

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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| In the Matter of: |) | |
| |) | |
| Terrence R. Pipenhagen, Traders |) | |
| East, Inc., and TRP Advisory |) | CFTC Docket No. 10 – <u>16</u> |
| Group, Inc., |) | |
| |) | |
| Respondents. |) | |
| |) | |

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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
 SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, AS AMENDED,
 MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Terrence Reid Pipenhagen (“Pipenhagen”), Traders East, Inc. (“TEI”), and TRP Advisory Group, Inc. (“TRP”) (collectively, “Respondents”) have violated Sections 4b(a)(2)(ii) and 4c(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6b(a)(2)(ii) and 6c(1) (2006), and Pipenhagen and TRP have violated Sections 4k(2) and 4m(1) of the Act, 7 U.S.C. §§ 6k(2) and 6m(1) (2006), and Commission Regulations 4.20 and 4.21, 17 C.F.R §§ 4.20 and 4.21 (2009). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether Respondents have engaged in the violations as set forth herein and to determine whether an order should be issued imposing remedial sanctions.

II.

In anticipation of instituting an administrative proceeding, Respondents have each submitted an *Offer of Settlement* (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings herein, Respondents acknowledge service of this *Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, as amended, Making Findings and Imposing Remedial Sanctions* (“Order”).¹

¹ Respondents consent to the entry of this *Order* and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondents do not consent to the use of the *Offer*, or the findings consented to in the *Order*, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this *Order*. Nor

III.

The Commission finds the following:

A. Summary

From approximately mid-2002 through August 2006 (“relevant period”), Pipenhagen, through two companies, TRP and TEI, solicited approximately \$450,000 from individuals to trade commodity futures contracts primarily through a commodity futures pool (“the pool”) but also through individually managed commodity futures accounts. Pipenhagen lost the investors’ funds trading, but concealed those losses through false statements sent to the investors that claimed that they were earning consistent profits.

Additionally, in operating the pool, TRP acted as a commodity pool operator (“CPO”), TEI acted as a Commodity Trading Advisor (“CTA”), and Pipenhagen acted as an associated person (“AP”) of both TRP and TEI, however, neither TRP, TEI nor Pipenhagen was registered with the Commission as required.

B. Respondents

Terrence R. Pipenhagen resides in Orlando, Florida. Pipenhagen has never registered with the Commission. From October 1980 to March 2008, Pipenhagen was registered with the Securities and Exchange Commission (“SEC”) and was registered with various Financial Industry Regulatory Authority, Inc. (“FINRA”) member firms, most recently as a general securities representative and general securities principal. In March 2008, FINRA filed a complaint and order of acceptance of settlement that imposed a lifetime bar on Pipenhagen from associating with any FINRA member. In March 2007, Pipenhagen filed a voluntary petition pursuant to Chapter Seven of the United States Bankruptcy Code in the Bankruptcy Court for the Middle District of Florida. In June 2007, the bankruptcy trustee reported that the estate had no property available for distribution to creditors. Ultimately, the bankruptcy court issued an order of discharge. *In re Pipenhagen*, Bankr. No. 07-902 (M.D. Fla. Jul. 6, 2007).

Traders East, Inc. is an inactive Florida corporation that was administratively dissolved in 1999 for failure to file its annual report. However, Pipenhagen continued to operate through TEI thereafter.

TRP Advisory Group, Inc. is an inactive Florida corporation that was administratively dissolved in 1999 for failure to file its annual report. However, Pipenhagen continued to operate through TRP thereafter.

do Respondents consent to the use of the *Offer* or this *Order*, or the findings in this *Order* consented to in the *Offer*, by any other party in any other proceeding.

C. Facts

During the relevant period, Pipenhagen, through TRP and TEI, solicited individuals to trade commodity futures contracts on their behalf. Pipenhagen solicited individuals he knew from his work as an insurance and securities salesman. He claimed he could provide them with consistent gains and achieve high returns.

Pipenhagen successfully solicited at least nine individuals to invest at least \$450,000 for the purpose of trading commodity futures. Most customers sent checks in the name of TRP. Pipenhagen pooled and traded most of the customer funds in commodity futures accounts held in his own name. Pipenhagen also traded individual managed accounts for a few investors.

In soliciting funds for the purpose of pooling and trading commodity futures contracts, TRP acted as a CPO, and in advising the pool and managing individual accounts for profit, TEI acted as a Commodity Trading Advisor (“CTA”). In soliciting for the pool and individual managed accounts, Pipenhagen acted as an AP of TRP and TEI.

