

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

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

vs.

DENNIS R. BOLZE and  
CENTURION ASSET MANAGEMENT, INC.,  
Defendants,

and

ADVANCED TRADING SERVICES, INC.  
Relief Defendant.

Civil Action No: 09 Civ. 088

Judge Curtis L. Collier

**[PROPOSED] ORDER OF DEFAULT JUDGMENT  
FOR PERMANENT INJUNCTION AND OTHER ANCILLARY RELIEF AGAINST  
DENNIS R. BOLZE, CENTURION ASSET MANAGEMENT, INC. AND ADVANCED  
TRADING SERVICES, INC.**

The Commodity Futures Trading Commission (“Commission” or “CFTC”) commenced this action on March 3, 2009, against defendants Dennis R. Bolze (“Bolze”) and Centurion Asset Management, Inc. (“CAM”) (collectively “Defendants”) and relief defendant Advanced Trading Services, Inc. (“ATS” or “Relief Defendant”) seeking injunctive and other equitable relief for violations of the Commodity Exchange Act (“the Act”), 7 U.S.C. §§ 1 *et seq.* (2006), 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”)), §§ 13101-13204, 122 Stat. 1651, and the Commission Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. §§ 1, *et seq.* (2009).

On March 6, 2009, the Commission effected service on CAM by serving a copy of the summons and Complaint upon CAM’s registered agent, Nevada Corporate Headquarters, Inc. (Doc. 23). The Commission also effected service on ATS on March 6, 2009, by serving a copy

of the summons and Complaint upon ATS's registered agent, Nevada Corporate Headquarters, Inc. (Doc. 22).

On May 7, 2009, service was properly effected upon Bolze pursuant to Fed. R. Civ. P. 4(e)(2), by the United States Marshals Service delivering copies of alias summons and complaint to Bolze, individually, while he was in their custody. (Doc. 34).

The Defendants and Relief Defendant failed to plead or otherwise defend as to the complaint within the time permitted by Fed. R. Civ. P. 12(a)(1). On December 9, 2009, the Clerk entered a default against Bolze, CAM and ATS pursuant to Fed. R. Civ. P. 55(a). (Doc. 42). Neither Bolze, CAM, nor ATS have objected to this entry of clerk's default.

The Commission now moves for entry of default judgments finding that Bolze, CAM and ATS are liable for each cause of action alleged in the Complaint and that Bolze and CAM should be permanently enjoined from violating the Act. This Order bifurcates issues of monetary sanctions against the Defendants, including restitution, civil monetary penalty and disgorgement, from the issue of liability, and reserves these latter issues to allow consistency with rulings issued in the criminal and bankruptcy proceedings.

This Court has considered the Plaintiff's Motion for Default Judgment and Order for Permanent Injunction and Other Ancillary Relief Against Defendants Bolze and CAM and Relief Defendant ATS, and the Memorandum of Law in support of its motion; the declarations and exhibits filed by Plaintiff, and all other papers filed herein, and the evidence presented during the evidentiary hearing conducted by the Honorable Thomas A. Varlan on March 31, 2009, and being fully advised in the premises;

**THE COURT FINDS:**

1. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 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 or any rule, regulation or order thereunder.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e), in that Bolze, CAM and ATS transacted business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district.

3. Service was properly effected upon Bolze on May 7, 2009, by the U. S. Marshals Service delivering copies of the summons and complaint to Bolze, individually, and on March 6, 2009, by delivering copies of the summons and complaint to CAM and ATS's registered service agent.

4. Bolze, CAM and ATS have failed to timely answer or otherwise defend the CFTC's Complaint within the time permitted by Fed. R. Civ. P. 12. Defendant Bolze is not in the military service, nor is he an infant or incompetent.

5. The allegations of the CFTC's Complaint are well-pleaded and hereby taken as true. This Order is supported by the following facts.

**Plaintiff**

6. The **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act and Regulations. The Commission is authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, to bring

a civil action to enjoin any practice constituting a violation of the Act, to enforce compliance with the Act, and to seek civil penalties.

