

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**Commodity Futures Trading Commission,**

**Plaintiff,**

**v.**

**William Thomas Caniff,**

**Arie Bos,**

**Berkley Capital Management, LLC,**

**BBOT 1, LP, and**

**Berkley II, LP,**

**Defendants.**

**Case No:** \_\_\_\_\_

\_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE RELIEF AND OTHER EQUITABLE RELIEF AND  
FOR CIVIL MONETARY PENALTIES UNDER THE COMMODITY EXCHANGE ACT**

The Commodity Futures Trading Commission (“CFTC” or “Commission”), an independent federal agency, by and through its attorneys, hereby alleges as follows:

**I. SUMMARY**

1. From at least January 2016 and continuing through the present (the “Relevant Period”), William Thomas Caniff (“Caniff”), Arie Bos (“Bos”), Berkley Capital Management, LLC (“BCM”), BBOT 1, LP (“BBOT”) and Berkley II, LP (“Berkley II”) (collectively, “Defendants”), have engaged in a scheme whereby they fraudulently solicited and accepted at least \$4.8 million from at least 62 commodity pool participants for the purpose of trading binary options on or subject to the rules of a designated contract market in pool accounts to be managed by BCM.

2. In January 2016, Caniff and Bos formed BCM and began to offer individual participants the opportunity to trade binary options with pools of other participants, first through the BBOT pool and later through the Berkley II pool. Caniff used a small portion of participants' funds to trade binary options through an account he set up at the binary options trading firm, the North American Derivatives Exchange, Inc. ("NADEX"), which is a designated contract market headquartered in Chicago, Illinois. Caniff sent Bos fabricated statements reflecting incredible results of his trading for these pools. In turn, Bos ignored numerous red flags and recklessly accepted Caniff's reports of profitable trading without verifying the results in any way and used them to both solicit participants with claims of past profitable trading and generate false statements that he sent to participants showing grossly-inflated, non-existent, profits for their accounts.

3. Caniff misappropriated a substantial portion of the participants' funds, paying Bos and himself between \$1.1 million to \$1.2 million each as "fees based on non-existent profits. Caniff also misappropriated funds to pay some participants a total of \$2.3 million in a manner akin to a Ponzi scheme. Overall, the defrauded participants have experienced a shortfall of approximately \$2.5 million.

4. By virtue of this conduct and the conduct further described below, Defendants have engaged, are engaging in, or are about to engage in acts and practices that violate the following sections of the Commodity Exchange Act ("Act" or "CEA"), 7 U.S.C. §§ 1-26 (2012), and Commission Regulations ("Regulations") promulgated thereunder, 17 C.F.R. pts. 1-190 (2018), specifically Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and Regulation 32.4, 17 C.F.R. § 32.14 (2018), which prohibit fraud in connection with commodity options

transactions. Defendant Caniff also violated Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2012), which prohibits making false statements to a registered entity.

5. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel Defendants' compliance with the Act and the Regulations. 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 and further relief as the Court may deem necessary or appropriate.

6. Unless restrained and enjoined by this Court, Defendants will likely continue to engage in acts and practices alleged in this Complaint and similar acts and practices, as described below.

## **II. JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2012) (federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice that violates any provision of the Act or any rule, regulation, or order promulgated thereunder.

8. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Defendants have transacted business in the Northern District of Illinois, and the acts and practices in violation of the Act and Regulations have occurred within this District, among other places.

### III. PARTIES

9. Plaintiff **Commodity Futures Trading Commission** (“CFTC” or “Commission”) is an independent federal regulatory agency charged with the administration and enforcement of the Commodity Exchange Act and Regulations promulgated thereunder.

10. Defendant **William Thomas Caniff** is a natural person, 50 years of age, who sometimes uses the alias “Thomas Caniff” and resides in Steubenville, Ohio. Caniff is a co-founder and General Partner of BCM Capital Management, LLC, and a limited partner of BBOT, LP. Caniff transacted business as the trader for BBOT at NADEX, which is located in Chicago, Illinois. Caniff has a criminal history as a felon, having been convicted of several financial crimes in the 1990s. Caniff he has never been registered with the Commission in any capacity.

11. Defendant **Arie Bos** is a natural person, 59 years of age, who resides in Rotterdam in the Netherlands and is a citizen of that country. Bos is a co-founder and Managing Partner of BCM and is a limited partner of BBOT and Berkley II. Bos was responsible for all “marketing” on behalf of BCM, and for “administration and reporting” to the funds limited partners and for “membership management” of BBOT and Berkley II and for the limited partnership’s offerings. Bos has never been registered with the Commission in any capacity.

