

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 F. KUNZ, Clerk
By _____ Dep. Clerk

**FINAL ORDER OF DEFAULT JUDGMENT AS TO DEFENDANT PHILADELPHIA
ALTERNATIVE ASSET MANAGEMENT COMPANY, LLC**

On June 22, 2005, the Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a complaint 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’s Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2004).

On June 23, 2005, United States District Judge John R. Padova of the Eastern District of Pennsylvania 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 August 2, 2005, the Commission filed a First Amended Complaint against Defendants Eustace and PAAM, along with a motion for a preliminary injunction and an amended statutory

restraining order (“Complaint” shall refer to the Complaint and the First Amended Complaint collectively).

On September 22, 2005, this Court entered the “Consent Order of Preliminary Injunction and Other Equitable Relief,” which continued the asset freeze and which made the appointment of the receiver, C. Clark Hodgson, Jr. (“Receiver”), permanent. Subsequently, the Court also appointed Stephen J. Harmelin as Receiver ad litem for purposes of Civil Action 06-1944, which was a pending litigation before the Court brought by the Receiver against Man Financial Inc., et al.

The Commission completed service of the Summons and Complaint upon Defendant PAAM. PAAM has not responded to the Complaint. Accordingly, on January 25, 2006, the Court issued an order entering PAAM’s default (Docket Number 141).

The Court, being fully advised in the premises and having carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Commission’s motion for entry of default judgment and the record of this case, finds that there is good cause for the entry of this Final Order Of Default Judgment As To Defendant Philadelphia Alternative Asset Management Company, LLC (“Order”) and that there is no just reason for delay. The Court therefore:

GRANTS plaintiff Commission’s motion for judgment of default as to PAAM;

ORDERS entry of findings of fact and conclusions of law; and

GRANTS the Commission’s requests for relief, as set forth below.

I. FINDINGS OF FACT

The Court hereby finds as follows:

A. Jurisdiction and Venue

1. This Court has jurisdiction over 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.

2. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), in that the Defendants are found in, inhabit, or transact business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District.

B. The Parties

3. Plaintiff Commission is an independent federal regulatory agency charged with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated under it, 17 C.F.R. §§ 1 *et seq.* (2004).

4. Defendant Eustace is an individual who resides in Ontario, Canada. Eustace is the President of PAAM. He has been registered with the CFTC as the sole associated person (“AP”) of PAAM since October 8, 2003, and is listed as its sole principal.

5. Defendant PAAM is a Delaware Limited Liability Company with an office located in King of Prussia, Pennsylvania. PAAM has been registered with the Commission as a commodity pool operator (“CPO”) since October 8, 2003 and was a registered commodity

trading advisor ("CTA") from October 8, 2003 until January 13, 2005, when it withdrew its CTA registration.

C. The Defendants Fraudulently Operated the Philadelphia Alternative Asset Fund, LP and Issued False Statements to Participants

6. In August 2002, Eustace formed, with the assistance of others, PAAM for the purpose of managing commodity futures and options trading for others. Eustace was the President of PAAM and the trader for PAAM. As such, Eustace was an agent, officer or employee of PAAM.

7. Beginning in at least the fall of 2002, Defendants fraudulently solicited and accepted approximately \$28 million from at least ten individuals to participate in a commodity pool, the Philadelphia Alternative Asset Fund, LP ("LP Pool"). The LP Pool was claimed to be a purported hedge fund that was to trade, among other things, commodity futures and options.

8. Commencing in at least October 2002 and continuing through May 2005 (the "relevant period"), the Defendants issued false trading account statements to LP Pool participants purporting to show that their investments were overall increasing in value from the trading of commodity futures and options.

9. During the time that the LP Pool participants were receiving these fictitious accounts statements, the Defendants never managed accounts that directly traded commodity futures or options in the name of the LP Pool or the LP Pool participants. In May 2005, Defendant Eustace represented to the National Futures Association ("NFA"), a self-regulatory organization to which the Commission has delegated certain oversight responsibilities, that the LP Pool had never traded futures or options.

