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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY tar DEPUTY

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

**United States Commodity Futures
Trading Commission,**

Plaintiff,

vs.

**Douglas Elsworth Wilson, Elsworth Berg
Capital Management LLC, Elsworth Berg
Inc., and Elsworth Berg FX LLC,**

Defendants.

Case No: 3:11-cv-1651

Hon. William Q. Hayes

**CONSENT ORDER FOR
PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY,
AND OTHER EQUITABLE
RELIEF AGAINST ALL
DEFENDANTS**

I. INTRODUCTION

On July 27, 2011, Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint against Defendants Douglas Elsworth Wilson, Elsworth Berg Capital Management LLC, Elsworth Berg Inc., and Elsworth Berg FX LLC ("Defendants") seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the [Commodity Exchange Act ("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")),

1 §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008). The Court entered a Consent Statutory
2 Restraining Order against Defendants on August 18, 2011 (ECF No. 13), a Consent Order of
3 Preliminary Injunction and Other Ancillary Relief disposing of most of the issues raised in
4 Plaintiff's Motion for an Order of Preliminary Injunction on September 13, 2011 (ECF No. 17),
5 and an order disposing of the remaining issue raised by Plaintiff's Motion for an Order of
6 Preliminary Injunction on December 20, 2011 (ECF No. 26).

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8 **II. CONSENTS AND AGREEMENTS**

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

11 1. Consent to the entry of this Consent Order for Permanent Injunction, Civil Monetary
12 Penalty and Other Equitable Relief Against All Defendants ("Consent Order");

13 2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no
14 promise, other than as specifically contained herein, or threat, has been made by the CFTC or
15 any member, officer, agent or representative thereof, or by any other person, to induce consent to
16 this Consent Order;

17 3. Acknowledge service of the summons and Complaint;

18 4. Admit the jurisdiction of this Court over them and the subject matter of this action
19 pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1;

20 5. Admit the jurisdiction of the CFTC over the conduct and transactions at issue in this
21 action pursuant to the Act, 7 U.S.C. §§ 1, *et seq.*;

22 6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, as
23 amended, 7 U.S.C. § 13a-1(e);
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1 7. Waive:

2 (a) any and all claims that they may possess under the Equal Access to Justice
3 Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the
4 Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.*
5 (2011), relating to, or arising from, this action;

6 (b) any and all claims that they may possess under the Small Business Regulatory
7 Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868
8 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or
9 arising from, this action;

10 (c) any claim of Double Jeopardy based upon the institution of this action or the
11 entry in this action of any order imposing a civil monetary penalty or any other relief, including
12 this Consent Order; and

13 (d) any and all rights of appeal from this action;

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

18 9. Agree that they will not oppose enforcement of this Consent Order by alleging that it
19 fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection
20 based thereon;

21 10. Agree that neither they nor any of their agents or employees under their authority or
22 control shall take any action or make any public statement denying, directly or indirectly, any
23 allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Consent Order,
24 or creating or tending to create the impression that the Complaint and/or this Consent Order is
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1 without a factual basis; provided, however, that nothing in this provision shall affect their:

2 (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the
3 CFTC is not a party. Defendants shall undertake all steps necessary to ensure that all of their
4 agents and/or employees under their authority or control understand and comply with this
5 agreement; and

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7 11. By consenting to the entry of this Consent Order, neither admit nor deny the
8 allegations of the Complaint or the Findings of Fact and Conclusions of Law in this Consent
9 Order, except as to jurisdiction and venue, which they admit. Further, Defendants agree and
10 intend that the allegations contained in the Complaint and all of the Findings of Fact and
11 Conclusions of Law contained in this Consent Order shall be taken as true and correct and be
12 given preclusive effect, without further proof, in the course of: (a) any current or subsequent
13 bankruptcy proceeding filed by, on behalf of, or against Defendants; (b) any proceeding pursuant
14 to Section 8a of the Act, as amended, 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R.
15 §§ 3.1 *et seq.* (2011); and/or (c) any proceeding to enforce the terms of this Consent Order.

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17 12. Agree to provide immediate notice to this Court and the CFTC by certified mail, in
18 the manner required by paragraph 93 of Part VI of this Consent Order, of any bankruptcy
19 proceeding filed by, on behalf of, or against them, whether inside or outside the United States,
20 and

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22 13. Agree that no provision of this Consent Order shall in any way limit or impair the
23 ability of any other person or entity to seek any legal or equitable remedy against Defendants in
24 any other proceeding.

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III. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the 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, 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

14. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

15. Defendant **Elsworth Berg Capital Management** ("EBCM") is a suspended California limited liability company formed in August 2001 with a business address in San Diego, California. EBCM's principals were Wilson, William B. Settles ("Settles"), and (for a portion of the company's existence) Lawrence E. Freeman ("Freeman"). EBCM acted as the commodity pool operator ("CPO") of a commodity pool called Velocity Trading Group LLC ("Velocity"). EBCM also controlled and managed a foreign exchange ("forex") trading pool called Vortex Currency Group LLC ("Vortex"). EBCM was at one time a California-registered Investment Adviser, but its investment adviser certificate was summarily revoked by the California Corporations Commissioner on November 4, 2010. EBCM has never been registered with the Commission in any capacity.

