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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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U.S. COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

PROFITSTARS INTL, CORP,  
ULYSIS K. STARLING

Defendants.

CASE NO. 11-civ-07742 (PAE)

~~PROPOSED~~ ORDER <sup>AND</sup> OF DEFAULT  
JUDGMENT AGAINST DEFENDANTS  
PROFITSTARS INTL, CORP AND  
ULYSIS K. STARLING ORDERING A  
PERMANENT INJUNCTION,  
DISGORGEMENT, CIVIL MONETARY  
PENALTIES, AND OTHER  
ANCILLARY RELIEF

I. INTRODUCTION

On October 31, 2011, Plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”) filed a Complaint for Injunctive and Other Equitable Relief and Penalties Under the Commodity Exchange Act (“Complaint”) against Defendants ProfitStars Intl, Corp (“PSI”) and Ulysis K. Starling (“Starling”) (collectively, “Defendants”) alleging violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 *et seq.* (2006), 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.*, and the Commission Regulations promulgated thereunder (“Regulations”), 17 C.F.R. §§ 1.1 *et seq.* (2012).

The Court entered a statutory restraining order against Defendants PSI and Starling on November 10, 2011, prohibiting Defendants from destroying books and records, interfering with the right of any Commission representatives from inspecting and copying Defendants’ records,

and further prohibiting Defendants from disposing of any of PSI's assets. Kelly Crawford, Esq., of Scheef & Stone LLP, Dallas Texas, was appointed temporary receiver by the Court to take control of PSI's assets. The Receiver has submitted a Declaration indicating that the Receiver initially took control of \$1,770,327.59 in PSI assets. With this Court's approval, the Receiver also transferred \$20,701 that remained from the receivership in the related case *CFTC v. Paragon FX Enterprises, LLC*, Case No. 11-civ-07740 (FM) (S.D.N.Y.), bringing the total in the PSI receivership to \$1,791,028.59. Thereafter, interim payment of receivership expenses of \$14,303.29 were approved by the Court on March 13, 2012 (D.E. 22), resulting in a current remaining balance of PSI assets in the receivership to \$1,776,725.30.

On November 30, 2011, the Commission properly served Starling, both individually and as an officer and President of PSI, with the Complaint and summons for each Defendant. No counsel appeared on behalf of either Defendant, and both PSI and Starling failed to answer, plead, or otherwise respond to the Complaint within the time permitted by the Federal Rules of Civil Procedure. Accordingly, on March 7, 2012, this Court entered defaults against both Defendants pursuant to Fed. R. Civ. P. 55(a).

Upon consideration of the affidavits and papers submitted by the Commission in accordance with the Individual Practice Rules for Entry of Default Judgment set forth by this Court, and pursuant to an Order issued on August 16, 2012 to Show Cause Why Orders of Default Judgment Should Not Be Entered Against Defendants, this matter is now before the Court to consider whether the relief requested in Plaintiff's Affidavit in Support of Application for Default Judgment Ordering a Permanent Injunction, Disgorgement, Civil Monetary Penalties, and Other Ancillary Relief Against Defendants PSI and Starling should be granted. Defendant Starling was served via United Parcel Service overnight delivery with this Court's Order to Show

Cause on August 22, 2012 and August 23, 2012 (Declaration of Antoinette Chance, Dated August 28, 2012, D.E. 31) on behalf of himself and Defendant PSI, and neither defendant appeared at the Show Cause Hearing or otherwise appeared to demonstrate why default judgments should not be entered against them. The Court, having considered the Complaint, Affidavits and other papers submitted by the Commission, and otherwise being fully advised in the premises; and Defendants having had actual notice of the Order to Show Cause, the Court now issues this Default Judgment Ordering a Permanent Injunction, Disgorgement, Civil Monetary Penalties, and Other Ancillary Relief Against Defendants PSI and Starling.

