

3:09-CV-387-RJC-DCK

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
U.S. COMMODITY FUTURES TRADING COMMISSION
(b) County of Residence of First Listed Plaintiff N/A
(c) Attorney's (Firm Name, Address, and Telephone Number)
August A. Imholtz III (202-418-5140); Michael Solinsky (202-418-5384);
Kassra Goudarzi (202-418-5416); Gretchen Lowe (202-418-5379)

DEFENDANTS
Capitalstreet Financial, LLC, Sean F. Mescall, Defendants and
Gerald T. Mescall and Gaincapital Inc., Relief Defendants
County of Residence of First Listed Defendant Catawba County, NC
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.
Attorneys (if known) Lawrence Gelber, Esq.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
[X] 1 U.S. Government Plaintiff
[] 2 U.S. Government Defendant
[] 3 Federal Question (U.S. Government Not a Party)
[] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State [] 1 [] 1
Citizen of Another State [] 2 [] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [] 5
Foreign Nation [] 6 [] 6

Table with 5 columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original Proceeding
[] 2 Removed from State Court
[] 3 Remanded from Appellate Court
[] 4 Reinstated or Reopened
[] 5 Transferred from another district (specify)
[] 6 Multidistrict Litigation
[] 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
7 U.S.C. 13a-1
Brief description of cause:
misappropriation of customer funds

VII. REQUESTED IN COMPLAINT:
[] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: [] Yes [] No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 9/8/2009
SIGNATURE OF ATTORNEY OF RECORD August A. Imholtz III

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

SEP 9 2009

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

**U. S. DISTRICT COURT
W. DIST. OF N. C.**

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

CAPITALSTREET FINANCIAL, LLC, a
Nevada limited liability company, and
SEAN F. MESCALL, an individual,

Defendants, and

GERALD T. MESCALL, an individual,
GAINCAPITAL, INC., a Delaware
corporation,

Relief defendants.

CASE NO. _____

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

Plaintiff U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”)

alleges as follows:

I. SUMMARY

1. Since at least September 2006 through the present (“relevant period”), defendants Capitalstreet Financial, LLC (“CSF”) and Sean Fitzgerald Mescall (“Mescall”) (collectively “Defendants”) fraudulently solicited at least \$1.3 million from at least 69 individuals or entities for the purported purpose of trading managed accounts and/or a pooled investment operated and

managed by Defendants and in connection with agreements, contracts or transactions in off-exchange foreign currency (“forex” or “foreign currency”) that are margined or leveraged.

2. In their oral and written solicitations, Defendants falsely claimed experience and success in trading forex and lured prospective customers with the prospect of quickly making large profits with returns such as 60 to 80 percent per year. Defendants also falsely created the impression of being a well-established forex firm by representing to be in operation since 1999 with over 35 offices in New York and North Carolina.

3. Throughout most of the relevant period, Defendants provided monthly account statements to CSF customers representing that Defendants were profitably trading forex on their behalf.

4. In reality, however, only \$280,000 of the approximately \$1.3 million that Defendants solicited from customers was ever deposited into actual forex trading accounts, and Defendants lost nearly all of that money unsuccessfully trading forex. Defendants misappropriated the remaining funds, approximately \$875,000, for personal use or to make purported profit payments or return principal to existing customers, in the manner akin to a “Ponzi” scheme.

5. Through the issuance of false monthly account statements and other communications, Defendants concealed from customers their trading losses, their misappropriation and their on-going fraud.

6. Upon information and belief, Defendants are still soliciting current and prospective customers to invest with them.

7. 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 anti-fraud provisions 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 (enacted June 18, 2008).

8. Mescall, as an agent, employee or officer of CSF, committed the acts and omissions described herein within the course and scope of his employment, agency or office with CSF; therefore, CSF is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation ("Regulation") 1.2, 17 C.F.R. § 1.2 (2009), for violations of the Act by Mescall.

9. Mescall is a controlling person of CSF. He failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations. Mescall is therefore liable for CSF's violations of the Act pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

10. Relief defendant Gerald Mescall ("G. Mescall"), who is not charged with violations of the Act, received funds from Defendants in which he had no legitimate interest or entitlement and which were derived from Defendants' fraudulent acts. G. Mescall, therefore, must return and repay these funds.

11. Relief defendant Gaincapital, Inc. ("Gaincapital") is not charged with violations of the Act. However, it received funds from Defendants in which it had no legitimate interest or entitlement and which were derived from Defendants' fraudulent acts. Gaincapital, therefore,

must return and repay these funds. Gaincapital is unrelated to GAIN Capital Group, LLC, an established futures commission merchant (“FCM”) that is registered with the Commission.

12. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin Defendants’ unlawful acts and practices, to compel Defendants to comply with the Act. 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.

13. 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

14. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2)(C)(i)-(iii) of the Act as amended by the CRA, to be codified at 7 U.S.C. §2(c)(2)(C)(i)-(iii). Section 6c(a) authorizes the Commission to seek injunctive relief in district court 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 the Act or any rule, regulation, or order thereunder. In addition, this section authorizes the Commission to bring a civil action in district court to enforce compliance with the Act and any rule, regulation or order thereunder.

15. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Defendants are found, inhabit, reside and/or transact business in the Western District of North Carolina, and certain of the transactions, acts, practices, and courses of business alleged to have violated the Act occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

16. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), as amended by the CRA, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2009). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

17. Defendant **Capitalstreet Financial, LLC** is a Nevada limited liability company. CSF's principal place of business is 4605 River Hills Drive, Denver, North Carolina, 28037 and is engaged in the business of soliciting and accepting funds for purportedly operating and trading managed accounts and/or a pooled investment in connection with agreements, contracts or transactions in off-exchange forex that are margined or leveraged. CSF has never been registered with the CFTC in any capacity. CSF is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment banking holding company, and is not an associated person of such entities.

18. Defendant **Sean F. Mescall** resides at 4605 River Hills Drive, Denver, North Carolina, 28037. Mescall through CSF is engaged in the business of soliciting and accepting funds for purportedly operating and trading managed accounts and/or a pooled investment in

connection with agreements, contracts or transactions in off-exchange forex that are margined or leveraged. Mescall has never been registered with the CFTC. Mescall was registered with the Financial Institution Regulatory Authority, but was suspended on three occasions, in or around October 2006, March 2007, and June 2007, for failure to comply with an arbitration award or settlement agreement. Mescall formed CSF on August 25, 2006. Upon information and belief, at least during the relevant period, apart from CSF, Mescall had no other employment or source of income. Mescall is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment banking holding company, and is not an associated person of such entities.

19. Relief Defendant **Gerald T. Mescall** resides at 4605 River Hills Drive, Denver, North Carolina, 28037. G. Mescall has never been registered with the CFTC. G. Mescall is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment banking holding company, and is not an associated person of such entities.

20. Relief Defendant **Gaincapital, Inc.** is a Delaware corporation with a principal place of business at 4605 River Hills Drive, Denver, North Carolina, 28037. Mescall formed Gaincapital on March 27, 2009 and is its President and sole director. Gaincapital has never been registered with the CFTC. Gaincapital is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment banking holding company, and is not an associated person of such entities.

IV. FACTS

Defendants' Fraudulent Solicitation of \$1.3 Million From Customers to Trade Forex

21. During the relevant period, Defendants fraudulently solicited, directly and through others, at least 69 individuals and entities for the purported purpose of trading managed accounts and/or a pooled investment operated and managed by Defendants and in connection with agreements, contracts or transactions in off-exchange forex that are margined or leveraged.

22. At least certain of Defendants' customers, if not all, were individuals who each had total assets of less than \$5 million.

23. In their oral solicitations, Defendants, directly and through others, represented that they would trade foreign currency on behalf of customers.

24. Mescall personally solicited customers through phone calls and personal solicitations. Upon information and belief, in one instance, Mescall travelled to the home of a customer in rural New York to obtain a check for \$50,000. Upon information and belief, Mescall also directed the solicitations of others.

25. In their oral solicitations, Defendants falsely claimed experience and success in trading foreign currency and lured prospective customers with false promises that they could quickly make large profits with returns such as 60 to 80 percent per year.

26. CSF has maintained, and continues to maintain, a website, www.capitalstreetfinancial.com. The website states that CSF offers "forex managed accounts," which purportedly "may also be appropriate for the investor who prefers to have his capital managed by professionals." The website also states that CSF launched operations in 1999 and lists over 35 locations across two states, New York and North Carolina. However, CSF was not

formed until 2006 and, upon information and belief, it has operated from, at most, four locations in and around Charlotte, North Carolina.

27. Defendants failed to disclose to customers and prospective customers that Defendants' claims of experience and success in trading forex were false.

28. Defendants failed to disclose to customers and prospective customers that there was no basis for their representations that customers could quickly make large profits with returns such as 60 to 80 percent per year.

29. Defendants further failed to disclose to customers and prospective customers that they were operating a Ponzi scheme and misappropriating CSF customer funds.

30. Defendants instructed customers to send their funds directly to CSF via check or wire transfer, and many customers did so.