12. Defendant **BCM Capital Management, LLC**, formed in January 2016, is a Wyoming limited company with offices in Wintersville, Ohio and Rotterdam in the Netherlands. BCM is the general partner of BBOT and Berkley II. BCM acted as the “portfolio manager” for the BBOT fund. BCM has never been registered with the Commission in any capacity.

13. Defendant **BBOT1 LP** is a Delaware limited partnership, formed in January 2016, which has its principal place of business in Wintersville, Ohio and transacts business in the State of Illinois at NADEX. BBOT has never been registered with the Commission in any capacity.

14. Defendant **Berkley II LP** is a Delaware limited partnership, formed in July 2017, which has its principal place of business in Wintersville, Ohio. Berkley II has never been registered with the Commission in any capacity.

#### **IV. OTHER RELEVANT ENTITY**

15. The **North American Derivatives Exchange** is a Commission designated contract market under Section 5 of the Act, 7 U.S.C. § 5 (2012). As such a designated contract market, NADEX also meets the definition of a “registered entity” under Section 1(a)40 of the Act, 7 U.S.C. § 1(a)40 (2012). NADEX provides a platform for retail customers to trade binary options that are commodity option transactions. NADEX is located in Chicago, Illinois.

#### **V. STATUTORY BACKGROUND**

16. Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), makes it unlawful for any person to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity regulated under the Act which is of the character of, or is commonly known to the trade as, inter alia, an “option”, “bid”, “offer”, “put”, or “call”, contrary to any rule, regulation or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe. Thus, through 7 U.S.C. § 6c(b), Congress has given the Commission jurisdiction and plenary rulemaking authority over all commodity option transactions.

17. Regulation 32.4, 17 C.F.R. § 32.4 (2018), promulgated under Section 4c(b) of the Act, provides that:

In or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, it shall be unlawful for any person, directly or indirectly:

- a) To cheat or defraud or attempt to cheat or defraud any other person;
- b) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or
- c) To deceive or attempt to deceive any other person by any means whatsoever.

## **VI. FACTS**

### **A. Overview of Binary Options**

18. Binary options involve a variety of underlying assets, including currency pairs (e.g., EUR/USD); commodities such as oil, wheat, coffee, and gold; equity indices (e.g., the Dow Jones Industrial Index); and stocks (e.g., Coke, Google, etc.). However, unlike other types of options, a binary option does not give the holder the right to purchase or sell the underlying asset. Instead, binary options are “cash settled.” When the binary option expires, if the customer has correctly predicted the asset’s movement, the customer is “in the money” and entitled to a payout of a pre-determined amount of money. Binary options offered at NADEX also give the holder the option to sell prior to expiration, which would allow the holder to reap a sum less than the premium if the position is in the money and suffer losses less than the premium if the option is out of the money. If the customer has made an incorrect prediction, he or she is “out of the money,” loses the premium paid, and gets nothing.

19. There are only three designated contract markets currently authorized to offer binary options that are commodity options transactions to retail customers in the United States: Cantor Exchange LP, Chicago Mercantile Exchange, Inc., and NADEX.

### **B. Caniff and Bos Formed BCM to Trade Binary Options**

20. In January 2016, Caniff and Bos formed a partnership and created a new “investment and trading technology firm” called BCM. This new Wyoming limited liability

corporation has offices near each of their residences, in Steubenville, Ohio and Rotterdam in the Netherlands, respectively, and purportedly “specialized in trading foreign-exchange binary options derivatives.”

21. BCM became the general partner of a new investment pool fund called BBOT that was set up as a limited partnership for this pool of participants.

22. Caniff was the designated trader for the fund, and Bos was responsible for soliciting and reporting to participants.

23. Bos solicited participants by initially approaching members of his family and friends in the Netherlands. Bos distributed an information packet to prospective participants that described Caniff as having trading experience dating back to 2004 with a “proven track record.”

24. Bos instructed prospective participants to wire their funds to the pools’ various bank accounts in the United States. Participants wired approximately \$1.8 million to BBOT in 2016 and approximately \$3 million to BBOT and Berkley II in 2017 and thereafter.

