

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

MICHAEL JUSTIN HOOPES,

Defendant.

Case No. 4:11-CV-00510-EJL

ORDER

CONSENT ORDER FOR PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY, AND OTHER EQUITABLE RELIEF
AGAINST DEFENDANT MICHAEL JUSTIN HOOPES

I. INTRODUCTION

On October 25, 2011, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint for Injunctive and Other Equitable Relief and for Civil Monetary Penalties Under the Commodity Exchange Act (“Complaint”) (Dkt. 1) against defendant Michael Justin Hoopes (“Hoopes” or “Defendant”) seeking injunctive and other equitable relief, as well as the imposition of civil monetary penalties, for violations of the Commodity Exchange Act (“Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. § 1.1 *et seq.* (2011). The Court entered a Statutory Restraining Order against Hoopes on October 25, 2011 (Dkt. 13) and a Consent Order for Preliminary Injunction Against Defendant Michael Justin Hoopes on November 7, 2011 (Dkt. 20).

II. CONSENTS AND AGREEMENTS

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

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendant Michael Justin Hoopes (“Consent Order”);
2. Affirms that he has read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent, or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledges service of the summons and Complaint;

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

5. Admits the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1 *et seq.*;

6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e);

7. Waives:

(a) any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2011), relating to, or arising from, this action;

(b) any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

(c) any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

(d) any and all rights of appeal from this action;

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

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

10. Agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect his: (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Hoopes shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement;

11. Admits to all of the findings made in this Consent Order and all of the allegations in the Complaint. Further, Hoopes agrees and intends that the allegations contained in the Complaint and all of the Findings of Fact and Conclusions of Law contained in this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Hoopes; (b) any proceeding pursuant to Section 8a of the Act, as amended, at 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2011); and/or (c) any proceeding to enforce the terms of this Consent Order;

12. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 59 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

13. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against him in any other proceeding.

III. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction, and equitable relief pursuant to Section 6c of the Act, as amended, at 7 U.S.C. § 13a-1, as set forth herein.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

1. The Parties to This Consent Order

14. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

15. Defendant Michael Justin Hoopes resides in Rexburg, Idaho. He owns, controls, and operates a commodity pool called Aspen Trading, LLC (“Aspen Trading”). He also acts as a commodity pool operator (“CPO”) for Aspen Trading. Hoopes has never been registered with the Commission in any capacity.

2. Hoopes’ Commodity Futures Trading Accounts

16. Hoopes maintained two commodity futures trading accounts at Dorman Trading, LLC (“Dorman”), account numbers XXX16 and XXX43, in the names of Hoopes and his wife, Harley Hoopes. These accounts were introduced to Dorman by Mirus Futures (“Mirus”), an introducing broker registered with the Commission. Hoopes opened account XXX16 in October 2006, funding it on October 24, 2006 with \$3,000, and he opened account XXX43 in January 2007, funding it with \$25,000 transferred from account XXX16 on January 17, 2007. Hoopes represented in opening account documents that these accounts were proprietary and did not contain any third party customer funds.

17. Between October 2006 and March 2009, Hoopes deposited \$2,280,550 into account XXX16. Although Hoopes obtained \$1,474,070 of these funds from third party pool participants who invested with him for the purpose of trading commodity futures in a commodity pool, when Mirus' president questioned him as to the source of these funds in February 2008, Hoopes falsely claimed that his "family sold some land, so it is my inheritance."

18. Between October 2006 and May 31, 2011, Hoopes suffered net losses of over 90% trading commodity futures at Dorman. Specifically, of the \$2,280,550 that Hoopes deposited into account XXX16, he lost \$2,055,598 trading.

19. During the lives of the Dorman accounts, Hoopes withdrew at least \$243,102, at least \$152,000 of which was pool participant funds, and he used the money for various personal expenses including credit card, car, and mortgage payments.

20. Hoopes has not placed any trades in his two Dorman accounts since July 2009. Account XXX16 has had a balance of approximately \$1,000 since August 2009, and account XXX43 has had a \$0 balance since July 2007.

3. Solicitation Fraud

21. From at least September 2007 to October 25, 2011 ("the relevant time"), Hoopes fraudulently solicited and accepted \$2,068,103 from ten individuals, most of whom were Idaho residents, for the purpose of trading stock index commodity futures in a commodity pool he owns, controls, and operates called Aspen Trading. Hoopes solicited and accepted an additional \$9.68 million from other mostly Idaho residents during the same time period, at least \$540,379.61 of which was used for futures trading, and all of which was extensively commingled with Hoopes' personal funds and the funds accepted from the ten individuals for the purpose of trading stock index commodity futures.

