

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

FILED

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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION
and
ALABAMA SECURITIES COMMISSION,

Plaintiffs,

v.

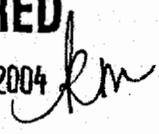
RANDALL NELSON
individually and doing business as
COMMODITY INVESTMENT CLUB
OF HUNTSVILLE,

Defendant.

CIVIL ACTION NO. CV 04-B-2794-NE

ENTERED

OCT 14 2004



CONSENT ORDER OF PERMANENT INJUNCTION, ANCILLARY
EQUITABLE RELIEF, AND CIVIL MONETARY PENALTIES AGAINST
DEFENDANT RANDALL NELSON

I.

INTRODUCTION

Plaintiffs the United States Commodity Futures Trading Commission ("CFTC") and the Alabama Securities Commission ("ASC") filed a complaint against defendant Randall Nelson ("Nelson"), individually and doing business as Commodity Investment Club of Huntsville ("Club"), alleging violations of the Commodity Exchange Act ("Act"), 7 U.S.C. § 1 *et seq.*, and the regulations promulgated thereunder ("Regulations"), 17 C.F.R. § 1.1 *et seq.*, and violations of Title 8, Chapter 6, Sections 3-(a) and 4, Code of Alabama 1975 ("Code").

To effect settlement of this action without a trial on the merits or further judicial proceedings, Nelson consents to this *Consent Order Of Permanent Injunction, Ancillary*

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Equitable Relief, And Civil Monetary Penalty Against Defendant Randall Nelson ("Order"). By consenting to this Order, Nelson: (1) acknowledges service upon him of the summons and complaint in this action; (2) admits this Court's personal and subject matter jurisdiction over him and this action; (3) admits that venue properly lies with this Court; and (4) consents to the entry of findings of fact and conclusions of law in this action pursuant to Fed. R. Civ. P. 52.

Nelson admits that all of the findings of fact and conclusions of law made by this Court and contained in this Order are true and correct. By consenting to the entry of this Order, Nelson agrees and the parties to this Order intend that the allegations of the complaint and all of the findings of fact and conclusions of law made by this Court and contained in this Order shall be taken as true and correct and be given preclusive effect without further proof in any bankruptcy proceeding filed by, on behalf of, or against Nelson, or in any proceeding to enforce this order, or in any proceeding relating to the fitness of Nelson to act in various capacities governed by the Act. Nelson also shall provide immediate notice to the CFTC and ASC of any bankruptcy proceeding filed by, on behalf of, or against him.

Nelson agrees that: (1) he will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or finding or conclusion contained in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; and (2) no agent or employee of Nelson acting under his authority or control shall take any action or make or permit to be made any public statement denying, directly or indirectly, any of the findings or conclusions in this Order or creating, or tending to create, the impression that any allegation in the complaint or this Order is without factual basis, and Nelson shall undertake all steps necessary to ensure that all of his agents and

employees understand and comply with this agreement. Nothing in this provision shall affect Nelson's: (1) testimonial obligations; or (2) right to take legal positions in other proceedings in which either the CFTC or the ASC is not a party.

Nelson waives: (1) all claims that he may possess under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 and 28 U.S.C. § 2412, relating to or arising from this action and any right under EAJA to seek costs, fees, and other expenses relating to or arising from this proceeding; (2) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and (3) all rights of appeal from this Order.

Nelson consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order.

Nelson affirms that he has read this Order and agrees to this Order voluntarily, and that no promise or threat of any kind has been made by the CFTC or ASC or any member, officer, agent, or representative thereof, or by any other person, to induce his consent to this Order, other than as set forth specifically herein.

This Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. This Court therefore directs the entry of findings of fact, conclusions of law, and a permanent injunction and other equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

II.

SCOPE OF ORDER

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 Northern District of Alabama, and all provisions of the Act, CFTC Regulations, and, as appropriate, the Code relating or referring to the obligations hereunder.

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

The failure of any party to this Order at any time to require performance of any provision of this Order shall in no manner affect the right of the party 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.

This Order incorporates all of the terms and conditions consented to by 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.

III.

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.

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 Alabama 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 Nelson resides in and transacted business in the Northern District of Alabama, and the acts and practices in violation of the Act and Code occurred within this District, among other places.