16. Defendant **Elsworth Berg FX LLC** ("EBFX") is a California limited liability company formed in June 2007 with a business address in San Diego, California. EBFX's

1 principals are Wilson and Settles. From at least July 2007 through January 2010, EBFX
2 controlled and managed a program that managed individual forex client trading accounts called
3 Elsworth Berg FX Managed Accounts ("EBFXMA") by, among other activities, using client
4 funds to trade individual forex accounts on their behalf. EBFX has never been registered with
5 the Commission in any capacity.

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7 17. Defendant **Elsworth Berg Inc.** ("EBI") is a former Nevada corporation formed in
8 August 2001 with a business address in San Diego, California. EBI's current registration status
9 with Nevada is "revoked." EBI's principals were Wilson, Settles, and (for a portion of the
10 company's existence) Freeman. Among other business activities, EBI held assets for the
11 "Collateral Reserve" portion of customer investments in Velocity, Vortex, and EBFXMA
12 (collectively, the "Elsworth Products"). EBI has never been registered with the Commission in
13 any capacity.

14 18. Defendant **Douglas Elsworth Wilson** is a co-founder of EBCM, EBI, and EBFX.
15 He has served as President of EBCM and EBI, as a Member of Elsworth Berg FX LLC and
16 Vortex Currency Group LLC, and as a Manager of Velocity Trading Group LLC. For the entire
17 period of their existence, Wilson was an officer, director, and/or partner in EBCM, EBI, and
18 EBFX, and controlled all three entities. Wilson resides in Poway, California, and has never been
19 registered with the Commission in any capacity.
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21 2. Defendants' Investment Offerings

22 19. Defendants willfully or recklessly misrepresented to customers and prospective
23 customers that regardless of the Elsworth Products' performance in trading high-risk financial
24 instruments, the return of their customers' investment principal was "secured" or "guaranteed" at
25 the end of a five-year period through use of a purportedly innovative "Collateral Reserve"
26 structure. Through the "Collateral Reserve," a 30% portion of each customer's initial
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1 contribution to the Elsworth Products was to be invested in a pool of life insurance policies that
2 would purportedly increase in value to the point that they would cover any trading losses
3 generated in trading the remaining 70% of customer contributions. The policies held by the
4 Collateral Reserve "matured" upon the death of an insured, entitling the Collateral Reserve to the
5 face value of the policy. The assets held in the Collateral Reserve, however, could not guarantee
6 Defendants' ability to make their customers whole, because the value of the Collateral Reserve
7 assets depended in large part on the unforeseeable timing of the deaths of a very small number of
8 insureds.
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10 20. EBCM first offered its Vortex forex product in late 2005, and the first Vortex pool
11 participant invested in February 2006. EBCM solicited over \$3.3 million from approximately 42
12 Vortex participants by June 2008.

13 21. The Vortex pool traded from February 2006 through November 2008. EBCM
14 marketed Vortex as a "secured" investment protected by use of the Collateral Reserve. EBCM
15 received management and performance fees in connection with its management of Vortex.
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17 22. In September 2006, EBCM first accepted investments in its Velocity commodity
18 pool, which used the same Collateral Reserve as Vortex. From October 2006 to November 2008,
19 EBCM solicited over \$1.1 million from approximately 21 pool participants.

20 23. While EBCM described Velocity as a "managed account" product, it actually
21 operated as a commodity pool by pooling participant funds and trading them using a common
22 strategy. EBCM received management and performance fees in connection with its management
23 of Velocity.

24 24. In June 2007, EBCM formed EBFX, which in turn managed EBFXMA. The
25 Collateral Reserve was an optional component of EBFXMA, used by some, but not all of its
26 clients. From at least March 2008 through January 2010, EBFX managed domestic forex trading
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1 accounts on behalf of approximately 28 clients that at times collectively held well in excess of
2 \$1 million. EBFX also solicited approximately \$5 million that it managed in forex trading
3 accounts overseas.

4 25. Neither Defendants nor the counterparties to the Vortex and EBFXMA forex
5 transactions were financial institutions, registered broker-dealers, insurance companies,
6 investment holding companies, or investment bank holding companies, or the associated persons
7 of financial institutions, registered broker-dealers, insurance companies, financial holding
8 companies, or investment bank holding companies.

9 26. Most or all of Defendants' customers were not "eligible contract participants" as that
10 term is defined in Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12) (2006) (an "eligible
11 contract participant," as relevant here, is an individual with total assets in excess of:
12 (i) \$10 million, or (ii) \$5 million and who enters the transaction "to manage the risk associated
13 with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the
14 individual").

15 27. The Vortex and EBFXMA forex transactions were entered into on a leveraged or
16 margined basis. Vortex and EBFXMA were required to provide only a percentage of the value
17 of the forex contracts they purchased.

18 28. The Vortex and EBFXMA forex transactions neither resulted in delivery within two
19 days nor created an enforceable obligation to deliver between a seller and a buyer who had the
20 ability to deliver and accept delivery, respectively, in connection with their lines of business.
21 Instead, these forex transactions remained open from day to day and ultimately were offset
22 without anyone making or taking delivery of actual currency (or facing an obligation to do so).
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1 **3. Fraud by Misrepresentations and Omissions**

2 29. The Elsworth Products all used a “collateralized” structure that purportedly
3 “secured” customer investments by placing 30% of each customer’s investment in a Collateral
4 Reserve account. The remaining 70% of customer investments were put into the customer’s
5 “trading account” and were used to trade financial instruments including forex, futures, and
6 equity options. Defendants represented that regardless of the trading performance, through the
7 operation of the Collateral Reserve, customers would at a minimum receive a return of their
8 principal investment amount five years after they invested.
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10 30. In their solicitation materials for the Elsworth Products, Defendants repeatedly
11 assured customers that they could not lose money by investing in the Elsworth Products,
12 including by describing the products as “Principal Secured,” and by explaining that the Collateral
13 Reserve provided “the security of a 100% collateralized principal guarantee.”