31. Certain customers, however, sent their funds directly to GAIN Capital, a registered FCM and one of the FCM's that Defendants used to trade forex.

32. Customers and prospective customers relied on Defendants' representations and omissions in making their decisions to invest and reinvest with Defendants.

Defendants Traded Only Some Customer Funds and Lost Those Funds Trading

33. Beginning in late August 2006, Defendants opened a corporate proprietary account at GAIN Capital. Additionally, CSF had an accounts into which GAIN Capital deposited commissions CSF earned from trading customer funds in individual third-party managed accounts where CSF was given trading authority.

34. Defendants never funded or traded the corporate proprietary account at GAIN Capital. In or around December 2008, Defendants opened another corporate proprietary account

at another FCM. Defendants funded that account with only \$10,000 in February 2009.

Defendants' trading in this account was not profitable, and they closed the account less than a month after starting to trade, losing approximately \$1,382. In October 2008, Defendants sent \$12,500 to another forex entity that is not registered with the Commission. There is no evidence that the \$12,500 was used for trading or that these funds were returned to Defendants.

35. Only those CSF customers that sent their investment funds directly to GAIN Capital or sent checks to Defendants made payable to GAIN Capital had actual managed or pooled forex trading accounts that were managed by CSF. Each of these customers executed an agreement provided by GAIN Capital in which the customer authorized CSF to manage their accounts and trade forex with their funds. The agreement also disclosed the commissions that CSF would earn in conjunction with trading their funds.

36. Of the at least \$1.3 million solicited by Defendants, only approximately \$270,000 was deposited into the managed trading accounts at GAIN Capital.

37. Contrary to their representations, Defendants were not successful foreign currency traders. In the managed accounts at GAIN Capital, Defendants sustained trading losses of approximately \$270,000, losing nearly every dollar that customers entrusted to them for trading.

38. The Defendants traded foreign currency on a margined or leveraged basis in the managed accounts containing customer funds. The foreign currency transactions conducted by Defendants neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these foreign currency contracts

remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

Defendants Misappropriated Approximately \$875,000 of the Customer Funds

39. As alleged, Defendants instructed other CSF customers to send their investment funds directly to bank accounts of CSF.

40. Customers sent a total of approximately \$1 million to Defendants by check and wire transfer payable to CSF.

41. Defendants misappropriated approximately \$875,000 of these funds. Defendants only used approximately \$10,000 of the funds that were payable to CSF to trade forex at FCMs and deposited the remaining customer funds into CSF's bank account. At all relevant times, Mescall was, and continues to be, a signatory on CSF's bank account.

42. Defendants used these misappropriated funds to return principal and purported profits to CSF customers, to finance CSF's ongoing operations and to finance Mescall's personal expenses.

43. Mescall used the misappropriated funds to pay for his living expenses, and those of G. Mescall.

44. Upon information and belief, G. Mescall does not and did not provide any legitimate services nor does he have any legitimate entitlement to any CSF funds received from Defendants.

45. Mescall also used the misappropriated funds to purchase over \$20,000 worth of jewelry and make payments of approximately \$110,000 to rare coin and bullion dealers.

46. In or around late March 2009, Defendants established and incorporated an entity they named "Gaincapital, Inc." Defendants opened at least one bank account in the name of Gaincapital and transferred funds from CSF's bank account into the Gaincapital bank account. Mescall is the sole President and director Gaincapital and controls and is a signatory of the Gaincapital bank account.

47. Upon information and belief, Defendants appear to have established Gaincapital to defraud customers and prospective customers who intend to deposit their funds with the legitimate, registered FCM, GAIN Capital.

48. Gaincapital does not provide any legitimate services to CSF and does not have any legitimate entitlement to any CSF funds received from Defendants.

49. In January and February 2009, certain CSF customers requested that Defendants return their funds, but their demands for funds to be returned have not been met.

50. The location and accounting of the remaining customer funds is not completely known at this time.

**Defendants Concealed the Trading Losses
and Misappropriation With False Statements**

51. Defendants, through false representations and statements by Mescall and CSF, directly and through others, concealed their misappropriation, their unsuccessful trading, and their on-going fraud through oral and written communications that Defendants were actually and profitably trading forex on behalf of customers. Defendants sent false monthly account statements to CSF customers showing consistent profitable returns.

52. Relying on the consistently profitable monthly account statements, certain existing customers invested additional funds with Defendants.

53. Mescall is the President, owner and manager of CSF. Upon information and belief, he has virtually complete authority over, and day-to-day control of CSF, and he does not report to anyone or share authority with anyone.