### **Defendants**

7. **Dennis R. Bolze**, is 60 years old. He resided in Gatlinburg, TN, and was the owner and manager of CAM and ATS. He has never been registered in any capacity with the CFTC.

8. On March 12, 2009, federal authorities arrested Bolze in connection with a related criminal complaint. On July 21, 2009, a federal grand jury sitting in the Eastern District of Tennessee returned an indictment against Bolze charging him with three counts of wire fraud and three counts of money laundering. *See, United States v. Bolze*, Case No. 3:09-cr-93 (E.D. Tenn.). On November 10, 2009, Bolze pleaded guilty to all counts in the indictment. (*Id.*; Doc. 42, 43). Bolze remains in the custody of the United States Marshals Service pending sentencing. A sentencing hearing is scheduled for May 19, 2010. Several participants in the pool filed a Chapter 7 involuntary bankruptcy petition against Bolze on January 9, 2009, and that case is pending. *See In re Dennis Bolze*, 09-bk-30075 (U.S. Bank. Ct. E.D. Tenn. 2009). The Meeting of Creditors is scheduled for May 14, 2010.

9. **Centurion Asset Management, Inc.** was incorporated in Nevada on February 13, 2003, with its principal place of business located at 101 Convention Drive, Suite 701, Las Vegas, Nevada 89109. CAM has never been registered in any capacity with the CFTC. Bolze operated and controlled CAM. CAM's assets and liabilities were consolidated with the Chapter 7 bankruptcy estate of Bolze, effective January 9, 2009. (*In re Bolze*, 09-bk-30075, Doc. 145).

## **Relief Defendant**

10. **Advanced Trading Services, Inc.** was incorporated in Nevada on November 1, 2001, with its principal place of business located at 101 Convention Drive, Suite 701, Las Vegas Nevada 89109. ATS was placed in default by Nevada on December 1, 2008. ATS has never been registered in any capacity with the CFTC. ATS' assets and liabilities were consolidated with the Chapter 7 bankruptcy estate of Bolze, effective January 9, 2009. (*In re Bolze*, 09-bk-30075, Doc. 145).

## **The Fraudulent Scheme**

The verified facts and sworn testimony regarding the Statutory and Regulatory Background show that:

### **CAM's Incorporation and Solicitation of Pool Participants.**

11. From in or about April 2002, and continuing through in or about December 2008, Bolze owned, operated, and controlled all activities of CAM and ATS. From the time the Defendants began operating ATS (the "commodity pool"), the Defendants and others convinced at least 100 pool participants to entrust approximately \$20 million to CAM and its employees to be pooled with the funds of others and used to trade commodity futures contracts. Approximately 40% of the investors reside in the United States and approximately 60% reside outside the United States.

12. After prospective pool participants expressed an interest in investing in the pool, the Defendants sent them an Investor's Agreement ("Agreement") that set forth the terms of the investment. The Agreement allowed the pool participants to withdraw all or part of their investment with CAM at any time without restriction and provided that CAM should be provided ten days from the date it receives notice to deliver the participant's investment.

13. The Defendants instructed pool participants to send their funds for investment in CAM to a Bank of America account, in the name of CAM, and to mail their completed account application to CAM in Las Vegas, Nevada.

**Fraudulent Misrepresentations and Omissions to Pool Participants.**

14. During the relevant period, CAM through Bolze, made oral misrepresentations and failed to disclose material facts to prospective pool participants regarding the profitability of CAM. Specifically, they represented to prospective pool participants that the pool was generating an annual profit of approximately 15 to 20 per cent.

15. The Defendants failed to tell prospective pool participants that, in 2001, Bolze pleaded guilty in the Sevier County, Tennessee, Criminal Court to four counts of failure to file sales tax returns and failure to pay sales tax and was sentenced to six years in prison for those offenses. The Court, however, suspended Bolze's prison sentence and ordered him to be placed on supervised probation and fined \$1,000 plus court costs.

