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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

CV '03 603 1 HU

**UNITED STATES COMMODITY
FUTURES TRADING COMMISSION and**

Case No.

**STATE OF OREGON EX REL CORY
STREISINGER, DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND
BUSINESS SERVICES, in her official capacity,**

FILED UNDER SEAL

Plaintiffs,

v.

**ORION INTERNATIONAL, INC.,
RUSSELL B. CLINE,
APRIL DUFFY,
BANGONE VORACHITH, and
NANCY HOYT,**

Defendants.

**COMPLAINT FOR
INJUNCTIVE RELIEF,
ANCILLARY EQUITABLE
RELIEF, AND CIVIL
MONETARY PENALTIES FOR
VIOLATIONS OF THE
COMMODITY EXCHANGE
ACT, 7 U.S.C. § 1 *ET SEQ.*,
AND THE OREGON REVISED
STATUTES, §§ 59.005 *ET SEQ.***

I.

SUMMARY

1. From at least December 1998 and continuing through the present, defendants Orion International, Inc., Russell B. Cline, April Duffy, Bangone Vorachith, and Nancy Hoyt, directly or indirectly, have purported to operate a foreign currency investment fund (“Orion Fund”). Defendants have solicited at least \$27 million from over 600 members of the public to participate in the Orion Fund and through the Orion Fund to engage in illegal off-exchange foreign currency futures transactions. Defendants have misappropriated millions of dollars in customer funds for personal uses, including using customer funds to purchase eight large homes in the Portland, Oregon area and at least 24 luxury automobiles.

2. By falsely representing to investors that trading in the Orion Fund had produced annual profits in excess of 150% and had produced profits every month from December 1998 through May 2002, defendants have fraudulently solicited individuals to send funds to accounts under their control at various domestic and offshore banks. Over \$9.3 million was deposited in one of these accounts established at Bank of America. Contrary to their representations that the funds sent to the account were being used to trade foreign currencies, defendants used virtually all the funds in the account for personal goods and services, transferred them to personal bank accounts, or transferred them to persons or entities unrelated to foreign currency trading.

3. Although defendants represent that the customer funds they receive are immediately transferred to a trading firm located in the United Kingdom, only a portion of those funds were transferred to the trading firm. Defendants deposited those funds into several accounts at the trading firm and incurred numerous monthly losses. To the extent that profits were made, those profits were offset by trading losses. Virtually the entire amount of customer

funds deposited into the trading accounts was subsequently transferred to offshore bank accounts under the control of defendants.

4. In order to hide their misappropriation of customer funds and trading losses, defendants have provided customers with false written reports showing consistent profits in their accounts and have made oral misrepresentations regarding trading profits.

5. In August 2002, defendants falsely informed investors that “unrealized long term positions” in the market had to be closed out causing losses in excess of 90% of the total pool of funds. At that time, defendants notified investors that all requests for withdrawals from accounts would be cancelled and all accounts would be frozen. As a result, investors have been unable to secure a return of their funds from the Orion Fund.

6. Since August 2002, defendants have represented to customers that they are continuing to trade foreign currency contracts for the purpose of restoring lost customer funds. In March 2003, defendants informed customers that the Orion Fund had a balance of over \$6.5 million in December 2002 that was attributable to a 210 % trading gain between July and November 2002. Contrary to these representations, the Orion Fund trading accounts had a balance of approximately \$240,000 in December 2002 and had sustained losses of almost \$400,000 between July and November 2002

7. By misappropriating customer funds, providing false written and oral account information to customers and making misrepresentations about the profitability of the Orion Fund and the risks involved, defendants have violated the antifraud provisions of Section 4b(a)(2)(i)-(iii) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 6b(a)(2)(i)-(iii), and Regulation 1.1(b) of the United States Commodity Futures Trading Commission (“CFTC”), 17 C.F.R. § 1.1(b).

8. By offering, selling, entering into, confirming the execution of, and/or conducting a business for the purpose of soliciting, accepting any order for or otherwise dealing in off-exchange foreign currency contracts that are not conducted on or subject to the rules of a board of trade designated or registered by the CFTC as a contract market or derivatives transaction facility for such commodity, and executed or consummated by or through a contract market, defendants Orion and Cline have violated the designated contract market provisions of Section 4(a) of the Act, 7 U.S.C. § 6(a).

9. Defendants have offered and sold unregistered securities and acted as an unlicensed broker-dealer and/or salespersons in violation of the Oregon Securities Law, Oregon Revised Statutes (“ORS”) §§ 59.055 and 59.165. By making material misrepresentations and omitting material information and misappropriating customer funds in connection with the purchase and sale of unregistered securities, defendants violated the antifraud provisions of ORS § 59.135.

