

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

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UNITED STATES COMMODITY  
FUTURES TRADING COMMISSION

and

CASE NO. 03-CV-603-KI

STATE OF OREGON *EX REL* CORY  
STREISINGER, DIRECTOR OF THE  
DEPARTMENT OF CONSUMER AND  
BUSINESS SERVICES, in her official  
capacity,

ORDER OF DEFAULT JUDGMENT  
FOR PERMANENT INJUNCTION,  
ANCILLARY EQUITABLE RELIEF,  
AND CIVIL MONETARY PENALTY  
AGAINST ORION INTERNATIONAL,  
INC.

Plaintiffs,

v.

ORION INTERNATIONAL, INC.,  
RUSSELL B. CLINE,  
APRIL DUFFY,  
BANGONE VORACHITH, and  
NANCY HOYT,

Defendants.

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I.

INTRODUCTION

This matter is before this Court on the motion of plaintiffs United States Commodity Futures Trading Commission ("CFTC") and the State of Oregon Department of Consumer and Business Services ("State of Oregon") seeking entry of a judgment by default for all the relief requested in its Complaint against defendant Orion International, Inc. ("Orion") for Orion's failure to appear or otherwise defend in this cause.

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The Court has considered the Complaint, the CFTC's *Motion For Statutory Ex Parte Restraining Order, Expedited Discovery, Preliminary Injunction, and Other Equitable Relief* containing sworn testimonial evidence supporting the allegations in the Complaint and the relief requested, and the complete record in this case. Being fully advised in the premises, the Court finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law, and orders of permanent injunction, restitution, and other equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

## II.

### **JURISDICTION AND VENUE**

This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the CFTC that any 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 promulgated thereunder, the CFTC may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

The CFTC has jurisdiction over the transactions in foreign currency alleged herein. Pursuant to Sections 2(c)(2)(B) of the Act and 4(a), 7 U.S.C. §§ 2(c)(2)(B) and 6(a), an agreement, contract or transaction in foreign currency that is a contract of sale of a commodity for future delivery, that is offered to, or entered into with a person that is not an eligible contract participant must be conducted on or subject to the rules of a board of trade designated or registered by the CFTC as a contract market or derivatives transaction execution facility for such commodity, and executed or consummated by or through a contract market, unless the counterparty to the transaction one of the six regulated entities designated under Section

2(c)(2)(B)(ii) of the Act, 7 U.S.C. § 2. Orion was not a proper counterparty who could offer and/or enter into foreign currency futures transactions with persons who are not eligible contract participants, i.e., retail customers.

This Court also has jurisdiction over this action pursuant to Section 6d(1) of the Act, 7 U.S.C. § 13a-2, which provides that whenever it shall appear to any State that the interests of the residents of the State have been, are being, or may be threatened or adversely affected because of such violations of the Act, the State may bring a suit in the district courts of the United States to enjoin such acts or practices and to enforce compliance with the Act, or to obtain such other and further relief as the court deems appropriate, including the Oregon Securities Law claims brought pursuant to Section 12(e) of the Act, 7 U.S.C. § 16(e), over which this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Orion maintained an office and transacted business in the District of Oregon, and the acts and practices in violation of the Act and the Oregon Securities Law occurred within this District, among other places.

### III.

#### **ORION IS IN DEFAULT**

1. The Complaint was filed on May 7, 2003. Defendant Orion was served with the Complaint and this Court's Summons on May 8, 2003. The affidavit of service of the Complaint and Summons on Orion has been filed with the Court.

2. Defendant Orion is a corporation. Orion was incorporated in Western Samoa under the name Falcon International, Inc. on February 25, 1998. On July 2, 1998, Falcon

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International, Inc. changed its corporate name to Orion International, Inc. Defendant Russell B. Cline ("Cline") has represented that he is the President, Director, and Head Trader of Orion.

3. On May 8, 2003, Orion was served with the Complaint and this Court's Summons by providing the Complaint and Summons to Cline in his capacity as an agent and officer of Orion.

4. Defendant Orion has not filed an answer to the Complaint and has not otherwise appeared before this Court to defend in this cause.