10. However, in a July 2005 bankruptcy filing, Eustace represented under oath that the LP Pool was an investor in another commodity pool, the Option Capital Fund, LLC ("Option

Capital Fund”), which was operated by Eustace, and that the LP Pool’s reported balance was approximately \$29,000,000.

11. Defendant Eustace had represented to certain LP Pool participants and others that the LP Pool was closing in 2004 and the LP Pool funds would be invested in an off-shore commodity pool, the Philadelphia Alternative Asset Fund, Ltd. (“Off-Shore Pool”) via the Philadelphia Alternative Asset Feeder Fund LLC (“Feeder Fund”), both operated by PAAM. As found below, the Off-Shore Pool sustained massive losses.

12. Defendants moved LP Pool funds into bank and trading accounts of the Option Capital Fund or into other bank and trading accounts under the management or control of Eustace.

13. Any trading done in the name of or for the benefit of the Option Capital Fund, either directly in trading accounts in the name of the Option Capital Fund, in Eustace’s personal trading accounts or any trading accounts Eustace managed or controlled, overall sustained losses from the trading of commodity futures and options.

14. Trading in accounts held in the name of Option Capital Fund resulted in net losses of more than \$1 million. Since March 30, 2000, Eustace’s trading of commodity futures and options in his personal trading accounts resulted in losses of more than \$19 million. From January through May 2005, Eustace sustained over \$22 million in trading losses in his personal trading accounts.

D. Defendants Presented Fictitious Trading Records to Prospective LP Pool Participants

15. In October 2002, Eustace successfully solicited at least one investor to participate in the LP Pool by providing, among other information, a purported trading record of the Option Capital Fund.

16. That record purported to show profitable futures and options trading results for the Option Capital Fund for the period of June 2001 through July 2002, when in fact the commodity futures and options accounts in the name of the Option Capital Fund had not achieved those same overall results and to the extent that Eustace traded Option Capital Pool funds in his personal trading accounts, his personal accounts had not achieved the same overall results.

17. This LP Pool participant relied in part on those past trading results in making the decision to invest and invested approximately \$250,000 in the LP Pool.

18. On or about March 8, 2004, Eustace sent promotional materials for the LP Pool to at least one prospective participant via e-mail, which included: a PowerPoint presentation dated December 2003 describing the LP Pool; a private placement memorandum for the LP Pool dated December 2003; and a one-page document that purported to show actual trading results for the LP Pool for the period October 2002 through March 2004 (the "LP Pool trading chart").

19. The PowerPoint presentation stated that PAAM is the "General Manager" of the LP Pool, and that Eustace was the president of PAAM.

20. The private placement memorandum refers to the LP Pool as "the Fund" and stated that it was a "Delaware limited partnership organized for the purpose of achieving capital appreciation through investments in a wide range of capital market instruments," including commodity futures and options.

21. The private placement memorandum also stated that "[t]he Fund and the General Partner are recently formed entities and have a limited past performance record."

22. The LP Pool trading chart stated that "the Fund commenced trading under the direction of the Manager in October 2002. The Fund had no transaction history prior to this."

23. The LP Pool trading chart further stated “[p]ast performance may not be indicative of future performance.”

24. Each of these statements indicates that actual trading had taken place in the LP Pool by the date of the solicitation documents. Nevertheless, at the time these statements were issued, by Eustace’s own representation, the Defendants had not actually conducted any trading in the name of the LP Pool. To the extent that the purported trading record reflected trading on behalf of the Option Capital Fund, Eustace had not achieved the same overall results for that fund.

25. On or about May 26, 2005, Eustace informed the NFA that the LP Pool trading chart “numbers were meant to demonstrate hypothetical performance of my trading strategies with a gradual escalation of assets” and provided purported back-up documentation reflecting futures trading results. Eustace further explained that “[t]he entity referenced, Philadelphia Alternative Asset Fund, LP, in this document never had a trading account.” Philadelphia Alternative Asset Fund, LP is the LP Pool.

