

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
Case No.: 07-61058-CIV COOKE/BROWN

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

NATIONS INVESTMENTS, LLC, SULAIMAN
“SAL” HUSAIN, and MANSUR “MANNY”
HUSAIN,

Defendants,

and

SAMMY JOE GOLDMAN, LALITA HUSAIN
and ROSALIND GOLDMAN,

Relief Defendants.

**FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE
RELIEF, AND A CIVIL MONETARY PENALTY**

I. JURISDICTION AND VENUE

1. The Commodity Exchange Act, as amended (the “Act”), 7 U.S.C § 1 *et seq.* (2002), establishes a comprehensive system for regulating commodity futures contracts and options on commodity futures contracts and those who are registrants pursuant to the Act. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commodity Futures Trading Commission (“CFTC” or “Commission”) to seek injunctive relief against any person or entity whenever it shall appear to the

Commission that such person or entity 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 Commission rule, regulation or order.

2. Venue properly lies with the Court pursuant to Section 6c of the Act, in that the Defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act occurred, are occurring, or are about to occur within this district.

II. SUMMARY

3. From as early as July 31, 2006 through July 23, 2007 (“relevant period”), Defendant Nations Investments LLC (“Nations”), a registered futures commission merchant (“FCM”) with the National Futures Association (“NFA”), while acting as a forex dealer member (“FDM”) failed to maintain the minimum adjusted net capital of \$1,000,000 as required by the Act and NFA rules. *See* 7 U.S.C. § 6f(b) and 17 C.F.R. § 1.17(a)(1)(C); *See also* NFA Financial Requirements Section 11(a)(i).

4. On July 17, 2007, Defendant Sulaiman Husain (“Sal Husain”) withdrew approximately \$1,000,000 from Nations’ bank account to pay off his and Relief Defendant Sammy Joe Goldman’s (“Sammy Goldman”) personal home equity loans obtained from Wachovia Bank (“Wachovia”).

5. According to Nations’ required monthly financial reports known as Form 1-FR-FCMs (“1-FR”) filed with the NFA and CFTC, Sal Husain’s \$1,000,000 withdrawal on July 17, 2007 caused Nations to fall below the \$1,000,000 adjusted net capital requirement.

6. On July 25, 2007, however, Sal Husain stated to a NFA staff member for the first time that he and Sammy Goldman actually loaned the \$1,000,000 to Nations pursuant to two purported loan agreements executed on July 31, 2006. Nations has never reported the

\$1,000,000 as a loan obligation or liability on its 1-FRs filed with the CFTC and NFA from August 2006 through June 2007 or any other documents filed with the CFTC and/or NFA during this same period. Therefore, Nations necessarily made false statements to a registered futures association by representing such funds as capital.

7. Furthermore, if the \$1,000,000 was a loan that Nations was obligated to repay, then Nations was undercapitalized from July 31, 2006 through July 23, 2007. Alternatively, if the \$1,000,000 was not a loan that Nations was obligated to repay, then Nations was undercapitalized from July 17, 2007 through July 23, 2007.

8. Nations currently owes its forex customers approximately \$5,000,000.

9. By virtue of their conduct, the Defendants have engaged, are engaging, or are about to engage in acts and practices that violate Sections 4f(b) and 9(a)(4) of the Act, 7 U.S.C. §§ 6f(b) and 13(a)(4) (2002) and Commission Regulations (“Regulation(s)”) 1.17(a)(1)(C), 1.17(a)(4), 1.10(d)(1)(vi), 17 C.F.R. §§1.17(a)(1)(C), 1.17(a)(4), 1.10(d)(1)(vi) (2007).

10. Accordingly, the Commission brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin Defendants’ unlawful acts and practices and to compel their compliance with the Act and Regulations. In addition, the Commission seeks disgorgement of Defendants’ and Relief Defendants’ ill-gotten gains, restitution to customers for damages proximately caused by Defendants’ violations, civil monetary penalties and such other relief as this Court may deem necessary and appropriate.

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

III. THE PARTIES

A. Plaintiff

12. Plaintiff, Commission, is an independent federal regulatory agency charged with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated under it, 17 C.F.R. §§ 1.1 *et seq.* The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

B. Defendants

13. Defendant Nations has been a registered FCM and member of the NFA since August 22, 2005. From August 22, 2005 through July 23, 2007, Nations operated as a FDM in that they were the counterparty or offered to be the counterparty to off-exchange foreign currency transactions with retail customers. During the relevant period, Nations' principal place of business was located at 1700 NW 64th Street, Suite 100, Fort Lauderdale, Florida, 33309.