22. In 2007, Hoopes informed his cousin, Richie Webb ("Webb"), that he was "day trading," earning very good returns, and confident he could earn 20% per year trading on Webb's behalf. Subsequently, Webb spoke to his brother-in-law, Stephen Crandall ("Crandall"), a certified public accountant in Rexburg, Idaho, about the possibility of investing with Hoopes.

23. Crandall met with Hoopes in November or December 2007 to discuss the possibility of investing with him, and Hoopes told Crandall that he was earning returns well in excess of 25%-30% annually day trading and could offer Crandall a 25% annual return if Crandall decided to invest with him. In reality, Hoopes lost over \$100,000 in November 2007 and over \$26,000 in December 2007 trading commodity futures for his own accounts.

24. Hoopes also told Crandall that he would take any profits over 25% as his commission and that, while he had suffered some isolated trading losses, he had not lost money trading on an annual basis. In reality, Hoopes' commodity futures trading in his own accounts resulted in losses of approximately \$3,797 in 2006 and \$240,444 in 2007. Hoopes also told Crandall that he was able to minimize the risks of trading by getting in and out of the market quickly and not holding positions overnight.

25. Based on Hoopes' representations regarding his trading success, Webb and Crandall decided to invest with him.

26. In January 2008, Crandall and Webb formed a company called SHR Investments, LLC ("SHR") with their friend Hollis Murri ("Murri") for the purpose of investing funds with Hoopes for "day trading." Although Crandall and Webb did not know at first precisely what products Hoopes was trading with SHR's funds, Hoopes used their funds to trade commodity futures. Hoopes also provided promissory notes to Crandall and Webb memorializing their investments that included an interest rate of 20% annually.

27. In addition to investing Webb's, Crandall's, and Murri's funds, SHR also invested funds with Hoopes for seven others who were friends or relatives of Webb, Crandall, and Murri, also for the purpose of "day trading." Hoopes collected at least \$2,068,103 from SHR investors during 2008 and 2009.

28. Hoopes told Crandall and Webb that all of the funds invested by and through SHR would be pooled into one account in the name of Aspen Trading, an entity Hoopes owned, controlled, and operated, and that Hoopes would use the funds to engage in "day trading." Hoopes told Crandall that customers who invested in 2008 would earn an annual return of 25%

on their investments, and customers who invested in 2009 would earn an annual return of 20% on their investments. Hoopes also told Crandall and Webb that he controlled the Aspen Trading account and made the trading decisions for that account.

29. In 2010, Hoopes told Crandall and Webb for the first time that he had lost SHR's funds trading in the Aspen Trading account at Dorman. Specifically, Hoopes told Crandall that he "was not honest with" Crandall and had "lost money" trading in the Aspen Trading account. In total, SHR lost approximately \$1,698,414 of its \$2,068,103 investment with Hoopes.

30. Subsequently, Hoopes provided Crandall and Webb with stock certificates in a company called Connected Lyfe that were purportedly equivalent to what they were owed pursuant to their promissory notes. After they received these certificates, however, the value of Connected Lyfe stock declined sharply, and as of late-March 2012, the stock was trading at nine cents per share.

4. False Reports

31. Hoopes provided Crandall with false monthly account statements for a fake Aspen Trading account at Dorman via hand delivery and email for December 2008 and January, May, June, October, November, and December 2009. The statements reflected that Aspen Trading's purported account at Dorman was earning monthly profits as high as 83.52%, with only one losing month, and had a \$2,210,584 balance as of December 2009. In fact, Aspen Trading has never had an account at Dorman. Instead, the account number on the fake Aspen Trading account statements, XXX16, is the account number for one of the trading accounts at Dorman in Hoopes' and Harley Hoopes' name. Hoopes simply altered seven of his personal account statements to appear as though they were Aspen Trading account statements, and to make it appear as though the Aspen Trading account was earning large profits from commodity futures trading. In reality, the trading accounts at Dorman in Hoopes' and Harley Hoopes' names lost \$244,768 in 2009 and have not traded since July 2009, and those accounts have had a combined approximate balance of only \$1,000 since August 2009. Hoopes admitted to Crandall in 2010 that the Aspen Trading statements were false.

