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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**U.S. Commodity Futures Trading  
Commission,**

**Plaintiff,**

**vs.**

**Victor Eugene Cilli and Progressive  
Investment Funds LLC,**

**Defendants.**

**Hon. William J. Martini**

**Case No.: 2:11-CV-03445WJM**

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTY  
AND OTHER EQUITABLE RELIEF AGAINST DEFENDANTS VICTOR E. CILLI AND  
PROGRESSIVE INVESTMENT FUNDS LLC**

## I. INTRODUCTION

On June 15, 2011, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against Defendants Victor Eugene Cilli (“Cilli”) and Progressive Investment Funds LLC (“PIF”) (collectively “Defendants”) charging them with engaging in a scheme to defraud commodity pool participants, misappropriating pool funds, providing false information to a registered futures association, failing to distribute quarterly statements and an annual report to pool participants, and failing to keep and provide to representatives of the Commission and of a registered futures association all of the pool’s documents, and seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (the “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), to be codified at 7 U.S.C. § 1 *et seq.* A clerk’s entry of default was entered against Defendants on January 10, 2012.

## II. CONSENTS AND AGREEMENTS

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

1. Consent to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendants Victor E. Cilli and Progressive Investment Funds LLC (“Consent Order”); and
2. Affirm that they have 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; and

3. Acknowledge service of the Summons and Complaint; and
4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1; and
5. Admit that venue lies properly with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1; and
6. Admit the Findings of Fact and Conclusions of Law contained in this Consent Order and agree that neither they nor their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law 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. The Findings of Fact and Conclusions of Law shall be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, or on behalf of, or against Cilli and/or PIF; (b) any proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.*; and/or (c) any proceeding to enforce the terms of this Consent Order. Cilli and PIF shall undertake all steps necessary to ensure that their agents or employees under their authority or control understand and comply with this Consent Order; and
7. Waive:
  - a. any and all claims that they 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 Commission's Regulations ("Regulations"), 17 C.F.R. § 148.1 *et seq.* (2011), relating to, or arising from, this action;

- b. any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 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 action;
- c. any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and
- d. any and all rights of appeal from this action; and

8. Consent to the continued jurisdiction of this Court over them for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this case, even if Defendants now or in the future operate or reside outside the jurisdiction; and

9. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 68 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, or on behalf of, or against Cilli and/or PIF, whether inside or outside the United States; and

10. Agree 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 Cilli and PIF in any other proceeding.

### **III. FINDINGS AND CONCLUSIONS**

The Court, being fully advised in the premises, finds that there is good cause for 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 and Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, as amended, 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**

11. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency charged with the responsibility of administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq* (2011).

12. Defendant Victor Eugene Cilli is a New Jersey resident who resided in Hackensack, New Jersey during the relevant period of the Complaint. Cilli has been registered with the CFTC as an Associated Person (“AP”) of PIF since September 2006 and is the owner and President of PIF. Cilli was also a member of the National Futures Association (“NFA”) from September 27, 2006 through February 17, 2009. In a settlement with NFA on February 6, 2009, Cilli withdrew as an NFA member and agreed to pay a \$10,000 fine if he ever reapplies for NFA membership.

13. Defendant Progressive Investment Funds LLC is a Delaware limited liability company formed in August 2006 with its last known business address at 170 Prospect Avenue, PH2, Hackensack, NJ 07601. Since September 2006, PIF has been registered with the CFTC as a Commodity Pool Operator (“CPO”) operating under 17 C.F.R. § 4.7 which exempts CPOs from certain requirements under Part 4 of the Regulations, 17 C.F.R. §§ 4.1 *et seq.*, such as the requirement to distribute monthly account statements as required by 17 C.F.R. § 4.22. PIF was also a member of NFA from September 20, 2006 through February 17, 2009 and was

permanently barred from NFA membership in a settlement with NFA on February 6, 2009. PIF is the CPO and General Partner of the commodity pool Progressive Managed Futures Fund LP (“PMFF”), a Delaware limited partnership. Cilli had sole trading authority for PMFF.