10. Accordingly, pursuant to Sections 6c and 6d of the Act, 7 U.S.C. §§ 13a-1 and 13a-2, plaintiffs, the CFTC and the State of Oregon Department of Consumer and Business Services (“DCBS”) bring this action to enjoin defendants’ unlawful acts and practices, to bar them from engaging in any commodity-related or securities-related activity, and to compel their compliance with the Act, the CFTC Regulations, and the Oregon Securities Law. In addition, the CFTC and DCBS seek civil monetary penalties, a freeze of defendants’ assets, an accounting, restitution to investors, disgorgement of defendants’ ill-gotten gains, identification and repatriation of assets located outside the United States, the appointment of a temporary and permanent receiver, and such other relief as this Court may deem necessary or appropriate.

11. Unless restrained and enjoined by this Court, defendants are likely, 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

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

13. Pursuant to Section 2(a)(1)(A) of the Act, 7 U.S.C. § 2(a)(1)(A), the CFTC has jurisdiction over transactions involving contracts of sale of a commodity for future delivery such as the transactions alleged herein. Section 4(a) of the Act, 7 U.S.C. § 6(a), requires that those transactions be conducted on, by, or through a designated contract market or a derivatives transaction execution facility.

14. The CFTC has jurisdiction over the transactions in foreign currency alleged herein. 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 currency transactions, including futures and options on foreign currencies. Congress has made clear that the Act is applicable to, and the CFTC “[has] jurisdiction over an agreement, contract or transaction in foreign currency that is a contract of sale of a commodity for future delivery [so long as the contract] is offered to, or entered into with, a person that is not an eligible contract participant unless the counterparty” is one of the six

regulated entities listed in Section 2(c)(2)(B)(ii) of the Act, 7 U.S.C. § 2. Defendants are not proper counterparties who may offer and/or enter into foreign currency futures transactions with persons who are not eligible contract participants, i.e., retail customers. Defendants were offering foreign currency futures contracts to and/or entering into foreign currency futures contracts with the Orion Fund. The Orion Fund is not an eligible contract participant. A substantial number, if not most, of the customers defendants solicited to participate in the Orion Fund were members of the retail investing public and were not eligible contract participants.

15. Section 6d(1) of the Act, 7 U.S.C. § 13a-2, provides that whenever it shall appear to any State that the interests of the residents of the State have been, are being, or may be threatened or adversely affected because of such violations of the Act, the State may bring a suit in the district courts of the United States to enjoin such acts or practices and to enforce compliance with the Act, or to obtain such other and further relief as the court deems appropriate, including the Oregon claims brought pursuant to Section 12(e) of the Act, 7 U.S.C. § 16(e), over which this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

16. 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 District of Oregon, and the acts and practices in violation of the Act have occurred within this District, among other places.

III.

THE PARTIES

A. Plaintiffs

17. Plaintiff **United States Commodity Futures Trading Commission** (“CFTC”) 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.*

18. Plaintiff **State of Oregon, ex rel Cory Streisinger, director of the Department of Consumer and Business Services** (“DCBS”) is the regulatory agency of the State of Oregon charged with administering and enforcing the provisions of the Oregon Securities Law, Oregon Statutes §§ 59.005 *et seq.*, and the Regulations promulgated thereunder.

B. Defendants

19. Defendant **Orion International, Inc.** (“Orion”) was incorporated in Western Samoa under the name Falcon International, Inc. on February 25, 1998. On July 2, 1998, it changed its name to Orion International, Inc. Orion has listed its address as Level 2, Lotemau Center, Vaea Street, Apia, Samoa. Orion has conducted business operations out of various homes belonging to defendant Russell Cline in Oregon, including homes in Beaverton, Lake Oswego, and Portland. Orion has never been registered with the CFTC, has never registered its securities, or has never been licensed with the DCBS under the Oregon Securities Law.

20. Defendant **Russell B. Cline** (“Cline”) lists his residence address as 11851 Southwest Riverwood Road, Portland, Oregon. At various times between December 1998 and the present, he has held himself out to be the President, Director and Head Trader of Orion. Cline has never been registered with the CFTC or licensed with the DCBS under the Oregon Securities Law.

21. Defendant **April Duffy** (“Duffy”) lists her residence address as 1102 North Springberger Road, Tigard, Oregon. She is also known as April Hoyt. Duffy, along with Hoyt and Vorachith, has controlled the account at Bank of America where some individuals sent funds for investment in the Orion Fund. At various times, Duffy has held herself out as an accounts manager of Orion. Duffy has never been registered with the CFTC or licensed with the DCBS under the Oregon Securities Law.

22. Defendant **Bangone Vorachith** (“Vorachith”) lists her residence address as 16600 Southwest Red Rock Way, Beaverton, Oregon. Vorachith, along with Duffy and Hoyt, has controlled the account at Bank of America where some individuals sent funds for investment in the Orion Fund. Vorachith has never been registered with the CFTC or licensed with the DCBS under the Oregon Securities Law.

23. Defendant **Nancy Hoyt** (“Hoyt”) lists her address as 15575 Southwest Breccia Drive, Beaverton, Oregon. Along with defendants Duffy and Vorachith, she has controlled the account at Bank of America where some individuals sent funds for investment in the Orion Fund. Hoyt has never been registered with the CFTC or licensed with the DCBS under the Oregon Securities Law.

IV.