IV.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS HEREBY ORDERED that the following findings of fact and conclusions of law are made in connection with each count of the Complaint:

FINDINGS OF FACT

1. Nelson resides in Harvest, Alabama. Nelson has never been registered with the CFTC or the State of Alabama in any capacity.
2. From October 2000 to March 2003, Nelson engaged in fraudulent practices while operating a commodity pool called the Commodity Investment Club of Huntsville ("Club"). Nelson operated the Club at his residence as a sole proprietorship.
3. By presenting historical testing data as actual trading results and thus causing prospective pool participants to believe that the Club was generating trading profits, Nelson solicited, directly or indirectly, at least 26 individuals residing in Alabama, Mississippi, Tennessee and Ohio to invest approximately \$680,000 in the Club for the purpose of trading cotton and sugar commodity futures contracts.
4. Contrary to Nelson's representations that the Club was generating trading profits, the Club sustained substantial trading losses. In order to conceal the trading losses, Nelson provided pool participants with false written reports showing fictitious trading activity and trading profits, falsely represented to participants that checks issued from the Club's bank account were trading profits, falsely claimed to have engaged in certain commodity futures transactions, and issued or directed the issuance of partnership tax documents to pool participants that falsely represented profitable returns on interests in the Club.

A. Defendant Operated the Club as a Commodity Pool

5. In May 2000, Nelson began soliciting individuals in Alabama to purchase interests in the Club. As part of his solicitation, he provided potential pool participants with a document/slide presentation about the Club ("Presentation").

6. The Presentation represents that the Club is the coordinating party for the collection of investment capital to purchase and sell commodity futures contracts on cotton and sugar and to distribute profitable trading returns to pool participants. The Presentation further represents that Nelson is the general partner of the Club and conducts all commodity futures trading for the Club.

7. According to the Presentation, Nelson designed a computer program trading system to trade cotton and sugar commodity futures contracts on the New York Board of Trade. The Presentation claims that Nelson developed the trading system using eleven years of historical data and that testing on the system produced about \$1,500 a month profit on a \$10,000 investment. According to the Presentation, the testing on Nelson's trading system produced 68.5% winning trades for sugar futures and 71.3 % winning trades for cotton futures, and the system never lost money in any 10 month period.

8. The Presentation represents that prospective pool participants can participate in the Club by purchasing \$10,000 investment units. According to the Presentation, returns are paid quarterly to pool participants from profits over their \$10,000 initial investment and profits are divided equally between the pool participants and Nelson.

9. Nelson prepared and provided participants in the Club with a Limited Partnership Agreement of the Commodity Investment Club of Huntsville ("Partnership Agreement"). The

Partnership Agreement is an investment contract that sets forth the agreement between Nelson, who is designated as the General Partner, and the investor, who is designated as the Limited Partner. The Partnership Agreement states "the only purpose of the Club is to invest the assets of the Club solely in commodity futures for the benefit of the partners." According to the Partnership Agreement, each partner is required to make a minimum capital contribution of \$10,000 to become a member of the Club.

10. The Partnership Agreement further provides that all management functions are to be performed by the General Partner, which include: (a) transferring funds to the brokerage account; (b) placing all commodity futures trade orders; (c) conducting all communications with the broker; (d) maintaining all Club records; (e) withdrawing funds from brokerage accounts; and (f) preparing and mailing account statements and sending funds to investors.

11. Between May 2000 and March 2003, Nelson received a total of \$680,000 from participants in the Club and deposited those funds into bank accounts maintained by the Club at AmSouth Bank in Huntsville, Alabama. Nelson was the sole signatory on the Club's accounts at AmSouth Bank.

12. In May 2000, Nelson, on behalf of the Club, sent account forms to Lind-Waldock & Company, LLC, a division of Refco, LLC ("Lind-Waldock"), a futures commission merchant located in Chicago, Illinois, to open a commodity pool trading account in the name of the Club. As part of the application for the commodity pool account, Nelson submitted a copy of the Partnership Agreement and identified himself as the general partner on the trading account. Nelson signed all the account forms as the general partner of the Club and certified that he was the only person authorized to handle funds for the account and conduct trading for the account.