5. Defendant Orion is neither an infant nor incompetent person, and is not eligible for relief under the *Soldiers' and Sailors' Civil Relief Act of 1940* (50 U.S.C. Appendix, § 501 *et seq.*).

6. No appearance has been entered by counsel on behalf of the corporation Orion. As a corporation, Orion may not appear or otherwise plead *pro se* in this litigation.

7. The Clerk of the Court has entered a default against defendant Orion pursuant to Fed. R. Civ. P. 55 based on Orion's failure to appear in this proceeding. The allegations in the Complaint against defendant Orion are deemed admitted based on Orion's failure to appear or defend in this proceeding.

IV.

**FINDINGS OF FACT**

**A. Summary of Facts**

1. From at least December 1998 to at least March 2003, Orion engaged in pervasive, willful, and systematic fraud in connection with his purported operation of a foreign currency investment fund called the Orion Fund. Orion fraudulently solicited \$40,148,112.98 from at least 542 investor accounts established at Orion. Orion obtained these funds obtained from

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members of the public to participate in the Orion Fund and through the Orion Fund to engage in illegal off-exchange foreign currency futures transactions. Orion misappropriated millions of dollars in customer funds for personal uses, including using customer funds to pay for houses, furniture, automobiles, and entertainment. Orion also used customer funds to pay others who participated in the scheme to defraud Orion's customers.

2. Orion fraudulently solicited individuals to send funds to accounts under its control at various domestic and offshore banks by falsely representing to investors that trading in the Orion Fund had produced annual profits in excess of 150% and had produced profits every month from December 1998 through May 2002. Contrary to Orion's representations that the funds sent to the account were being used to trade foreign currencies, Orion used virtually all the funds in the account for personal goods and services, transferred them to personal bank accounts, or transferred them to persons or entities unrelated to foreign currency trading.

3. Orion falsely represented that customer funds would be immediately transferred to a trading firm located in the United Kingdom. Instead, only a portion of those funds were transferred to the trading firm. Orion deposited those funds into several accounts at the trading firm and incurred numerous monthly losses. To the extent that profits were made, those profits were offset by trading losses. Virtually the entire amount of customer funds deposited into the trading accounts was subsequently transferred to offshore bank accounts under Orion's control.

4. In order to hide the misappropriation of customer funds and trading losses, Orion provided customers with false written reports showing consistent profits in their accounts and made oral misrepresentations regarding trading profits.

5. After misappropriating virtually all of the customer funds received, Orion falsely informed investors in August 2002 that "unrealized long term positions" in the market had to be

closed out causing losses in excess of 90% of the total pool of funds. At that time, Orion notified investors that all requests for withdrawals from accounts would be cancelled and all accounts would be frozen. Since that time, customers have been unable to secure a return of their funds.

6. In March 2003, Orion falsely informed customers that the Orion Fund had a balance of over \$6.5 million in December 2002 that was attributable to a 210% trading gain between July and November 2002. Contrary to these representations, the Orion Fund trading accounts had a balance of approximately \$240,000 in December 2002 and had sustained losses of almost \$400,000 between July and November 2002.

7. Orion fraudulently solicited persons to send funds totaling \$40,148,112.98 to bank accounts under defendants' control for the purpose of engaging in illegal foreign currency futures transactions and misappropriated those funds. Orion sent funds back to some of these persons totaling \$13,150,651.49 and falsely represented that those funds were profits from trading. Some of the persons receiving a return of funds received more than their investment and thus did not suffer losses on their investment. These overpayments amounted to \$1,825,572.41 and do not constitute a reduction in the amount of losses to customers. Accordingly, the total customer losses amount to \$28,823,033.90. None of these persons have obtained a full return of their funds.

#### **B. Orion Fraudulently Solicited Customers**

8. From at least December 1998 to at least March 2003, Orion fraudulently solicited retail customers throughout the United States and elsewhere to send funds to Orion for the purpose of engaging in illegal foreign currency transactions by participating in the Orion Fund.