**2. Fraud by Misrepresentations and Omissions by a CPO and an AP of a CPO**

14. From in or about September 2006 through in or about July 2007, Defendant Cilli solicited at least four individuals to become pool participants by investing a total of approximately \$506,000 in PMFF.

15. PIF is registered with the Commission as a CPO and acted as a CPO with respect to the PMFF commodity pool and its participants. Cilli is registered with the Commission as an AP of PIF, was PIF’s sole principal, and controlled PIF’s actions.

16. Each of these four pool participants either wrote a check directly to PMFF or, pursuant to Cilli’s instructions, wired their funds directly to PMFF’s bank account.

17. From in or about January 2007 through in or about September 2007, when Cilli actively traded PMFF’s account, Cilli only traded approximately \$263,000 of the \$506,000 that the pool participants invested in PMFF. Cilli primarily traded Chicago Mercantile Exchange (“CME”) Globex e-Mini S&P 500 index futures.

18. Of the approximately \$263,000 that Cilli traded, Cilli had net trading losses of approximately \$201,168.

19. Cilli never disclosed to the PMFF pool participants that he traded only half of their invested funds or that most of his trading resulted in net losses.

20. Cilli sent the PMFF pool participants statements that falsely stated that PMFF had made money.

21. Between in or about January and September 2007, Cilli sent at least one pool participant false statements claiming that the pool had made profits of approximately .675 to 7.8 percent when, in fact, the pool had lost money trading.

22. Cilli also sent emails to another pool participant between April and July 2007 in which he attached fraudulent monthly statements and falsely claimed profits on that pool participant's \$200,000 investment.

23. Cilli also issued false Form 1099s for 2007 to at least two pool participants which showed profits in their investments when in fact PMFF had net trading losses in 2007.

24. In the approximately nine months that Cilli actively traded PMFF's account between in or about January and September 2007, Cilli had only two months that had a net profit and seven months that had net losses, resulting in net losses for the life of the trading account.

25. In an effort to conceal his scheme and to convince pool participants that the profit statements he sent them were true, Cilli returned some funds to the pool participants in a manner known as Ponzi scheme. These purported profits were actually funds/capital from existing pool participants.

26. At all times stated herein, Cilli acted knowingly and willfully.

### **3. False Statements to a Registered Entity**

27. Between May and June 2008, the National Futures Association ("NFA"), a registered futures association under 7 U.S.C. § 21, conducted an investigation of Defendants, in furtherance of NFA's official duties, and requested all documents relating to pool participants. Defendants failed to produce the requested documents.

28. In June 2008, Cilli willfully and falsely told the NFA that PMFF never had any pool participants or investors, only individuals who had loaned him and PIF money. Cilli knew

at the time that PMFF had at least four pool participants when he made these false statements to NFA.

**4. Failure to Distribute Required Quarterly and Annual Reports**

29. PIF is a registered CPO that operated under 17 C.F.R. § 4.7, which exempts CPOs from certain requirements under Part 4 of the Regulations, 17 C.F.R. §§ 4.1 *et seq.*

30. PIF never distributed to any PMFF pool participants quarterly Net Asset Value (“NAV”) statements or an annual financial report as required by 17 C.F.R. § 4.7(b)(2)-(3).

31. Cilli knowingly induced PIF’s failure to distribute quarterly NAV statements or an annual financial report to PMFF pool participants.

**5. Failure to Keep Required Records and to Produce them to the CFTC and NFA**

32. In or around May or June 2008, NFA requested PIF to produce its books and records. PIF failed to produce any of its books and records to NFA.

33. In February 2009, the CFTC subpoenaed PIF’s books and records from Defendants and took testimony under oath from Cilli, PIF’s sole principal. PIF only produced a handful of records relating to the aforementioned settlement with NFA. PIF failed to produce its offering memoranda, bank records, trading records, and correspondence.

34. Cilli admitted that PIF did not maintain all of its books and records prepared in connection with the pool and did not maintain the required annual or quarterly NAV reports for the PMFF pool.

**B. Conclusions of Law**

**6. Jurisdiction and Venue**

35. The Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), 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.

36. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Defendants reside or resided in this District, transacted business in this District, and the acts and practices in violation of the Act have occurred within this District, among other places.