14 31. The Collateral Reserve assets consisted of cash and life insurance policies on third
15 parties that were largely held by EBI, which acquired them through life settlement transactions.
16 A life settlement is a transaction in which an insurance policy owner sells a life insurance policy
17 to a third party for an amount that exceeds the policy’s cash surrender value (the amount an
18 insurance company would pay an insured for the policy), but is less than the expected death
19 benefit of the policy.
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21 32. Following a life settlement transaction, life settlement investors must pay periodic
22 premiums to keep the policy active while awaiting maturity of the policy through the death of the
23 insured.

24 33. The number of life insurance policies held by the Collateral Reserve varied over
25 time, but never exceeded five policies.
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1 34. The same Collateral Reserve assets were used by the Velocity, Vortex, and
2 EBFXMA products, so customer investments in all three of these products were purportedly
3 secured or guaranteed by the same assets.

4 35. If the Collateral Reserve were required to cover substantial trading losses by
5 fulfilling its obligations to its customers as described above, some, if not all, of Defendants'
6 policies would need to mature before those obligations accrued.

7 36. Defendants failed to perform or obtain actuarial analysis sufficient to determine the
8 likelihood that the insureds of the Collateral Reserve's five policies would die "in time" to
9 satisfy the obligations of the Collateral Reserve, or to determine how the value of the policies
10 was likely to change over time. Defendants had no assurance that the insureds of the Collateral
11 Reserve's limited number of policies would die before Collateral Reserve obligations accrued.

12 37. Defendants also had no assurance that the policies in the Collateral Reserve would
13 significantly increase in value over time, or that there would be liquidity in the market for life
14 settlement policies such that Defendants would be able to sell the policies at a gain whenever
15 they wished. And in fact, when Defendants attempted to sell the policies in an effort to raise
16 cash in early 2008, they were unable to find buyers for the policies.

17 38. Defendants willfully or recklessly misrepresented to customers and prospective
18 customers that the Collateral Reserve would guarantee or secure customer investments, and, as a
19 result, misrepresented the risk of loss associated with the Elsworth Products.
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21 39. EBCM's partners were jointly responsible for developing the flawed collateral
22 reserve structure. EBCM partner Lawrence E. Freeman was EBCM's purported expert on life
23 settlement policies, developed the "70/30 split" between the Collateral Reserve and trading
24 account assets, and later publicly claimed to have "developed the first collateralized currency
25 trading platform to protect investors' funds from losses."
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1 40. On June 26, 2007, Freeman resigned and withdrew as a partner in all EBCM-related
2 entities. Wilson was intimately familiar with the structure and operations of the Collateral
3 Reserve, and after Mr. Freeman's resignation continued to make representations to customers
4 and potential customers concerning the "security" the Collateral Reserve purportedly provided.

5 41. The Velocity and Vortex trading accounts suffered heavy trading losses. The Vortex
6 trading account suffered losses of over 75% from February 2006 to November 2008. The
7 Velocity trading account suffered losses of over 98% from October 2006 to June 2009.

8 42. The poor trading performance of the Velocity and Vortex products led participants to
9 withdraw their funds, requiring EBCM and EBI to redeem to those participants the "vested"
10 portion of their Collateral Reserve accounts. The Collateral Reserve assets dwindled as a result.
11 By January 2009, EBCM and EBI were not redeeming the "vested" portion of the Collateral
12 Reserve to customers who withdrew their accounts in full.

13 43. EBCM and EBI also eventually failed to make premium payments necessary to keep
14 four of the Collateral Reserve's five life insurance policies in force. As a result, by January
15 2008, all but one of the life insurance policies lapsed, and the Collateral Reserve was no longer
16 entitled to any payment from the lapsed policies upon death of an insured.

17 44. The face value on the policy that remained in force was \$1 million. Because trading
18 losses in collateralized accounts already exceeded \$1 million in January 2008, Defendants knew
19 at that time that the Collateral Reserve could not cover its guarantee obligations to Elsworth
20 Product customers even if that single remaining policy matured.

21 45. Despite this knowledge, Defendants willfully or recklessly failed to disclose to
22 customers of the Elsworth Products that the Collateral Reserve was unable to satisfy the
23 Elsworth Products' "principal guarantee."
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1 46. Instead, Defendants continued to affirmatively misrepresent to customers of the
2 Elsworth Products that they would receive a return of their principal investment after five years.
3 For example, in summer and fall of 2008 and as late as February of 2009, Wilson wrote letters to
4 Vortex participants assuring them that they would receive their Collateral Reserve balance plus a
5 return of their trading losses on the five-year anniversary of their initial investment.
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7 47. Furthermore, in 2009, EBCM issued account statements to Velocity and Vortex
8 participants that listed the amount of trading losses as "Collateral Offset Due," and listed the five
9 year anniversary of participants' initial contributions as the "Collateral Reserve Maturity Date."
10 These account statements failed to include any accompanying disclosure that the Collateral
11 Reserve could not satisfy its guarantee obligations and that EBCM had no reasonable expectation
12 of returning trading losses on a participant's "maturity date."

