

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY *(Signature)*

Civil Action No. **AO 9 CA 497 SS**

**UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,**

Plaintiff,

v.

**STRONGBOW INVESTMENTS GP, LLC,
a Delaware limited liability company; and
PATRICK JAMES DAILEY, an individual,**

Defendants,

**DAILEY FAMILY LIMITED
PARTNERSHIP, a California limited
partnership, and SUZI DAILEY, a/k/a
SUZIE DAILEY and SUZY DAILEY,**

Relief Defendants.

Civil Action No.

FILED UNDER SEAL

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

Plaintiff, the United States Commodity Futures Trading Commission (“Commission” or CFTC”), by its attorneys, alleges as follows:

I. SUMMARY

1. From at least July 2005 to the present, Strongbow Investments GP, LLC (“Strongbow”), by and through its employees, agents, and principals, including Strongbow’s controlling person Patrick J. Dailey, (“Dailey”) (collectively “Defendants”), solicited at least \$17 million from approximately 22 members of the general public for the purported purpose of investing in Strongbow, a registered commodity pool operator (“CPO”), and Strongbow Investments Fund II (“Fund II” or “the Pool”), a commodity pool operated by Strongbow.

Defendants told prospective pool participants that the part of their money to be invested in the Pool would be used to trade commodity futures contracts (“futures”) and options on futures (“options”). Defendants instructed pool participants to send money directly to an account in the name of Strongbow, rather than to an account in the name of the Pool. Defendants then took some of pool participant funds and deposited them into trading accounts in the name of Strongbow Investments Fund III (“Fund III”), a separate pool managed by Strongbow and unrelated to the Pool. Defendants commingled pool participant funds held in the Pool with funds in bank and trading accounts held in the names of Strongbow and Dailey. Defendants also commingled pool participant funds with funds held in accounts held by the Dailey Family Limited Partnership (“DFLP”) and Suzi Dailey (“Suzi Dailey”) (collectively “Relief Defendants”), neither having legitimate entitlement to all of the pool participant funds they received. Approximately \$2.1 million in commingled funds are currently unaccounted for.

2. Dailey repeatedly “borrowed” pool participant funds for his own personal use and then repaid the loan prior to the end of the calendar year. To conceal and perpetuate their fraud, Defendants failed to disclose to pool participants these purported loans in account statements, disclosure documents or in solicitation materials.

3. Defendants failed to maintain statutorily required records of, among other things, pool participant investments, distributions, redemptions or agreements, monthly investment activity such as realized or unrealized gains and losses, or administrative expenses, or any documentation of these purported loans or the purported repayment of the loans and any interest on these loans repaid to the Pool.

4. 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 violation of

provisions of the Commodity Exchange Act (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 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and CFTC Regulations (“Regulations”) 17 C.F.R. §§ 1.1 *et seq.* (2009).

5. Dailey, as well as other Strongbow employees, committed the acts and omissions described herein within the course and scope of their employment at Strongbow. Therefore, Strongbow is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), as principal for its agents’ violations of the Act, the Act as amended by the CRA, and the Regulations.

6. Dailey is liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), as a controlling person of Strongbow for Strongbow’s violations of the Act, the Act as amended by the CRA, and the Regulations, because he did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations.

7. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. §§ 13a-1 (2006), the Commission brings this action to enjoin Defendants’ unlawful acts and practices and to compel their compliance with the Act, the Act as amended by the CRA, and the Regulations. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

8. Unless restrained and enjoined by this Court, Defendants are likely to 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

9. The Act, the Act as amended by the CRA and the Regulations together establish a comprehensive system for regulating the purchase and sale of futures and options. The 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, the Act as amended by the CRA or any rule, regulation, or order thereunder.

10. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), in that Defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act, the Act as amended by the CRA, and the Regulations have occurred, are occurring, or are about to occur within this district, among other places.