**7. Violations of Section 4b(a) of the Act—Fraud in Connection with Futures**

37. By the conduct described in ¶¶ 14-26 above, Defendant Cilli, in connection with an order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that was made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of other persons, (i) cheated or defrauded or attempted to cheat or defraud such other persons; (ii) willfully made or caused to be made to such other persons false reports or statements thereof, or willfully entered or caused to be entered for such persons any false record thereof; (iii) willfully deceived or attempted to deceive such other persons by any means whatsoever by, among other things, knowingly or recklessly making false statements about PMFF's profits and failing to disclose the actual losses, in violation of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), for conduct before June 18, 2008. The false statements Cilli made to PMFF pool participants were material and were made knowingly or with reckless disregard for their falsity.

38. The foregoing acts, omissions and failures of Cilli, occurred within the scope of his agency, employment or office with PIF, and therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and CFTC Regulation 1.2, 17 C.F.R. § 1.2, PIF is liable for Cilli's acts, omissions and failures in violation of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii).

**C. Violations of Section 4o of the Act—Fraud by CPO and AP of CPO**

39. PIF was a CPO pursuant to that term's definition in 7 U.S.C. § 1a(5) because PIF was engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicited, accepted, or received from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

40. The knowing or reckless misrepresentations, omissions, and acts of Defendant Cilli described in ¶¶ 14-26 above also constitute violations by Defendant Cilli of Section 4o(1)(A) and (B) of the Act, in that Cilli, an AP of a CPO, by use of the mails or means or instrumentality of interstate commerce, directly or indirectly – (A) employed a device, scheme, or artifice to defraud pool participants, or (B) engaged in a transaction, practice, or course of business which operated as a fraud or deceit upon pool participants.

41. The foregoing acts, omissions and failures of Cilli, occurred within the scope of his employment or office with PIF, and therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and CFTC Regulation 1.2, 17 C.F.R. § 1.2, PIF is liable for Cilli's acts, omissions and failures in violation of Section 4o(1)(A) and (B) of the Act.

**D. Violations of 9(a)(4) of the Act—False Statements to Futures Association**

42. Section 9(a)(4) of the Act, 7 U.S.C. §13(a)(4), makes it a felony for any person to willfully falsify, conceal, or cover up by any trick, scheme, or artifice to defraud a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, or futures association designated or registered under this Act acting in furtherance of its official duties under this Act.

43. Cilli violated Section 9(a)(4) of the Act, 7 U.S.C. §13(a)(4), by willfully and falsely representing to NFA in June 2008 that PIF had no pool participants but only individuals who loaned Cilli or PIF money.

44. The foregoing acts, omissions and failures of Cilli, occurred within the scope of his employment or office with PIF; therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and CFTC Regulation 1.2, 17 C.F.R. § 1.2, PIF is liable for Cilli's acts, omissions and failures in violation of Section 9(a)(4) of the Act, 7 U.S.C. §13(a)(4).

**E. Violations of Regulation 4.7(b)(2)-(3)—Failure to Distribute Required Reports**

45. CFTC Regulation 4.7(b)(2), 17 C.F.R. § 4.7(b)(2), requires all registered CPOs operating under the exemptions of Regulation 4.7 to distribute to all pool participants signed and affirmed quarterly Net Asset Value ("NAV") statements, computed in accordance with generally accepted accounting principles.

46. CFTC Regulation 4.7(b)(3), 17 C.F.R. § 4.7(b)(3), requires all registered CPOs operating under the exemptions of Regulation 4.7 to file with NFA and distribute to all pool participants an annual financial report. Such annual financial report must be made in accordance with generally accepted accounting principles and a copy thereof must be filed with the NFA.

47. PIF, a registered CPO that operated under the exemptions of 17 C.F.R. § 4.7, never distributed to any PMFF pool participants quarterly NAV statements or an annual financial report, in violation of CFTC Regulation 4.7(b)(2)-(3), 17 C.F.R. § 4.7(b)(2)-(3).

