

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

No. 05-21571-Civ-Lenard-Torres

UNITED STATES COMMODITY FUTURES TRADING COMMISSION)	
)	
Plaintiff,)	
)	
v.)	Consent Order of Permanent
)	Injunction and Equitable Relief
E-METAL MERCHANTS, INC. , a Florida)	
corporation, BENJI DAYAN , an individual, and)	
ANDREW STERN , an individual,)	
)	
Defendants.)	

INTRODUCTION

On June 13, 2005, Plaintiff United States Commodity Futures Trading Commission (Commission or Plaintiff) filed its Complaint in the above-captioned action against E-Metal Merchants, Inc. (E-Metal), Benji Dayan (Dayan), and Andrew Stern (Stern), (collectively, Defendants) seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended (the Act), 7 U.S.C. §§ 1 *et seq.* (2002), and the Commission's Regulations (Regulations) promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2007). The Court entered a Statutory Restraining Order on June 13, 2005 and an Order of Preliminary Injunction against Defendants on January 6, 2006.

I.

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint in this action without a trial on the merits, presentation of evidence, or further judicial proceedings:

1. Defendants agree to entry of this Consent Order of Permanent Injunction and Equitable Relief (Consent Order);

2. Defendants affirm that they have agreed to this 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 Consent Order, other than as set forth specifically herein;

3. Defendants acknowledge proper service of the Summonses and Complaint;

4. For purposes of this Consent Order, Defendants admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002);

5. For purposes of this Consent Order, Defendants admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002);

6. Defendants waive:

a. all claims that they may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), relating to or arising from this action and any right under EAJA to seek costs, fees, and other expenses relating to or arising from this action;

b. any claim that they may possess under the Small Business Regulatory Enforcement Fairness Act, 1996 HR 3136, Pub. L. 104-121, §§ 231-232, 110 Stat. 862-63 (Mar. 29, 1996), 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;

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. all rights of appeal from this action;

7. Defendants consent to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Consent Order and for any other purposes relevant to this case, even if Defendants now or in the future reside outside the Southern District of Florida;

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

9. In consenting to the entry of this Consent Order, Defendants neither admit nor deny the allegations of the Complaint or the Findings of Fact and Conclusions of Law contained in this Consent Order, except as to jurisdiction and venue, which they admit for purposes of this Consent Order. Defendants, however, agree and intend that the all of the allegations of the Complaint and all of the Findings of Fact and Conclusions of Law made by this Court and contained in Part II of this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of (1) any current or subsequent bankruptcy

proceeding filed by, on behalf of, or against any Defendant; (2) a proceeding to enforce this Consent Order; or (3) a proceeding pursuant to Section 8a of the Act, 7 U.S.C. § 12a(1), and/or Part 3 of the Regulations, 17 C.F.R. § 3;

10. Each Defendant shall provide the Commission with immediate notice of any bankruptcy filed by, on behalf of, or against that Defendant and shall provide reasonable notice (within thirty days) of any change of address, phone number, or contact information in the manner required by Part V of this Consent Order until such time as their obligations set forth in the Consent Order are satisfied; and

11. No provision of this Consent Order shall in any way limit or impair the ability of any person to seek any legal or equitable remedy against any Defendant in any other proceeding.

12. This Consent Order shall not bind any party who is not a signatory hereto.

II.

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, without a trial on the merits, presentation of evidence, or further judicial proceedings, the entry of the following Findings of Fact and Conclusions of Law.

A. Findings of Fact

The Parties

13. The United States Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act and the Regulations.

14. E-Metal Merchants, Inc. is a Florida corporation located in Aventura, Florida. In May 2004, E-Metal registered as a corporation with the Florida Department of State. E-Metal is not registered with the Commission.

15. Benji Dayan is E-Metal's president and currently resides in Miami, Florida. Dayan is not registered with the Commission.

16. Andrew Stern is E-Metal's secretary and currently resides in North Miami, Florida. Stern is not registered with the Commission.

Off-Exchange Metal Option Contracts

17. E-Metal engaged in the purchase and sale of illegal off-exchange gold and silver option contracts (metal option contracts) with members of the general public. These metal option contracts were not traded on a regulated exchange, meaning that E-Metal set its own prices for the metal option contracts and customers bought and sold the metal option contracts directly from E-Metal.

18. E-Metal solicited customers through introducing brokers and a website that, among other things, informed prospective customers that they could purchase and sell options on physical metal (*i.e.*, gold and silver).