III. PARTIES

11. **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with the administration and enforcement of the Act, the Act as amended by the CRA, and the Regulations promulgated thereunder. The CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

12. **Strongbow Investments GP LLC**, is a Delaware limited liability company formed on June 17, 2005, with its principal place of business at 614 S. Capital of Texas Highway, Austin, Texas 78746 and/or 3311 Westlake Drive, Austin, Texas 78746. Strongbow has been a registered commodity trading advisor (“CTA”) and CPO since December 2006. Strongbow is the CPO for Fund II (the Pool) and Fund III.

13. **Patrick J. Dailey** resides in Dana Point, California and is Strongbow's Managing Partner, president, chief executive officer and principal. Dailey has been listed as a principal of Strongbow since December 2006. Since at least January 2006, Dailey has been associated with Strongbow, and has solicited or been involved in the solicitation of funds for participation in pools, but has failed to register as an Associated Person ("AP") of Strongbow.

14. **Dailey Family Limited Partnership** is a limited partnership with its principal place of business at Dailey's home in Dana Point, California. DFLP has never been registered with the Commission in any capacity.

15. **Suzi S. Dailey a/k/a Suzy Dailey a/k/a Suzie Dailey** resides in Dana Point, California and is the wife of Patrick J. Dailey. Suzi Dailey has never been registered with the Commission in any capacity.

IV. STATUTORY BACKGROUND

16. A "commodity pool" is defined in Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1) (2009), as any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.

17. A "commodity pool operator" 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 futures delivery on or subject to the rules of any contract market or derivatives transaction execution facility (*i.e.*, futures). Regulation 33.2(a)(2), 17 C.F.R.

§ 33.2(a)(2) (2009) states that Section 1a of the Act, 7 U.S.C. § 1(a) (2006), including the definition of a CPO, also applies to options.

V. FACTS

18. From at least July 2005 to the present, Defendants solicited at least \$17 million from approximately 22 members of the general public for the purported purpose of investing in Strongbow and the Pool, a commodity pool established by Strongbow. Defendants provided prospective pool participants a single private placement memorandum (“PPM”) for both Strongbow and the Pool. Upon information and belief, almost all pool participants who invested in Strongbow also invested in the Pool. Defendants told prospective pool participants that the part of their money to be invested in the Pool would be used to trade futures, options and securities.

19. Defendants instructed pool participants to send money directly to an account in the name of Strongbow rather than to an account in the name of the Pool. Defendants then took some pool participant funds and deposited them into trading accounts in the name of Fund III, a separate pool managed by Strongbow and unrelated to the Pool.

20. Defendants lost millions of dollars trading futures and options in the Pool.

21. Since at least January 2007, Defendants commingled millions of dollars of pool participant funds intended as an investment in the Pool with funds in bank and trading accounts held in the names of Strongbow, Dailey and Relief Defendants, and neither Relief Defendant having legitimate entitlement to all the pool participant funds they received.

22. Defendants did not tell pool participants that their funds intended as an investment in the Pool would be commingled with funds held in bank or trading accounts in the names of Strongbow, Dailey and Relief Defendants.

23. Defendants treated accounts in the name of Strongbow and the Pool as Dailey's personal bank account. Dailey frequently borrowed money from pool participant assets for his personal benefit. For example, Dailey borrowed as much as \$1 million to pay off his personal home equity line of credit. Just before the end of the calendar year, so the "loans" would not appear on any end-of-year financial statement, Dailey would repay the loans by borrowing on his personal equity home line of credit. Then, after the first of the year, Dailey would again borrow money from the Pool to pay off his personal line of credit.

24. Defendants failed to disclose to pool participants that pool participant funds were borrowed by Dailey for his personal use for extended periods of time and that those funds would be paid, purportedly with interest, by Dailey at the end of the calendar year. These transactions were hidden from pool participants because the loans were never included in the Pool's certified annual financial statements that were prepared as of December 31st.

25. Those loans were identified as notes receivable in Strongbow's corporate books. The notes receivable recorded unknown deposits or withdrawals as orally reported by Dailey. For example, Dailey would verbally tell the Strongbow bookkeeper the status of his loans, including the current value of the loan and when and how much was repaid. Dailey did not provide the bookkeeper, however, with any supporting documentation or records to corroborate his oral statements.