E. Defendant Eustace Did Not Disclose the Existence and Operation of the LP Pool to NFA

26. In or around September 20, 2004, NFA conducted an audit of PAAM.

27. Eustace was the person at PAAM who responded to all of NFA’s questions concerning PAAM.

28. During the on-site audit of PAAM, NFA did not find any documents referring to the LP Pool, and Eustace did not disclose the existence of the LP Pool.

29. As part of its audit, NFA conducted sworn testimony of Eustace and asked him to name all of the accounts over which he exercised any control during 2004. Eustace identified

four trading accounts that he managed in 2004. Eustace did not identify or otherwise disclose that he managed the LP Pool.

30. On or about May 20, 2005, NFA asked Eustace about the LP Pool and Eustace said it contained only personal money and might have been traded at registered futures commission merchant FC Stone LLC ("FC Stone"). During the relevant period, FC Stone never maintained an account in the name of the LP Pool or Eustace.

31. On or about May 24, 2005, Eustace changed his story and claimed that the LP Pool was never traded.

32. On or about June 8, 2005, Eustace again revised his story, claiming that the LP Pool did not trade, and had never traded futures or options, but instead had engaged in "swap transactions."

33. In his July 2005 bankruptcy filing, Eustace represented that the LP Pool was invested in the Option Capital Fund.

F. Defendants Issued False Statements to Off-Shore Pool Participants and Posted False Trading Results on PAAM's Website

34. Beginning around July 2004 and continuing through June 2005, PAAM also operated the Off-Shore Pool that, according to PAAM, traded exclusively on regulated futures markets. PAAM also operated the Feeder Fund, which allowed U.S. customers to participate in the Off-Shore Pool.

35. Defendants solicited and accepted over \$250 million from participants to trade in the Off-Shore Pool and Feeder Fund.

36. During the relevant period, the Feeder Fund did not maintain any trading accounts in its own name.

37. The Off-Shore Pool traded commodity futures and options on U.S. registered entities, or, in other words, on U.S. futures exchanges.

38. Eustace opened one trading account at one FCM and several trading accounts at another FCM, in the name of the Off-Shore Pool. Eustace had sole trading authority over those Off-Shore Pool accounts.

39. The Off-Shore Pool had an administrator that prepared and issued account statements to the Off-Shore Pool participants. The administrator prepared the account statements in part based upon Off-Shore Pool account information it accessed through websites maintained by the two FCMs.

40. Defendants prepared and issued account statements directly to the Feeder Fund participants on Feeder Fund letterhead and with Eustace's name and title, as president.

41. Beginning in February 2005 and continuing through June 2005, the Off-Shore Pool sustained severe net trading losses in at least one Off-Shore Pool trading account that totaled more than \$140 million.

42. During this time, the Defendants issued account statements to Feeder Fund participants showing overall profitable trading of futures and options. For example, in or about May 2005, the Defendants directly issued account statements to at least one Feeder Fund participant showing a monthly net return for April 2005 of 1.69%.

43. In or about May 2005, Defendants posted on their website, www.paamcollc.com, the following 2005 net returns for the Off-Shore Pool: 1.25% in February; 1.56% in March; 1.69% in April, with a year-to-date net return of 5.5%.

44. For these same months, Defendants caused account statements to be issued to the Off-Shore Pool participants that reflected the overall profitable trading of commodity futures and

options, with the account statements for May 2005 reflecting a cumulative net asset value of over \$230 million at the end of May.

45. In fact, the Off-Shore Pool's commodity futures and options trading accounts had sustained the following losses during those months: February - \$18 million (-10.36%); March - \$7 million (-4.41%); April - \$33 million (-17.94%); and May - \$85 million (-50.16%).

46. Defendants masked the massive trading losses from the Off-Shore Pool participants by ensuring that the administrators of the Off-Shore Pool did not have access to account information for at least one trading account opened in the name of the Off-Shore Pool and traded by Eustace and from the Feeder Fund participants by issuing false accounts statements prepared by PAAM.

G. Defendants Misappropriated Pool Participants' Funds

47. At the same time, Defendants issued false account statements showing profitable trading for the LP Pool, Feeder Fund and Off-Shore Pool, Defendants earned incentive fees based on the purported profits and earned management fees based on the purported lawful operation of the pools.

