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MIDDLE DISTRICT COURT
ORLANDO FLORIDA

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

ALPHA TRADE GROUP, S.A. A/K/A
REVOLUTION NETWORK LTD., JOSE
CECILIO MARTINEZ BELTRAN,
WELINTON BAUTISTA CASTILLO,
MARIA ALVAREZ GUTIERREZ,
YEHODIZ PADUA VALENTIN, MARIA
ASELA RODRIGUEZ AND FRANCISCO
AMAURY SUERO MATOS,

Defendants.

CIVIL ACTION NO.:

6:11-cv-1584-Orl-31DAB

COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL MONETARY
PENALTIES, AND OTHER EQUITABLE
RELIEF

Plaintiff, Commodity Futures Trading Commission ("Commission" or "CFTC"),

by its attorneys, alleges as follows:

I. SUMMARY

1. From at least April 2009 to December 2009 ("the Relevant Period"), Alpha Trade Group, S.A. a/k/a Revolution Network Ltd. (collectively "ATG"), an unregistered commodity pool operator ("CPO"), by and through its employees, agents, directors, and control persons, including Jose Cecilio Martinez Beltran ("Martinez"), Welinton Bautista Castillo ("Bautista"), Maria Alvarez Gutierrez ("Gutierrez"), Yehodiz Padua Valentin ("Padua"), Maria Asela Rodriguez ("Rodriguez") and Francisco Amaury Suero Matos ("Suero") (collectively "Defendants"), solicited and/or accepted at least

\$1.7 million from hundreds of U.S. residents in Florida, California, Puerto Rico and other states (the “pool participants”) to invest in its associated pools, Orsa Investment Group, L.L.C. (“Orsa” or “the Orsa pool”) and Online Marketing Solutions (“OMS” or “the OMS pool”) that would trade foreign currency contracts (“forex”) and commodity futures contracts (“futures”), among other investments.

2. On behalf of ATG, Martinez, Bautista, Padua and Suero solicited pool participants through face-to-face meetings, telephone calls, written correspondence or e-mail communications, and/or ATG’s websites to invest in the Orsa and/or OMS pools that would invest in the forex and futures markets by guaranteeing that pool participants’ principal investments were risk-free, and would earn steady monthly returns – even as much 12.5% to 25.5% per month.

3. These guarantees were reinforced by certain Defendants: (1) preparing contracts for and/or sending promissory notes to certain pool participants guaranteeing monthly returns on the investment; (2) publishing account statements on ATG’s websites that purported to display the promised monthly returns; and (3) commissioning an attorney to draft a letter to pool participants promising future monthly payments, when in fact none would be paid.

4. Unbeknownst to the pool participants, only approximately \$57,500 of the funds invested in the Orsa and/or OMS pools was sent to a company called “Advanced Forex Systems” located in Anguilla. On information and belief, none of the funds invested in the Orsa and/or OMS pools were used to trade futures. Rather, the Defendants misappropriated, at least several hundred thousands of dollars of pool

participant funds and used those funds for their own personal benefit, including financing international trips to Spain, Switzerland and Panama.

5. By virtue of this conduct and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violations of certain anti-fraud provisions of the Commodity Exchange Act (“CEA” or “the Act”), 7 U.S.C. §§ 1 *et seq.* (2006); the Act, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), § 13102, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 1 *et seq.* (“Act, as amended by the CRA”), to be codified at 7 U.S.C. §§ 1 *et seq.*; and Commission Regulations (“Regulations”), 17 C.F.R. §§ 1.1 *et seq.* (2011), promulgated thereunder.

6. In particular, ATG, by and through its employees, agents and control persons, and Martinez, Bautista, Padua and Suero made fraudulent misrepresentations to pool participants in violation Sections 4b(a)(1)(A)-(C) and 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C) and 6b(a)(2)(A)-(C).

7. Further, ATG, by and through its employees, agents and control persons, and Martinez, Bautista, Gutierrez, Padua, Suero and Rodriguez misappropriated pool participants’ funds in violation of Sections 4b(a)(1)(A), (C) and 4b(a)(2)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (C) and 6b(a)(2)(A), (C).

8. Additionally, ATG, by and through its employees, agents and control persons, and Martinez, Bautista, Padua and Suero committed commodity pool fraud in

violation of Section 4o of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6o; ATG, by and through its employees, agents and control persons, engaged in false and misleading advertising in violation of Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2011); and ATG, by and through its employees, agents and control persons, as a CPO, used the mails or instrumentalities of interstate commerce in connection with a commodity pool while failing to register as a CPO, in violation of Section 4m(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6m(1).

9. Martinez, Bautista, Padua, and Suero failed to register as associated persons (“APs”) of ATG in violation of Section 4k(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §6k(2) and Regulation 3.12, 17 C.F.R. § 3.12 (2011). ATG permitted Martinez, Bautista, Padua, and Suero to remain associated with ATG notwithstanding that ATG knew that they were required to be registered as APs, and thus ATG also violated Section 4k(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §6k(2) and Regulation 3.12, 17 C.F.R. § 3.12 (2011).

10. Martinez, Bautista, Gutierrez, Padua, Rodriguez and Suero, as employees, agents and officers of ATG, committed, are committing, or are about to commit the acts and omissions described herein within the scope of their employment, agency or office with ATG. Therefore, ATG is liable under Section 2(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011), for actions constituting violations of the Act, as amended by the CRA, committed by Martinez, Bautista, Gutierrez, Padua, Rodriguez and Suero as agents of ATG.

11. Martinez, Bautista, Padua and Suero are controlling persons of ATG. They failed to act in good faith or knowingly induced, directly or indirectly, ATG's acts and omissions described herein. Martinez, Bautista, Padua and Suero are therefore liable for ATG's violations of the Act, and the Act as amended by the CRA, pursuant to Section 13(b) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13c(b).