9. Cline incorporated Orion in Western Samoa under the name Falcon International, Inc. on February 25, 1998. On July 2, 1998, Cline caused Falcon International, Inc. to change its

name to Orion International, Inc. Orion has conducted business operations out of various homes belonging to Cline in Oregon, including homes in Beaverton, Lake Oswego, and Portland. Orion has never been registered with the CFTC, has never registered its securities, and has never been licensed with the DCBS under the Oregon Securities Law.

10. Orion solicited customers to participate in the Orion Fund through an Internet website having an address of [www.orionfx.com](http://www.orionfx.com) ("Orion Website"), and through personal contacts by its president Cline and other employees. In its solicitations, Orion represented to customers that their funds would be pooled with the funds of other customers for the purpose of engaging in foreign currency transactions. Orion solicited customers to send funds to domestic and foreign accounts under Cline's control, including accounts at Bank of America in the United States, Australian New Zealand Bank in Samoa, First Swedish Savings EK in Sweden, Sovereign Chartered Bank in Switzerland, Loyal Bank in St. Vincent, Bermuda Commercial Bank in Bermuda, and Worldwide Financial Credit Union in Nevis.

11. Orion represented to customers that their funds would be transferred to Orion's trading account located in London, England, immediately after Orion received them. Orion represented to customers that they could verify that their funds were invested and check the status of their investment in the Orion Fund by accessing their individual account balance sheets through the Orion Website.

12. Cline represented to Orion employees and at least some customers that customer funds were transferred to Orion's account at Currency Management Corporation PLC, ("CMC"), a trading firm located in London, England, immediately after they were received by Orion. Orion issued a written brochure to at least some customers stating that all funds received by

Orion for the purpose of trading foreign currency immediately will be “deposited with Orion’s broker Currency Management Corporation (CMC) in London.”

### **Misrepresentations of Profit**

13. As part of its solicitations, Orion claimed that investors in the Orion Fund had made extraordinary profits. Orion represented to customers that the Orion Fund had been profitable every month between December 1998 and May 2002. Orion also told customers that the Orion Fund had either met or exceeded its expected annual earnings of at least 96% in the first four years since its inception and commencement of trading.

14. Orion represented to customers that they could expect a return on their investment of 8% per month because, “based on trades and the compounding principle, Orion has provided an average return in excess of 150% per year for its members.”

15. Contrary to Orion’s representations of profits, many customers were unable to make trading profits through their investment in the Orion Fund because their funds were not transferred to a trading firm for the purpose of trading foreign currencies and, instead, were misappropriated by Cline. To the extent that customer funds were transferred to Orion’s accounts at CMC trading in those accounts resulted in numerous monthly trading losses and, in those few months where trading profits were made, those profits were offset by substantial losses.

### **Misrepresentations of Risk**

16. In addition to profit misrepresentations, Orion misrepresented the risk of loss associated with trading foreign currency futures contracts through investing in the Orion Fund by making material statements minimizing the risk of loss.

17. Through the Orion Website, Orion claimed that the Forex market “mathematically conforms to technical analysis charting and obeys technical rules, which presents the opportunity to trade with minimal risk.”

18. Orion further represented to potential customers that risk is “substantially minimized” because Orion only commits an average of 20% of its pool of funds to any trade positions in progress.

19. Orion also represented that “Orion’s trading protocol determines and then verifies minimum risk before execution of a trade” and that “Orion always places stop loss protection orders simultaneously when a position is opened so no open trade can ever experience severe or unexpected loss.”

20. Orion’s representations of minimal risk of loss to customers and potential customers were materially false because the risk of loss in trading futures on foreign currency is high.

### **C. Orion Misappropriated Investor Funds**

21. Contrary to Orion’s representations, investors’ funds sent to Orion to invest in the Orion Fund and through the Fund to trade foreign currency futures contracts were not immediately transferred to Orion’s trading account at CMC or any trading firm. Customer funds were deposited in various domestic and offshore bank accounts under Cline’s control and were not used for the purpose of trading foreign currencies. Instead, Orion misappropriated customer funds for personal uses.

22. Cline instructed some investors to deposit their funds into a trust account at the Bank of America (“Orion Trust Account”). Cline exercised control over the Orion Trust Account and directed or approved all disbursements from the Orion Trust Account.

