

UNITED STATES OF AMERICA  
Before the  
U.S. COMMODITY FUTURES TRADING COMMISSION



\_\_\_\_\_) )  
JACK VOGEL, ) )  
 ) )  
Complainant, ) )  
 ) )  
v. ) )  
 ) )  
GAIN CAPITAL GROUP LLC, ) )  
 ) )  
Respondents. ) )  
\_\_\_\_\_) )

CFTC Docket No. 20-R009

ORDER

**ORDER TO SHOW CAUSE**

On December 13, 2019 and January 15, 2020, Jack Vogel and seven other complainants (collectively, the Complainants) separately filed reparations complaints against Respondent GAIN Capital Group, LLC (GAIN). On April 29, 2021, GAIN moved to dismiss all eight complaints. On February 21, 2023, the Administrative Judge issued an Initial Decision and Order Granting Respondent’s Motions to Dismiss.

On March 8, 2023, the General Counsel granted the Complainants’ request for an extension of time for them to appeal the dismissal by March 22, 2023. Five of the complainants, not including Mr. Vogel, filed Notices of Appeal by March 22, 2023. On March 23, 2023, counsel for the Complainants notified the Office of Proceedings that Mr. Vogel had informed them the previous evening that he mailed them his executed Notice of Appeal on March 20, 2023, and that he still wished to appeal the dismissal. Counsel had previously received notice of Mr. Vogel’s intent to appeal the dismissal but had not yet received his Notice of Appeal. Counsel

therefore asked whether the Commission would accept his untimely appeal. On March 24, 2023, Mr. Vogel filed his appeal and paid his filing fee.

CFTC Rule 12.401(a) states that a party's failure to file a timely notice of appeal and pay the appellate filing fee shall constitute a waiver of any objection to the initial decision. 17 C.F.R. § 12.401(a). The requirement to file a timely notice of appeal is "mandatory and jurisdictional," but the Commission will accept late-filing petitions in cases of "excusable neglect." *Torbin v. National Futures Assoc.*, CFTC No. 08-04, 2008 WL 1930793 (CFTC May 1, 2008).

In determining whether the neglect is excusable, the Commission follows the equitable test adopted by the Supreme Court in *Pioneer Insurance Service Co. v. Brunswick Association, Ltd.*, 507 U.S. 380 (1993). *In re Ligammari*, CFTC No. 02-05, 2005 WL 1536804 (CFTC June 28, 2005). The test considers four factors: (1) the risk of prejudice to the appellee; (2) the length of delay and its potential prejudice upon the judicial proceeding; (3) the reasons for the delay, including whether it was in the reasonable control of the late-filing party; and (4) whether the late-filing party acted in good faith. *Id.*

We therefore order Mr. Vogel to **SHOW CAUSE** why the Commission should not dismiss his untimely appeal. Mr. Vogel may submit a briefing in support of accepting his appeal within 20 days of the date of this order. GAIN may submit a brief responding to Mr. Vogel's arguments within 20 days of receipt of his brief.

IT IS SO ORDERED.\*

/s/ Robert A. Schwartz  
Robert A. Schwartz  
General Counsel  
U.S. Commodity Futures Trading Commission

Dated: April 10, 2023

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\* By the Commission pursuant to delegated authority under 17 C.F.R. § 12.408(a)(4).