STATUTORY AND REGULATORY REQUIREMENTS

A. CFTC Statutes and Regulations

24. Pursuant to Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), it is unlawful for any person to cheat or defraud or to attempt to cheat or defraud any person, willfully to make or cause to be made any false report or statement, or willfully to deceive or

attempt to deceive any person in or in connection with any order to make, or the making of, any contract of sale of a commodity for future delivery.

25. Pursuant to Section 4(a) of the Act, 7 U.S.C. § 6(a), it is unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business for the purpose of soliciting, or accepting any order for, or otherwise dealing in any transaction in or in connection with a contract for the purchase or sale of a commodity for future delivery, unless such transaction is conducted on or subject to the rules of a board of trade designated or registered by the CFTC as a contract market or derivatives transaction execution facility for such commodity, and executed or consummated by or through a contract market, unless specifically exempted under the Act.

26. Pursuant to Sections 2(c)(2)(B) of the Act and 4(a), 7 U.S.C. §§ 2(c)(2)(B) and 6(a), an agreement, contract or transaction in foreign currency that is a contract of sale of a commodity for future delivery, that is offered to, or entered into with a person that is not an eligible contract participant must be conducted on or subject to the rules of a board of trade designated or registered by the CFTC as a contract market or derivatives transaction execution facility for such commodity, and executed or consummated by or through a contract market, unless the counterparty to the transaction one of the six regulated entities designated under Section 2(c)(2)(B)(ii) of the Act, 7 U.S.C. § 2.

B. Oregon Statutes and Regulations

27. Pursuant to ORS § 59.015(19)(a), a security under the Oregon Securities Laws means, *inter alia*, any investment contract, or certificate of interest in or participation in any profit-sharing arrangement.

28. Pursuant to ORS § 59.015(1), a broker-dealer under the Oregon Securities Law means a person who engages, all or part of the time, in effecting transactions in securities for the account of others or for the person's own account.

29. Pursuant to ORS § 59.015(20)(a), an investment advisor under the Oregon Securities Laws means a person who, for compensation, engages, all or part of the time of the person, in the State of Oregon, in the business of managing an investment or trading account in securities for other persons.

30. Pursuant to ORS § 59.015(16), a salesperson under the Oregon Securities Laws means a person, other than a broker-dealer, who represents or purports to represent a broker-dealer, issuer, or owner of securities in effecting or attempting to effect in any manner transactions in securities.

31. Pursuant to ORS § 59.055, it is unlawful to offer or sell within or from the State of Oregon any securities that are not registered or exempt therefrom under the Oregon Securities Laws.

32. Pursuant to ORS § 59.165, it is unlawful for any person to transact business in the State of Oregon as a broker-dealer, investment advisor, investment advisor representative, or salesperson unless the person is licensed under the Oregon Securities Laws.

33. Pursuant to ORS § 59.135, it is unlawful for any person, directly or indirectly, in connection with the purchase or sale of any security or the conduct of a securities business or for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, to: (1) employ any device, scheme, or artifice to defraud; (2) make any untrue statement of a material fact or to omit to state a material fact necessary in order

to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

V.

FACTS

A. Defendants Have Fraudulently Solicited Customers

34. From at least December 1998 and continuing through the present, Orion, Cline, Duffy, Vorachith, and Hoyt, either directly or through other persons or entities either under their employ, supervision and control or acting in combination or concert with them, or by participating or materially aiding in the offers and sales, have participated in a fraudulent scheme to solicit retail customers throughout the United States and elsewhere to send funds to Orion for the purpose of participating in the Orion Fund, which was purportedly investing in foreign currency traded on the foreign exchange markets ("Forex"). In reality, the defendants have been soliciting customers to invest in, offering and/or entering into illegal foreign currency futures contracts, and engaging in a massive fraud to misappropriate millions of dollars from the Fund participants. Defendants have concealed their misappropriation as well as trading losses they have sustained by issuing statements to customers falsely showing that the Orion Fund was realizing profits in its trading.

35. Defendants have solicited customers to participate in the Orion Fund through, among other means, an Internet website having an address of www.orionfx.com ("Orion Website"), and personal contacts. In their solicitations, defendants have represented to the individual investors that their funds will be pooled with the funds of other investors for the purpose of engaging in the trading of foreign currencies. Defendants have solicited customers to

sent funds to domestic and foreign accounts under their control, including accounts at Bank of America in the United States, Australian New Zealand Bank in Samoa, First Swedish Savings EK in Sweden, Sovereign Chartered Bank in Switzerland, Loyal Bank in St. Vincent, Bermuda Commercial Bank in Bermuda, and Worldwide Financial Credit Union in Nevis.

36. Through the Orion Website, defendants have represented to customers that their funds are transferred to Orion's trading account located in London, England, immediately after they are received by Orion. Defendants represented that investors can verify that their funds are invested and check the status of their investment in the pool with the trading firm by accessing their individual account balance sheets through the Orion Website.

37. Defendants have orally represented to their employees and at least some customers that customer funds are transferred to Orion's account at Currency Management Corporation PLC, ("CMC"), a trading firm located in London, England, immediately after they are received by Orion. Defendants issued a written brochure to at least some customers stating that all funds received by Orion for the purpose of trading foreign currency immediately will be "deposited with Orion's broker Currency Management Corporation (CMC) in London."