26. On June 1, 2009 the National Futures Association ("NFA") commenced an unannounced audit of Strongbow. The NFA is a not-for-profit membership corporation formed as a futures industry self-regulatory organization under Section 17 of the Act and designated a "registered futures association" by the CFTC. NFA performs several regulatory activities pursuant to the authority delegated to it by the CFTC under Section 17 including, but not limited

to: 1) auditing and conducting surveillance of NFA Members to enforce compliance with NFA financial requirements; 2) establishing and enforcing rules and standards for investor protection; 3) screening to determine fitness to become or remain an NFA member; and 4) multiple registration functions under the Act.

27. During the audit and subsequent investigation, NFA asked Defendants to produce all financial and corporate records relating to the Pool, balance sheets and income statements for the Pool with supporting documentation, monthly account statements sent to pool participants, a list of all future commission merchants and introducing brokers with which Strongbow conducts business and cash receipts and disbursement journals. The NFA also requested written documentation pertaining to the loans made to Dailey.

28. During the NFA's investigation, Defendants provided only a limited number of documents to the NFA and could not produce most of the documents requested by the NFA, despite the fact that Defendants were required by CFTC Regulations to do so. Throughout the course of NFA's investigation, Defendants provided incomplete and inconsistent information and documentation relating to the financial condition of Strongbow and the Pool.

29. For example, Defendants could not provide the NFA with documentation of the total amount of pool participant funds invested in Strongbow or Fund II. On June 16, 2009, Defendants orally represented that approximately \$6 to \$8 million had been invested since the Pool's inception. Defendants also told the NFA that there was no documentation as to how pool participant funds were allocated between Strongbow and Fund II. Defendants were unable to produce documentation of pool participant investments, distributions, redemptions or agreements, monthly investment activity such as realized or unrealized gains and losses, or

administrative expenses, or any documentation of these purported “loans” or the purported repayment of the loans and any interest on these loans to the Pool.

30. On June 23, 2009, Defendants produced an unsubstantiated general ledger to the NFA. The general ledger indicates that the Pool received a total of \$17 million since its inception, of which it purportedly paid \$8.4 million in redemptions to pool participants, including several entities and individuals related to Dailey. Defendants were unable to produce documentation to corroborate the general ledger. Although the Pool incurred trading losses and paid salaries and other administrative expenses, to date, as much as \$2.1 million remains unaccounted for.

31. Pursuant to federal common law, DFLP is a relief defendant because it received ill-gotten gains from Defendants’ fraudulent conduct and, therefore, DFLP must disgorge all ill-gotten gains regardless of whether it actually violated the anti-fraud provisions of the Act and/or the Act as amended by the CRA, and the Regulations.

32. Pursuant to federal common law, Suzi Dailey is a relief defendant because she received ill-gotten gains from Defendants’ fraudulent conduct and, therefore, Suzi Dailey must disgorge all ill-gotten gains regardless of whether she actually violated the anti-fraud provisions of the Act and/or the Act as amended by the CRA, and the Regulations.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS

COUNT I

Violations of Section 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) (Fraud in Connection with Futures)

33. The allegations set forth in paragraphs 1 through 32 are realleged and incorporated herein by reference.

34. 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), make it unlawful

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person – (A) to cheat or defraud or attempt to cheat or defraud the other person; ...[or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever... .

35. From at least January 2007 to the present, in or in connection with futures contracts made or to be made, for or on behalf of other persons, Defendants cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool participants and willfully deceived or attempted to deceive pool participants or prospective pool participants by, among other things, knowingly (i) omitting to tell pool participants that their funds would be commingled with funds held in bank or trading accounts in the names of Strongbow, Dailey, and Relief Defendants; (ii) using pool participant funds for Dailey's personal use; and (iii) Dailey paid back the purported loans in such a way as to avoid the pool participants discovering that the loans had ever occurred, in violation of Section 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).

36. Defendants engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

37. DFLP is a relief defendant. DFLP received ill-gotten gains as a result of the fraud committed by Defendants and, therefore, DFLP must disgorge this money.

38. Suzi Dailey is a relief defendant. Suzi Dailey received ill-gotten gains as a result of the fraud committed by Defendants, and therefore, Suzi Dailey must disgorge this money.

