

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

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In the Matter of: )

Jeffrey J. Kinseth and Virtual Vision )  
Inc., )

Respondents. )  
\_\_\_\_\_ )

CFTC Docket No. 12 – 10

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

**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Jeffrey J. Kinseth (“Kinseth”) and Virtual Vision Inc. (“Virtual Vision”) (collectively, “Respondents”) have violated Section 4b(a)(2)(i)-(iii) of the Commodity Exchange Act (the “Act” or the “CEA”), 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), and Sections 4b(a)(1)(A)-(C) and 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6b(a)(2)(A)-(C) (Supp. III 2009). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations set forth herein, and to determine whether any order shall be issued imposing remedial sanctions.

**II.**

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

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

### III.

The Commission finds the following:

#### A. Summary

Between March 2008 and September 2009 (the “relevant time period”), Virtual Vision, by and through Kinseth acting as its director and president, fraudulently solicited and accepted approximately \$975,360 from approximately eleven individuals (collectively, “investors”) for the purpose of trading commodity futures contracts (“commodity futures”) and leveraged or margined off-exchange foreign currency contracts (“forex”) through a pooled investment vehicle, Virtual Vision (“Virtual Vision” or the “pool”).

Respondents misappropriated the majority of the funds, over \$800,000, to make payments to other investors and for Kinseth’s personal use. Of the funds traded, Respondents consistently sustained losses. Respondents concealed their trading losses and misappropriation by creating and issuing false account statements to investors reflecting purported profits from their trading.

#### B. Respondents

**Virtual Vision Inc.** is an active corporation organized and existing under the laws of the State of Iowa. Virtual Vision’s office is located at Kinseth’s principal residence in Cedar Rapids, Iowa. Virtual Vision has never been registered or claimed an exemption from registration with the Commission. Kinseth is a director, principal shareholder, registered agent, president and sole known employee of Virtual Vision.

**Jeffrey J. Kinseth** resides in Cedar Rapids, Iowa. Kinseth is not registered with the Commission. Kinseth owns, operates and controls the day-to-day operations of Virtual Vision.

#### C. Facts

During the relevant time period, Virtual Vision by and through Kinseth, solicited and accepted approximately \$975,360 for the purpose of trading commodity futures and forex through a pooled investment vehicle, Virtual Vision. Respondents, through Kinseth, solicited funds from Kinseth’s personal interactions with prospective investors and through the internet.

In his solicitations, Kinseth guaranteed returns on investments. Kinseth made these guarantees even though his trading of commodity futures and forex consistently resulted in losses.

In order to invest with Respondents, Kinseth directed investors to wire or send funds to bank accounts held in the name of Virtual Vision. Once Kinseth had control of the funds in the Virtual Vision bank accounts, Kinseth would do one of three things: (i) transfer the funds to futures and forex trading accounts held at multiple registered Futures Commission Merchants in

the name of Virtual Vision;<sup>2</sup> (ii) use the new funds to make payments to earlier investors; or (iii) misappropriate the funds for personal use.

Respondents did not trade the majority of investor funds. Instead, Kinseth misappropriated approximately \$405,295 of investor funds to pay personal bills and expenses, such as his monthly home mortgage payment. Respondents effectuated these misappropriations by making numerous cash withdrawals and by check, electronic funds transfers and wire transfer withdrawals from the Virtual Vision bank accounts. Respondents also used approximately \$400,424 of investor funds to make payments to investors.

Of the limited funds traded, Kinseth's trading of commodity futures and forex resulted in overall losses of approximately \$169,640. Throughout the relevant period, to conceal the misappropriation and trading losses, Kinseth created and distributed account statements that falsely depicted trading profits.

#### IV.

### LEGAL DISCUSSION

#### A. Respondents Violated Section 4b(a) of the Act<sup>3</sup>

Sections 4b(a) of the Act prohibits all manner of fraud in, or in connection with futures or forex transactions, including fraudulent solicitation, misappropriation of investor funds and issuance of false statements. Respondents, through their fraudulent solicitations, misappropriation of investor funds and issuance of false statements, violated: Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006) (with respect to conduct involving futures before June 18, 2008); Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (Supp. III 2009) (with respect to conduct involving commodity futures on or after June 18, 2008); and Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009) (with respect to conduct involving forex on or after June 18, 2008).<sup>4</sup>

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<sup>2</sup> Virtual Vision trading accounts were opened and operated as corporate proprietary accounts and not as accounts of the pool.