48. Eustace also moved LP Pool funds, through the Option Capital Fund, into his personal trading or banking accounts.

49. As a result, Defendants misappropriated funds belonging to the LP Pool, Feeder Fund and Off-Shore Pool participants.

II. CONCLUSIONS OF LAW

1. This Court has jurisdiction over 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 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 Defendant PAAM.

4. Beginning in or about March 2003 and continuing through June 2005, with respect to the LP Pool, Feeder Fund, and Off-Shore Pool, Defendants: (1) cheated or defrauded or attempted to cheat or defraud other persons; (2) willfully made or caused to be made false reports or statements to other persons; and/or (3) willfully deceived or attempted to deceive other persons, in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of any other persons, where such contracts for future delivery were or might be used for the purposes set forth in Section 4b(a) of the Act, all in violation of Sections 4b(a)(2)(i) - (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) - (iii) (2002).

5. Beginning in or about March 2003 and continuing through June 2005, Defendants knowingly, or with reckless disregard for the truth, violated Sections 4b(a)(2)(i) - (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) - (iii) (2002), by (a) issuing false account statements to LP Pool participants showing fictitious futures trading; (b) omitting to inform LP Pool participants of the material information that Defendants had not engaged in any futures trading in the name of the LP Pool or LP Pool participants; (c) providing false trading results to solicit LP Pool participants showing profitable actual trading; (d) providing false account statements to Feeder Fund participants showing profitable actual trading ; (e) causing false statements to be issued to Off-Shore Pool participants; (f) posting false trading results for the Off-Shore Pool on PAAM's website; (g) misappropriating LP Pool funds by transferring LP Pool funds into Eustace's

personal accounts; and (h) misappropriating LP Pool, Feeder Fund and Off-Shore Pool funds by collecting incentive and management fees they had not earned and were therefore not entitled to collect.

6. The actions and failures of Eustace with respect to the LP Pool, Feeder Fund and Off-Shore Pool were done within the scope of his employment with PAAM, and therefore PAAM is liable for his violations of Sections 4b(a)(2)(i) - (iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002).

7. Each act of issuing false account statements; each failure to disclose material facts; each act of showing false trading results to participants and prospective participants; each act of misappropriation; and each posting of false trading results on PAAM's website is a separate and distinct violation of Sections 4b(a)(2)(i) - (iii) of the Act by Defendants.

8. Beginning in or about March 2003 and continuing through June 2005, with respect to the LP Pool, Feeder Fund and Off-Shore Pool, Defendants have: (1) cheated or defrauded or attempted to cheat or defraud other persons; (2) made or caused to be made to other persons false reports or statements; and/or (3) deceived or attempted to deceive other persons, in or in connection with an offer to enter into, the entry into, the confirmation of, the execution of, or the maintenance of, commodity option transactions, all in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulations 33.10(a) - (c), 17 C.F.R. §§ 33.10 (a) - (c) (2004).

9. Defendants have, knowingly or with reckless disregard for the truth, violated Section 4c(b) of the Act and Commission Regulations 33.10(a) - (c) by: (a) issuing false account statements to LP Pool participants showing fictitious commodity options trading; (b) omitting to inform LP Pool participants that Defendants had not engaged in any commodity options trading

in the name of the LP Pool or LP Pool participants; (c) providing false trading results to solicit LP Pool participants showing profitable trading; (d) causing false statements to be issued to Off-Shore Pool participants; (e) providing false account statements to Feeder Fund participants; (f) posting false trading results for the Off-Shore Pool on PAAM's website; and (g) misappropriating LP Pool, Feeder Fund and Off-Shore Pool funds by collecting incentive and management fees they had not earned and were therefore not entitled to collect.

10. The actions and failures of Eustace with respect to the LP Pool, Feeder Fund and Off-Shore Pool were done within the scope of his employment with PAAM, and therefore PAAM is liable for his violations of Section 4c(b) of the Act and Commission Regulations 33.10 (a) – (c), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002).