Misrepresentations of Profit

38. As part of their solicitations, defendants claim that investors in the Orion Fund have made extraordinary profits. Defendants have represented to customers that the Orion Fund has been profitable every month between December 1998 and May 2002 and has either met or exceeded its expected annual earnings of at least 96% in the first four years since its inception and commencement of trading.

39. Defendants have represented to investors that they could expect a return on their investment of 8% per month because, “based on trades and the compounding principle, Orion has provided an average return in excess of 150% per year for its members.”

40. Contrary to defendants’ representations of profits, many investors have been unable to make trading profits through their investment in the Fund because their funds were not transferred to a trading firm for the purpose of trading foreign currencies and, instead, were misappropriated by defendants. To the extent that customer funds were transferred to Orion’s accounts at CMC trading in those accounts resulted in numerous monthly trading losses and, in those few months where trading profits were made, those profits were offset by substantial losses.

Misrepresentations of Risk

41. In addition to profit misrepresentations, defendants have misrepresented the risk of loss associated with trading foreign currency futures contracts through investing in the Orion Fund by making material statements minimizing the risk of loss.

42. Through the Orion Website, defendants have claimed that the Forex market “mathematically conforms to technical analysis charting and obeys technical rules, which presents the opportunity to trade with minimal risk.”

43. Defendants have further represented to potential investors that risk is “substantially minimized” because Orion only commits an average of 20% of its pool of funds to any trade positions in progress.

44. Defendants also have represented that “Orion’s trading protocol determines and then verifies minimum risk before execution of a trade” and that “Orion always places stop loss

protection orders simultaneously when a position is opened so no open trade can ever experience severe or unexpected loss.”

45. Defendants’ representations of minimal risk of loss to customers and potential customers are materially false because the risk of loss in trading futures on foreign currency is high.

B. Defendants Have Misappropriated Investor Funds

46. Contrary to defendants’ representations, investors’ funds sent to defendants to invest in the Orion Fund and through the Fund to trade foreign currency futures contracts have not been immediately transferred to Orion’s trading account at CMC or any trading firm. Customer funds were deposited in various domestic and offshore bank accounts under defendants’ control and have not been used for the purpose of trading foreign currencies. Instead, defendants misappropriated customer funds for their personal use.

47. Defendants instructed some investors to deposit their funds into a bank account at the Bank of America in the name of DIA and VB Revocable Express Trust (“Orion Trust Account”). Defendants Duffy, Vorichith, and Hoyt were listed as trustees on and had signatory authority over the Orion Trust Account.

48. Approximately \$9.3 million has been deposited into the Orion Trust Account between April 2000 and March 2002. Almost all of these funds, instead of being sent to the Orion trading account at CMC, have been either transferred to bank accounts controlled by various defendants or used to pay for personal expenses, personal goods and services, or payments to individuals and entities unrelated to foreign currency trading.

49. Defendants have used funds from the Orion Trust Account to purchase large homes, pay for luxury automobiles, and pay for vacation expenses, including the rental of private jets. They also have transferred funds to other accounts under their control at Bank of America.

50. Customer funds were deposited into a personal trust account under the control of Cline at Bank of America. Funds from this account were used to pay for extravagant personal expenses including over \$500,000 for house furnishings, over \$500,000 for automobile related purchases, over \$260,000 for vacation travel, over \$50,000 for private jet rental, over \$150,000 for home furniture, over \$100,000 for audio visual systems, over \$12,000 for adult videos, and almost \$3,000 for limousines.

51. Duffy misappropriated customer funds in several ways. She established fictitious customer accounts at Orion and prepared false deposit records for these accounts. She withdrew funds from the Orion Trust Account for her own personal use and attempted to hide those withdrawals by marking them as withdrawals from the fictitious customer accounts. In addition, she, along with Hoyt, misappropriated customer funds by establishing a joint account into which they deposited customer funds intended for deposit with the Orion Fund. Finally, she directly signed hundreds of checks on the Orion Trust Account for personal and non-foreign currency trading related business including almost \$615, 000 in checks written to cash.

52. Vorachith directly misappropriated customer funds by signing hundreds of checks on the Orion Trust Account for personal and non-foreign currency trading related business including almost \$40,000 in checks to herself, \$20,000 in checks to her personal bank account, and \$33,000 in checks written to cash.

53. Hoyt misappropriated customer funds by establishing fictitious customer accounts at Orion and, after preparing false deposit records for these accounts, withdrew funds from them

for her own personal use. In addition, she misappropriated customer funds by establishing a joint account with Duffy and deposited customer funds directly into that account. Finally, Hoyt misappropriated customer funds by signing hundreds of checks on the Orion Trust Account for personal and non-foreign currency trading related business including over \$255,000 in checks written to cash.

