

have solicited individuals to send them funds in amounts ranging from \$10,000 to \$170,000 to trade options on foreign currencies.

3. From December 21, 2000 to the present, at least 25 customers have sent almost \$700,000 to IMG for the purpose of trading options on foreign currencies. Those funds were not used to trade options on foreign currency; rather, they were deposited in accounts in the name of IMG and CMG that were controlled by defendants Anthony and Emido Dellarciprete. During that time period, over \$1 million has been deposited in those accounts. Virtually all funds in those accounts have been either used for personal goods and services, or transferred to firms and entities unrelated to commodity options trading.

4. In order to hide their misappropriation of customer funds, defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon have provided customers with false written reports showing fictitious trading activity, have made oral misrepresentations regarding non-existent commodity option transactions, and have falsely represented to individuals that their funds would be pooled with the funds of other investors to execute option transactions in foreign currency.

5. Defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon have solicited members of the public to purchase options on foreign currencies that were not being traded on or subject to the rules, or through a member, of a designated contract market and have not registered with the Commodity Futures Trading Commission (“Commission”) as they are required to do so. In addition, these defendants failed to provide investors with required disclosure documents, failed to provide investors with statements of account and certain reports, and failed to file a disclosure documents with the Commission

6. Defendants have engaged, are engaged, or are about to engage in acts and practices that violate the antifraud, designated contract market, registration, and disclosure provisions of the Commodity Exchange Act (“Act”), 7 U.S.C. § 1 *et seq.*, as amended by the Commodity Futures Modernization Act of 2000 (“CFMA”), Pub. L. No. 106-554, 114 Stat. 2763 (2000), and the Commission’s Regulations (“Regulations”), 17 C.F.R. § 1.1 *et seq.*, relating to commodity options transactions. Defendants have violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9, 17 C.F.R. § 32.9, by engaging in fraudulent activity in connection with trading commodity options, including making false representations, disseminating false trading reports, and misappropriating customer funds. In addition, defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon have violated Section 4c(b) of the Act and Regulations 32.11 and 33.3, 17 C.F.R. §§ 32.11, 33.3, by offering and selling commodity option transactions that are not traded on or subject to, or by or through a member of, a designated contract market. Defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon have also violated Section 4c(b) of the Act and Regulation 32.5, 17 C.F.R. § 32.5, by failing to provide prospective customers with disclosure documents containing information required by the Regulations.

7. Defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon have also engaged, are engaged, or are about to engage in acts and practices that violate the antifraud, registration, and disclosure provisions of the Act and Regulations concerning the operation of a commodity pool. They have violated Section 4o of the Act, 7 U.S.C. § 6o, by misrepresenting to prospective pool participants the trading performance of the pool and misappropriating investor funds. In addition, they violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1), by soliciting and accepting funds from the public for the purpose of trading commodity interests without being

registered with the Commission as a commodity pool operator. They also violated the Section 4k of the Act, 7 U.S.C. § 6k, by soliciting funds for a commodity pool and permitting persons to solicit funds for a commodity pool without being registered with the Commission as an associated person of a commodity pool operator. They further violated Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and Regulations 4.21, 4.22, 4.24, 4.25, and 4.26, 17 C.F.R. §§ 4.21, 4.22, 4.24, 4.25, 4.26, by failing to comply with reporting and disclosure requirements for commodity pool operators.

8. Accordingly, pursuant to Section 6c of the Act, the Commission brings this action to enjoin defendants' unlawful acts and practices, to bar them from engaging in any commodity-related activity, and to compel their compliance with the Act and the Regulations. In addition, the Commission seeks civil monetary penalties, remedial ancillary relief including, but not limited to, an accounting, restitution, disgorgement, pre-judgment and post-judgment interest, and the appointment of a temporary and permanent receiver, and such other relief as this Court may deem necessary or appropriate.

9. Unless restrained and enjoined by this Court, defendants are likely to and will continue to engage in the acts and practices alleged in this Complaint or in similar acts and practices, as more fully described below.