39. Dailey controls Strongbow, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Strongbow's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Dailey is liable for Strongbow's violations 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).

40. The foregoing acts and omissions by Dailey, as well as other Strongbow employees, occurred within the scope of their employment with Strongbow; therefore, Strongbow is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

41. Each act and omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 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).

COUNT II

Violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulations 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) (Fraud in Connection with Options)

42. The allegations set forth in paragraphs 1 through 32 are realleged and incorporated herein by reference.

43. Section 4c(b) of the Act, 7 U.S.C. § 6c(b), provides that no person shall engage in any commodity option transaction regulated under the Act contrary to any rule, regulation, or order of the Commission. Furthermore, Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c), make it unlawful for any person, directly or indirectly,

(a) to cheat or defraud or attempt to cheat or defraud any other person;... (c) to deceive or attempt to deceive any other person by any means whatsoever; in or in connection with . . . any commodity option transaction.

44. As set forth above, from at least January 2007 through the present, Defendants violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Regulations 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c), by engaging in options transactions and, among other things, knowingly (i) omitting to tell pool participants that their funds would be commingled with funds held in bank or trading accounts in the names of Strongbow, Dailey, and Relief Defendants; (ii) using pool participant funds for Dailey's personal use; and (iii) Dailey paid back the purported loans in such a way as to avoid the pool participants discovering that the loans had ever occurred.

45. DFLP is a relief defendant. DFLP received ill-gotten gains as a result of the fraud committed by Defendants and, therefore, DFLP must disgorge this money.

46. Suzi Dailey is a relief defendant. Suzi Dailey received ill-gotten gains as a result of the fraud committed by Defendants, and therefore, Suzi Dailey must disgorge this money.

47. Dailey controls Strongbow, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Strongbow's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Dailey is liable for Strongbow's violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c).

48. The foregoing acts and omissions by Dailey, as well as other Strongbow employees, occurred within the scope of their employment with Strongbow; therefore, Strongbow is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

49. Each omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c).

COUNT III

**Violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1)
(Fraud By Commodity Pool Operator and
Fraud by an Associated Person of a Commodity Pool Operator)**

50. The allegations set forth in paragraphs 1 through 32 are realleged and incorporated herein by reference.
51. As defined in Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), a CPO is 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 . . . 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.
52. Regulation 33.2(a)(2), 17 C.F.R. § 33.2(a)(2) states that Section 1a of the Act, 7 U.S.C. § 1(a), which includes the definition of a CPO, also applies to options.
53. Section 4o(1) of the Act, 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.
54. From at least January 2007 to present, Strongbow acted as a CPO and Dailey acted as an AP of 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.
55. From at least January 2007 to present, Defendants 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 or deceit upon commodity futures and

options pool participants and prospective commodity futures and options pool participants in violation of Section 40(1) of the Act, 7 U.S.C. § 60(1).

56. DFLP is a relief defendant. DFLP received ill-gotten gains as a result of the fraud committed by Defendants and therefore, DFLP must disgorge this money.

57. Suzi Dailey is a relief defendant. Suzi Dailey received ill-gotten gains as a result of the fraud committed by Defendants, and therefore, Suzi Dailey must disgorge this money.

58. Dailey controls Strongbow, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Strongbow's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Dailey is liable for Strongbow's violations of Section 40(1) of the Act, 7 U.S.C. § 60(1).

59. The foregoing acts and omissions of Dailey, as well as other Strongbow employees, occurred within the scope of their employment with Strongbow; therefore, Strongbow is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

60. Each act and 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 40(1) of the Act, 7 U.S.C. § 60(1).

COUNT IV

Violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (Failure to Register as an Associated Person of a CPO)

61. The allegations set forth in paragraphs 1 through 32 are realleged and incorporated herein by reference.

62. Section 4k(2) of the Act states that it is:

unlawful for any person to be associated with a [CPO] as a partner, officer, employee, consultant or agent . . . 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, unless such person is registered with the Commission . . . as an associated person of such [CPO] It shall be unlawful for a [CPO] to permit such a person to become or remain associated with the [CPO] in any such capacity if the [CPO] knew or should have known that such person was not so registered. . . .

