

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

vs.

U.S. BANK, N.A.,

Defendant.

Case No.: 6:13-cv-2041-LRR

CONSENT ORDER

I. INTRODUCTION

On June 5, 2013, Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint against Defendant U.S. Bank National Association ("U.S. Bank") seeking relief against U.S. Bank for alleged violations of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2012). (Dkt. #1.)

The parties have informed the Court that they are prepared to settle this action, pursuant to the terms set forth below.

II. CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint, U.S. Bank, without a trial on the merits or any further judicial proceedings:

1. Consents to the entry of this Consent Order;
2. Affirms that it has read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledges service of the summons and Complaint;

4. Admits the jurisdiction of this Court over it and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012);

5. Admits the jurisdiction of the Commission over the conduct at issue in this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012);

6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012);

7. Waives:

(a) any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or Part 148 of Commission Regulations (“Regulations”), 17 C.F.R. §§ 148.1 *et seq.* (2014), relating to, or arising from, this action;

(b) any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

(c) any claim of Double Jeopardy based upon the institution of this action or the entry of this Consent Order; and

(d) any and all rights of appeal from this action;

8. Agrees that it will not oppose enforcement of this Consent Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon; and

9. Consents to the continued jurisdiction of this Court over it for the purpose of enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action.

10. Agrees that neither it nor any of its agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any of the undisputed facts listed in this Court's November 19, 2014 Summary Judgment Order ("Summary Judgment Order") (Docket #112), or creating or tending to create the impression that the Summary Judgment Order or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect U.S. Bank's: (a) testimonial obligations, (b) right to take positions in other proceedings to which the Commission is not a party, or (c) obligation to cooperate fully and truthfully with its regulators. U.S. Bank shall undertake all reasonable steps necessary to ensure that all of its agents and employees under its authority or control understand and comply with this agreement.

11. U.S. Bank agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against it in any other proceeding, other than reduce the total amount recoverable by Peregrine Section 4(d) customers holding domestic futures accounts by the amount of the PFG Trustee Contribution (\$18,000,000). However, U.S. Bank does not consent to the use of this Consent Order by any other party in any other proceeding.

12. U.S. Bank represents, and the Commission recognizes, that U.S. Bank has already taken significant remedial action to strengthen the internal controls and policies relating to its handling of customer segregated funds accounts of its futures commission merchant ("FCM") clients to ensure the bank's compliance with Section 4d(b) of the Act, 7 U.S.C. § 6d(b), and Regulation 1.20(a), 17 C.F.R. § 1.20(a).

III. SUMMARY

A. Parties

13. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2014).

14. Defendant **U.S. Bank National Association** is a nationally chartered bank with its main office located in Cincinnati, Ohio. U.S. Bank has several branches in the Northern District of Iowa, including in Cedar Falls, Iowa. U.S. Bank is a wholly-owned subsidiary of U.S. Bancorp.

B. Facts

15. The parties agree to adopt the uncontested material facts set forth in the Court's Summary Judgment Order.

C. Legal Discussion

16. Section 4d(b) of the Act, 7 U.S.C. § 6d(b), makes it unlawful for any person, including any depository, that has received any FCM customer money, securities, or property for deposit in a separate account, as provided for in Section 4d(a)(2) of the Act, to hold, dispose of, or use any such money, securities, or property as belonging to the depositing FCM or any person other than the customers of such FCM.

17. Regulation 1.20(a), 17 C.F.R. § 1.20(a), makes it unlawful for any person, including any depository, that has received customer funds for deposit in a segregated account, as provided for in Regulation 1.20, to hold, dispose of, or use any such funds as belonging to any person other than the customers of the FCM which deposited such funds.

D. Jurisdiction and Venue

18. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

19. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because U.S. transacts business in this District.

THE PARTIES AGREE AND IT IS HEREBY ORDERED THAT:

IV. PERMANENT INJUNCTION

20. The Parties agree that pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, U.S. Bank is permanently restrained, enjoined and prohibited from violating Section 4d(b) of the Act, 7 U.S.C. § 6d(b), and Regulation 1.20(a), 17 C.F.R. § 1.20(a).