32. Additionally, in order to secure a \$430,000 loan from a third party individual, Keith Cornelison, in or about September 2010, Hoopes provided Cornelison with a letter on purported Mirus letterhead falsely stating that he had \$430,000 in an account at Dorman in Aspen Trading's name. In fact, Aspen Trading has never had an account at Dorman, and Hoopes forged the signature of a Mirus broker, Byron Zook, on the letter.

5. Misappropriation and Commingling of Customer Funds

33. Beginning in September 2007, Hoopes solicited and accepted \$2,068,103 from ten pool participants for the purpose of trading commodity futures in an account in the name of Aspen Trading, but he used no more than \$1,474,070 of that amount to trade commodity futures. Specifically, Hoopes transferred \$1,607,009 of participant funds originally held in Aspen Trading bank accounts into his personal bank accounts. From there, he transferred \$1,474,070 to his personal trading accounts at Dorman, where it was commingled with \$1,259 of Hoopes' own money. Hoopes then used at least \$151,694 of the commingled funds for his personal expenses, including car, credit card, and mortgage payments, and he paid participants \$594,339 in purported profits in the manner of a Ponzi scheme. At no time did Hoopes disclose to pool participants that he would use their funds for these purposes.

34. Hoopes also commingled participants' funds with his personal funds in a bank account in the name of Aspen Trading that he controlled. For example, between January 28, 2008 and May 29, 2009, Hoopes transferred \$79,287 from his personal bank accounts into the Aspen Trading bank account, where it was commingled with approximately \$1,990,094 in participants' funds that he solicited and accepted for the purpose of trading commodity futures.

6. Hoopes Acted as a CPO Without Being Registered as a CPO

35. Hoopes acted as a CPO during the relevant time by soliciting and accepting more than two million dollars from ten pool participants for the purpose of trading futures in his Aspen Trading pool without the benefit of registration with the Commission as a CPO, as required.

B. Conclusions of Law

1. Jurisdiction and Venue

36. This Court has jurisdiction over this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act or any rule, regulation, or order thereunder.

37. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e), because Hoopes resides in this District, and the acts and practices in violation of the Act occurred within this District.

2. Hoopes Committed Fraud by His Misrepresentations and Misappropriation in Violation of Section 4b of the Act

38. By the conduct described in paragraphs 16 through 35 above, Hoopes cheated and defrauded, or attempted to cheat and defraud, and willfully deceived, or attempted to deceive, actual and prospective pool participants by, among other things, knowingly or recklessly: (1) making material misrepresentations to actual and prospective pool participants regarding the profit potential and risk of loss involved in his commodity futures trading; (2) misappropriating pool participant funds; and (3) failing to disclose to pool participants his actual trading losses and misappropriation of participant funds, in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), for conduct occurring before June 18, 2008, and Section 4b(a)(1)(A) and (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A), (C), for conduct occurring on or after June 18, 2008.

3. Hoopes Committed Fraud by His False Reports in Violation of Section 4b of the Act

39. By the conduct described in paragraphs 16 through 35 above, Hoopes willfully made or caused to be made false reports or statements by, among other things, creating and issuing false account statements to one pool participant, in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006), for conduct occurring before June 18, 2008, and Section 4b(a)(1)(B) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(B), for conduct occurring on or after June 18, 2008.

4. Hoopes Committed Fraud as a CPO in Violation of Section 4o of the Act

40. By the conduct described in paragraphs 16 through 35 above, Hoopes, while acting as a CPO, employed a device, scheme, or artifice to defraud actual or prospective pool participants, or engaged in a transaction, practice, or course of business that operated as a fraud or deceit on actual or prospective pool participants, by use of the mails or other means or instrumentalities of interstate commerce, by, among other things: (1) making material misrepresentations to actual and prospective pool participants regarding the profit potential and risk of loss involved in his commodity futures trading; (2) misappropriating pool participant funds; (3) failing to disclose to pool participants his actual trading losses and misappropriation of participant funds; and (4) creating and issuing false account statements to at least one pool participant, including by email, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

5. Hoopes Failed to Register as a CPO in Violation of Section 4m(1) of the Act

41. By the conduct described in paragraphs 16 through 35 above, Hoopes, while acting as a CPO, made use of the mails or other means or instrumentalities of interstate commerce in connection with his CPO business, without the benefit of registration as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

6. Hoopes Commingled Pool Participant Funds in Violation of Regulation 4.20(c)

42. By the conduct described in paragraphs 16 through 35 above, Hoopes, while acting as a CPO, commingled property of the commodity pool he operated with the property of another person by, among other things, commingling pool participant funds with his own personal funds, in violation of Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011).