19. E-Metal's account-opening documents, which were provided to customers and prospective customers, clearly state that the firm offered to purchase and sell off-exchange metal option contracts.

20. The firm issued trading statements to its customers indicating (1) the purchase and sale of "options," "puts," and "calls" with respect to physical metal; (2) the existence of an option premium paid to enter the metal option contract; and (3) a date upon which the option would expire.

21. Neither E-Metal nor its customers were producers, processors, or commercial users of, or merchants handling, the metal that was the subject of the option transactions in which they were engaged with E-Metal.

22. Since May 2004, over 200 customers provided over \$8.4 million dollars to E-Metal. Only \$372,000 of this money ever was returned to customers. The remainder of the funds were transferred to accounts controlled by Dayan or Stern or were used for E-Metal's operating expenses.

Dayan and Stern Operated and Controlled E-Metal

23. Dayan, as E-Metal's president, operated and possessed control over E-Metal's business. He registered the corporation with the Florida Secretary of State and signed the on-line annual report. He also submitted and signed the electronic articles of incorporation in which he specifically represented that E-Metal was organized and engaged in "any and all lawful business."

24. Stern, as E-Metal's secretary, operated and possessed control over E-Metal's business. He regularly corresponded via e-mail with E-Metal's chief metal options dealer, and he participated in decisions regarding salaries, business cards, conforming E-Metal's trade practices to the standards of other organizations, hedging activities, and price setting on the metal option contracts.

25. Stern and Dayan were co-signers of the E-Metal's customer account.

26. From E-Metal's customer account, over \$5.4 million dollars in customer funds was transferred to the firm's operating account, \$575,000 was transferred to an E-Metal account in New Zealand, and \$509,000 was transferred to the account of Universal Financial Holding Corporation.

27. As compensation for their duties, E-Metal paid Dayan at least \$1,335,000 and Stern at least approximately \$250,000 in customer funds obtained from the sale of illegal off-exchange metal option contracts.

B. Conclusions of Law

Jurisdiction and Venue

28. This Court has subject matter jurisdiction over this action and the allegations in the Complaint pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

29. This Court has personal jurisdiction over Defendants pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

30. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, because during the time of the acts complained of, Defendants resided in and transacted business in the Southern District of Florida.

Regulatory Background

31. Pursuant to Section 4c(b) of the Act, 7 U.S.C. § 6c(b), “[n]o person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an ‘option,’ ‘privilege,’ indemnity,’ ‘bid,’ ‘offer,’ ‘put,’ ‘call,’ ‘advance guaranty,’ or ‘decline guaranty,’ contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.”

32. Regulation 32.11(a), 17 C.F.R. § 32.11(a), states that “it shall be unlawful on and after June 1, 1978, until further rule, regulation or order of the Commission, for any person to

solicit or accept orders for, or to accept money, securities or property in connection with, the purchase or sale of any commodity option, or to supervise any person or persons so engaged.”

33. Regulation 32.11(b), 17 C.F.R. § 32.11(b), provides that the provisions of § 32.11(a), 17 C.F.R. § 32.11(a), do not apply to commodity option transactions that are conducted

(1) in accord with Regulation 32.4(a), 17 C.F.R. § 32.4(a) (relating to commodity option contracts that are offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction); or

(2) on or subject to the rules of a contract market or a foreign board of trade.

Defendants Violated the Act and Regulations

34. The Commission has the authority to regulate the off-exchange metal option contracts entered into between E-Metal and its customers at issue in this case. The Act’s prohibition on entering into transactions involving options to buy or sell commodities regulated by the Act includes options to buy or sell gold and silver. *See CFTC v. Am. Board of Trade, Inc.*, 803 F.2d 1242, 1244 (2d Cir. 1986) (affirming district court’s determination that options to purchase or sell gold and silver bullion and silver coins are prohibited under the Act).

35. E-Metal engaged in the purchase and sale of off-exchange metal option contracts with its customers. E-Metal was the counterparty to each of its customers’ off-exchange metal option contracts transactions.

36. E-Metal orally solicited customers and the firm’s website offered to the general public—not commercial users of metal—the opportunity to purchase and sell option contracts on physical metal. The firm’s account-opening documents definitively stated that the firm offered

to purchase and sell off-exchange metal option contracts. The firm issued trading statements to its customers indicating: (1) the purchase and sale of "options," "puts," and "calls" with respect to physical metal; (2) the existence of an option premium paid to enter the metal option contract; and (3) a date upon which the option would expire.