## **II. FINDINGS OF FACT**

### **A. Jurisdiction and Venue**

1. The Commodity Exchange Act establishes a comprehensive system for regulating registrants pursuant to the Act. Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), authorizes the Commission to seek injunctive and other relief against any person or entity whenever it shall appear to the Commission that such person or entity 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 Commission rule, regulation, or order.

2. This Court has jurisdiction over this matter as alleged herein pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006) and Section 2(c)(2)(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C). Specifically, from approximately October 28, 2010 to December 13, 2010, Paragon FX offered or entered into leveraged forex transactions with PSI. PSI was not an eligible contract participant (“ECP”) because it was not a commodity pool. Consequently, Section 2(c)(2)(C) of the Act applies to the agreements, contracts, or transactions offered or entered into between PSI and Paragon FX.

3. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because the Defendants transact or have transacted business, among other places, in this District, and the acts and practices in violation of the Act are occurring or have occurred, among other places, within this District.

**B. Parties**

4. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, 7 U.S.C. §§ 1 *et seq.* (2006), the Act as amended by the CRA and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 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), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

5. Defendant **ProfitStars Intl, Corp.** (“PSI”) (NFA No.: 423748) is a Texas corporation with its principal place of business in Dallas, Texas. PSI registered as a Commodity Trading Advisor (“CTA”) on August 16, 2010. PSI registered as a Commodity Pool Operator (“CPO”) of a forex commodity pool named “ProfitStars” on October 12, 2010.

6. Defendant **Ulysis K. Starling** (NFA No.: 419993) is an individual residing in Dallas, Texas. Starling is the sole-listed principal of PSI. Starling became registered as an associated person and principal of PSI in August 2010.

**C. Other Relevant Entities and Persons**

7. **Paragon FX Enterprises, LLC** (“Paragon FX”) is a limited liability corporation organized under the laws of the State of New York on March 10, 2010. The registered agent of

Paragon FX is Basil Fayadh of Brooklyn, New York. Paragon FX has never been registered with the Commission or NFA in any capacity.

8. **A&J Capital Management** is a company related to PSI. Prior to the formation of PSI, A&J Capital Management traded individually managed accounts at Paragon FX for many of PSI's customers. A&J Capital Management has never been registered with the Commission or National Futures Association ("NFA") in any capacity.

9. **Tracy Spaeth** is an individual residing in Lubbock, Texas. Spaeth worked as an investment advisor with a broker-dealer company named Brokers Xpress LLC. Spaeth is also the owner and operator of a company named Uncommon Wealth Management, an investment advisory service.

10. **Joey Miller** is an individual residing, on information and belief, in Lake Mary, Florida. Miller is the principal of A&J Capital Management and owner and operator of a company named Traders Edge Live. Miller offers forex trading and financial seminars. Miller has never been registered with the Commission or NFA in any capacity.

#### **D. Statutory and Regulatory Background**

11. On October 18, 2010, the Commission enacted new regulations implementing certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 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) and the CRA, with respect to off-exchange forex transactions.

##### ***Regulations Relating to CPOs Exempted from Disclosure Requirements***

12. Commission Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2012), defines any person who operates or solicits funds, securities, or property for a pooled investment vehicle that

is not an “eligible contract participant” (“ECP”), as defined in Section 1a of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a, and that engages in retail forex transactions, to be a “commodity pool operator” (“CPO”).

13. Section 1a of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a, defines an ECP as, “a commodity pool that (I) has total assets exceeding \$5,000,000 and (II) is formed and operated by a person subject to regulation under [the] Act.”

