

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

RECEIVED
CFTC

2012 MAY 14 PM 4: 14

OFFICE OF
GENERAL COUNSEL

In the Matter of:)
)

ACI Capital Group, L.L.C. and)
Alexandre P. Guimaraes,)

Respondents.)
_____)

12-21

CFTC Docket No. _____

**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 from in or about February 2010 to approximately February 2011 (the “Relevant Period”), ACI Capital Group, L.L.C. (“ACI”), through its principal, Alexandre P. Guimaraes (“Guimaraes”), and Guimaraes in his individual capacity (collectively “Respondents”) violated Section 4b(a)(2)(A)-(C) of the Commodity Exchange Act (“the Act”), 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009), and from October 18, 2010 to February 2011 (a subset of the Relevant Period, hereinafter the “Relevant Registration Period”), Respondents violated Commission Regulation (“Regulation”) 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2011). 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 should 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 or conclusions herein, Respondents consent to the entry 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”) and acknowledge service of this Order.¹

¹ 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 or conclusions in this Order consented to in the Offer, as the sole basis for any other

III.

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Guimaraes, on behalf of ACI, fraudulently solicited approximately \$465,000 from at least twenty-nine individuals throughout California and Hawaii (“ACI customers”) to trade off-exchange foreign currency contracts (“forex”), by making misrepresentations about his forex trading experience and ACI’s profitability, among other things. Guimaraes also issued hundreds of false monthly account statements and correspondence to ACI customers during the Relevant Period. The false account statements and correspondence showed that 100% of ACI customer funds were invested, and that each ACI customer was earning a profit every month. These account statements and correspondence were false and misleading because Guimaraes only traded a portion of the ACI customer funds solicited and lost the majority of those funds by trading forex. Guimaraes also misappropriated a portion of the funds, which Guimaraes used for his personal benefit. By virtue of this conduct and the further conduct described herein, Respondents violated Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009).

During the Relevant Registration Period, Guimaraes, on behalf of ACI, acted as a commodity trading advisor (“CTA”)² by exercising discretionary trading authority on behalf of persons that were not eligible contract participants (“ECPs”)³ in connection with leveraged retail forex transactions without registering with the Commission, in violation of Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2011).

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 or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

² For the purpose of trading forex, a CTA is defined in Regulation 5.1(e)(1), 17 C.F.R. § 5.1(e)(1), as “any person who exercises discretionary trading authority or obtains written authorization to exercise discretionary trading authority over any account for or on behalf of any person that is not an eligible contract participant as defined in Section 1a(12) of the Act, in connection with retail forex transactions.”

³ During the Relevant Period, an ECP was defined in Section 1a(12)(A)(xi), 7 U.S.C. § 1a(12)(A)(xi) (Supp. III 2009), as “an individual who has total assets in an amount in excess of—(I) \$10,000,000; or (II) \$5,000,000 and who enters into the agreement, contract or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.”

B. RESPONDENTS

ACI Capital Group, L.L.C. is a former Wyoming limited liability company (“L.L.C.”), with its principal place of business located at 2372 Morse Avenue, Irvine, California 92614. ACI registered as an L.L.C. on June 15, 2009. Guimaraes also operated another business at the same address. However, during the Relevant Period, Guimaraes focused ACI’s business predominately on trading ACI customer funds in forex. ACI has never been registered with the Commission in any capacity.

Alexandre P. Guimaraes is the sole principal and employee of ACI and resides in Irvine, California. Guimaraes has never been registered with the Commission in any capacity.

C. FACTS

1. The Fraudulent Scheme

During the Relevant Period, Guimaraes solicited approximately \$465,000 from at least twenty-nine customers throughout California and Hawaii to invest in forex through various in-person meetings and telephone calls.⁴ Guimaraes told ACI customers and potential customers, among other things, that he had approximately five years of experience trading forex and that he was consistently making a profit trading forex for ACI customers. To bolster these claims, Guimaraes showed certain potential customers charts that purported to show actual gains he had earned trading forex. These statements were false and misleading because prior to February 2010, Guimaraes had no experience trading forex and had only traded forex in demonstration accounts. In fact, the charts that Guimaraes showed certain potential customers reflected the fictitious gains from his demonstration accounts, and not actual returns.