13 48. From May 2008 through November 2008, EBCM also accepted funds from at least
14 eight new Velocity futures pool participants and EBFX accepted two new collateralized
15 EBFXMA clients without disclosing the inability of the Collateral Reserve to satisfy its
16 guarantee obligations.
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18 49. Furthermore, EBFX represented to at least 20 additional EBFXMA clients who
19 invested after January 2008 that their investments would be secured by a new so-called
20 "Cumulative Trust Deposit" Collateral Reserve option in which the client agreed to pay extra
21 fees for every forex trade executed in their account over a period of five years (rather than the
22 "traditional" 30% Collateral Reserve contribution) in order to "collateralize" their accounts.
23 Despite the new name assigned to this option, it relied on the same Collateral Reserve assets
24 used to "collateralize" previous Elsworth Product customers.
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1 50. Consequently, Wilson, EBCM, and EBFX willfully or recklessly failed to disclose to
2 customers of the Velocity and EBFXMA products who invested after January 2008 that the
3 Collateral Reserve purportedly "securing" their investment was unable to fulfill that function.

4 **4. Misappropriation of Customer Funds and False Statements**

5 51. From approximately May 2008 through November 2008, eight customers with
6 accounts in other EBCM investment vehicles requested transfer of approximately \$72,000 into
7 the Velocity pool. None of these funds were ever traded in the Velocity pool as the customers
8 intended. EBCM instead misappropriated these funds and used them for other purposes.

9 52. From at least June 2008 through December 2009, EBCM issued periodic statements
10 to the Velocity pool participants that reflected a certain cash value of their shares of the pool.
11 The cash value of the accounts inaccurately represented that the roughly \$72,000 that EBCM
12 was supposed to transfer to Velocity was indeed trading in the Velocity pool. Consequently,
13 EBCM issued false statements to the Velocity pool participants that overstated the value of
14 participants' shares of the pool.
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16 **5. Failure To Register With The CFTC**

17 53. EBCM acted as the CPO of the Velocity commodity pool without the benefit of
18 registration as a CPO, and in connection therewith, made use of the mails or other means or
19 instrumentalities of interstate commerce. Wilson controlled EBCM and did not act in good faith
20 or knowingly induced, directly or indirectly, the acts constituting EBCM's violations alleged in
21 this count.
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23 54. Wilson acted as a principal or officer of EBCM, in a capacity that involved
24 solicitation of funds for participation in Velocity, without the benefit of registration as an
25 associated person ("AP") of EBCM. Furthermore, EBCM permitted Wilson to become or
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1 remain associated with EBCM in this capacity even though it knew or should have known that
2 Wilson was not registered as an AP.

3 **6. EBCM and EBI Constituted a Common Enterprise**

4 55. EBCM and EBI operated as a common enterprise, and each is liable for the unlawful
5 conduct of the other.

6 56. EBCM and EBI operated under the common ownership and control of Wilson,
7 Settles, and, for a portion of the entities' existence, Freeman.

8 57. EBCM and EBI shared common office space at 4370 La Jolla Village Drive, Suite
9 400, in San Diego, California.

10 58. With respect to the Vortex and Velocity pool products, EBCM told participants that
11 EBCM would maintain custody of all participant assets. The participants' Collateral Reserve
12 assets, however, were held by EBI rather than EBCM.

13 59. With respect to the EBFXMA product, EBCM told clients that Collateral Reserve
14 assets would be held in an "Elsworth Berg Collateral Reserve Trust" that EBCM would manage,
15 and for which EBCM would act as trustee. Collateralized EBFXMA clients executed a Trust
16 Agreement with EBCM. The "Elsworth Berg Collateral Reserve Trust" never actually held any
17 assets, and the Collateral Reserve assets intended for use as the EBFXMA clients' Collateral
18 Reserve were instead held by EBI.

19 60. EBCM was the first of many related entities formed that operated under the common
20 control of Wilson, Freeman and Settles, including Elsworth Berg Inc., Elsworth Berg Currency
21 Master Fund LP, Vortex Currency Fund LP, Vortex Currency Group LLC, Velocity Trading
22 Group LLC, Elsworth Berg FX LLC, and EB Trading Solutions. EBCM operated at the center
23 of these entities, and collected EBCM's earnings (in the form of performance and management
24 fees) from entities including but not limited to Velocity and Vortex. Many of the operational
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1 expenses for the EBCM-related entities, however, including the salaries of Wilson, Freeman, and
2 Settles, were paid not by EBCM, but by EBI.

3 **B. Conclusions of Law**

4 **1. Jurisdiction and Venue**

5 61. This Court has jurisdiction over this action pursuant to Section 6c of the Act, as
6 amended, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the CFTC that any
7 person has engaged, is engaging, or is about to engage in any act or practice constituting a
8 violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the
9 CFTC may bring an action in the proper district court of the United States against such person to
10 enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order
11 thereunder.
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13 62. The CFTC has jurisdiction over the forex solicitations and transactions at issue in this
14 action pursuant to Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (Supp. III 2009).

15 63. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended,
16 7 U.S.C. § 13a-1(e), because Defendants reside in or are headquartered in this jurisdiction, and
17 the acts and practices in violation of the Act occurred within this District.
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19 **2. Violations of the Commodity Exchange Act**

20 64. By the conduct described in paragraphs 1 through 60 above, defendants EBCM and
21 Wilson, in connection with their trading of futures, cheated and defrauded, or attempted to cheat
22 and defraud, and willfully deceived, or attempted to deceive, their pool participants by, among
23 other things, willfully or recklessly: (a) misrepresenting to participants and prospective
24 participants in Velocity that their principal investments were secured or guaranteed in various
25 ways by use of the Collateral Reserve; and/or (b) failing to disclose to participants that the
26 Collateral Reserve could not satisfy its guarantee obligations, in violation of Section 4b(a)(2)(i),
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1 (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect to acts occurring before June 18,
2 2008, and Section 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A), (C), with
3 respect to acts occurring on or after June 18, 2008.