12. Accordingly, pursuant to Sections 6c and 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 13a-1 and 2(c)(2), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act, as amended by the CRA, and as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII, §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.*, and to further enjoin Defendants from engaging in any forex- and commodity-related activity.

13. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution to pool participants, disgorgement of Defendants' ill-gotten gains, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

14. Unless restrained and enjoined by the Court, Defendants likely will continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

15. The Court has jurisdiction over this action pursuant to Section 6c of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act, as amended by the CRA, and as amended by the Dodd-Frank Act, or any rule, regulation, or order thereunder.

16. The Commission has jurisdiction over the forex transactions at issue in this case pursuant to Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2).

17. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1(e), because Defendants are found in, inhabit, or transact business in this District, and certain acts and practices in violation of the Act, as amended by the CRA, and the Regulations have occurred, are occurring, or are about to occur within this District.

III. PARTIES

18. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011). The CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

19. Defendant **Alpha Trade Group, S.A. a/k/a Revolution Network Ltd.** is a Panamanian corporation, with its principal place of business located at Via Belisario Porras y Calle 69 Este, Republic of Panama. Martinez, Bautista, Padua and Suero are directors of ATG, and were involved in its day-to-day operations during the Relevant Period. ATG is the unregistered CPO that solicited funds to trade forex and futures, among other things, and pooled those funds in the Orsa pool, and later the OMS pool. ATG has never been registered with the Commission in any capacity.

20. Defendant **Jose Cecilio Martinez Beltran** resides in Orlando, Florida and is the vice president of ATG, and was a director and manager of Orsa. He was also a partner in OMS, which was a partnership created by Martinez, Bautista and Padua in 2009, as a second pool in which ATG pool participants could invest to trade forex and futures. During the Relevant Period, Martinez's responsibilities included soliciting new pool participants to invest in the Orsa and/or OMS pools, by authorizing and directing trading for ATG, and controlling Orsa's international banking activities. Martinez was a signatory on each of the U.S. bank accounts opened in the name of Orsa. Martinez has never been registered with the Commission in any capacity.

21. Defendant **Welinton Bautista Castillo** resides in Orlando, Florida and is the chief executive officer of ATG and was a partner in OMS. During the Relevant Period, Bautista's responsibilities included soliciting new pool participants for ATG to invest in forex and futures through the Orsa and OMS pools, as well as managing the ATG referral program, which promised to reward pool participants who introduced additional investors to ATG with commissions and other incentives (the "ATG referral

program"). Bautista was also a signatory on at least one of the bank accounts opened in the name of OMS. Bautista has never been registered with the Commission in any capacity.

22. Defendant **Maria Alvarez Gutierrez** resides in Orlando, Florida and was a director and manager of Orsa. Upon information and belief, she was also responsible for Orsa's accounting and bookkeeping. Gutierrez was a signatory on the Orsa bank accounts located in the United States. During the Relevant Period, she deposited funds into Orsa's bank accounts and issued checks and directed wire transfers from Orsa's U.S. bank accounts to certain Defendants, including herself, and to certain pool participants. Gutierrez was also responsible for answering pool participants' telephone calls and responding to their e-mail communications. Gutierrez has never been registered with the Commission in any capacity.

23. Defendant **Yehodiz Padua Valentin** resides in Orlando, Florida and is the executive vice president of ATG and was a partner in OMS. During the Relevant Period, Padua was responsible for the general business development of ATG. Padua was a signatory on the bank accounts opened in the name of OMS. Padua accepted ATG customer deposits into the OMS accounts that were later forfeited to the U.S. Department of Justice in a civil asset forfeiture action described in paragraphs 73-75 below. Padua also solicited new pool participants for ATG to invest in forex and futures through the Orsa and OMS pools by giving PowerPoint presentations in person. Padua has never been registered with the Commission in any capacity.

24. Defendant **Maria Asela Rodriguez** resides in Orlando, Florida and was a director and manager of Orsa. Upon information and belief, Rodriguez was responsible for Orsa's accounting and bookkeeping. She was a signatory on the Orsa bank accounts located in the U.S. During the Relevant Period, she deposited funds into Orsa's bank accounts and issued checks and directed wire transfers from Orsa's bank accounts to certain Defendants, including herself, and to certain pool participants. Rodriguez was also responsible for answering pool participants' telephone calls and responding to their e-mail communications. Rodriguez has never been registered with the Commission in any capacity.

25. Defendant **Francisco Amaury Suero Matos** resides in Mexico and is the president of ATG. During the Relevant Period, Suero managed the day-to-day operations of ATG. His responsibilities also included soliciting new pool participants for ATG to invest in forex and futures through Orsa. In addition, Suero was responsible for ATG's information technology services, and created its websites: *www.alphatradegroup.com*, *www.alphatradegroup.biz* and *www.revolution-network.com* (collectively "the ATG websites"). Suero has never been registered with the Commission in any capacity.

IV. THE COMMODITY POOLS

26. **Orsa Investment Group, L.L.C. a/k/a Orsa Investments, S.A.** is a former Florida limited liability company created in 2008, and located in Orlando, Florida. Orsa is also incorporated in Panama. Martinez, Gutierrez and Rodriguez were directors and managers of Orsa, and ran its day-to-day operations. Orsa was one of the commodity pools operated by ATG. From April 2009 until December 2009, ATG, by and through its

employees, agents and control persons, solicited pool participants to invest in the Orsa pool by instructing them to send their funds to bank accounts in the name of Orsa. Orsa received, accepted and pooled these funds ostensibly to trade, at least in part, in forex and/or futures on the pool participants' behalf. Orsa has never been registered with the Commission in any capacity.