II

JURISDICTION AND VENUE

10. The Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the

Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

11. Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B), expressly clarifies the jurisdiction of the CFTC over certain retail foreign exchange transactions, including options on foreign currencies. Congress has made clear that the Act is applicable to, and the Commission has jurisdiction over, foreign currency futures and options transactions involving retail customers if the counterparty to such transactions does not come within an enumerated list of regulated entities. If the counterparty to a retail customer in a foreign currency or options transaction is not one of the enumerated regulated entities, the transaction must be conducted on a designated contract market. In addition, those transactions are subject to the Commission's antifraud jurisdiction.

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because defendants are found in, inhabit, or transact business in the Northern District of Ohio, and the acts and practices in violation of the Act have occurred within this District, among other places.

III

THE PARTIES

A. Plaintiff

13. **U.S. Commodity Futures Trading Commission** ("Commission") is the independent federal regulatory agency charged with the administration and enforcement of the Act, 7 U.S.C. § 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. § 1.1 *et seq.*

B. Defendants

14. **International Monetary Group, Inc.** is a corporation registered in Ohio. IMG maintains an office located at 273 Wooster Road North, Suite A, Barberton, Ohio 44203. At all times relevant to the complaint, IMG has transacted business in the Northern District of Ohio. IMG has never been registered with the Commission in any capacity.

15. **Currency Management Group, Inc.** is an Ohio corporation whose principal place of business is listed as 223 Yonker Street, Barberton, Ohio 44203. Anthony Dellarciprete and Emido Dellarciprete incorporated CMG on June 4, 1998. CMG has never been registered with the Commission in any capacity.

16. **Anthony Dellarciprete** is a principal of IMG and CMG is the registered statutory agent for both of these corporations. He resides at 223 Yonker Street, Barberton, Ohio 44203. Anthony Dellarciprete has never been registered with the Commission in any capacity.

17. **Emido Dellarciprete** is a principal of IMG and CMG. He resides at 1643 Massillon Road, Akron, Ohio 44312. Emido Dellarciprete has never been registered with the Commission in any capacity.

18. **Jason Lemmon** is an employee of IMG and a self-described foreign currency broker. Lemmon resides at 130 E. Mapledale Avenue, Akron, Ohio 44301. Lemmon has never been registered with the Commission in any capacity.

IV.

FACTS

A. Operation Of IMG As An Unregistered Forex Firm

19. Since at least December 21, 2000 to the present, defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon have been soliciting individuals throughout the United States to invest in options on foreign currency traded on the foreign currency exchange markets (“Forex”).

20. Defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon have represented to some individuals that their funds would be pooled with the funds of other investors to purchase Forex options.

21. As part of their solicitation, defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon provide prospective investors with a Client Account Agreement (“Agreement”). The Agreement provides that IMG will act as the customer’s agent for the “purchases and sales of Foreign Currency Options by and through a United Kingdom Corporation engaged in the business of foreign currency transactions.” The Agreement also provides that the United Kingdom Corporation is located in London, England and that it has no assets or place of business in the United States.

22. The Agreement states that the customer may purchase a foreign currency option and may thereafter “sell the Foreign Currency Option back to [the United Kingdom Corporation] at any time prior to the expiration date for the price [the United Kingdom Corporation] is then quoting.” It also states that the United Kingdom Corporation may act as the counterparty to transactions for a customer’s account, and may sell foreign currencies and/or options to the customer from its own account or may buy foreign currencies from the customer for its own account.

23. Notwithstanding the clear authority of the Commission to regulate the sale of foreign currency options to members of the public, the Agreement states, “there is no federal or state nor banking authority which regulates foreign currency options, subject to [the Agreement].”

24. Pursuant to the terms of the Agreement, individuals who purchase foreign currency options are directed either to wire funds to an account in the name of IMG at FirstMerit Bank N/A in Akron, Ohio (“IMG FirstMerit Account”), or to mail to checks made payable to IMG to IMG’s office in Barberton, Ohio.

25. Since at least December 21, 2000 to the present, defendants Anthony Dellarciprete and Emido Dellarciprete have been the only authorized signatories for the IMG FirstMerit Account. During this time, over \$1 million has been deposited in the IMG FirstMerit Account.

26. Since at least December 21, 2000 to the present, no funds have been transferred from the IMG FirstMerit Account to any United Kingdom corporation. Moreover, during this time, no funds have been transferred from the IMG FirstMerit Account to a federally registered financial institution, a broker or securities dealer or futures commission merchant, an associated person of a broker or dealer, an insurance company, a financial holding company, or an investment bank holding company which was acting as a counterparty to purported options transactions by IMG customers.