4 65. By the conduct described in paragraphs 1 through 60 above, all defendants, in
5 connection with their off-exchange retail forex transactions, cheated and defrauded, or attempted
6 to cheat and defraud, and willfully deceived, or attempted to deceive, their customers by, among
7 other things, knowingly or recklessly: (a) misrepresenting to customers and prospective
8 customers in Vortex and EBFXMA that their principal investments were secured or guaranteed
9 in various ways by use of the Collateral Reserve; and/or (b) failing to disclose to customers that
10 the Collateral Reserve could not satisfy its guarantee obligations, in violation of Section
11 4b(a)(2)(A), (C) of the Act, as amended, 7 U.S.C. § 6b(a)(2)(A), (C).

13 66. By the conduct described in paragraphs 1 through 60 above, defendants EBCM and
14 Wilson cheated and defrauded, or attempted to cheat and defraud, and willfully deceived, or
15 attempted to deceive, their customers by, among other things, misappropriating at least \$72,000
16 of Velocity participants' funds, in violation of Section 4b(a)(2)(i), (iii) of the Act, 7 U.S.C.
17 § 6b(a)(2)(i), (iii) (2006), with respect to acts occurring before June 18, 2008, and Section
18 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A), (C), with respect to acts
19 occurring on or after June 18, 2008.

21 67. By the conduct described in paragraphs 1 through 60 above, defendants EBCM and
22 Wilson willfully made, or caused to be made, false statements to Velocity pool participants that
23 overstated the value of participants' interests in the pool, in violation of Section 4b(a)(2)(ii) of
24 the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006), with respect to acts occurring before June 18, 2008, and
25 Section 4b(a)(1)(B) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(B), with respect to acts
26 occurring on or after June 18, 2008.

1 68. By the conduct described in paragraphs 1 through 60 above, defendants EBCM and
2 Wilson directly or indirectly employed a device, scheme or artifice to defraud pool participants
3 and engaged in transactions, practices or a course of business which operated as a fraud or deceit
4 upon pool participants by, among other things: (a) willfully or recklessly misrepresenting to
5 participants and prospective participants in the Velocity pool that their principal investments
6 were secured or guaranteed in various ways by use of the Collateral Reserve; (b) willfully or
7 recklessly failing to disclose to participants that the Collateral Reserve could not satisfy its
8 guarantee obligations; (c) misappropriating at least \$72,000 of Velocity participants' funds; and
9 (d) willfully making or causing to be made false statements to Velocity pool participants that
10 overstated the value of participants' interests in the pool, in violation of Section 4o(1)(A), (B) of
11 the Act, 7 U.S.C. § 6o(1)(A), (B) (2006).

13 69. By the conduct described in paragraphs 1 through 60 above, defendant EBCM acted
14 as the CPO of the Velocity commodity pool without the benefit of registration as a CPO, and in
15 connection therewith, made use of the mails or other means or instrumentalities of interstate
16 commerce, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

17 70. By the conduct described in paragraphs 1 through 60 above, defendant Wilson acted
18 as an AP of a CPO by soliciting participants and accepting funds for Velocity without the benefit
19 of registration as an AP of a CPO, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2)
20 (2006), and defendant EBCM, acting as a CPO, allowed Wilson to act as its AP when it knew or
21 should have known that Wilson was not registered as an AP, in violation of Section 4k(2) of the
22 Act, 7 U.S.C. § 6k(2) (2006).

24 71. Wilson controlled EBCM, EBI, and EBFX, directly or indirectly, and did not act in good
25 faith or knowingly induced, directly or indirectly, EBCM's, EBI's, and EBFX's act or acts in violation
26 of the Act, as amended; therefore, pursuant to Section 13(b) of the Act, as amended, 7 U.S.C. § 13c(b),
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1 Wilson is liable for EBCM's, EBI's, and EBFX's violations of: Section 4b(a)(2)(i), (iii) of the Act,
2 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect to acts occurring before June 18, 2008, and for
3 EBCM's and EBI's violations of Section 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C.
4 § 6b(a)(1)(A), (C), with respect to acts occurring on or after June 18, 2008; Section 4b(a)(2)(A), (C) of
5 the Act, as amended, 7 U.S.C. § 6b(a)(2)(A), (C); (3) Section 4b(a)(2)(ii) of the Act, 7 U.S.C.
6 § 6b(a)(2)(ii) (2006), with respect to acts occurring before June 18, 2008, and for EBCM's violations
7 of Section 4b(a)(1)(B) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(B), with respect to acts occurring
8 on or after June 18, 2008; Section 4o(1)(A), (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2006); and
9 Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