25. In February 2016, Caniff set up bank accounts for both BCM and the pool, BBOT. In December 2016, he closed those accounts and opened new accounts for BCM and BBOT at a different bank. In April 2017, Caniff moved the BCM and BBOT bank accounts to a third banking institution and, in July 2017, opened an additional account for the new Berkley II pool at the third bank.

26. During the Relevant Time, Caniff made all financial decisions for BCM, BBOT and Berkley II. He directed withdrawals of client funds from the BBOT and Berkley II bank accounts and deposits and withdrawals of fund from the BCM bank account and the BBOT trading account. Bos was not a signatory to any of the bank accounts, but he had online access to view the BBOT, Berkley II and BCM bank account statements.

**C. Caniff Concealed his Criminal Background from NADEX and Opened a Trading Account**

27. In June 2016, Caniff opened a binary options trading account for BBOT at NADEX, but, in doing so, hid his extensive criminal past from NADEX by falsifying his application for that account. In connection with his February 25, 2016 application to NADEX, Caniff willfully made a false statement to NADEX by intentionally responding in the negative to each of the following two questions:

- (a) Have you been convicted of, pled guilty to, or entered a plea of no contest or plea agreement to, any felony in any domestic, foreign, or military court?
- (b) Have you been convicted of, pled guilty to, or entered a plea of no contest or plea agreement to, a misdemeanor in any domestic, foreign, or military court or military court which involves: Embezzlement, theft, extortion, fraud, fraudulent conversion, forgery, counterfeiting, false pretenses, bribery, gambling, racketeering, or misappropriation of funds, securities, or property?

28. The responses Caniff gave to NADEX were false because Caniff had been convicted of several felony offenses including ones involving fraudulent conversion, forgery, and grand theft with a firearm. According to NADEX, it would have rejected Caniff's application to open the BBOT trading account if it had known about these criminal convictions.

**D. Caniff Minimally Funded the NADEX Account and Misappropriated Most of the Participants' Money**

29. From February 2016 through the present, at least 62 BCM participants, two of whom were U.S. customers, paid more than \$4.8 million to fund investments to trade binary options through pools in the names of BBOT or Berkley II.

30. Over the life of the account, Caniff only sent two payments to NADEX, \$35,000 in June 2016 and \$50,000 in June 2017, for a total of \$85,000. Thus, a mere fraction of BBOT



or Berkley II participant funds were ever sent to NADEX for trading. Caniff never opened a NADEX trading account for Berkley II participants.

31. Caniff misappropriated the remainder of participant funds, by sending approximately \$2.3 million to repay other participants and to pay Bos and himself between \$1.1 and \$1.2 million each in purported fees. Approximately \$2.5 million is presently owing to participants.

**E. Bos Ignored Obvious Red Flags and Made Misrepresentations to Prospective Participants**

32. Throughout their partnership, Caniff sent Bos emails reflecting his purported daily trading activity at NADEX, some of which included purported screen shots showing the NADEX account balance for the BCM pools. Caniff's emails reflected implausible rates of return and consistently profitable trading.

33. Bos combined the NADEX account value information that he received from Caniff with the information Bos obtained from his online access to the pools' bank accounts to calculate the pools' overall profitability and individual participants' returns. Bos inserted his profit calculations into statements sent to participants and into promotional packets of information that he prepared and distributed to prospective participants without any independent verification of these profits. For example, Bos told prospective participants:

- (a) For the period January 2016 through May 2016, BCM reported monthly net return on investments ("ROIs") of 3.9%, 17.3%, 23%, 11.6% and 17.3%;
- (b) BCM's fund grew to a size of \$5,500,000 by the end of calendar year 2016;
- (c) BCM's average monthly ROI for 2016 was 10%;
- (d) Berkley II had an ROI of 14.4% in April 2018; and

- (e) Berkley II had an overall average monthly return on invested capital of 13.9% between August 2017 and April 2018.

34. Each of the aforementioned representations that Bos made to prospective participants was false, in that:

- (a) BCM's reported monthly profits for the period from January to May 2016 were false in that BBOT's account at NADEX was not even opened and funded until June 29, 2016;
- (b) BCM's fund did not have a value of \$5,500,000 by the end of 2016; rather, the BBOT account value combined with balances in BBOT's bank account was \$277,961.89 at December 31, 2016; and
- (c) BCM did not average a 10% ROI for 2016; rather the average ROI for 2016 was a negative, specifically -0.88%;
- (d) Berkley II did not have an ROI of 14.4% in April 2018 because BCM never opened an account at NADEX for Berkley II and, thus, there were no profits earned for this pool; and
- (e) Berkley II did not have an overall average monthly return on invested capital of 13.9% between August 2017 and April 2018 because BCM never opened an account at NADEX for Berkley II and, thus, there were no profits earned for this pool.