16. The Defendants also misrepresented that a private attorney, Michael L. Potter ("Potter"), was the president of CAM, when he was not. The Agreement that Defendants entered into with pool participants identified Potter as the President of CAM and the officer executing the Agreement on behalf of CAM. In fact, Potter was only a temporary nominee whose name was submitted as CAM's president solely for purposes of incorporating CAM with the Nevada Secretary of State's office. Potter's name was to be removed from incorporation documents within 30 days after CAM submitted its permanent officers and directors to the Nevada Secretary of State. Potter never authorized CAM to use his name in connection with any contracts executed by CAM or the conducting of any business by CAM.

**Issuance of False Records/Statements to Pool Participants.**

17. During the relevant period, the Defendants directed an individual who provided website services to set up a website for Defendants, entitled www.thecampartnership.com. After the website was set up, the Defendants provided individual pool participants with passwords that enabled them to access their respective “pool accounts” and determine the value of their “account balances” via the website. Through this website, the Defendants caused false statements to be issued to pool participants. Specifically, the Defendants provided the website operator with information that falsely depicted the account balances of the individual pool participants. The account statements reviewed by pool participants on the website typically showed that the pool earned an annual profit of approximately 15 to 18 per cent. In fact, the futures trading accounts owned or controlled by CAM sustained net losses exceeding \$800,000 in the years between 2002 and 2008.

18. The Defendants also provided some pool participants with annual “invoices” purportedly representing the balances in their respective accounts and the management fees paid to CAM. These invoices, which were either mailed to pool participants or electronically transmitted to them, and falsely depicted the individual pool participants’ account balances.

19. The Defendants distributed fictitious account statements to participants. At least one commodity pool participant received an account statement from the Defendants that purported to be a July 1, 2008 daily account statement for a commodity account that ATS maintained at a futures commission merchant (“FCM”). In fact, this account statement was fictitious because while ATS maintained a commodity account at that FCM, the FCM never issued a July 1, 2008 daily account statement for ATS’s account and the account balance was false.

**The Pool's Actual Commodity Trading Accounts.**

20. Despite the Defendants' representations to pool participants that they were pooling their funds to trade commodities on their behalf, the Defendants opened at least two commodity trading accounts at a registered FCM in the name of ATS and represented to the FCM that the monies in the trading accounts were ATS's own funds and that the monies did not represent the investment of any other individuals or companies. In fact, the two trading accounts were funded with pool participants' funds, lost money every year and sustained trading cumulative trading losses in excess of \$800,000 since 2002.

21. The Defendants opened ATS's first account at the FCM on March 4, 2002. That account was active from March 2002 through December 2008 and never carried an account balance in excess of \$250,000. The account typically traded Standard and Poor's ("S&P") 500 index futures contracts, NASDAQ 100, and Russell 200 stock index futures contracts. Over the life of the account, the account incurred cumulative losses of \$794,889. More specifically, the account realized trading losses of: \$47,338 in 2002; \$118,318 in 2003; \$128,373 in 2004; \$127,105 in 2005; \$24,182 in 2006; \$324,138 in 2007; and \$25,434 in 2008). The Defendants withdrew all but approximately \$500 from the account in November 2008.

22. ATS's second commodity trading account at the FCM was opened in September 2003. That account was active from September 2003 through June 2008. Over the life of the account, the account incurred cumulative trading losses of \$27,728. In particular, the account realized trading losses of: \$3,595 in 2003; \$8,197 in 2004; \$15,786 in 2005; and \$150 in 2008. The account did no futures trading in 2006 and 2007 and currently carries a negligible balance.

**Misappropriation of Pool Participant Funds.**

23. The Defendants solicited and received approximately \$20 million in pool participant interests and reported profits to participants, but the ATS trading accounts lost money and never carried an account balance in excess of \$250,000. Bolze misappropriated an amount of participant funds that is presently undetermined, for his own use and benefit and operated the commodity pool in a manner akin to a Ponzi scheme, using newly received participant funds to pay profits and withdrawals to participants.

**CAM's Inability to Repay Pool Participants.**

24. Since approximately November 2008, pool participants have tried to contact the Defendants in order to withdraw funds from their accounts. Bolze initially told pool participants that withdrawals could not be made since the pools' funds were invested in Treasury securities that had not matured. Subsequently the pool participants were told that they could not withdraw their funds because the pools' funds were invested in Barrier Notes that had not matured. In fact, their funds had not been invested in Barrier Notes.