54. Only \$300,000 of the customer funds deposited in the Orion Trust Account has been transferred for the purported purpose of trading in foreign currencies. Defendants transferred this amount on September 27, 2001 from the Orion Trust Account to an account in the name of Orion at CMC. Those funds were used to trade illegal off-exchange futures contracts on foreign currency and funds from that account were later transferred to off-shore bank accounts under the control of defendants. Defendants transferred funds from the CMC account to accounts under their control at the Hansabank in Talinn, Estonia, HSBC Bank Middle East in Dubai, United Arab Emirates, Barclay's Bank in Bermuda, Bermuda Commercial Bank Ltd. in Hamilton, Bermuda, First Swedish Savings EK in Solna, Sweden, and Loyal Bank, an Internet bank registered in St. Vincent.

C. Defendants Have Issued False Trading Reports

55. To conceal their misappropriation of funds and trading losses, defendants have provided false trading reports to investors after receiving their funds. Since at least December 1998, defendants have provided false statements and reports to customers through the Orion Website and through personal contacts with customers. These statements and reports were false because a substantial amount of funds received by defendants from customers was not transferred to a trading firm for the purpose of trading foreign currency futures contracts and, to

the extent that defendants used customer funds to trade foreign currency futures contracts, the results of the trading were contrary to the reports of profitable trading provided to customers.

56. Defendants have provided investors with a password by which they can access information concerning their accounts on the Orion Website. Investors have been able to access account balance sheets that purport to show deposits/withdrawals, monthly gains, and total balance in a customer's account.

57. Defendants have represented on the balance sheets provided to investors through the Orion Website that the Orion Fund had achieved gains for every month from December 1998 through May 2002.

58. Orion has maintained five (5) trading accounts in its name at CMC since August 1998. Contrary to defendants' representations that the Orion Fund had produced profits every month from December 1998 through May 2002, in 29 of those months Orion's accounts either were not traded or sustained losses. For example, defendants reported a 3.6% gain in the Orion Fund for the month of September 2001 when, in fact, the CMC trading records revealed a 60.33% loss for that month. Moreover, contrary to defendants' representations to investors in 2001 that the Orion Fund had provided an average return in excess of 150% per year over the last two years, the Orion trading accounts sustained losses of 100% in 1999 and approximately 64% in 2000.

59. At various times since December 1998, defendants have also posted information on the "general member news" portion of the Orion Website informing investors of the monthly investment gains achieved by the Orion Fund.

60. In August 2002, defendants informed investors through the Orion Website that, because of certain "unrealized long term positions" in the market that had to be closed out, the

Orion Fund had lost in excess of 90% of its total pool of funds. The Orion Website further informed investors that, because of these losses, all pending requests for withdrawals from accounts would be cancelled and all accounts would be frozen. Investors were told, however, that the Orion Fund would be rebuilt over the course of the next twelve to eighteen months.

61. In March 2003, defendants informed investors through the Orion Website that the 90% loss of customer funds reported in August 2002 had left only \$1,486,572 in the Orion Fund and that the trading account had increased to \$6,561,100 as of the beginning of December 2002. Contrary to these representations, the balance in defendants' trading account at CMC in August 2002 was approximately \$600,000 and, after sustaining substantial trading losses, the balance in the trading account on December 31, 2002 was about \$240,000.

62. Defendants continue to represent falsely to investors that they are trading profitably and are working to recover the funds lost trading in the Orion Fund. In the meantime, however, investors continue to be unable to withdraw any funds invested in the Orion Fund.

D. Defendants Have Solicited Illegal Off-Exchange Futures Contracts

63. Defendants purport to offer participants the opportunity to trade contracts in "spot" foreign currency through the Orion Fund investors. In fact, the contracts defendants offer are illegal off-exchange foreign currency futures contracts.

64. The foreign currency investments that defendants market entail the purchase or sale of commodities for future delivery at prices or using pricing formulas that are established at the time the contracts are initiated, and may be fulfilled through offset, cancellation, cash settlement or other means to avoid delivery.

65. Defendants market these contracts to the general public by soliciting participation in the Orion Fund. Unlike parties to a spot transaction, neither the Orion Fund itself, as the

actual party being offered the contracts, nor the underlying Orion Fund customers have any commercial need for the foreign currency. Indeed, neither the Orion Fund nor the underlying investors anticipate taking or in fact, have taken, delivery of the foreign currencies the Orion Fund may purchase or has purchased as a consequence of the Orion Fund's investments. Instead, the Orion Fund and Orion's customers, through the Orion Fund, enter into these transactions to speculate and profit from anticipated price fluctuations in the markets for these currencies.

66. Through the Orion Website, defendants have represented to the general public that the Orion Fund's "primary activity is trading in the foreign currency market." The Orion Website states that Orion Fund executes "trade positions" and that "conservative stop loss orders are used to protect profits." The website also states that "Orion always places stop loss protection orders simultaneously when a position is opened so no open trade can ever experience severe or unexpected loss."

67. Defendants have advised their customers that trading in the Orion Fund is based on "unusual volatility and movement in the market creating a probability to realize exceptional earnings." Defendants have represented that positions in the market may be held open for as long as several months to afford them sufficient time to capture price movements.