63. As set forth above, since at least January 2007, Dailey has been associated with a CPO, Strongbow, and has solicited or been involved in the solicitation of funds for participation in pools while failing to register as an AP of the CPO, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

64. Strongbow has permitted Dailey to become and remain associated with Strongbow and knew, or should have known, that Dailey was not registered as an AP of Strongbow, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

65. Dailey controls Strongbow, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Strongbow's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Dailey is liable for Strongbow's violations of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

COUNT V

Violation of Section 4n(3)(A) of the Act, 7 U.S.C. § 6n(3)(A), and Regulation 4.23, 17 C.F.R. § 4.23 (Failure to Make and Keep Books and Records)

66. The allegations set forth in paragraphs 1 through 32 are realleged and incorporated herein by reference

67. Section 4n(3)(A) of the Act, 7 U.S.C. § 6n(3)(A), requires that every registered CTA and CPO maintain books and records and file such reports in such form and manner as may be prescribed by the Commission.

68. Regulation 4.23, 17 C.F.R. § 4.23, provides that each CPO registered or required to be registered under the Act must make and keep certain books and records in an accurate, current and orderly manner at its main business office. These records include cancelled checks, bank statements, journals, ledgers, invoices, and other relevant records, data and memoranda prepared or received in connection with the operation of the pool.

69. As described above, Strongbow failed to make and keep books and records in an accurate, current or orderly manner and, in some instances, failed to keep any books and records, as required by Section 4n(3)(A) of the Act, 7 U.S.C. § 6n(3)(A) and Regulation 4.23, 17 C.F.R. § 4.23.

70. Dailey controls Strongbow, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Strongbow's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Dailey is liable for Strongbow's violations of Section 4n(3)(A) of the Act, 7 U.S.C. § 6n(3)(A) and Regulation 4.23, 17 C.F.R. § 4.23.

71. Each failure to make and keep books and records, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4n(3)(A) of the Act, 7 U.S.C. § 6n(3)(A), and Regulation 4.23, 17 C.F.R. § 4.23.

COUNT VI

Violation of Regulation 4.20, 17 C.F.R. § 4.20 (Prohibited Activities for a CPO)

72. The allegations set forth in paragraphs 1 through 32 are realleged and incorporated herein by reference.

73. Regulation 4.20(a), 17 C.F.R. § 4.20(a), requires a CPO to operate its pool as an entity cognizable as a legal entity separate from that of the CPO.

74. Despite operating from at least January 2007, Strongbow did not establish separate bank and trading accounts in the name of the Pool until June 2009. Up until June 2009, Strongbow accepted and deposited pool participants' funds in accounts in Strongbow's and in an unrelated pool's name. Strongbow thereby failed to operate the Pool separate from Strongbow, in violation of Regulation 4.20(a), 17 C.F.R. § 4.20(a).

75. Regulation 4.20(b), 17 C.F.R. § 4.20(b), provides that all funds received by a CPO from a pool participant must be accepted in the name of the pool and the CPO may not accept funds in its own name. Strongbow violated Regulation 4.20(b), 17 C.F.R. § 4.20(b), by receiving pool participant funds in its own name, rather than in the name of the Pool.

76. Regulation 4.20(c), 17 C.F.R. § 4.20(c), provides that commodity pool funds may not be commingled with the funds of the CPO or any other person. Strongbow violated Regulation 4.20(c), 17 C.F.R. § 4.20(c), by commingling pool participant funds in accounts held in the name of Strongbow, Dailey and Relief Defendants.

77. Dailey controls Strongbow, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Strongbow's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Dailey is liable for Strongbow's violation of Regulation 4.20, 17 C.F.R. § 4.20.

78. The foregoing acts of Dailey, as well as other Strongbow employees, occurred within the scope of their employment with Strongbow; therefore, Strongbow is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

79. The failure to operate a pool as an entity separate from the CPO, as well as each act of improper receipt and commingling of pool participant funds is alleged as a separate and distinct violation of Regulation 4.20, 17 C.F.R. § 4.20.

