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CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
BY

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ORIGINAL

18 Attorneys for Plaintiff, United States Commodity Futures Trading Commission

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

19 U.S. COMMODITY FUTURES)
20 TRADING COMMISSION,)
21 Plaintiff,)

Case No. CV05- 5074 GHK
(MANx)

22 vs.)

**(Proposed) CONSENT ORDER
OF PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF
AGAINST DEFENDANT
BRETT E. LOVETT**

23 Brett E. Lovett, individually and d/b/a)
24 Northwest Asset Fund)
25 Defendants.)

JUDGE: George H. King

DATE:

PLACE:

No Hearing Required

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1 1. On July 12, 2005, Plaintiff Commodity Futures Trading Commission
2 (“CFTC” or “Commission”) filed a Complaint against defendant Brett Edward
3 Lovett individually and d/b/a Northwest Asset Fund (“Defendant”) seeking a civil
4 monetary penalty, injunctive, and other equitable relief for violations of the
5 Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 *et seq.* (2002). The
6 Court entered an *Ex Parte* Statutory Restraining Order on July 15, 2005, and
7 entered a Consent Order of Preliminary Injunction and Other Ancillary Relief
8 against Lovett on August 19, 2005.

9 **I. CONSENTS AND AGREEMENTS**

10 To effect settlement of the matters alleged in the Complaint against
11 Defendant without a trial on the merits or any further judicial proceedings,
12 Defendant:

13 2. Consents to the entry of this Consent Order of Permanent Injunction
14 and Other Equitable Relief ("Order").

15 3. Affirms that he has agreed to this Order voluntarily, and that no
16 promise or threat has been made by the Commission or any member, officer, agent
17 or representative thereof, or by any other person, to induce consent to this Order,
18 other than as set forth specifically herein.

19 4. Acknowledges service of the Summons and Complaint.

20 5. Admits jurisdiction of this Court over him, admits that the Court has
21 subject matter jurisdiction over this action, and admits that venue properly lies
22 with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

23 6. Waives:

24 (a) all claims which he may possess under the Equal Access to Justice
25 Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), relating
26 to, or arising from, this action;

- 1 (b) any claim of double jeopardy based upon the institution of this
2 proceeding or the entry in this proceeding of any order imposing a
3 civil monetary penalty or any other relief; and
4 (c) all rights of appeal from this Order.

5 7. Neither admits nor denies the findings of facts and conclusions of law
6 stated herein. Defendant Lovett consents to the use by the CFTC of the findings
7 herein in this proceeding and in any other proceeding brought by the CFTC or to
8 which the CFTC is a party. Lovett does not consent to the use of this Order, or the
9 findings of fact or conclusions of law, as the sole basis for any other proceeding
10 brought by the CFTC, other than a proceeding in bankruptcy relating to Lovett, or
11 to enforce the terms of this Order. Solely with respect to any bankruptcy
12 proceeding relating to Lovett or any proceeding to enforce this Order, Lovett
13 agrees that the allegations of the Complaint and the findings in this Order shall be
14 taken as true and correct and be given preclusive effect, without further proof.

15 Furthermore, Lovett agrees to provide immediate notice to this Court and the
16 CFTC by certified mail of any bankruptcy proceeding filed by, on behalf of, or
17 against Lovett in the manner required by paragraph 32 of Section V of this Order.

18 8. Agrees that no provision of this Order shall in any way limit or impair
19 the ability of any person to seek any legal or equitable remedy against Lovett or
20 any other person in any other proceeding, including any current or subsequent
21 bankruptcy.

22 9. Agrees that neither he nor any of his agents or employees acting under
23 his authority or control shall take any action or make any public statement
24 denying, directly or indirectly, any allegation in the Complaint or findings or
25 conclusions in this Order, or creating, or tending to create, the impression that the
26 Complaint or this Order is without a factual basis; provided, however, that nothing
27 in this provision shall affect Defendant's: i) testimonial obligations; or ii) right to
28 take legal positions in other proceedings to which the Commission is not a party.

1 Defendant Lovett shall take all necessary steps to ensure that all of his agents and
2 employees understand and comply with this agreement.

3 10. Consents to the continued jurisdiction of this Court for the purpose of
4 enforcing the terms and conditions of this Order and for any other purposes
5 relevant to this case.