27. **Online Marketing Solutions** was a partnership created in May 2009 by Martinez, Bautista and Padua. OMS was the second commodity pool operated by ATG. From May 2009 until December 2009, ATG, by and through its employees, agents and control persons, solicited pool participants to invest in the OMS pool by instructing them to send their funds to bank accounts in the name of OMS. OMS received, accepted and pooled these funds ostensibly to trade in, at least in part, forex and/or futures on the pool participants' behalf. OMS has never been registered with the Commission in any capacity.

V. STATUTORY BACKGROUND

28. During the Relevant Period, a "commodity pool" was defined in Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1) (2011), as any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.

29. During the Relevant Period, a "commodity pool operator" was defined in Section 1a of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a, as any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions,

the sale of stock or other forms of securities or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

30. An “associated person” is defined in Section 4k(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6k(2), as “any person . . . associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for participation in a commodity pool or (ii) the supervision of any person or persons so engaged”

VI. FACTS

A. Summary of ATG’s, Orsa’s and OMS’ Operations

31. In April 2009, Martinez, Bautista, Padua and Suero created ATG for the purpose of soliciting individuals to invest funds in the Orsa, and later OMS pools, which would trade forex, futures – including contracts in crude oil and sugar – and other investments.

32. Through its websites and in other promotional materials, ATG described itself as a “Funds and Investment Management Company,” that offered four separate investment programs, including the “ATG Commodities Program” (purporting to trade in agricultural, metals and energy products) and the “ATG Managed Funds Program” (purporting to trade in forex, securities, commodities, energy, short-term venture capital and short and long-term “REIT’s”). ATG represented on its website that it participates

in “one of the most recognizable Trading Platforms in the world for Forex and Futures trades” and utilized traders with twenty-five years of experience.

33. As part of the solicitation for funds to trade forex and futures, as more fully described in paragraphs 47-65 and 70-72 below, ATG, by and through its employees, agents and control persons, and Martinez, Bautista, Padua and Suero told potential pool participants, among other things, that their principal investment was guaranteed, risk-free and a high-yield investment.

34. ATG, by and through its employees, agents and control persons, also encouraged its pool participants to solicit other pool participants to invest in the Orsa and/or OMS pools in exchange for commissions through the ATG referral program.

35. Martinez, Gutierrez and Rodriguez, among others, opened at least seven bank accounts in the name of Orsa in the United States beginning in September 2008, and as early as April 2009, began accepting ATG pool participants’ deposits in those accounts. Orsa’s bank accounts, in addition to others, were listed on the ATG websites as accounts to which pool participants should send their funds. In addition, during face-to-face meetings, certain Defendants, and other agents and employees acting on behalf of ATG, provided pool participants with written instructions on how to send or wire funds to the appropriate Orsa bank accounts.

36. In May 2009, Padua opened four bank accounts in the name of OMS and began accepting ATG pool participants’ deposits in those accounts. At least one of the OMS bank accounts, among others, was listed on the ATG websites as the account to which pool participants should send their funds. In addition, during face-to-face

meetings, Bautista, on behalf of ATG, provided pool participants with written instructions on how to send or wire funds to the appropriate OMS bank accounts.

37. During the Relevant Period, ATG, by and through its employees, agents and control persons, and Martinez, Bautista, Padua and Suero solicited approximately \$1.7 million from approximately 300 pool participants located in the United States, to invest in the Orsa and/or the OMS pools to trade forex, futures, and/or other investments.

38. To open an account with ATG, pool participants needed only to complete ATG's online registration form through a link on the ATG websites, and send funds to the Orsa and/or OMS bank accounts listed on the ATG websites.

39. Certain Defendants also prepared and/or sent contracts and/or promissory notes to certain pool participants, further guaranteeing the risk-free nature of the investment and the monthly returns. For example, at least one pool participant received a promissory note from ATG, by and through its employees, agents and control persons, stating that his principal investment was guaranteed, and also promising 35% monthly returns on that investment. Martinez solicited the customer for this agreement and Suero sent this promissory note to the customer on behalf of ATG. Thereafter, Suero served as the customer's point of contact for any and all questions relating to that investment.

40. Once a pool participant opened an account with ATG, s/he received an e-mail communication that included a username and password for the ATG websites. By logging into their individual accounts through the ATG websites, the pool participant was able to view his/her ATG account statements. Those statements showed that the entire amount of the pool participant's funds was invested. Upon information and belief, the

statements also showed that the pool participant was earning the monthly returns promised by certain Defendants.

41. Pool participants understood from ATG's employees, agents and control persons that Orsa, and later OMS, pooled their funds and purportedly transferred those funds to trading accounts opened for the purposes of trading, at least in part, forex and/or futures. However, during the Relevant Period, (i) no trading in forex or futures occurred in the United States; (ii) only approximately \$57,500 was transferred by the Orsa and/or OMS pools to Advanced Forex Systems Ltd., a forex-trading firm located in Anguilla; and (iii) no money was sent overseas to any futures trading firm.

42. Certain pool participants periodically requested withdrawals from their ATG accounts. These pool participants received checks and wire transfers from Orsa that purportedly represented their monthly earnings, and/or commissions earned through the ATG referral program. Many of these checks were signed by Gutierrez or Rodriguez on behalf of Orsa. Many of the wire transfers were processed by Gutierrez or Rodriguez on behalf of Orsa.

43. ATG, by and through its employees, agents and control persons, also issued pre-loaded debit cards to its pool participants. These debit cards were supposed to give the pool participants direct access to their monthly returns and/or commissions from the ATG referral program. However, when pool participants attempted to use the debit cards to withdraw their earnings and/or commissions, many found that the debit cards were empty.

44. Of the \$1.7 million solicited from U.S. pool participants by Martinez, Bautista, Padua and Suero on behalf of ATG and received by the Orsa and OMS pools, approximately \$763,000 was returned to pool participants located in the United States, as either purported returns on investments or commissions from the ATG referral program. Upon information and belief, none of the funds returned to pool participants represented actual profits earned by trading in forex, futures, or any other investment, through the Orsa or OMS pools.