37. Neither E-Metal nor its customers were producers, processors, or commercial users of, or merchants handling, the metal that is the subject of the commodity option transactions engaged in by E-Metal and its customers as set out in Regulation 32.4(a), 17 C.F.R. § 32.4(a).

38. Further, purchases and sales of E-Metal's option contracts were not conducted on or subject to the rules of a contract market or a foreign board of trade as set out in Regulation 32.11(b), 17 C.F.R. § 32.11(b).

39. The conduct engaged in by E-Metal, thus, violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.11(a), 17 C.F.R. § 32.11(a).

40. The foregoing acts, omissions, and failures of E-Metal's employees, including but not limited to Dayan and Stern, occurred within the scope of their employment with E-Metal; therefore, E-Metal is liable for these acts, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

41. During the relevant time, Dayan and Stern directly and indirectly controlled E-Metal and its employees, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations of Section 4c(b) of the Act and Regulation 32.11(a) described above. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Dayan and Stern are liable for these violations to the same extent as E-Metal.

III.

ORDER OF PERMANENT INJUNCTION

Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1,

IT IS HEREBY ORDERED that:

42. Defendants are permanently restrained, enjoined, and prohibited from directly or indirectly cheating or defrauding or attempting to cheat or defraud other persons and willfully deceiving or attempting to deceive other persons in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of any commodity option transaction, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9, 17 C.F.R. § 32.9.

43. Defendants are permanently restrained, enjoined, and prohibited from directly or indirectly engaging in or attempting to engage in soliciting or accepting orders for, or accepting money, securities or property in connection with, the purchase or sale of any commodity option (including, but not limited to, any off-exchange metal options contract), or supervising any person or persons so engaged in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.11(a), 17 C.F.R. § 32.11(a).

44. E-Metal is permanently prohibited from engaging, directly or indirectly, in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (commodity interest), including, but not limited to, the following:

- a) trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);
- b) engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;

- c) soliciting or accepting any funds from any person for use in connection with the purchase or sale of any commodity interest;
- d) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9), or acting as a principal, agent or any other officer or employee of 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);
- e) entering into any commodity interest transactions for E-Metal's own accounts, for any account in which E-Metal has a direct or indirect interest, and/or having any commodity interests traded on its behalf; and
- f) engaging in any business activities related to commodity interest trading.

45. Dayan and Stern are permanently prohibited from engaging, directly or indirectly,

in any of the following activity related to trading in any commodity interest:

- a) engaging in, controlling, or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise, on any board of trade, contract market, or derivatives transaction execution facility¹;
- b) soliciting or accepting any funds from any person for use in connection with the purchase or sale of any commodity interest on any board of trade, contract market, or derivatives transaction execution facility (*see note 1*); and
- c) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9), or acting as a principal, agent or any other officer or employee of 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).

¹ Dayan and Stern, however, are permitted to engage in, control, or direct the trading of any commodity interest on a board of trade, contract market, or derivatives transaction execution facility in their respective personal accounts.

IV.

ORDER FOR OTHER EQUITABLE RELIEF

IT IS HEREBY ORDERED that:

Appointment of Monitor

46. To effect payment by Defendants and distribution of restitution, the National Futures Association (NFA) is appointed as Monitor (Monitor). The Monitor shall collect restitution payments from Defendants, 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 its appointment as Monitor, other than actions involving fraud.

Restitution Obligations

47. Defendants shall pay, jointly and severally, restitution in the amount of \$8,042,021, and post-judgment interest, in restitution to E-Metal's customers, provided that the joint and several liability of each Defendant is capped at the following amounts:

- E-Metal \$8,042,021, plus post-judgment interest thereon
- Dayan \$3,500,000, plus post-judgment interest thereon
- Stern \$2,000,000, plus judgment interest thereon

48. Post-judgment interest shall accrue commencing upon entry of the Consent Order.² The post-judgment interest rate shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Consent Order, pursuant to 28 U.S.C. § 1961.