V. CONTRIBUTION TO THE PEREGRINE FINANCIAL GROUP, INC. TRUSTEE

21. U.S. Bank agrees to pay the amount of EIGHTEEN MILLION DOLLARS (\$18,000,000), within ten (10) business days of the date of entry of this Consent Order ("PFG Trustee Contribution"). The PFG Trustee Contribution represents funds that will be paid to Peregrine Section 4(d) customers holding domestic futures accounts as a contribution to the PFG Trustee and not as a fine or penalty.

22. U.S. Bank shall pay the PFG Trustee Contribution to Ira Bodenstein, the Court-appointed Trustee for Peregrine Financial Group, Inc. in *In re Peregrine Financial Group, Inc.*, BK Case No. 12-27488 (N.D. Ill) ("PFG Trustee") for payment to Peregrine Section 4(d) customers holding domestic future accounts. U.S. Bank shall make such payment to Ira Bodenstein, not individually, but as chapter 7 Trustee of Peregrine Financial Group, Inc. and shall send such payment by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order to Ira Bodenstein, Shaw Fishman Glantz & Towbin LLC, 321 North Clark Street, Suite 800, Chicago, Illinois 60654 under a cover letter that identifies U.S.

Bank and the name and docket number of this proceeding. If accomplished through electronic funds transfer, a separate letter with the same information will be sent upon confirmation of the transfer. U.S. Bank shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and Susan Gradman, U.S. Commodity Futures Trading Commission, 525 W. Monroe St., Suite 1100, Chicago, IL 60661.

23. Any acceptance by the PFG Trustee of partial payment of U.S. Bank's PFG Trustee Contribution shall not be deemed a waiver of U.S. Bank's obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

VI. NOTICES

24. All notices required to be given by any provision in this Consent Order shall be filed with the Court and sent by certified mail, return receipt requested, as set forth below. Any notice to the Commission shall reference the name and docket number of this action.

Notice to Plaintiff Commission:

Director of the Division of Enforcement
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581

and

Susan Gradman and Robert Howell
Commodity Futures Trading Commission
525 W. Monroe, 11th Floor
Chicago, IL 60661

Notice to Defendant U.S. Bank:

Peter W. Carter
Attorney for U.S. Bank National Association
Dorsey & Whitney LLP
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498

25. Change of Address/Phone: Until such time as U.S. Bank satisfies in full its PFG Trustee Contribution as set forth in this Consent Order, it shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

VII. MISCELLANEOUS PROVISIONS

26. This Consent Order incorporates all of the terms and conditions of the settlement among the parties to this action. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

27. If any provision of this Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of this Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

28. The failure of any party to this Consent Order at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

29. The Court shall retain jurisdiction over this action to ensure compliance with this Consent Order and for all other purposes related to this action.


30. The injunctive and equitable relief provisions of this Consent Order shall be binding upon U.S. Bank, upon any person under its authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with U.S. Bank.

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

32. Authority: Sarah Stroebel hereby warrants that she is a Vice President, Associate General Counsel of U.S. Bank, that this Consent Order has been duly authorized by U.S. Bank., and that she has been duly empowered to sign and submit this Consent Order on behalf of U.S. Bank

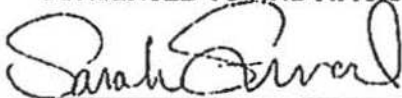
33. Except as permitted herein, this Consent Order shall not be used by any other party in any other proceeding.

IT IS SO ORDERED on this 4th day of February, 2015.



Honorable Linda R. Reade
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

CONSENTED TO AND APPROVED BY:



Sarah Stroebel
Vice President, Associate General Counsel for
U.S. Bank National Association
800 Nicollet Mall
Minneapolis, MN 55402
(612) 303-7803 (direct dial)
sarah.stroebel@usbank.com

Dated: 1/7/15



Peter W. Carter
Attorney for Defendant U.S. Bank, N.A.
Dorsey & Whitney LLP
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
(612) 340-5635 (direct dial)
(612) 340-2868 (facsimile)
Carter.Peter@dorsey.com

Dated: 1/7/15



Robert T. Howell
Susun J. Gradman
Commodity Futures Trading Commission
Attorney for Plaintiff U.S. Commodity
Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, IL 60661
(312) 596-0523 (direct dial)
(312) 596-0714 (facsimile)
rhowell@cftc.gov
sgradman@cftc.gov

Dated: 1/15/15