68. Defendants do not offer, sell, enter into, confirm the execution of, and/or their conduct business of soliciting, accepting any order for or otherwise dealing in off-exchange foreign currency contracts in connection with foreign currency futures transactions on or subject to the rules of a board of trade that has been designated by the CFTC as a contract market or derivatives transaction facility, nor are any of these transactions executed or consummated by or through a member of such a contract market or derivatives transaction execution facility.

69. Section 2(c)(2)(B)(i) and (ii) of the Act, 7 U.S.C. § 2, provides that the CFTC shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, so long as the contract is “offered to, or entered into with, a person that is not an eligible contract participant” unless the counterparty, or the person offering to be the counterparty, is a regulated entity as specified in Section 2(c)(2)(B)(ii) of the Act, 7 U.S.C. § 2.

70. The defendants have been offering and/or entering into foreign currency futures contracts with the Orion Fund and through the Orion Fund with the individual customers. The Orion Fund is not an eligible contract participant. At least some, if not most of, the underlying individual investors in the Orion Fund were not eligible contract participants. In addition, neither defendants nor CMC is a proper counterparty for retail foreign currency transactions.

E. Defendants have Offered And Sold Unregistered Securities

71. Since at least December 1998 and continuing to the present, defendants have solicited members of the public to purchase interests or investments in the Orion Fund. Defendants have offered and sold investments in the Orion Fund by informing customers that their funds will be pooled with the funds of others in the Orion Fund, that gains created by trading are applied to the total value of the pool of money, and that the gain is pro-rated to each customer’s account based on the percentage of the pool which the investor’s funds represent.

72. The investments in the Orion Fund offered and sold to members of the public by defendants involve persons investing money in a common enterprise with other investors and with the investors expecting profits on their investments to be made through the management and control of defendants. These investments therefore constitute investment contracts under the Oregon Securities Laws.

73. The offer and sale of such investment contracts are securities interests that have not been registered with the Securities and Exchange Commission. Defendants have not registered these security interests with the DCBS as securities required to be licensed under the Oregon Securities Law. Defendants also have not been licensed with the DCBS as broker-dealers, investment advisers, or salespersons under the Oregon Securities Law.

F. Defendants Have Engaged In Securities Fraud

74. The foregoing oral and written fraudulent representations and the misappropriation of funds by defendants were made in connection with the purchase or sale of a security, or by a person who receives consideration from another person primarily for advising the other person as to the value or securities or their purchase or sale.

75. In connection with the offer and sale of Orion Fund securities, defendants employed a scheme to defraud investors by, among other things, making false oral and written representations that all investor funds would be deposited in the Orion Fund trading account and used for foreign currency trading, by making false oral and written representations that the pool's trading was profitable and that investors' accounts increased in value monthly, and, instead, misappropriating investors' funds.

G. Liability of Defendants

Controlling Person Liability

76. Cline is a controlling person of Orion. He incorporated Orion in 1998. He opened its trading account with CMC, signing the account opening documents as Orion's President and Director. He has had sole authority to trade Orion's trading accounts at CMC and has held himself out to investors as Orion's Head Trader. He opened bank accounts, directed that checks be signed, authorized wire transfers, signed correspondence, dealt with investors,

hired staff, solicited customers, and directed the movement and expenditure of the investors' funds. Directly or indirectly, he either knowingly induced or failed to act in good faith in connection with Orion's unlawful conduct alleged herein.

Aiding and Abetting Liability

77. Cline, Duffy, Vorachith, and Hoyt participated and/or aided and abetted the illegal conduct alleged herein. They knowingly associated themselves with the illegal scheme and sought by their actions to make the scheme succeed.

78. Cline was directly involved in soliciting individuals to invest in the Orion Fund. He made direct misrepresentations to investors in furtherance of the unlawful scheme. He induced individuals to invest in Orion by assuring profits and minimizing risks. He also wrongfully received millions of dollars in customer funds intended for investment in the Orion Fund. Cline aided the misappropriation of investor funds by falsely assuring investors that their funds had been transferred to Orion's trading account when, in fact, only a portion of customer funds were invested with CMC.

79. Duffy, Vorachith and Hoyt acted as participants and/or aiders and abettors by functioning as trustees for the Orion Trust Account at Bank of America and having signatory authority over it. Their signatures were required to cause customer funds to be transferred to persons and entities unrelated to Forex trading. The signatures of Duffy, Vorachith, and Hoyt appear on hundreds of checks written on the Orion Trust Account for personal and non-Forex related business. They each caused funds from the Orion Trust Account to be transferred to personal accounts under their sole control.

80. Duffy and Hoyt aided and abetted the illegal conduct alleged herein by dealing directly with investors. Duffy and Hoyt held themselves out to investors as either an account

manager or client services representative. Hoyt routinely assisted investors with matters relating to their accounts. Duffy marked deposits made by customers. Duffy also sent out general news alerts to investors on Orion's website, informing them of issues relating to account management and notifying them of alleged monthly profits. Hoyt instructed investors as to how to make deposits to the Orion Trust Account, answered investors' questions over the phone, and dealt with new customers who had been referred by existing investors.

