

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-23992-CIV-MARTINEZ/AOR**

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COMMODITY FUTURES TRADING	)
COMMISSION,	)
	)
Plaintiff,	)
	)
v.	)
	)
TIMOTHY JOSEPH ATKINSON, JAY	)
PASSERINO, ALL IN PUBLISHING, LLC and	)
GASHER, INC.,	)
Defendants.	)

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**ORDER FOR PRELIMINARY INJUNCTION AND OTHER ANCILLARY RELIEF  
AGAINST DEFENDANTS JAY PASSERINO AND GAHSER, INC.**

On September 27, 2018, Plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”) filed a Complaint against the Defendants, Timothy Joseph Atkinson (“Atkinson”), Jay Passerino (“Passerino”), All In Publishing, LLC (“AIP”) and Gasher, Inc. (“Gasher”) (collectively “Defendants”), seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1-26 (2012). On October 5, 2018, the Court entered a Statutory Restraining Order (“SRO”) against the Defendants that, among other things: froze Defendants’ assets; prohibited Defendants from destroying books and records, or denying the Commission access to such books and records; appointed Melanie Damian of Damian and Valori LLP, 1000 Brickell Ave., Suite 1020, Miami, FL 33131, as Temporary Receiver, with the full powers of an equity receiver, for Defendants and their affiliates and subsidiaries; required Defendants to provide the Temporary Receiver with an accounting; and ordered Defendants to appear before the Court on October 12, 2018, to show cause why an Order for Preliminary Injunction should not be entered. Service of the Statutory

Restraining Order was properly made on the Defendants on October 5, 2018 via the Court's ECF system.

## **I. FINDINGS BY THE COURT**

This matter comes before this Court on the Motion for Preliminary Injunction filed by the CFTC (Dkt. #7). The Court having considered the pleadings, declarations, exhibits, and the incorporated memorandum of law filed in support of the CFTC's Motion, and the record from the hearing held on October 12, 2018, which is incorporated by reference, and the Court being fully advised in the premises,

### **THE COURT FINDS:**

1. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2012) (federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). This Court has jurisdiction over the subject matter of this action and Defendants hereto pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(a) (2012), which authorizes the CFTC to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, in that Defendants are found in, inhabit, or transact business in this district, and the actions and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

### **Definitions**

For the purposes of this Order, the following definitions apply:

3. The term “funds, assets, or other property” means any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, directly or indirectly controlled, and wherever located, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at other financial institutions), credits, receivables, lines of credit, contracts (including spot, futures, options, or swaps contracts), insurance policies, and all cash, wherever located, whether in the United States or outside the United States.

4. The terms “document” and “electronically stored information” are synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 34(a), and includes, but is not limited to, all writings, graphs, charts, photographs, sound recordings, images, and other data or other data compilations—stored in any medium from which information can be obtained or translated, if necessary, into reasonable usable form. The terms “document” and “electronically stored information” also refer to each and every such item in Defendants’ actual or constructive possession, including but not limited to: (i) all such items within the custody or control of any agents, employers, employees, or partners of the Defendants; and (ii) all items which Defendants have a legal or equitable right to obtain from another person. A draft or non-identical copy is a separate item within the meaning of the term. A document also includes the file and folder tabs associated with each original and copy.

5. The term “Passerino Defendants” refers to Jay Passerino and Gasher, Inc.

**A. The Parties To This Order**

6. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with the responsibility for enforcing the

provisions of the Act, 7 U.S.C. §§ 1-26 (2012), and the Regulations promulgated thereunder, 17 C.F.R. Pts. 1-190 (2018).

7. Defendant **Passerino** is a natural person who resides in Miami, Florida. From January 2014 through approximately October 2016, Passerino controlled and oversaw the day-to-day operations of AIP, identified as the Vice President of AIP, and shared in profits of the company for his services. During that time, Passerino was also a signatory to AIP's bank accounts and conducted AIP business in his own name and also in the name of Gasher. Passerino bragged to other affiliates about his role at AIP: "Tim doesn't pay me, I pay him . . . latr!!!!crooksssss."

8. Defendant **Gasher** is a Florida Corporation. Beginning in at least October 2013 through at least November 2016 (the "Relevant Period") Gasher's principal place of business was in Miami, Florida and Passerino owned Gasher and served as its president. Between at least January 2014 and October 2016, Gasher received payments from AIP for Passerino's operation of AIP business and for "consulting" services.

#### **B. OTHER RELEVANT PARTIES**

9. **Partner** is an Israeli company with its principal place of business in Tel Aviv and two Israeli individuals who own the company and conduct its various business activities related to binary options. Partner was the actual, but undisclosed, intermediary which directed customers to various binary options Brokers ("Brokers"). Partner has never been registered with the Commission in any capacity.

10. Partner worked with the Passerino Defendants on the Passerino Defendants' binary options marketing campaigns and made payments to the Passerino Defendants related to those activities. For example, Partner supplied and/or procured the trading software advertised in the Passerino Defendants' campaigns and which customers used to trade their accounts.

Partner also selected the Brokers for the Passerino Defendants' campaigns and controlled the webpages on the Passerino Defendants' campaign websites which directed customers to various Brokers.

**C. The Passerino Defendants' Affiliate Marketing Scam**

11. There is good cause to believe that during the Relevant Period, the Passerino Defendants, acting as commodity trading advisors ("CTA's"), scammed prospective customers and customers by disseminating fraudulent solicitations in at least twenty-nine (29) binary options affiliate marketing "campaigns." The Passerino Defendants' goal was to earn commissions from Brokers by inducing prospective customers to open and fund binary options trading accounts. The Passerino Defendants knew or recklessly disregarded that the solicitations they disseminated for those campaigns included false or misleading statements of material fact, including fake promises of guaranteed success.