<sup>3</sup> The Commission has jurisdiction over Respondents' fraud in connection with on-exchange commodity futures contracts and off-exchange forex pursuant to Sections 6(c) and 2(c)(2)(C) of the Act. Section 2(c)(2)(C)(iv) of the Act, 7 U.S.C. § 2(c)(2)(C)(iv) (Supp. III 2009), provides that Section 4b (fraud in connection with futures) shall apply to any forex agreement, contract, or transaction over which the Commission has jurisdiction "as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery."

<sup>4</sup> The June 2008 legislation reauthorizing the CFTC, the CFTC Reauthorization Act of 2008 ("CRA"), revised Section 4b of the Act, among other things. *See* Section 1302 of the CRA. The objective of the revision was to "clarify that the CEA gives the Commission the authority to bring fraud actions in off-exchange 'principal-to-principal' futures transactions." H.R. REP. NO. 2419, at 981 (2008) (Conf. Rep.). The CRA also reorganized Section 4b so that Respondents' fraudulent conduct occurring prior to June 18, 2008 is in violation of Section 4b(a)(2)(i)-(iii) of

## 1. Solicitation Fraud

Fraudulent solicitation of prospective investors violates Sections 4b(a) of the Act. To establish solicitation fraud, the Commission must prove that: (1) a misrepresentation has occurred; (2) with scienter; and (3) that the misrepresentation was material. *R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328-29 (11th Cir. 2002).

Whether a misrepresentation has been made depends on the overall message and the common understanding of the information conveyed.” *R.J. Fitzgerald & Co.*, 310 F.3d at 1328 (internal quotation marks and citation omitted). A statement or omission is material if “a reasonable investor would consider it important in deciding whether to make an investment.” *Id.* at 1328-29. “Scienter requires proof that an individual committed the alleged wrongful acts intentionally or with reckless disregard for his duties under the Act.” *CFTC v. Rolando*, 589 F. Supp. 2d 159, 169-170 (D. Conn. 2008) (citing *Lawrence v. CFTC*, 759 F.2d 767, 773 (9th Cir. 1985) and *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988)); *Do v. Lind-Waldock & Co.* [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) P 26,516, 1995 CFTC LEXIS 247, at \*4 (CFTC Sept. 27, 1995) (determining that a reckless act is one that “departs so far from the standards of ordinary care that it is very difficult to believe the [actor] was not aware of what he was doing”) (quoting *Drexel Burnham Lambert v. CFTC*, 850 F.2d at 848); see also *CFTC v. Noble Metals Int'l, Inc.*, 67 F.3d 766, 774 (9th Cir. 1995) (“Mere negligence, mistake, or inadvertence fails to meet Section 4b’s scienter requirement”).

Respondents knowingly guaranteed returns on investments when Respondents knew their trading had consistently resulted in losses. Kinseth told at least one investor that his previous trading of forex had resulted in consistent profits. This statement was knowingly false. Misrepresentations such as those made by Respondents regarding profitability and trading track records, and which were made knowingly and intentionally, are exactly the types of statements that a “reasonable investor would consider . . . important in making an investment decision.” *Saxe v. E.F. Hutton & Co.*, 789 F.2d 105, 111 (2d Cir. 1986). Virtual Vision, by and through Kinseth, made material misrepresentations with the requisite scienter, in violation of: Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2006) (with respect to conduct involving futures before June 18, 2008); Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (Supp. III 2009) (with respect to conduct involving commodity futures on or after June 18, 2008); and Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009) (with respect to conduct involving forex on or after June 18, 2008).

## 2. Fraud by Misappropriation

Misappropriation of investors’ funds also violates Section 4b(a) of the Act. *CFTC v. Noble Wealth Data Info. Serv., Inc.*, 90 F. Supp. 2d 676, 687 (D. Md. 2000) (defendants defrauded investors by diverting investor funds for operating expenses and personal use), *aff’d in part, vacated in part, sub nom.*, *CFTC v. Baragosh*, 278 F.3d 391 (4th Cir. 2002); *In re Slusser*,

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the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), while Respondent’s similar misconduct occurring on or after June 18, 2008 involving futures and forex is in violation of Sections 4b(a)(1)(A)-(C) and 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009), respectively.

