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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT CALIFORNIA
SOUTHERN DIVISION**

COMMODITY FUTURES
TRADING COMMISSION
Plaintiff,

vs.

MONEX DEPOSIT COMPANY,
MONEX CREDIT COMPANY,
NEWPORT SERVICE
CORPORATION, MICHAEL
CARABINI, AND LOUIS
CARABINI
Defendants.

Case No: 8:17-cv-01868-JVS-DFM

CONSENT ORDER [415]

Hon. James V. Selna
Dept. 10C

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

I. INTRODUCTION

On September 6, 2017, the Commodity Futures Trading Commission (“Commission” or “CFTC”), filed a complaint against Defendants Monex Deposit Company, Monex Credit Company, Newport Service Corporation (referred to herein collectively as “Monex” or “Monex Entity Defendants”), Louis Carabini, and Michael Carabini (referred to herein together with Monex as “Defendants”) seeking injunctive and

1 other equitable relief, as well as the imposition of civil penalties, for violations of the
2 Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1–26, and the Commission’s Regulations
3 (“Regulations”) promulgated thereunder, 17 C.F.R. pts. 1–190 (2021). (“Complaint,” ECF
4 No. 1.).¹ Defendants filed their Answer (Dkt. 230) on March 27, 2020, in which they
5 denied the Complaint allegations and asserted various affirmative defenses.

6 II. CONSENTS AND AGREEMENTS

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

9 1. Consent to the entry of this Consent Order for Permanent Injunction, Civil
10 Monetary Penalty, and Other Equitable Relief Against All Defendants (“Consent Order”);

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

15 3. Acknowledge service of the summonses and Complaint;

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

18 5. Admit the jurisdiction of the CFTC over the conduct and transactions at issue
19 in this action pursuant to the Act;

20 6. Admit that venue properly lies with this Court pursuant to 7 U.S.C. § 13a-
21 1(e);

22 7. Waive:

23 a. Any and all claims that they may possess under the Equal Access to Justice
24 Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission
25 in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2021), relating to,
26 or arising from, this action;

27 b. Any and all claims that they may possess under the Small Business Regulatory
28

29 ¹ The CFTC filed an Amended Complaint on March 13, 2020 (ECF No. 225) alleging the same
violations against the same Defendants.

1 Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847,
2 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and
3 15 U.S.C.), relating to, or arising from, this action;

4 c. Any claim of Double Jeopardy based upon the institution of this action or the
5 entry in this action of any order imposing a civil monetary penalty or any other relief,
6 including this Consent Order; and

7 d. Any and all rights of appeal from this action;

8 8. Consent to the continued jurisdiction of this Court over them for the purpose
9 of implementing and enforcing the terms and conditions of this Consent Order and for any
10 other purpose relevant to this action, even if Defendants now or in the future reside outside
11 this judicial district;

12 9. Agree that they will not oppose enforcement of this Consent Order on the
13 ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil
14 Procedure and hereby waive any objection based thereon;

15 10. Agree that neither they nor any of their agents or employees under their
16 authority or control shall take any action or make any public statement denying, directly or
17 indirectly, any allegation in the Complaint, the Amended Complaint, the Court’s October
18 28, 2021 order on the parties’ motions for summary judgment (ECF No. 339, the
19 “Summary Judgment Order”), or the Findings of Fact or Conclusions of Law in this
20 Consent Order, or creating or tending to create the impression that the Complaint,
21 Amended Complaint, Summary Judgment Order, and/or this Consent Order is without a
22 factual basis; provided, however, that nothing in this provision shall affect their:
23 (a) testimonial obligations, or (b) right to take positions in other proceedings to which the
24 Commission is not a party. Defendants shall comply with this agreement, and shall
25 undertake all steps necessary to ensure that all of their agents and/or employees under their
26 authority or control understand and comply with this agreement;

27 11. Consent to the entry of this Consent Order without admitting or denying the
28 allegations of the Complaint or any findings or conclusions in this Consent Order, except
29 as to jurisdiction and venue, which they admit;