45. An additional \$316,418.50 was returned to pool participants as a result of the U.S. Department of Justice's civil forfeiture action (discussed in further detail in paragraphs 73-75 below).

46. As set forth more fully in paragraphs 66-69 below, it appears that the vast majority of the shortfall between the total amount solicited/received from U.S. pool participants, less the sum of what was returned to pool participants and the \$57,500 that was lost trading – *i.e.*, hundreds of thousands of dollars – was misappropriated by the Defendants.

B. Pool Participants Were Solicited through False and Misleading Statements and Omissions of Material Facts

47. On behalf of ATG, certain of the Defendants solicited pool participants to invest in the Orsa and/or OMS pools that would trade forex and/or futures, though face-to-face meetings and PowerPoint presentations, telephone calls, the ATG websites, correspondence and e-mail communications, and by word of mouth.

The Face-to-Face Meetings and PowerPoint Presentations

48. For example, during the Relevant Period, Martinez, Bautista, Padua and Suero, on behalf of ATG, met with individuals and/or groups of prospective investors at churches, restaurants and other locations throughout Florida, California and Puerto Rico. During these meetings, Martinez, Bautista, Padua and/or Suero, on behalf of ATG, verbally represented to prospective pool participants that (a) their funds would be traded, at least in part, in forex and/or commodities; (b) their investments were 100% guaranteed against risk of loss; and (c) they would earn monthly returns on their investments.

49. The representations set forth in paragraph 48 above are false and misleading and/or contain omissions of material facts for, among other reasons, the following:

- (a) Of the \$1.7 million solicited and accepted from U.S. pool participants into the Orsa and/or OMS pools: no trading in forex or futures was conducted in the U.S., only approximately \$57,500 was transferred by the Orsa and/or OMS pools to a forex-trading firm located outside of the U.S., and no money was transferred by the Orsa and/or OMS pools to futures trading firms located outside of the U.S.
- (b) Defendants guaranteed pool participants' principal investment against risk of loss and did not return pool participants' guaranteed principal investment.
- (c) Defendants did not earn or pay pool participants the returns promised. There is no evidence that any trading resulted in any profits.

50. In addition, during the Relevant Period, Martinez, Bautista, Padua and Suero, on behalf of ATG, showed individuals and/or groups of prospective pool participants PowerPoint presentations at churches, restaurants and other locations

throughout Florida, California and Puerto Rico. One PowerPoint presentation regarding, among others programs, the ATG Managed Funds Program included the following:

- (a) pledged that ATG would manage the funds in several markets (*e.g.*, currencies, futures, energy, financial, securities, and commodities); and
- (b) represented monthly returns up to certain amounts, depending on the amount invested, as follows: (i) up to 12.5% for investments ranging from \$1,000-\$4,999; (ii) up to 14.5% for investments ranging from \$5,000-\$9,999; (iii) up to 16% for investments ranging from \$10,000-\$24,999; (iv) up to 21.5% for investments ranging from \$25,000-\$49,999; and (v) up to 25.5% for investments ranging from \$50,000-\$100,000.

51. The representations set forth in paragraph 50 above are false and misleading and/or contain omissions of material facts for, among other reasons, the following:

- (a) Defendants did not manage the funds as promised. As set forth in paragraph 49(a) above, of the \$1.7 million solicited and accepted from U.S. pool participants, no funds were used to trade futures, and only approximately \$57,500 was potentially used to trade forex. Moreover, Orsa's and OMS' bank records for the Relevant Period show that pool participants' funds were not invested in any of the other markets identified in the PowerPoint presentation.
- (b) Defendants did not earn or pay pool participants any of the returns promised. Indeed, there is no evidence that any trading resulted in any profits.

52. In another Power Point presentation provided to potential pool participants during the Relevant Period, in addition to repeating the representations set forth in paragraph 50 above, ATG, by and through its employees, agents and control persons, also included several charts and graphs comparing investing with ATG versus a savings account or certificate of deposit ("CD"), and showing that ATG pool participants would

earn approximately fifty-four times more than had the pool participants deposited their funds into a traditional savings account and approximately twenty-two times more than if the pool participants had invested in a CD.

53. The representations set forth in paragraph 52 above are false and misleading and/or contain omissions of material facts because, during the Relevant Period neither ATG, nor any of its agents or employees had a history of trading forex, futures or any of the other identified markets at a profit on behalf of the Orsa and/or OMS pools, let alone earning fifty-four times more than a savings account or twenty-two times more than a CD.

54. After the pool participants invested funds to trade forex and/or futures, Martinez, Bautista, Padua and Suero, on behalf of ATG, reinforced the representations set forth in paragraphs 39, 48 and 50 above in face-to-face meetings, telephone calls and/or correspondence and e-mail communications, in which they assured pool participants that 100% of the principal investment was guaranteed, that ATG was actually earning the promised returns, and that pool participants requesting withdrawals would received their money as promised. Certain Defendants also prepared and/or sent contracts and/or promissory notes to certain pool participants, further guaranteeing the risk-free nature of the investment and the monthly returns. In addition, the representations set forth in paragraphs 39, 48 and 50 above were also reinforced by Gutierrez and Rodriguez through telephone calls and/or correspondence and emails with pool participants, during which they reassured pool participants requesting withdrawals would receive their money as promised.

The ATG Websites

55. Through the ATG websites, pool participants could input the amount they intended to invest in the “Earnings Calculator,” which would then automatically show the customer how much money he or she would earn each month trading futures and/or forex, among other things.

56. These representations generated by the “Earnings Calculator” were false and misleading and contain omissions of material fact because the amount shown in the “Earnings Calculator” gave pool participants the false impression that they would automatically earn the amount shown, regardless of fluctuations in the forex and futures markets.