In his trading, Pipenhagen consistently sustained losses and eventually lost all the customers’ funds. Pipenhagen sent false account statements to customers in order to conceal his trading losses and to prevent them from pulling out their investments. For example, in one instance, he sent an account statement showing profits of over \$10,000, even though the trading account had been closed months earlier after having sustained losses of over \$75,000.

Eventually, Pipenhagen’s customers attempted to access their funds and learned of his fraud.

IV. LEGAL DISCUSSION

A. **Section 4b(a)(2)(ii) of the Act:** **Fraud by False Statements**

Prior to being revised in June 2008,² Section 4b(a)(2)(ii) of the Act provided that it was unlawful:

for any person in or in connection with any order to make, or the making of any contract or sale of any commodity for future

² The June 2008 legislation reauthorizing the CFTC revised Section 4b of the Act, among other things. *See* Section 1302 of the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”). The objective of the revision was to “clarify that the CEA gives the Commission the authority to bring fraud actions in off-exchange ‘principal-to-principal’ futures transactions.” H.R. Rep. No. 110-627, at 981 (2008) (Conf. Rep.). While the CRA did not change the Act’s prohibition on misconduct such as that at issue here, it reorganized Section 4b so that similar misconduct occurring on or after June 18, 2008 would be in violation of Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C).

delivery, made or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for [one of the enumerated purposes herein] ... (ii) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof ...

7 U.S.C. §§ 6b(a)(2)(ii) (2006).

Respondents, through the issuance of false account statements, violated Section 4b(a)(2)(ii) of the Act.

1. Fraud by Issuance of False Statements

Issuing or causing to be issued false statements to investors concerning the profitability of commodity futures trading conducted on their behalf violates Section 4b(a)(2)(ii) of the Act. *CFTC v. Weinberg*, 287 F. Supp. 2d 1100, 1107 (C.D. Cal. 2003) (false and misleading statements as to the amount and location of investors' money violated Section 4b(a) of the Act); *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 448 (D.N.J. 2000); *CFTC v. Skorupskas*, 605 F. Supp. 923, 932-33 (E.D. Mich. 1985) (defendant violated Section 4b(a) of the Act by issuing false monthly statements to customers); *CFTC v. Sorkin*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,855, at 27,585 (S.D.N.Y. Aug. 25, 1983) (distribution of account statements that falsely report trading activity or equity is a violation of Section 4b of the Act).

Respondents knowingly issued false statements to investors showing that they were earning profits from Pipenhagen's trading of commodity futures contracts when in fact he was losing money trading. Therefore, Respondents violated Section 4b(a)(2)(ii) of the Act.

B. Section 4o(1) of the Act: Fraud by CPO's, CTA's and Their AP's

Section 4o(1) of the Act, in relevant part, makes it unlawful for a CPO, CTA, or an AP of a CPO or CTA, by using the mails or any means or instrumentality of interstate commerce, directly or indirectly (a) to employ a device, scheme or artifice to defraud pool participants, or (b) to engage in a transaction or course of business that operated as a fraud or deceit upon pool participants. 7 U.S.C. § 6o(1) (2006). This section of the Act applies to all CPOs and CTAs and their APs whether registered, required to be registered, or exempt from registration. *Skorupskas*, 605 F. Supp. at 932. Although scienter must be proven to establish violations of Sections 4b and 4o(1)(A) of the Act, it is not necessary to prove scienter to establish a violation of Section 4o(1)(B) of the Act. See *Messer v. E.F. Hutton & Co.*, 847 F.2d 673, 678-79 (11th Cir. 1988). *Accord In re Kolter*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,262 (CFTC Nov. 8, 1994) (Commission cited *Messer* for this proposition with approval).

By operating a business in the nature of an investment pool, syndicate or similar form of enterprise and by soliciting, accepting or receiving funds for the purpose of trading commodity futures or options, TRP was acting as a CPO and Pipenhagen was acting as an AP. Section 1a(5)

of the Act, 7 U.S.C. § 1a(5) (2006) (defining CPO), and Commission Regulation 1.3(aa)(3), 17 C.F.R. 1.3(aa)(3) (2008) (defining AP of a CPO). *See, e.g., In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,310 (CFTC July 19, 1999), *aff'd in relevant part sub nom. Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000) (respondent acted as a CPO when it accepted investment funds from individual investors who deposited funds in respondent's bank account for the purpose of trading in a commodity pool); *SEC v. Princeton Econ. Int'l*, 73 F. Supp. 2d 420, 424 (S.D.N.Y. 1999) (defendant acted as a CPO by commingling proceeds derived from sale of notes to customers in a commodity pool). By advising on commodity futures trading for profit, TEI acted as a CTA. Section 1a(6) of the Act. By soliciting funds for TRP and TEI, Pipenhagen acted as an AP of a CPO and CTA. Commission Regulation 1.3(aa)(3) (defining an AP of a CPO) and 1.3(aa)(4) (defining an AP of a CTA).