1 12. Consent to the use of the Findings of Fact or Conclusions of Law in this
2 Consent Order in this proceeding and in any other proceeding brought by the Commission
3 or to which the Commission is a party or claimant, and agree that they shall be taken as
4 true and correct and be given preclusive effect therein, without further proof;

5 13. Do not consent, however, to the use of this Consent Order, or the Findings of
6 Fact or Conclusions of Law herein, as the sole basis for any other proceeding brought by
7 the Commission or to which the Commission is a party, other than: a statutory
8 disqualification proceeding pursuant to Section 8a(2), (3) and (4), 7 U.S.C. § 12a(2), (3),
9 (4); proceeding in bankruptcy, or receivership; or proceeding to enforce the terms of this
10 Order; and

11 14. Defendants further do not consent to the use of this Consent Order, or the
12 findings or conclusions in this Order, by any other party in any other proceeding; but
13 Defendants agree that no provision of this Consent Order shall in any way limit or impair
14 the ability of any other person or entity to seek any legal or equitable remedy against
15 Defendants in any other proceeding.

16 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

17 The Court, being fully advised in the premises, finds that there is good cause for the
18 entry of this Consent Order and that there is no just reason for delay. The Court therefore
19 directs the entry of the following Findings of Fact, Conclusions of Law, permanent
20 injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, as set
21 forth herein.

22 **A. Findings of Fact**

23 **1. The Parties to this Consent Order**

24 15. Plaintiff Commodity Futures Trading Commission is an independent federal
25 regulatory agency that is charged by Congress with administering and enforcing the Act
26 and the Regulations.

27 16. Monex Deposit Company and Monex Credit Company are California limited
28 partnerships organized in 1987. Newport Service Corporation is a California corporation
29 formed in 1987. All three entities are located in the same building at 4910 Birch Street,

1 Newport Beach, California. Monex Deposit Company, Monex Credit Company, and
2 Newport Service Corporation have never been registered with the Commission in any
3 capacity. As set out in further detail in the Summary Judgment Order, the Monex Entity
4 Defendants operated as a common enterprise and are referred to collectively in this Consent
5 Order as “Monex.”

6 17. Michael Carabini is the primary owner of the Monex Entity Defendants,
7 holding ownership interests directly and through various corporate entities and trusts.
8 Michael Carabini resides in this judicial district. He was the CEO of Monex during the
9 Relevant Period in this case. Michael Carabini is not currently registered with the
10 Commission in any capacity, but has been registered in the past as an Associated Person
11 of Monex International, Ltd., and Monex Trading Corporation, and as a Principal of Monex
12 Options, Ltd.

13 18. Louis Carabini is the founder of Monex. He resides in this judicial district.
14 He is not currently registered with the Commission, but has been registered in the past as
15 an Associate Member, Associated Person and Principal of Monex International, Ltd.,
16 Monex Trading Corporation, and Monex Options Ltd.

17 **2. Monex’s Off-Exchange “Atlas” Commodities Trading Platform**

18 19. During the Relevant Period (July 16, 2011 to August 31, 2021), through its
19 “Atlas” trading account, Monex allowed retail customers to trade gold, silver, platinum and
20 palladium on a leveraged basis. Atlas transactions did not take place on a regulated
21 exchange or board of trade. Instead, Monex operated its own retail over-the-counter
22 platform, allowing customers to speculate on precious metals price movements, with
23 Monex acting as the counterparty to every transaction.

24 20. During the Relevant Period, thousands of Monex Atlas customers engaged in
25 leveraged trading through Monex’s Atlas program (“leveraged Atlas Accounts”). Many
26 leveraged Atlas Accounts were subject to a margin call or had trading positions force-
27 liquidated. In addition, the majority of leveraged Atlas Accounts realized losses
28 (including losses from trading, interest charges, and other fees) during the Relevant
29 Period.

1 21. Further details about the structure of Monex’s Atlas platform are discussed in
2 the Court’s findings in the Summary Judgment Order, ECF No. 339.