14. Commission Regulation 4.7(b), 17 C.F.R § 4.7(b) (2012), provides an exemption for qualifying CPOs from certain disclosure requirements of Part 4 and recordkeeping requirements of Part 4.23 otherwise applicable to such entities. Exemptive relief under Commission Regulation 4.7(b) is available to any registered CPO “who offers or sells participations in a pool solely to qualified eligible persons in an offering which qualifies for exemption from the registration requirements of the Securities Act pursuant to section 4(2) of that Act or pursuant to Regulation S, 17 C.F.R. § 230.901 *et seq.*”

15. Commission Regulation 4.7(a), in relevant part, 17 C.F.R. § 4.7(a) (2012), defines a “qualified eligible person” (“QEP”) as a person whose individual net worth, or joint net worth with that person’s spouse, at the time of either his purchase in the exempt pool or his opening of an exempt account exceeds \$1,000,000, or as a person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

***Regulations Requiring a Retail Forex Exchange Dealer to Register***

16. Commission Regulation 5.1(h)(1), 17 C.F.R. § 5.1(h)(1) (2012), defines a retail foreign exchange dealer (“RFED”) for purposes of Part 5 of the Commission’s Regulations

relating to off-exchange retail foreign currency transactions as “any person that is, or that offers to be, the counterparty to a retail forex transaction, except for a person described in sub-paragraph (aa), (bb), (cc)(AA), (dd), (ee) or (ff) of section 2(c)(2)(B)(i)(II) of the Act.”

These exceptions pertain to certain financial institutions, brokers and dealers registered under the Securities Exchange Act of 1934 and associated persons thereof, futures commission merchants and affiliated persons thereof, financial holding companies, and investment bank holding companies, and do not apply to Paragon FX.

17. Commission Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2012), requires any person acting as an RFED, as defined by Commission Regulation 5.1(h)(1), to be registered as such.

18. Commission Regulation 5.4, 17 C.F.R. § 5.4 (2012), states that all of Part 4 of the Commission’s Regulations apply to forex CPOs required to register, and that “failure by any person to comply with the requirements of Part 4 will constitute a violation of this section and the relevant section of part 4.”

***Applicability of Section 4o(1)(B) of the Act to Forex Commodity Pool Operators***

19. Section 2(c)(2)(C)(ii)(I) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(ii)(I), states in relevant part that Section 4o of the Act, to be codified at 7 U.S.C. § 6o, applies to agreements, contracts or transactions in foreign currency described in Section 2(c)(2)(C)(i) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(i).

20. Commission Regulation 5.25, 17 C.F.R. § 5.25 (2012), states in relevant part that Section 4o of the Act, to be codified at 7 U.S.C. § 6o, shall apply to retail forex transactions that are subject to the requirements of Part 5 of the Commission’s Regulations as though Section 4o

was set forth therein and included specific references to retail forex transactions and the persons defined in Commission Regulation 5.1, 17 C.F.R. § 5.1 (2012).

21. Section 4o(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6o(1)(B), in relevant part, makes it unlawful for any CPO, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any participant or prospective participant.

***Regulations Relating to a Forex CPO's Duty to Notify the NFA***

22. The National Futures Association ("NFA") is a not-for-profit membership corporation and a self-regulatory organization that is registered with the Commission as a futures association under Section 17 of the Act. NFA conducts audits and investigations of NFA member firms, including registered CPOs, to monitor them for compliance with NFA rules, some of which incorporate by reference Commission Regulations.

23. Commission Regulation 4.7(d)(3), 17 C.F.R. § 4.7(d)(3) (2012), requires a CPO to promptly file a notice advising NFA of any change which would cause the CPO to be ineligible for the relief claimed under Commission Regulation 4.7.

**E. Background**

24. On July 29, 2010, PSI was incorporated in the state of Texas. PSI's Certificate of Formation filed with the Texas Secretary of State identified the registered agent as Charles Belteton and the registered office address as 540 Nandina, Allen, Texas 75002.

25. During the period from at least August 2010 to at least December 13, 2010, Tracy Spaeth ("Spaeth") of Uncommon Wealth Management and Joey Miller ("Miller") of A&J Capital Management (AJCM) and Traders Edge Live directly and indirectly solicited members



of the public to invest in off-exchange retail forex trading. Spaeth and Miller solicited members of the public to open off-exchange, retail forex trading accounts at AJCM by, among other things, holding financial seminars and meetings. Joey Miller also solicited customers through recorded video seminars on forex trading. As a result of these solicitations, a number of clients opened accounts at AJCM during, approximately, August and September 2010. AJCM forwarded clients' funds to Paragon FX, where AJCM managed and traded individual client "sub" forex accounts under an AJCM "master" account.