**CONCLUSIONS OF LAW**

25. The pending bankruptcy matters do not affect the Commission's ability to obtain injunctive relief enjoining the Defendants' fraud. Such regulatory actions fall under an exception to the bankruptcy stay provisions. *See In re Commerce Oil Co.*, 847 F.2d 291, 295 (6<sup>th</sup> Cir. 1988) ("In particular, §§ 362(b)(4) and 362(b)(5) of the automatic stay except both 'the commencement or continuation of an action or proceeding' and 'the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory powers' from the automatic stay.")

26. A “commodity pool” is defined in Commission Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1) (2008), as any investment trust, syndicate or similar form of enterprise engaged in the business of investing its pooled funds in trading commodity futures and/or commodity options.

27. A “commodity pool operator” (“CPO”) is defined in Section 1a(5) of the Act, 7 U.S.C. § 1(a)(5) (2006), 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.

28. A “participant” is defined in Regulation 4.10(c), 17 C.F.R. § 4.10(c) (2009), as any person that has any direct financial interest in a pool.

29. An “associated person of a commodity pool operator” (“AP”) is defined in Regulation 1.3(aa)(3), 17 C.F.R. § 1.3(aa)(3) (2009), in relevant part, as any natural person who is associated with a CPO as: a partner, officer, employee, consultant or agent to a CPO (or any natural person occupying a similar status or performing similar functions), in any capacity which involves the solicitation of funds, securities or property for a participation in a commodity pool.

30. Since at least April 2002, the Defendants violated Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) -(iii) (2006), with respect to acts occurring before June 18, 2008, and violated Sections 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), with respect to acts occurring on or after June 18, 2008, in that they cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool participants; willfully made or caused to be made to other persons false reports or statements; and willfully

deceived or attempted to deceive pool participants by, among other things, knowingly (i) misrepresenting the pool's profitability when soliciting prospective customers (ii) failing to inform prospective customers about Bolze's criminal conviction; (iii) causing false statements to be issued to pool participants that misrepresented the balance of their respective interests in the pool; (iv) falsely representing that an individual who agreed to be CAM's nominee president solely for purposes of incorporation was, in fact, CAM's President and duly authorized to execute Agreements on CAM's behalf and transact business for CAM; and, (v) misappropriating pool participant funds for their personal benefit.

31. At all relevant times, Bolze and Cam engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

32. During the relevant period, CAM, while acting as a CPO, and Bolze, acting as an AP, violated Section 40(1)(A) and (B) of the Act, 7 U.S.C. § 60(1)(A) and (B), in that they directly or indirectly employed or are employing a device, scheme, or artifice to defraud pool participants or prospective pool participants, or engaged or are engaging in transactions, practices or a course of business that operated as a fraud or deceit upon pool participants or prospective pool participants by making material misrepresentations, failing to disclose material facts, issuing false statements, and misappropriating pool participant funds. In connection with such conduct, the Defendants used or are using the mails or other means of instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CPO or an AP of a CPO.

33. During the relevant period, CAM, operating as a CPO, solicited and accepted funds from pool participants, using instrumentalities of interstate commerce, including the U.S. mail and interstate bank wire transfers for the purpose of trading commodity futures in pooled

accounts without the benefit of registration with the Commission, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

34. During the relevant period, Bolze, acting as an AP of a CPO, solicited prospective participants on behalf of CAM to participate in the pool and supervised other persons so engaged without the benefit of registration as an AP of a CPO, in violation of Section 4k(2) of the Act, 7 U.S.C. §6k(2) (2006).