57. ATG, by and through its employees, agents and control persons, created the online account statements through the ATG websites, that purported to show that the entire principal amount of ATG pool participants’ funds deposited with the Orsa and/or OMS pools were invested, and that the pool participants were earning monthly returns beyond the principal amount of their investments.

58. The online account statements are false and misleading and/or contain omissions of material facts for the reasons set forth in paragraphs 49 and 51 above.

59. ATG, by and through its employees, agents and control persons, stated under the “Frequently Asked Questions” section of the ATG websites that ATG does not charge any fees and that each pool participant’s full deposit was invested in ATG’s investment “platform.” Accordingly, Defendants were not entitled to use pool participant funds for management fees or operating expenses.

60. The representations set forth in paragraph 59 above were false and misleading and contain omissions of material fact because, as described in paragraphs 66-69 below, certain of the defendants withdrew, at least several hundred thousand dollars of pool participant funds from the Orsa and/or OMS bank accounts, which were used, among other things, to finance international travel and other personal expenses for certain Defendants.

The Debit Cards

61. During the face-to-face meetings, in telephone conversations and/or through the ATG websites, ATG, by and through its employees, agents and control persons, and Martinez, Bautista, Padua and Suero, told potential ATG pool participants that they would receive pre-loaded debit cards, with their monthly earnings and commissions loaded on the cards.

62. For example, on at least one occasion, Bautista demonstrated to potential pool participants how the debit cards would work. He showed them his own ATG-issued debit card, dialled the phone number on the back of the card, activated the speaker phone, and let them hear the automated system state the current balance on his card.

63. Suero negotiated the contract for the debit cards on behalf of ATG with a debit- card provider, through which he could request that specific amounts of money be loaded onto the individual pool participant's card. Suero ordered hundreds of cards, which were then sent to the Orsa and/or OMS pool participants through the U.S. Mail.

64. The representations set forth in paragraph 62 above were false and misleading and contain omissions of material fact because, based upon the

representations, pool participants believed that they would receive their monthly returns and commissions via this payment method. However, when pool participants activated the debit cards, many found that the debit cards were empty.

65. ATG, by and through its employees, agents and control persons, and Martinez, Bautista, Padua and Suero made the representations set forth in paragraphs 39 and 47-65 above knowing them to be false or with reckless disregard as to their truth.

C. The Defendants Misappropriated Pool Participants' Funds

66. As alleged above, beginning in April 2009, and continuing through the Relevant Period, the Defendants solicited at least \$1.7 million from pool participants located in the U.S. to invest in the Orsa and/or OMS pools that purported to trade forex and futures, among other things. Of this sum, only approximately \$763,000 was returned to pool participants located in the United States, as either purported returns on investments or commissions earned through the ATG referral program. An additional \$316,418.50 was returned to pool participants by the U.S. Department of Justice following the filing of an *in rem* action to recover funds from the Orsa and/or OMS pools (see paragraphs 73-75 below).

67. Accordingly, approximately \$562,500 in Orsa and/or OMS pool participants' funds remains outstanding. As set forth in paragraph 49 above, only \$57,500 – the amount transferred from the Orsa and/or OMS bank accounts to an overseas forex-trading firm – could have been lost trading in forex; none was lost trading futures or in the other identified markets. Rather, the Defendants misappropriated, at least several hundred thousands of dollars.

68. Some or all of the Defendants used the misappropriated pool participants' funds to pay for, among other things, personal items and expenses, including furniture, foreign and domestic travel (including airline tickets and hotels), restaurants and purchases at department stores. For example, certain of the Defendants used the Orsa pool's bank accounts, containing the pool participants' funds, to purchase several international airplane tickets to travel to Spain, Switzerland and Panama.

69. In addition, Gutierrez and Rodriguez wrote several checks from the Orsa pool's bank accounts containing the ATG customer funds, to Martinez, Bautista, Padua and themselves. Rodriguez also sent money orders to Suero. Martinez, Gutierrez and Rodriguez also made several cash withdrawals from the Orsa accounts.

D. The July 23 Letter

70. On or about July 8, 2009, Gutierrez and Rodriguez, on behalf of Orsa, commissioned an attorney to prepare a letter for the Orsa pool participants explaining that there would be a several month delay in receiving monthly returns. That letter, dated July 23, 2009, (the "July 23 Letter") was sent to the Orsa pool participants via e-mail, stated, among other things, that the Orsa pool participants would be paid their monthly returns, but that the "dividends will be delayed" due to the purported need to "redesign a new structure of financial logistics due to the modalities of the various banks involved regarding the vetting process of wire transfers." The July 23 Letter promised to send additional communications to pool participants if the "dividend" payments were to be delayed beyond September 20, 2009. Thereafter, no further communication was sent to ATG pool participants by Defendants, Orsa, Orsa's attorney, or anyone else.

71. Given the representations in the letter, a number of pool participants decided not to attempt to withdraw their funds during the time period July 23 through September 20, 2009. Other pool participants invested additional funds in the Orsa pool – from July 24, 2009 until the scheme collapsed in December 2009 Orsa received approximately \$1 million in additional pool participant funds.

72. The July 23 Letter lulled pool participants into believing that their money was safe, when in fact: (a) ATG was not trading pool participant funds as promised in forex, futures or the other identified markets; (b) certain Defendants had already misappropriated pool participant funds; and (c) the scheme was on the verge of collapse.

E. Civil Forfeiture Action

73. On February 22, 2010, the U.S. Department of Justice filed a Complaint for Forfeiture *in rem*, in Case No. 6:10-cv-292 (“February Complaint”), alleging that \$316,418.50 constituted proceeds traceable to wire fraud offenses (“wire fraud proceeds”), in violation of 18 U.S.C. § 1343, and, are subject to forfeiture pursuant to the provisions of 18 U.S.C. § 981(a)(1)(C). The February complaint alleged that the wire fraud proceeds were held in a Chase bank account in the name of Yehodiz Padua d/b/a Online Marketing Solutions.