26. In early October 2010, as PSI was about to become registered as a CPO, Spaeth and/or Miller contacted clients who had AJCM-managed forex accounts at Paragon FX, and represented to such clients that PSI was becoming registered as a CPO and the clients had to transfer their forex accounts from AJCM to PSI "so that we can maintain the same feature set that we currently have." Spaeth and/or Miller advised AJCM clients to execute subscription documents which authorized the transfer of forex funds being held and traded at Paragon FX from AJCM's management and control, to PSI's management and control as the CPO of the ProfitStars pool. PSI held and traded pool participants' funds at Paragon FX, an unregistered and non-NFA member entity. Paragon FX's forex trading with PSI was generated and executed pursuant to Paragon FX's electronic trading platform.

27. The subscription documents that ProfitStars pool participants signed were accompanied by a "Confidential Private Placement Memorandum ("PPM"). The PPM purported to create a limited partnership agreement with PSI as a general partner, Starling as the "managing director" of "Profit Stars Inc.," and the ProfitStars pool participants as limited partners. No such limited partnership agreement actually came into existence during the Relevant Period, because PSI did not register the limited partnership with the State of Texas or in any other state. During

the Relevant Period, PSI failed to operate the ProfitStars pool as a legal entity separate from itself.

**F. PSI's Registration as a CPO and Filing of Invalid Exemption as a CPO under Commission Regulation 4.7(b)**

28. On October 12, 2010, six days before the Commission's Regulations regarding retail forex trading became effective, PSI registered with NFA as a CPO of a forex commodity pool named "ProfitStars." Although the ProfitStars pool purportedly was incorporated in the state of Texas, the Texas Secretary of State has no corporate formation records for the ProfitStars pool. PSI never created a pool named "ProfitStars" as a legally cognizable entity.

29. On October 13, 2010, Defendant Starling, on behalf of PSI, filed for an exemption with NFA from certain Commission Part 4 requirements pursuant to Commission Regulation 4.7(b), 17 C.F.R. § 4.7(b) (2012). Under Commission Regulation 4.7(b), qualified CPOs who offer or sell participations in a pool solely to QEPs may claim relief from certain Part 4 disclosure requirements, including the delivery of an approved Disclosure Document that conformed to Commission Regulation 4.21. Defendant Starling, on behalf of PSI, listed "ProfitStars" as the exempt commodity pool.

30. PSI's records show that a significant number of the ProfitStars pool participants did not meet the QEP requirements set forth in Commission Regulation 4.7(a), 17 C.F.R. § 4.7(a) (2012). Therefore, PSI was not entitled to claim an exemption under Commission Regulation 4.7(b). At no time after PSI filed for an exemption pursuant to Commission Regulation 4.7(b) did PSI advise NFA, as required by Commission Regulation 4.7(d)(3), that its exemption claim was invalid or no longer valid.

31. From at least October 18, 2010 through December 13, 2010 ("Relevant Period"), PSI acted as a CPO as defined by Commission Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1)

(2012), relating to off-exchange foreign currency transactions, because it operated or solicited funds for a pooled investment vehicle that is not an ECP, as defined in Section 1a of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a, and engaged in retail forex transactions.

32. PSI failed to disclose to the ProfitStars pool participants that it was not entitled to claim the disclosure exemption.

33. PSI also failed to inform NFA that its exemption status was not valid.

**G. PSI's Account at Paragon FX**

34. On October 28, 2010, Starling opened a forex account at Paragon FX listing the "commodity pool" as PSI, and referring to his title as "General Partner." Defendant Starling signed the Paragon account opening documents, dated October 28, 2010, and an "attestation of eligible contract participant status," stating that PSI was a (i) commodity pool with greater than \$5 million in total assets formed and operated by a person or entity properly registered as a CPO, as well as (ii) an entity with greater than \$10 million in total assets. Since October 28, 2010, Paragon FX has been acting as a counterparty, or has been offering to act as a counterparty, to leveraged retail forex transactions with PSI, using the ProfitStars pool funds. During the Relevant Period, PSI was not an ECP because it was a CPO rather than a commodity pool. Further it was not an ECP because it did not hold assets in excess of \$10 million.

