

committing further violations of the Act as alleged in the complaint. On _____, 2002, the Commission filed a First Amended Complaint (“Complaint”) adding defendant Ydiyell Howard (“Howard”) and naming additional Relief Defendants. The complaint alleges, *inter alia*, that defendants Brown, Thompson and Howard fraudulently allocated commodity interest trades by placing losing trades in customer accounts (“victim accounts”) and winning trades in the accounts of friends and relatives (“favored accounts”).

2. To effect settlement of the matters alleged in the Complaint against King without a trial on the merits, King and the Commission consent to the entry of this Consent Order of Disgorgement and other Equitable Relief Against Javette King (“Consent Order”). King also: (1) acknowledges service of the Summons and Complaint; (2) admits both personal and subject matter jurisdiction of this Court in this action; (3) admits that venue properly lies with this Court; and (4) generally waives the entry of findings of fact and conclusions of law in this action pursuant to Rule 52 of the Federal Rules of Civil Procedure, except as provided in Part II below.

3. By consenting to the entry of this Consent Order, King neither admits nor denies any of the allegations of the Complaint except as to jurisdiction and venue. Notwithstanding the above, King further agrees and the parties to this Consent Order intend that all of the findings of fact made by the Court in this Consent Order shall be taken as true and correct and be given preclusive effect without further proof only in any subsequent bankruptcy proceeding filed by, on behalf of or against King for the purpose of determining whether the disgorgement payments ordered herein are excepted from discharge. King shall also provide immediate notice of any bankruptcy proceeding filed by, on behalf of or against her in the manner required by the Notice provision of this Consent Order.

4. King agrees (1) not to take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating or tending to create, the impression that the Complaint or this Consent Order is without factual basis; and (2) no agent or employee of King or other person acting under King's authority or control shall take any action or make any statement denying, directly or indirectly, any allegation in the Complaint or creating, or tending to create, the impression that the Complaint is without factual basis and King shall take all steps necessary to insure that all of her agents and employees understand and comply with this agreement. Nothing in this provision affects King's (1) testimonial obligations; or (2) right to take legal positions in other proceedings to which the Commission is not a party.

5. King waives: (1) all claims that she may possess under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121. §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commissions' Regulations, 17 C.F.R. §§ 148.1, et seq. (2001), relating to or arising from this action and any right under EAJA to seek costs, fees and other expenses relating to or arising from this proceeding; (2) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and (3) all rights of appeal from this Consent Order.

6. The parties hereto also consent to the continued jurisdiction of the Court for the purpose of enforcing the terms and conditions of this Consent Order and for any other purposes relevant to this case.

7. King agrees to cooperate fully with the Commission in its prosecution of the Complaint in this proceeding, in any ongoing investigations related to the subject matter of the

Complaint, and in all other proceedings arising from such investigations by, among other things: (1) responding promptly, completely, and truthfully to any inquiries or requests for information and otherwise cooperating fully with respect to discovery; (2) providing authentication of documents; (3) testifying completely and truthfully; and, (4) not asserting privileges under the Fifth Amendment of the United States Constitution in connection with any testimony King is asked to provide.

8. King further affirms that she has read the Consent Order and agrees to entry of this Consent Order voluntarily, and that no promise or threat of any kind has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce her to consent to this Consent order, other than as set forth specifically herein.

II.

FINDINGS OF FACT

9. 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 to delay. The Court therefore directs the entry of an order for ancillary equitable relief, pursuant to § 6c of the Commodity Exchange Act, as amended, 7 U.S.C. § 13a-1 (2001), as set forth herein.

10. This Court has subject matter jurisdiction over this action and the allegations in the Complaint pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).

11. This Court has personal jurisdiction over King and King has acknowledged service of the Summons and Complaint and consented to the Court's jurisdiction over her.

12. The Commission and King have agreed that this Court shall retain jurisdiction over each of them for the purpose of enforcing the terms of this Consent Order.