B. The Fraudulent Solicitation of Individuals to Invest in Forex Options with IMG

27. At various times between December 21, 2000 and the present, defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon , and other persons under their

supervision and control, have solicited individuals to send funds to IMG for the purpose of investing in options on foreign currencies.

28. As part of these solicitations, defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon, or other persons under their supervision and control, stated that they were offering investors an opportunity to make large profits on the rise in the value of foreign currencies relative to the dollar. They claimed that they would double a customer's investment in less than a month and that IMG has customers who have invested hundreds of thousands dollars and have more than doubled their investment. In addition, they represented that IMG has expert Forex currency market analysts who are highly successful traders.

29. After initial telephone calls to prospective customers, defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon, or other persons under their supervision and control, sent prospective customers by mail or facsimile copies of the Agreement, an account information and customer profile statement, and an authorization to purchase and promise to pay. These defendants instructed customers to sign and return the documents to IMG for the purpose of opening an account at IMG. Pursuant to their instructions, individuals signed these documents and sent them to the IMG office in Barberton, Ohio.

30. During the course of their solicitations, defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon, or other persons under their supervision and control, failed to provide prospective and actual customers with required commodity option disclosure documents and failed to comply with the reporting and disclosure requirements for commodity pool operators.

31. Pursuant to instructions by defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon, or other persons under their supervision and control, individuals

have wired funds to an account in the name of IMG at FirstMerit Bank in Akron, Ohio to invest in options on foreign currencies.

32. As the result of the defendants' fraudulent solicitations, at least 25 individuals in various parts of the United States have sent funds to IMG in amounts ranging from approximately \$10,000 to \$170,000. Those funds totaled almost \$700,000 and were deposited in the IMG FirstMerit Bank account. Between December 21, 2000 and May 22, 2001, deposits in that account, and other FirstMerit Bank accounts controlled by defendants CMG, Anthony Dellarciprete, and Emido Dellarciprete, have totaled approximately \$1 million.

C. Misappropriation of Investor Funds

33. Documents for the IMG FirstMerit Bank account, which is controlled by defendants Anthony Dellarciprete and Emido Dellarciprete, show that none of the customer deposits were used for the purchase of foreign currency options. Those documents show that funds in the IMG FirstMerit Bank account were used to pay the expenses of Anthony Dellarciprete and Emido Dellarciprete in connection with the purchase of various personal goods and services.

34. FirstMerit Bank documents also show that funds were transferred to a business checking account in the name of CMG at FirstMerit Bank ("CMG FirstMerit Account"). Those documents reveal that Anthony and Emido Dellarciprete control the CMG FirstMerit Account and that funds from the IMG FirstMerit Account were transferred from that account to the CMG FirstMerit Account between December 21, 2000 and May 22, 2001. During that time, funds from the CMG FirstMerit Account were used by Anthony and Emido Dellarciprete to pay for personal goods and services.

35. Defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon, or other persons under their supervision and control, sent false statements and reports to customers showing that their funds were used for trading options on foreign currencies and that virtually all of those funds were lost in trading. These statements and reports summarized fictitious trading transactions because IMG bank records reveal that no customer funds have been used to purchase options on foreign currency.

36. Since at least December 21, 2000, and continuing through the present, defendants have accepted funds for the purpose of trading options on foreign currencies and have misappropriated those funds for their personal use. Contrary to representations to customers that their funds were being used to purchase Forex options, defendants transferred those funds to various accounts under their personal control and used funds from those accounts to pay expenses unrelated to trading Forex options.

V

VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND THE COMMISSION'S REGULATIONS

COUNT I

VIOLATIONS OF SECTION 4c(b) OF THE ACT, 7 U.S.C. § 6c(b), AND SECTION 32.9 OF THE REGULATIONS, 17 C.F.R. § 32.9: FRAUD IN CONNECTION WITH COMMODITY OPTIONS TRANSACTIONS

37. Paragraphs 1 through 36 are re-alleged and incorporated herein.

38. From December 21, 2000, and continuing through the present, the IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Section 32.9 of the Regulations, 17 C.F.R. § 32.9, in that they have cheated, defrauded or deceived, or attempted to cheat, defraud, or deceive other persons by making false, deceptive, or misleading representations of material facts and by failing to disclose material facts, in

soliciting customers or potential customers, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, commodity option transactions including, but not limited to:

- (a) false representations that customers who purchase options on foreign currency though IMG will make substantial profits in a short period of time;
- (b) false representations that IMG's investment scheme involves little or no risk;
- (c) false representations that customer funds are being used to purchase and sell options on foreign currency;
- (d) false representations that option transactions are generating significant profits; and
- (e) false representations that there is no government regulation of transactions involving foreign currency options.