3 **3. Monex’s Fraudulent Conduct**

4 22. Monex solicited customers to engage in leveraged trading by first touting the
5 benefits of investing in precious metals as an asset class. Monex emphasized the benefits
6 and importance of having physical precious metals in a portfolio of investments as a hedge
7 against inflation, political and economic uncertainty, civil unrest and other factors and
8 claimed that physical metals are intrinsically valuable, “unlike stocks and bonds.”

9 23. Monex highlighted the potential profitability of precious metals investments,
10 including in a “Profit Opportunity” section of its website. Monex claimed elsewhere on
11 its website that “precious metals can offer outstanding price appreciation and profit
12 potential,” and made other similar claims such as: “What’s more, in recent years, precious
13 metals have also proven to be outstanding short-term trading vehicles, offering traders
14 periods of outstanding profit potential as metals prices fluctuate, sometimes dramatically,
15 on world markets.”

16 24. After statements about the security, intrinsic value and potential profitability
17 of physical precious metals investments, certain Monex sales representatives told
18 customers that trading with leverage in an Atlas account is one potential way to achieve
19 profitability with physical precious metals investments.

20 25. Monex had a vast amount of customer transactional information at its
21 disposal. Monex monitored its Atlas customers’ realized and unrealized gains and losses.
22 Among other statistics, Monex monitored the value of its customers’ open precious metals
23 positions, cash balance, and profits or losses.

24 26. For example, in a daily “Position Report,” Monex captured a detailed snapshot
25 of each Atlas customer account with information including the account’s equity, cushion
26 before a margin call, cash balance, position market value, and the profit or loss on the
27 positions. In its “Position Report Summary,” Monex tracked information for each Atlas
28 customer account including the number of trades executed by the account, profits or
29 losses, the current number of long versus short trades, the total market value of trading

1 positions for each account, and available equity for additional trades. A monthly
2 “Customer Unrealized Loss” report showed Atlas customer account unrealized losses,
3 realized profits or losses and the market value of open trading positions for certain
4 customers. “Forced Liquidations” and “Equity Calls” reports showed the number of
5 forced liquidations and margin calls issued during a month.

6 27. Monex made available these and other reports to management, including
7 defendants Louis and Michael Carabini, summarizing customer data. Many reports during
8 the Relevant Period showed significant losses in leveraged Atlas accounts.

9 28. The majority of leveraged Atlas accounts lost money during the Relevant
10 Period. Monex did not disclose its customers’ performance to its customers or prospects.

11 29. Certain Monex sales training materials encouraged sales representatives to
12 sell prospects on the benefits of leveraged Atlas trading by emphasizing profit potential.
13 For example, Monex training materials used during the Relevant Period provided
14 examples of phrases on sales calls such as:

- 15 a. “If gold were to increase in value by \$100 per ounce in the next year, and you
16 had a 30% to 40% net gain, you’d feel pretty good, wouldn’t you?”
- 17 b. “I’d like to show you some ways that you might earn a very positive return on
18 investments in precious metals today.”
- 19 c. “Discover an opportunity to invest with defined risk, while enjoying the
20 possibility of unlimited upside potential.”
- 21 d. “Would you like the potential to earn an annualized rate of return of 20% or
22 more on your money?”
- 23 e. “Since you’re looking for short term profit, but with defined risk, I think
24 you’re going to love the proposal I have for you.”

25 30. Claims like these were misleading because reports distributed to management
26 during the Relevant Period showed that the majority of leveraged Atlas customers lost
27 money.

28 31. In addition, in unrecorded sales calls during the Relevant Period, certain
29 Monex sales representatives misleadingly pitched the profit potential of investing with

1 leverage through the Atlas Program.

2 32. Monex training materials used during the Relevant Period taught sales
3 representatives to “close” sales with solicitations designed to earn the trust of prospective
4 customers, and with language emphasizing profit potential. A video used to train sales
5 representatives during the Relevant Period stated that Monex sales representatives have a
6 fiduciary relationship to Atlas customers analogous to the relationship between a lawyer and
7 her client.