48. Cilli, directly or indirectly, controlled PIF and did not act in good faith or knowingly induced, directly or indirectly, PIF's acts constituting the violations alleged in this count; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Cilli is liable for PIF's violations of 17 C.F.R. § 4.7(b)(2)-(3).

**F. Defendants' Violations of Section 4n(3)(A) and Regulations 1.31(a) and 4.7(b)(4): Failure to Keep and Produce Records**

49. Section 4n(3)(A) of the Act, 7 U.S.C. § 6n(3)(A), requires all registered CPOs and Commodity Trading Advisors ("CTAs") to maintain books and records and file such reports in such form and manner as may be prescribed by the CFTC for a period of at least three years, or longer if the CFTC so directs, and shall be open to inspection by any representative of the CFTC or U.S. Department of Justice.

50. Under CFTC Regulation 1.31(a)(1), 17 C.F.R. § 1.31(a)(1), all books and records required to be kept by the Act or by the CFTC's Regulations shall kept for a period of five years. Under CFTC Regulation 1.31(a)(2), 17 C.F.R. § 1.31(a)(2), a copy of such books and records shall be provided to a representative of the Commission or U.S. Department of Justice upon the representative's request.

51. CFTC Regulation 4.7(b)(4), 17 C.F.R. § 4.7(b)(4), provides that CPOs operating under the exemptions of Regulation 4.7 must keep and maintain for at least five years the annual and quarterly reports required by 17 C.F.R. § 4.7(b)(2)-(3) and all books and records prepared in connection with its activities as a CPO, and must make such books and records available to representatives of the CFTC, NFA, or U.S. Department of Justice.

52. Defendants failed to maintain quarterly NAV statements and annual reports for the PMFF pool and other records created by Defendants relating to the pool. Defendants also failed to provide to representatives of the CFTC and NFA documents requested by those representatives. Therefore, Defendants violated Section 4n(3)(A) of the Act, 7 U.S.C. § 6n(3)(A), and CFTC Regulations 1.31(a) and 4.7(b)(4), 17 C.F.R. §§ 1.31(a) and 4.7(b)(4).

53. Cilli controlled PIF, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, PIF's acts constituting the violations alleged in this Count; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Cilli is liable for PIF's violations of Section 4n(3)(A) of the Act, and CFTC Regulations 1.31(a) and 4.7(b)(4).

54. Unless restrained and enjoined by this Court, there is a reasonable likelihood that the Defendants 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:**

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

- a. Cheating, defrauding or willfully deceiving, or attempting to cheat, defraud, or willfully deceive any other person in or in connection with any order to make, or the making of any contract of sale of any commodity for future delivery, made or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person in violation of Section 4b(a)(1)(A) and (C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A) and (C);
- b. willfully making or causing to be made to any other person any false report or statement, or willfully entering or causing to be entered for such other person any false record, in or in connection with any order to make, or the making of any contract of sale of any commodity for future delivery, made or to be made, on or subject to the rules of a designated contract market, for or on

behalf of any other person in violation of Section 4b(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 6b(a)(1)(B);

- c. while registered or acting as a CPO or an AP of a CPO, employing any device, scheme or artifice to defraud any client or participant or prospective client or participant or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1)(A) and (B) of the Act, as amended, 7 U.S.C. § 6o(1)(A) and (B);
- d. willfully falsifying, concealing, or covering up by any trick, scheme, or artifice a material fact, making any false, fictitious, or fraudulent statements or representations, or making or using any false writing or document knowing the same to contain false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, or futures association designated or registered under the Act acting in furtherance of its official duties under the Act, in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4);
- e. while registered as a CPO under the exemptions of CFTC Regulation 4.7, failing to prepare and distribute to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period a statement signed and affirmed in accordance with CFTC Regulation 4.22(h) and that is presented and computed in accordance with generally accepted accounting principles and indicates: (i) the net asset value of the exempt pool as of the end of the reporting period; (ii) the change in net asset value per outstanding participation unit in the exempt pool as of the end of the reporting period; or (iii) the total value of the participant's interest or share in the exempt pool as of the end of the reporting period; and where the pool is comprised of more than one ownership class or series, failing to include in the statement required by 4.7(b)(2), the net asset value of the series or class on which the account statement is reporting and the net asset value per unit or value of the participant's share; except that, for a pool that is a series fund structured with a limitation on liability among the different series, the account statement required by 4.7(b)(2) is not required to include the consolidated net asset value of all series of the pool, in violation of CFTC Regulation 4.7(b)(2), 17 C.F.R. § 4.7(b)(2);
- f. while registered as a CPO under the exemptions of CFTC Regulation 4.7, failing to electronically file with the NFA and distributing to each participant, within 90 calendar days after the exempt pool's fiscal year or the permanent cessation of trading, whichever is earlier, an annual report for the exempt pool that contains, at a minimum, the information required by 4.7(b)(3)(A)-(D), in violation of CFTC Regulation 4.7(b)(3), 17 C.F.R. § 4.7(b)(3);