14. Defendant Sal Husain was a director, the Chief Financial Officer, and a principal of Nations during the relevant period. Since June 28, 2005, he has been listed as a manager of Nations on Florida Department of State Division of Corporations records. He is the founder and a chief financial backer of Nations. At all times relevant hereto, he ran and exercised direct and complete control of Nations with his son, Defendant Mansur Husain ("Manny Husain"). He is a resident of Southwest Ranches, Florida. In March 2002, Sal Husain was the subject of a NFA complaint alleging that he failed to supervise a guaranteed introducing broker. In May 2003, Sal Husain was the subject of a NFA complaint charging that he failed

to diligently supervise introducing broker employees and agents in the conduct of their commodity futures activities.

15. Defendant Manny Husain was the President and a principal of Nations during the relevant period. Since January 30, 2006, he has been listed as a manager of Nations with the Florida Department of State Division of Corporation records. He is the son of Sal Husain. He, along with his father, ran and exercised direct and complete control of Nations. He is a resident of Davies, Florida.

C. Relief Defendants

16. Relief Defendant Sammy Goldman, at all relevant times, was an owner and former principal of Nations. From January 30, 2006 through January 23, 2007, he was listed as a manager of Nations. He is a resident of Delray Beach, Florida. In October 2001, Sammy Goldman was the subject of a NFA complaint alleging that he failed to diligently supervise employees and agents in the conduct of their commodity futures activities. In June 1999, Goldman was the subject of an NFA complaint alleging that he used promotional material that was deceptive and misleading, failed to supervise the use of promotional material and provided misleading information to the NFA. The complaint also alleged that Sammy Goldman failed to diligently supervise employees.

17. Relief Defendant Lalita Husain is the wife of Sal Husain and was an owner and principal of Nations. She purportedly shares ownership of her husband's primary residence, which secured Sal Husain's home equity loan. She did not provide any consideration for Nations paying off the home equity loan on her home. She had no legitimate interest in Nations' funds used to pay off the home equity loan.

18. Relief Defendant Rosalind Goldman is the wife of Sammy Goldman. Rosalind Goldman purportedly shares ownership of her husband's primary residence which secured Sammy Goldman's home equity loan. She did not provide any consideration for Nations paying off the home equity loan on her home. She had no legitimate interest in Nations' funds used to pay off the home equity loan.

IV. FACTS

19. FDMs are defined as FCMs that are the counterparty or offer to be the counterparty to forex transactions. *See* NFA Bylaw 306 (a).

20. Effective July 31, 2006, all FCMs acting as FDMs have been required to maintain adjusted net capital of \$1,000,000 to ensure that they can meet their financial obligations. *See* 7 U.S.C. § 6f(b) and 17 C.F.R. § 1.17(a)(1)(C); *See also* NFA Notice I-06-09 and NFA Financial Requirements Section 11(a)(i).

21. From August 22, 2005 through July 23, 2007, Nations, a registered FCM, acted as a FDM in that they were the counterparty or offered to be the counterparty to off-exchange forex transactions with retail customers. During this same period Nations also offered retail customers trading in exchange-traded futures transactions.

22. On or about July 15, 2006, Sal Husain and Sammy Goldman took out home equity loans from Wachovia in the amount of \$500,000 each. The home equity loans were secured by the primary residences of Sal Husain and Sammy Goldman. Sal Husain and Sammy Goldman purportedly share ownership of their primary residences with their wives, Relief Defendants Lalita Husain and Rosalind Goldman, respectively.

23. On July 31, 2006, Sal Husain and Sammy Goldman opened a money market account in the name of Nations and each deposited \$500,000 from their home equity loans

into this account to meet or make it appear as though Nations was meeting NFA's new \$1,000,000 minimum adjusted net capital requirement.

24. All FCMs are required to file monthly 1-FR reports with the CFTC and NFA. *See* 17 C.F.R. §§ 1.10(b) and (c). In addition each 1-FR report must contain all material information to make the report not misleading. *See* 17 C.F.R. § 1.10(d)(1)(vi).