8 33. Despite the availability of transactional data showing significant losses being
9 suffered by Atlas customers during the Relevant Period, Monex trained and incentivized
10 its sales representatives to encourage prospects to open Atlas trading accounts, and to
11 encourage leveraged trading in these accounts.

12 34. Monex’s compensation structure for sales representatives reinforced the goal
13 to open Atlas accounts and encourage leveraged trading in these accounts. Sales
14 representatives (and Monex) made more money when customers purchased and sold
15 precious metals using leverage in their Atlas accounts. The higher the volume and dollar
16 amount of purchases and sales, the more commissions and bonuses Monex sales
17 representatives made. The higher the volume and dollar amount of transactions, the more
18 sales revenue Monex made. The higher the loan and transaction amount, the more interest
19 and service and storage fees Monex charged.

20 35. Certain of Monex’s claims about the profitability of leveraged Atlas
21 transactions during the Relevant Period were misleading. Certain leveraged Atlas
22 customers who expected they would profit from engaging in leveraged Atlas transactions
23 during the relevant period instead suffered losses.

24 **4. Michael and Louis Carabini Are Controlling Persons of Monex**

25 36. Louis Carabini is the founder of Monex. Despite passing on many operational
26 responsibilities to his son Michael, Louis Carabini remained involved in Monex’s
27 operations during the relevant period.

28 37. During the relevant period, Michael Carabini was the primary operational
29 overseer of Monex and was the majority owner of both Monex Deposit Company and

1 Monex Credit Company.

2 38. All Monex employees ultimately reported to Michael and Louis Carabini
3 during the relevant period, including high level executives such as Monex's C.F.O., the
4 head of Monex's Sales department, and the head of Monex's Trading department. Michael
5 Carabini and Louis Carabini do not report to anyone. They supervise, direct, manage,
6 determine compensation for, and hire and fire sales managers, department heads, in-house
7 and external counsel, and compliance officers.

8 39. Michael and Louis Carabini controlled Monex's bank and financial accounts.
9 Michael Carabini was a signatory on all of the Monex (and its various corporate affiliates)
10 bank and other financial accounts during the relevant period. Louis Carabini was a
11 signatory on most of the same accounts.

12 40. Michael and Louis Carabini had access during the Relevant Period to data and
13 information from Monex's transactional database showing losses by Monex Atlas
14 customers, and gains by Monex and its sales representatives.

15 41. Michael and Louis Carabini were involved in reviewing and responding to
16 certain Monex customer complaints during the Relevant Period.

17 42. Michael Carabini was primarily responsible for Monex's marketing function,
18 including its advertisements and the content of the Monex website located at
19 www.monex.com. Michael and Louis Carabini were involved in developing Monex's sales
20 materials, and its sales policies and procedures, during the Relevant Period.

21 **C. Conclusions of Law**

22 **1. Jurisdiction and Venue**

23 43. This Court possesses jurisdiction over this action pursuant to 28 U.S.C. § 1331
24 (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (providing that U.S. district
25 courts have original jurisdiction over civil actions commenced by the United States or by
26 any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act,
27 7 U.S.C. § 13a-1(a), provides that the CFTC may bring actions for injunctive relief or to
28 enforce compliance with the Act or any rule, regulation, or order thereunder in the proper
29 district court of the United States whenever it shall appear to the CFTC that any person has

1 engaged, is engaging, or is about to engage in any act or practice constituting a violation
2 of any provision of the Act or any rule, regulation, or order thereunder.

3 44. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because
4 Defendants reside in this jurisdiction and the acts and practices in violation of the Act
5 occurred within this District.

6 **2. Off-Exchange Transactions in Violation of Section 4(a) of the CEA**

7 45. By the conduct described above in paragraphs 19 through 21, and paragraphs
8 36 through 42, between July 16, 2011 and August 31, 2021, Defendants Louis Carabini
9 and Michael Carabini violated Section 4(a) of the CEA, 7 U.S.C. § 6(a), by conducting an
10 office or business in the United States for the purpose of soliciting, accepting any order for,
11 or otherwise dealing in retail commodity transactions.