74. The February complaint also alleged that Martinez, Bautista, Suero and Padua operated a Ponzi/Pyramid scheme by holding investment presentations in the state of Florida and worldwide through ATG.

75. On July 27, 2010, the court entered a judgment of default against Martinez, Bautista, Suero and Padua and ordered the wire fraud proceeds forfeit pursuant to 18 U.S.C. § 981(a)(1)(C).

F. Forex Transactions

76. Defendants did not conduct forex transactions with U.S. financial institutions, registered brokers or dealers, associated persons of registered brokers or dealers, or financial holding companies.

77. During the Relevant Period, pool participants who provided funds to the Defendants were not “eligible contract participants” as that term was defined in the Act. See Section 1a of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a(12) (an “eligible contract participant,” as relevant here, is an individual with total assets in excess of \$10 million).

78. On information and belief, the forex transactions offered and/or conducted by Defendants on behalf of the pool participants were entered into on a margined or leveraged basis.

79. On information and belief, the forex transactions offered and/or conducted by Defendants neither resulted in delivery of actual currency within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these forex contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

VII. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE:

Fraud in Connection with Forex – Misrepresentations to Pool Participants

**Violation of Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA,
to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C)
(Against ATG, Martinez, Bautista, Padua and Suero)**

80. Paragraphs 1 through 79 are realleged and incorporated herein.

81. Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C), provides in relevant part, that it is unlawful for any person, in or in connection with any order to make or the making of a forex contract, for or on behalf of any other person, (A) to cheat or defraud or attempt to cheat or defraud other persons; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; or (C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract.

82. As set forth in paragraphs 39 and 47-65 above, during the Relevant Period, ATG, by and through its employees, agents and control persons, and Martinez, Bautista, Padua and Suero cheated and defrauded and attempted to cheat and defraud, and willfully deceived and attempted to deceive, pool participants in connection with forex by, among other things: (1) telling prospective and actual pool participants that their investment with ATG was risk-free; (2) guaranteeing pool participants returns on the Orsa and OMS pools' forex trading; and (3) issuing false statements to pool participants, in violation of

Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C).

83. The Defendants engaged in the acts and practices described above knowingly or recklessly.

84. Martinez, Bautista, Padua and Suero, as agents and officers of ATG, committed the acts and omissions described in paragraphs 39 and 47-65 above within the scope of their employment and offices with ATG. ATG is therefore liable under Section 2(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011), for actions constituting violations of the Act, as amended by the CRA, and the Regulations committed by Martinez, Bautista, Padua and Suero.

85. Martinez, Bautista, Padua and Suero controlled ATG, respectively, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, ATG's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13c(b); each is liable for ATG's violations of Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C).

86. Each misrepresentation or omission of material fact, actual or attempted act to cheat, defraud, or deceive, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C).

COUNT TWO:

Fraud in Connection with Forex – Misappropriation of Pool Participants' Funds

**Violation of Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA,
to be codified at 7 U.S.C. § 6b(a)(2)(A), (C)
(Against All Defendants)**

87. Paragraphs 1 through 79 are realleged and incorporated herein.

88. Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A), (C), provides in relevant part, that it is unlawful for any person, in or in connection with any order to make or the making of a forex contract, for or on behalf of any other person, (A) to cheat or defraud or attempt to cheat or defraud other persons; . . . or (C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract.

89. As set forth in paragraphs 31-46 and 66-69 above, during the Relevant Period, ATG, by and through its employees, agents and control persons, and Martinez, Bautista, Padua Gutierrez, Rodriguez, and Suero cheated or defrauded or attempted to cheat or defraud pool participants and deceived or attempted to deceive pool participants by, among other things, misappropriating pool participants' funds that purportedly were to be used at least in part to trade forex, in violation of Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A), (C).

90. The Defendants engaged in the acts and practices described above knowingly or recklessly.

91. Martinez, Bautista, Padua, and Suero as agents and officers of ATG, committed the acts and omissions described in paragraphs 31-46 and 66-69 above within the scope of their employment and offices with ATG. ATG is therefore liable under Section 2(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011), for actions constituting violations of the Act, as amended by the CRA, and Regulations committed by Martinez, Bautista, Padua and Suero.

92. Martinez, Bautista, Padua and Suero controlled ATG, respectively, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, ATG's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13c(b), each is liable for ATG's violations of Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A), (C).

93. Each time the Defendants misappropriated pool participants' funds is alleged as a separate and distinct violation of Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A), (C).

COUNT THREE:

Fraud in Connection with Futures – Misrepresentations to Pool Participants

**Violation of Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA,
to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C)
(Against ATG, Martinez, Bautista, Padua and Suero)**

94. Paragraphs 1 through 79 are realleged and incorporated herein.

95. Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), provides in relevant part, that it is unlawful for any person, in or in connection with any order to make or the making of a futures contract, for or on behalf of any other person, (A) to cheat or defraud or attempt to cheat or defraud other persons; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; or (C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract.

96. As set forth in paragraphs 39 and 47-65 above, during the Relevant Period, ATG, by and through its employees, agents and control persons, and Martinez, Bautista, Padua and Suero cheated and defrauded and attempted to cheat and defraud, and willfully deceived and attempted to deceive, pool participants in connection with futures by, among other things: (1) telling potential and actual pool participants that their investment with ATG was risk-free; (2) guaranteeing returns on customer investments in the futures market; and (3) issuing false statements to pool participants, in violation of Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C).