12. There is good cause to believe that the Passerino Defendants engaged in the fraud as affiliates and also as sub-affiliates of Brokers. As affiliates, the Passerino Defendants created marketing materials, including email solicitations, websites, and sales videos, which promised free access to fool-proof, successful automated "Trading Systems" that purportedly activated upon funding a binary options trading account with a "recommended" Broker. The marketing materials disseminated by the Passerino Defendants incorporated materially false or misleading statements about the risk of loss, performance, and results of the Trading Systems, and included the use of fictional characters and fake trading performance, accounts, and profits depicted as real. There is good cause to believe that the Passerino Defendants intentionally or recklessly included those false or misleading statements to lure customers to open and fund trading accounts so they would earn commissions from the "recommended" Broker(s).

13. When acting as sub-affiliates, the Passerino Defendants disseminated marketing materials created by other affiliates, while knowing or recklessly disregarding that the materials included false or misleading information to earn additional commissions.

14. There is good cause to believe that the Passerino Defendants disseminated their marketing materials through millions of email solicitations directly and through others acting on their behalf. Passerino was directed by another affiliate marketer to manage the spamming part of the affiliate marketing business and oversaw those activities, Passerino and employees under his supervision set up the email autoresponders to use for an affiliate marketing business' spamming.

15. There is good cause to believe that the email solicitations disseminated by the Passerino Defendants and the sub-affiliates they worked with included embedded links to the Passerino Defendants' campaign websites. The first landing page for the Passerino Defendants' campaigns—i.e., where the link in the email is directed—included a streaming sales video and an “opt-in” where a prospective customer could enter his or her name and email to get access to the full sales video and/or for more information. There is good cause to believe that the Passerino Defendants mined that data to add to their “lead lists” stored in the autoresponders to follow up with prospective customers and to spam in future campaigns. The Passerino Defendants followed up via email with prospective customers who failed to open or fund an account right away with targeted emails that also included false or misleading information.

16. There is good cause to believe that the Passerino Defendants got paid a flat commission from a Broker for each first time depositor (“FTD”) who deposited a minimum threshold (generally at least \$250) resulting from their solicitation efforts, regardless of the customer's subsequent trading results or deposits. The Passerino Defendants generally earned

between \$350 to \$450 in commission per FTD; the Passerino Defendants determined the sub-set of their commission and/or prizes that they paid-out to sub-affiliates.

17. There is good cause to believe that Passerino continues to participate in a similar fraudulent solicitation scheme with the same people he previously worked with in connection with his binary options fraud.

**D. The Passerino Defendants' Fraudulent Binary Options Campaigns**

18. There is good cause to believe that during the Relevant Period, the Passerino Defendants disseminated fraudulent solicitations and earned commissions from at least twenty-nine (29) fraudulent binary options advertising campaigns as Affiliates and/or sub-affiliates.

19. There is good cause to believe that for at least twenty (20) campaigns, the Passerino Defendants acted as Affiliates—i.e. they identified the campaigns as their own and/or had direct involvement with creation of the websites and marketing materials—including: (1) Automated Income App ; (2) Golden Goose (“GG”); (3) Push Button Millionaire; (4) Rock Star Commissions ; (5) Auto Money App (“AMA”); (6) Cash Code (“CC”); (7) Free Money System (“FMS”); (8) Free Money App; (9) Quick Cash System ; (10) Easy Money Machines; (11) Free Cash; (12) Secret Millionaire Society; (13) Cash Software; (14) Push Button Commissions; (15) Binary Cash Creator; (16) Free Millionaire System; (17) Easy Money Method; (18) Fast Cash; (19) Push Money App (“PMA”); and (20) Click Money System (“CMS”).

20. There is good cause to believe that the Passerino Defendants paid for and registered the domain names associated with the websites for those campaigns, which generally included some variation of the campaign name like <http://automoneyapp.com> for AMA, or <http://fastcash.biz> for Fast Cash. Passerino (and/or employees or independent contractors that Passerino oversaw) had primary responsibility for registering the Passerino Defendants'

campaign website domains, setting up the hosting, uploading the Passerino Defendants' content, and managing the technical aspects of the campaign. The Passerino Defendants' binary options campaigns included emails, sales videos and/or websites rife with materially false or misleading statements.

*a. The Passerino Defendants' Fraudulent Email Solicitations*

21. There is good cause to believe that the Passerino Defendants' email solicitations contained numerous false or misleading statements about the profitability from using the advertised Trading Systems, e.g., that customers made hundreds in profits in seconds, thousands in a day, and became millionaires in a few months. The emails often created the appearance of urgency by stressing that "spots are limited" or "time is running out." The Passerino Defendants also made it appear as though emails to prospective customers came from the owner or support department or other division of the fake company of the advertised System so the solicitation looked more persuasive and credible.

22. There is good cause to believe that Passerino wrote deceptive emails. There is good cause to believe that on or about February 23, 2016, Passerino, or others at his direction, sent an email out purportedly on behalf of "PMA company." That email—signed by the fake founders of the fake PMA company—was replete with the following false statements:

We have just closed a special deal with one of our major brokers. Everyone that registers their PMA App today gets a matching deposit bonus . . . up to \$10k if you're so fortunate . . . Just in the past 24 hrs the PM App has made the new members a combined \$118,927.36. Just in the last 24hrs! My friend, you are missing out on serious money if you haven't activated your app yet. I know last year you were scammed with Binary Options bots. Trust me, this is not one of those scams. Not even close. PMA Company received the Most Profitable Trading System award at the NY convention of 2015. Yes we are a real legit company that really wants to help you become filthy rich.