THE PARTIES AND OTHER ENTITIES

13. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency charged with the responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 *et seq.* (2001), and Regulations promulgated under it, 17 C.F.R. §§ *et seq.* (2001).

14. Defendant Martin Brown, age 32, resides at 1307 S. Wabash #706, Chicago, Illinois 60605. At all relevant times, Brown was an employee of F. C. Stone, LLC (“Stone”) and worked as a clerk in Stone’s Futures Direct unit. Brown has never been registered with the Commission in any capacity. Brown is no longer employed at Stone. Brown and King live together.

15. Relief Defendant Javette L. King resides at 1307 S. Wabash # 706, Chicago, Illinois 60605. King has never been registered with the Commission in any capacity.

16. F.C. Stone, LLC is registered with the Commission as a futures commission merchant (“FCM”) and is a member firm of the Chicago Board of Trade, the Chicago Mercantile Exchange and the National Futures Association. It is located at Suite 2600, 141 West Jackson Blvd., Chicago, Illinois 60604. As of July 1, 2000, it succeeded Saul Stone & Company LLC and assumed the rights and responsibilities of Saul Stone under all relevant customer account agreements. At all times, the term “Stone” shall refer to both Saul Stone & Company, LLC and F.C. Stone, LLC, as its successor and assignee.

THE ALLOCATION SCHEME

17. During the relevant time, while employed at Stone, the Defendants engaged in a fraudulent trade allocation scheme.

18. In March 2000, King, at the direction of or by agreement with Brown, opened commodity interest account No. 18809 at Stone. Thereafter, the Defendants placed profitable trades into King's account and losing trades in victim accounts.

19. In the at least eight months that the Defendants perpetrated the scheme, King's favored account at Stone received approximately \$680,400 in funds that were obtained as a result of the Defendants' fraudulent scheme. Thereafter, the Defendants and King caused \$556,000 of the funds to be transferred from King's favored account at Stone to King's bank account.

20. The Defendants did not have specific authorization to place any trades in the victim accounts or written authorization to place trades in those accounts without specific authorization.

21. King has no legitimate entitlement to or interest in the funds received from the Defendants' fraudulent conduct.

22. King is required to disgorge the funds she received from Defendant's fraudulent conduct or the value of those funds that she may have subsequently transferred to third parties.

23. By reason of the foregoing, King holds funds in constructive trust for the benefit of Stone customers who were victimized by Defendants' fraudulent scheme.

24. As of October 27, 2000, King has returned only a portion of the illicitly obtained funds to Stone for the benefit of the customers whose accounts were victimized in the scheme.

III.

ORDER OF DISGORGEMENT

NOW THEREFORE, IT IS ORDERED THAT:

25. DISGORGEMENT: King is ordered to disgorge \$226,992 (Two Hundred Twenty Six Thousand Nine Hundred Ninety-Two Dollars), representing profits or proceeds she received

as a result of the acts and/or conduct alleged in the Complaint, plus pre-judgment interest thereon from October 27, 2000, to the date of this Order in the amount of \$_____, and post-judgment interest thereon (“Disgorgement Obligation”). Pre-judgment interest is calculated at the underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. §662(a)(2). King shall pay post-judgment interest from the date of this Order until her Disgorgement Obligation is paid in full, at the Treasury Bill rate prevailing on the date of this Order, pursuant to 28 U.S.C. § 1961(a).