25. On or about August 23, 2006, Nations submitted a form 1-FR that represented the \$1,000,000 as a capital deposit to meet the NFA's new minimum adjusted net capital requirement.

26. Nations never reported this \$1,000,000 to NFA as a loan or liability on its form 1-FRs for the months of July 2006 through June 2007 or on any other documents submitted to the CFTC or NFA.

27. Manny Husain is listed as the contact person on each 1-FR submitted by Nations.

28. On July 17, 2007, Sal Husain and Sammy Goldman went to Wachovia and caused Nations to withdraw the \$1,000,000 plus accrued interest from Nations' money market account. Sal Husain signed two checks drawn on Nations' money market account in the amount of \$503,195 each. On the same day Sal Husain and Sammy Goldman used these funds to satisfy their home equity loans with Wachovia. Sammy Goldman witnessed Sal Husain sign the two checks and payoff the home equity loans.

29. On July 21, 2007, Nations, through Sal Husain, notified the NFA that Nations had fallen below NFA's \$1,000,000 minimum adjusted net capital requirement.

30. On July 23, 2007, Nations, through Sal Husain, notified the NFA in a letter that Nations was under the minimum adjusted net capital requirement by approximately \$3.5

million “due to losses in the forex markets.” This letter also indicated that Nations was attempting to raise \$5 million “to make customers whole.”

31. On the same day, Sal Husain completed and submitted to the NFA a form 1-FR which indicated that since at least July 20, 2007, Nations was undercapitalized.

32. That same day the NFA sent Nations a letter notifying it that, inasmuch as Nations was unable to demonstrate compliance with the minimum capitalization requirements, Nations was required to cease doing business, including the solicitation or acceptance of any additional customer funds, and could only accept or place trades for liquidation purposes until such time as it demonstrated it had in place the required capitalization, pursuant to Regulation 1.17(a)(4).

33. On July 24, 2007, Sal Husain represented to NFA staff members that the \$1,000,000 that he withdrew from Nations on July 17, 2007 was for repayment of a loan from Wachovia to Nations. NFA requested all documentation regarding any loan between Nations and Wachovia. Nations has never produced any such loan documents.

34. On the same day, the NFA initiated and filed a Member Responsibility Action (“MRA”) against Nations that, among other things, ordered the firm to cease doing business due to the firm’s capital deficiencies and prohibited the firm from transferring any funds.

35. On July 25, 2007, Sal Husain represented to NFA staff members for the first time that he and Sammy Goldman actually loaned the \$1,000,000 to Nations pursuant to two loan agreements.

36. The two loan agreements were purportedly executed on July 31, 2006 between Nations and Sal Husain and Sammy Goldman. The purported loan agreement between Sal Husain and Nations was signed by Sal Husain and Manny Husain on behalf of Nations.

The purported loan agreement between Sammy Goldman and Nations was signed by Sammy Goldman, and Manny Husain on behalf of Nations. Pursuant to each purported loan agreement, Nations agreed to remit payment of the loan balance (\$500,000) plus any accrued interest to Wachovia within one year (July 31, 2007).

37. To date, neither Sal Husain nor Sammy Goldman has returned the funds to Nations that were used to payoff their home equity loans. In addition, Nations currently owes its forex customers \$5,000,000.

38. From as early as July 31, 2006 through July 23, 2007, Nations failed to maintain the minimum adjusted net capital required by the Act and NFA rules.

V. VIOLATIONS OF THE ACT AND REGULATIONS

COUNT ONE: VIOLATIONS OF SECTION 4f(b) OF THE ACT AND REGULATIONS 1.17(a)(1)(C) and 1.17(a)(4): FAILURE TO MAINTAIN REQUIRED MINIMUM ADJUSTED NET CAPITAL AND OPERATING WHILE UNDERCAPITALIZED

39. The allegations set forth in paragraphs 1 through 38 are re-alleged and incorporated herein by reference.

40. Pursuant to Section 4f(b) of the Act, 7 U.S.C. § 6f(b), and Regulation 1.17(a)(1)(C), 17 C.F.R. § 1.17(a)(1)(C), all FCMs acting as FDMs or counterparties to off-exchange foreign currency transactions are required to maintain a minimum adjusted net capital of \$1,000,000. *See* 7 U.S.C. § 6f(b) and 17 C.F.R. § 1.17(a)(1)(C).