23. There is good cause to believe that the Passerino Defendants and/or their sub-affiliates sent the email, the trading results of purported users in the email were fake, there were no “beta testers” or 2015 convention, and there was never a company called PMA Company. The email included no disclosures about hypothetical or simulated trading results.

24. There is good cause to believe that in May 2016, the Passerino Defendants (and/or their sub-affiliates), through the same fictitious PMA founders, sent various emails to a disabled veteran living on disability payments, reminding the recipient to fund a trading account “to make possibly 7 figures in 180 days just like our first group of beta testers!” One email to the veteran stressed the “limited availability” of PMA and urged that customer to fund his account “so you’ll be able to start making money right away . . .” These emails included fake trading profits, false time limits, and no disclosures about hypothetical or simulated trading results.

*b. Passerino Defendants’ Fraudulent Sales Videos*

25. There is good cause to believe that the Passerino Defendants’ campaign websites featured at least one sales video (known in the industry as a video sales letter or “VSL”) that depicted a fictional story about clients profitably using a Trading System, when in fact the clients were fictional characters portrayed by paid actors making false or misleading statements about the Trading System’s trading results, risk of loss, and profits earned. Passerino knew the scripts and videos depicted fictitious characters, trading performance, and profits.

26. There is good cause to believe that none of Passerino Defendants’ binary options videos involved real users or creators of the advertised System. As scripted, the actors brazenly lied in the videos about their role and the fictional story line. For example, the SMS video included the following false statement delivered by an actor about fictitious trading results: “Everything I’m about to tell you is 100% real and was experienced by me firsthand.”

27. There is good cause to believe that the Passerino Defendants' videos also included fake "testimonials" of purported users of the advertised System and fake bank or trading accounts and/or "live" trading to add credibility to the misstatements.

28. There is good cause to believe that in the FMS video, three individuals said they became millionaires in three months, and screenshots of false bank accounts accompanied their testimonials. In the FC VSL, "Gordon Powers," a 61-year-old army veteran suffering from osteoporosis claimed that he deposited \$250 in his trading account and "Ten minutes in just like they promised, I had over eleven thousand dollars in my brokerage account." At Passerino's direction, Berry and his video production company fabricated all bank account, trading account, and checks reflected in the PMA VSL as fake proof to support the false testimonials. Defendants knew that the false or misleading statements in their videos deceived viewers.

29. There is good cause to believe that the video for CC portrays "Robert Allen" as the star. Allen, a doctor, apparently received the CC System from a "true billionaire" and "financial mogul" on his deathbed after Allen cared for him in the hospital. The video shows screenshots of Allen's trading account from July 2009 through August 2009 and also a "live" video of the account with big red letters across the screen, "LIVE ONLINE PROOF." Allen explains that he "just" deposited \$250 "risk-free" into his account and he will "show you the money it makes LIVE over the next 60 seconds. We can back up every word we say with real life results." The video shows the account increasing nine times then settling at \$356,910 in the span of one minute. However, Robert Allen was a fictional character portrayed by an actor, there was no billionaire mogul creator, and Allen had no trading account from 2009 or any trading profits from the CC System. Indeed, Berry fabricated the trading result "proof" displayed in the video at an affiliate marketer's request.

30. There is good cause to believe that the Passerino Defendants' binary option campaigns not only included false profits, but they also purported to guarantee those profits:

- In CC, the viewer is told: "And our success rate? It's pretty clear. It's 100% accuracy. All of our clients are financially independent within 60 days of using this system . . . on average." The video concludes with: "As I always say . . . a system either works or it doesn't. And if it works . . . it works every time. And this one works. Period."
- The AMA script promised: "In sum total . . . we know . . . you will be earning at least \$300,000 per month—also known as . . . \$3.6 million dollars per year . . . starting just 30 days from now . . . just as sure as 1 plus 1 equals 2. Gosh, I love numbers! These are mathematical certainties . . ."
- FMS promised, "I'm going to make you a millionaire in 3 months tops[.]"
- SMS includes: "And when you do get to the end of this video, you will also be rewarded with a guaranteed \$1000 in your first 60 seconds and \$10,000 in your first two days for free . . . There will be no losses. None at all."
- FC and other videos make similar claims: "We make hundreds of dollars and even thousands of dollars every 60 seconds on autopilot with the Fast Cash Biz."

31. There is good cause to believe that the Passerino Defendants' videos also all included props like luxury vehicles, a private jet, and mansions—all rented to create the video and not in fact owned or purchased by any user of the advertised System. The props depicted in Passerino Defendants' VSLs were designed to mislead viewers into believing that success with the advertised System enabled the characters to live such lifestyles.

**E. The Passerino Defendants Successfully Scammed Tens of Thousands of Individuals**

32. There is good cause to believe that millions of individuals received the Passerino Defendants' fraudulent solicitations. For example, in less than 3 weeks, the PMA website had

over 2 million visitors and the campaign generated commissions for the Passerino Defendants for almost nine months. Between January 2014 and June 2016, at least 51,000 new customers in the United States and abroad opened and funded binary options trading accounts in connection with fraudulent campaigns involving the Passerino Defendants and a foreign business partner. There is good cause to believe that the amount of money customers deposited when opening a new account varied. Generally, customers were required to deposit at least \$250 initially. Therefore, the 51,000 customers that opened new accounts between January 2014 and June 2016 resulting from the Passerino Defendants' solicitations deposited at least \$12.75 million into their trading accounts. Between October 2013 and June 2016, an account received over twenty-seven million dollars (\$27,000,000) resulting from the Passerino Defendants' affiliate marketing activities, including, and primarily related to, fraudulent binary options solicitations. Of those earnings, the Passerino Defendants received the majority from accounts that Partner controlled, but also got payments from Brokers, Broker intermediaries, payment processors, and affiliate networks, among others. A portion of the Passerino Defendants' earnings stemmed from their role as sub-affiliates for other fraudulent binary options campaigns. Between October 2013 and October 2016, an affiliate marketing company deposited over one million and eight hundred thousand dollars (\$1,800,000) into a Gasher bank account.

