

Ex. C

Statement of Facts

This Statement of Facts is incorporated by reference as part of the Deferred Prosecution Agreement (the “Agreement”) between the United States Attorney’s Office for the Southern District of New York (“USAO”) and Central States Capital Markets, LLC (“CSCM”). The parties agree and stipulate that the following information is true and accurate:

Overview

1. CSCM is a broker-dealer and investment advisor based in Prairie Village, Kansas. During the relevant time period, CSCM was registered with the Securities and Exchange Commission (“SEC”) as a broker-dealer, municipal advisor, and investment adviser. According to CSCM’s financial statements, in 2016, the firm had approximately \$3.8 million in revenues and net losses of approximately \$600,000.

2. As discussed below, CSCM willfully failed to file a Suspicious Activity Report (“SAR”) concerning transactions involving Scott Tucker (“Tucker”), a client, despite knowing, suspecting, or having reason to suspect that Tucker was using CSCM to launder proceeds from an illegal payday lending scheme. In doing so, CSCM violated a provision of the Bank Secrecy Act, 31 U.S.C. § 5322(a).

The Bank Secrecy Act’s Requirements

3. The Currency and Foreign Transactions Reporting Act (known as the “Bank Secrecy Act” or “BSA”), Pub. L. 91–508, Tit. II, 84 Stat. 1118, codified at 31 U.S.C. §§ 5311–5332, requires broker-dealers like CSCM to take steps to “guard against” being used for money laundering or other crimes.

4. To that end, the BSA and its implementing regulations require, among other things, that broker-dealers “report any suspicious transaction relevant to a possible violation of law or regulation.” 31 U.S.C. § 5318(g)(1). In particular, a broker-dealer is required to file a SAR every time it “knows, suspects, or has reason to suspect that . . . [t]he transaction involves funds derived from illegal activities” or that the “transaction has no business or apparent lawful purpose[.]” 31 C.F.R. § 1023.320(a)(2).

CSCM’s Relationship with Scott Tucker

5. On October 13, 2017, Tucker and his attorney, Timothy Muir, were convicted after trial in the United States District Court for the Southern District of New York of racketeering, wire fraud and money laundering for their roles in perpetrating a massive payday lending scheme. As the jury found, from in or about the late 1990s through in or about 2013, through various companies that he owned and controlled (the “Tucker Payday Lenders”), Tucker extended short-term, high-

interest, unsecured loans, commonly referred to as “payday loans,” to individuals around the country at interest rates as high as 700% or more and in violation of the usury laws of numerous states, including New York. Tucker sought to inoculate himself against applicable usury laws by entering into a series of sham relationships with certain Native American tribes (the “Tribes”) in order to conceal his ownership and control of the Tucker Payday Lenders and gain the protection of tribal sovereign immunity – a legal doctrine that generally prevents states from enforcing their laws against Native American tribes. To effectuate his scheme, Tucker assigned nominal ownership of his payday lending companies to certain corporations created under the laws of the tribes (the “Tribal Companies”).

6. In April 2012, CSCM opened investment accounts for multiple Tribal Companies. The account funds were held at another firm that provided custodial and clearing services (the “Clearing Firm”) to CSCM. In the account opening documents, Tucker’s brother Blaine (“BTucker”) was granted full trading authorization for each of the Tribal Companies’ accounts, but the space on the forms for identifying BTucker’s relationship with the Tribal Companies was left blank. Tucker was not given any authority or otherwise mentioned in the account opening forms.

7. In August 2012, CSCM opened a personal account for Tucker and an account for BA Services, LLC, an entity he owned and controlled. In his account opening documents, Tucker identified himself as an employee of another tribal company involved in the payday lending business. In September 2012, CSCM opened a personal account for BTucker.

8. In November 2012, the Miami Tribe of Oklahoma (the “Miami”) withdrew BTucker’s signature authority for the Tribal Companies associated with the Miami, and the Santee Sioux Tribe of Nebraska (the “Santee Sioux”) added the requirement of a signature from a tribal official for transactions in the account of the Tribal Company associated with the Santee Sioux. In March 2013, the Miami reinstated BTucker’s authorization.

