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5 Attorneys for Plaintiff
6 **U.S. COMMODITY FUTURES TRADING COMMISSION**

SEALED

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**
10 **PHOENIX DIVISION**

11 CV-12-2513-PHX-FJM

12 **United States Commodity Futures**
Trading Commission,

13 Plaintiff,

14 v.

15 **Ray Thomas Brown,**

16 Defendant.

Civil Action No. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL MONETARY
PENALTIES, AND OTHER
EQUITABLE RELIEF**

17
18
19 **I. SUMMARY**

20 1. From at least 2010 through the present (“relevant period”), Ray Thomas Brown
21 (“Brown”) has engaged in a fraudulent scheme to solicit members of the public to participate
22 in a commodity pool and to authorize him to trade their commodity futures accounts. As part
23 of this illegal scheme, Brown made material misrepresentations about his past trading
24 success, trading profits, trading expertise, and personal history. Brown also failed to disclose
25 to pool participants and customers that he used only a small portion of their funds to trade
26 commodities while misappropriating the vast majority of their funds.

27 2. Brown lured his victims into providing him funds for a commodity pool and
28 individual managed accounts by fraudulently guaranteeing profitable returns of up to 100

1 percent per month and representing that trading in the pool account was generating as much
2 as multi-million dollar profits. Brown directed persons to send funds to bank and trading
3 accounts under his control. At least \$1 million was deposited in these accounts.

4 3. Brown deposited only a small portion of the commodity pool funds he received
5 in commodity trading accounts, and he lost virtually all of those funds in trading. Brown
6 concealed his trading losses by issuing false account statements showing fictitious trading
7 profits.

8 4. Brown also misappropriated the vast majority of commodity pool funds to pay
9 for personal expenses and to further his fraudulent scheme. When Brown returned participant
10 funds, he did so using money paid by other participants, in the manner of a Ponzi scheme.

11 **II. JURISDICTION AND VENUE**

12 5. This Court has jurisdiction over this action pursuant to Section 6c(a) of the
13 Commodity Exchange Act ("Act"), as amended by the Food, Conservation, and Energy Act
14 of 2008, Pub. L. No. 110-246, Title XIII (the Commodity Futures Trading Commission
15 Reauthorization Act of 2008 ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18,
16 2008), to be codified at 7 U.S.C. § 13a-1(a), which authorizes the United States Commodity
17 Futures Trading Commission ("CFTC") to seek injunctive and other relief against any person
18 whenever it shall appear to the CFTC that such person has engaged, is engaging, or is about
19 to engage in any act or practice constituting a violation of any provision of the Act or any
20 rule, regulation, or order thereunder.

21 6. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, as
22 amended, 7 U.S.C. § 13a-1(e) (2006 & Supp. V 2011), because Brown is found in, inhabits,
23 or transacts business in the District of Arizona, and acts and practices in violation of the Act
24 occurred, are occurring, or are about to occur within this District.

25 **III. PARTIES**

26 7. Plaintiff **United States Commodity Futures Trading Commission** is an
27 independent federal regulatory agency that is charged by Congress with the administration
28 and enforcement of the Act, as amended by the CRA and the Dodd-Frank Wall Street Reform

1 and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII
2 (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376
3 (effective July 16, 2011), to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations
4 promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012). The CFTC maintains its principal
5 office at Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

6 8. Defendant **Ray Thomas Brown** resides in Phoenix, Arizona. Brown holds
7 himself out as the proprietor of several entities, including Ray Brown and Associates, SunRay
8 Trading Group, and Day Trade Expo LLC. Neither Brown nor any of his entities has ever
9 been registered with the CFTC in any capacity.