11 72. The foregoing acts, omissions, and failures of Wilson occurred within the scope of his
12 employment, office, or agency with EBCM; therefore, pursuant to Section 2(a)(1)(B) of the Act, as
13 amended, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011), EBCM is liable for
14 Wilson's acts, omissions, and failures in violation of Section 4b(a)(2)(i), (iii) of the Act, 7 U.S.C.
15 § 6b(a)(2)(i), (iii) (2006), with respect to acts occurring before June 18, 2008, and for the acts
16 constituting Wilson's violations of Section 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C.
17 § 6b(a)(1)(A), (C), with respect to acts occurring on or after June 18, 2008; Section 4b(a)(2)(A), (C) of
18 the Act, as amended, 7 U.S.C. § 6b(a)(2)(A), (C); Section 4b(a)(2)(ii) of the Act, 7 U.S.C.
19 § 6b(a)(2)(ii) (2006), with respect to acts occurring before June 18, 2008, and for the acts constituting
20 Wilson's violations of Section 4b(a)(1)(B) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(B), with
21 respect to acts occurring on or after June 18, 2008; and Section 4o(1)(A), (B) of the Act, 7 U.S.C.
22 § 6o(1)(A), (B) (2006).

24 73. The foregoing acts, omissions, and failures of Wilson occurred within the scope of
25 his employment, office, or agency with EBI; therefore, pursuant to Section 2(a)(1)(B) of the Act,
26 as amended, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011), EBI is liable for
27 Wilson's acts, omissions, and failures in violation of Section 4b(a)(2)(i), (iii) of the Act, 7 U.S.C.

1 § 6b(a)(2)(i), (iii) (2006), with respect to acts occurring before June 18, 2008, and for the acts
2 constituting Wilson's violations of Section 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C.
3 § 6b(a)(1)(A), (C), with respect to acts occurring on or after June 18, 2008; and Section
4 4b(a)(2)(A), (C) of the Act, as amended, 7 U.S.C. § 6b(a)(2)(A), (C).

5 74. The foregoing acts, omissions, and failures of Wilson occurred within the scope of
6 his employment, office, or agency with EBFX; therefore, pursuant to Section 2(a)(1)(B) of the
7 Act, as amended, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011), EBFX is
8 liable for Wilson's acts, omissions, and failures in violation of Section 4b(a)(2)(A), (C) of the
9 Act, as amended, 7 U.S.C. § 6b(a)(2)(A), (C).

10 75. EBI participated in a Common Enterprise together with EBCM and is thus liable for
11 EBCM's violations of: Section 4b(a)(2)(i), (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with
12 respect to acts occurring before June 18, 2008, and for EBCM's violations of Section 4b(a)(1)(A), (C)
13 of the Act, as , 7 U.S.C. § 6b(a)(1)(A), (C), with respect to acts occurring on or after June 18, 2008;
14 Section 4b(a)(2)(A), (C) of the Act, as amended, 7 U.S.C. § 6b(a)(2)(A), (C); Section 4b(a)(2)(ii) of
15 the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006), with respect to acts occurring before June 18, 2008, and for
16 EBCM's violations of Section 4b(a)(1)(B) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(B), with
17 respect to acts occurring on or after June 18, 2008; and Section 4o(1)(A), (B) of the Act, 7 U.S.C.
18 § 6o(1)(A), (B) (2006).

19 76. Unless restrained and enjoined by this Court, there is a reasonable likelihood that the
20 Defendants will continue to engage in the acts and practices alleged in the Complaint and in
21 similar acts and practices in violation of the Act.
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IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

77. 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 are permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Cheating or defrauding, or attempting to cheat or defraud, or willfully deceiving, or attempting to deceive, other persons in connection with off-exchange retail forex transactions in violation of Section 4b(a)(2)(A), (C) of the Act, as amended 7 U.S.C. § 6b(a)(2)(A), (C).
- b. As to defendants EBCM, EBI, and Wilson, cheating or defrauding, or attempting to cheat or defraud, or willfully deceiving, or attempting to deceive, other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery that is made, or to be made, for or on behalf of, or with, any other person in violation of Section 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A), (C).
- c. As to defendants EBCM, EBI, and Wilson, making or causing to be made any false report or statement in violation of Section 4b(a)(1)(B) of the Act, as amended, 7 U.S.C. § 6b(a)(2)(B).
- d. As to defendants EBCM, EBI, and Wilson, employing any device, scheme, or artifice to defraud any participant or prospective participant, or engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any participant or prospective 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, 7 U.S.C. § 6o(1)(A) and (B).

1 e. As to defendants EBCM and Wilson, acting in any capacity requiring registration
2 with the Commission without the benefit of registration, in violation of Sections
3 4k(2) and 4m(1) of the Act, 7 U.S.C. §§ 6k(2) and 6m(1).

4 78. Defendants are also permanently restrained, enjoined and prohibited from directly or
5 indirectly:

- 6 a. Trading on or subject to the rules of any registered entity (as that term is defined
7 in Section 1a of the Act, as amended, 7 U.S.C. § 1a;
8
9 b. Entering into any transactions involving commodity futures, options on commodity
10 futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R.
11 § 1.3(hh) (2011)) (“commodity options”), security futures products, and/or foreign
12 currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as
13 amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for their own
14 personal account or for any account in which they have a direct or indirect interest;
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16 c. Having any commodity futures, options on commodity futures, commodity
17 options, security futures products, and/or forex contracts traded on their behalf;
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19 d. Controlling or directing the trading for or on behalf of any other person or entity,
20 whether by power of attorney or otherwise, in any account involving commodity
21 futures, options on commodity futures, commodity options, security futures
22 products, and/or forex contracts;
23
24 e. Soliciting, receiving or accepting any funds from any person for the purpose of
25 purchasing or selling any commodity futures, options on commodity futures,
26 commodity options, security futures products, and/or forex contracts;
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28 f. Applying for registration or claiming exemption from registration with the
Commission in any capacity, and engaging in any activity requiring such