CSCM’s Willful Failure to File a SAR in Violation of the BSA

9. At all relevant times, CSCM had written policies, procedures, and controls, and designated its Chief Executive Officer (the “CEO”) as its Anti-Money Laundering (“AML”) Compliance Officer. Therefore, under CSCM’s written supervisory procedures, the CEO had “full responsibility for the continual development and enforcement of [CSCM’s] AML program,” including, among other things, “monitoring for compliance of all AML areas by all employees,” “internal [SARs] investigations,” “filing of SARs,” “ensuring that any other background checks undertaken are accomplished and documented,” and “ensuring that all documented and/or non-documented client identification is appropriately maintained in client files.”

10. CSCM's written supervisory procedures required that a customer's identity be verified when opening a new account. For commercial entities, CSCM's policies required the collection of "information sufficient to determine the corporate or business entity's identity and the authority of its business representative to act on its behalf."

11. Under CSCM's written supervisory procedures, CSCM was required to file a SAR for any account activity involving \$5,000 or more when it knew, suspected, or had reason to suspect that the transaction (1) involved funds derived from illegal activity or was "derived from illegal activity as part of a plan to violate or evade federal law or regulation," (2) was designed to evade any requirements of the BSA regulations, (3) had no business or apparent lawful purpose or was not the sort in which the customer would normally be expected to engage in, or (4) involved the use of CSCM to facilitate criminal activity.

12. To detect suspicious transactions, CSCM's written supervisory procedures provided that "[f]or any transactions involving a clearing firm, [CSCM] will monitor through the clearing firm's automated exception reports for unusual size, volume, pattern or type of transaction." The Clearing Firm made available to CSCM reports and electronic alerts designed to detect suspicious transactions. CSCM's policies also identified various red flags, including for example a "customer (or a person publicly associated with the customer) [that] has a questionable background or is the subject of news reports indicating possible criminal, civil or regulatory violations."

Ineffective KYC Due Diligence

13. CSCM failed to follow its written customer identification procedures and did not act upon red flags prior to opening investment accounts for the Tribal Companies. CSCM discussed opening these accounts exclusively with Tucker and BTucker (the "Tuckers"). Although CSCM received account opening documents signed by tribal officials granting BTucker authorization over the accounts, CSCM routinely dealt with and took direction from Tucker concerning the management of funds in the Tribal Companies' accounts based solely on Tucker's oral assertions that he was a "consultant" to the Tribes. At no point did CSCM obtain written verification of Tucker's authority over the accounts.

14. CSCM also disregarded red flags that were known prior to opening the accounts. In March 2012, Tucker explained to the CEO that he was involved in the payday lending business and that he had approached certain Native American tribes to operate the payday lending business in order to take advantage of the tribes' sovereign immunity. Tucker further explained that the payday lending business had generated large cash reserves and that he was approaching CSCM because the business's existing bank, a small bank based in Florida (the "Florida Bank"), had asked Tucker to move excess accumulations of cash because of certain regulatory requirements it was unable to meet. Neither the CEO, nor anyone at CSCM, attempted to verify this explanation.

15. Shortly thereafter, CSCM also became aware of additional red flags concerning the Tuckers and the Tribal Companies. Specifically, CSCM learned that Tucker had been convicted of fraud in 1991 and, separately, found news reports from as early as 2011 alleging that the Tuckers were engaging in a “rent-a-tribe” scheme in which the Tribal Companies were used by the Tuckers to claim ownership and control over the payday lending businesses in order to exploit the Tribal Companies’ ability to assert sovereign immunity as a defense to charges that the payday lending business violated state usury laws. CSCM also became aware of an action brought by the Federal Trade Commission (“FTC”) against the Tuckers and the Tribal Companies, among others, for engaging in unfair business practices, which included allegations that the Tribal Companies were not protected by sovereign immunity. CSCM, including its CEO, did not act upon these red flags because Tucker assured CSCM that the FTC action would soon be resolved and all challenges brought by state regulators had been unsuccessful due to sovereign immunity.