26. PAYMENT OF DISGORGEMENT: Payment of King’s Disgorgement

Obligation shall be made as follows:

- a. The balance of funds in account number 851-034201-4, held in the name of Javette L. King at Charter One, (formerly St. Paul Federal), 6700 W. North Ave., Chicago, Illinois 60707, shall be transferred with King’s cooperation to an account designated by the Monitor, as described in subparagraph c below, within ten days of the date this Order is entered by the Court. The Monitor shall distribute the payment in accordance with Attachment A and any applicable court Order. Based upon the amount of funds available, the Monitor may decide to defer distribution. The amount of such funds shall reduce King’s Disgorgement Obligation on a dollar-for-dollar basis.
- b. King shall make an annual disgorgement obligation payment (“Annual Payment”) to an account designated by a monitor determined by the Commission (“the Monitor”) of: (1) a percentage of her adjusted gross income (as defined by the Internal Revenue Code) earned or received by her during the previous calendar year, plus (2) all other cash receipts, cash entitlements or proceeds of non-cash assets received by her during the previous calendar year. The Annual Payment shall be made on or before July 31 of each calendar year starting in calendar year 2002 and continuing for ten years or until the Disgorgement Obligation is paid in full from any source, whichever occurs sooner. The ten year Annual Payment period shall run from January 1, 2001 through December 31, 2010. Annual Payments for a calendar year shall take place by July 31 of the following year. Therefore, the final Annual Payment for the year 2010 will occur on or before July 31, 2011.
- c. King agrees that the National Futures Association is hereby designated as the Monitor for a period of eleven years commencing January 1, 2001.

Notice to the Monitor shall be made to Daniel A. Driscoll, Esq., Executive Vice President, Chief Compliance Officer, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, Illinois 60606.

- d. King shall provide a sworn financial statement to the Monitor on June 30 and December 31 of each calendar year, starting June 30, 2002 and continuing through and including June 2011. The financial statement shall provide;
 - i). a true and complete itemization of all of her rights, title and interest in (or claimed in) any asset, wherever located, however and by whomever held;
 - ii). an itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of her over the preceding six-month interval; and
 - iii). a detailed description of the source and amount of all her income or earnings, however generated.

King shall also provide the Monitor with complete copies of her signed federal income tax returns, including all schedules and attachments thereto (*e.g.*, IRS Forms W-2) and Forms 1099, as well as any filings she is required to submit to any state tax or revenue authority, for the preceding calendar year, on or before June 30 of each calendar year, or as soon thereafter as the same are filed, starting in calendar year 2002 and continuing for ten years or until all amounts due under this agreement are paid in full, whichever occurs first.

- e. If, during the same time period, King elects to file a joint tax return, she shall provide all documents called for by this paragraph 26, including the signed and filed joint tax return, plus a draft individual tax return prepared on IRS Form 1040 containing a certification by a licensed certified public accountant that the "Income" section (currently lines 7-22 of Form 1040) truly, accurately and completely reflects all of King's income, that the "Adjusted Gross Income" section truly, accurately and completely identifies all deductions that King has a right to claim, and that the deductions contained in the "Adjusted Gross Income" section are equal to or less than 50% of the deductions that King is entitled to claim on the joint tax return; provided however that King may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely hers. Such individual tax return shall include all schedules and attachments thereto (*e.g.*, IRS Forms W-2) and Forms 1099, as well as any filing required to be submitted to any state tax or revenue authority.

- f. Based on the information contained in King's tax returns, King's sworn Financial Disclosure Statement and other financial records provided to the Commission, the Monitor shall calculate the Annual Payment to be paid by King for that year. Thereafter, the Monitor shall distribute the payment in accordance with Attachment A and any applicable court order. On or before June 30 of each year and starting in calendar year 2002, the Monitor shall send written notice to King with instructions to pay the Annual Payment on or before July 31 of that year to an account designated by the Monitor. If the Monitor determines that an Annual Payment is due, then the Monitor will increase the amount of the remaining Annual Payment by post-judgment interest calculated to the date of the payment based on the total remaining Disgorgement Obligation, pursuant to 28 U.S.C. § 1961. The Monitor shall then disburse any payment by King in accordance with Attachment A. If at the end of the ten year payment period, any amount of the Annual Payments has not been distributed, that amount shall instead be paid as provided in subparagraph g below.
- g. Based on the information contained in King's tax returns, King's sworn Financial Disclosure Statement and other financial records, the Monitor shall calculate the Annual Payment to be paid by King for that year. Thereafter, the Monitor shall distribute the payment in accordance with Attachment A and any applicable court order. On or before June 30 of each year and starting in calendar year 2002, the Monitor shall send written notice to King with instructions to pay the Annual Payment on or before July 31 of that year to an account designated by the Monitor. The Monitor shall then disburse any payment by King in accordance with Attachment A. When the Monitor determines that the victims listed in Attachment A have recovered their losses in full, the Monitor shall direct King to make each such Annual Payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashiers check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, D.C. 20581, under cover of a letter that identifies King and the name and docket number of the proceeding. King shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor and to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, NW, Washington, D.C. 20581.