**F. The Passerino Defendants Tried to Cover Their Tracks and Prevent the CFTC From Accessing Evidence, Including Evidence of Ongoing Illegal Marketing Campaigns**

33. There is good cause to believe that the Securities and Exchange Commission served the Passerino Defendants with a subpoena requesting documents and communications related to their affiliate marketing activities on or about October 25, 2016. Beginning in or about October or November 2016, the Passerino Defendants deleted, displaced, and/or otherwise

destroyed sales videos, emails, websites, and/or other documents and communications related to binary options and otherwise responsive to those subpoenas.

34. There is good cause to believe that the Passerino Defendants continued working with the same foreign associates and their companies in connection with fraudulent solicitations related to CFDs and/or virtual currency campaigns until at least August 2018. Passerino has received over one million dollars (\$1,000,000) from accounts controlled by those associates in connection with his work for their U.S. corporation (Corporation A) and/or their foreign entity between November 2016 and May 2018. Passerino, serves as the registered agent, Vice President, and signatory to Corporation A's bank accounts.

**G. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS**

35. As alleged in Count One of the Complaint, the Court finds that the Plaintiff has made a showing of a reasonable likelihood of success on the merits that the Passerino Defendants have engaged in illegal off exchange binary options transactions, and have intentionally or recklessly cheated or defrauded or attempted to cheat or defraud other persons; made or caused to be made to other persons false reports or statements thereof or caused to be entered for other persons any false record thereof; or deceived or attempted to deceive other persons by any means whatsoever in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Regulation 32.4, 17 C.F.R. § 32.4.

36. As alleged in Count One of the Complaint, the Court finds that the Plaintiff has made a showing of a reasonable likelihood of success on the merits that the Passerino Defendants violated Section 4c(b) of the Act by, among other things, intentionally or recklessly using fraudulent solicitations in emails, websites, and fictitious VSLs promising free access to

Trading Systems to induce prospective customers to open and fund a binary options trading account with a recommended Broker so that the Passerino Defendants could earn commissions.

37. As alleged in Count Two of the Complaint, the Court finds that the Plaintiff has made a showing of a reasonable likelihood of success on the merits that, During the Relevant Period, the Passerino Defendants acted as commodity trading advisors (“CTAs”) by disseminating for compensation numerous and varied marketing materials which advised customers and prospective customers to open binary options accounts and use purportedly successful trading systems to trade those accounts in violation of Section 4o(1) of the Act, 7 U.S.C. §6o(1).

38. As alleged in Count Two of the Complaint, the Court finds that the Plaintiff has made a showing of a reasonable likelihood of success on the merits that, during the Relevant Period, the Passerino Defendants while acting as CTAs, employed a device, scheme, or artifice to defraud clients and prospective clients; or engaged in a transaction, practice or course of business which operated as a fraud or deceit upon any client or prospective client in violation of Section 4o(1) of the Act, 7 U.S.C. §6o(1).

39. As alleged in Count Two of the Complaint, the Court finds that the Plaintiff has made a showing of a reasonable likelihood of success on the merits that the Passerino Defendants engaged in violations of Section 4o(1) of the Act, 7 U.S.C. §6o(1) by:

- a. fraudulently soliciting members of the public and creating and/or disseminating fraudulent websites and emails to induce members of the public to go through their funnel to open and fund new binary options trading accounts with a recommended Broker to access the advertised trading System.
- b. for each of the Passerino Defendants’ binary options campaigns, including but not limited to the twenty (20) the Passerino Defendants launched and at least nine (9) others they disseminated, the Passerino Defendants repeatedly misrepresented, among other things: (i) hypothetical and

fictitious trading results as real results; (ii) actors as true users of the Trading Systems; (iii) the fictitious experience, background and skill of the “creators” of the Trading Systems; (iv) fabricated testimonials; and/or (v) that the Trading Systems traded automatically.

40. As alleged in Count Three of the Complaint, the Court finds that the Plaintiff has made a showing of a reasonable likelihood of success on the merits that, during the Relevant Period, the Passerino Defendants, while acting as CTAs, advertised in a manner that was fraudulent and failed to include the required disclosures for hypothetical or simulated trading performance and testimonials in violation of Section 4.41(a)(1)-(3) and (b)(1)-(2), 17 C.F.R. § 4.41(a)(1)-(3) and (b)(1)-(2).

41. As alleged in Count Three of the Complaint the Court finds that the Plaintiff has made a showing of a reasonable likelihood of success on the merits that each of the binary options advertising campaigns that the Passerino Defendants launched and/or disseminated, including the twenty-nine (29) identified above, contained materially false or misleading statements. The Passerino Defendants’ promotional materials, including emails, websites and VSLs, refer to testimonials in their binary options campaigns without prominently disclosing for each testimonial that it may not represent the experience of other users of the advertised System, that the testimonial was not a guarantee of future performance or that the testimonial was entirely fake and represented by paid actors or misappropriated images from the internet. The Passerino Defendants’ promotional materials, including emails, websites and VSLs, further depicted fabricated performance results of binary options transactions in, among other instruments, commodity futures, options, swaps and forex, without displaying the required disclosure in immediate proximity to those statements. Instead, the VSLs repeatedly referred to trading performance, activity and results as “real” and depicted “live” in violation of Section 4.41(a)(1)-(3) and (b)(1)-(2), 17 C.F.R. § 4.41(a)(1)-(3) and (b)(1)-(2).