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23. Approximately \$9.3 million in customer funds was deposited into the Orion Trust Account between April 2000 and March 2002. Almost all of these funds, instead of being sent to the Orion trading account at CMC, were transferred to bank accounts directly or indirectly controlled by Cline or used to pay for personal expenses, personal goods and services, or payments to individuals and entities unrelated to foreign currency trading.

24. Cline used funds from the Orion Trust Account and other bank accounts under his direct or indirect control to purchase large homes, pay for luxury automobiles, and pay for vacation expenses, including the rental of private jets. Cline also transferred funds to other accounts under his control at Bank of America.

25. Customer funds were also deposited into a personal trust account under the control of Cline at Bank of America. Cline used funds from this account to pay for extravagant personal expenses including over \$500,000 for house furnishings, over \$500,000 for automobile related purchases, over \$260,000 for vacation travel, over \$50,000 for private jet rental, over \$150,000 for home furniture, over \$100,000 for audio visual systems, over \$12,000 for adult videos, and almost \$3,000 for limousines.

26. Only \$300,000 of the customer funds deposited in the Orion Trust Account was transferred for the purported purpose of trading in foreign currencies. Cline directed a transfer of \$300,000 on September 27, 2001 from the Orion Trust Account to an account in the name of Orion at CMC. Cline used those funds to trade illegal off-exchange futures contracts on foreign currency and later transferred funds from that account to off-shore bank accounts under his control.

**D. Orion Issued False Trading Reports**

27. To conceal misappropriation of funds and trading losses, Orion provided false trading reports to investors after receiving their funds. Between December 1998 and March 2003, Orion provided false statements and reports to customers through the Orion Website and through Cline' personal contacts with customers. Orion represented on the trading statements and reports provided to investors through the Orion Website that the Orion Fund had achieved gains for every month from December 1998 through May 2002. These statements and reports were false because a substantial amount of funds received by Orion from customers was not transferred to a trading firm for the purpose of trading foreign currency futures contracts and, to the extent that Orion used customer funds to trade foreign currency futures contracts, the results of the trading were contrary to the reports of profitable trading provided to customers.

28. Orion maintained five (5) trading accounts in its name of Orion at CMC between August 1998 and May 2002. Contrary to Orion's representations that the Orion Fund had produced profits every month from December 1998 through May 2002, in 29 of those months Orion's accounts at CMC either were not traded or sustained losses. For example, Orion reported a 3.6% gain in the Orion Fund for the month of September 2001 when, in fact, the CMC trading records revealed a 60.33% loss for that month. Moreover, contrary to Orion's representations to investors in 2001 that the Orion Fund had provided an average return in excess of 150% per year over the last two years, the Orion trading accounts sustained losses of 100% in 1999 and approximately 64% in 2000.

29. At various times since December 1998, Orion posted false information on the "general member news" portion of the Orion Website informing investors of the monthly investment gains achieved by the Orion Fund.

30. In August 2002, Orion falsely informed investors through the Orion Website that, because of certain “unrealized long term positions” in the market that had to be closed out, the Orion Fund had lost in excess of 90% of its total pool of funds. Orion further falsely informed investors through the Orion Website that, because of these losses, all pending requests for withdrawals from accounts would be cancelled and all accounts would be frozen.

31. In March 2003, Orion falsely informed investors through the Orion Website that the 90% loss of customer funds reported in August 2002 had left only \$1,486,572 in the Orion Fund and that the trading account had increased to \$6,561,100 as of the beginning of December 2002. Contrary to these representations, the balance in the Orion trading account at CMC in August 2002 was approximately \$600,000 and, after sustaining substantial trading losses, the balance in the trading account on December 31, 2002 was about \$240,000.

**E. Orion Solicited Illegal Off-Exchange Futures Contracts**

32. Orion purported to offer participants the opportunity to trade contracts in “spot” foreign currency through the Orion Fund. In fact, the contracts Orion offered were illegal off-exchange foreign currency futures contracts.

33. The foreign currency investments that Orion marketed entailed the purchase or sale of commodities for future delivery at prices or using pricing formulas that were established at the time the contracts were initiated, and could be fulfilled through offset, cancellation, cash settlement or other means to avoid delivery.