35. PSI never disclosed to the ProfitStars pool participants that it opened an account with Paragon FX under its own name rather than the pool's name. PSI also never disclosed to ProfitStars pool participants that their funds were used to trade for PSI's account.

36. After the ProfitStars pool participants executed standardized subscription agreements, they forwarded funds to Defendants. The ProfitStars pool has over 240 participants' accounts, including individual, corporate and IRA accounts. Many of the ProfitStars pool

participants were pre-existing clients of AJCM. These AJCM clients transferred their funds from AJCM to the ProfitStars pool account at Paragon FX, which PSI controlled and operated in its own name.

37. The ProfitStars pool subscription agreements show that over half of the pool's participants did not indicate affirmatively that they met the income or net worth requirements for QEPs, and approximately 32 participants actually indicated that they did not meet the income or net worth requirements for QEPs.

38. Paragon FX has been accepting the ProfitStars pool participants' funds through wire transfers, checks, or other payments.

39. The PSI trading account with Paragon FX, had just over \$15 million in ProfitStars participant funds as of January 28, 2011. The participants' funds that PSI traded at Paragon FX were held and traded in a master account with over 200 sub-accounts. This master account was traded as a so-called "percentage asset allocation method" ("PAAM") account, whereby each individual participant sub-account received a proportional fraction of the gains or losses from an aggregate forex transaction that occurred in the master account. Paragon FX is not a financial institution, registered broker dealer (or their associated persons), insurance company, financial holding company, or investment bank holding company, as defined in Section 2(c)(2)(B)(II)(aa)-(bb), (dd)-(ff), as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(B)(II)(aa)-(bb), (dd)-(ff).

40. From approximately October 28, 2010 to December 13, 2010, Paragon FX offered leveraged forex transactions to PSI, or entered into leveraged forex transactions with PSI, which neither resulted in delivery within two days nor created an enforceable obligation to deliver between a buyer and a seller who had the ability to deliver and accept delivery, respectively, in

connection with their line of business. Rather, these forex transactions remained open from day to day and ultimately were offset. By virtue of this conduct, Paragon FX has been acting as an RFED as defined by Commission Regulation 5.1(h)(1), 17 C.F.R. § 5.1(h)(1) (2012). Paragon FX was not registered as an RFED during the Relevant Period, as required.

41. PSI failed to disclose to the ProfitStars pool participants that pool funds had been used to trade forex transactions opposite an entity, Paragon FX, that was not registered as an RFED, as required by law.

#### **H. NFA's Investigation and Emergency Enforcement Action**

42. In late November 2010, NFA conducted an investigation and audit of Defendants PSI and Starling. PSI and Starling have failed to produce adequate records and documentation regarding their forex business to demonstrate that PSI is in compliance with NFA requirements. As revealed by the NFA investigation, PSI never in fact formed and operated the ProfitStars pool as a legally cognizable entity separate from the CPO.

43. On December 7, 2010, NFA issued a Member Responsibility Action ("MRA") against PSI and an Associate Responsibility Action ("ARA") against Starling prohibiting PSI and Starling from (i) soliciting or accepting any funds from clients or participants, soliciting investments for any pools or other investment vehicles, or placing any trades on behalf of clients or participants, pools or investors; and (ii) disbursing or transferring any funds of clients or participants, investors or pools over which they exercise control without prior approval from NFA.

44. On December 10, 2010, Paragon FX terminated its relationship and account with PSI. Paragon FX liquidated the PSI account, which had a cash value of just over \$15 million as of January 28, 2011.