49. All Defendants' restitution obligations are immediately due and owing. Further, Defendants shall pay initial restitution payments as follows:

² The date of the "entry of the Consent Order" shall be the date the Court signs the Consent Order.

a. E-Metal: E-Metal's initial restitution payment shall consist of all money in E-Metal's frozen accounts referenced in paragraph 50. In addition, E-Metal's initial restitution payment shall consist of all gold and silver in E-Metal's possession, custody, or control (as inventoried at E-Metal's office by the Commission on June 15, 2005). In this regard, within five (5) days of entry of the Consent Order, E-Metal shall transfer all gold and silver in its possession, custody, or control to Lewis B. Freeman (Asset Liquidator), 3225 Aviation Avenue, Suite 501, Coconut Grove, Florida 33133. Within sixty (60) days of receipt of E-Metal's gold and silver, the Asset Liquidator shall sell all the gold and silver at a reasonable market value. All the proceeds from such sale, less any applicable service charges (not to exceed \$2,500), shall be provided to the Monitor by electronic funds transfer, U.S. Postal money order, certified check, bank cashier's check, or bank money order, made payable to the "E-Metal Settlement Fund," within five (5) days of receiving the proceeds. The Asset Liquidator then shall provide counsel for the Commission and counsel for Defendants documentation of his payment to the Monitor, as well as documentation concerning the amount of the Asset Liquidator's fees and costs associated with the aforementioned sale. Defendants shall cooperate fully with and assist the Asset Liquidator. The Asset Liquidator shall be paid exclusively from the proceeds of the aforementioned sale of E-Metal's gold and silver. Neither Defendants nor the Commission shall bear responsibility for payment of any of the costs and fees incurred by the Asset Liquidator in carrying out his responsibilities under this paragraph. Further, all E-Metal initial restitution proceeds provided for in this subparagraph (without subtracting the Asset Liquidator's costs and fees) shall represent an offset to Dayan's and Stern's individual restitution obligations identified in paragraph 47. This offset, however, shall not reduce the initial restitution payments required of Dayan and Stern in subparagraphs b. and c. below.

b. Dayan: Dayan shall pay an initial restitution payment of \$300,000 (irrespective of any payments by E-Metal pursuant to subparagraph a. above), which may represent a further offset to Dayan's joint and several restitution obligation identified in paragraph 47. The funds for this initial restitution payment shall come from Dayan's frozen accounts referenced in paragraph 50 (approximately \$79,632) and from HomerBonner's client trust account (approximately \$220,368), which the Defendants expect shall have sufficient funds to satisfy Dayan's initial restitution obligation upon entry of the Consent Order.³

(i) Payments from Dayan's frozen accounts shall be made in accordance with paragraph 50; and

(ii) A \$220,368 payment from HomerBonner, P.A.'s client trust account shall be provided to the Monitor within five (5) days after entry of this Consent Order. Dayan shall cooperate to the fullest extent in the release of any and all funds required to satisfy his initial restitution payment, including, but not limited to, explicitly waiving any objections or legal protections that he may possess with respect to any of the funds identified in any of the accounts in paragraphs 50 and 51. If the amount of funds ultimately collected from Dayan's frozen accounts and HomerBonner, P.A.'s trust account is less than \$300,000, any and all shortfall first shall be paid from the Dayan account(s) identified in paragraph 51. Dayan shall pay any remaining shortfall to the Monitor within ten (10) days of being notified of such shortfall. If the amount of funds collected from Dayan's frozen accounts and HomerBonner, P.A.'s trust account is more than \$300,000, the Monitor shall return any excess to Dayan,

³ HomerBonner, P.A. shall in no event be found to be in violation of this Consent Order because moneys intended to fund Defendants' initial restitution payments upon entry of the Consent Order have not been collected in HomerBonner, P.A.'s trust account as expected. Further, nothing in this Consent Order shall impose obligations upon Homer Bonner, P.A. that are inconsistent with Florida's Rules Regulating Trust Accounts (Chapter 5 of the Rules Regulating the Florida Bar), and in particular Fla. Bar Rule 5-1.1(i), Disbursement Against Uncollected Funds.

through HomerBonner, P.A.'s client trust account, within ten (10) days of the final determination of the excess amount.

c. Stern: Stern will pay an initial restitution payment of \$200,000 (irrespective of any payments by E-Metal pursuant to subparagraph a. above), which may represent a further offset to Stern's joint and several restitution obligation identified in paragraph 47. The funds for this initial restitution payment shall come from Stern's frozen accounts referenced in paragraph 50 (approximately \$169,967) and from HomerBonner, P.A.'s client trust account (approximately \$30,033), which Defendants expect shall have sufficient funds to satisfy Stern's initial restitution obligation upon entry of the Consent Order (*see* note 4).

