

2. From at least February 18, 2010 through May 2011, Galemmo, through QFC, operated the Pool as an unregistered CPO. At no time during this period was Galemmo or QFC exempt from the requirement to register as a CPO. From April 1, 2011 through December 16, 2013, QFC was registered as a CPO and Galemmo was registered as QFC's principal during the same period.

3. In soliciting pool participants, Galemmo knowingly, willfully, or with reckless disregard for the truth thereof made misrepresentations and omissions of material fact, including but not limited to the following: (1) the misrepresentation that the Pool had over 30% returns for the first seven (7) years since the pool started in 2001 and never had a losing month; (2) the misrepresentation that the Pool had generated returns of 17% to 40% from 2008 through 2012; (3) the misrepresentation that the Pool was routinely audited; (4) the omission that Galemmo misappropriated pool participants' funds for his personal and other business use; (5) the omission that Galemmo failed to trade pool participants' funds from at least 2003 through May 2011; (6) the omission that the Pool's commodity interest accounts had sustained overall net losses from April 2011 through July 2013; and (7) the omission that Galemmo and QFC failed to properly register as a CPOs.

4. Galemmo operated a "Ponzi" scheme by paying so-called returns to pool participants with those pool participants' own money or money from other pool participants. In doing so, Galemmo misappropriated pool participant funds. Galemmo also misappropriated pool participant funds for personal and other business use.

5. To conceal his fraudulent scheme and misappropriation, Galemmo issued or caused to be issued false account statements to pool participants. These account statements falsely

represented positive returns from the Pool's purported trading activity and that the pool participants' investments were increasing in value.

6. Contrary to Galemmo's representations to QFC's pool participants that their funds were being used to trade futures, commodities, and securities products, Galemmo only traded a small fraction of pool participants' funds in commodity interest accounts for the Pool.

7. By virtue of this conduct and the conduct further described herein, Galemmo has engaged, is engaging, or is about to engage in acts and practices in violation of provisions of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1 *et seq.* (2012), and certain Commission Regulations ("Commission Regulation(s)" or "Regulation(s)") promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2013).

8. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the Commission brings this action to enjoin Galemmo's unlawful acts and practices and to compel compliance with the Act, and Commission Regulations.

9. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

10. Unless restrained and enjoined by this Court, Galemmo is likely to continue to engage in the acts and practices alleged in this Complaint or in similar acts and practices, as described more fully below.

II. JURISDICTION AND VENUE

11. This Court possesses jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), which authorizes the Commission to seek injunctive and other relief

against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Galemmo resides and transacts business in this district.

III. THE PARTIES

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

14. Defendant **Glen Galemmo** resides in Cincinnati, Ohio. Galemmo is the sole owner of QFC. During the relevant period, Galemmo controlled QFC's commodity interest accounts held at Interactive Brokers, LLC ("IBL") and Dorman Trading, LLC ("DTL"), both registered futures commission merchants ("FCM"). Galemmo was registered as a principal of QFC from April 1, 2011 through December 16, 2013.

IV. OTHER RELEVANT ENTITY

15. **QFC, LLC** is a limited liability company with its principal office located in Cincinnati, Ohio. Galemmo is the sole owner of QFC. QFC was registered as a CPO with the National Futures Association ("NFA") from April 1, 2011 through December 16, 2013. Galemmo was listed as QFC's principal during this same period. On December 16, 2013, the NFA permanently barred QFC from NFA membership and from acting as a principal of an NFA member based upon findings that QFC violated NFA rules by failing to uphold high standards of

commercial honor and just and equitable principles of trade by failing to perform any due diligence before entering into a business relationship with Galemmo. QFC's NFA membership ban became effective on December 31, 2013.

V. STATUTORY BACKGROUND

16. Prior to July 16, 2011, Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), defined a CPO or "commodity pool operator" as any firm or individual engaged in a business which is of 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. Upon the effective date of Title VII of the Dodd-Frank Act on July 16, 2011, the definition of a CPO was clarified, expanded, and re-designated in Section 1a(11) of the Act, 7 U.S.C. § 1a(11) (2012).