27. ANNUAL PAYMENT: The Annual Payments shall be calculated as follows:

Where Adjusted Gross	Percent of total to be paid by
Income Plus Net Cash	King:
<u>Receipts Total:</u>	

Under \$25,000.00	0%
\$25,000.00 up to and including \$50,000.00	20% of the amount between \$25,000.00 and \$50,000
\$50,000.00 up to and including \$100,000	\$5,000.00 (which represents 20% of the amount between \$25,000.00 and \$50,000.00) plus 30% of the amount between \$50,000.00 and \$100,000.
Above \$100,000	\$20,000.00 (which represents 20% of the amount between \$25,000.00 and \$50,000.00 plus 30% of the amount between \$50,000.00 and \$100,000) plus 40% of the amount above \$100,000.

28. Cooperation: King shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all duties with respect to her Disgorgement Obligation payments. She shall cooperate fully with the Monitor and the Commission in explaining her financial income and earnings, status of assets, financial statements, asset transfers and tax returns, and shall provide any information concerning herself as may be required by the Commission and/or the Monitor. Furthermore, King shall provide such additional information and documents with respect thereto as may be requested by the Commission and/or the Monitor.

29. Collateral Agreements: King shall immediately notify the Commission if she makes or has previously made any agreement with any victim account holder obligating her to make payments outside of this order. King shall also provide immediate evidence of any payments made pursuant to such agreement in the manner required by Paragraph 33.

30. Default: Any failure by King to carry out any of the terms, conditions or obligations under any paragraph of this Consent Order shall constitute an Event of Default. If any Event of Default occurs the Commission (or its designee) shall be entitled to:

- a. an order requiring immediate payment of any unpaid Annual Disgorgement Payment or, at the Commission's option, the entire unpaid balance, or any unpaid portion, of the Disgorgement Obligation set forth in Paragraphs 25 through 27 above; and/or
- b. move the Court for imposition of all other available remedies, including, but not limited to, an order holding King in contempt for violation of this Order.

Upon the occurrence of an Event of Default based upon a claim or cause of action that King failed to make any Annual Disgorgement Payments when due, King will be barred from asserting any defense, including expiration of any statute of limitations, waiver, estoppel or laches, where such defense is based on the alleged failure of the Commission to pursue such claims or causes of action during the pendency of this civil action, during the negotiation of King's consent to this Order or while this Order remains in effect. The only issue that King may raise in defense is whether she made the Annual Disgorgement Payment as directed by the Monitor. Any motion by the Commission for entry of an order pursuant to this paragraph requiring payment of less than the full amount of the Disgorgement Obligation, set forth in paragraphs 25 through 27 above, or any acceptance by the Commission of partial payment of the Annual Disgorgement Payments made by King shall not be deemed a waiver of the Commission's right to require King to make further payments pursuant to the payment plans set forth above, or, in the event of a further Event of Default, a waiver of the Commission's right to require immediate payment of the entire remaining balance, or any unpaid portion, of the Disgorgement Obligation set forth in paragraphs 25 through 27 above.