39. From December 21, 2000 to the present, defendants IMG, CMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon have misappropriated customer funds in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 32.9, 17 C.F.R. § 32.9. Defendants have failed to apply customer funds for the purchase of foreign currency options in the manner represented and have misappropriated customer funds for personal expenses and services.

40. From December 21, 2000 to the present, defendants Anthony Dellarciprete and Emido Dellarciprete, as principals and directors of IMG, directly or indirectly controlled IMG; and they did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Anthony Dellarciprete and Emido Dellarciprete are liable for the violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9, 17 C.F.R. § 32.9, as described in this Count, to the same extent as IMG.

41. From December 21, 2000 to the present, defendants Anthony Dellarciprete and Emido Dellarciprete, as principals and directors of CMG, directly or indirectly controlled CMG; and they did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Anthony Dellarciprete and Emido Dellarciprete are liable for the violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9, 17 C.F.R. § 32.9, as described in this Count, to the same extent as CMG.

42. Defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemon engaged in the conduct alleged in this Count within the scope of their offices or employment as agents of defendant IMG. Therefore, defendant IMG is liable as a principal for the violations of its agents. *See* Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

43. Defendants Anthony Dellarciprete and Emido Dellarciprete engaged in the conduct alleged in this Count within the scope of their offices or employment as agents of defendant CMG. Therefore, defendant CMG is liable as a principal for the violations of its agents. *See* Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

44. Defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon willfully aided, abetted, counseled, commanded, induced, or procured the commission of violations of the Act, or acted in combination or in concert with defendant IMG or willfully caused acts to be done or omitted which when directly performed or omitted constituted defendant IMG's violations described in this Count. Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon therefore violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Section 32.9 of the Regulations, 17 C.F.R. § 32.9, as described in this Count.

45. Defendants Anthony Dellarciprete and Emido Dellarciprete willfully aided, abetted, counseled, commanded, induced, or procured the commission of violations of the Act, or acted in combination or in concert with defendant CMG or willfully caused acts to be done or omitted which when directly performed or omitted constituted defendant CMG's violations described in this Count. Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), defendants Anthony Dellarciprete and Emido Dellarciprete therefore violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Section 32.9 of the Regulations, 17 C.F.R. § 32.9, as described in this Count.

46. Each false, deceptive, or misleading representation of material facts, each failure to disclose material facts, and each misappropriation of customer funds 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 Section 32.9 of the Regulations, 17 C.F.R. § 32.9.

COUNT II

**VIOLATIONS OF SECTION 4c(b) OF THE ACT,
7 U.S.C. § 4c(b), AND REGULATIONS 32.11 AND 33.3,
17 C.F.R. §§ 32.11, 33.3: SALE OF COMMODITY OPTIONS NOT TRADED ON OR
SUBJECT TO THE RULES OF A DESIGNATED CONTRACT MARKET**

47. Paragraphs 1 through 46 are re-alleged and incorporated herein.

48. Section 2(c)(2)(B)(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(ii), provides that the Commission shall have jurisdiction over options contracts on foreign currency, so long as the option is "offered to, or entered into with, a person that is not an eligible contract participant" and the counterparty to the option, or the person offering to be the counter-party, is not a regulated entity, as defined in the Act.

49. In the case of an individual, Section 1a(12)(A)(xi) of the Act defines an eligible contract participant as one who has total assets in excess of: \$10 million or in excess of \$5

million if hedging a risk associated with an asset or liability. All customers identified by the Commission that have been solicited by defendants are not eligible contract participants.

50. Neither IMG nor the United Kingdom Corporation referenced in the Agreement are regulated entities that are permitted under the Act to act as counterparties for retail foreign currency transactions absent Commission jurisdiction.