17. Sections 4b(a)(1)(A)-(C), 7 U.S.C. § 6b(a)(1)(A)-(C) make it unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person- (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

VI. FACTS

A. Galemmo's Fraudulent Operation

18. During the relevant period, Galemmo controlled the operations of QFC. Galemmo is the sole owner and principal of QFC. Galemmo exercised control over various bank accounts

held at US Bank and KeyBank (collectively, “QFC bank accounts”) into which pool participants’ funds were deposited.

19. During the relevant period, Galemmo, through QFC, solicited actual and prospective pool participants by offering them various investment opportunities including commodity futures, commodities, stocks, and bonds.

20. During the relevant period, Galemmo solicited actual and prospective pool participants to roll over their retirement accounts for him to manage. Galemmo also offered some pool participants the opportunity to take advantage of short-term investment opportunities in the form of short-term loans. Galemmo induced some pool participants by offering to invest their funds in a private equity fund, claiming that their investing in such a manner would provide flexibility for greater investment opportunities and further claiming that investing in such a manner would allow for the capability of “going short,” purportedly to provide higher protection from losses.

21. Galemmo provided prospective pool participants with a “confidential business overview,” an “offering memorandum,” and a “subscription agreement” outlining QFC’s investment strategy, including investments in futures and securities.

22. In reality Galemmo’s claims were false, and his claimed investment offers and strategies were meaningless since Galemmo only invested a small portion of pool participants’ funds in commodity futures accounts from April 2011 through July 17, 2013, while he used the majority of funds to pay other pool participants and for his own personal expenses in the manner of a Ponzi scheme.

(1) **Galemmo's Fraudulent Misrepresentations and Material Omissions**

23. During the relevant period, Galemmo induced prospective pool participants to invest in the Pool by providing them with promotional materials that included the following representation concerning the Pool's purported annual returns for 2008 thru 2012:

- 2008- 17.15%
- 2009- 32.35%
- 2010- 40.81%
- 2011- 30.12%
- 2012- 32.64%

24. Galemmo's promotional materials, that he provided to prospective pool participants, also claimed that the "[f]und was established in 2001 and has averaged over 30% returns over the past 7 years."

25. Galemmo knew that these representations in paragraphs 23-24 above were false, because, among other things, he failed to invest any pool participants' funds from at least 2003 through May 2011. Furthermore, Galemmo knew that the Pool did not achieve the claimed annual returns and actually sustained overall net losses in its commodity interest accounts during the relevant period.

26. Upon information and belief, the Pool did not maintain any other trading accounts.

27. During the relevant period, Galemmo also falsely represented to prospective and actual pool participants that the Pool was routinely audited. For example, the "confidential business overview" that Galemmo provided to prospective pool participants listed a specific audit firm purportedly used by the Pool. In fact, the audit firm had not performed any audits of QFC. QFC's operating agreement that Galemmo provided to pool participants also falsely indicated that pool participants would receive annual financial statements that had been independently audited.

28. On or about August 8, 2011, Galemmo sent an email communication to pool participants in which he falsely represented that the Pool was “fine” despite the current market status, asserting that he sold 10% of “our positions” and that “the fund was protected by our long position in the vix index,” when in fact Galemmo had invested very little of pool participants’ funds at that time.

29. To induce pool participants to continue to invest with him, Galemmo sent updates to pool participants via email or mail that falsely represented that the Pool was performing well. For example, in March 2011, to assuage fears concerning the market’s volatility, and to encourage pool participants to continue investing, Galemmo emailed pool participants that “[d]espite the recent events around the world, we have held strong and steady. The fund is positioned for the current downturn... Through these turbulent times, the fund will be managed very conservatively to avoid any major draw downs on fund performance.” Contrary to this statement, the fund was underwater and contained virtually no money. Furthermore, Galemmo did not have any trading accounts open at this time.

30. Contrary to these performance claims, Galemmo did not trade any pool participant funds from at least 2003 through May 2011. Furthermore, trading records for the Pool’s commodity interest accounts show that the Pool’s trading did not make the returns that Galemmo touted and in fact the trading accounts sustained overall net losses.