- g. while registered as a CPO under the exemptions of CFTC Regulation 4.7, failing to maintain the reports referred to in Regulation 4.7(b)(2)-(3) and all books and records prepared in connection with the activities of the CPO of the exempt pool (including, without limitation, records relating to the qualifications of qualified eligible persons and substantiating any performance representations) at its main business address and failing to make such books and records available to any representative of the CFTC, the NFA, and the U.S. Department of Justice in accordance with Regulation 1.31, in violation of Regulation 4.7(b)(4), 17 C.F.R. § 4.7(b)(4); and
- h. while registered with the CFTC, failing to maintain all books and records required by the Act and CFTC Regulations for a period of at least five years from the date thereof and readily accessible during the first 2 years of the 5-year period, and failing to make such books and records open to inspection by any representative of the CFTC or the U.S. Department of Justice, in violation of Section 4n(3)(A) of the Act, 7 U.S.C. § 6n(3)(A), and CFTC Regulation 1.31(a)(1), 17 C.F.R. § 1.31(a)(1).

56. Defendants are also permanently restrained, enjoined and prohibited from directly 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 CFTC Regulation 1.31(hh), 17 C.F.R. § 1.31(hh) (2011) (“commodity options”), security futures product and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, amended, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (“forex contracts”) for their own personal accounts or for any account in which Cilli or PIF have 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 Cilli’s or PIF’s 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 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 CFTC 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 CFTC 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, exempt from registration or required to be registered with the Commission, except as provided for in CFTC Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

## V. RESTITUTION AND CIVIL MONETARY PENALTY

### A. Restitution

57. Cilli and PIF shall, jointly and severally, pay restitution in the amount of two hundred and forty-three thousand dollars (\$243,000), plus post-judgment interest, within ten (10) days of the date of the entry of this Consent Order (the "Restitution Obligation"). Post-judgment 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 the entry of this Consent Order pursuant to 28 U.S.C. § 1961.

58. Defendants shall receive a dollar-for-dollar credit against their Restitution Obligation for the amount of any restitution paid by Defendant Cilli as ordered by the U.S. District Court of the District of New Jersey in *United States v. Victor E. Cilli*, Criminal No. 11-660 (AET).

59. To effect payment of the Restitution Obligation and the distribution of any restitution payments to pool participants, the Court appoints the National Futures Association as



Monitor (“Monitor”). The Monitor shall collect restitution payments from Defendants and make distributions as set forth below. Because the Monitor is acting as an officer of the Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA’s appointment as Monitor, other than actions involving fraud.

60. Defendants shall make restitution payments under this Consent Order in the name of “PIF Settlement Fund” and shall send such restitution payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under a cover letter that identifies the paying Defendant and the name and case number of the proceeding. The paying Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Square, 1155 21<sup>st</sup> Street, NW, Washington, DC 20581.

61. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to pool participants identified by the CFTC 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 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 following the instructions for civil monetary penalties set forth in Part B below.

62. Defendants shall cooperate with the Monitor as appropriate to provide such information as the NFA deems necessary and appropriate to identify Defendants’ pool

participants to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendants shall execute any documents necessary to release funds that they have in repository, bank, investment or other financial institution wherever located, in order to make partial or total payment toward the Restitution Obligation.