51. Sections 32.11 and 33.3 of the Regulations, 17 C.F.R. §§ 32.11, 33.3, together provide that it shall be unlawful for any person to solicit or accept orders for, or accept funds in connection with, the purchase or sale of any commodity option, or supervise any person or persons so engaged, unless the commodity option is conducted (1) on or subject to the rules of a contract market which has been designated by the Commission to trade options and (2) by or through a member thereof in accordance with the Act and Regulations.

52. Beginning on December 21, 2000, and continuing to the present, defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Jason Lemmon have offered to enter into, entered into, executed, confirmed the execution of, or conducted business for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a commodity option when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated by the Commission as a “contract market” for such commodity, and (b) such contracts have not been executed or consummated by or through a member of such contract market, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Sections 32.11 and 33.3 of the Regulations, 17 C.F.R. §§ 32.11, 33.3.

53. From December 21, 2000, and continuing to the present, Anthony Dellarciprete and Emido Dellarciprete, as principals and directors of the IMG, directly or indirectly controlled IMG and did not act in good faith or knowingly induced, directly or indirectly, the acts

constituting the violations described in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (1994), as described in this Count, Anthony Dellarciprete and Emido Dellarciprete are liable for the violations described in this Count, to the same extent as IMG.

54. Defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon engaged in the conduct alleged in this Count within the scope of their offices or employment as agents of defendant IMG. Therefore, defendant IMG is liable as a principal for the violations of its agents. *See* Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

55. Defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon willfully aided, abetted, counseled, commanded, induced, or procured the commission of violations of the Act, or acted in combination or in concert with defendant IMG or willfully caused acts to be done or omitted which when directly performed or omitted constituted defendant IMG's violations described in this Count. Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon therefore violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Sections 32.11 and 33.3 of the Regulations, 17 C.F.R. § 32.11, 33.3, as described in this Count.

56. Each Forex commodity option transaction not conducted on a designated contract market made during the relevant time period, 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 Sections 32.11 and 33.3 of the Regulations, 17 C.F.R. § 32.11, 33.3.

COUNT III

VIOLATIONS OF SECTION 4c(b) OF THE ACT, 7 U.S.C. § 6c(b), AND REGULATION 32.5, 17 C.F.R. § 32.5: FAILURE TO MAKE PROPER DISCLOSURES

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

58. Section 32.5 of the Commission's Regulations, 17 C.F.R. § 32.5, requires that a person soliciting or accepting an order for an options transaction shall deliver to the customer or prospective customer a disclosure statement. That statement must include a brief description of the transaction (including the duration of the options offered and a list of elements comprising the purchase price), a description of all costs that may be incurred by the customer if the option is exercised, an explanation concerning the necessary rise or fall in the price of the contract underlying the option in order for the customer to profit, and a specific, boldfaced statement concerning the risk of loss. None of this information appears in the documentation that the defendants have furnished to customers in connection with the sale of foreign currency options.

59. Defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon failed to furnish customers with the disclosure statement required for options transactions in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Section 32.5 of the Regulations, 17 C.F.R. § 32.5.

60. Defendants Anthony Dellarciprete and Emido Dellarciprete, as principals and directors of IMG, directly or indirectly controlled IMG, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), defendants Anthony Dellarciprete and Emido Dellarciprete are liable for violations of Section 4c(b), 7 U.S.C. § 6c(b),

and Commission Regulation 32.5, 17 C.F.R. § 32.5, as described in this Count to the same extent as IMG.

61. Defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon willfully aided, abetted, counseled, commanded, induced, or procured the commission of violations of the Act, or acted in combination or in concert with defendant IMG or willfully caused acts to be done or omitted which when directly performed or omitted constituted defendant IMG's violations described in this Count. Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon therefore violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.5, 17 C.F.R. § 32.5, as described in this Count.

62. Defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon engaged in the conduct alleged in this Count within the scope of their offices or employment as agents of defendant IMG. Therefore, defendant IMG is liable as a principal for the violations of its agents. *See* Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

63. Each failure to provide a required disclosure statement during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b), 7 U.S.C. § 6c(b), and Commission Regulation 32.5, 17 C.F.R. § 32.5.