The Club's commodity pool trading account at Lind-Waldock was established and commenced trading on May 31, 2000.

13. Between May 2000 and February 2003, Nelson caused \$544,390 to be transferred from the Club's accounts at AmSouth Bank to the Club's trading account at Lind-Waldock. During that time, Nelson caused \$186,543.24 to be transferred back from the Club's account at Lind-Waldock to the Club's accounts at AmSouth Bank.

14. Between May 2000 and March 2003, trading in the Club's commodity pool account at Lind-Waldock sustained substantial losses from trading in cotton and sugar futures contracts. During that time and contrary to his representations to the participants in the Club, Nelson also purchased and sold stock index futures in the Club's trading account at Lind-Waldock that resulted in further losses.

15. In March 2003, trading ceased in the Club's trading account at Lind-Waldock and the account had a balance of \$230.39. At that time, the Club's trading account had sustained losses amounting to \$424,879.22.

B. Defendant Committed Fraud In Connection With Commodity Futures Transactions

16. From at least October 2000 to at least March 2003, Nelson fraudulently solicited, either directly or indirectly, at least 26 persons residing in Alabama, Tennessee, Mississippi, and Ohio to send funds to the Club for the purpose of becoming a participant in the Club.

17. As part of Nelson's fraudulent solicitations to prospective commodity pool participants, he made misrepresentations and omissions of material facts about the Club both orally and in writing. Although the Club's trading account sustained substantial losses, Nelson

falsely represented to potential and actual pool participants that the Club's trading account was generating profits.

18. Contrary to the statements contained in the Club's Presentation and the Partnership Agreement, Nelson did not use all pool participant funds for the purpose of trading cotton and sugar futures contracts. Instead, Nelson only used approximately half of participant funds to trade commodity futures contracts and used some of those funds to trade stock index futures.

19. In order to conceal his fraudulent representations about profitable trading for Club investors, Nelson provided Club participants with false quarterly trading reports. These reports showed fictitious trading profits and did not disclose that Nelson was using participant funds in an authorized manner to trade stock index futures. In addition, Nelson provided many pool participants with false K-1 partnership tax forms showing non-existent profits.

20. To further conceal his fraudulent representations that the Club's trading account was making profits, Nelson issued checks to pool participants drawn on the Club's accounts at AmSouth Bank and misrepresented to participants that those checks represented profitable returns on their investments in the Club. Between May 2000 and March 2003, Nelson wrote checks to pool participants totaling \$278,859.56 from the Club's accounts at AmSouth Bank and falsely represented that those funds were profits from the Club's trading account. By this conduct, Nelson engaged in a "Ponzi" scheme whereby he paid investors returns from money out of their principal investment maintained at the Club's accounts at AmSouth Bank and failed to disclose that returns were not from profits generated in the Club's trading account.

C. Defendant Acted As An Unregistered CPO

21. During the course of his solicitations to prospective and actual pool participants in the Club between May 2000 and March 2003, Nelson represented that the Club operated as a limited partnership whereby each partner purchased investment units of \$10,000 that were transferred to a commodity pool account at Lind Waldock for trading commodity futures contracts on cotton and sugar. Nelson further represented to potential and actual pool participants that he was the general partner of the Club and operated the Club's bank accounts at AmSouth Bank and trading account at Lind-Waldock.

22. Between May 2000 and March 2003, Nelson solicited and accepted at least \$680,000 from at least 26 persons for the purpose of investing those funds in a pooled investment to trade cotton and sugar futures contracts on the New York Board of Trade. During that time, Nelson acted as the CPO of the Club and was not registered as a CPO with the CFTC.

23. While acting as an unregistered CPO between May 2000 and March 2003, Nelson failed to provide prospective and actual pool participants with commodity pool disclosure documents and failed to comply with the reporting and disclosure requirements for a CPO.

D. Defendant Offered And Sold Unregistered Securities

24. Between May 2000 and March 2003, Nelson solicited members of the public to purchase interests or investments in the Club. Nelson offered and sold investments in the Club by informing customers that their funds would be pooled with the funds of others in the Club, that gains created by trading are applied to the total value of the pool of money, and that the gain is pro-rated to each customer's account based on the percentage of the pool which the investor's funds represent.