The same fraudulent conduct that violates Section 4b(a), as set forth above, also violates Section 4o(1). *Skorupskas*, 605 F. Supp. at 932-33. Accordingly, Respondents violated Section 4o(1) of the Act.

**C. Section 4m(1) of the Act:
Failure to Register as a Commodity Pool Operator**

Section 1a(5) of the Act defines a CPO as any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions or the sale of stock, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market. Section 4m(1) of the Act provides that it is unlawful for any CPO, unless registered under the Act, to make use of the mails or any instrumentality of interstate commerce in connection with its CPO business. 7 U.S.C. § 6m(1) (2006).

TRP accepted participants' funds by mail and by wire transfers for the purpose of investing in a commodity pool, and used the mails, e-mail and facsimiles to send false account statements to some participants of the pool. In doing so without being registered as a CPO, TRP violated Section 4m(1) of the Act.

**D. Section 4k(2) of the Act:
Failure to Register as an Associated Person**

Section 4k(2) of the Act prohibits any person from being associated with a CPO as a partner, officer, employee, consultant or agent in any capacity that involves the solicitation of funds for participation in a commodity pool, unless such person is registered with the Commission as an AP of the commodity pool. 7 U.S.C. § 6k(2) (2006). Section 4k(2) further makes it unlawful for a CPO to permit such person to become or remain associated with the CPO in any such capacity if the CPO knew or should have known that such person was not so registered.

Pipenhagen solicited funds for participation in the pool but was not registered as an AP of TRP, therefore he violated Section 4k(2) of the Act. TRP also violated Section 4k(2) by

allowing Pipenhagen to act as an unregistered AP of TRP when it knew or should have known that he was not registered with the Commission.

**E. Commission Regulation 4.20(a):
Failure to Operate a Pool as a Separate Legal Entity**

Commission Regulation 4.20(a)(1) provides that a “commodity pool operator must operate its pool as an entity cognizable as a legal entity separate from that of the pool operator.” 17 C.F.R. § 4.20(a)(1) (2008). TRP accepted and traded pool participant funds in its own name and failed to operate the pool as a separate legal entity. TRP thus violated Commission Regulation 4.20(a)(1).

**F. Commission Regulation 4.20(c):
Commingling Pool Funds**

Commission Regulation 4.20(c) states that “[n]o commodity pool operator may commingle the property of any pool that it operates or that it intends to operate with the property of any other person.” 17 C.F.R. § 4.20(c) (2008). TRP, through Pipenhagen, deposited pool participants’ funds into bank accounts in Pipenhagen’s name and in TRP’s name. TRP thus violated Commission Regulation 4.20(c).

**G. Commission Regulation 4.21(a):
Failure to Provide Disclosure Documents**

Commission Regulation 4.21(a) provides that each CPO registered or required to be registered must deliver or cause to be delivered to a prospective participant of a pool that it operates or intends to operate a Disclosure Document for the pool by no later than the time it delivers to the prospective participant a subscription agreement for the pool. 17 C.F.R. § 4.21(a) (2008). TRP failed to provide any form of a Disclosure Document to any of the pool participants before or after they invested funds, and thus violated Commission Regulation 4.21(a).

**H. Sections 2(a)(1)(B) and 13(b) of the Act:
Respondents’ Derivative Liability for Each Other’s Violations**

The acts and failures of Pipenhagen in violation of the Act, as discussed above, occurred within the scope of his agency with TRP and TEI. Therefore, TPR and TEI are each liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006).

Pipenhagen, as TRP’s and TEI’s owner and operator, controlled both TRP and TEI and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting TRP’s and TEI’s violations of the Act and Commission Regulations, as discussed above. Consequently, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Pipenhagen is liable for TRP’s and TEI’s violations of the Act and Commission Regulations to the same extent as TRP and TEI.

IV. FINDINGS OF VIOLATIONS

Based upon the foregoing, the Commission finds that Respondents violated Sections 4b(a)(2)(ii) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(ii) and 4o(1) (2006), and TRP and Pipenhagen violated 4m(1) and 4k(2) of the Act, 7 U.S.C. §§ 6m(1) and 6k(2) (2006), and Commission Regulations 4.20 and 4.21, 17 C.F.R. §§ 4.20 and 4.21 (2009).