97. The Defendants engaged in the acts and practices described above knowingly or recklessly.

98. Martinez, Bautista, Padua, and Suero, as agents and officers of ATG, committed the acts and omissions described in paragraphs 39 and 47-65 above within the

scope of their employment and offices with ATG. ATG is therefore liable under Section 2(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011), for actions constituting violations of the Act, as amended by the CRA, and Regulations committed by Martinez, Bautista, Padua and Suero.

99. Bautista, Martinez, Padua and Suero controlled ATG, respectively, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, ATG's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13c(b), each is liable for ATG's violations of Section 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C).

100. Each misrepresentation or omission of material fact, actual or attempted act to cheat, defraud, or deceive, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C).

COUNT FOUR:

Fraud in Connection with Futures – Misappropriation of Pool Participants' Funds

**Violation of Section 4b(a)(1)(A), (C) of the Act, as amended by the CRA,
to be codified at 7 U.S.C. § 6b(a)(1)(A), (C)
(Against All Defendants)**

101. Paragraphs 1 through 79 are realleged and incorporated herein.

102. Section 4b(a)(1)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C), provides in relevant part, that it is unlawful for

any person, in or in connection with any order to make or the making of a futures contract, for or on behalf of any other person, (A) to cheat or defraud or attempt to cheat or defraud other persons; . . . or (C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract.

103. As set forth in paragraphs 31-46 and 66-69 above, during the Relevant Period, ATG, by and through its employees, agents and control persons, and Martinez, Bautista, Padua Gutierrez, Rodriguez, and Suero cheated or defrauded or attempted to cheat or defraud pool participants and deceived or attempted to deceive pool participants by, among other things, misappropriating pool participants' funds that purportedly were to be used at least in part to trade futures, in violation of Section 4b(a)(1)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C).

104. The Defendants engaged in the acts and practices described above knowingly or recklessly.

105. Martinez, Bautista, Padua, Gutierrez, Rodriguez, and Suero as agents and officers of ATG, committed the acts and omissions described in paragraphs 31-46 and 66-69 above within the scope of their employment and offices with ATG. ATG is therefore liable under Section 2(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011), for actions constituting violations of the Act, as amended by the CRA, and Regulations committed by Martinez, Bautista, and Padua.

106. Martinez, Bautista, Padua and Suero controlled ATG, respectively, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, ATG's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13c(b), each is liable for ATG's violations of Section 4b(a)(1)(A), (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C).

107. Each time the Defendants misappropriated pool participants' funds is alleged as a separate and distinct violation of Section 4b(a)(1)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C).

COUNT FIVE:

Fraud as a Commodity Pool Operator

**Violation of Section 4o of the Act, as amended by the CRA,
to be codified at 7 U.S.C. § 6o,
and Regulation 4.41(a), 17 C.F.R. § 4.41(a)
(Against ATG, Martinez, Bautista, Padua and Suero)**

108. Paragraphs 1 through 79 are realleged and incorporated herein.

109. Section 4o(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6o(1), prohibits CPOs, and APs of CPOs, from using the mails or any other means of interstate commerce to: (a) employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or (b) engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

110. During the Relevant Period, ATG acted as a CPO by soliciting, accepting or receiving funds from others and engaging in a business that is of the nature of an

investment trust, syndicate, or similar form of enterprise, for the purpose of trading in futures while failing to register as a CPO.

111. During the Relevant Period, Martinez, Bautista, Padua and Suero acted as APs of ATG by (a) soliciting funds, securities, or property for participation in a commodity pool or (b) supervising persons so engaged while failing to register as APs.

112. As set forth in paragraphs 31-75 above, during the Relevant Period, ATG, by and through its employees, agents and control persons, and its APs, employed a device, scheme or artifice to defraud pool participants and prospective pool participants or engaged in a transaction, practice or course of business, which operated as a fraud, including through (a) misappropriating the funds received from the pool participants to trade futures; and/or (b) soliciting pool participants and prospective pool participants to invest in the Orsa and/or OMS pools through making materially false and misleading statements and omissions in face-to-face meetings and advertising through their website, including, among other things, misrepresentations and omissions, in violation of Section 40(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 60(1).

113. Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2011), provides that no CPO may advertise in a manner that: (a) employs any device, scheme or artifice to defraud any participant or client or prospective participant or client; or (b) involves any transaction, practice, or course of business which operates as a fraud or deceit upon any participant or client or any prospective participant or client.

114. As set forth in paragraphs 31-46 and 47-65 above, during the Relevant Period, ATG, by and through its employees, agents and control persons, advertised in a

manner that employed a device, scheme or artifice to defraud futures pool participants and prospective pool participants or engaged in a transaction, practice or course of business, including soliciting pool participants and prospective pool participants to invest in the Orsa and/or OMS pools through materially false and misleading its websites and written solicitation materials and statements, in violation of Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2011).

115. The Defendants engaged in the acts and practices described above knowingly or recklessly.

116. Martinez, Bautista, Padua and Suero, as agents and officers of ATG, committed the acts and omissions described paragraphs 110 and 112 above within the scope of their employment and offices with ATG. ATG is therefore liable under Section 2(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. §1.2 (2011), for actions constituting violations of the Act, as amended by the CRA, and Regulations committed by Martinez, Bautista, Padua and Suero.

117. Martinez, Bautista, Padua and Suero controlled ATG, respectively, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, ATG's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13c(b); each is liable for ATG's violations of Section 4o(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6o(1).

118. Each misrepresentation or omission of material fact, actual or attempted act to cheat, defraud, or deceive, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, to be codified at 7 U.S.C. § 6o(1), and Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2011).

COUNT SIX:

Failure to Register as a Commodity Pool Operator

**Violation of Section 4m(1) of the Act, as amended by the CRA,
to be codified at 7 U.S.C. § 6m(1)
(Against ATG, Martinez, Bautista, Padua and Suero)**

119. Paragraphs 1 through 79 are realleged and incorporated herein.

120. Section 4m(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C § 6m(1), provides that it is unlawful for any CPO, unless registered under the Act, and the Act as amended by the CRA, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO.