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

64. The amounts payable to each pool participant shall not limit the ability of any pool participant from proving that a greater amount is owed from Defendants 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.

65. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each pool participant of Cilli and PIF 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 Cilli and PIF, to ensure continued compliance with any provision of this Consent Order and to hold Cilli and PIF in contempt for any violation of any provision of this Consent Order.

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

**B. Civil Monetary Penalty**

67. Cilli and PIF shall, jointly and severally, pay a civil monetary penalty of four hundred and seventy-four thousand dollars (\$474,000), plus post-judgment interest with ten (10) day of the date of entry of this Consent Order (the “CMP Obligation”). Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order, 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.

68. Cilli and PIF 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: Accounts Receivables—AMZ340  
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 transfer is chosen, Defendants shall contact Linda Zurhorst or her successor for instructions and shall fully comply with those instructions. The paying Defendant shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Defendant and the name and case number of this proceeding. The paying Defendant 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 21<sup>st</sup> Street, NW, Washington DC 20581.

**C. Partial Payments**

69. Any acceptance by the Commission or the Monitor of partial payment of Defendants' Restitution Obligation or CMP Obligation shall not be deemed a waiver of their 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**

70. Defendants shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other government 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**

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

Notice to the Commission:

Regional Counsel/Associate Director  
Division of Enforcement  
Commodity Futures Trading Commission  
140 Broadway  
New York, NY 10005  
(646) 746-9940 (fax)

Notice to Defendants Cilli and PIF:

Francis P. Crotty, Esq.  
Attorney for Defendants Cilli and PIF  
103 Sterling Drive  
Franklin Lakes, NJ 07417  
(201) 891-5221 (fax)

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

72. **Change of Address/Phone:** Until such time as Defendants satisfy the Restitution Obligation and CMP Obligation as set forth in this Consent Order, Defendants shall provide written notice of their new telephone number and mailing address within ten (10) calendar days of the change.

73. **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: (1) reduced to writing; (2) signed by the parties hereto; and (3) approved by order of this Court.

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

75. **Waiver:** The failure of any party to this Consent Order or any PMFF pool participant at any time or times to require performance of any provision hereof shall in no manner affect the right of such party or PMFF 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.

76. **Acknowledgements:** Upon being served with copies of this Consent order after entry by the Court, Defendants shall sign acknowledgement of such service and serve such acknowledgement on the Court and the Commission within ten (10) calendar days.

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

78. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendants, upon any person under their authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is in active concert or participation with Defendants.


79. **Authority:** Defendant Cilli hereby warrants that he is a representative of PIF and that this Consent Order has been duly authorized by PIF and that he has been duly empowered to sign and submit this Consent Order on behalf of PIF.

80. **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, e-mail, 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.

81. **Defendants understand that the terms of this Consent Order are enforceable through contempt proceedings, and that, in any such proceeding Defendants 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.

IT IS SO ORDERED on this 29 day of May, 2012.




Hon. William J. Martini  
UNITED STATES DISTRICT JUDGE

**CONSENTED TO AND APPROVED BY:**

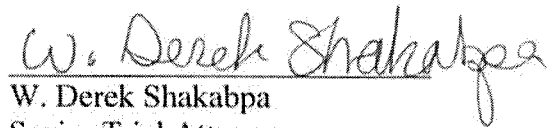


Defendant Victor E. Cilli




Progressive Investment Funds LLC  
Victor E. Cilli, President

STEPHEN J. OBIE  
Regional Counsel/Associate Director



W. Derek Shakabpa  
Senior Trial Attorney  
David Acevedo  
Chief Trial Attorney  
Commodity Futures Trading Commission  
140 Broadway, 19<sup>th</sup> floor  
New York, NY 10005  
(646) 746-9748  
(646) 746-9940 (facsimile)  
[wshakabpa@cftc.gov](mailto:wshakabpa@cftc.gov)

Approved as to form:



Francis P. Crotty, Esq.  
103 Sterling Drive  
Franklin Lakes, NJ 07417  
Attorneys for Defendants