10 **IV. RELEVANT STATUTES**

11 9. Under Section 1a(11) of the Act, as amended, 7 U.S.C. § 1a(11) (2006 & Supp.
12 V 2011), a commodity pool operator (“CPO”) is, in relevant part, any person who, for
13 compensation or profit, engages in a business that is of the nature of a commodity pool,
14 investment trust, syndicate, or similar form of enterprise, and who, in connection therewith,
15 solicits, accepts, or receives from others, funds, securities, or property, either directly or
16 through capital contributions, the sale of stock or other forms of securities, or otherwise, for
17 the purpose of trading in commodity interests, including any commodity for future delivery
18 made or to be made on or subject to the rules of a contract market, certain commodity
19 options, certain leveraged transactions authorized by the Act, and security futures products.

20 10. Under Section 1a(12) of the Act, as amended, 7 U.S.C. § 1a(12) (2006 & Supp.
21 V 2011), a commodity trading advisor (“CTA”) is any person who, for compensation or
22 profit, engages in the business of advising others, either directly or through publications,
23 writings, or electronic media, as to the value of or advisability of trading in any contract of
24 sale of a commodity for future delivery made or to be made on or subject to the rules of a
25 contract market, certain commodity options, and certain leveraged transactions authorized by
26 the Act, or for compensation or profit, and as part of a regular business, issues or promulgates
27 analyses or reports concerning any of these activities.

1 RETURN.” Contrary to this representation, Brown either lost participants’ funds in trading
2 or misappropriated their funds for purposes unrelated to trading.

3 17. Brown also misrepresented his trading performance. For example, Brown
4 directed some potential participants to Internet sites and stated that the positive trading results
5 shown on the sites represented Brown’s past trading performance. In fact, Brown’s historical
6 trading performance shows only substantial losses, and Brown failed to disclose this losing
7 record to prospective pool participants.

8 18. The brochures also state that members of the Group Trading Program would
9 “enjoy the benefits of having a PROFESSIONAL COMMODITIES trader executing the
10 trades” and that the “Group Trader” – i.e. Brown – “utilizes technical and fundamental
11 analysis to forecast the direction of movement of market prices.” Contrary to these
12 statements, Brown has never been professionally employed by any registered commodity firm
13 handling the trading of customer accounts, has never been registered in any capacity with the
14 CFTC as a person authorized to make trades on behalf of others, and failed to disclose to pool
15 participants and customers that he was acting as an unregistered CPO and CTA.

16 19. Brown made oral misrepresentations and omissions as well. As he did in the
17 written brochures, Brown orally promised potential participants rates of return as high as 100
18 percent per month but omitted that, in fact, he either lost participants’ funds in trading or
19 misappropriated participants’ funds for purposes unrelated to trading.

20 20. Brown orally represented to participants that he was an experienced trader, but
21 he failed to disclose that he has never been registered with the CFTC as a CPO or CTA, or
22 that he has a prior criminal conviction.

23 **(2) Brown Provided Pool Participants with False Trading Reports**

24 21. Brown deposited into the pool trading accounts only approximately \$86,000.
25 Brown lost nearly all of this \$86,000 in trading.

26 22. Brown did not disclose that he put only a fraction of participants’ funds into the
27 pool trading accounts, nor did he disclose the pool trading losses to pool participants. Instead,
28 Brown falsely represented to pool participants that their funds were being used to trade

1 commodity futures contracts and that trading in the commodity pool account was highly
2 profitable.

3 23. Brown also provided pool participants with fictitious account statements
4 showing extraordinary profits. Brown provided two types of false account statements to pool
5 participants: (i) individual account performance statements and (ii) monthly pool account
6 statements.

7 24. The fabricated individual account performance statements showed that pool
8 participants' accounts had experienced outlandish profits. For example, Brown provided one
9 pool participant with a statement showing that his account had grown from \$50,000 to
10 \$200,000 in 18 months, a profit in of 300 percent. Brown provided another pool participant
11 with a statement showing that his account had grown from an initial investment of about
12 \$29,000 to \$2,273,736 in approximately 10 months, a gain of more than 7,800 percent. In
13 fact, at no time did the amount of funds deposited in the pool trading accounts exceed
14 approximately \$86,000, and nearly all those funds were lost in trading.