34. Orion marketed these contracts to the general public by soliciting participation in the Orion Fund. Unlike parties to a spot transaction, neither the Orion Fund itself, as the actual party being offered the contracts, nor the underlying Orion Fund customers had any commercial need for the foreign currency. Indeed, neither the Orion Fund nor the underlying investors

anticipated taking, or in fact took, delivery of the foreign currencies the Orion Fund may have purchased. Instead, the Orion Fund and Orion's customers, through the Orion Fund, entered into these transactions to speculate and profit from anticipated price fluctuations in the markets for these currencies.

35. Orion advised customers through the Orion Website that trading in the Orion Fund was based on "unusual volatility and movement in the market creating a probability to realize exceptional earnings." Cline also represented through the Orion Website that positions in the market may be held open for as long as several months to afford them sufficient time to capture price movements.

36. Orion did not offer, sell, enter into, confirm the execution of, and/or conduct business of soliciting, accepting any order for or otherwise dealing in off-exchange foreign currency contracts in connection with foreign currency futures transactions on or subject to the rules of a board of trade that has been designated by the CFTC as a contract market or derivatives transaction facility, nor are any of these transactions executed or consummated by or through a member of such a contract market or derivatives transaction execution facility.

37. Section 2(c)(2)(B)(i) and (ii) of the Act, 7 U.S.C. § 2, provides that the CFTC shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, so long as the contract is "offered to, or entered into with, a person that is not an eligible contract participant" unless the counterparty, or the person offering to be the counterparty, is a regulated entity as specified in Section 2(c)(2)(B)(ii) of the Act, 7 U.S.C. § 2.

38. Orion offered and/or entered into foreign currency futures contracts with the Orion Fund and through the Orion Fund with the individual customers. The Orion Fund was not

an eligible contract participant. At least some, if not most of, the underlying individual investors in the Orion Fund were not eligible contract participants. In addition, neither Orion, Cline, nor CMC was a proper counterparty for retail foreign currency transactions.

**F. Orion Offered And Sold Unregistered Securities**

39. From at least December 1998 to at least August 2002, Orion solicited members of the public to purchase interests or investments in the Orion Fund. Orion offered and sold investments in the Orion Fund by informing customers that their funds would be pooled with the funds of others in the Orion Fund, that gains created by trading would be applied to the total value of the pool of money, and that the gain would be pro-rated to each customer's account based on the percentage of the pool which the investor's funds represented.

40. The investments in the Orion Fund offered and sold to members of the public by Orion involved persons investing money in a common enterprise with other investors and with the investors expecting profits on their investments to be made through the management and control of Orion. These investments therefore constitute investment contracts under the Oregon Securities Laws.

41. The offer and sale of such investment contracts were securities interests that were not registered with the Securities and Exchange Commission. Orion did not register these security interests with the DCBS as securities required to be licensed under the Oregon Securities Law. Orion was not licensed with the DCBS as a broker-dealer, investment adviser, or salesperson under the Oregon Securities Law.

**G. Orion Engaged In Securities Fraud**

42. The foregoing oral and written fraudulent representations and the misappropriation of funds by Orion were made in connection with the purchase or sale of a

security, or by a person who receives consideration from another person primarily for advising the other person as to the value or securities or their purchase or sale.

43. In connection with the offer and sale of Orion Fund securities, Orion employed a scheme to defraud investors by, among other things, making false oral and written representations that all investor funds would be deposited in the Orion Fund trading account and used for foreign currency trading, by making false oral and written representations that the pool's trading was profitable and that investors' accounts increased in value monthly, and, instead, misappropriating investors' funds.

#### **H. Liability of Orion**

##### **Direct Liability**

44. Orion is directly liable for the unlawful conduct as set forth in the findings of fact herein. Orion made fraudulent representations to investors, issued false trading reports, and misappropriated customer funds.

##### **Principal/Agent Liability**

45. During the time of the findings of illegal activity set forth in the findings of fact herein, Cline was acting within the scope of his employment or office as an officer and agent of Orion.