35. In sum, all of Bos' claims of BCM's multi-million dollar account values and high profitability to prospective participants earned through binary options trading were fraudulent in light of the actual deployment and misappropriation of participant funds. Berkley II never had an account at NADEX and the only other BCM account at NADEX, BBOT, resulted in an overall loss of \$43,204.60. Further, the trading in the BBOT account at NADEX generated an overall net rate of return of -5.54% and its highest account balance at any given time was only \$89,764.90. Instead, the vast majority of the \$4.8 million of participant deposits into BCM's BBOT or Berkley II pools were simply withdrawn to pay Bos and Caniff fees or to pay participant withdrawal requests in the manner of a Ponzi scheme.

36. Throughout the relevant period, Bos willfully or recklessly ignored red flags that should have prompted him to seek some corroboration of BCM's incredible pool returns at NADEX. Bos committed fraud in failing to do so and, instead, distributing the absurd profit figures to existing participants and using them to solicit new participants. Among the red flags that Bos ignored:

- (a) Bos knew that, in 2016, participants had invested total capital of \$1.74 million. In or around January 2017, Caniff gave Bos a copy of a purported NADEX IRS Form 1099 showing that BBOT's total invested capital of \$1.8 million had made total profits in 2016 of \$5,043,386.60.
- (b) When Bos told Caniff to withdraw a "substantial part" of the more than \$5 million in profits from NADEX in January 2017 and return them to the BBOT bank account, Caniff told Bos that the funds could not be withdrawn from NADEX and gave Bos a number of transparently bogus explanations.
- (c) In March 2017, Bos requested that Caniff arrange for him to have online access to personally view the NADEX account balances. Caniff said that such arrangements could not be made.
- (d) Bos routinely accessed the pools' bank account statements and, thus, he knew that they had only deposited a total of \$85,000 with NADEX over the life of the NADEX accounts. Yet, Bos accepted the patently absurd rate of return on a statement dated May 2, 2017 sent to him by Caniff showing that the BBOT account at NADEX had earned a balance in excess of \$11.8 million through the trading of participants' funds.
- (e) In June 2017, Caniff falsely told Bos that he had initiated a lawsuit on behalf of BBOT against NADEX's bank claiming that NADEX was illegally withholding BBOT's funds.

37. Despite all of these red flags during the relevant period, Bos, inexplicably, continued to solicit individuals to invest new monies to be sent to NADEX. Bos could have contacted NADEX directly to verify the account balances at any time, but he did not do so until September 2018.

**F. Bos Issued False Account Statements**

38. In addition to the false solicitations, Bos issued false account statements to at least one participant. Participant M.Y. is a U.S. citizen who invested \$100,000 with BBOT in January 2017. From January 2017 through July 2018, Bos prepared and sent M.Y. multiple “Individual Account Statements” that falsely reported profits, or neglected to report losses incurred in her account at BBOT and never reported a losing month of trading. For example, an account statement dated August 10, 2018 indicated that participant M.Y.’s \$100,000 investment had increased to \$146,035.21 by July 31, 2018. In fact, between January 2017 and July 2018, the BBOT pool actually lost a net total of \$40,569. Similarly, in the months of August and September 2017, Bos reported a 0% ROI to M.Y. when, in fact, the BBOT pool actually had an ROI for those months of -31.06% and -23.13%.

**G. When the Money Ran Out, Caniff Blamed NADEX and Bos Continued to Solicit Participants**

39. After Bos made several requests for Caniff to distribute funds from the NADEX account in early 2017, Caniff informed Bos that he was not able to withdraw funds from NADEX and indicated that NADEX was wrongfully holding the pools’ funds.

40. In May 2017, Bos informed M.Y. that BBOT had suspended trading because of problems that had been encountered with NADEX. Although no fees were being earned from trading during this time, Bos knew that funds continued to be withdrawn from the BBOT pool bank account during this period, and that the funds were being used to pay fees to Caniff and himself and to repay some investors. Nonetheless, Bos failed to report those expenses as deductions from the participant’s account value and continued to report unchanged balances to M.Y. on her account statement.