12 46. Further, as more specifically set forth in paragraphs 36 through 42, Louis
13 Carabini and Michael Carabini controlled Monex and knowingly induced, directly or
14 indirectly, the acts constituting Monex's execution of off-exchange retail commodity
15 transactions. As a result, pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b), Louis
16 Carabini and Michael Carabini are liable as controlling persons for Monex's violations of
17 Section 4(a) of the CEA, 7 U.S.C. § 6(a), set out in this Court's Summary Judgment Order.

18 **3. Fraud in Violation of Section 4b(a)(2)(A) and (C) of the CEA**

19 47. Between July 16, 2011 and August 31, 2021, Monex defrauded customers,
20 attempted to defraud customers, and deceived or attempted to deceive customers in regard
21 to orders for, or the disposition or execution of, financed retail commodity transactions.

22 48. As more specifically set forth in paragraphs 22 through 35, Monex knowingly
23 made materially misleading statements to customers during the Relevant Period about the
24 profit potential of financed trading on its Atlas trading platform, and knowingly failed to
25 disclose material information necessary to make those representations not materially
26 misleading.

27 49. Pursuant to Section 2(c)(2)(D)(iii) of the CEA, 7 U.S.C. § 2(c)(2)(D)(iii),
28 Monex's financed retail commodity transactions are subject to Section 4b of the CEA, 7
29 U.S.C. § 6b, as if they are contracts of sale of a commodity for future delivery.

1 50. Therefore, Monex violated Section 4b(a)(2)(A) and (C) of the CEA, 7 U.S.C.
2 § 6b(a)(2)(A), (C).

3 51. As more specifically set forth in paragraphs 36 through 42, Louis Carabini
4 and Michael Carabini controlled Monex and knowingly induced, directly or indirectly, the
5 acts constituting Monex's violations alleged in this count. As a result, pursuant to Section
6 13(b) of the CEA, 7 U.S.C. § 13c(b), Louis Carabini and Michael Carabini are liable for
7 Monex's violations of Section 4b(a)(2)(A) and (C) of the CEA, 7 U.S.C. § 6b(a)(2)(A),
8 (C), as controlling persons.

9 **4. Fraud in Violation of Section 6(c)(1) of the CEA and Regulation**
10 **180.1(a)(1)-(3)**

11 52. As more specifically set forth in paragraphs 22 through 35, between August
12 15, 2011 and August 31, 2021, in connection with contracts of sale of commodities in
13 interstate commerce, Monex knowingly made materially misleading statements to
14 customers about the profit potential of financed trading on its Atlas trading platform, and
15 knowingly failed to disclose material information necessary to make those representations
16 not materially misleading.

17 53. Monex therefore violated Section 6(c)(1) of the CEA, 7 U.S.C. § 9(1), and
18 Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2021).

19 54. As more specifically set forth in paragraphs 36 through 42, Louis Carabini
20 and Michael Carabini controlled Monex and knowingly induced, directly or indirectly, the
21 acts constituting Monex's violations. As a result, pursuant to Section 13(b) of the CEA, 7
22 U.S.C. § 13c(b), Louis Carabini and Michael Carabini are liable for Monex's violations of
23 Section 6(c)(1) of the CEA, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)-(3), 17 C.F.R.
24 § 180.1(a)(1)-(3) (2021), as controlling persons.

25 **IV. PERMANENT INJUNCTION**

26 55. Based upon and in connection with the foregoing conduct, pursuant to Section
27 6c of the CEA, 7 U.S.C. § 13a-1, Defendants Louis and Michael Carabini are permanently
28 restrained, enjoined and prohibited from directly or indirectly conducting any office or
29 business anywhere in the United States, its territories or possessions, for the purpose of

1 soliciting or accepting any order for, or otherwise dealing in retail commodity transactions
2 within the scope of and not excepted from Section 2(c)(2)(D) of the Commodity Exchange
3 Act, 7 U.S.C. § 2(c)(2)(D).