15 25. The fraudulent monthly pool account statements Brown provided to pool
16 participants grossly overvalued the assets of the pool and showed astonishing trading results.
17 For example, Brown provided some pool participants with a monthly statement showing that,
18 during February 2012, the pool trading account had realized trading profits in excess of \$2.7
19 million and that the cash balance of the pool had reached over \$7 million. Brown provided
20 other pool participants with a monthly statement showing that the pool had increased in value
21 from almost \$320,000 in July 2011 to over \$3.76 million in May 2012.

22 **(3) Brown Misappropriated Nearly All of the Pool Funds**

23 26. Brown fraudulently solicited pool participants to send him funds for the purpose
24 of trading commodity futures contracts. Instead of using these funds for commodity futures
25 trading, Brown misappropriated the vast majority of the funds.

26 27. Brown misappropriated pool funds by using those funds to pay his personal
27 expenses and to further his fraudulent scheme.

1 28. Brown also misappropriated pool funds by using those funds to pay purported
2 profits and referral commissions to some pool participants. Brown made representations that
3 these payments came from trading profits. Contrary to his representations, Brown made these
4 payments from the deposits of other pool participants, in the manner of a Ponzi scheme.

5 29. Pool participants have made repeated demands on Brown for the return of their
6 funds. Brown told some pool participants that he could not return their funds because the
7 trading firm where the pool account was located has frozen the account. In fact, at no time
8 did the trading firm freeze the pool account. Brown has failed to comply with participants'
9 redemption demands, and most participants have been unable to obtain a return of their funds.

10 **B. Brown Committed Fraud While Acting as a CTA**

11 30. During the relevant period, Brown fraudulently represented his trading expertise
12 and past performance to induce individuals to open individual commodity futures trading
13 accounts and to authorize him to trade for them. During this time, Brown acted as an illegal,
14 unregistered CTA by soliciting and engaging customers to trade commodity futures contracts
15 on their behalf.

16 31. During the relevant period, Brown fraudulently solicited over \$270,000 from
17 individuals, some of whom were also pool participants, for the purpose of establishing
18 managed trading accounts and authorizing Brown to trade the accounts.

19 32. In soliciting potential customers to open managed accounts, Brown told
20 potential customers that he had a track record of generating substantial profits for a
21 commodity pool he operated.

22 33. Brown represented that he had developed a trading system that minimized risk
23 of loss and maximized profits.

24 34. In the same way he lied to pool participants, Brown directed some potential
25 customers to an Internet sites and falsely stated that the positive trading results shown on the
26 sites represented Brown's past trading performance. In fact, the Internet site did not relate in
27 any way to Brown's trading, and Brown failed to disclose that he had a significant losing
28 record.

1 35. Brown sustained near total trading losses in the commodity futures accounts for
2 which he fraudulently induced persons to authorize him to trade. Brown nevertheless failed
3 to inform customers of their losses.

4 **C. Brown Failed to Register with the CFTC as a CPO and CTA**

5 36. During the relevant period, Brown acted as a CPO by soliciting and accepting
6 funds from individuals and pooling those funds for the purpose of trading commodity futures
7 contracts.

8 37. Brown represented to pool participants that the Group Trading Program was a
9 pool arrangement in which the funds of all group members would be combined to “create
10 contract buying power that far exceeds that of a single member.” Brown used the mails and
11 other means or instrumentalities of interstate commerce to provide potential pool participants
12 with brochures and written statements about the Group Trading Program.

13 38. Brown accepted funds in interstate commerce by mail and wire transmissions
14 for participation in the Group Trading Program.

15 39. Brown provided participants in the Group Trading Program pool with account
16 statements showing the trading profits and cash balance of the pool. Brown disseminated
17 these account statements using electronic transmissions in interstate commerce.

18 40. Although he acted as a CPO during the relevant period, Brown was not
19 registered with the CFTC as a CPO.