31. During the relevant period, Galemmo failed to disclose to prospective and actual pool participants that he was not properly registered as a CPO from at least 2003 through May 2011. Galemmo also failed to disclose to actual and prospective pool participants that he did not invest pool participants’ funds as he promised but instead misappropriated pool participants’ funds by

using the funds to pay principal and purported returns to other pool participants as well as to pay for personal and other business expenses.

32. Galemmo also failed to disclose that the Pool's commodity interest accounts sustained overall net losses.

(2) Galemmo Issued False Account Statements

33. During the relevant period, Galemmo mailed or emailed monthly statements to pool participants purporting to show their account balances. To create monthly statements, each pool participant's principle investment balance was merely multiplied by a fictitious percentage of return, consistent with the returns that Galemmo had promised. The statements were false, showing positive account balances and fictitious earnings, when in fact Galemmo had not invested pool participants' funds as promised.

(3) Galemmo's Misappropriation

34. From 2006 to July 2013, Galemmo received approximately \$87 million from individual pool participants, including, individuals, trusts, charitable organizations, and retirement accounts. During this period, Galemmo also received \$29 million from some pool participants in the form of short term loans. Galemmo received these funds through interstate wire transfers and other instrumentalities of interstate commerce, including but not limited to mailings delivered by the United States Postal Service.

35. In April 2011, September 2011, and April 2013 Galemmo opened or caused to be opened four futures trading accounts at IBL in the name of QFC but only funded three of the accounts. During the life of these accounts, QFC traded various energy, grain, metals, and financial futures contracts in these accounts at IBL.

36. In September 2012, Galemmo opened or caused to be opened three additional accounts in the name of QFC at DTL. During the life of these accounts, QFC traded various energy, grain, metals, and financial futures contracts in these accounts at DTL.

37. Although Galemmo solicited over \$116 million from pool participants to deposit into the Pool, he only deposited approximately \$4.7 million into the futures accounts that he controlled at IBL and DTL. Galemmo also withdrew or caused to be withdrawn \$2.7 million in pool participants' funds from these futures accounts.

38. The futures accounts at IBL and DTL that Galemmo controlled sustained total losses of approximately \$1.2 million.

39. During the relevant period, Galemmo only traded a small portion of pool participants' funds which was contrary to the stated purpose of the Pool and how he promised to use pool participants' funds.

40. During the relevant period, Galemmo instead misappropriated the majority of pool participants' funds by using these funds to pay other pool participants returns purportedly generated through the Pool's trading in the manner of a Ponzi scheme.

41. During the relevant period, Galemmo also used pool participants' funds to finance other businesses or to pay for personal expenses. For example, Galemmo used pool participants' funds to purchase real estate, vehicles, to renovate and to furnish an office building, and to operate several sports and entertainment complexes.

(4) Galemmo's Failure to Register

42. During the relevant period, Galemmo, through QFC, acted as a CPO by soliciting and accepting funds from individuals and pooling those funds for the purpose of trading, among other things, futures contracts.

43. Glemmo used the mails and other means or instrumentalities of interstate commerce to provide potential and actual pool participants with promotional materials touting the Pool's purported performance, as well as to provide pool participants with purported account statements showing positive account balances and fictitious earnings.

44. Glemmo was required to disclose the QFC's trading losses to all pool participants and prospective pool participants because he is a CPO and therefore a fiduciary to his pool participants. Glemmo was separately required to disclose such material information because he falsely represented and/or caused to be represented to actual and prospective QFC pool participants that the Pool was successful and had a successful performance record. Glemmo was required to disclose the truth about the Pool's actual trading performance.

45. On January 15, 2014, Glemmo formally pleaded guilty in a related criminal case. *See United States v. Glen Glemmo*, Case no. 1:13-cr-00141-HJW. As part of his plea agreement, Glemmo agreed to forfeit approximately \$722,000 of pool participants' funds that remained in these futures accounts.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE

FRAUD IN CONNECTION WITH COMMODITY FUTURES CONTRACTS

Violations of Sections 4b(a)(1)(A)-(C), 7 U.S.C. § 6b(a)(1)(A)-(C)

46. The allegations set forth in paragraphs 1 through 45 are re-alleged and incorporated herein by reference.

47. Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012), provides, in relevant part, that it is unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on

behalf of any other person... (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for the other person.