4 56. In addition, based upon and in connection with the foregoing conduct,
5 pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, Defendants Monex Deposit Company,
6 Monex Credit Company, Newport Service Corporation, Louis Carabini, and Michael
7 Carabini are permanently restrained, enjoined and prohibited from directly or indirectly:

- 8 A. Cheating or defrauding, or attempting to cheat or defraud, other persons in or
9 in connection with any order to make, or the making of, any retail commodity
10 transactions in violation of Section 4b(a)(2)(A) of the CEA, 7 U.S.C.
11 § 6b(a)(2)(A);
- 12 B. Willfully deceiving or attempting to deceive customers in regard to orders for,
13 or the disposition or execution of, retail commodity transactions in violation
14 of Section 4b(a)(2)(C) of the CEA, 7 U.S.C. § 6b(a)(2)(C);
- 15 C. Using or employing, or attempting to use or employ, a scheme or artifice to
16 defraud in violation of 6(c)(1) of the CEA, 7 U.S.C. § 9(1), and Regulation
17 180.1(a)(1), 17 C.F.R. § 180.1(a)(1) (2021);
- 18 D. Making, or attempting to make, in connection with contracts of sale of
19 commodities in interstate commerce, untrue or misleading statements of
20 material fact, or omitting to state material facts necessary to make the
21 statements made not untrue or misleading, in violation of 6(c)(1) of the CEA,
22 7 U.S.C. § 9(1), and Regulation 180.1(a)(2), 17 C.F.R. § 180.1(a)(2) (2021);
- 23 E. Engaging in, or attempting to engage in, acts, practices, or a course of business
24 that operated or would operate as a fraud or deceit on Monex's customers in
25 violation of 6(c)(1) of the CEA, and Regulation 180.1(a)(3), 17 C.F.R.
26 § 180.1(a)(3) (2021);
- 27 F. Making material misrepresentations or omissions to its customers or
28 prospective customers about the safety, security, profit potential, or risk of
29 investing in or trading of commodities; and

1 G. failing to disclose material information to customers or prospective customers
2 in connection with investments in or trading of commodities.

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

5 a. Trading on or subject to the rules of any registered entity (as that term is
6 defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40)), unless such trading
7 is for their own personal account or any account in which they have a direct
8 or indirect interest and is for hedging, which may include taking or making
9 delivery of the underlying commodity;

10 b. Controlling or directing the trading for or on behalf of any other person or
11 entity, whether by power of attorney or otherwise, in any account involving
12 “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R.
13 § 1.3 (2021)); and

14 c. Soliciting, receiving or accepting any funds from any person for the purpose
15 of purchasing or selling any commodity interests.

16 58. Defendants are also restrained, enjoined and prohibited for a period of ten (10)
17 years from directly or indirectly:

18 a. Applying for registration or claiming exemption from registration with the
19 Commission in any capacity, and engaging in any activity requiring such
20 registration or exemption from registration with the Commission, except as
21 provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2021); and/or

22 b. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R.
23 § 3.1(a) (2021)), agent or any other officer or employee of any person (as that
24 term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38)), registered,
25 exempted from registration or required to be registered with the Commission
26 except as provided for in 17 C.F.R. § 4.14(a)(9) (2021).

27 **V. RESTITUTION AND CIVIL MONETARY PENALTY**

28 **A. Restitution**

29 59. Defendants shall pay, jointly and severally, restitution in the amount of Thirty-

1 Three Million Dollars (**\$33,000,000**) (“Restitution Obligation”) within thirty (30) days of
2 the date of entry of this Consent Order. If the Restitution Obligation is not paid in full
3 within thirty days of the date of entry of the Consent Order, then post-judgment interest
4 shall accrue on the unpaid portion of the Restitution Obligation beginning on the date of
5 entry of this Consent Order and shall be determined by using the Treasury Bill rate
6 prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

7 60. To effect payment of the Restitution Obligation and the distribution of any
8 restitution payments to Defendants’ customers, the Court appoints the National Futures
9 Association (“NFA”) as Monitor (“Monitor”). The Monitor shall receive restitution
10 payments from Defendants and make distributions as set forth below. Because the Monitor
11 is acting as an officer of this Court in performing these services, NFA shall not be liable
12 for any action or inaction arising from NFA’s appointment as Monitor, other than actions
13 involving fraud.