20 41. During the relevant period, Brown acted as a CTA by soliciting individuals to
21 open commodity futures accounts and to authorize him to trade the accounts. By managing
22 the trading in these accounts, Brown engaged in a business of advising others as to the value
23 and advisability of trading commodity futures contracts.

24 42. Brown also acted as a CTA in that he issued account statements and reports
25 using electronic mail and other means of interstate commerce to advise customers on the
26 value of the transactions in their accounts.

27 43. Although he acted as a CTA during the relevant period, Brown was not
28 registered with the CFTC as a CTA.

1 **VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

2 **COUNT I**

3 **Violation of Section 4c(1) of the Act:**

4 **Fraud by a Commodity Pool Operator or Commodity Trading Advisor**

5 44. The allegations set forth in paragraphs 1 through 43 are re-alleged and
6 incorporated herein by reference.

7 45. Brown, individually and doing business as Ray Brown and Associates, SunRay
8 Trading Group, and/or Day Trade Expo LLC, engaged in a business that is of the nature of a
9 commodity pool, investment trust, syndicate, or similar form of enterprise in that he solicited,
10 accepted, or received from others, funds, securities, or property, either directly or through
11 capital contributions, the sale of stock or other forms of securities, or otherwise, for the
12 purpose of trading in commodity interests, including commodities for future delivery, security
13 futures products, commodity options, foreign currency agreements, contracts, or transactions
14 described in section 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. § 2(c)(2)(C)(i) (2006 &
15 Supp. V 2011). In connection with such conduct, Brown used the mails and other means or
16 instrumentalities of interstate commerce, directly or indirectly, to engage in his business as a
17 CPO.

18 46. Brown, individually and doing business as Ray Brown and Associates, SunRay
19 Trading Group, and/or Day Trade Expo LLC, operated as a CTA in that, for compensation or
20 profit, he engaged in the business of advising others, either directly or through publications,
21 writings, or electronic media, as to the value of or the advisability of trading in any contract
22 of sale of a commodity for future delivery, security futures product, commodity options,
23 foreign currency agreements, contracts or transactions described in sections 2(c)(2)(C)(i) or
24 2(c)(2)(D)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(C)(i), 2(c)(2)(D)(i) (2006 & Supp.
25 V 2011). Brown also acted as a CTA in that, for compensation or profit, and as part of a
26 regular business, he issued or promulgated analyses or reports concerning these activities or
27 transactions. In connection with such conduct, Brown used the mails or other means or
28

1 instrumentalities of interstate commerce, directly or indirectly, to engage in his business as a
2 CTA.

3 47. Brown violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and
4 (B) (2006 & Supp. V 2011), in that, while acting as a CPO and CTA, he directly or indirectly
5 employed a device, scheme, or artifice to defraud individuals and engaged in transactions,
6 practices, or a course of business which operated as a fraud or deceit upon individuals by (i)
7 misappropriating their funds, and (ii) providing them with false and misleading account
8 statements that misrepresented the value of the investors' accounts and Brown's performance.

9 48. Brown engaged in such acts by use of the mails or other means or
10 instrumentalities of interstate commerce.

11 49. Each act of misappropriation, issuance of a false account statement, and
12 material misrepresentation or omission, including but not limited to those specifically alleged
13 herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. §
14 6o(1)(A), (B) (2006 & Supp. V 2011).

15 **COUNT II**

16 **Violation of Section 4m of the Act**

17 **Failure to Register with the CFTC as a CPO**

18 50. Paragraphs 1 through 49 are re-alleged and incorporated herein.

19 51. With certain exemptions and exclusions not applicable here, all CPOs and
20 CTAs must register with the CFTC pursuant to Section 4m of the Act, as amended, 7 U.S.C.
21 § 6m (2006 & Supp. V 2011).