6 **II. FINDINGS OF FACTS**

7 *Based on the parties' stipulation, and only as to these parties, we find as follows:*
8 **A. The Parties**

K

9 11. Plaintiff **Commodity Futures Trading Commission** is an
10 independent federal regulatory agency that is charged with the responsibility for
11 administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1
12 *et seq.*, and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.*

13 12. Defendant **Brett E. Lovett** is 35 years old and resides in Ontario,
14 California. He has never been registered with the Commission in any capacity.
15 Lovett has been doing business as Northwest Asset Fund, 19510 Strathern Street,
16 Reseda, California, from June 2002 to April 2005. Since April 2005, Lovett has
17 been an officer and has been responsible for the day-to-day operation of Colonial
18 Global Holdings, Inc. of Oxnard, California. Lovett is a self-proclaimed financial
19 advisor and fund manager.

20 **B. Lovett Made Misrepresentations of Material Fact in the Solicitation of Customers**

21 13. From at least October 2002 to at least August 2005, Lovett persuaded
22 at least four individuals, who were affiliated with his church, to invest at least
23 \$495,000 with him while falsely informing them that that he would trade
24 commodity futures for them, describing it as a low-risk investment. Lovett falsely
25 informed at least two of the customers that trading in commodity futures would
26 provide them with regular monthly income of between \$700 to \$1,000 with no risk
27 of losing the principal investment. Lovett also held himself out as a "fund
28

1 manager,” and “financial advisor,” while falsely claiming to be a successful
2 commodity futures trader.

3 14. Lovett falsely informed at least three customers that he had deposited
4 their funds into accounts in their names. However, Lovett actually deposited the
5 customer’s funds into a commodity trading account, personal checking account
6 and a money market account in Lovett’s own name or the name of his business in
7 which Lovett was the only signatory.

8 15. When customers requested a return of their funds, Lovett falsely
9 represented that it would take at least a month to unwind positions, close out the
10 account and withdraw the balance. Additionally, Lovett told at least two
11 customers that they could not withdraw funds within the first year of investing, and
12 told at least one customer that he would be assessed a \$35,000 to \$40,000 early
13 withdrawal penalty for closing out the account and withdrawing the balance prior
14 to a year’s time.

15 **C. Lovett Misappropriated Customer Funds**

16 16. From approximately October 2002 to at least April 2005, Lovett
17 received approximately \$495,000 from at least four different customers. Lovett
18 deposited the funds into bank accounts and trading accounts in his own name, or in
19 the name of his business in which Lovett was the only signatory. Lovett used the
20 funds for his personal expenses, including clothing, groceries, dinner, gasoline,
21 transfers to his family, thousands of dollars of medical expenses for his friend,
22 payments for investments in Lovett’s own name, and re-payments to at least three
23 of the customers.

24 **D. Defendant Made False Reports or Statements**

25 17. Lovett created false reports or statements that included the account
26 holder’s name and false information including, but not limited to, the following:
27 identifying account numbers; place where funds were held; account holder’s name;
28

1 profits; and account balances. Lovett provided these false reports or statements to
2 at least two customers via mail and facsimile.

3 **III. CONCLUSIONS OF LAW**

4 *Based on the parties' stipulation, & only as to these parties, we conclude as follows:*
18. Lovett willfully violated §§ 4b(a)(2)(i) and (iii) of the Act by, among

5 other things: (1) making material misrepresentations of material facts, including
6 (a) misrepresenting to at least one customer that trading in commodity futures
7 trading with him would be a low risk investment similar to a certificate of deposit,
8 and (b) misrepresenting to at least three customers that they would earn amounts
9 ranging from \$700 to \$1,000 per month with minimal or no risk of losing their
10 investment; and (2) misappropriating customer funds.

11 19. Lovett willfully violated Section 4b(a)(2)(ii) of the Act by, among
12 other things, making or causing to be made false reports and false statements
13 issued or communicated to at least two customers who invested money with Lovett
14 to trade commodity futures contracts.

15 **IV. ORDER FOR PERMANENT INJUNCTION**

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

17 20. Defendant Lovett, and all persons insofar as they are acting in the
18 capacity of their agents, servants, employees, successors, assigns, and attorneys
19 and all persons insofar as they are acting in active concert or participation with
20 them who receive actual notice of ^{their} such order by personal service or otherwise, are
21 permanently restrained, enjoined and prohibited from directly or indirectly
22 cheating or defrauding or attempting to cheat or defraud such other person;
23 willfully making or causing to be made to such other person any false report or
24 statement thereof, or willfully entering or causing to be entered for such person
25 any false record thereof; willfully deceiving or attempting to deceive such other
26 person by any means whatsoever, in or in connection with any order to make, or
27 the making of, any contract of sale of any commodity for future delivery made, in
28 violation of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2002).