**V. COUNT ONE:
Violations of the Commodity Exchange**

**Violations of Sections 4b(a)(2)(A)-(C) of the Act,
as amended by the CRA
(Fraudulent Solicitation, Misappropriation and False Statements)**

54. The allegations set forth in paragraphs 1 through 53 are realleged and incorporated herein by reference.

55. Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), 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 for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, apply to the foreign currency transactions, agreements or contracts offered by Defendants. Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iv).

56. As set forth above, from at least June 18, 2008 through the present, in or in connection with foreign currency contracts, made, or to be made, for or on behalf of, or with,

other persons, Defendants cheated or defrauded or attempted to cheat or defraud customers or prospective customers; willfully made or caused to be made false reports or statements to another person; willfully deceived or attempted to deceive customers or prospective customers by, among other things, knowingly (i) fraudulently soliciting customers and prospective customers; (ii) misappropriating customer funds that purportedly were to be used to trade forex; (iii) misrepresenting forex trading activity that purportedly occurred on behalf of CSF customers, as well as purported returns CSF customers would and did receive on their forex investments; (iv) failing to disclose that Defendants were operating a Ponzi scheme and misappropriating customer funds; and (v) making, causing to be made, and distributing reports and statements to CSF customers that contained false account values, false returns on investment, and other misinformation, all in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

57. CSF, by and through its agents, and Mescall engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

58. Mescall controlled CSF, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CSF's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Mescall is liable for CSF's violations of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

59. The foregoing acts, misrepresentations, omissions, and failures of Mescall occurred within the scope of his employment, office or agency with CSF; therefore, CSF is liable

for these acts, misrepresentations, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2009).

60. Each act of misappropriation, misrepresentation or omission of material facts, and making or causing to be made a false report or statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

**VI. COUNT TWO:
Disgorgement of Funds From the Relief Defendants**

62. Paragraphs 1 through 61 are re-alleged and incorporated herein.

63. Defendants have defrauded CSF customers.

64. Relief Defendant G. Mescall also is a signatory on the CSF bank account into which customer funds were deposited. G. Mescall used this CSF bank account to pay his personal expenses. G. Mescall comingled his own funds with the customer funds in the CSF bank account. G. Mescall thus received funds from Defendants that were derived from Defendants' fraudulent acts.

65. Relief Defendant G. Mescall received funds as a result of the Defendants' fraudulent conduct and has been unjustly enriched thereby.

66. Upon information and belief, Relief Defendant G. Mescall has no legitimate entitlement to or interest in all of the funds received as a result of the Defendants' fraudulent conduct.

67. Relief Defendant G. Mescall should be required to disgorge funds up to the amount he received from Defendants' fraudulent conduct or the value of those funds that he may have subsequently transferred to third parties.

68. Relief Defendant Gaincapital maintains a bank account at Peoples Bank. Both Mescall and G. Mescall are signatories on the Gaincapital account at Peoples Bank. Funds from CSF's bank accounts have been deposited into the Gaincapital account at Peoples Bank. Gaincapital thus received funds from Defendants that were derived from Defendants' fraudulent acts.

69. Relief Defendant Gaincapital received funds as a result of the Defendants' fraudulent conduct and has been unjustly enriched thereby.

70. Relief Defendant Gaincapital has no legitimate entitlement to or interest in all of the funds received as a result of the Defendants' fraudulent conduct.

71. Relief Defendant Gaincapital should be required to disgorge funds up to the amount it received from Defendants' fraudulent conduct or the value of those funds that it may have subsequently transferred to third parties.

VII. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers, enter:

a) An order finding that Defendants violated Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C);

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

(ii) 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);

(iii) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2009)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the CRA, to be codified at 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;

(iv) having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;

(v) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;

(vi) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;

(vii) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009);

(viii) 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 Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009);

c) An order directing Defendants and Relief Defendants, as well as any successors to any defendant or relief defendant, 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;

d) 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;

e) 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 customers whose funds were received by them as a result of the acts and practices which constituted violations of the Act, as described herein;

f) An order directing each defendant to pay a civil monetary penalty for each violation of the Act described herein, plus post-judgment interest, in the amount of the higher of:

\$140,000 for each violation of the Act committed on or after October 23, 2008, \$130,000 for each violation of the Act committed on or between October 23, 2004; or triple the monetary gain to each defendant for each violation of the Act described herein, plus post-judgment interest;

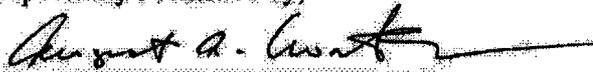
g) An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C.

§§ 1920 and 2412(a)(2) (2006); and

h) Such other and further relief as the Court deems proper.

Dated: September 8th, 2009.

Respectfully submitted by,



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