CSCM Failed to Report Suspicious Transactions In the Accounts

16. CSCM failed to monitor any transactions using Actimize, an AML tool that was made available to CSCM by the Clearing Firm. Between December 2011 and December 2015, Actimize generated 103 alerts but CSCM never checked any of the alerts, made any attempt to customize Actimize’s default parameters, or undertook a review to ensure that this tool was sufficient for its specific monitoring needs or was being appropriately utilized. Further, although the Clearing Firm furnished CSCM with the ability to generate a report reflecting, among other things, the identities of third parties transferring funds via wire transactions to CSCM account holders, CSCM never generated such reports.

17. Numerous suspicious transactions went undetected and unreported by CSCM. For example, between December 21, 2012 and March 13, 2013, 18 wire transfers totaling \$40,518,000 were sent from Florida Bank accounts in the names of Tribal Companies to Tucker’s personal CSCM account. The transfers were in even dollar amounts and on several occasions, two different Tribal Companies, associated with different tribes, transferred the same dollar amounts, on the same day, to Tucker’s personal CSCM account. CSCM never asked Tucker or the Tribal Companies about any of these transactions.

18. On March 4, 2013, CSCM processed a \$9 million wire from Tucker’s personal CSCM account to another financial institution, which Tucker had informed CSCM was for the payment of his taxes. According to reports of the asset movement processing system used by CSCM, CSCM employees were presented, during the course of processing the wire, with two AML rule violations triggered by the transaction. CSCM processed the wire without investigating the violations or reporting the wire to the appropriate authorities.

19. In addition, Actimize generated AML alerts for certain transactions that occurred on March 12 and 13, 2013, but because CSCM never accessed this software, the alerts were not checked. CSCM did not file a SAR with respect to any of these transactions.

The Clearing Firm Closed the Tucker and Tribal Companies Accounts and
CSCM Worked To Find Another Firm to Maintain Custody of the Accounts

20. In or about March 2013, the Florida Bank decided to terminate its ACH processing program, including its banking relationship with the Tucker Payday Lenders, and required Tucker to move the funds from their operating accounts to another institution. In mid-March 2013, the Tuckers approached CSCM about opening additional, operating accounts for the Tribal Companies on its platform to replace the Florida Bank. CSCM agreed to consider opening these accounts even though operating accounts were outside the scope of CSCM's normal business activity as a broker-dealer and investment advisor. Anticipating that the Clearing Firm might raise concerns with the expected activity in these operating accounts, CSCM contacted the Clearing Firm to discuss the additional accounts.

21. CSCM, including the CEO, discussed the Tuckers and the Tribal Companies with the Clearing Firm's AML officers during a conference call on March 27, 2013. CSCM's description of the Tuckers, the Tribal Companies, and their payday lending business caused the Clearing Firm's AML officers to raise concerns and pose questions to CSCM about all of the accounts associated with the Tuckers and Tribal Companies, including the investment accounts already maintained on the Clearing Firm's platform. According to the AML officers, CSCM was not fully forthcoming in answering their questions, which contributed to their concerns. Following the discussion, CSCM's relationship partner responsible for these accounts (the "Partner") sent the Tuckers an email describing the call with the Clearing Firm in which the Partner said "[o]ur conversations regarding these accounts were very generic. Other than disclosing that these were tribal accounts we did not get into the nature of their business. Had they asked we would have been as brief as possible in our description."

22. According to the Clearing Firm's AML officers, after the March 27 call, they notified the CEO that the Clearing Firm was "not comfortable" with the Tucker and Tribal Companies accounts – with the new operating accounts and the preexisting investment accounts – and asked that CSCM not send funds to the new accounts until it had time to consider the AML concerns the accounts raised. Nevertheless, CSCM allowed approximately \$82.1 million in new funds to be transferred into these new accounts.

23. In an April 3, 2013 email to CSCM, one of the Clearing Firm AML officers shared findings of additional research he had done regarding Tucker and his businesses, and included links to online sources indicating that Tucker was engaged in a "rent-a-tribe" scheme with the Tribal Companies, and revealing that he had served time in prison for fraud, was the subject of a civil RICO suit, and had been sued by the FTC. According to the AML officer, he also orally reported other facts that he found suspicious: (1) that a payday lending business controlling over \$200 million in cash would use a local bank in Florida, especially because neither the Tuckers,

based in Kansas, nor the Tribal Companies, based in Oklahoma and Nebraska, had any apparent connection to Florida; and (2) that the place of business for one of the Tribal Companies, which had over \$100 million in cash and securities in its accounts at the time, appeared to be a trailer.