[1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,315 (CFTC July 19, 1999), *aff'd in relevant part sub nom., Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000) (respondents violated Section 4b by surreptitiously retaining money in their own bank accounts that should have been traded on behalf of participants); *CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (defendant violated Section 4b(a) of the Act by misappropriating customer funds entrusted to her for trading commodity futures contracts); *CFTC v. A.S. Templeton Group, Inc.*, [2007-2009 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,988 (E.D. N.Y. 2009) (defendants defrauded customers by using customer funds which were allocated for trading forex to pay personal and corporate expenses).

Kinseth used investor funds held in Virtual Vision corporate bank accounts for his personal expenses and benefit. Furthermore, Virtual Vision by and through Kinseth, used investor funds held in Virtual Vision corporate bank accounts in order to make payments to other investors, in a manner akin to a Ponzi scheme. Accordingly, Respondents misappropriated investor funds in violation of: Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2006) (with respect to conduct involving futures before June 18, 2008); Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (Supp. III 2009) (with respect to conduct involving commodity futures on or after June 18, 2008); and Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009) (with respect to conduct involving forex on or after June 18, 2008).

### **3. Fraud by Issuance of False Statements**

Issuing or causing to be issued false statements to investors concerning the profitability of commodity futures and forex trading conducted on their behalf violates Section 4b(a) of the Act. *See CFTC v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d 676, 686 (D. Md. 2000) (finding defendants violated Section 4b(a) because they issued false account statements); *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 447-48 (D.N.J. 2000) (defendant violated the CEA's anti-fraud provisions by falsely stating he would set up an account in the customer's name, reporting erroneous account balances, and preparing and sending false 1099 tax forms); *Skorupskas*, 605 F. Supp. at 932-33 (defendant violated Section 4b(a) of the Act by issuing false monthly statements to customers).

During the relevant period, Respondents created and issued account statements to investors that showed investors were earning profits. In truth, Respondents knew that the pool was not earning profits. By knowingly or recklessly issuing such false statements, Respondents violated: Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006) (with respect to conduct involving futures before June 18, 2008); Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b(a)(1)(B) (Supp. III 2009) (with respect to conduct involving commodity futures on or after June 18, 2008); and Section 4b(a)(2)(B) of the Act, 7 U.S.C. § 6b(a)(2)(B) (Supp. III 2009) (with respect to conduct involving forex on or after June 18, 2008).

### **B. Respondents' Derivative Liability for Each Other's Violations**

Kinseth controlled Virtual Vision, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Virtual Vision's conduct in violation of the Act;

therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13(b) (2006), Kinseth is liable for Virtual Vision's violations of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), and Sections 4b(a)(1)(A)-(C) and 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6b(a)(2)(A)-(C) (Supp. III 2009).

The foregoing acts, misrepresentations, and failures of Kinseth occurred within the scope of his employment, office, or agency with Virtual Vision; therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2011), Virtual Vision is liable for Kinseth's acts, misrepresentations, omissions, and failures in violation of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), and Sections 4b(a)(1)(A)-(C) and 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6b(a)(2)(A)-(C) (Supp. III 2009).

## V.

### **FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that Respondents violated: Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006) (with respect to conduct involving futures before June 18, 2008); Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (Supp. III 2009) (with respect to conduct involving commodity futures on or after June 18, 2008); and Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009) (with respect to conduct involving forex on or after June 18, 2008).

## VI.

### **OFFER OF SETTLEMENT**

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

- A. Acknowledge receipt of service of this Order;
- B. Admit to the jurisdiction of the Commission with respect to all matters set forth in the Order and for any action or proceeding brought or authorized by the Commission based upon violation of or enforcement of this Order;
- C. Waive: the filing and service of a complaint and notice of hearing; a hearing; all post-hearing procedures; judicial review by any court; any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer; 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, 17 C.F.R. §§ 148.1-30 (2011), relating to, or arising from, this proceeding; any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110

Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to or arising from this proceeding; and any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