1 21. Lovett is further permanently restrained, enjoined and prohibited from
2 directly or indirectly engaging in any activity related to trading in any commodity,
3 as that term is defined in Section 1a(4) of the Act, , 7 U.S.C. § 1a(4) (“commodity
4 interest”), including but not limited to, the following:

- 5 A. trading on or subject to the rules of any registered entity, at that
6 term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);
- 7 B. Engaging in, controlling, or directing the trading of any
8 commodity interest accounts, on his own behalf or for or on behalf
9 of any other person or entity, whether by power of attorney or
otherwise;
- 10 C. Soliciting, accepting or placing orders, giving advice or price
11 quotations or other information in connection with the purchase or
12 sale of commodity interests, for himself and others
- 13 D. Applying for registration or claiming exemption from registration
14 with the Commission in any capacity, and engaging in any activity
15 requiring such registration or exemption from registration with the
16 Commission, except as provided for in Commission Regulation
17 4.14(a)(9), 17 C.F.R. 4.14(a)(9) (2006), or acting as a principal,
18 agent or officer or employee of any person registered, required to
be registered or exempted from registration with the Commission
unless such exemption is pursuant to Commission Regulation
4.14(a)(9), 17 C.F.R. 4.14(a)(9) (2006); and
- 19 E. Otherwise engaging in any business activities related to
20 commodity interest trading.

21 **V. ORDER FOR OTHER EQUITABLE RELIEF**

22 **IT IS FURTHER ORDERED THAT:**

23 **A. Restitution**

24 22. Upon entry of this Order, Defendant Lovett is ordered to pay
25 restitution in the amount of \$315,943 plus post-judgment interest as described
26 below. Post-judgment interest shall accrue commencing on the date of entry of
27 this Order and shall be determined by using the Treasury Bill rate prevailing on the
28 date of entry of this Order pursuant to 28 U.S.C. § 1961. The amount of restitution
represents the amount of funds that Lovett solicited by the course of conduct

1 alleged in the Complaint less any funds previously returned to customers. Listed
 2 in the table below are the names of the customers/creditors to whom restitution
 3 shall be made pursuant to this paragraph, together with the amount of restitution
 4 payable by Lovett to each of them (not including required interest) and the pro rata
 5 distribution percentage by which each customer/creditor shall be paid:

6 Restitution Payable to Customer/Creditor	7 Amount of Restitution	8 Pro Rata Distribution Percentage
9 H. Douglas Kelly	\$180,943	57%
10 Bradford Pate	\$135,000	43%

11 Omission of any customer listed above shall in no way limit the ability of such
 12 customer from seeking recovery from Lovett or any other person or entity.

13 Further, the amounts payable to each customer identified above shall not limit the
 14 ability of any customer from proving that a greater amount is owed from Lovett or
 15 any other person or entity, and nothing herein shall be construed in any way to
 16 limit or abridge the rights of any investor that exist under state or common law.

17 All payments made pursuant to this Order by Defendant shall first be made to the
 18 customer/creditors for restitution on a pro rata basis until those amounts (including
 19 interest) are fully satisfied. All payments after satisfaction of the restitution shall
 20 be applied to the civil monetary penalty described below.

21 23. Appointment of Monitor: To effect payment by Lovett and the
 22 distribution of restitution to defrauded customers, the Court appoints Daniel
 23 Driscoll, Executive Vice-President of the National Futures Association ("NFA"),
 24 or his successor, as Monitor ("Monitor"). The Monitor shall collect restitution
 25 payments from Lovett, compute pro rata allocations to injured customers identified
 26 above in paragraph 22, and make distributions as set forth below. Because the
 27 Monitor is not being specially compensated for these services, and these services
 28 are outside the normal duties of the Monitor, he shall not be liable for any action or

1 inaction arising from his appointment as Monitor, other than actions involving
2 fraud.