COUNT IV

VIOLATIONS OF SECTION 4c(1)(A) and (B) OF THE ACT, 7 U.S.C. § 6c(1)(A) and (B): FRAUD BY COMMODITY POOL OPERATORS

64. Paragraphs 1 through 63 are realleged and incorporated herein by reference.

65. From at least December 21, 2000 to the present, IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon, while acting as a commodity pool operator ("CPO") and

associated persons of a CPO, violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that, directly and indirectly, they have been or are employing a device, scheme, or artifice to defraud pool participants or prospective pool participants, or have engaged or are engaging in transactions, practices or courses of business which have operated or are operating as a fraud or deceit upon pool participants or prospective pool participants. These fraudulent transactions, practices, or courses of business include, among other things: (a) misrepresenting the trading performance of IMG; (b) omitting to inform investors that their funds would be placed in non-pool related accounts; (c) disseminating false reports regarding the trading performance of the pool; and (d) misappropriating investor funds by depositing them into non-pool related accounts.

66. Defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon engaged in the conduct alleged in this Count within the scope of their offices or employment as agents of defendant IMG. Therefore, defendant IMG is liable as a principal for the violations of its agents. *See* Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

67. Defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon willfully aided, abetted, counseled, commanded, induced, or procured the commission of violations of the Act, or acted in combination or in concert with defendant IMG or willfully caused acts to be done or omitted which when directly performed or omitted constituted defendant IMG's violations described in this Count. Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon therefore violated Section 4o of the Act, 7 U.S.C. § 6o, as described in this Count.

68. Defendants Anthony Dellarciprete and Emido Dellarciprete control defendant IMG, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, defendant IMG's conduct alleged in this Count. Pursuant to Section 13(b) of the Act,

7 U.S.C. § 13c(b), defendants Anthony Dellarciprete and Emido Dellarciprete are liable for defendant IMG's violations of Section 4o of the Act, 7 U.S.C. § 6o, as described in this Count.

69. Each device, scheme, or artifice to defraud pool participants or prospective pool participants made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o of the Act, 7 U.S.C. § 6o.

COUNT V

VIOLATION OF SECTION 4m(1) OF THE ACT, 7 U.S.C. § 4m(1): ACTING AS AN UNREGISTERED COMMODITY POOL OPERATOR

70. Paragraphs 1 through 69 are realleged and incorporated herein by reference.

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

72. A commodity pool operator ("CPO") is any firm or individual engaged in a business which is in the nature of an investment trust, syndicate, or similar form of enterprise, and that, in connection therewith, solicits, accepts, or receives from others funds, securities, or property, either directly through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or designated transaction execution facility. Section 1a(5) of the Act, 7 U.S.C. § 1a(5). With certain specified exceptions and exemptions not applicable here, CPOs are required to be registered with the Commission pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

73. Defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon represented to individuals that customer funds would be pooled for the purpose of trading options on foreign currencies.

74. IMG is a CPO and acted as such by soliciting and accepting funds for the purpose of pooling funds to trade options on foreign currencies.

75. From at least December 21, 2000 to the present, IMG violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1), in that it solicited, accepted and received funds from the public for the purpose of trading in commodity interests without being registered, as required, with the Commission as a CPO and made use of the mails or other means or instrumentalities of interstate commerce in connection with its business as a CPO.

76. Defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon willfully aided, abetted, counseled, commanded, induced, or procured the commission of violations of the Act, or acted in combination or in concert with defendant IMG or willfully caused acts to be done or omitted which when directly performed or omitted constituted defendant IMG's violations described in this Count. Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), Anthony Dellarciprete, Emido Dellarciprete, and Lemmon therefore violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1), as described in this Count.

77. Defendants Anthony Dellarciprete and Emido Dellarciprete control defendant IMG, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, defendant IMG's conduct alleged in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Anthony Dellarciprete and Emido Dellarciprete are each liable for IMG's violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1), as described in this Count.