42. As alleged in Count Four of the Complaint, the Court finds that the Plaintiff has made a showing of a reasonable likelihood of success on the merits that, during the Relevant Period, the Passerino Defendants, directly or indirectly, used, employed or attempted to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, a manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate....” in violation of Section 6(c) of the Act, 7 U.S.C. § 9(1).

43. As alleged in Count Four of the Complaint, the Court finds that the Plaintiff has made a showing of a reasonable likelihood of success on the merits that, during the Relevant Period, the Passerino Defendants used or employed, or attempted to use or employ, any manipulative device, scheme, or artifice to defraud; (2) made, or attempted to make, any untrue or misleading statement of material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; (3) engaged, or attempted to engage, in any act, practice, or course of business, which operated or would operate as a fraud or deceit upon any person ... in violation of Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3).

44. As alleged in Count Four of the Complaint, the Court finds that the Plaintiff has made a showing of a reasonable likelihood of success on the merits that, during the Relevant Period, the Passerino Defendants, directly or indirectly, in connection with swaps, intentionally or recklessly: (a) used or employed, or attempted to use or employ, manipulative devices, schemes, and artifices to defraud; (b) made, or attempted to make, untrue or misleading statement of a material fact; (c) omitted to state material facts necessary in order to make statements made not untrue or misleading; and (d) engaged, or attempted to engage, in acts, practices, and courses of business, which operated or would operate as a fraud or deceit upon



customers and prospective customers, in violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

## **II. ORDER OF PRELIMINARY INJUNCTION AND OTHER EQUITABLE RELIEF**

### **IT IS THEREFORE ORDERED THAT:**

45. The Passerino Defendants, and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee or attorney of the Passerino Defendants and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with the Passerino Defendants, is restrained, enjoined and prohibited, until further order of the Court, from directly or indirectly:

- a. Offering to enter into, entering into, confirming the execution of, maintaining positions in, or otherwise conducting activities relating to binary options;
- b. Acting as an affiliate marketer in any capacity that involves binary options or any commodity interest (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3 (yy) (2017));
- c. Offering so-called autotrading systems or services that purport to trade binary options or any commodity interest (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy))(2018)
- d. Offering to enter into, entering into, confirming the execution of, maintaining positions in, or otherwise conducting activities relating to commodity options off of a registered exchange or otherwise violating Section 4c(b) of the Act, 7 U.S.C. § 6c(b);
- e. Using the instrumentalities of interstate commerce to (1) cheat or defraud, or attempt to cheat or defraud, customers or prospective customers; (2) make or cause to be made false reports or statements to customers or prospective customers; or (3) deceive or attempt to deceive customers and prospective customers in, or in connection with, an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction or otherwise violating Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.4, 17 C.F.R. § 32.4;
- f. Using the instrumentalities of interstate commerce to (1) employ any device, scheme, or artifice to defraud clients or prospective clients, or (2) engage in any transaction, practice, or course of business which operates as a fraud or deceit

upon clients or prospective clients or otherwise violating Section 4o(1) of the Act, 7 U.S.C. § 6o(1), and Regulation 4.41(a) and (b), 17 C.F.R. § 4.41(a) and (b);

- g. Using the instrumentalities of interstate commerce to (1) use or employ, or attempt to use or employ, manipulative devices, schemes, and artifices to defraud; (2) make, or attempt to make, untrue or misleading statements of a material fact; (3) omit to state material facts necessary in order to make statements made not untrue or misleading; or (4) engage, or attempt to engage, in acts, practices, and courses of business, which operate or would operate as a fraud or deceit upon customers or prospective customers in connection with swap transactions or otherwise violate Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a), 17 C.F.R. § 180.1(a).

46. The Passerino Defendants and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee or attorney of the Passerino Defendants and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with the Passerino Defendants, is further restrained, enjoined and prohibited, until further order of the Court, from directly or indirectly:

- a. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (2012));
- b. entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2017)) for his personal account or for any account in which he has a direct or indirect interest;
- c. (i) having any commodity interests traded on their behalf; (ii) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests; or (iii) soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- d. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2017); and
- e. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2014)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)) registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2017).

**IT IS FURTHER ORDERED THAT:**

**Asset Freeze Order Prohibiting the Transfer, Removal, Dissipation and Disposal of Assets**

47. Until further order of this Court and except as provided otherwise in this Order, the Passerino Defendants and each firm, corporation, or other person or entity with notice that holds any accounts, funds, assets, or other property of the Passerino Defendants is prohibited from directly or indirectly withdrawing, transferring, removing, dissipating, concealing, assigning, pledging, encumbering, disbursing, converting, selling, or otherwise disposing of, in any manner, any funds, assets, or other property of the Passerino Defendants, wherever situated, including, but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account, including funds or property of customers, wherever located, whether held in the name of the Passerino Defendants or otherwise.

48. Notwithstanding the provisions of this Section, at the request of the Temporary Receiver, the Passerino Defendants and any other person who has possession, custody, or control of the Passerino Defendants' funds, assets or other property shall transfer possession of all assets subject to this Order to the Temporary Receiver in accordance with paragraph 63 of this Order.

49. The funds, assets or other property affected by this Order shall include existing funds, assets or other property, and funds, assets or other property acquired after the effective date of this Order.

**Maintenance of and Access to All Records Which Relate to the Business Activities and Business and Personal Finances**

50. The Passerino Defendants are restrained from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner any documents that refer

or relate in any manner to any transaction or matter described in the Complaint in this case, including the business practices or business or personal finances of the Passerino Defendants.