3 24. Restitution payments under this Order shall be made in the name
4 "Lovett Settlement Fund" and sent by electronic funds transfer, or by U.S. postal
5 money order, certified check, bank cashier's, or bank money order, to Daniel
6 Driscoll, Monitor, National Futures Association, 200 W. Madison Street #1600,
7 Chicago, Illinois 60606-3447 under cover letter that identifies ~~the~~ Lovett and the K
8 name and docket number of the proceeding. Lovett shall simultaneously transmit
9 a copy of the cover letter and the form of payment to Gregory Mocek, Director,
10 Division of Enforcement, Commodity Futures Trading Commission, at the
11 following address: Three Lafayette Centre, 1152 21st Street, N.W., Washington,
12 D.C. 20581. The Monitor shall oversee Lovett's restitution obligation, shall make
13 periodic distribution of funds to customers as appropriate, or may defer
14 distribution until such time as it deems appropriate. Restitution payments shall be
15 made in an equitable fashion as determined by the Monitor to the persons
16 identified above in paragraph 22.

17 25. Lovett shall execute any documents necessary to release funds that he
18 has in any repository, bank, investment or other financial institution wherever
19 located, in order to make partial or total payment toward his restitution obligation.

20 26. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of
21 the customers identified above in paragraph 22 are explicitly made an intended
22 third-party beneficiary of this Order and may seek to enforce obedience of this
23 Order to obtain satisfaction of any portion of the restitution amount which has not
24 been paid by Lovett, to ensure continued compliance with any provision of this
25 Order and to hold Lovett ^{in Contempt} for any violations of any provisions of this Order. Any K
26 individual or entity holding frozen funds by this Court's Statutory Restraining
27 Order entered July 15, 2005, shall transfer those funds to the Monitor, as described
28

1 above in paragraph 24, to be distributed, pro rata, to the defrauded customers
2 pursuant to the Restitution provision set forth above.

3 **B. Civil Monetary Penalty**

4 27. Civil Monetary Penalty: Upon entry of this Order, Defendant Lovett
5 is ordered to pay to the CFTC a civil monetary penalty in the amount of \$320,000,
6 plus post-judgment interest. Post-judgment interest shall accrue commencing on
7 the date of entry of this Order and shall be determined by using the Treasury Bill
8 rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.
9 Defendant Lovett shall pay this penalty by making electronic funds transfer, U.S.
10 postal money order, certified check, bank cashier's check, or bank money order
11 made payable to the Commodity Futures Trading Commission and sent to the
12 address below:

13 Commodity Futures Trading Commission
14 Division of Enforcement
15 ATTN: Marie Batemen - AMZ-300
16 DOT/FAA/MMAC
17 6500 S. Macarthur Blvd.
18 Oklahoma City, OK 73169

19 If payment by electronic transfer is chosen, contact Marie Bateman at 405-954-
20 6569 for instructions. Lovett shall accompany payment of the penalty with a cover
21 letter that identifies himself and the name and docket number of this proceeding.
22 Lovett shall simultaneously transmit a copy of the cover letter and the form of
23 payment to:

24 Office of Cooperative Enforcement
25 Division of Enforcement
26 Commodity Futures Trading Commission
27 Three Lafayette Centre
28 1155 21st Street, NW
Washington, DC 20581

29 **C. Partial Payments**

30 28. Any acceptance by the Commission or the Monitor of partial payment
31 of any Lovett's restitution and/or civil monetary obligations shall not be deemed a

1 waiver of Lovett's obligation to make further payments pursuant to this Order, or a
2 waiver of the Commission's right to seek to compel payment of any remaining
3 balances.

4 **D. Collateral Agreements**

5 29. Lovett shall immediately notify the Commission and Monitor if ~~they~~ ^{he} *12*
6 *K* make ^f any agreement with any customer obligating ~~them~~ ^{her} to make payments outside
7 of this Order. Lovett shall provide immediate evidence to the Court, the
8 Commission and Monitor of any payments made pursuant to such agreement.
9 Upon being notified of any payments made by Lovett to customers outside of this
10 Order, and receiving evidence of such payments, the Monitor will have the right to
11 reduce and offset Lovett's obligation to specified customers and to make any
12 changes in the restitution distribution schedule that he deems appropriate.

13 **VI. MISCELLANEOUS PROVISIONS**

14 **IT IS FURTHER ORDERED THAT:**

15 30. Freeze Orders Dissolved and Funds Transferred to the Monitor: All
16 frozen funds shall be transferred to the Monitor to be distributed to the defrauded
17 customers pursuant to the Restitution provision set forth above in paragraph 24 and
18 all prior freeze orders are dissolved. Lovett shall, within ten (10) days of the date
19 of entry of this Order, execute any documents necessary to release to the Monitor
20 all frozen funds that he has in any repository, bank, investment or other financial
21 institution, and shall ensure the transfer of the above funds within ten (10) business
22 *K* days of the date ^o ~~of~~ entry of this Order.