78. Each use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO without proper registration during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

COUNT VI

VIOLATIONS OF SECTION 4k(2) OF THE ACT, 7 U.S.C. § 6k(2), AND REGULATION 3.12(a), 17 C.F.R. § 3.12(a): ACTING AS UNREGISTERED ASSOCIATED PERSONS OF A COMMODITY POOL OPERATOR AND PERMITTING UNREGISTERED ASSOCIATED PERSONS TO BE ASSOCIATED WITH A COMMODITY POOL OPERATOR

79. Paragraphs 1 through 78 are realleged and incorporated herein by reference.

80. It is unlawful for any person to be associated with a CPO as a partner, officer, employee, consultant or agent (or any person occupying a similar status or performing similar functions) in any capacity that involves the solicitation of funds, securities or property for participation in a commodity pool unless that person is registered as an associated person (“AP”) of a CPO. Section 4k(2) of the Act, 7 U.S.C. § 6k(2), and Regulation 3.12(a), 17 C.F.R. § 3.12(a). Further, it is unlawful for a CPO to permit such an unregistered AP to become or remain associated with the CPO in any such capacity. Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

81. From at least December 21, 2000 to the present, defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2), and Regulation 3.12(a), 17 C.F.R. § 3.12(a), in that they solicited funds for participation in a commodity pool or supervised persons so engaged without being registered, as required, with the Commission as associated persons of a CPO.

82. From at least December 21, 2000 to the present, defendant IMG violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2), and Regulation 3.12(a), 17 C.F.R. § 3.12(a), in that it

permitted persons to be associated with it who were engaged in soliciting funds for participation in a commodity pool while not being registered, as required, with the Commission as associated persons of a CPO.

83. Defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon engaged in the conduct alleged in this Count within the scope of their offices or employment as agents of defendant IMG. Therefore, defendant IMG is liable as a principal for the violations of its agents. *See* Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

84. Defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon willfully aided, abetted, counseled, commanded, induced, or procured the commission of violations of the Act, or acted in combination or in concert with defendant IMG or willfully caused acts to be done or omitted which when directly performed or omitted constituted IMG's violations of Section 4k(2) of the Act, 7 U.S.C. § 6k(2), and Regulation 3.12(a), 17 C.F.R. § 3.12(a), as described in this Count. Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), Anthony Dellarciprete, Emido Dellarciprete, and Lemmon therefore violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2), and Regulation 3.12(a), 17 C.F.R. § 3.12(a), as described in this Count.

85. Defendants Anthony Dellarciprete and Emido Dellarciprete control IMG, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, IMG's conduct alleged in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Anthony Dellarciprete and Emido Dellarciprete are each liable for IMG's violations of Section 4k(2) of the Act, 7 U.S.C. § 6k(2), and Regulation 3.12(a), 17 C.F.R. § 3.12(a), as described in this Count.

86. Each failure to act as an AP of a CPO without being registered and each failure to permit an AP to be associated with a CPO without being registered made during the relevant

time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2), and Regulation 3.12(a), 17 C.F.R. § 3.12(a).

COUNT VII

VIOLATIONS OF SECTION 4n(4) OF THE ACT, 7 U.S.C. § 6n(4), AND REGULATIONS 4.21, 4.22, 4.24, 4.25 AND 4.26, 17 C.F.R. §§ 4.21, 4.22, 4.24, 4.25, 4.26: FAILURE TO COMPLY WITH CPO REPORTING AND DISCLOSURE REQUIREMENTS

87. Paragraphs 1 through 86 are realleged and incorporated herein by reference.

88. Section 4n(4) of the Act, 7 U.S.C. § 6n(4), provides that every CPO shall regularly furnish statements of account to each participant in his operations in the form and manner prescribed by the Commission and shall include in such statements complete information as to the current status of all trading accounts in which a pool participant has an interest.

89. Section 4.21 of the Commission's Regulations, 17 C.F.R. § 4.21, provides that no CPO registered or required to be registered under the Act may directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a pool that it operates or that it intends to operate unless, on or before the date it engages in that activity, the CPO delivers or causes to be delivered to the prospective participant a Disclosure Document for the pool containing the information required by the Commission's Regulations.

90. Section 4.22 of the Commission's Regulations, 17 C.F.R. § 4.22, requires a CPO who is registered or required to be registered under the Act to distribute to pool participants a monthly account statement and an annual report containing specified information.

91. Section 4.24 of the Commission's Regulations, 17 C.F.R. § 4.24, sets forth the information that is required to be included in a pool Disclosure Document, including, but not limited to, a specified statement regarding risk, a disclosure of the investment program and the

use of proceeds, a description of past and future fees and expenses, and a disclosure of the pool's past performance.

