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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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CLEK, U.S. DIST. COURT  
MINNEAPOLIS, MN

U.S. Commodity Futures Trading  
Commission,

Plaintiff,

v.

Charles E. Hays a.k.a. Chuck Hayes  
And Crossfire Trading, LLC,

Defendants.

No. 09 CIV 259 DWF/ASB

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

I. SUMMARY

1. From at least January 2006 to the present (“the relevant time”), Charles E. Hays a.k.a. Chuck Hayes (“Hays”), individually and as the controlling person of Crossfire Trading, LLC (“Crossfire”), solicited and accepted over \$5,500,000 from at least three individuals for the purpose of trading commodity futures in a commodity pool on their behalf.

2. Hays represented to prospective and actual customers that Crossfire operated a commodity pool that day-traded stock index and crude oil futures on behalf of pool participants and earned a 3% monthly return with no losing months.

3. Hays provided at least two pool participants with a false account statement showing that Crossfire had over \$37 million in a commodity futures trading account carried at Dorman Trading, LLC ("Dorman"), a futures commission merchant ("FCM") registered with the Commodity Futures Trading Commission ("CFTC" or "Commission"). However, Crossfire has never had an account with Dorman and Hays has not had an account with Dorman since July 2008. Hays also misappropriated investor funds using them for personal expenses instead of commodity futures trading.

4. By making false statements to at least three pool participants regarding profits and losses, misappropriating their funds and issuing a false statement to at least two pool participants, Defendants cheated, defrauded and deceived pool participants and prospective pool participants, in violation of Sections 4b(a)(2)(i), (ii) and (iii), and 4o(1), of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6b(a)(2)(i), (ii), and (iii) and 6o(1)(2006), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the "CFTC Reauthorization Act of 2008"), §§ 13101-13204, 122 Stat. 1651.

5. Defendants have also acted in a capacity requiring registration with the CFTC without the benefit of registration in violation of Sections 4m(1) and 4k(2) of the Act.

6. Accordingly, the CFTC 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. In addition, the CFTC seeks rescission, restitution, disgorgement, civil monetary penalties and such other equitable relief as this Court may deem necessary or appropriate.

## II. JURISDICTION AND VENUE

7. 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 in the proper District Court of the United States against such person to enjoin such practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

8. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because the Defendants reside in this District and the acts and practices in violation of the Order have occurred within this District.

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

### III. THE PARTIES

10. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with administering and enforcing the Act, 7 U.S.C. §§ 1 *et seq.*, and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.*

11. Defendant Crossfire Trading, LLC was incorporated in March 2006 in Minnesota. Hays is the sole owner of the company and operates the company out of his residence. Crossfire represented to prospective and existing pool participants that it operated a commodity pool that traded stock index and crude oil futures. Crossfire has never been registered with the Commission in any capacity.

12. Defendant Charles E. Hays resides in Rosemount, Minnesota. He owns and operates and acts as an associated person ("AP") of Crossfire Trading, which solicits customers to invest in a commodity pool. He has never been registered with the Commission in any capacity.

### IV. FACTUAL BACKGROUND

#### A. Statutory Background

13. An FCM is defined in the Act as an individual, association, partnership, corporation or trust that solicits or accepts orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract

market and that accepts payment from or extends credit to those whose orders are accepted. 7 U.S.C. § 1a(20).

14. An IB is defined in the Act as any person engaged in soliciting or accepting orders for the purchase or sale of commodity futures contracts, who does not accept any money, securities, or property or extend credit, to margin, guarantee, or secure any trades or contracts that result. 7 U.S.C. § 1a(23).

15. A commodity pool operator ("CPO") means, 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. Section 1a(4) of the Act, 7 U.S.C. (4) (2002).

16. An associated person ("AP") is defined in Section 4k of the Act, 7 U.S.C. § 6k and Commission Regulation 1.3(aa)(1) and (2), 17 C.F.R. § 1.3(aa)(1) and (2), with certain qualifications, as a natural person associated with any CTA, CPO or FCM as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves: (i) the solicitation or acceptance of customers' or options customers' orders; or (ii) the supervision of any person or persons so engaged.

## **B. Solicitation Fraud And Misappropriation**

17. A Crossfire customer, Bruce Hendry ("Hendry"), first heard of Hays and Crossfire approximately three years ago from a friend who claimed that he had invested his retirement money with Hays and Crossfire and had been receiving consistent monthly returns of approximately 3% with no losing months. The friend also told Hendry that he received monthly checks from his investment with Hays and Crossfire.

18. In October 2007, Hendry met with Hays after continually hearing from his friend that he was earning consistently profitable monthly returns on his investment with Hays. Hays told Hendry that he was a day trader and traded primarily stock index and crude oil futures.

19. Shortly after the meeting, Hendry visited Hays' home in Rosemount, Minnesota to learn more about Hays' trading for customers and to watch Hays trade. Hendry observed Hays execute a couple of trades. Hays told Hendry that he had a profitable trading strategy and that he earned approximately 3% per month. Hays also provided Hendry with a customer agreement stating that profits and losses would be divided 80% to the customer and 20% to Crossfire as a fee.

20. Based on his friend and Hays' representations of consistently profitable returns, in November 2007, Hendry decided to invest with Hays and Crossfire for the purpose of trading commodity futures in the Crossfire commodity

pool. He invested two million dollars of his own money and one million dollars from the Hendry Family Foundation. In March 2008, after representations from Hays and Crossfire that Hendry had earned consistent profits for four months, Hendry invested an additional two million dollars of his own funds with Crossfire.