24. CSCM's email in response to the AML Officer's April 3 email did not address concerns over whether the Tuckers truly controlled the Tribal Companies' funds and focused instead on the fact that state courts had upheld the Tribal Companies' assertion of sovereign immunity. The CEO stated "[t]hrough our research we found, read, and digested the articles you included in your email—as well as countless others before accepting any account." Regarding the state suits, the CEO said "[w]e acknowledge that these people/organizations have been investigated/sued by various regulatory/legal entities . . . To the best of our knowledge, at this point all such efforts have been thwarted by the courts or resolved by legal agreements with the agency involved." Regarding the FTC suit, the CEO said "[t]he issue with the [FTC] was resolved through negotiation and an agreement was signed with them in January 2013." (Although that agreement set conditions for the Tucker Payday Lenders' ongoing operations, the merits of the case continued to be litigated and in September 2016 resulted in a \$1.3 billion judgment against Tucker.) The CEO assured the Clearing Firm that, due to limitations placed on the accounts, no funds could be transferred directly to a third party. The CEO also remarked that, "[i]n summary, we feel that while this Pay Day Loan industry might be unpopular in various venues, it is a thriving industry—revenues of almost \$4 billion last year. No legal objection to this point has been upheld to substantially interfere with its operation."

25. Later in April 2013, the Clearing Firm notified CSCM of its decision to close all of the Tucker and Tribal Companies accounts and directed that all the funds in those accounts be moved off its platform. Per Tucker's instructions, CSCM did not inform any tribal officials when the Clearing Firm ordered that the Tribal Companies' accounts be closed and moved off the Clearing Firm's platform.

26. CSCM approached multiple financial institutions to assist the Tuckers in finding a new custodian for the funds. As part of that effort, the Partner approached a contact at an investment bank (the "Investment Bank"). In his communications with the Investment Bank, the Partner did not mention the Tuckers and represented that the Clearing Firm "agreed no red flags were raised at [the Clearing Firm] over the past year and ultimately agreed there was [sic] no AML issues ... [h]owever, from a social standpoint, [the Clearing Firm] did not wish to be involved with anyone in the payday lending business and the potential negativity that may arise from that business." The CEO commented that the Partner's email had not "mentioned Tucker and the historical items that also swayed [the Clearing Firm's] decision process" and stated that "I feel that is material information and should be disclosed as part of our discussion." The Partner responded that he would do so "if [the Investment Bank] agree to consider the accounts" and added that he had not yet heard from the Investment Bank's representative. The CEO responded "Good job." Ultimately, the Investment Bank determined not to open accounts for the Tribal Companies.

27. Ultimately, CSCM identified a Kansas-based state-chartered trust company (the "Trust Company") that agreed to custody the Tucker and Tribal Companies accounts and permit CSCM to continue to act as an investment adviser in connection with those assets. In an email informing the Tuckers of the development, the Partner stated the following:

[The CEO] and I have found a permanent solution to your problem. No longer will we have to worry about hiding your business or diversifying your assets to avoid concern and uncertainty. We will be eager to meet with you guys when you get back to explain our solution and get this process moving. We believe it will offer you and the Tribes a great deal of comfort, security, and support to your business. We appreciate your patience with us during this time and the opportunity to again find solutions to the challenges you have presented us with. We hope this news will add a little more horsepower to your weekend!

In the same email chain, the CEO stated "[a]s [the Partner] indicated, we are very pleased with our proposed solution to our common issue. It is one that is simple, safe, user friendly, and long term. By the time you return, we should have all the documentation in order and will be able to move expeditiously."

28. By the end of May 2013, all of the funds associated with the Tuckers and the Tribal Companies had been transferred from the Clearing Firm to the Trust Company. CSCM continued to serve as an investment adviser to the Tuckers and the Tribal Companies until the unsealing of the criminal indictment against Tucker on February 10, 2016.

29. Despite producing documents in connection with the criminal investigation and its awareness of the indictment, CSCM did not file a SAR until December 10, 2018, after Tucker was convicted at trial.