Principal/Agent Liability

81. During the time of the illegal activity alleged herein, Cline, Duffy, Vorachith, and Hoyt were acting within the scope of their employment or office as officers and agents of Orion.

VI.

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

COUNT I

FRAUD IN CONNECTION WITH FUTURES TRANSACTIONS

**VIOLATIONS OF SECTION 4b(a)(2)(i)-(iii) OF THE ACT, 7 U.S.C. § 6b(a)(2)(i)-(iii),
AND SECTION 1.1(b) OF THE REGULATIONS, 17 C.F.R. § 1.1(b)**

82. Paragraphs 1 through 81 above are realleged and incorporated herein by reference.

83. From at least December 21, 2000 and continuing through the present, defendants Orion, Cline, Duffy, Vorachith, and Hoyt, either directly or through other persons or entities either under their employ, supervision and control or acting in combination or concert with them, in or in connection with the orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made, for or on behalf of any other persons, where such

contracts for future delivery were or could be used for the purposes set forth in Section 4b(a) of the Act, 7 U.S.C. § 6b(a), have cheated or defrauded or attempted to cheat or defraud customers or prospective customers, willfully made or caused to be made false statements to customers or prospective customers, and willfully deceived or attempted to deceive customers or prospective customers by, among other things, misappropriating customer funds all in violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), and Regulation 1.1(b), 17 C.F.R. § 1.1(b).

84. From at least December 21, 2000 and continuing through the present, Cline directly or indirectly controlled Orion 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, Cline is therefore liable for Orion's violations of the Act and Regulations as described in this Count.

85. Defendants Cline, Duffy, Vorachith, and Hoyt willfully aided, abetted, counseled, commanded, induced, or procured the commission of violations of the Act and Regulations, or acted in combination or in concert with defendant Orion, or willfully caused acts to be done or omitted which when directly performed or omitted constituted defendant Orion's violations of the Act and Regulations described in this Count. Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), defendants Cline, Duffy, Vorachith, and Hoyt therefore violated Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), and Regulation 1.1(b), 17 C.F.R. § 1.1(b), as described in this Count.

86. Defendants Cline, Duffy, Vorachith, and Hoyt engaged in the illegal conduct alleged in this Count within the scope of their offices or employment as agents of defendant Orion. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), defendant Orion is

therefore liable as a principal for the violations of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), and Regulation 1.1(b), 17 C.F.R. § 1.1(b), by its agents Cline, Duffy, Vorachith, and Hoyt.

87. Each misrepresentation of material facts, each failure to disclose material facts, each act of misappropriating customer funds, and each act of issuing false reports by defendants including, but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), and Regulation 1.1(b), 17 C.F.R. § 1.1(b).

COUNT II

OFFER AND SALE OF ILLEGAL OFF-EXCHANGE FUTURES CONTRACTS

VIOLATIONS OF SECTION 4(a) OF THE ACT, 7 U.S.C. § 6(a)

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

89. From at least December 21, 2000 and continuing through the present, defendants Orion and Cline, either directly or through other persons or entities either under their employ, supervision and control or acting in combination or concert with them, have offered to enter into, entered into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility 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 4(a) of the Act, 7 U.S.C. § 6(a).

90. From at least December 21, 2000, and continuing through the present, defendant Cline directly or indirectly controlled Orion 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), Cline is therefore liable for Orion's violations of Section 4(a) of the Act, 7 U.S.C. § 6(a), as described in this Count.

91. Defendant Cline engaged in the illegal conduct alleged in this Count within the scope of his office or employment as an agent of defendant Orion. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), defendant Orion is therefore liable as a principal for the violations of Section 4(a) of the Act, 7 U.S.C. § 6(a), by its agent Cline.

92. Each foreign currency futures transaction not conducted on a designated contract market or derivatives transaction execution facility made by defendants including, but not limited to, those conducted by the defendants as specifically alleged herein, is alleged as a separate and distinct violation of Section 4(a) of the Act.

COUNT III

SALE OF UNREGISTERED SECURITIES

VIOLATION OF ORS § 59.055

93. Paragraphs 1 through 92 above are realleged and incorporated herein by reference.

94. From at least December 1998 to the present, within or from the State of Oregon, defendants Orion, Cline, Duffy, Vorachith, and Hoyt, either directly or through other persons or entities either under their employ, supervision and control or acting in combination or concert

with them, offered and sold securities as that term is defined in ORS § 59.015(19)(a) in the form of investment contracts or certificates of interest or participation in a profit sharing agreement.

95. The securities sold by defendants Orion, Cline, Duffy, Vorachith, and Hoyt, were not registered under ORS §§ 59.065 through 59.095, were not exempt securities under ORS § 59.025, were not offered or sold in exempt transactions under ORS § 59.035, were not securities exempt under any rule or order promulgated by DCBS, and were not subject to notice filing under ORS § 59.049. Therefore, defendants Orion, Cline, Duffy, Vorachith, and Hoyt, violated ORS § 59.055.