41. In June 2017, Caniff told Bos that he had initiated a lawsuit in Chicago on behalf of BBOT against NADEX's bank claiming that NADEX was illegally withholding BBOT's funds. In reality, Caniff never filed a lawsuit. Rather, Caniff sent Bos fabricated pleadings and forged correspondence from an attorney purportedly representing BBOT in the dispute with NADEX. After Bos received the fabricated pleadings, Bos, inexplicably, continued to solicit individuals to invest new monies to be sent to NADEX for trading, while ignoring that BBOT purportedly could not withdraw its participant funds already deposited there and this legal entanglement with NADEX.

**H. Bos Eventually Faced the Fraud and Filed a Related State Court Suit in Chicago**

42. Over a year later, in September 2018, Bos finally contacted NADEX directly and learned that the true balance of the NADEX trading account was approximately \$6,824.00.

43. Bos eventually told participant M.Y. that Caniff had reported incorrect NADEX trading results and that the total remaining participant funds were significantly less than participants' overall deposits. Participant M.Y. lost her entire investment of \$100,000.

44. In an effort to recover any remaining funds, on February 1, 2019, Bos filed suit in state court in Chicago, Illinois against Caniff alleging fraud by Caniff and seeking to prevent a bank's disbursement of \$116,153.25 on deposit in accounts it holds in the names of BCM, BBOT and Berkley II. The state court pleading is captioned: *Arie Bos, and Berkley Capital Management, LLC, on behalf of All Participants and Limited Partners of BBOT 1, LP and Berkley II, LP v. William Thomas Caniff, Jr., an individual, BBOT 1, LP, a limited partnership, Berkley II, LP and Huntington Bank*, Circuit Court of Cook County, Chancery Division, No. 2019 CH 01264. A copy of the complaint filed in the state court is attached as part of the Appendix accompanying this filing.

45. On February 11, 2019, Circuit Court Judge Atkins entered a TRO freezing the accounts pending further order of the court. However, on April 24, 2019, the Court issued an order vacating the asset freeze.

## **VII. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

### **COUNT I**

#### **Options Fraud**

#### **Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and Regulation 32.4, 17 C.F.R. § 32.4 (2018) (All Defendants)**

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

47. During the Relevant Period, the Defendants, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, directly and indirectly: (a) cheated or defrauded, and attempted or cheat and defraud, customers and prospective customers; (b) made or caused to be made to customers and prospective customers false reports or statements; and (c) deceived or attempted to deceive customers and prospective customers, in violation of 7 U.S.C. § 6c(b), and 17 C.F.R. § 32.4.

48. During the relevant period, Defendant Caniff violated 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4 by misappropriating approximately \$2.5 million of participant funds and by sending Bos emails about false daily trading activity and nonexistent trading profits that he knew Bos would use to solicit participants and make false reports to existing participants.

49. During the relevant period, Defendant Bos violated 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4 by, among other things, recklessly telling prospective participants:

- (a) For the period January 2016 through May 2016, BCM reported monthly net return on investments (“ROIs”) of 3.9%, 17.3%, 23%, 11.6% and 17.3%;

- (b) BCM's fund grew to a size of \$5,500,000 by the end of calendar year 2106; and
- (c) BCM's average monthly ROI for 2016 was 10%;
- (d) Berkley II did not have an ROI of 14.4% in April 2018 because BCM never opened an account at NADEX for Berkley II and, thus, there were no profits earned for this pool; and
- (e) Berkley II did not have an overall average monthly return on invested capital of 13.9% between August 2017 and April 2018 because BCM never opened an account at NADEX for Berkley II and, thus, there were no profits earned for this pool.

50. During the relevant period, Defendant Bos violated 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4 by, among others, sending at least one participant numerous false statements reporting that her account was profitable when it was not profitable and, at times, failed to report withdrawals from her account balance.

51. Defendants committed the acts and practices describes herein willfully, or with reckless disregard for the truth.

52. Each act of misrepresentation, misappropriation and omission of material fact, including, but not limited to, those specifically alleged herein, constitutes a separate and distinct violation of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4.

53. The foregoing acts, omissions and failures of Caniff and Bos, and all other agents of BCM, occurred and are occurring within the scope of their employment, office or agency with BCM; therefore, BCM is liable for these acts, omissions and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2018).