To conceal his forex trading losses, Guimaraes created and delivered hundreds of false monthly account statements and correspondence. These monthly account statements and correspondence always reflected false information; indeed, even for the one-month period that Guimaraes was able to trade at a profit, he reported a lower profit than what he had actually earned in the monthly account statements. The account statements and correspondence lulled ACI customers into believing that 100% of their funds were invested in forex, and that they were consistently earning a profit. These statements were false and misleading because of the approximately \$465,000 solicited from ACI customers, only approximately \$384,000 was used to trade forex through trading accounts Guimaraes opened at Forex Capital Markets (“FXCM”), located in the United Kingdom, and Dukascopy Bank, S.A., located in Switzerland (hereinafter, the “ACI trading accounts”). Of those funds, Guimaraes lost approximately \$8,971 in March 2010 (his first month trading during the Relevant Period), earned a profit of approximately \$72,834 in April 2010, and thereafter sustained losses each and every month. Guimaraes also withdrew approximately \$17,000 from the ACI trading accounts before ultimately losing the remaining balance of the funds over the course of the Relevant Period.

⁴ Guimaraes met certain ACI customers through a separate business he operated at the same business address as ACI. Guimaraes also paid certain ACI customers a commission for convincing potential ACI customers to invest with ACI for the purpose of allowing Guimaraes to trade forex on their behalf.

ACI customers agreed to keep their funds invested with ACI for either six months or one year, depending on when they invested, before requesting any withdrawals. However, Guimaraes permitted three ACI customers to close their accounts with ACI before the end of their respective waiting periods. Guimaraes paid these ACI customers their initial investment, plus the fictitious profits as they appeared on their respective false monthly account statements, for a total amount of approximately \$36,954.

Further, Guimaraes misappropriated more than \$44,000 of ACI customer funds, using those funds to finance international travel and purchase jewelry, among other things. Throughout the Relevant Period, Guimaraes failed to disclose to ACI customers that he was using their funds for his personal benefit.

In May 2011, Guimaraes began telling ACI customers that the CFTC had frozen the ACI trading accounts solely because of a registration issue. Guimaraes claimed that this purported freeze prevented him from trading and/or making any withdrawals from the ACI trading accounts. Guimaraes told ACI customers that as a result, all of their funds were lost. These statements were also false.

2. Failure to Register as a CTA

On October 18, 2010, the Commission adopted new regulations implementing certain provisions of Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII §§701-774, 124 Stat. 1376 (enacted July 21, 2010), and the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. § 1 *et. seq.*, with respect to forex transactions. For purposes of retail forex transactions, the new regulations, among other things, require CTAs that trade forex on behalf of other persons that are not ECPs to register with the Commission.

During the Relevant Registration Period, Guimaraes, on behalf of ACI, exercised discretionary trading authority on behalf of persons that were not ECPs in connection with leveraged retail forex transactions. During the Relevant Registration Period, neither ACI nor Guimaraes registered with the Commission as a CTA.

D. LEGAL DISCUSSION

1. Fraud in Connection with Forex

Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009), provides in relevant part, that it is unlawful for any person, in or in connection with any order to make, or the making of, a forex contract, for or on behalf of any other person, (A) to cheat or defraud or attempt to cheat or defraud other persons; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; or (C) willfully to deceive or attempt to deceive such other person by

any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract.⁵

To prove that Respondents have violated Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009), by misrepresentations and/or omissions, the Commission need only show that: (1) the Respondents misrepresented or failed to disclose certain information; (2) the misrepresentations or omissions were material; and (3) the Respondents acted with scienter. *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321,1328 (11th Cir. 2002) (citing *CFTC v. Trinity Fin. Group, Inc.*, [1997-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,179, 1997 WL 820970, *29 (S.D. Fla. Sept. 29, 1997), *aff'd in relevant part sub nom.*, *CFTC v. Sidoti*, 178 F.3d 1132 (11th Cir.1999) (finding that a failure to establish any one of these elements is dispositive and would preclude CFTC's fraud/deception claims)).