48. As set forth above, during the relevant period, Galemmo violated Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012), by, among other things: (1) making misrepresentations concerning the Pool's performance record and his experience; (2) failing to disclose material information, including, that he was not properly registered as a CPO, that he only invested a small portion of pool participants' funds, and that the Pool sustained consistent net losses; (3) issuing or causing to be issued false account statements to pool participants reflecting positive returns for the Pool and increases in the value of individual pool participants' interest; (4) misappropriating pool participant funds by using such funds to pay principal and purported returns to other pool participants; and (5) misappropriating pool participant funds to pay other business expenses and personal expenses.

49. Each misrepresentation or omission of material fact, issuance of a false statement or report, and misappropriation, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012).

COUNT TWO

**FRAUD BY A COMMODITY POOL OPERATOR
Violations of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B)**

50. The allegations set forth in paragraphs 1 through 45 are re-alleged and incorporated herein by reference.

51. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), prohibits CPOs from using the mails or any other means or instrumentality of interstate commerce to (A) employ any device, scheme or artifice to defraud any client or participant or prospective client or participant; or (B) engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or participant or prospective participant.

52. As set forth above, during the relevant period, Galemmo acted as a CPO by soliciting, accepting, or receiving funds from others while engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of, among other things, trading in futures.

53. Galemmo violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2012), in that he employed or is employing a device, scheme or artifice to defraud actual and prospective pool participants or engaged or is engaging in transactions, practices, or a course of business which operated or operates as a fraud or deceit upon the pool participants or prospective pool participants. The fraudulent acts include distributing false account statements to pool participants.

54. Each misrepresentation or omission of material fact, issuance of a false statement or report, and misappropriation, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2012).

COUNT THREE

**FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR
Violation of Section 4m(1) of the Act, 7 U.S.C § 6m(1)**

55. The allegations set forth in paragraphs 1 through 45 are re-alleged and incorporated herein by reference.

56. Section 4m(1) of the Act, 7 U.S.C § 6m(1) (2012), provides that it is unlawful for any CPO, unless registered, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO.

57. As set forth above, during the relevant period, Galemmo used the telephone, email, U.S. mail, and/or the Internet in or in connection with his business as a CPO, while failing to register as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012). Each use of the mails or any means or instrumentality of interstate commerce by Galemmo, while acting as a CPO 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) (2012).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and pursuant to its own equitable powers, enter:

a) An order finding that Galemmo violated Sections 4b(a)(1)(A)-(C) and 4o(1)(A) and (B), 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012) and 6o(1)(A) and (B) (2012), and 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012);

b) An order of permanent injunction prohibiting Galemmo and any of his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Galemmo, including any of his successors, from, directly or indirectly:

(i) engaging in conduct in violation of Sections 4b(a)(1)(A)-(C), 4o(1)(A) and (B) and 4m(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6o(1)(A) and (B) and 6m(1);

(ii) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a);

(iii) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2013) (“commodity options”), security futures products, swaps (as that term is defined in Section 1a(47) of the Act, as amended and as will be further defined by Commission Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx)), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i), 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (2012)) (“forex contracts”), for his own personal accounts or for any account in which he has a direct or indirect interest;

(iv) having any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts traded on his behalf;

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

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

(vii) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or

exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2013);

(viii) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2013)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2013);

c) An order directing Galemmo, as well as any of his successors, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act and the Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

d) An order directing Galemmo to make full restitution to every person or entity whose funds he received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act and the Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) An order directing Galemmo to pay a civil monetary penalty for each violation of the Act and the Regulations described herein, plus post-judgment interest, in the amount of the higher of: 1) \$140,000 for each violation of the Act and Regulations committed on or after October 23, 2008; or 2) triple the monetary gain to Galemmo for each violation of the Act and the Regulations, plus post-judgment interest;

f) An order directing Galemmo and any of his successors to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the pool participants and pool participants whose funds were received by them as a result of the acts and practices which constituted violations of

the Act and the Regulations, as described herein;

g) An order requiring Galemmo to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2)(2012); and

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

Respectfully submitted,

PLAINTIFF UNITED STATES COMMODITY

FUTURES TRADING COMMISSION

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Dated: September 15, 2014