51. Representatives of the Commission shall be immediately allowed to inspect the records that relate or refer to the business and personal finances of the Passerino Defendants, including, but not limited to, both hard-copy and electronically stored information, wherever they may be situated and whether they are in the possession of the Passerino Defendants or others. To ensure preservation and facilitate meaningful inspection and review of records, the Passerino Defendants shall allow representatives of the Commission to make copies of said documents and electronically stored information, and if on-site copying of documents and electronically stored information is not practicable, representatives may make such copies off site. After any such off-site copying, Plaintiff shall promptly return the original documents and devices upon which electronic information is stored.

52. To further facilitate meaningful inspection and review, the Passerino Defendants shall, absent a valid assertion of their rights against self-incrimination under the Fifth Amendment, promptly provide Commission staff with:

- a. the location of all records relating or referring to the business activities and business and personal finances of the Passerino Defendants; and
- b. all identification numbers and other identifying information for websites, cloud storage services, email and smartphone accounts, and all accounts at any bank, financial institution or brokerage firm (including any introducing broker or futures commission merchant) owned, controlled or operated by the Passerino Defendants, or to which the Passerino Defendants have access; and

- c. all passwords to, and the location, make and model of, all computers and/or mobile electronic devices owned and/or used by the Passerino Defendants in connection with their business activities and business and personal finances.

53. When inspecting records that are subject to this Order, including those contained on computer(s) and/or other electronic device(s), the Commission should undertake reasonable measures to prevent review of the Passerino Defendants' privileged communications and/or other nonbusiness, nonfinancial materials by the Commission's attorneys and other staff who are part of the litigation team in this matter. Moreover, the Passerino Defendants (or their counsel) shall promptly contact Plaintiff's counsel to assert any claims of privilege (or other legal objections) relating to the contents of any records that are subject to this Order and promptly cooperate with Plaintiff's counsel to develop reasonable protocols to isolate and prevent disclosure of claimed privileged and/or other nonbusiness, nonfinancial materials to the Commission's attorneys and other staff who are part of the litigation team in this matter. However, nothing herein shall excuse the Passerino Defendants from full and immediate compliance with this Court's Order permitting Plaintiff to inspect the books and records which relate to the Passerino Defendant's business activities and their business and personal finances.

**Notice to Financial Institutions and Others that Hold or Control Assets or Records**

54. To ensure the effectiveness of the asset freeze and pending further Order of this Court, any financial or brokerage institution, business entity, or person that receives actual notice of this Order and holds, controls, or maintains custody of any account or asset or other property of the Passerino Defendants' shall not, in active concert or participation with the Passerino Defendants, permit the Passerino Defendants or other persons to withdraw, transfer, remove, dissipate, or otherwise dispose of any of the Passerino Defendants' assets, except as directed by further order of the Court.

55. Any financial or brokerage institution, business entity, or person that receives notice of this Order by personal service or otherwise shall not, in active concert or participation with the Passerino Defendants, directly or indirectly destroy, alter, or dispose of, in any manner, any records relating to the business activities and business and personal finances of the Passerino Defendants.

56. Furthermore, any such financial or brokerage institution, business entity, or person that receives actual notice of this Order and holds, controls, or maintains custody of any account or asset titled in the name of, held for the benefit of, or otherwise under the control of the Passerino Defendants, or has held, controlled, or maintained custody of any such account or asset of the Passerino Defendants at any time since October 2013, shall not, in active concert or participation with the Passerino Defendants deny a request by the Commission to inspect all records pertaining to every account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of the Passerino Defendants, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. As an alternative to allowing inspection of records, a financial or brokerage institution, business entity or other person may provide copies of records requested by the Commission.

57. Furthermore, any such financial or brokerage institution, business entity, or person that receives actual notice of this Order shall:

- a. Within ten (10) business days of a request by the Temporary Receiver, or such longer period specified by the Temporary Receiver, provide the Temporary Receiver with copies of all records pertaining to any account or asset owned,

controlled, managed, or held by, on behalf of, or for the benefit of the Passerino Defendants, either individually or jointly, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; and

- b. Cooperate with all reasonable requests of the Temporary Receiver relating to implementation of this Order, including transferring the Passerino Defendants' funds at the Temporary Receiver's direction, and producing records related to business activities or business or personal finances of the Passerino Defendants' to the Temporary Receiver.

#### **Order Continuing Appointment Of The Temporary Receiver**

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

58. Melanie Damian will continue her appointment as Temporary Receiver, until further order of the Court, with the full powers of an equity receiver, for the Passerino Defendants, and their affiliates and subsidiaries owned or controlled by the Passerino Defendants (hereinafter referred to as the "Receivership Defendants"), and of all the funds, properties, premises, accounts, income, now or hereafter due or owing to the Receivership Defendants, and other assets directly or indirectly owned, beneficially or otherwise, by the Receivership Defendants (hereinafter, the "Receivership Estate"). The Temporary Receiver shall be the agent of this Court in acting as Temporary Receiver under this Order.