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

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

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

- A. Cheating or defrauding, or attempting to cheat or defraud, other persons; willfully making, or causing to be made, any false report or statement to other persons, or willfully entering, or causing to be entered, any false record for other persons; or willfully deceiving, or attempting to deceive, other persons, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of such other persons, in violation of Section 4b(a)(1)(A)-(C) of the Act, as amended, at 7 U.S.C. § 6b(a)(1)(A)-(C);
- B. Employing any device, scheme, or artifice to defraud any actual or prospective pool participant, or engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any actual or prospective pool participant, by use of the mails or any other means or instrumentalities of interstate commerce, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006);
- C. Making use of the mails or any other means or instrumentalities of interstate commerce in connection with a CPO business without being registered with the Commission under the Act, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006); and
- D. Commingling the property of any commodity pool with the property of another person, in violation of Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011).

45. Hoopes is also permanently restrained, enjoined, and prohibited from directly or indirectly:
- A. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a);
 - B. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2011)) (“commodity options”), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”), for his own personal account or for any account in which he has a direct or indirect interest;
 - C. Having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on his behalf;
 - D. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
 - E. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
 - F. 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) (2011); and/or
 - G. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) 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) (2011).

V. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution

46. Hoopes shall pay restitution in the amount of ten million, four hundred thousand, nine hundred and thirty-eight dollars and fifteen cents (\$10,400,938.15) (“Restitution Obligation”), plus post-judgment interest, within ten (10) days of the date of entry of this Consent Order. If the Restitution Obligation is not paid in full within ten (10) days of the date of entry of this Consent Order, then post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

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

48. Hoopes shall make Restitution Obligation payments under this Consent Order to the Monitor in the name “Hoopes – Settlement/Restitution Fund” and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s check, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies Hoopes and the name and docket number of this proceeding. Hoopes shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

49. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Hoopes’ pool

participants identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible pool participants 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 Part V.B below.

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

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

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

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

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

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

B. Civil Monetary Penalty

55. Hoopes shall pay a civil monetary penalty in the amount of one million, four hundred and ninety-two thousand, five hundred and ninety-seven dollars and eighty cents (\$1,492,597.80) ("CMP Obligation"), plus post-judgment interest, within ten (10) days of the date of entry of this Consent Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Consent Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006).

56. Hoopes shall pay his 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, then 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: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, Hoopes shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Hoopes shall accompany payment of the CMP Obligation with a cover letter that identifies Hoopes and the name and docket number of this proceeding. Hoopes shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial

Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

C. Provisions Related to Monetary Sanctions

57. Partial Satisfaction: Any acceptance by the Commission or the Monitor of partial payment of Hoopes' Restitution Obligation or CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

D. Cooperation

58. Hoopes shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.

VI. MISCELLANEOUS PROVISIONS

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

Notice to the Commission:

Regional Counsel
Division of Enforcement – Central Region
U.S. Commodity Futures Trading Commission
525 West Monroe, Suite 1100
Chicago, Illinois 60661

Notice to the Monitor:

Vice President, Compliance
National Futures Association
300 South Riverside Plaza, Suite 1800
Chicago, Illinois 60606; and

Notice to Defendant Michael Justin Hoopes:

Michael Justin Hoopes
355 Partridge Lane
Rexburg, Idaho 83440

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

60. Change of Address/Phone: Until such time as Hoopes satisfies in full his Restitution Obligation and CMP Obligation as set forth in this Consent Order, Hoopes shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

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

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

63. Waiver: The failure of any party to this Consent Order or of any of Hoopes' pool participants at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or pool participant at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

64. Acknowledgements: Upon being served with copies of this Consent Order after entry by the Court, Hoopes shall sign acknowledgements of such service and serve such acknowledgements on the Court and the Commission within ten (10) calendar days.

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

66. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Hoopes, upon any person under his authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, email, facsimile, or otherwise insofar as he or she is acting in active concert or participation with Hoopes.

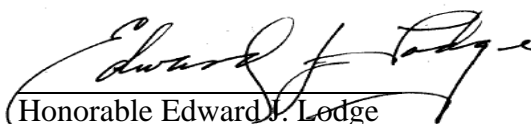
67. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, email, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

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

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendant Michael Justin Hoopes.



DATED: **July 26, 2012**


Honorable Edward J. Lodge
U. S. District Judge