- D. Stipulate that the record upon which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer; and
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that Respondents violated Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), and Sections 4b(a)(1)(A)-(C) and 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6b(a)(2)(A)-(C) (Supp. III 2009);
  2. orders Respondents to cease and desist from violating Sections 4b(a)(1)(A)-(C) and 4b(a)(2)(A)-(C) of the Act, as amended by 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), to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6b(a)(2)(A)-(C);
  3. orders that Respondents be permanently restrained, enjoined and prohibited from engaging, directly or indirectly, in 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), and all registered entities shall refuse them trading privileges;
  4. orders Respondents, jointly and severally, to pay restitution in the amount of \$574,936 and to pay, within ten (10) days of the date of entry of this *Order*, a civil monetary penalty of \$575,000; and
  5. orders Respondents to comply with the undertakings consented to in the Offer and set forth below in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

## VII.

### ORDER

**Accordingly, IT IS HEREBY ORDERED THAT:**

- A. Respondents shall cease and desist from violating Sections 4b(a)(1)(A)-(C) and 4b(a)(2)(A)-(C) of the Act, as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6b(a)(2)(A)-(C);

- B. Respondents be permanently restrained, enjoined and prohibited from engaging, directly or indirectly, in 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), for their own account, for any account in which they have a direct interest or indirect interest, or for any other account for or on behalf of any other person or entity, whether by power of attorney or otherwise, and all registered entities shall refuse them trading privileges thereon;
- C. Respondents shall pay restitution, jointly and severally, in the amount of five hundred and seventy-four thousand nine hundred and thirty-six Dollars (\$574,936), plus post-judgment interest. Post-judgment interest shall accrue 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. To effect payment by Respondents and distribution of restitution, the Commission appoints the National Futures Association (“NFA”) as Monitor. The Monitor shall collect the restitution payments from Respondents and make distributions as set forth below. Because the Monitor is not being specially compensated for these services and these services are outside the normal duties of the Monitor, the Monitor shall not be liable for any action or inaction arising from its appointment as Monitor, other than actions involving fraud.

Respondents shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Virtual Vision’s investors, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments. Respondents shall make restitution payments under this Consent Order in the name of “Kinseth/Virtual Vision Restitution Fund” and shall send such restitution payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s check, or bank money order, made payable to and sent to the Office of Administration, National Futures Association, 300 S. Riverside Plaza, 1800 Chicago, Illinois 60606, under a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at the following address: Three Lafayette Center, 1155 21st Street, N.W., Washington, DC 20581, and to the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address. The Monitor shall oversee Respondents’ restitution obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to Virtual Vision’s investors. 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;

- D. Respondents, jointly and severally, shall pay a civil monetary penalty of five hundred and seventy-five thousand Dollars (\$575,000), within ten (10) days of the date of entry of this Order (the “CMP Obligation”). If the CMP Obligation is not paid within ten (10) days of the date of entry of this Order, post judgment interest shall accrue on the CMP Obligation



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. Respondents shall pay their civil monetary penalty by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, then the payments shall be made payable to the Commodity Futures Trading Commission, and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables – AMZ 340  
E-mail Box: 9-AMC-AMZ-AR-CFTC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: 405-954-5644

If payment by electronic funds transfer is chosen, Respondent shall contact Linda Zurhorst or her successor at the above address to receive payment instruction and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies Respondents and the name and docket number of this proceeding. Respondents shall simultaneously transmit copies of the cover letter and the form of payment to (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581 and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address; and

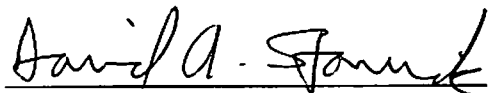
- E. Respondents and their successors and assigns to comply with the undertakings set forth below in the Offer:
1. Respondents agree that neither they nor any of their successors or assigns, employees or agents under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) rights to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of their employees and/or agents under their authority or control understand and comply with this undertaking; and
  2. Respondents agree that they shall never engage, directly or indirectly, in:
    - i. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh),, 17 C.F.R. § 1.3(hh) (2011)) ("commodity options"), security futures products, and/or foreign

currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for Respondents’ own personal account(s) or for any account(s) in which Respondents have a direct or indirect interest;

- ii. having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on Respondents’ behalf;
- iii. 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;
- iv. 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;
- v. 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and/or
- vi. acting as a principal (as that term is defined in Commission 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(38) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(38)) registered, exempted from registration, or required to be registered with the Commission except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

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

By the Commission.



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

Dated: February 23 2012