Enforcement  
Commodity Futures Trading Commission  
1155 21st Street, N.W.  
Washington, D.C. 20581  
Phone - (202) 418-5000  
Facsimile - (202) 418-5523

cc. Sexton  
Kaminsky  
Chernigoff  
Bergmann  
Rodgers  
Horn  
Rosegard  
Stansfield  
Doherty  
Eustace