### III. CONCLUSIONS OF LAW

1. During the Relevant Period, PSI acted as a CPO as defined by Commission Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2012), relating to off-exchange foreign currency transactions, because it operated or solicited funds, securities, or property for a pooled investment vehicle that is not an ECP, as defined in Section 1a of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a, and engaged in retail forex transactions.

2. During the Relevant Period, PSI, by use of the mails or by any means or instrumentality of interstate commerce, violated Section 4o(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6o(1)(B) in that, while acting as a CPO as defined by Commission Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2012), it engaged in a transaction, practice, or course of business which operated as a fraud or deceit upon participants and prospective participants of the ProfitStars pool by failing to disclose to the ProfitStars pool participants, or prospective participants, that (i) PSI had opened an account, using ProfitStars pool funds, at Paragon FX under PSI's name rather than the ProfitStars pool name; (ii) pool funds were being used to trade opposite an unlawfully unregistered entity, Paragon FX, which had been acting as an RFED, as defined by Commission Regulation 5.1(h)(1), 17 C.F.R. § 5.1(h)(1) (2012), without being registered as such, in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), and Commission Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2012); and (iii) PSI was not entitled to the disclosure exemption it was claiming under Commission Regulation 4.7(b), 17 C.F.R. § 4.7(b) (2012), because many of the ProfitStars pool participants were not QEPs. PSI's omissions as alleged herein were material in that reasonable investors would consider them important in making investment decisions.

3. Defendant Starling controlled PSI, directly or indirectly, and knowingly induced, directly or indirectly, PSI's violations of Section 4o(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6o(1)(B). Starling is therefore liable for these violations as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

4. During the Relevant Period, PSI acted as a CPO as defined by Commission Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2012), relating to off-exchange foreign currency transactions because it operated or solicited funds, securities, or property for a pooled investment vehicle that is not an "eligible contract participant" ("ECP"), as defined in Section 1a of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a, and engaged in retail forex transactions.

5. As set forth above, PSI claimed exemption as a CPO from certain Part 4 disclosure and recordkeeping requirements pursuant to Commission Regulation 4.7(b), 17 C.F.R. § 4.7(b) (2012), on October 13, 2010.

6. PSI was not entitled to the Commission Regulation 4.7(b) exemption as a CPO because many of the ProfitStars pool participants did not meet the QEP requirements set forth in Commission Regulation 4.7(a), 17 C.F.R. § 4.7(a) (2012). Therefore, PSI did not qualify for the Commission Regulation 4.7(b) exemption.

7. PSI, while acting as a CPO, as defined by Commission Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2012), failed to give notice to NFA that its claimed exemptions from certain disclosure and recordkeeping requirements pursuant to Commission Regulation 4.7(b) were invalid or no longer valid, in violation of Commission Regulations 4.7(d)(3) and 5.4, 17 C.F.R. §§ 4.7(d)(3), 5.4 (2012).

8. Defendant Starling controlled PSI, directly or indirectly, and knowingly induced, directly or indirectly, PSI's violations of Commission Regulations 4.7(d)(3) and 5.4, 17 C.F.R.

§§ 4.7(d)(3), 5.4 (2012). Starling therefore is liable as a controlling person for these violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

9. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants PSI and Starling will continue to engage in the acts and practices alleged in the Complaint or in similar acts and practices in violation of the Act. Other ancillary equitable relief is imposed to carry out the goals of the Act.

#### **IV. PERMANENT INJUNCTION**

##### **IT IS HEREBY ORDERED THAT:**

1. PSI and Starling are permanently restrained, enjoined, and prohibited from directly or indirectly:
  - A. Engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any participant, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1)(B) of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 6o(1)(B), and
  - B. While acting as a CPO, as defined by Commission Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2012), failing to give notice to the National Futures Association that any claimed exemption from certain disclosure and recordkeeping requirements pursuant to Commission Regulation 4.7(b) are invalid or are no longer valid, in violation of Commission Regulations 4.7(d)(3), and 5.4, 17 C.F.R. §§ 4.7(d)(3), 5.4 (2012).
2. PSI and Starling are each further 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) (2012)) (“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 their own personal account or for any account in which either PSI or Starling 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 either PSI's or Starling'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 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) (2012); and/or
- G. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), 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) (2012).