92. Section 4.25 of the Commission's Regulations, 17 C.F.R. § 4.25, specifies the performance disclosures a CPO must make regarding a commodity pool.

93. Section 4.26 of the Commission's Regulations, 17 C.F.R. § 4.26, requires that the pool Disclosure Document be filed with the Commission.

94. From at least December 21, 2000 to the present, defendant IMG violated Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and Commission Regulations 4.21, 4.22, 4.24, 4.25, and 4.26, 17 C.F.R. §§ 4.21, 4.22, 4.24, 4.25, 4.26, by failing to provide a pool Disclosure Document in the form specified by the Commission's Regulations to prospective pool participants, failing to distribute to pool participants monthly account statements and an annual report, and failing to file a pool Disclosure Document with the Commission.

95. Defendants Anthony Dellarciprete, Emido Dellarciprete, and Lemmon willfully aided, abetted, counseled, commanded, induced, or procured the commission of violations of the Act, or acted in combination or in concert with defendant IMG or willfully caused acts to be done or omitted which when directly performed or omitted constituted defendant IMG's violations of Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and Commission Regulations 4.21, 4.22, 4.24, 4.25, and 4.26, 17 C.F.R. §§ 4.21, 4.22, 4.24, 4.25, 4.26, as described in this Count. Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), defendants Anthony Dellarciprete and Emido Dellarciprete therefore violated Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and Commission Regulations 4.21, 4.22, 4.24, 4.25, and 4.26, 17 C.F.R. §§ 4.21, 4.22, 4.24, 4.25, 4.26, as described in this Count.

96. Defendants Anthony Dellarciprete and Emido Dellarciprete control defendant IMG, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, defendant IMG's conduct alleged in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), defendants Anthony Dellarciprete and Emido Dellarciprete are each liable for defendant IMG's violations of Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and Commission Regulations 4.21, 4.22, 4.24, 4.25, and 4.26, 17 C.F.R. §§ 4.21, 4.22, 4.24, 4.25, 4.26.

97. Each failure to comply with the CPO disclosure and reporting requirements made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and on Regulations 4.21, 4.22, 4.24, 4.25, and 4.26, 17 C.F.R. §§ 4.21, 4.22, 4.24, 4.25, 4.26.

VI.

RELIEF

Wherefore, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1:

- A. Enter orders of preliminary and permanent injunction enjoining defendants, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of defendants, and all persons insofar as they are acting in active concert or participation with defendants, who receive actual notice of the order, by personal service or otherwise, from directly or indirectly engaging in conduct violative of the provisions of the Act and the Commission's Regulations as they are alleged to have violated;
- B. An order directing defendants to make an accounting to the Court of all their assets and liabilities, together with all funds they received from and paid to investors and

other persons in connection with commodity interest transactions, and all disbursements for any purpose whatsoever of funds received from customers of IMG and other commodity interest investors, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from December 21, 2000, to and including the date of such accounting.

- C. An order prohibiting defendants, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of defendants, and all persons insofar as they are acting in active concert or participation with defendants who receive actual notice of the Order by personal service or otherwise, from directly or indirectly: (1) soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest contract; (2) placing orders or giving advice or price quotations, or other information in connection with the purchase or sale of commodity interest contracts for themselves and others; (3) introducing customers to any other person engaged in the business of commodity interest trading; (4) issuing statements or reports to others concerning commodity interest trading; and (5) otherwise engaging in any business activities related to commodity interest trading.
- D. An order requiring defendants to disgorge to any officer appointed and directed by the Court or directly to their investors all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act and the Commission's Regulations as described herein, including pre-judgment and post-judgment interest.

- E. An order requiring defendants to make restitution for harm caused by their violations of the provisions of the Act and the Regulations as described herein, including prejudgment and post-judgment interest.
- F. An order requiring defendants to pay civil penalties under Section 6c of the Act, 7 U.S.C. § 13a-1, to be assessed by the Court separately against each of them, in amounts not more than the higher of \$110,000 or triple the monetary gain to defendants for each violation of the Act.
- G. Such other equitable relief, including the appointment of a temporary or permanent receiver, as the Court may deem necessary or appropriate under the circumstances.

Respectfully submitted by,

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