11. Each act of issuing of false account statements; each failure to disclose material facts; each act of showing false trading results to prospective participants; each posting of false trading results on PAAM's website; and each act of misappropriation, is a separate and distinct violation of Section 4c(b) of the Act and Commission Regulations 33.10 (a) – (c) by Defendants.

12. Beginning in or about March 2003 and continuing through June 2005, Defendant PAAM was a CPO registered with the Commission and PAAM acted as a CPO by soliciting, accepting or receiving funds from others and engaging in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in commodities for future delivery or options on futures contracts on or subject to the rules of a contract market. Defendant Eustace was a registered Associated Person (“AP”) of a CPO, PAAM, and acted as an AP of a CPO by soliciting prospective pool participants.

13. Beginning in or about March 2003 and continuing through June 2005, Defendant PAAM, while acting as a CPO, and Defendant Eustace, while acting as an AP of PAAM,

knowingly or with reckless disregard for the truth, employed a device, scheme or artifice to defraud LP Pool participants and prospective LP Pool, Off-Shore Pool and Feeder Fund participants, in violation of Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A)(2002), and Commission Regulation 4.41(a)(1), 17 C.F.R. § 4.41(a)(1) (2004).

14. Beginning in or about March 2003 and continuing through June 2005, Defendant PAAM, while acting as a CPO, and Defendant Eustace, while acting as an AP of PAAM, engaged in a transaction, practice or course of business which operated as a fraud or deceit upon LP Pool, Off-Shore Pool and Feeder Fund participants and prospective participants, in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) (2002), and Commission Regulation 4.41(a)(2), 17 C.F.R. § 4.41(a)(2) (2004).

15. Defendants, knowingly or with reckless disregard for the truth, violated Sections 4o(1)(A) and (B) of the Act by: (a) issuing false account statements to LP Pool participants showing fictitious commodity futures and options trading; (b) omitting to inform LP Pool participants that the Defendants had not engaged in any commodity futures or options trading in the name of the LP Pool or LP Pool participants; (c) providing false trading results to at least one prospective LP Pool participant showing profitable trading; (d) causing false statements to be issued to Off-Shore Pool participants; (e) providing false account statements to Feeder Fund participants; (f) posting false trading results for the Off-Shore Pool on PAAM's website; and (g) misappropriating LP Pool, Feeder Fund and Off-Shore Pool funds by collecting incentive and management fees they had not earned and were therefore not entitled to collect.

16. Defendants, knowingly or with reckless disregard for the truth, violated Commission Regulations 4.41(a)(1) and (2) by: (a) posting false trading results for the Off-Shore

Pool on PAAM's website; and (b) providing false trading results to at least one prospective LP Pool participant.

17. The actions and failures of Eustace were done within the scope of his employment with PAAM, and therefore PAAM is liable for his violations of Sections 4o(1)(A) and (B) of the Act, and Commission Regulations 4.41(a)(1) and (2), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002).

18. Each act of issuing of false account statements; each failure to disclose material facts; each act of showing false trading results to prospective participants; each act of misappropriation; and each posting of false trading results on PAAM's website is a separate and distinct violation of Sections 4o(1)(A) and (B) of the Act by Defendants.

19. Each act of showing false trading results to prospective participants; and each posting of false trading results on PAAM's website is a separate and distinct violation of Sections 4o(1)(A) and (B) of the Act and Commission Regulations 4.41(a)(1) and (2) by Defendants.

III.

ORDER FOR RELIEF

GOOD CAUSE APPEARING, IT IS ORDERED THAT:

A. Permanent Injunction

1. Defendant PAAM shall be permanently restrained, enjoined and prohibited from directly or indirectly engaging in conduct violative of Sections 4b(a)(2)(i) - (iii), 4c(b), and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) - (iii), 6c(b), and 6o(1)(A) and (B) (2002), and Commission Regulations 4.41(a)(1) and (2) and 33.10, 17 C.F.R. §§ 4.41(a)(1) and (2) and

33.10 (2004), including but not limited to the conduct described in the Findings of Fact and Conclusions of Law above.