### **V.**

#### **CONCLUSIONS OF LAW**

##### **A. Fraud in Connection with Futures Transactions**

46. From at least December 21, 2000 to at least March 2003, Orion, either directly or through other persons or entities either under its employ, supervision and control or acting in combination or concert with it, in or in connection with the orders to make, or the making of,

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contracts of sale of commodities for future delivery, made or to be made, for or on behalf of any other persons, where such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a) of the Act, 7 U.S.C. § 6b(a), cheated or defrauded or attempted to cheat or defraud customers or prospective customers, willfully made or caused to be made false statements to customers or prospective customers, and willfully deceived or attempted to deceive customers or prospective customers by, among other things, misrepresenting the profits and risk of loss associated with commodity futures trading, issuing false statements and reports, and misappropriating customer funds all in violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), and Regulation 1.1(b), 17 C.F.R. § 1.1(b).

47. Orion willfully aided, abetted, counseled, commanded, induced, or procured the commission of violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), and Regulation 1.1(b), 17 C.F.R. § 1.1(b), or acted in combination or in concert with defendant Cline, or willfully caused acts to be done or omitted which when directly performed or omitted constituted defendant Cline's violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), and Regulation 1.1(b), 17 C.F.R. § 1.1(b). Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), Orion therefore violated Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), and Regulation 1.1(b), 17 C.F.R. § 1.1(b).

48. Defendant Cline engaged in the illegal conduct alleged in the Complaint within the scope of their offices or employment as agents of defendant Orion. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), defendant Orion is therefore liable as a principal for the violations of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), and Regulation 1.1(b), 17 C.F.R. § 1.1(b), by its agent Cline.

**B. Offer and Sale of Illegal Off-Exchange Futures Contracts**

49. From at least December 21, 2000 to at least March 2003, Orion, either directly or through other persons or entities either under its employ, supervision and control or acting in combination or concert with it, offered to enter into, entered into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the CFTC as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts have not been executed or consummated by or through a member of such contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a).

50. Defendant Cline engaged in the illegal conduct alleged in the Complaint within the scope of their offices or employment as agents of defendant Orion. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), defendant Orion is therefore liable as a principal for the violations of Section 4(a) of the Act, 7 U.S.C. § 6(a), by its agent Cline.

**C. Sale of Unregistered Securities**

51. From at least December 1998 to March 2003, within or from the State of Oregon, Orion, either directly or through other persons or entities either under its employ, supervision and control or acting in combination or concert with it, offered and sold securities as that term is defined in ORS § 59.015(19)(a) in the form of investment contracts or certificates of interest or participation in a profit sharing agreement.

52. The securities sold by Orion were not registered under ORS §§ 59.065 through 59.095, were not exempt securities under ORS § 59.025, were not offered or sold in exempt

transactions under ORS § 59.035, were not securities exempt under any rule or order promulgated by DCBS, and were not subject to notice filing under ORS § 59.049. Therefore, Orion violated ORS § 59.055.

**D. Sales and Advisor Activity by Unlicensed Person**

53. In connection with offers to sell and the sale of securities within or from the State of Oregon, Orion acted as a broker-dealer and/or salesperson, although not licensed pursuant to the provisions of the Oregon Securities Law or exempt therefrom. Therefore, Orion violated ORS § 59.165(1).

54. In managing an investment or trading account in securities for other persons, for compensation, Orion acted as an investment adviser or investment adviser representative, although not licensed pursuant to the provisions of the Oregon Securities Law, nor exempt therefrom. Therefore, Orion violated ORS § 59.165(4).

**E. Securities Fraud**

55. In connection with the purchase and sale of any security, the conduct of a securities business, or while advising, for a fee, other persons as to the value of securities or the purchase or sale of securities, Orion directly or indirectly violated ORS § 59.135 by (1) employing a device, scheme, or artifice to defraud; (2) making untrue statements of material fact or omitting to state material facts which were necessary in light of the circumstances under which they were made; and (3) engaging in acts, practices, or a course of business which operated or would operate as a fraud or deceit upon any person in violation of ORS § 59.135.