(i) Payments from Stern's frozen accounts shall be made in accordance with paragraph 50 and

(ii) A \$30,033 payment from HomerBonner, P.A.'s client trust account shall be provided to the Monitor within five (5) days after entry of this Consent Order. Stern shall cooperate to the fullest extent in the release of any and all funds required to satisfy his initial restitution payment, including, but not limited to, explicitly waiving any objections or legal protections that he may possess with respect to any of the funds identified in any of the accounts in paragraphs 50 and 51. If the amount of funds ultimately collected from Stern's frozen accounts and HomerBonner, P.A.'s trust account is less than \$200,000, any and all shortfall first shall be paid from Stern account(s) identified in paragraph 51. Stern shall pay any remaining shortfall to the Monitor within ten (10) days of being notified of such shortfall. If the amount of funds collected from Stern's frozen accounts is more than \$200,000, the Monitor shall return any excess to Stern, through HomerBonner, P.A.'s client trust account, within ten (10) days of the final determination of the excess amount.

50. Upon entry of this Consent Order, the Commission shall promptly provide each of the financial institutions identified in this paragraph with a copy of this Consent Order. Within thirty (30) days of receiving a copy of this Consent Order, each of the financial institutions identified in this paragraph are specifically directed to liquidate and release all funds held by E-Metal, Dayan, or Stern, in any account number identified below, whether the account is held singly or jointly, or in any other capacity, and to convey by wire transfer to an account designated by the Monitor, all funds in these accounts, less any amounts required to cover the financial institutions' outstanding administrative or wire transfer fees. At no time during the liquidation, release, and/or wire transfer of these funds pursuant to this Consent Order shall E-Metal, Dayan, or Stern be afforded any access to, or be provided with, any funds from these accounts. All Defendants and all banks and financial institutions listed in this Consent Order, shall cooperate fully and expeditiously with the Commission and Monitor in the liquidation, release, and wire of these funds. The accounts to be liquidated, released, and transferred are:

Name	Financial Institution	Account Number	Approx. Amount
E-Metal	Comtrust	***70	\$106,871
E-Metal	IFSCL	***90	\$2,289,396 (as of January 30, 2008)
E-Metal	Wachovia	*****3130	\$417,748
E-Metal	Wachovia	*****3143	\$19,149
Dayan	Ameriprise	****-5134	\$7,145
Dayan	Ameriprise	****-3351	\$9,896
Dayan	Ameriprise	****-3740	\$34,842
Dayan	Ameriprise	****-8576	\$27,749
Stern (QLP Holdings)	Wachovia	*****9162	\$58,786
Stern	Bank United	*****0645	\$64,266
Stern	City National Bank	*****9093	\$3,785
Stern	Bank of America	*****8415	\$1,280
Stern (UFHC)	Bank United	*****0845	\$16,313
Stern (UFHC)	Bank United	*****0810	\$10,453
Stern (QIX)	Wachovia	*****0520	\$294

Stern (QLX)	Wachovia	*****9104	\$307
Stern (QLX)	Bank United	*****1264	\$14,267
Stern (UTS World)	Wachovia	*****7975	\$216

51. The Monitor will notify the Commission when the Monitor receives Dayan's and Stern's complete initial restitution payments as described in paragraphs 49 b. and 49 c. After receiving this notification from the Monitor, the Commission will notify Defendants' counsel. At such time, and not before (except as permitted in paragraphs 49 b. and 49 c.), the following funds (or any portion of such funds) frozen pursuant to the PI Order shall be released:

Name	Financial Institution	Account Number	Approx. Amount
Dayan	Ameriprise	****-****-7591	\$461,134
Stern	Wachovia Securities (IRA)	****-****, ***-*7822	\$46,589
Andrew & Silvia Stern (Joint Tenants)	Wachovia Securities	****-****, ***-*2092	\$12,728

52. Defendants shall make restitution payments under this Consent Order in the name "E-Metal Settlement 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, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under cover letter that identifies the paying Defendant and the name and docket number of the proceeding. The paying Defendant shall simultaneously transmit copies of the cover letter and the form of payment to: (a) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1152 21st Street, N.W., Washington, D.C. 20581, and (b) the Chief, Office of Cooperative Enforcement, at the same address.

53. The NFA shall oversee Defendants' restitution obligations and shall have discretion to determine the manner for distribution of funds in an equitable fashion to customers identified in Attachment A, as appropriate, 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 of 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 following the instructions for civil monetary penalty payments set forth in paragraph 58 below.

54. Nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law.

55. To the extent that any funds accrue to the U.S. Treasury as a result of either the restitution or disgorgement obligations in this Consent Order, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in paragraph 53 above.