14 61. Defendants shall make Restitution Obligation payments, and any post-
15 judgment interest payments, under this Consent Order, to the Monitor in the name
16 “MONEX SETTLEMENT RESTITUTION FUND” and shall send such payments by
17 electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s
18 check, or bank money order, to the Office of Administration, National Futures Association,
19 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that
20 identifies the paying Defendant(s) and the name and docket number of this proceeding.
21 Defendants shall simultaneously transmit copies of the cover letter and the form of payment
22 to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette
23 Centre, 1155 21st Street, NW, Washington, D.C. 20581.

24 62. The Monitor shall oversee the Restitution Obligation and shall have the
25 discretion to determine the manner of distribution of such funds in an equitable fashion to
26 Defendants’ customers identified by the CFTC or may defer distribution until such time as
27 the Monitor deems appropriate. It is the intent of this Consent Order that the entirety of
28 the Restitution Obligation will be distributed to Defendants’ customers to effect payment
29 of the Restitution Obligation. In the event that the amount of Restitution Obligation

1 payments remaining to be made by the Monitor are of a de minimis nature such that the
2 Monitor determines that the administrative cost of making further distributions to eligible
3 customers is impractical, the Monitor may, in its discretion, treat such restitution payments
4 as civil monetary penalty payments, which the Monitor shall forward to the CFTC
5 following the instructions for civil monetary penalty payments set forth in Part V. B. below.

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

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

19 65. The amounts payable to each customer shall not limit the ability of any
20 customer from proving that a greater amount is owed from Defendants or any other person
21 or entity, and nothing herein shall be construed in any way to limit or abridge the rights of
22 any customer that exists under state or common law.

23 66. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of
24 Defendants who suffered a loss is explicitly made an intended third-party beneficiary of
25 this Consent Order and may seek to enforce obedience of this Consent Order to obtain
26 satisfaction of any portion of the restitution that has not been paid by Defendants to ensure
27 continued compliance with any provision of this Consent Order and to hold Defendants in
28 contempt for any violations of any provision of this Consent Order.

29 67. To the extent that any funds accrue to the U.S. Treasury for satisfaction of

1 Defendants' Restitution Obligation, such funds shall be transferred to the Monitor for
2 disbursement in accordance with the procedures set forth above.

3 **B. Civil Monetary Penalty**

4 68. Defendants shall pay, jointly and severally, a civil monetary penalty in the
5 amount of Five Million Dollars (\$5,000,000) ("CMP Obligation"), within thirty (30) days
6 of the date of the entry of this Consent Order. If the CMP Obligation is not paid in full
7 within thirty days of the date of entry of this Consent Order, then post-judgment interest
8 shall accrue on the unpaid portion of the CMP Obligation beginning on the date of entry
9 of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on
10 the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

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

16 MMAC/ESC/AMK326
17 Commodity Futures Trading Commission
18 6500 S. MacArthur Blvd.
19 HQ Room 266
Oklahoma City, OK 73169
9-amz-ar-cftc@faa.gov

20 If payment by electronic funds transfer is chosen, Defendants shall contact Tonia King or
21 her successor at the address above to receive payment instructions and shall fully comply
22 with those instructions. Defendants shall accompany payment of the CMP Obligation with
23 a cover letter that identifies Defendant(s) and the name and docket number of this
24 proceeding. Defendant(s) shall simultaneously transmit copies of the cover letter and the
25 form of payment to the Chief Financial Officer, Commodity Futures Trading Commission,
26 Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

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

28 70. Partial Satisfaction: Acceptance by the CFTC or the Monitor of any partial
29 payment of Defendants' Restitution Obligation or CMP Obligation shall not be deemed a

1 waiver of Defendants' obligation to make further payments pursuant to this Consent Order,
2 or a waiver of the CFTC's right to seek to compel payment of any remaining balance.