23 31. Scope of Injunctive Relief: The injunctive provisions of this Order
24 shall be binding on Defendant, upon any person insofar as he or she is acting in the
25 capacity of officer, agent, servant, employee or attorney of Lovett, and upon any
26 person who receives actual notice of this Order by personal service, facsimile or
27 otherwise insofar as he or she is acting in active concert or participation with
28 Lovett.

1 32. Notices: All notices required to be given by any provision in this
2 Order shall be sent certified mail, return receipt requested, as follows:

3 Notice to Commission:

4 Associate Director
5 Division of Enforcement - Central Region
6 Commodity Futures Trading Commission
7 525 West Monroe Street, Suite 1100
8 Chicago, Illinois 60661

8 Notice to Defendant:

9 Robert E. Thompson
10 Law Office of Robert E. Thompson
11 110 Sutter Street, Suite 501
12 San Francisco, CA 94104
13 (415) 543-2818
14 (415) 788-6144 facsimile
15 e-mail: *thmpson@pacbell.net*

14 In the event that Lovett changes his residential or business telephone number(s)
15 and/or address(es) at any time, he shall provide written notice of his new
16 number(s) and/or address(es) to the Commission within twenty (20) calendar days
17 thereof.

18 33. Entire Agreement and Amendments: This Order incorporates all of
19 the terms and conditions of the settlement among the parties hereto. Nothing shall
20 serve to amend or modify this Order in any respect whatsoever, unless:

21 (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order
22 of this Court.

23 34. Waiver: The failure of any party hereto at any time or times to require
24 performance of any provision hereof shall in no manner affect the right of such
25 party at a later time to enforce the same or any other provision of this Order. No
26 waiver in one or more instances of the breach of any provision contained in this
27 Order shall be construed as a further or continuing waiver of a breach of any other
28 provision of this Order.

1 35. This Court shall retain jurisdiction of this action to assure compliance
2 with this Order and for all purposes related to this action.

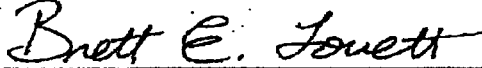
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4 IT IS SO ORDERED.

5 DATED: 11/20, 2007

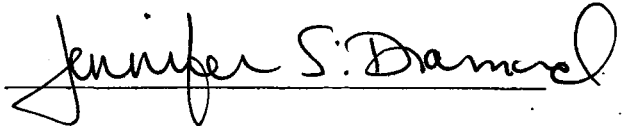

The Honorable George H. King
UNITED STATES DISTRICT JUDGE

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8 Dated: July 13, 2007

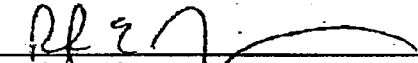
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10 CONSENTED TO AND APPROVED BY:

11 

12 Brett E. Lovett
13 Defendant



Jennifer S. Diamond
Trial Attorney
One of the Attorneys for the Plaintiff
Commodity Futures Trading Commission
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15 Robert Thompson
16 Attorney for Defendant
17 Law Office of Robert Thompson
18 110 Sutter Street, Suite 501
19 San Francisco, CA 94104
20 (415) 543-2818
21 (415) 788-6144 facsimile
22 e-mail: thmpson@pacbell.net
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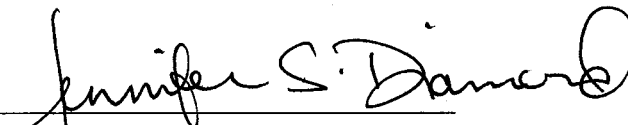
PROOF OF SERVICE

The undersigned, an attorney with the Commodity Futures Trading Commission, certify that I served true copies of the **(Proposed) Consent Order of Permanent Injunction and Other Ancillary Relief Against Defendant Brett E. Lovett** via Federal Express on November 17, 2007, to the following Service List:

Robert Thompson
Law Office of Robert Thompson
110 Sutter Street, Suite 501
San Francisco, CA 94104
Attorney for Defendant

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 17, 2007, at Chicago, Illinois.


Jennifer S. Diamond