31. Reliance on Financial Disclosure: Based upon the sworn representations of King contained in her Financial Disclosure Statement dated November 11, 2001, and other evidence provided by King regarding her financial condition, the Court is not ordering immediate payment of the full Disgorgement Obligation pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 and Rule

143.8 of the Commission's Regulations, 17 C.F.R. § 143.8. The determination not to order immediate payment of the full amount of disgorgement is contingent upon the accuracy and completeness of the Financial Disclosure Statement and other evidence provided by King regarding her financial condition. If at any time following the entry of this Consent Order, the Commission obtains information indicating that King's representations to the Commission concerning her financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may move this Court for an order requiring King to make immediate payment of her entire Disgorgement Obligation or of any portion thereof, the amount of which shall be determined by the Commission. In connection with any such motion, the only issues shall be whether the financial information provided by King was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. In its motion, the Commission may move this Court to consider all available remedies, including, but not limited to ordering King to pay funds or transfer assets or directing the forfeiture of any assets and the Commission may also request additional discovery. King may not, by way of defense to such motion, challenge the validity of her consent to this Consent order, or contest any of the findings of fact or conclusions of law set forth in this Consent Order, assert that payment of the Disgorgement Obligation should not be ordered, or contest the amount of the Disgorgement Obligation to be paid. If in such motion the Commission moves for, and the Court orders, payment of less than the full amount of the Disgorgement Obligation, such motion will not be deemed a waiver of the Commission's right to require King to make further payment pursuant to the payment plans set forth above.

32. Transfer of Assets: King shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any members of her family or any other person for the purpose of concealing such funds from the Court or the Commission until the disgorgement is paid in full.

IV.

MISCELLANEOUS PROVISIONS

33. Notices: All notices required to be given by any provision in this Consent Order shall be sent certified mail, return receipt requests, as follows:

Notice to Commission:

If prior to March 15, 2002, then to:

Regional Counsel
Division of Enforcement – Central Region
Commodity Futures Trading Commission
300 South Riverside Plaza, Suite 1600 N
Chicago, Illinois 60606

If after March 15, 2002, then to:

Regional Counsel
Division of Enforcement – Central Region
Commodity Futures Trading Commission
525 W. Monroe, Suite 1100
Chicago, Illinois 60606

Notice to King:

c/o Theodore Poulos, Esq.
Cotsirilos, Tighe & Streicker, Ltd.
33 N. Dearborn Street, Suite 600
Chicago, Illinois 60602

Notice to Monitor:

Daniel Driscoll
Vice President, Compliance
National Futures Association

200 West Madison Street
Chicago, Illinois 60606

In the event that King changes her residential or business telephone number(s) and/or address(es) at any time, she shall provide written notice of her new number(s) and/or address(es) to Theodore Poulos and to the Commission within ten (10) calendar days thereof.

34. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

35. Waiver: The failure of any party hereto or of any victim account holder listed in Attachment A at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

36. Successors and Assigns: This Consent Order shall insure to the benefit of and be binding upon the successors, assigns, heirs, beneficiaries and administrators of the parties hereto.

37. Acknowledgements: Upon being served with copies of this Consent Order after entry by the Court, King shall sign acknowledgements of such service and serve such acknowledgments on this Court and the Commission within seven (7) calendar days.

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

39. Jurisdiction: This Court shall retain jurisdiction of this cause to assure compliance with this Consent Order and for all other purposes related to this action.

40. Lift of Asset Freeze: Upon entry of this Consent Order, all prior orders freezing King's assets are hereby declared moot.

ENTERED THIS 27th of March, 2002.

Hon. George W. Lindberg
United States District Court Judge

Consented to and
approved for entry by:

Javette King

Theodore T. Poulous
Cotsirilos, Tighe & Streicker, LTD
33 N. Dearborn St., Suite 1600
Chicago, IL 60602
Attorney for the Defendant

Ava Gould, Trial Attorney
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