22 52. Brown, individually and doing business as Ray Brown and Associates, SunRay
23 Trading Group and/or Day Trade Expo LLC, operated as a CPO in that he engaged in a
24 business that is of the nature of an investment trust, syndicate, or similar form of enterprise
25 and, in connection therewith, solicited, accepted, or received funds, securities, or property
26 from others for the purpose of trading in commodity interests, including commodities for
27 future delivery on or subject to the rules of any contract market or derivatives transaction
28 execution facility. In connection with such conduct, Brown used the mails or other means or

1 instrumentalities of interstate commerce, directly or indirectly, to engage in his business as a
2 CPO.

3 53. At all times relevant to this Complaint, Brown was not registered with the
4 CFTC as a commodity pool operator.

5 54. At all times relevant to this CFTC, Brown did not qualify for a registration
6 exemption under the Act or CFTC Regulations.

7 55. Brown engaged in the activities described herein without having registered as a
8 CPO, in violation of Section 4m of the Act, 7 U.S.C. § 6m (2006 & Supp. V 2011).

9 56. Each use of the mails or any means or instrumentality of interstate commerce in
10 connection with his business as a CPO without proper registration during the relevant period,
11 including but not limited to those specifically alleged herein, is alleged as a separate and
12 distinct violation of Section 4m of the Act, 7 U.S.C. § 6m (2006 & Supp. V 2011).

13 **COUNT III**

14 **Violation of Section 4m of the Act:**

15 **Failure to Register with the CFTC as a CTA**

16 57. Paragraphs 1 through 56 are re-alleged and incorporated herein.

17 58. With certain exemptions and exclusions not applicable here, all CTAs must
18 register with the CFTC, pursuant to Section 4m of the Act, as amended, 7 U.S.C. § 6m (2006
19 & Supp. V 2011).

20 59. Brown, individually and doing business as Ray Brown and Associates, SunRay
21 Trading Group and/or Day Trade Expo LLC, operated as a CTA in that, for compensation or
22 profit, he engaged in the business of advising others, either directly or through publications,
23 writings, or electronic media, as to the value of or the advisability of trading in contracts of
24 sale of a commodity for future delivery.

25 60. At all times relevant to this Complaint, Brown was not registered with the
26 CFTC as a CTA.

27 61. At all times relevant to this Complaint, Brown did not qualify for a registration
28 exemption under the Act or CFTC Regulations.

1 (3) Withdrawing, transferring, removing, dissipating, concealing, or disposing
2 of, in any manner, any funds, assets, or other property, wherever situated,
3 including, but not limited to, all funds, personal property, money, or
4 securities held in safes or safety deposit boxes and all funds on deposit in
5 any financial institution, bank, or savings and loan account, whether
6 domestic or foreign, held by, under the actual or constructive control of, or
7 in the name of Ray Thomas Brown and/or any entity under his control.

8 C. Enter an order directing that Brown make an accounting to the Court of all of
9 his assets and liabilities, together with all funds Brown received from and paid to any pool
10 participants and other persons in connection with commodity futures and options transactions
11 or purported commodity futures and options transactions, including the names, mailing
12 addresses, email addresses, and telephone numbers of any such persons from whom he
13 received such funds from January 1, 2008 to the date of such accounting, and all
14 disbursements for any purpose whatsoever of funds received from pool participants, including
15 salaries, commissions, fees, loans, and other disbursements of money and property of any
16 kind, from January 1, 2008 to the date of such accounting;

17 D. Enter an order requiring Brown to immediately identify and provide an
18 accounting for all assets and property that he currently maintains outside the United States,
19 including, but not limited to, all funds on deposit in any financial institution, futures
20 commission merchant, bank, or savings and loan account held by, under the actual or
21 constructive control of, or in the name of Ray Thomas Brown or any entity under his control,
22 whether jointly or otherwise, and requiring Brown to repatriate all funds held in such
23 accounts by paying them to the Registry of the Court, or as otherwise ordered by the Court,
24 for further disposition in this case;