## VI.

### PERMANENT INJUNCTION

A. **IT IS HEREBY ORDERED** that Orion is permanently restrained, enjoined, and prohibited from directly or indirectly:

1. Cheating or defrauding or attempting to cheat or defraud other persons and willfully deceiving or attempting to deceive other persons by making false, deceptive or misleading representations of material facts, by failing to disclose material facts, and by misappropriating customer funds in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made for or on behalf of any other person in violation of Section 4b(a) of the Act, 7 U.S.C. § 6b(a), and CFTC Regulation 1.1(b), 17 C.F.R. § 1.1(b);
2. Offering to enter into, entering into, executing, confirming the execution of, or conducting an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts have not been executed or consummated by or through a member of such contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a);
3. Offering or selling unregistered securities in violation of Oregon Securities Law, Oregon Revised Statutes § 59.055;
4. Acting as an unlicensed broker-dealer and/or salesperson in violation of the Oregon Securities Law, Oregon Revised Statutes § 59.165; and
5. Directly or indirectly, in connection with the purchase or sale of any security or the conduct of a securities business: (1) to employ any device, scheme or artifice to defraud; (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or (4) to make or file, or cause to be made or filed, to or with the Director of the Department of Consumer and Business Services any statement, report or document which is known to be false in any material respect or matter in violation of Oregon Securities Law, Oregon Revised Statutes § 59.135.

**B. IT IS HEREBY FURTHER ORDERED** that Orion is permanently restrained, enjoined, and prohibited from directly or indirectly engaging in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (“commodity interest”), and any activity related to trading in any security, as that term is defined in Section § 59.015(19)(a) of the Oregon Securities Law (“security interest”) other than personal investment of Cline’s own funds including, but not limited to, the following:

1. Trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);
2. Engaging in, controlling, or directing the trading of any futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;
3. Soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest contract;
4. Placing orders or giving advice or price quotations, or other information in connection with the purchase or sale of commodity interest contracts for itself and others;
5. Introducing customers to any other person engaged in the business of commodity interest trading;
6. Issuing statements or reports to others concerning commodity interest trading;
7. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9);
8. Engaging in any business activities related to commodity interest trading;
9. Soliciting or accepting any funds from any person in connection with the purchase or sale of any security interest;

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10. Placing orders or giving advice or price quotations, or other information in connection with the purchase or sale of any security interest for themselves and others;
11. Introducing customers to any other person engaged in the business of securities;
12. Issuing statements or reports to others concerning any security interest; and
13. Engaging in any business activities related to securities.

**C. IT IS HEREBY FURTHER ORDERED** that Orion is restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing, or disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or the business or personal finances of any of the defendants in this case.

**D. IT IS HEREBY FURTHER ORDERED** that the injunctive provisions of this Order shall be binding upon Orion, any person insofar as he or she is acting in the capacity of officer, agent, servant, or attorney of Orion, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in active concert or participation with Orion.

## VI.

### RESTITUTION, CIVIL MONETARY PENALTY, AND ANCILLARY RELIEF

**IT IS HEREBY ORDERED** that Orion shall comply fully with the following terms, conditions and obligations relating to the payment of restitution and the submission of financial information.

**A. RESTITUTION**

1. Orion shall make restitution in the amount of \$28,823,034 plus post-judgment interest. Orion shall make restitution immediately upon entry of this Order. The amount of restitution represents the amount of losses that persons sustained as a result of the foregoing

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findings of fact and as set forth in Exhibit A, attached hereto and filed under seal. Exhibit A includes the total amount of restitution owed to each investor. Omission of any investor from Exhibit A shall in no way limit the ability of such investor from seeking recovery from Orion or any other person or entity. Further, the amounts payable to each investor identified in Exhibit A shall not limit the ability of any investor from proving that a greater amount is owed from Orion or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any investor that exist under state or common law. Post-judgment interest shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961.

2. The amount of restitution directed under this Order shall be reduced by any payments made by defendant Russell B. Cline pursuant to this Court's restitution order in *U.S. v. Cline*, CR-04-205-KI.