a. Fraud by Misrepresentations and Omissions

“Whether a misrepresentation has been made depends on the ‘overall message’ and the ‘common understanding’ of the information conveyed.” *R.J. Fitzgerald*, 310 F.3d at 1328 (citing *Hammond v. Smith Barney, et al.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) 24,617 at 36,657, n. 12, 1990 WL 282810, *4 (CFTC March 1, 1990)). A misrepresentation or omitted fact is material if “a reasonable investor would consider it important in making an investment decision.” *R.J. Fitzgerald*, 310 F.3d at 1328-29 (quoting *Saxe v. E.F. Hutton & Co., Inc.*, 789 F.2d 105, 111 (2d Cir. 1986); *see also CFTC v. Commonwealth Fin. Group, Inc.*, 874 F. Supp. 1345, 1353-54 (S.D. Fla. 1994) (finding that misrepresentations regarding the trading record of a firm or broker are fraudulent because past success and experience are material factors which a reasonable investor would consider when deciding to invest).

The scienter element is established when an individual's conduct involves intentional omissions or misrepresentations that present a risk of misleading customers, either known to the defendant or sufficiently manifest that the defendant must have been aware of the risk. *R.J. Fitzgerald*, 310 F.3d at 1328; *see also Wasnick v. Refco, Inc.*, 911 F.2d 345, 348 (9th Cir. 1990) (holding that scienter is established when an individual's acts are performed “with knowledge of their nature and character”). In order to meet the scienter requirement, the Commission must demonstrate that the misrepresentations and omissions were made intentionally or recklessly. *Lawrence v. CFTC*, 759 F.2d 767, 773 (9th Cir. 1985) (holding that to prove scienter, the CFTC must show that the actions of respondents were “intentional as opposed to accidental.”); *see also Drexel Burnham Lambert Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988) (finding that reckless behavior is such that it “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 *First Commodity Corp. of Boston v. CFTC*, 676 F.2d 1, 7 (1st Cir. 1982)).

⁵ The Commission has jurisdiction over the Respondents' fraudulent solicitation of customers to trade forex through a pool pursuant to Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (Supp. III 2009). Section 2(c)(2)(C)(iv) of the Act provides that Section 4b (fraud in connection with futures) shall apply to any agreement, contract, or transaction that meets this criteria “as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.”

As set forth in Section C.1. above, during the Relevant Period, Guimaraes, on behalf of ACI, cheated or defrauded at least twenty-nine customers by, among other things, misleading potential customers about his experience trading forex and the overall profitability of ACI before they decided to invest with ACI. Guimaraes also made numerous misrepresentations to ACI customers after they invested, through the false monthly account statements discussed below. These misrepresentations and omissions are material because they address among other things, ACI's trading record and the handling of the customer accounts, and are thus factors that a reasonable investor would take into account when deciding whether or not to invest. Guimaraes made these misrepresentations and omissions knowingly or with reckless disregard for the truth. As such, this conduct violated Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(2)(A) and (C) (Supp. III 2009).

b. Fraud by the Issuance of False Statements

Issuing false statements to customers concerning the profitability of futures trading conducted on their behalf violates Section 4b(a)(2)(B) of the Act, 7 U.S.C. § 6b(a)(2)(B) (Supp. III 2009). See *CFTC v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d 676, 686 (D. Md. 2000), *aff'd in relevant part sub nom., CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002) (finding that defendants violated Section 4b(a) because they issued false account statements); see also *CFTC v. Skorupskas*, 605 F. Supp. 923, 932-33 (E.D. Mich. 1985) (finding that defendant violated Section 4b(a) of the Act by issuing false monthly statements to customers).