3 **VI. MISCELLANEOUS PROVISIONS**

4 71. Until such time as Defendants satisfy in full their CMP and Restitution
5 Obligations under this Order, upon the commencement by or against Defendants of
6 insolvency, receivership or bankruptcy proceedings or any other proceedings for the
7 settlement of Defendants' debts, all notices to creditors required to be furnished to the
8 Commission under Title 11 of the United States Code or other applicable law with respect
9 to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the
10 address below:

11 Secretary of the Commission
12 Commodity Futures Trading Commission
13 Three Lafayette Centre
14 1155 21st Street N.W.
15 Washington, DC 20581

16 72. Notice: All notices required to be given by any provision in this Consent
17 Order, except as set forth in paragraph 71 above, shall be sent certified mail, return receipt
18 requested, as follows:

19 Notice to CFTC:

20 Robert Howell
21 Deputy Director, Division of Enforcement
22 Commodity Futures Trading Commission
23 77 W. Jackson Blvd., Ste. 800
24 Chicago, Illinois 60604

25 Notice to Defendants:

26 Elizabeth Dorsi
27 Farella Braun Martel LLP
28 235 Montgomery Street, 17th Floor
29 San Francisco, California 94104

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

1 73. Change of Address/Phone: Until such time as Defendants satisfy in full their
2 Restitution Obligation and CMP Obligation as set forth in this Consent Order, Defendants
3 shall provide written notice to the Commission by certified mail of any change to their
4 telephone numbers and mailing addresses within ten calendar days of the change.

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

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

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

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

25 78. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief
26 provisions of this Consent Order shall be binding upon the following persons who receive
27 actual notice of this Consent Order, by personal service or otherwise: (1) Defendants;
28 (2) any officer, agent, servant, employee, or attorney of the Defendants; and (3) any other
29 persons who are in active concert or participation with any persons described in subsections

1 (1) and (2) above.

2 79. Authority: Michael Carabini hereby warrants that he is CEO of the Monex
3 Entity Defendants (Monex Deposit Company, Monex Credit Company, and Newport
4 Service Corporation), and that this Consent Order has been duly authorized by these Monex
5 Entity Defendants and he has been duly empowered to sign and submit this Consent Order
6 on behalf of the Monex Entity Defendants.


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

15 81. Contempt: Defendants understand that the terms of the Consent Order, except
16 with respect to restitution, are enforceable through contempt proceedings, and that, in any
17 such proceedings they may not challenge the validity of this Consent Order.

18 82. Agreements and Undertakings: Defendants shall comply with all of the
19 undertakings and agreements set forth in this Consent Order.

20 There being no just reason for delay, the Clerk of the Court is hereby ordered to enter
21 this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable
22 Relief forthwith and without further notice.

23
24 IT IS SO ORDERED on this 19th day of December, 2022.

25
26
27 
28 JAMES V. SELNA

29 UNITED STATES DISTRICT JUDGE

1 CONSENTED TO AND APPROVED

Dated _____

2 BY:

3 Approved as to form:

4 _____
5 Monex Deposit Company

6 Date:

Elizabeth Dorsi
Farella Braun Martel LLP
Attorney for Monex Deposit Company,
Monex Credit Company, Newport
Service Corporation, Louis Carabini, and
Michael Carabini
235 Montgomery Street, 17th Floor
San Francisco, California 94104

7 _____
8 Monex Credit Company

9 Date: _____

10 _____
11 Newport Service Corporation

12 Date:

13 _____
14 Louis Carabini, individually

15 Date: _____

16 _____
17 Michael Carabini, individually

18 Date: _____

19 _____
20 _____
21 _____
22 _____
23 _____
24 Carlin Metzger
25 Senior Trial Attorney
26 Commodity Futures Trading Commission
27 77 W. Jackson Blvd., Suite 800
28 312-596-0536
29 CMetzger@cftc.gov