25. The investments in the Club offered and sold to members of the public by Nelson 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 Nelson. These investments therefore constitute investment contracts under the Code.

26. The offer and sale of such investment contracts are securities interests that have not been registered with the Securities and Exchange Commission. Nelson has not registered these security interests with the ASC as securities required to be licensed under the Code. Nelson also has not been licensed with the ASC as a broker-dealer, investment adviser, or salesperson under the Code.

E. Defendant Engaged In Securities Fraud

27. The foregoing oral and written fraudulent representations and omissions of material fact by Nelson 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 of securities or their purchase or sale.

28. In connection with the offer and sale of securities, Nelson 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 Club trading account and used for trading cotton and sugar commodity futures contracts, by making false oral and written representations that the Club's trading account was profitable, and by sending funds to investors and falsely representing that those funds represented profitable returns on their investments in the Club.

CONCLUSIONS OF LAW
VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND THE ALABAMA CODE

COUNT I

FRAUD IN CONNECTION WITH COMMODITY FUTURES CONTRACTS

29. From at least October 2000 to at least March 2003, Nelson violated Section 4b(a) of the Act, 7 U.S.C. § 6b(a), in that he cheated or defrauded or attempted to cheat or defraud other persons by, among other things: (a) misrepresenting the profits and losses in the Club's trading account at Lind-Waldock; (b) providing false account statements showing fictitious profits to pool participants; (c) misrepresenting the nature of the commodity futures transactions in the Club's trading account at Lind-Waldock; and (d) misrepresenting returns to pool participants as profits generated by trading in the Club's account at Lind-Waldock.

30. The fraudulent acts alleged in this Count were made in or in connection with orders to make, or the making of contracts for future delivery, made, or to be made for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

COUNT II

FRAUD BY A CPO

31. From at least October 2000 to at least March 2003, Nelson, while acting as a CPO, violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that, directly and indirectly, he

employed a device, scheme, or artifice to defraud pool participants or prospective pool participants, or engaged in transactions, practices or courses of business which operate as a fraud or deceit upon pool participants or prospective pool participants by, among other things, engaging in the acts and omissions set forth in Count I.

COUNT III

ACTING AS AN UNREGISTERED CPO

32. From at least May 2000 to at least March 2003, Nelson violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1), in that he solicited, accepted and received funds from the public for the purpose of trading in commodity interests without being registered, as required, with the CFTC as a CPO and made use of the mails or other means or instrumentalities of interstate commerce in connection with his business as a CPO.

COUNT IV

FAILURE TO COMPLY WITH CPO REPORTING AND DISCLOSURE REQUIREMENTS

33. From at least May 2000 to at least March 2003, Nelson violated Section 4n of the Act, 7 U.S.C. § 6n, and CFTC Regulations 4.21, 4.22, 4.24, 4.25, and 4.26, 17 C.F.R. §§ 4.21, 4.22, 4.24, 4.25, 4.26, by failing to provide a Disclosure Document in the form specified by the CFTC's Regulations to prospective pool participants, failing to distribute to pool participants monthly account statements and an annual report, and failing to file a Disclosure Document with the CFTC.

COUNT V

SALE OF UNREGISTERED SECURITIES

34. From at least May 2000 to at least March 2003, Nelson violated § 8-6-4 of the Code by offering and selling securities, as that term is defined in § 8-6-2(10) of the Code, in the form of investment contracts or certificates of interest or participation in a profit sharing agreement that were not registered under § 8-6-4 of the Code, were not exempt securities under § 8-6-10 of the Code, were not offered or sold in exempt transactions under § 8-6-11 of the Code, were not securities exempt under any rule or order promulgated by the ASC, and were not subject to notice filing under § 8-6-5 of the Code.

COUNT VI

SALES AND ADVISOR ACTIVITY BY UNLICENSED PERSONS

35. From at least May 2000 to at least March 2003, Nelson violated § 8-6-3 of the Code by acting as a broker-dealer and/or salesperson, although not licensed pursuant to the provisions of the Code or exempt therefrom.

36. From at least May 2000 to at least March 2003, Nelson violated § 8-6-3 of the Code by managing an investment or trading account in securities for other persons, for compensation, and acting as an investment adviser or investment adviser representative, although not licensed pursuant to the provisions of the Code, nor exempt therefrom.