3. The injunctive provisions of this Order shall be binding upon PSI and Starling, all persons insofar as they are acting in the capacity of Defendants' officers, agents, servants, employees, and attorneys, and all persons insofar as they are acting in active concert or participation with either Defendant who receive actual notice of this Order by personal service or otherwise.

#### **V. DISGORGEMENT AND CIVIL MONETARY PENALTIES**

##### **IT IS FURTHER ORDERED THAT:**

##### **Disgorgement**

1. Defendants PSI and Starling are jointly and severally liable, and shall pay disgorgement in the amount of \$1,791,028.59 ("Disgorgement Obligation"); *provided, however,*

that Defendants PSI and Starling shall receive a credit and offset towards this Disgorgement Obligation for the equivalent amount of funds collected by the Receiver in this matter, as described on p. 2, *supra*. Any funds remaining in the Receivership shall be distributed pursuant to a further order by this Court after submission of a recommendation for distribution by the Receiver, and subject to any claims and notice process approved by this Court.

2. Upon the termination of the receivership estate in this matter, the Receiver shall provide the Commission with a report detailing the disbursement of funds to PSI's pool participants. The Receiver 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.

3. The amounts payable to each Participant shall not limit the ability of any Participant from proving that a greater amount is owed from Defendants PSI or Starling or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any Participant that exist under state or common law.

#### **Civil Monetary Penalties**

4. Section 6c(d) of the Act, 7 U.S.C. § 13a-1(d) (2006), and Commission Regulation 143.8, 17 C.F.R. § 143.8 (2012) permit the imposition of a civil monetary penalty on any person found to have committed a violation of the Act of up to \$140,000 for each violation of the Act after October 23, 2008.

5. Upon the date of entry of this Order, PSI is hereby liable for, and a judgment is entered against it to pay, a civil monetary penalty in the amount of Two Hundred Ten Thousand Dollars (\$210,000) plus post-judgment interest; and Starling is separately liable for, and a

judgment is entered against him to pay, a civil monetary penalty in the amount of Seventy Thousand Dollars (\$70,000), plus post-judgment interest (“CMP obligations”).

6. Post-judgment interest shall accrue on the CMP obligations beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

7. PSI and Starling shall pay their respective CMP obligations 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 following address:

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, Defendants shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. PSI and Starling shall accompany payment of their respective CMP obligation with a cover letter that identifies the Defendant by name, as well as the name and docket number of this proceeding. PSI and Starling shall simultaneously transmit a copy of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address.

8. Any acceptance by the CFTC of partial payment of the CMP obligation shall not be deemed a waiver of both Defendants' requirement to make further payments pursuant to this Order or a waiver of the CFTC's right to seek to compel either Defendant's payment of any remaining balance, respectively, of the CMP obligation owed.

**IT IS FURTHER ORDERED THAT:**

9. All notices required to be given by this Order shall be sent via certified mail, return receipt requested, as follows:

Notice to Plaintiff Commission:  
Director of the Division of Enforcement  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street NW  
Washington, D.C. 20581

Notice to Defendant PSI or Starling:  
Ulysis S. Starling  
18383 Gallery Drive # 4304  
Dallas, TX 75252

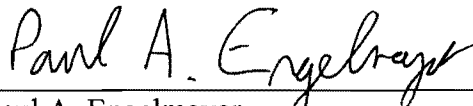
**VI. CONTINUING JURISDICTION OF THIS COURT**

**IT IS FURTHER ORDERED THAT:**

This Court shall retain jurisdiction over this action to implement and carry out the terms of this Order, to monitor and to provide for the orderly administration and termination of the receivership, to ensure compliance with this Order, and for any suitable application or motion for additional relief within the jurisdiction of this Court.

**IT IS SO ORDERED.**

Date: Sept. 14, 2012

  
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Paul A. Engelmayer  
United States District Judge