2. Defendant PAAM shall be permanently restrained, enjoined and 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, at 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 in connection with the purchase or sale of any commodity interest contract;
- 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) (2004), 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) (2004); and
- e. engaging in any business activities related to commodity interest trading.

3. The injunctive provisions of this Order shall bind PAAM, any person who acts in the capacity of officer, agent, servant or employee of PAAM (other than the Receiver, the receiver *ad litem* and any agent of them), and any person who receives actual notice of this order, by personal service, email or facsimile, insofar as he or she acts in active concert or participation with PAAM.

B. Restitution

1. PAAM shall pay restitution in the amount of \$276,273,698.99, plus post-judgment interest, consisting of \$25,733,497 to participants in the Philadelphia Alternative Asset

Fund, L.P. and \$250,540,201.99 to participants in the Philadelphia Alternative Feeder Fund, LLC and Philadelphia Alternative Asset Fund Ltd. (collectively, the "Restitution Obligation").

2. 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.

3. PAAM's Restitution Obligation shall be reduced by: (a) amounts already distributed to the pool participants, pursuant to the Court's orders dated November 13, 2006, December 18, 2006 and February 15, 2008; and (b) amounts subsequently distributed by the Receiver pursuant to further orders of this Court. PAAM's Restitution Obligation shall also be reduced by any amounts of restitution paid directly by Eustace to participants, upon a showing that such payments have been made.

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 pursuant to further orders of the Court.

5. The provision of the consent order of preliminary injunction entered against PAAM on September 22, 2005, continuing a freeze on assets or funds in PAAM's name or under its 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. PAAM shall satisfy the Restitution Obligation by making payments to the Receiver. The Receiver shall distribute such payments to claimants whose claims are or have been allowed in the claims process.

7. In the event that PAAM has not fully satisfied the Restitution Obligation after entry of the Court's final order of distribution and the termination of the receivership estate, PAAM shall satisfy the Restitution Obligation by making payments to the National Futures Association as Monitor ("Monitor"). The Monitor shall collect restitution payments from PAAM 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. PAAM 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, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies PAAM and the name and docket number of this case. PAAM 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, 1155 21st Street, NW, Washington, D.C. 20581, and (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

9. The Monitor shall oversee PAAM'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 in the manner set forth in Part III.C.3, below.

10. To the extent that any funds accrue to the U.S. Treasury as a result of the Restitution Obligation in this Default Judgment, such funds shall be transferred to the Receiver or, if the receivership has been terminated, to the Monitor for disbursement to pool claimants in accordance with the procedures set forth above in paragraphs 6 or 9, respectively.

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 PAAM.

C. Civil Monetary Penalty

1. PAAM shall pay a civil monetary penalty in the amount of \$8,800,000, plus post judgment interest (the "CMP Obligation").

2. 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.

3. PAAM 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/FAA/MMAC
6500 S. Macarthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-6569


If payment is to be made by electronic funds transfer, PAAM shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. PAAM shall accompany payment of the CMP Obligation with a cover letter that identifies PAAM and the name and docket number of this proceeding. PAAM 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, 1155 21st Street, N.W., Washington, D.C. 20581; and (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

D. Priority Of Monetary Sanctions And Partial Payments

1. All payments by PAAM pursuant to this Order shall first be applied to satisfaction of the Restitution Obligations, consistent with the authority granted to the Receiver and Monitor above. After PAAM satisfies the Restitution Obligation, payments by PAAM pursuant to this Order shall apply to PAAM's CMP Obligation.

2. Any acceptance of partial payment of PAAM's Restitution Obligations or CMP Obligations shall not be deemed a waiver of PAAM's requirement to make further payments pursuant to this Order, or a waiver of the Receiver's, Monitor's and/or Commission's right to seek to compel payment of any remaining balance.

SO ORDERED, this 13 day of August, 2008.



HON. MICHAEL M. BAYLSON
UNITED STATES DISTRICT JUDGE

mail
cc: Sexton
Kaminsky
Chernigoff
Bergmann
Rodgers
HORN
Rosengard
Stansfeld
Doherty
Eustace