121. As set out in paragraphs 31-75 above, during the Relevant Period, ATG, by and through its employees, agents and control persons, used the mails or instrumentalities of interstate commerce in or in connection with a commodity pool as a CPO while failing to register as a CPO, in violation of Section 4m(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6m(1).

122. Martinez, Bautista, Padua and Suero each controlled ATG, directly or indirectly, and each did not act in good faith or knowingly induced, directly or indirectly, ATG's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13c(b); each is liable for ATG's

violations of Section 4m(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6m(1).

123. Each use of the mails or any means or instrumentality of interstate commerce by ATG, by and through its employees, agents and control persons, while acting as a CPO including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, to be codified at 7 U.S.C. § 6o(1),

COUNT SEVEN:

Failure to Register as an Associated Person

**Violation of Section 4k(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6k(2) and Regulation 3.12, 17 C.F.R. § 3.12 (2011)
(Against ATG, Martinez, Bautista, Padua and Suero)**

124. Paragraphs 1 through 79 are realleged and incorporated herein.

125. Section 4k(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6k(2) prohibits,

- (a) persons to be associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered; and
- (b) a CPO from permitting a person identified in paragraph 121(a) above to become or remain associated with a CPO in any such capacity if

the CPO knew or should have known that such person was not so registered.

126. Regulation 3.12, 17 C.F.R. § 3.12 (2011), prohibits a person to be associated with a commodity pool operator unless the person shall have been registered as an AP of the sponsoring CPO.

127. Based on the conduct described in paragraphs 31-75 above, Martinez, Bautista, Padua and Suero (i) solicited funds, securities, or property for participation in a commodity pool or (ii) supervised persons so engaged. Because Martinez, Bautista, Padua and Suero were not registered as APs by the Commission, each person violated Section 4k(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6k(2), and Regulation 3.12, 17 C.F.R. § 3.12 (2011).

128. Based on the conduct described in paragraphs 31-75 above, ATG, by and through its employees, agents and control persons, permitted Martinez, Bautista, Padua and Suero to become or remain associated with ATG knowing that they should have been registered as APs, in violation of Section 4k(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6k(2).

129. Martinez, Bautista, Padua and Suero controlled ATG, respectively, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, ATG's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13c(b), each is liable for ATG's violations of Section 4k(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6k(2).

VIII. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court, as authorized by Section 6c of the Act, to be codified at 7 U.S.C. § 13a-1, and pursuant to its own equitable powers, enter:

- a) An order finding that ATG, Martinez, Bautista, Padua and Suero violated Section 4b(a)(1)(A)-(C) and 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C) and 6b(a)(2)(A)-(C) by making fraudulent misrepresentations and issuing false account statements to pool participants in connection with futures and forex;
- b) An order finding that the Defendants violated Section 4b(a)(1)(A), (C) and 4b(a)(2)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C) and 6b(a)(2)(A), (C), by misappropriating pool participants' funds in connection with futures and forex;
- c) An order finding that ATG, Martinez, Bautista, Padua and Suero violated Section 4o and of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6o by committing pool fraud and Section 4m(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6m(1), by failing to register as a commodity pool;
- d) An order finding that ATG, Martinez, Bautista, Padua and Suero violated Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2011) by engaging in false and misleading advertising;

e) An order finding that ATG, Martinez, Bautista, Padua, and Suero violated Section 4k(2), to be codified at 7 U.S.C. § 6k(2) and Regulation 3.12, 17 C.F.R. § 3.12 (2011) by failing to register as APs;

f) Orders of preliminary and permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, from directly or indirectly:

- (i) engaging in conduct in violation of Section 4b(a)(1)(A)-(C) and 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C) and 6b(a)(2)(A)-(C), Section 4o of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6o; Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2011); Section 4m(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6m(1); Section 4k(2), to be codified at 7 U.S.C. § 6k(2); and Regulation 3.12, 17 C.F.R. § 3.12 (2011);
- (ii) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a);
- (iii) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2011) (“commodity options”)), swaps, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA and the

Dodd-Frank Act, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (“forex contracts”)) for their own personal or proprietary account or for any account in which they have a direct or indirect interests;

- (iv) having any commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts traded on any of their behalf;
- (v) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts;
- (vi) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts;
- (vii) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011);
and
- (viii) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified 7 U.S.C. § 1a) registered, exempted from registration or required to be registered with the

Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

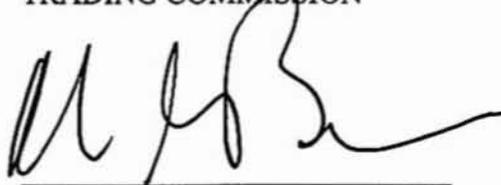
- g) An order directing Defendants, as well as any successors and/or agents of Defendants, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices that constitute violations of the Act, as amended by the CRA, and the Regulations as described herein, and pre- and post-judgment interest thereon;
- h) An order directing Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act, as amended by the CRA, and the Regulations as described herein, and pre- and post-judgment interest thereon;
- i) An order directing Defendants and any successor thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the pool participants whose funds were received by Defendants as a result of the acts and practices that constitute violations of the Act, as amended by the CRA, and the Regulations as described herein;
- j) An order directing Defendants to pay civil monetary penalties of not more than the higher of \$140,000 or triple the monetary gain to proposed Defendants for each violation of the Act, as amended by the CRA, and the Regulations occurring on or after October 23, 2008;
- k) An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

- l) Such other and further relief as the Court deems just and appropriate.

September 26, 2011

Respectfully submitted,

PLAINTIFF COMMODITY FUTURES
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