COUNT VII

SECURITIES FRAUD

37. In connection with the purchase and sale of a security, the conduct of a securities business, and while advising, for a fee, other persons as to the value of securities or the purchase

or sale of securities, Nelson violated § 8-6-17(a) of the Code 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.

V.

PERMANENT INJUNCTION

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

1. Violating Sections 4b(a), 4m(1), 4n(1), and 4o of the Act, 7 U.S.C. §§ 6b(a), 6m(1), 6n(1), and 6o, and CFTC Regulations 4.21, 4.22, 4.24, 4.25, and 4.26, 17 C.F.R. §§ 4.21, 4.22, 4.24, 4.25, 4.26; and
2. Violating Title 8, Chapter 6, Sections 3, 4, and 17(a)(2) of the Code.

B. **IT IS HEREBY FURTHER ORDERED** that Nelson 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 § 8-6-2(10) of the Code (security interest") 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 himself 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;
10. Placing orders or giving advice or price quotations, or other information in connection with the purchase or sale of any security interest for himself 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.

The injunctive provisions of this Order shall be binding upon Nelson, any person insofar as he or she is acting in the capacity of officer, agent, servant, or attorney of Nelson, 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 Nelson.

VI

RESTITUTION AND ANCILLARY RELIEF

A. **IT IS HEREBY ORDERED** that Nelson shall make full restitution of \$680,000, plus pre- and post-judgment interest, to the pool participants identified in Exhibit A, attached hereto and filed under seal. Upon sufficient showing by Nelson to the CFTC and ASC, Nelson's restitution obligation shall be reduced by any amount he has paid to pool participants prior to the date of this Order. Exhibit A includes the total amount of restitution owed to each pool participant. Omission of any pool participant from Exhibit A shall in no way limit the ability of such participant from seeking recovery from Nelson or any other person or entity. Further, the amounts payable to each participant identified in Exhibit A shall not limit the ability of any participant from proving that a greater amount is owed from Nelson or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any participant that exist under state or common law. Pre-judgment interest shall be determined by using the underpayment rate established quarterly by the Internal Revenue Service pursuant to 26 U.S.C. § 6621 from May 1, 2000 to the date of this Order. 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(a).

B. **IT IS HEREBY FURTHER ORDERED** that 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 Nelson'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 pool participants identified on Exhibit A and any other participant upon sufficient proof of his or her purchase of an interest with Nelson or the Club.

C. IT IS HEREBY FURTHER ORDERED that Nelson shall file with this Court and serve on the parties within thirty (30) days of the date of this Order a complete, detailed, and accurate financial accounting setting forth the disposition of any funds or other assets in his possession or control, either directly or indirectly, from May 1, 2000 to the date of such accounting. Such accounting shall detail all income, expenditures, assets, liabilities, gifts, and conveyances by Nelson and any corporation, partnership or other business entity in which Nelson holds or has held an interest including, without limitation, the identification of:

1. All funds, securities, commodity interests, assets, and other property currently owned or controlled (legally, equitably, or otherwise) directly or indirectly by Nelson or the Club, whether individually or jointly;
2. All funds, securities, commodity interests, assets, and other property received directly or indirectly by Nelson or the Club, whether individually or jointly, describing the source, amount, disposition, and current location of each listed item;
3. All funds, securities, commodity interest contracts, assets, and other property transferred or otherwise disposed of directly or indirectly by Nelson or the Club, whether held individually or jointly, describing the source, amount, disposition, and current location of each listed item; and
4. The name and last known address of each bailee, debtor, or other person or entity currently holding any funds, securities, commodity interest contracts, assets, or other property owned or controlled (legally, equitably, or otherwise) by Nelson or the Club, either individually or jointly.

D. IT IS HEREBY FURTHER ORDERED that Nelson shall file with the Court and serve on the parties within ten (10) days of the date of this Order an accounting of all persons and entities known by him to have held accounts with, purchased commodity futures or options through, invested in, or purchased securities from, either directly or indirectly, Nelson, the Commodity Investment Club of Huntsville, or any entity under his control. With respect to each such person or entity, Nelson shall include the following information:

1. The amount and date of the initial and each additional investment made by any person or entity, and the identity and location of each account into which such funds were deposited and/or transferred;
2. The amount and date of any payments made to such person or entity by Nelson in connection with their investment;
3. The current value and location of such person or entity's investment;
4. The identity, location, and complete trading record of all bank accounts, commodity futures trading accounts, or similar accounts in which the funds of any such person or entity were deposited; and
5. The identity and location of each account in which the funds of any such person or entity were deposited or transferred and the amount of profit realized or loss sustained in each such account.