59. The Temporary Receiver is directed and authorized to accomplish the following:

- a. Assume full control of the Receivership Defendants by removing Defendants and any officer, independent contractor, employee, or agent of the

Receivership Defendants, from control and management of the affairs of the Receivership Defendants as the Temporary Receiver deems appropriate;

- b. Take exclusive custody, control, and possession of the Receivership Estate, which includes but is not limited to complete authority to sue for, collect, receive and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, books, records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, funds on hand in banks and other financial institutions, and other papers and records of the Receivership Defendants and customers or clients of any of Receivership Defendants' business activities whose interests are now held by or under the direction, possession, custody or control of the Receivership Defendants;
- c. Take all steps necessary to secure the business and other premises under the control of the Receivership Defendants, including but not limited to premises located in Fort Lauderdale, Florida;
- d. Perform all acts necessary, including the suspension of operations, to conserve, hold, manage, and preserve the value of the Receivership Estate in order to prevent an irreparable loss, damage, or injury to any customers or clients of any of Receivership Defendants' business activities;
- e. Prevent the withdrawal or misapplication of funds entrusted to the Receivership Defendants, and otherwise protect the interests of any customers or clients of any of Receivership Defendants' business activities;



- f. Manage and administer the Receivership Defendants and the Receivership Estate by performing all acts incidental thereto that the Temporary Receiver deems appropriate, including hiring or dismissing any and all personnel, suspending operations, and/or entering into agreements, including but not limited to: (1) the retention and employment of investigators, attorneys or accountants, appraisers, and other independent contractors and technical specialists of the Temporary Receiver's choice, including without limitation members and employees of the Temporary Receiver firm, to assist, advise, and represent the Temporary Receiver; and (2) the movement and storage of any equipment, furniture, records, files or other physical property of the Receivership Defendants;
- g. Collect all money owed to the Receivership Defendants;
- h. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court that the Temporary Receiver deems necessary and advisable to preserve or increase the value of the Receivership Estate or that the Temporary Receiver deems necessary and advisable to carry out the Temporary Receiver's mandate under this Order;
- i. Issue subpoenas to obtain documents and records pertaining to the Receivership and conduct discovery in this action on behalf of the Receivership Estate;

- j. Open one or more bank accounts and deposit all funds of the Receivership Estate in such designated accounts and make all payments and disbursements from the Receivership Estate from such accounts;
- k. Make payments and disbursements from the Receivership Estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order, provided that the Temporary Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendants prior to the date of entry of this Order, except for payments that the Temporary Receiver deems necessary or advisable to secure the Receivership Estate from immediate and irreparable loss; and
- l. Maintain written accounts itemizing receipts and expenditures, describing properties held or managed, and naming the depositories holding funds or other assets of the Receivership Estate; make such written accounts and supporting documentation available to the Commission for inspection; and, within sixty (60) days of being appointed and periodically thereafter, as directed by the Court, file with the Court and serve on the parties a report summarizing efforts to marshal and collect assets, administer the Receivership Estate, and otherwise perform the duties mandated by this Order.

**Accounting and Transfer of Funds and Records to the Receiver**

60. Absent a valid assertion by the Passerino Defendants of their rights against self-incrimination under the Fifth Amendment and to the extent they have not done so pursuant to the SRO, the Passerino Defendants shall, within five (5) business days following the service of this Order:

- a. Provide the Temporary Receiver with a full detailed accounting of all funds, records, and assets, including the assets inside and outside of the United States that are held by the Passerino Defendants, for their benefit, or under their direct or indirect control, whether jointly or singly.
- b. Transfer to the territory of the United States and deliver to possession, custody, and control of the Temporary Receiver, all records, funds, and assets (other than real property) located outside of the United States that are held by the Passerino Defendants, for their benefit, or under their direct or indirect control, whether jointly or singly. Provide the Temporary Receiver access to all records of accounts or assets of the Passerino Defendants held by financial institutions located within or outside the territorial United States by signing the necessary consent forms.

61. Absent a valid assertion by the Passerino Defendants of their rights against self-incrimination under the Fifth Amendment, and to the extent they have not done so pursuant to the SRO, the Passerino Defendants shall, within 24 hours of the issuance of this Order, cause to be prepared and delivered to the Temporary Receiver, a detailed and complete schedule of all passwords and identification (ID) numbers for all websites, cloud storage services, email and smartphone accounts, and all accounts at any bank, financial institution or brokerage firm (including any introducing broker or futures commission merchant) controlled or operated by or to which any of the Passerino Defendants has access in connection with their business activities and business and personal finances.

62. Absent a valid assertion by the Passerino Defendants of their rights against self-incrimination under the Fifth Amendment, and to the extent they have not done so pursuant to

the SRO, Defendants shall, within 24 hours of the issuance of this Order, cause to be prepared and delivered to the Temporary Receiver, a detailed and complete schedule of all passwords to, and the location, make and model of, all computers and mobile electronic devices owned and/or used by the Passerino Defendants in connection with their business activities and business and personal finances. The schedules required by this section shall include at a minimum the make, model and description of each, along with the location, the name of the person primarily assigned to use the computer and/or mobile device, and all passwords necessary to access and use the software contained on the computer and/or mobile device.

**Turning Over Property to the Temporary Receiver**

63. To the extent the Passerino Defendants have not done so pursuant to the SRO, immediately upon service of this Order, and absent a valid assertion by the Passerino Defendants of their rights against self-incrimination under the Fifth Amendment, the Passerino Defendants and any other person or entity served with a copy of this Order, shall immediately or within such time as permitted by the Temporary Receiver in writing, deliver over to the Temporary Receiver:

- A. Possession and custody of all funds, assets, property, and all other assets, owned beneficially or otherwise, wherever situated, of the Receivership Defendants;
- B. Possession and custody of records of the Receivership Defendants in connection with their business activities and business and personal finances, including but not limited to, all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and

check registers), client lists, title documents and other records of the Receivership Defendants;

- C. Possession and custody of all funds and other assets belonging to members of the public now held by the Receivership Defendants;
- D. All keys, computer passwords, entry codes, and combinations to locks necessary to gain or to secure access to any of the assets or records of the Receivership Defendants, including, but not limited to, access to the Receivership Defendants' business premises, means of communication, accounts, computer systems, mobile electronic devices or other property; and
- E. Information identifying the accounts, employees, properties or other assets or obligations of the Receivership Defendants.