1 registration or exemption from registration with the Commission, except as
2 provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and/or
3 g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R.
4 § 3.1(a) (2011)), agent or any other officer or employee of any person (as that
5 term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a registered,
6 exempted from registration or required to be registered with the Commission
7 except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).
8

9 V. RESTITUTION AND CIVIL MONETARY PENALTY

10 A. Restitution

11 79. Defendants shall jointly and severally pay restitution in the amount of three million,
12 nine hundred and sixty-five thousand, six hundred seventy dollars and 71 cents (\$3,965,670.71)
13 (“Restitution Obligation”), plus post-judgment interest. The Court Registry currently holds
14 \$701,412.93 (plus accrued interest), which was transferred into the Court Registry as partial
15 payment of the Restitution Obligation. Post-judgment interest shall accrue on the remaining
16 Restitution Obligation beginning on the date of entry of this Consent Order and shall be
17 determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order
18 pursuant to 28 U.S.C. § 1961.
19

20 80. To effect the distribution of funds currently held in the Court Registry to
21 Defendants’ customers as partial restitution for customer losses, Plaintiff has filed or will file a
22 motion to initiate a distribution plan, which will propose to the Court for its approval specific
23 dollar amounts to be received by specific customers.

24 81. This paragraph and paragraphs 82 through 88 below relate only to payment and
25 distribution of the remaining Restitution Obligation, and not to the funds that are currently held
26 in the Court Registry. To effect further payment of the remaining Restitution Obligation and the
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1 distribution of any restitution payments to Defendants' customers of funds beyond those
2 currently held in the Court Registry, the Court appoints the National Futures Association
3 ("NFA") as Monitor ("Monitor"). The Monitor shall collect restitution payments from
4 Defendants and make distributions as set forth below. Because the Monitor is acting as an
5 officer of this Court in performing these services, the NFA shall not be liable for any action or
6 inaction arising from NFA's appointment as Monitor, other than actions involving fraud.
7

8 82. Defendants shall make Restitution Obligation payments under this Consent Order to
9 the Monitor in the name "Elsworth Berg Capital Management – Settlement/Restitution Fund"
10 and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S.
11 postal money order, certified check, bank cashier's, or bank money order, to the Office of
12 Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago,
13 Illinois 60606 under cover letter that identifies the paying defendant and the name and docket
14 number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter
15 and the form of payment to the Chief Financial Officer, Commodity Futures Trading
16 Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and to
17 Regional Counsel, Commodity Futures Trading Commission, 525 West Monroe Street, Chicago,
18 Illinois, 60661.
19

20 83. The Monitor shall oversee the Restitution Obligation and shall have the discretion to
21 determine the manner of distribution of such funds in an equitable fashion to Defendants'
22 customers identified by the CFTC or may defer distribution until such time as the Monitor deems
23 appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are
24 of a *de minimis* nature such that the Monitor determines that the administrative cost of making a
25 distribution to eligible customers is impractical, the Monitor may, in its discretion, treat such
26 restitution payments as civil monetary penalty payments, which the Monitor shall forward to the
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1 CFTC following the instructions for civil monetary penalty payments set forth in Part V(B)
2 below.

3 84. Defendants shall cooperate with the Monitor as appropriate to provide such
4 information as the Monitor deems necessary and appropriate to identify Defendants' customers
5 to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution
6 of any Restitution Obligation payments. Defendants shall execute any documents necessary to
7 release funds that they have in any repository, bank, investment or other financial institution,
8 wherever located, in order to make partial or total payment toward the Restitution Obligation.
9

10 85. The Monitor shall provide the Commission at the beginning of each calendar year
11 with a report detailing the disbursement of funds to Defendants' customers during the previous
12 year. The Monitor shall transmit this report under a cover letter that identifies the name and
13 docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading
14 Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

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

19 87. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of
20 Defendants who suffered a loss is explicitly made an intended third-party beneficiary of this
21 Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of
22 any portion of the restitution that has not been paid by Defendants to ensure continued
23 compliance with any provision of this Consent Order and to hold Defendants in contempt for any
24 violations of any provision of this Consent Order.
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1 88. To the extent that any funds accrue to the U.S. Treasury for satisfaction of
2 Defendants' Restitution Obligation, such funds shall be transferred to the Monitor for
3 disbursement in accordance with the procedures set forth above.

4 **B. Civil Monetary Penalty**

5 89. Defendants shall jointly and severally pay a civil monetary penalty in the amount of
6 one million, five hundred thousand dollars (\$1,500,000.00) ("CMP Obligation"), plus post-
7 judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning on the
8 date of entry of this Consent Order and shall be determined by using the Treasury Bill rate
9 prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006).

10 90. Defendants shall pay their CMP Obligation by electronic funds transfer, U.S. postal
11 money order, certified check, bank cashier's check, or bank money order. If payment is to be
12 made other than by electronic funds transfer, then the payment shall be made payable to the
13 Commodity Futures Trading Commission and sent to the address below:

14
15 Commodity Futures Trading Commission
16 Division of Enforcement
17 ATTN: Accounts Receivables – AMZ 340
18 E-mail Box: 9-AMC-AMZ-AR-CFTC
19 DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

20 If payment by electronic funds transfer is chosen, Defendants shall contact Linda Zurhorst or her
21 successor at the address above to receive payment instructions and shall fully comply with those
22 instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter
23 that identifies Defendants and the name and docket number of this proceeding. Defendants shall
24 simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial
25 Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street,
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1 NW, Washington, D.C. 20581, and to Regional Counsel, Commodity Futures Trading
2 Commission, 525 West Monroe Street, Chicago, Illinois 60661.