As described in Section C.1. above, during the Relevant Period, Guimaraes, on behalf of ACI, prepared and issued false account statements to ACI customers on a monthly basis. These account statements were false because they showed that 100% of the customer's funds were invested, and that each ACI customer was earning consistent profits each month, when in fact, for the majority of the Relevant Period, ACI's trading account was trading at a loss. However, even for the one-month period that ACI was trading at a profit, Guimaraes reported a lower profit in the monthly account statements than what he had actually earned. The false account statements were material because they lulled ACI customers into believing that their investments were consistently profitable. Guimaraes created and issued these false monthly account statements knowing them to be false or with reckless disregard for their truth. As such, this conduct violated Section 4b(a)(2)(B) of the Act, 7 U.S.C. § 6b(a)(2)(B) (Supp. III 2009).

c. Fraud by Misappropriation

Misappropriation of client funds constitutes "willful and blatant" fraud in violation of Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(2)(A) and (C) (Supp. III 2009). See *Noble Wealth*, 90 F. Supp. 2d at 687 (finding that defendants violated Section 4b(a)(2)(i), (iii) (the predecessor to 4b(a)(2)(A) and (C)) by diverting investor funds for operating expenses and personal use); see also *Skorupskas*, 605 F. Supp. at 932 (holding that defendant violated Section 4b when she misappropriated pool participant funds by soliciting funds for trading and then trading only a small percentage of those funds, while disbursing the rest of the funds to investors, herself, and her family).

As stated in Section C.1 above, during the Relevant Period, Guimaraes, on behalf of ACI, solicited approximately \$465,000 from ACI customers. Of that amount, only approximately

\$384,000 was used to trade forex. Guimaraes withdrew approximately \$17,000, and then ultimately lost the remaining funds. While Guimaraes returned approximately \$36,954 to ACI customers, he misappropriated more than \$44,000, which he used to finance international travel, purchase jewelry, among other personal expenses. As such, this conduct violated Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(2)(A) and (C) (Supp. III 2009).

2. Failure to Register as a CTA

The registration requirements found in the Act and Regulations for commodity professionals are the cornerstone of the regulatory framework enacted by Congress to protect the public. Registration is critical to the Commission's ability to perform its statutory functions of monitoring and enforcing the Act and Regulations. Thus, Respondents' failure to register with the Commission is a serious offense, and not a mere technical violation of the Act. *CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 139-40 (2d Cir. 1977), *cert. denied*, 438 U.S. 905 (1978) (holding that "[r]egistration is the kingpin in this statutory machinery, giving the Commission the information about participants in commodity trading which it so vitally requires to carry out its other statutory functions of monitoring and enforcing the Act.>").

Commission Regulation 5.1(e)(1) defines a CTA as

. . . any person who exercises discretionary trading authority or obtains written authorization to exercise discretionary trading authority over any account for or on behalf of any person that is not an eligible contract participant as defined in section 1a(18) of the Act, in connection with retail forex transactions.

17 C.F.R. § 5.1(e)(1) (2011). Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2011), requires all CTAs, as defined in Regulation 5.1(e)(1), 17 C.F.R. § 5.1(e)(1) (2011), to register with the Commission.

During the Relevant Registration Period, Guimaraes, on behalf of ACI, acted as a CTA without registering with the Commission. Guimaraes, on behalf of ACI, exercised discretionary trading authority over an account on behalf of persons who were not ECPs, in connection with leveraged retail forex transactions. As such, this conduct violated Commission Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2011).

3. Respondents are Vicariously Liable for the Violations of the Act and Regulations

The foregoing acts, omissions, and failures of Guimaraes occurred within the scope of his employment, office, or agency with ACI; therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (Supp. III 2009), and Regulation 1.2, 17 C.F.R. § 1.2 (2011), ACI is liable for Guimaraes' acts, omissions, and failures in violation of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2011).

IV.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Guimaraes and ACI violated Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009) and that during the Relevant Registration Period, Guimaraes and ACI violated Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2011).

V.