E. IT IS HEREBY FURTHER ORDERED that Nelson shall execute any documents necessary to release funds that he has in any repository, bank, investment or other financial institution in order to make partial or total payment toward his restitution obligation.

F. IT IS HEREBY FURTHER ORDERED that, until Nelson has satisfied his restitution obligation, Nelson shall not convey or transfer, or cause others to convey or transfer, anything of value in excess of \$500 to the custody, possession, or control of any members of his family or any other person without the authorization of the CFTC or ASC; provided, however, that the provisions of this paragraph shall not apply to the use or transfer of funds for reasonable and

necessary living expenses that have been approved by this Court upon application by Nelson. The CFTC and the ASC shall be served with any such application and may object or otherwise respond to such application.

VII.

CIVIL MONETARY PENALTY

A. **IT IS HEREBY FURTHER ORDERED** that, upon full satisfaction of his restitution obligation, Nelson shall pay to the CFTC a civil monetary penalty in the amount of \$120,000 pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1. Nelson 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 21st Street, N.W., Washington, D.C. 20581. Nelson shall accompany payment of the penalty with a cover letter that identifies Nelson, and the name and docket number of this proceeding. Nelson shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, CFTC, 1155 21st N.W., Washington, D.C. 20581.

B. **IT IS HEREBY FURTHER ORDERED** that, upon full satisfaction of his restitution obligation, Nelson shall pay to the Alabama Securities Commission an administrative assessment in the amount of \$5,000 pursuant to § 8-6-19(j)(2) of the Code and reimbursement of investigative costs in an amount of \$5,000 pursuant to § 8-6-19(k)(1) of the Code. Nelson 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 Alabama Securities Commission and sent to Alabama Securities Commission, 770 Washington Avenue, Suite 570, Montgomery,

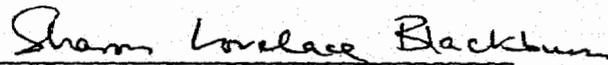
Alabama 36130-4700. Nelson shall accompany payment of this assessment and reimbursement with a cover letter that identifies Nelson and the name and docket number of this proceeding.

VIII.

COOPERATION

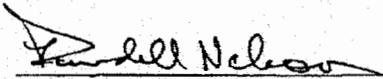
IT IS HEREBY FURTHER ORDERED that Nelson shall cooperate fully with the CFTC, ASC, and any other government agency seeking to enforce the provisions of this Order in carrying out all duties with respect to his obligations to make restitution and pay a civil monetary penalty payment. Nelson shall cooperate fully with the CFTC, ASC, and any other government agency seeking to enforce the provisions of this Order in explaining his 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, ASC, and any other government agency seeking to enforce the provisions of this Order.

DONE this the 14th day of October, 2004.



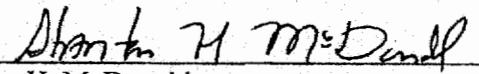
SHARON LOVELACE BLACKBURN
United States District Judge

**Order Of Permanent Injunction And Ancillary Equitable Relief Against Defendant
Randall Nelson consented to and approved for entry by:**



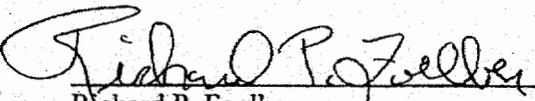
Randall Nelson

Dated: 8/19, 2004



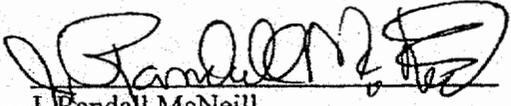
Stanton H. McDonald
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Telephone: (256) 882-2272

Dated: 8/19/04, 2004



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Telephone: (202) 418-5320

Dated: 9/23/04, 2004



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Dated: 9/23/04, 2004