3. Restitution payments under this Order shall be made in the same manner as the restitution payments required in the judgment for restitution entered against Russell B. Cline in *U.S. v. Cline*, CR-04-205-KI. Upon further Order of the Court, restitution payments under this Order shall be made to the National Futures Association ("NFA") by tendering payments to the Executive Vice President and Chief Operating Officer, or his successor, at the following address: National Futures Association, 200 West Madison, Street, Chicago, IL 60606. The NFA shall oversee Orion's restitution obligation and shall make periodic distributions of funds to investors as appropriate. Based upon the amount of funds available, the NFA may defer distribution until such time as it deems appropriate. Restitution payments shall be made in an equitable fashion as determined by the NFA to the persons identified on Exhibit A and any other person who demonstrates to the NFA that he or she is entitled to restitution under this Order. Orion shall

notify the CFTC of any restitution payment with a letter that identifies its name and the name and docket number of this proceeding and the amount of the payment, and shall transmit the letter and a copy of the form of payment to the Office of Cooperative Enforcement, Division of Enforcement, CFTC, 1155 21<sup>st</sup> N.W., Washington, D.C. 20581.

4. The Court reserves jurisdiction to monitor and change the process for payment of funds presently in the possession of the Receiver and which are received hereafter.

**B. CIVIL MONETARY PENALTY**

Pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, judgment is entered against Orion as of the date of this Order for a civil monetary penalty in the amount of \$86,469,100 plus post-judgment interest. This penalty represents triple the monetary gain received by Orion as calculated by tripling the amount of Orion's restitution obligation excluding pre-judgment interest. No funds shall be applied to the civil monetary penalty until Orion has fully satisfied its restitution and disgorgement obligations. Orion shall pay this penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order made payable to the CFTC and sent to the attention of the Office of Cooperative Enforcement, Division of Enforcement, CFTC, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581. Orion shall accompany payment of the penalty with a cover letter that identifies Orion and the name and docket number of this proceeding. Orion shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, CFTC, 1155 21<sup>st</sup> N.W., Washington, D.C. 20581.

**C. TRANSFER OF ASSETS**

Orion shall not transfer, or cause others to transfer, funds or other property to the custody, possession, or control of any person or entity for the purpose of concealing such funds from this

Court, the CFTC, or the DCBS until its restitution and civil monetary penalty obligations have been satisfied under this Order.

**D. DELIVERY OF DOCUMENTS**

Orion shall immediately, or within such time as permitted by the CFTC and the DCBS, deliver to the CFTC and the DCBS all documents in the possession and custody of Orion relating or referring to Orion or Cline, or any of the allegations of the complaint, 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 papers.

**E. COOPERATION**

Orion shall cooperate fully with the CFTC, DCBS, NFA, and any government agency seeking to enforce the provisions of this Order in carrying out all duties with respect to its obligations to make restitution and pay a civil monetary penalty payment. Orion shall cooperate fully with the CFTC, DCBS, NFA, and any government agency seeking to enforce the provisions of this Order in explaining its financial income and earnings, status of assets, financial statements, asset transfers and tax returns, and shall provide any information as may be required by the CFTC, DCBS, NFA, and any government agency seeking to enforce the provisions of this Order.

**VII.**

**SCOPE OF ORDER**

A. **IT IS HEREBY ORDERED** that this Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action. This Order shall be interpreted and enforced according to the Federal Rules of Civil Procedure, the Local

Rules of the United States District Court for the District of Oregon, and all provisions of the Act, CFTC Regulations, and, as appropriate, the Oregon Securities Law relating or referring to the obligations hereunder.

**B. IT IS HEREBY FURTHER ORDERED** that the following provisions shall apply to the terms and conditions of this Order:

1. **Notices:** All notices required by this Order shall be sent by certified mail, return receipt requested.
2. **Waiver:** The failure of any party to this Order or of any investor at any time to require performance of any provision of this Order shall in no manner affect the right of the party or investor to enforce the same or any other provision of this Order at a later time. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Order.
4. **Invalidation:** If any provision, or the application of any provision of this Order is held invalid, the remainder of this Order and the application of the provision to any other person or circumstance shall not be affected by the holding.
5. **Integration:** This Order incorporates all of the terms and conditions of the settlement of the parties to this Order. Nothing shall serve to amend or modify this Order in any respect, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

Done and Ordered this 16 day of June 2006, at \_\_\_\_\_,

2006.



GARR M. KING  
UNITED STATES DISTRICT JUDGE

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