OFFER OF SETTLEMENT

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

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waive:
 - 1. the filing and service of a complaint and notice of hearing;
 - 2. a hearing;
 - 3. all post-hearing procedures;
 - 4. judicial review by any court;
 - 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. 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;
 - 7. 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

8. any claims of Double Jeopardy based on 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 basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;
- 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)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009) during the Relevant Period and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2011) during the Relevant Registration Period;
 2. orders Respondents to cease and desist from violating Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009), and as amended by the Dodd-Frank Act, and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2011);
 3. orders Respondents, jointly and severally, to pay restitution in the amount of four hundred twenty-eight thousand, forty-six dollars and thirty-one cents (\$428,046.31), plus post-judgment interest;
 4. orders Respondents, jointly and severally, to pay a civil monetary penalty in the amount of four hundred twenty thousand dollars (\$420,000), plus post-judgment interest;
 5. appoints the National Futures Association ("NFA") as Monitor in this matter;
 6. orders that Respondents be permanently prohibited from, directly or indirectly, engaging 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; and
 7. orders Respondents and ACI's successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

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

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents and their successors and assigns shall cease and desist from violating Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009), and as

amended by the Dodd-Frank Act, and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2011).

- B. Respondents, jointly and severally, shall pay restitution in the amount of four hundred twenty-eight thousand, forty-six dollars and thirty-one cents (\$428,046.31) within ten (10) days of the date of entry of this Order (“Restitution Obligation”). Post-judgment interest shall accrue on the Restitution 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 (2006).

To effect payment by Respondents and the distribution of restitution to Respondents’ customers, the Commission appoints the NFA as “Monitor.” The Monitor shall collect payments of the Restitution Obligation 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, it shall not be liable for any action or inaction arising from its appointment as Monitor other than actions involving fraud.

Respondents shall make their payments of the Restitution Obligation under this Order in the name of the “ACI Capital Group, L.L.C. and Alexandre P. Guimaraes’ Settlement Fund” and shall send such payments by electronic funds transfer, or U.S. postal money order, certified check, bank cashier’s check, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

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 the Respondents’ customers or may defer distribution until such time as the Monitor may deem appropriate. In the event that the amount of payments of the Restitution Obligation to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost 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, as discussed below. To the extent any funds accrue to the U.S. Treasury for satisfaction of Respondents’ Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this Order.

- C. Respondents, jointly and severally, shall pay a civil monetary penalty in the amount of four hundred twenty thousand dollars (\$420,000) within ten (10) days of the date of entry of this Order (the “CMP Obligation”). 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 (2006). Respondents shall pay the CMP Obligation by electronic funds transfer,

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

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables --- 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 is to be made by electronic funds transfer, Respondents shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- D. Respondents are permanently prohibited from, directly or indirectly, engaging 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.
- E. Respondents, and ACI's successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondents agree that neither they nor any of ACI's successors and assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and ACI's successors and assigns shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
 2. Respondents agree that they shall never, directly or indirectly:
 - a. enter into any transactions involving futures, options, 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;

- b. have any futures, options, commodity options, security futures products, and/or forex contracts traded on Respondents’ behalf;
- c. control or direct 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;
- d. solicit, receive, or accept 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;
- e. apply for registration or claim exemption from registration with the Commission in any capacity, and engage 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) (2011); and/or
- f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

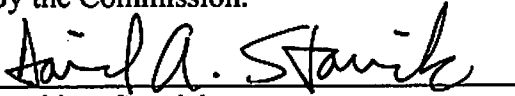
F. **Cooperation with Monitor:** Respondents shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondents’ customers, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments. Respondents shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

G. **Partial Satisfaction:** Respondents understands and agrees that any acceptance by the Commission or the Monitor of partial payment of Respondents’ Restitution Obligation or CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission’s right to seek to compel payment of any remaining balance.

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

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

By the Commission.

A handwritten signature in black ink, appearing to read "David A. Stawick", written over a horizontal line.

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

Dated: May 14, 2012