COUNT VII

**Violation of Regulation 4.22(a)(3), 17 C.F.R. § 4.20
(CPO Reporting Requirements)**

80. The allegations set forth in paragraphs 1 through 32 are realleged and incorporated herein by reference

81. Regulation 4.22(a)(3), 17 C.F.R. § 4.22(a)(3), requires that a CPO registered or required to be registered in its Account Statements to pool participant

disclose any material business dealings between the pool, the pool's operator, commodity trading advisor, futures commission merchant, or the principals thereof that previously have not been disclosed in the pool's Disclosure Document or any amendment thereto, other Account Statements or Annual Reports.

82. Dailey repeatedly borrowed substantial funds from pool assets, used them for, among other things, his personal uses, and, purportedly, returned the funds with interest at the end of each calendar year. Until June 2009, Defendants failed to disclose this material business dealing to pool participants in Account Statements, Disclosure Document or in any other manner, in violation of Regulation 4.22(a)(3), 17 C.F.R. § 4.22(a)(3).

83. Dailey controls Strongbow, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Strongbow's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Dailey is liable for Strongbow's violation of Regulation 4.20, 17 C.F.R. § 4.20.

84. The foregoing acts of Dailey, as well as other Strongbow employees, occurred within the scope of their employment with Strongbow; therefore, Strongbow is liable for these

acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

85. Each instance when Defendants took pool assets for uses unrelated to the pool and failed to disclose to pool participants such conduct is alleged as a separate and distinct violation of Regulation 4.20, 17 C.F.R. § 4.20.

VII. RELIEF REQUESTED

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

86. An order finding that Defendants violated Section 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); Sections 4c(b), 4o(1), 4k(2) and 4n(3)(A) of the Act, 7 U.S.C. §§ 6c(b), 6o(1), 6k(2) and 6n(3)(A); and Regulations 4.20, 4.22(a)(3), 4.23, and 33.10(a) and (c), 17 C.F.R. §§ 4.20, 4.22(a)(3), 4.23 and 33.10(a) and (c).

87. An order of permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, from engaging, directly or indirectly:

(i) in conduct in violation of Section 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); Sections 4c(b), 4o(1), 4k(2) and 4n(3)(A) of the Act, 7 U.S.C. §§ 6c(b), 6o(1), 6k(2) and 6n(3)(A); and Regulations 4.20, 4.22(a)(3), 4.23, and 33.10(a) and (c), 17 C.F.R. §§ 4.20, 4.22(a)(3), 4.23 and 33.10(a) and (c).;

88. An order of permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, from engaging, directly or indirectly, in:

- a. 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));
- b. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1)) (“commodity options”), and/or foreign currency (as described in Section 2(c)(2)(C)(i) of the Act as amended by the by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008) § 13101, 122 Stat. 1651 (enacted June 18, 2008) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;
- c. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;
- d. 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, and/or forex contracts;
- e. 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, and/or forex contracts;

- f. 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); and
- g. acting as a principal (as that term is defined in Regulation 3.1(a)), agent or any other officer or employee of any person 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).

89. An order directing both Defendants and Relief Defendants, as well as any successors thereto, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act, as described herein, and pre- and post-judgment interest thereon from the date of such violations.

90. 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 described herein, and pre- and post-judgment interest thereon from the date of such violations.

91. An order directing Defendants and any successors 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 them as a result of the acts and practices which constituted violations of the Act, as described herein.

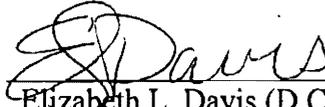
92. An order directing each Defendant to pay a civil monetary penalty under the Act, to be assessed by the Court, in amounts of not more than the higher of (1) triple the monetary

gain to Defendant for each violation of the Act or (2) \$130,000 for each violation of the Act occurring from October 23, 2004 through October 22, 2008, and \$140,000 for each violation of the Act occurring on or after October 23, 2008.

93. An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2).

94. Such other and further relief as the Court deems proper.

Respectfully submitted,



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Dated this 30th day of June, 2009.