Civil Monetary Penalties

56. Defendants shall pay Civil Monetary Penalties (CMPs), plus post-judgment interest, in the following amounts:

- E-Metal \$1,000,000
- Dayan \$800,000
- Stern \$200,000

57. Post-judgment interest shall accrue commencing on the date this Consent Order is entered. The post-judgment interest rate shall be determined by using the Treasury Bill rate prevailing on the date this Consent Order is entered, pursuant to 28 U.S.C. § 1961.

58. Defendants' CMP obligations are immediately due and owing, subject to Paragraphs 59 and 60 below. Defendants shall pay this CMP obligation 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 Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman -- AMZ-300
DOT/FZZ/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-6569

If payment by electronic transfer is chosen, the paying Defendant shall contact Marie Bateman or her successor at the address above to receive payment instructions and shall fully comply with those instructions. The paying Defendant shall accompany payment of the CMP with a cover letter that identifies the paying Defendant and the name and docket number of this proceeding. The paying Defendant shall simultaneously transmit copies of the cover letter and the form of payment to (a) the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, D.C. 20581, and (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

Priority of Monetary Sanctions and Partial Payments

59. All payments by Defendants pursuant to this Consent Order shall first be applied to satisfaction of their restitution obligations, consistent with the authority granted the Monitor, above. After satisfaction of their restitution obligations, payments by Defendants pursuant to this Consent Order shall be applied to satisfy their CMP obligations.

60. Any acceptance by the Commission and/or Monitor of partial payment of Defendants' restitution obligations and/or CMP obligations shall not be deemed a waiver of the respective requirement to make further payments pursuant to this Consent Order, or a waiver of the Commission's and/or Monitor's right to seek to compel payment of any remaining balance.

V.

OTHER PROVISIONS

61. Continuing Jurisdiction of This Court: This Court shall retain jurisdiction over Defendants to assure compliance with this Order.

62. Notices: All notices required to be given by any provision in this Order shall be sent certified mail, return receipt requested, as follows: Notice to the Commission: Attention, Director of Enforcement, Commodity Futures Trading Commission, Division of Enforcement, 1155 21st Street, N.W., Washington, DC 20581.

63. Waiver: The failure of any party to this Consent Order at any time or times to require performance of any provision hereof shall in no manner affect the right of such party 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 or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

64. Equitable Relief: The equitable relief provisions of this Consent Order shall be binding upon Defendants and any person who is acting in the capacity of officer, agent, employee, servant, or attorney of Defendants, and any person acting in active concert or participation with Defendants and those equitable relief provisions that relate to restitution shall

be binding on any financial institutions listed above or holding frozen funds or assets of the Defendants, who receives actual notice of this Consent Order by personal service or otherwise.

65. Upon entry of this Consent Order, the following accounts shall be immediately lifted from the asset freeze:

Name	Financial Institution	Account Number	Approx. Amount
QLP Holding Inc— Customers	Colonial Bank	*****8459	\$8,248
QLP Holding Inc.— Customers	Washington Mutual	*****5827	\$75,545
QLP Holdings Customers	Wachovia	*****9845	\$71,290
Qualified Leverage Providers Customer	Wachovia	*****9793	\$9,321

To the extent these accounts contain money due, owing, or otherwise belonging to customers of QLP Holding Inc., Qualified Leverage Providers, or any related entity, these customer funds shall be distributed to these customers on a pro rata basis. Any other accounts frozen in this case, but not specifically mentioned in this Consent Order, shall be released from the asset freeze.

66. Acknowledgments: Upon being served with a copy of this Consent Order after entry by this Court, Defendants shall sign an acknowledgment of service and serve such acknowledgment on this Court and the Commission within seven days.

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

68. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by further order of this Court.

69. Authority: Dayan hereby warrants that he is the President of E-Metal, that this Consent Order has been duly authorized by E-Metal, and that he has been duly empowered to sign and submit this Consent Order on behalf of E-Metal.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order.

Done and ORDERED in Chambers at Miami, Florida this 9 day of April,

2008.

Joan A. Lenard
Honorable Joan A. Lenard
United States District Judge

CONSENTED TO AND APPROVED BY:

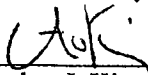
Benji Dayan
Benji Dayan, Individually and on
behalf of E-Metal

Date: 4-1-08

Andrew Stern
Andrew Stern, Individually

Date: 4-1-08


Approved for Entry:



Christopher J. King (as to form only)
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Date: 4/2/08

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Date: 4/3/08

Attorneys for Plaintiff