25 E. Enter an Order of permanent injunction prohibiting Brown and any other person
26 or entity associated with him, from, directly or indirectly, engaging in conduct in violation of
27 Sections 4o and 4m of the Act, as amended, 7 U.S.C. §§ 6o, 6m (2006 & Supp. V 2011);
28

1 F. Enter an Order of permanent injunction enjoining Brown, and all persons
2 insofar as they are acting in capacity of his agents, servants, employees, successors, assigns,
3 and attorneys, and all persons insofar as they are acting in active concert or participation with
4 Brown who receive actual notice of such order by personal service or otherwise, from
5 engaging, directly or indirectly, in:

- 6 (1) Trading on or subject to the rules of any registered entity, as that term is
7 defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a (2006 & Supp. V
8 2011);
- 9 (2) Entering into any transactions involving commodity futures, options on
10 commodity futures, commodity options (as that term is defined in CFTC
11 Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2012)) (“commodity options”),
12 security futures products, and/or foreign currency (as described in Sections
13 2(c)(2)(B) and/or 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§
14 2(c)(2)(B), 2(c)(2)(C)(i) (2006 & Supp. V 2011)) (“forex contracts”), for his
15 own personal account or for any account in which he has a direct or indirect
16 interest;
- 17 (3) Having any commodity futures, options on commodity futures, commodity
18 options, security futures products, and/or forex contracts traded on his
19 behalf;
- 20 (4) Controlling or directing the trading for or on behalf of any other person or
21 entity, whether by power of attorney or otherwise, in any account involving
22 commodity futures, options on commodity futures, commodity options,
23 security futures products, and/or forex contracts; soliciting, receiving, or
24 accepting any funds from any person for the purpose of purchasing or
25 selling any commodity futures, options on commodity futures, commodity
26 options, security futures products, and/or forex contracts;
- 27 (5) Applying for registration or claiming exemption from registration with the
28 CFTC in any capacity, and engaging in any activity requiring such

1 registration or exemption from registration with the CFTC, except as
2 provided for in CFTC Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012);
3 or

4 (6) Acting as a principal (as that term is defined in CFTC Regulation 3.1(a), 17
5 C.F.R. § 3.1(a) (2012)), agent or any other officer or employee of any
6 person registered, exempted from registration or required to be registered
7 with the CFTC, except as provided for in CFTC Regulation 4.14(a)(9), 17
8 C.F.R. § 4.14(a)(9) (2012);

9 G. Enter an order requiring Brown and any third party transferee and/or successors
10 thereof, to disgorge to any officer appointed or directed by the Court all benefits received including,
11 but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or
12 indirectly, from acts or practices which constitute violations of the Act as described herein, including
13 prejudgment and post-judgment interest.

14 H. Enter an order directing Brown and any successors thereof, to rescind, pursuant
15 to such procedures as the Court may order, all contracts and agreements, whether implied or
16 express, entered into between them and any of the pool participants or CTA customers whose
17 funds were received as a result of the acts and practices that constituted violations of the Act,
18 as described herein;

19 I. Enter an order requiring Brown to make restitution by making whole each and
20 every pool participant or CTA customer whose funds were received or utilized in violation of
21 the provisions of the Act as described herein, including prejudgment interest;

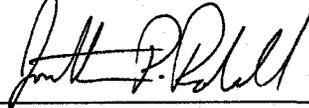
22 J. Enter an order requiring Brown to pay civil penalties under the Act, to be
23 assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain
24 to Brown for each violation of the Act; or (2) \$130,000 for each violation of the Act occurring
25 from October 23, 2004 through October 22, 2008 and/or \$140,000 for each violation of the
26 Act occurring on or after October 23, 2008;

27 K. Enter an order requiring Brown to pay costs and fees as permitted by 28 U.S.C.
28 §§ 1920 and 2412(a)(2) (2006 & Supp. V 2011); and

1 L. Enter an Order providing such other and further relief as this Court may deem
2 necessary and appropriate.

3
4
5 Dated: November 26, 2012

Respectfully submitted,

6
7 By: 
Jonathan P. Robell

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