3 **C. Provisions Related to Monetary Sanctions**

4 91. Partial Satisfaction: Any acceptance by the CFTC or the Monitor of partial payment
5 of Defendants' Restitution Obligation or CMP Obligation shall not be deemed a waiver of their
6 obligation to make further payments pursuant to this Consent Order, or a waiver of the CFTC's
7 right to seek to compel payment of any remaining balance.

8 **D. Cooperation**

9 92. Defendants shall cooperate fully and expeditiously with the CFTC, including the
10 CFTC's Division of Enforcement, and any other governmental agency in this action, and in any
11 investigation, civil litigation, or administrative matter related to the subject matter of this action
12 or any current or future Commission investigation related thereto.

13
14 **VI. MISCELLANEOUS PROVISIONS**

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

17 Notice to CFTC:

18 Director, Division of Enforcement
19 Three Lafayette Centre
20 1155 21st Street, NW
Washington, D.C. 20581

21 Notice to Defendants:

22 Douglas Wilson
23 15485 Willow Ranch Trail
Poway, California 92064

24 All such notices to the CFTC shall reference the name and docket number of this action.

25 94. Change of Address/Phone: Until such time as Defendants satisfy in full their
26 Restitution Obligation and CMP Obligation as set forth in this Consent Order, Defendants shall
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1 provide written notice to the Commission by certified mail of any change to their telephone
2 number and mailing address within ten (10) calendar days of the change.

3 95. Entire Agreement and Amendments: This Consent Order incorporates all of the
4 terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to
5 amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing;
6 (b) signed by all parties hereto; and (c) approved by order of this Court.
7

8 96. Invalidation: If any provision of this Consent Order or if the application of any
9 provision or circumstance is held invalid, then the remainder of this Consent Order and the
10 application of the provision to any other person or circumstance shall not be affected by the
11 holding.

12 97. Waiver: The failure of any party to this Consent Order or of any customer at any
13 time to require performance of any provision of this Consent Order shall in no manner affect the
14 right of the party or customer at a later time to enforce the same or any other provision of this
15 Consent Order. No waiver in one or more instances of the breach of any provision contained in
16 this Consent Order shall be deemed to be or construed as a further or continuing waiver of such
17 breach or waiver of the breach of any other provision of this Consent Order.
18

19 98. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this
20 action to ensure compliance with this Consent Order and for all other purposes related to this
21 action, including any motion by Defendants to modify or for relief from the terms of this
22 Consent Order.

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

3 100. Authority: Defendant Douglas Wilson hereby warrants that he is a principal and
4 officer of EBCM, EBI, and EBFX, that this Consent Order has been duly authorized by EBCM,
5 EBI, and EBFX, and that he has been duly empowered to sign and submit this Consent Order on
6 behalf of EBCM, EBI, and EBFX.


7
8 101. Counterparts and Facsimile Execution: This Consent Order may be executed in
9 two or more counterparts, all of which shall be considered one and the same agreement and shall
10 become effective when one or more counterparts have been signed by each of the parties hereto
11 and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all
12 parties need not sign the same counterpart. Any counterpart or other signature to this Consent
13 Order that is delivered by any means shall be deemed for all purposes as constituting good and
14 valid execution and delivery by such party of this Consent Order.

15 102. Defendants understand that the terms of the Consent Order are enforceable
16 through contempt proceedings, and that, in any such proceedings they may not challenge the
17 validity of this Consent Order.

18
19 There being no just reason for delay, the Clerk of the Court is hereby directed to enter
20 this *Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable*
21 *Relief Against All Defendants*. This matter shall remain open and active on this Court's docket to
22 allow for the Court's approval of a method for distributing funds currently held in the Court
23 Registry to Defendants' customers.

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25 IT IS SO ORDERED on this 9 day of August, 2012.

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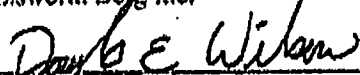

WILLIAM Q. HAYES
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:

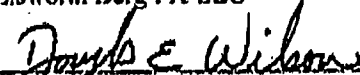
Elsworth Berg Capital Management LLC


By: Douglas E. Wilson

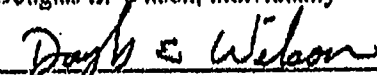
Elsworth Berg Inc.


By: Douglas E. Wilson

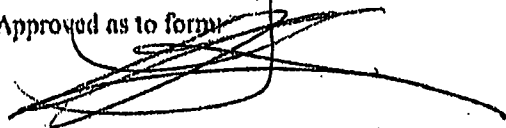
Elsworth Berg FX LLC


By: Douglas E. Wilson

Douglas E. Wilson, Individually

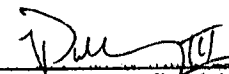

Douglas E. Wilson

Date: 6-7-2012

Approved as to form:


Khuong D. Tien, SBN 213503
(kdt@kdtien.com; (949) 580-3727)
24411 Ridge Route, Suite 200
Laguna Hills, CA 92653
Attorney for All Defendants

Date: 6/13/12


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525 West Monroe Street, Ste. 1100
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Attorney for CPTC

Date: 7/27/2012