54. The foregoing acts, omissions and failures of Caniff and Bos, and all other agents of BBOT, occurred and are occurring within the scope of their employment, office or agency with BBOT; therefore, BBOT is liable for these acts, omissions and failures pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2.

55. The foregoing acts, omissions and failures of Caniff and Bos, and all other agents of Berkley II, occurred and are occurring within the scope of their employment, office or agency with Berkley II; therefore, Berkley II is liable for these acts, omissions and failures pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2.

## **COUNT II**

### **Making a False Statement to a Registered Entity Violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2012) (Caniff)**

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

57. 7 U.S.C. § 13(a)(4) makes it a violation for any person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice, a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, swap data repository, or futures association designated or registered under this Act in furtherance of its official duties under this Act.

58. In connection with his February 25, 2016 application to NADEX, a registered entity under the Act, where he was seeking to open the trading account for BCM's pool, BBOT, Caniff willfully made false statements to NADEX by falsely and intentionally responding in the negative to questions about whether he had a criminal record, in violation of 7 U.S.C. § 13(a)(4).



### VIII. RELIEF REQUESTED

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

- A. Find that the Defendants violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and Regulation 32.4, 17 C.F.R. § 32.4 (2018);
- B. Find that Defendant Caniff violated Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2012);
- C. Enter an order of permanent injunction prohibiting the Defendants, and their affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with them, who receive actual notice of such order by personal service or otherwise from engaging in the conduct described above, in violation of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4; and prohibiting Caniff and his affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with him, who receive actual notice of such order by personal service or otherwise from engaging in the conduct described above, in violation of 7 U.S.C. § 13(a)(4);
- D. Enter an order of permanent injunction prohibiting the Defendants and their affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with them, from directly or indirectly:
  1. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40)(2012);
  2. Entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3(2018)), for accounts

- held in the name of any Defendant or for accounts in which any Defendant has a direct or indirect interest;
3. Having any commodity interests traded on any Defendants' behalf;
  4. 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 interests;
  5. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
  6. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2018); and
  7. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2018), agent or any other officer or employee of any person registered, exempted from registration, or required to be registered with the CFTC except as provided for in 17 C.F.R. § 4.14(a)(9).
- E. Enter an order directing Defendants Caniff, Bos, BCM, BBOT and Berkley II, as well as any third-party transferee and/or successors thereof, to disgorge pursuant to such procedure as the Court may order, 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 Regulations as described herein, including pre-judgment and post-judgment interest;

- F. Enter an order directing Defendants Caniff, Bos, BCM, BBOT and Berkley II, as well as any successors thereof, to make full restitution to every person who has sustained losses proximately caused by the violations described herein, including pre-judgement and post-judgment interest;
- G. Enter an order directing Defendants Caniff, Bos, BCM, BBOT and Berkley II, as well as any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between, with or among Defendants Caniff, Bos, BCM, BBOT and Berkley II, and any of the participants whose funds were received by Defendants Caniff, Bos, BCM, BBOT and Berkley II as a result of the acts and practices that constituted violations of the Act and Regulations as described herein;
- H. Enter an order directing Defendants Caniff, Bos, BCM, BBOT and Berkley II to pay a civil monetary penalty assessed by the Court, in an amount not to exceed the penalty prescribed by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1) (2012), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, tit. VII, § 701, 129 Stat. 584, 599-600, *see* Regulation 143. 8, 17 C.F.R. § 143.8 (2018) for each violation of the Act and Regulations, as described herein;
- H. Enter an order requiring Defendants Caniff, Bos, BCM, BBOT and Berkley II, to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2413(a)(2) (2012); and
- I. Enter an Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Date: May 1, 2019

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF  
COMMODITY FUTURES TRADING COMMISSION

/s/ Susan B. Padove

Lead Attorney

Susan B. Padove

Senior Trial Attorney

(312) 596-0544

[spadove@cftc.gov](mailto:spadove@cftc.gov)

Illinois A.R.D.C. No. 3127019

Lindsey Evans

Chief Trial Attorney

(312) 596-0643

[levans@cftc.gov](mailto:levans@cftc.gov)

Illinois A.R.D.C. No. 6286125

Scott R. Williamson

Deputy Regional Counsel

(312) 596-0560

Illinois A.R.D.C. No. 6191293

Commodity Futures Trading Commission

Division of Enforcement

525 W. Monroe Street, Suite 1100

Chicago, Illinois 60661

(312) 596-0700 (Office Number)

(312) 596-0714 (facsimile)