COUNT IV

SALES AND ADVISOR ACTIVITY BY UNLICENSED PERSONS

VIOLATION OF OREGON STATUTES § 59.165

96. Paragraphs 1 through 95 above are realleged and incorporated herein by reference.

97. In connection with offers to sell and the sale of securities within or from the State of Oregon, as alleged in Count III above, defendants Orion, Cline, Duffy, Vorachith, and Hoyt acted as broker-dealers and/or salespersons, although not licensed pursuant to the provisions of the Oregon Securities Law or exempt therefrom. Therefore, defendants Orion, Cline, Duffy, Vorachith, and Hoyt violated ORS § 59.165(1).

98. In managing an investment or trading account in securities for other persons, for compensation, defendants Orion, Cline, Duffy, Vorachith, and Hoyt each acted as an investment adviser or investment adviser representative, although not licensed pursuant to the provisions of the Oregon Securities Law, nor exempt therefrom. Therefore, defendants Orion, Cline, Duffy, Vorachith, and Hoyt violated ORS § 59.165(4).

COUNT V

SECURITIES FRAUD

VIOLATION OF OREGON STATUTES § 59.135

99. Paragraphs 1 through 98 above are realleged and incorporated herein by reference.

100. In connection with the purchase and sale of any security, the conduct of a securities business, or while advising, for a fee, other persons as to the value of securities or the purchase or sale of securities, as alleged in Counts V and VI above, defendants Orion, Cline, Duffy, Vorachith, and Hoyt directly or indirectly violated ORS § 59.135 by (1) employing a device, scheme, or artifice to defraud; (2) making untrue statements of material fact or omitting to state material facts which were necessary in light of the circumstances under which they were made; and (3) engaging in acts, practices, or a course of business which operated or would operate as a fraud or deceit upon any person in violation of ORS § 59.135.

VII.

RELIEF REQUESTED

WHEREFORE, plaintiffs CFTC and DCBS respectfully request that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to the Court's own equitable powers:

A. Enter orders of preliminary and permanent injunction enjoining defendants and 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, from directly or indirectly engaging in conduct violative of the provisions of the Act, CFTC Regulations, and the Oregon Securities Laws alleged herein;

B. Enter an *ex parte* statutory restraining 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. transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any funds, assets, or other property, wherever located, including assets held by or on behalf of the defendants within or outside the United States, and including both existing assets and assets acquired after the filing of this complaint;
2. destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records, or other property of defendants, wherever situated, including, but not limited to, all such records concerning defendants' business and banking operations; and
3. refusing to permit authorized representatives of the CFTC to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendants, whenever located, including all such records concerning defendants' business operations.

C. Enter 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;
5. engaging in any business activities related to commodity interest trading.
6. soliciting or accepting any funds from any person in connection with the purchase or sale of any security;
7. placing orders or giving advice or price quotations, or other information in connection with the purchase or sale of any security interest for themselves and others;
8. introducing customers to any other person engaged in the business of securities;
9. issuing statements or reports to others concerning securities; and
10. engaging in any business activities related to securities.

C. Enter 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 the acts and practices alleged in this Complaint, and all disbursements for any purpose whatsoever of funds received from customers of defendants and other commodity

interest investors, including salaries, commissions, fees, loans and other disbursements of money and property of any kind;

D. Enter an order directing defendants immediately to identify and provide an accounting for all assets and financial accounts they currently maintain or control, either directly or indirectly, outside the United States, and to repatriate all such assets and funds by paying them to the Registry of the Court or as otherwise ordered by the Court;

E. Enter an order requiring defendants to disgorge to any officer appointed and directed by the Court all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from the unlawful acts and practices as described herein, including pre-judgment and post-judgment interest.

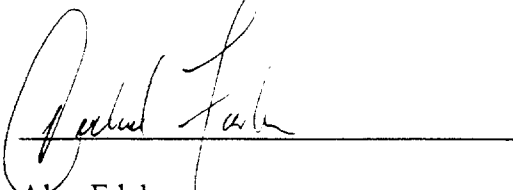
F. Enter an order requiring defendants to make restitution for harm caused by their violations of the provisions of the Act, CFTC Regulations, and the Oregon Securities Laws as described herein, including pre-judgment and post-judgment interest.

G. Enter 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 for each violation (or \$120,000 for each violation occurring after October 23, 2001), or triple the monetary gain to defendants for each violation of the Act;

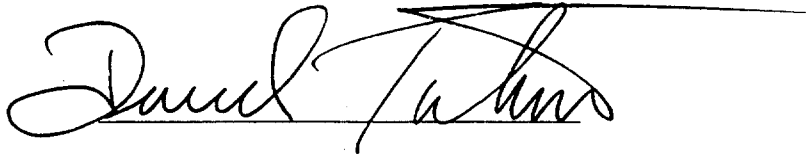
H. Enter an order directing defendants to cooperate fully with the CFTC and DCBS to locate all assets, books, and records of defendants and to make an accounting of all assets and liabilities of Orion, Cline, Duffy, Vorachith, and Hoyt from December 1998 to the date of such accounting; and

I. 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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