41. Pursuant to Regulation 1.17(a)(4), 17 C.F.R. § 1.17(a)(4), all FCMs who are not in compliance with Regulation 1.17(a)(1)(C), 17 C.F.R. § 1.17(a)(1)(C), or are unable to demonstrate such compliance must transfer all customer accounts and immediately cease

doing business as a FCM and may trade for liquidation purposes only. *See* 17 C.F.R. § 1.17(a)(4).

42. From August 22, 2005 through July 23, 2007, Nations operated as a FDM by acting as the counterparty to retail customers' trading forex. From as early as July 31, 2006 through July 23, 2007, Nations failed to satisfy the \$1,000,000 minimum adjusted net capital requirement in violation of Section 4f(b) of the Act, 7 U.S.C. § 6f(b), and Regulation 1.17(a)(1)(C), 17 C.F.R. § 1.17(a)(1)(C).

43. From as early as July 31, 2006 through July 23, 2007, Nations failed to demonstrate compliance with CFTC's and NFA's \$1,000,000 minimum adjusted net capital requirement and failed to transfer all customer accounts and immediately cease doing business as a FCM, in violation of Regulation 1.17(a)(4), 17 C.F.R. § 1.17(a)(4).

44. Each day Nations failed to satisfy its minimum adjusted net capitalization requirements, is alleged as a separate and distinct violations of Section 4f(b) of the Act, 7 U.S.C. § 6f(b), and Regulation 1.17(a)(1)(C), 17 C.F.R. § 1.17(a)(1)(C).

45. Each day Nations failed to demonstrate compliance with CFTC's and NFA's \$1,000,000 minimum adjusted net capital requirement and failed to transfer all customer accounts and immediately cease doing business as a FCM, is alleged as a separate and distinct violations of Section 4f(b) of the Act, 7 U.S.C. § 6f(b), and Regulation 1.17(a)(4)(C), 17 C.F.R. § 1.17(a)(4).

46. Sal Husain and Manny Husain controlled Nations and either knowingly induced or did not act in good faith with respect to the acts and practices of Nations and its employees, officers, agents, directors, and/or principals that constitute the violations Section 4f(b) of the Act, 7 U.S.C. § 6f(b), and Regulations 1.17(a)(1)(C) and 1.17(a)(4), 17 C.F.R. §§

1.17(a)(1)(C) and 1.17(a)(4). Defendants Sal Husain and Manny Husain are therefore liable as controlling persons for those violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

47. Based on their conduct, Sal Husain and Manny Husain knowingly and willfully aided, abetted, counseled, commanded, induced or procured Nations of violations of Section 4f(b) of the Act, 7 U.S.C. § 6f(b), and Regulations 1.17(a)(1)(C) and 1.17(a)(4), 17 C.F.R. §§ 1.17(a)(1)(C) and 1.17(a)(4). Defendants Sal Husain and Manny Husain are therefore liable for those violations pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a).

COUNT TWO:
VIOLATION OF SECTION 9(a)(4) OF THE ACT:
MAKING FRAUDULENT STATEMENTS AND/OR PROVIDING FALSE
DOCUMENTS TO A REGISTERED FUTURES ASSOCIATION

48. Plaintiff re-alleges paragraphs 1 through 38 above and incorporates these allegations herein by reference.

49. Sal Husain and Sammy Goldman allege that the \$1,000,000 deposited with Nations on July 31, 2006 was actually a loan that Nations was obligated to repay to Wachovia. If this is true, then from August 2006 through June 2007, Nations, by failing to disclose the \$1,000,000 as a loan or liability, willfully filed false monthly 1-FRs and other documents with to the CFTC and NFA and made false representations knowing that such 1-FRs, documents, and/or representations contained false information all in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4).

50. Each false form 1-FR submitted by Nations from August 2006 through June 2007 is separate and distinct violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4).