**Directive to Cooperate with Temporary Receiver**

64. Absent a valid assertion by the Passerino Defendants of their rights against self-incrimination under the Fifth Amendment, the Passerino Defendants, and all other persons or entities served with a copy of this order, shall cooperate fully with and assist the Temporary Receiver. This cooperation and assistance shall include, but not be limited to, providing any information to the Temporary Receiver that the Temporary Receiver deems necessary to exercising the authority as provided in this Order; providing any password required to access any computer or electronic files in any medium; and discharging the responsibilities of the Temporary Receiver under this Order, and advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the Temporary Receiver.

**Stay on Actions Against the Receivership Defendants**

65. Except by leave of the Court, during the pendency of the receivership ordered herein, the Passerino Defendants and all other persons and entities be and hereby are stayed from taking any action (other than the present action by the Commission) to establish or enforce any claim, right or interest for, against, on behalf of, in, or in the name of, the Receivership Defendants, the Temporary Receiver, receivership assets, or the Temporary Receiver's duly authorized agents acting in their capacities as such, including but not limited to, the following actions:

- A. Petitioning, or assisting in the filing of a petition that would cause the Receivership Defendants to be placed in bankruptcy.
- B. Commencing, prosecuting, litigating or enforcing any suit or proceeding against any of the Receivership Defendants, or any of their subsidiaries or affiliates, except that such actions may be filed to toll any applicable statute of limitations
- C. Commencing, prosecuting, continuing or entering any suit or proceeding in the name or on behalf of any of the Receivership Defendants, or any of their subsidiaries or affiliates;
- D. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, property of the Receivership Defendants, or any of their subsidiaries or affiliates, or any property claimed by any of them, or attempting to foreclose, forfeit, alter or terminate any of the Receivership Defendants' interests in property, including without limitation, the

establishment, granting, or perfection of any security interest, whether such acts are part of a judicial proceeding or otherwise;

- E. Using self-help or executing or issuing, or causing the execution or issuance of, any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wherever located, owned by or in the possession of the Receivership Defendants, or any of their subsidiaries or affiliates, or the Temporary Receiver, or any agent of the Temporary Receiver; and
- F. Doing any act or thing whatsoever to interfere with the Temporary Receiver taking control, possession or management of the property subject to the receivership, or to in any way interfere with the Temporary Receiver or to harass or interfere with the duties of the Temporary Receiver; or to interfere in any manner with the exclusive jurisdiction of this Court over the property and assets of the Receivership Defendants, or their subsidiaries or affiliates.

66. Provided, however, that nothing in this section shall prohibit any federal or state law enforcement or regulatory authority from commencing or prosecuting an action against the Receivership Defendants.

**Compensation for Temporary Receiver and Personnel Hired by the Temporary Receiver**

67. The Temporary Receiver and all personnel hired by the Temporary Receiver as herein authorized, including counsel to the Receiver, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them for those services authorized by this Order that when rendered were (1)

reasonably likely to benefit the receivership estate or (2) necessary to the administration of the estate. However, the Receiver and any personnel hired by the Receiver shall not be compensated or reimbursed by, or otherwise be entitled to, any funds from the Court or the CFTC. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than ninety (90) days after the date of this Order and subsequent requests filed quarterly thereafter. The requests for compensation shall itemize the time and nature of services rendered by the Receiver and all personnel hired by the Receiver.

**Persons Bound By this Order**

68. This Order is binding on any person who receives actual notice of this Order by personal service or otherwise and is acting in the capacity of an officer, agent, servant, employee, or attorney of the Passerino Defendants, or is in active concert or participation with the Passerino Defendants.

**Bond Not Required of Plaintiff or the Temporary Receiver**

69. As Plaintiff Commission has made a proper showing under Section 6c(b) of the Act, 7 U.S.C. 13a-1(b) (2012), it is not required to post any bond in connection with this Order. The Temporary Receiver similarly is not required to post bond.

**Service of Order and Assistance of U.S. Marshals Service and/or Other Law Enforcement Personnel**

70. Copies of this Order may be served by any means, including via email or facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any records or assets of the Passerino Defendants, or that may be otherwise subject to any provision of this Order.



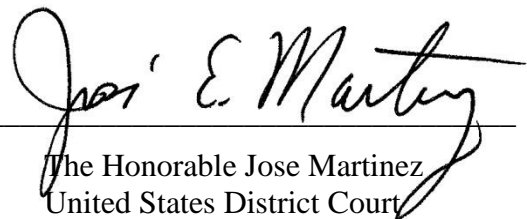
71. Staff of the Division of Enforcement and representatives of the United States Marshal Service and other law enforcement personnel are specially appointed by the Court to effect service.

72. The United States Marshal's Service, the Federal Bureau of Investigation and other law enforcement personnel are authorized to: (a) accompany and assist the Commission's representatives in the service and execution of this Order on the Passerino Defendants, and (b) help maintain lawful order while Commission representatives inspect records as provided in this Order.

**Service on the Commission**

73. The Passerino Defendants shall comply with all electronic filing rules and requirements of the U.S. District Court of the Southern District of Florida and shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Allison V. Passman, Senior Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, Illinois 60661, [apassman@cftc.gov](mailto:apassman@cftc.gov), by electronic filing, e-mail, personal delivery or courier service (such as Federal Express or United Parcel Service) and not by regular mail due to potential delay resulting from heightened security and decontamination procedures applicable to the Commission's regular mail.

DATED: November 16, 2018

  
The Honorable Jose Martinez  
United States District Court