35. During the relevant period, Bolze directly or indirectly controlled CAM and did not act in good faith or knowingly induced, directly or indirectly, CAM's violative acts, as discussed herein. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Bolze is liable as a controlling person for CAM's violations of: Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006) (with respect to acts occurring before June 18, 2008), Sections 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) (with respect to acts occurring on or after June 18, 2008), and Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

36. The foregoing acts, omissions and failures of Bolze, discussed herein, occurred within the scope of his employment with CAM. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), CAM, as Bolze's principal, is liable for all of Bolze's acts, omissions and failures in violation of: Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006) (with respect to acts occurring before June 18, 2008), Sections 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) (with respect to acts occurring on or after June 18, 2008), and Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

37. Relief defendant ATS received some of the funds that the Defendants obtained from the pool participants as a result of fraudulent conduct. ATS has no legitimate entitlement or interest in all of the funds received as a result of Defendants' fraudulent conduct. ATS would be unjustly enriched if it were permitted to retain ill-gotten gains or funds that flowed from the Defendants' fraudulent conduct. Thus, ATS should be ordered to disgorge these ill-gotten funds in an amount to be determined upon Plaintiff's Motion.

**Need for Permanent Injunction and Other Ancillary Equitable Relief**

38. Plaintiff has made a showing that defendants Bolze and CAM have engaged, are engaging, or are about to engage in acts and practices in violation of the Act. Notwithstanding their default, the totality of the circumstances establish that, unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act.

39. Because issues regarding the appropriate amounts of necessary equitable and statutory relief – including the amount of restitution, disgorgement and civil monetary penalty to be ordered against Defendants and the amount of disgorgment to be ordered against Relief Defendant - are still unresolved and subject to the pending criminal and bankruptcy proceedings, the Court reserves those issues for further proceedings.

**ORDER OF PERMANENT INJUNCTION**

IT IS HEREBY ORDERED that Bolze and CAM, their officers, agents, servants, employees, attorneys and all other persons who are in active concert with them are permanently restrained, enjoined and prohibited from directly or indirectly:

40. Cheating or defrauding or attempting to cheat or defraud other persons and willfully deceiving or attempting to deceive other persons by making false, deceptive or

misleading representations of material facts, by failing to disclose material facts, or by misappropriating customer funds in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person, in violation of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A) and (C).

41. Willfully making any false report or statement or causing any false report or statement to be made to other persons, in or in connection with any order to make, or the making of, any contract of sale of commodities for future delivery, made, or to be made, for or on behalf of any other person, in violation of Section 4b(a)(2)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(B).

42. While acting as a CPO or an AP of a CPO, to use the mails or any means or instrumentality of interstate commerce, directly or indirectly to employ any device, scheme or artifice to defraud any perspective or actual pool participant or to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any prospective or actual pool participant by making false, deceptive or misleading statements of material facts, by failing to disclose materials facts, or by misappropriating pool participant funds, in violations of Section 4q(1)(A) and (B) of the Act, 7 U.S.C. § 6q(1)(A) and (B) (2006).

43. Operating as a CPO engaged in the business of soliciting, accepting, or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market without the benefit of registration, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

44. Operating as an AP of a CPO, as a partner, officer, employee, consultant or agent 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 with the Commission, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

IT IS FURTHER ORDERED that Defendants are permanently enjoined from engaging, directly or indirectly, in:

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) (2006));
2. Entering into any transactions involving futures, options, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1)) (commodity options), and/or foreign currency (as described in Section 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA, to be codified in 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (forex contracts) for their own personal account or for any account in which they have a direct or indirect interest;
3. Having any futures, options, commodity options, and/or forex contracts traded on their behalf;
4. 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 futures, options, commodity options, and/or forex contracts;
5. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any futures, options, commodity options, and/or forex contracts;
6. 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) (2009); and
7. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)(2009)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009).

**IT IS FURTHER ORDERED** that because the issues the amounts of necessary equitable and statutory relief, including the appropriate amounts of restitution, disgorgement and

civil monetary penalty against Defendants and appropriate amounts of disgorgement against Relief Defendant, are still unresolved, they are hereby reserved for further proceedings before this Court.

**CONCLUSION**

For the reasons above, the CFTC's motion for entry of a default judgment and for a permanent injunction against defendants Bolze and CAM, and a default judgment against relief defendant ATS is granted.

ENTERED \_\_\_\_\_

/s/ \_\_\_\_\_  
U.S. District Judge  
Curtis L. Collier