51. Husain and Manny Husain controlled Nations and either knowingly induced or did not act in good faith respecting the acts and practices of Nations and its employees, officers, agents, directors, and/or principals that constitute the violations of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4). Sal Husain and Manny Husain are therefore liable as a controlling persons for those violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

**COUNT THREE:
VIOLATION OF REGULATION 1.10(d)(1)(vi):
FORM 1-FRs FAILED TO CONTAIN MATERIAL
INFORMATION TO MAKE THEM NOT MISLEADING**

52. Plaintiff re-alleges paragraphs 1 through 38 above and incorporates these allegations herein by reference.

53. Regulation 1.10(b) requires all FCMs to file 1-FR reports with the CFTC and NFA. *See* 17 C.F.R. § 1.10(b). Regulation 1.10(d)(1)(vi) provides that each form 1-FR must contain material information to make the form not misleading. *See* 17 C.F.R. § 1.10(d)(1)(vi).

54. Sal Husain and Sammy Goldman allege that the \$1,000,000 deposited with Nations on July 31, 2006 was actually a loan that Nations was obligated to repay to Wachovia. If this is true, then from August 2006 through June 2007, Nations failed to disclose the \$1,000,000 as a loan or liability. Nations' failure to disclose the \$1,000,000 as a loan or liability was material and misleading in violation of Regulation 1.10(d)(1)(vi), 17 C.F.R. § 1.10(d)(1)(vi).

55. Each misleading form 1-FR submitted by Nations from August 2006 through June 2007 is separate and distinct violation of Regulation 1.10(d)(1)(vi), 17 C.F.R. § 1.10(d)(1)(vi).

56. Sal Husain and Manny Husain controlled Nations and either knowingly induced or did not act in good faith respecting the acts and practices of Nations and its employees, officers, agents, directors, and/or principals that constitute the violations of Regulation

1.10(d)(1)(vi), 17 C.F.R. § 1.10(d)(1)(vi). Sal Husain and Manny Husain are therefore liable as a controlling persons for those violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

COUNT FOUR:
DISGORGEMENT OF THE ASSETS OF DEFENDANT
SAL HUSAIN AND THE RELIEF DEFENDANTS

57. Plaintiff re-alleges paragraphs 1 through 38 above and incorporates these allegations herein by reference.

58. Nations, through its undercapitalization, has violated the Act and Regulations as alleged herein.

59. Sal Husain fraudulently transferred funds belonging to Nations which was required to be maintained for the benefit of Nations customers and/or creditors.

60. Sal Husain, Sammy Goldman, Rosalind Goldman, and Lalita Husain have received these funds or otherwise benefited from these funds which are directly traceable to the funds obtained from Nations as a result of Sal Husain's and Sammy Goldman's fraudulent conduct.

61. Upon information and belief, the Sal Husain, Sammy Goldman, Rosalind Goldman, and Lalita Husain are not *bona fide* purchasers with legal and equitable title to the customers' funds or assets, and Sal Husain, Sammy Goldman, Rosalind Goldman, and Lalita Husain will be unjustly enriched if they are not required to disgorge the funds or the value of the benefit they obtained from Sal Husain's fraudulent conduct and embezzlement.

62. Sal Husain, Sammy Goldman, Rosalind Goldman, and Lalita Husain should be required to disgorge the funds and assets, or the value of the benefit they received from those funds and assets, which are traceable to Nations' accounts.

63. By reason of the foregoing, Sal Husain, Sammy Goldman, Rosalind Goldman, and Lalita Husain hold funds and assets in constructive trust for the benefit of Nations' customers.

VI. RELIEF REQUESTED

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

- a) a permanent injunction enjoining Defendants from violating Sections 4f(b) and 9(a)(1) and (4) of the Act, 7 U.S.C. §§ 6f(b) and 13(a)(1) and (4) (2002) and; Regulations 1.17(a)(1)(C), 1.17(a)(4), 1.10(d)(1)(vi), 17 C.F.R. §§ 1.17(a)(1)(C), 1.17(a)(4), and 1.10(d)(1)(vi) (2006);
- b) an order directing Defendants and Relief Defendants 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, as described herein, and interest thereon from the date of such violations;
- c) an order directing Defendants to make full restitution to every customer whose funds were lost as a result of acts and practices which constituted violations of the Act and Regulations, described herein, and interest thereon from the date of such violations;
- d) civil penalties against Defendants in the amount of not more than the higher of \$130,000 or triple the monetary gain to the Defendants for each violation by each of the Defendants of the Act or Regulations; and
- e) such other and further remedial ancillary relief as the Court may deem appropriate.

Date: _____

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