V. OFFER OF SETTLEMENT

Respondents have submitted their *Offer* in which they, without admitting or denying the findings herein:

- A. Acknowledge receipt of service of this *Order*;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this *Order*;
- C. Waive: the filing and service of a complaint and notice of hearing; a hearing; all post-hearing procedures; judicial review by any court; any and all objections to the participation by any member of the Commission's staff in consideration of the *Offer*; any and 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), and/or Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2009), relating to, or arising from, this proceeding; any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-68 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to or arising from this proceeding; and 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;
- D. Stipulate that the record upon which this *Order* is entered shall consist solely of the findings contained in this *Order* to which the Respondents have consented in their *Offer*; and
- E. Consent, solely on the basis of the *Offer*, to entry of this *Order* that:
 1. makes findings by the Commission that Respondents violated Sections 4b(a)(2)(ii) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(ii) and 4o(1) (2006), and TRP and Pipenhagen violated Sections 4m(1) and 4k(2) of the Act, 7 U.S.C. §§ 6m(1) and 6k(2) (2006), and Commission Regulations 4.20 and 4.21, 17 C.F.R. §§ 4.20 and 4.21 (2009);
 2. orders Respondents to cease and desist from violating Sections 4b(a)(2)(ii) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(ii) and 4o(1) (2006);

3. orders TRP and Pipenhagen to cease and desist from violating Sections 4m(1) and 4k(2) of the Act, 7 U.S.C. §§ 6m(1) and 6k(2) (2006), and Commission Regulations 4.20 and 4.21, 17 C.F.R. §§ 4.20 and 4.21 (2009);
4. permanently prohibits Respondents from 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) (2006), for their own account, for any account in which either of them has a direct interest or indirect interest, or for any other account for or on behalf of any other person or entity, whether by power of attorney or otherwise, and all registered entities shall refuse them all privileges thereon;
5. orders Respondents, jointly and severally, to pay a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000) within ten (10) days of the date of entry of this *Order*; and
6. orders Respondents to comply with their undertakings consented to in the *Offer* and set forth below in Section VII of this *Order*.

Upon consideration, the Commission has determined to accept the Respondents' *Offer*.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents shall cease and desist from violating Sections 4b(a)(2)(ii) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(ii) and 6o(1) (2006).
- B. TRP and Pipenhagen shall cease and desist from violating Sections 4m(1) and 4k(2) of the Act, 7 U.S.C. §§ 6m(1) and 6k(2) (2006), and Commission Regulations 4.20 and 4.21, 17 C.F.R. §§ 4.20 and 4.21 (2009).
- C. Respondents are permanently prohibited from 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) (2006), for their own account, for any account in which either of them has a direct interest or indirect interest, or for any other account for or on behalf of any other person or entity, whether by power of attorney or otherwise, and all registered entities shall refuse them all privileges thereon.
- D. Respondents, jointly and severally, shall pay a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000) within ten (10) days of the date of entry of this *Order*. Respondents shall pay their civil monetary penalty by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, the payments 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 by electronic transfer is chosen, Respondent shall contact Marie Bateman or her successor at the above address to receive payment instruction and shall fully comply with those instructions. Respondents shall accompany payment of their penalty with a cover letter that identifies Respondents and the name and docket number of this proceeding. Respondents shall simultaneously transmit copies of the cover letter and the form of payment to (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581 and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2) (2006), if this amount is not paid in full within fifteen (15) days of the due date, Respondents shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration(s) shall be suspended automatically until the Respondents have shown to the satisfaction of the Commission that payments of the full amount of the penalty with interest thereon to the date the payment has been made; and

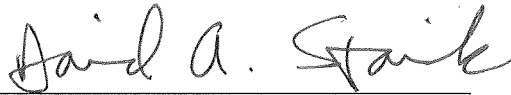
E. Respondents shall comply with the following undertakings:

1. Public Statements: Respondents agree that neither they, nor any of their employees or agents under any of their authority or control, shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this *Order*, or creating, or tending to create, the impression that this *Order* is without a factual basis; provided, however, that nothing in this provision affects Respondents': (i) testimonial obligations; or (ii) rights to take legal positions in other proceedings to which the Commission is not a party. Respondents shall undertake all steps necessary to ensure that all of their employees and agents under any of their authority or control understand and comply with this undertaking;
2. Respondents shall never apply for registration or claim exemption from registration with the Commission in any capacity, and shall never engage in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009); and
3. Respondents shall not act as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2009)), 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009).

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

By the Commission.



David A. Stawick
David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: Aug. 30, 2010