21. Hendry wired all of the funds to a bank account at Wells Fargo Bank in the name of Crossfire Trading at Hays' direction. Hendry received monthly account statements via email from Crossfire or from Crossfire's password protected website for both his personal investment and the family foundation investment. The statements were on Crossfire's letterhead and on information and belief was drafted by Hays. The statements reflected monthly profits of approximately 3% consistently with no losing months. However, Crossfire has never had an active futures trading account.

22. In October 2008, Hendry requested and received a \$30,000 distribution in the form of a check. Hendry has not requested or received any additional funds from Hays and Crossfire. By the end of December 2008, Hendry's statements from Crossfire reflected that Hendry's account balance was over five million dollars, and the Hendry Family Foundation's account balance was over \$1.3 million.

### **C. False Account Statement**

23. In October or November 2008, Hendry became concerned about his investment and questioned Hays at his home about his trading strategy and allocation of profits and losses. Hays told Hendry for the first time that Crossfire trades through an account at Dorman, and showed Hendry an account statement on Dorman letterhead that he pulled from an envelope that appeared to have just been mailed to him.

24. Hays also explained for the first time that Dorman was the entity that cleared Crossfire's trades and where Crossfire maintained Hendry's funds. Hays told Hendry that Crossfire's account at Dorman was introduced to Dorman by an entity called NDX Futures, Inc. ("NDX"), which is an IB registered with the CFTC.

25. On or about December 23, 2008, Hendry went to Hays' house again to inquire about his investment. Specifically, Hendry asked Hays exactly where his money was and how it was being traded. Hays avoided answering Hendry's questions, but gave Hendry a false account statement on Dorman's letterhead for November 2008 purportedly for the entire Crossfire pool. The statement appeared to show that Crossfire had over \$37 million at Dorman, with over \$900,000 in profits for November 2008, and that Crossfire cleared its trades through Dorman,



and was introduced to Dorman by NDX. Hays gave the same statement to at least one other pool participant.

26. Hendry also asked Hays where the calculation of Crossfire's fees was represented as he did not see it reflected anywhere on the statements he received from Crossfire, and Hays told Hendry just to trust him. Additionally, while Hendry was at Hays' house he saw a list of about thirty names, which Hays referred to as his confidential customer list.

27. In reality, Crossfire has never maintained an account with Dorman or NDX. NDX acted as the IB for an account Hays opened at Dorman in his own name in January 2006, which Hays initially funded in March 2006 with \$300,000 and deposited a total of two million over the life of the account. Hays represented to NDX that he did not solicit any customer funds, and used his own funds to trade this account. The account number was only one digit different from the Crossfire statement Hays provided to Hendry on Dorman letterhead. Thus, on information and belief, Hays altered at least one of the statements he received from Dorman for his personal account to appear as though it was an account statement for Crossfire trading.

28. Hays has not traded through his Dorman account since March 2008. On July 7, 2008, Hays received a check for approximately \$84,000 from his Dorman account, and closed out the account on July 22, 2008, withdrawing the

balance of approximately \$300,000. The remainder of the funds he deposited into the account were used for trading commissions and fees and were lost trading.

#### **D. Misappropriation of Customer Funds**

29. Defendants did not use Hendry's money for commodity futures trading through Dorman as they represented to Hendry. Crossfire never had an account with Dorman, and Hays' personal account at Dorman, which was closed in July 2008, had a total of two million deposited over the life of the account, the last deposit in October 2007, one month before Hendry invested. Therefore, none of Hendry's money was deposited into that account.

30. When Hendry questioned Hays about how Hays was handling his investment, Hays provided Hendry with the November 2008 false account statement previously described.

31. Additionally, in July 2008, Hays took delivery of a brand new four million dollar yacht that he ordered and purchased in January 2008 shortly after receiving Hendry's initial three million dollar investment. On information and belief, Hays misappropriated Hendry's and possibly others' investments for the purpose of commodity futures trading in the Crossfire commodity pool to benefit himself, including the purchase of the yacht.

**E. Hays is a Controlling Person of Crossfire**

32. At all relevant times, Hays has owned and operated Crossfire out of his home and acted as an AP of Crossfire, which acted as a CPO.

33. Hays exercised control over the day-to-day business operations of Crossfire.

34. Hays solicited prospective pool participants.

35. Hays knowingly induced Crossfire's violations by personally participating in the fraud by knowingly misrepresenting profit potential, risk of loss, and trading profits to prospective and actual pool participants and misappropriating their money.

36. Hays also knowingly distributed a false account statement to at least two pool participants.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT****COUNT ONE****VIOLATIONS OF SECTIONS 4b(a)(2)(i) AND (iii) OF THE ACT:  
FRAUD BY MISREPRESENTATION AND MISAPPROPRIATION**

37. The allegations set forth in paragraphs 1 through 36 are re-alleged and incorporated by reference.

38. Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), make it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully deceive or attempt to deceive by any means whatsoever other

persons in or in connection with 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 such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.

39. Beginning in at least January 2006 and continuing through the present, Hays and Crossfire violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), by, among other things: (1) soliciting investments through fraudulent misrepresentations about Crossfire's past and current trading performance; and (2) misappropriating funds received from pool participants for the purpose of trading commodity futures.

40. Hays and Crossfire therefore: (a) violated Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. §§ 4b(a)(1)(A), and (C), for conduct occurring on or after June 18, 2008; and (b) violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2000), the pre-CFTC Reauthorization Act of 2008 precursors to Sections 4b(a)(1)(A) and (C) of the Act for conduct occurring before June 18, 2008.

41. The actions and omissions of Hays, as described in this Count One, were done within the scope of his employment with Crossfire and, therefore, Crossfire is liable for his violations of Sections 4b(a)(2)(i) and (iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2.

42. During the relevant time, Hays directly and indirectly controlled Crossfire, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count I. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Hays is liable for the violations described in this Count I to the same extent as Crossfire.

43. Each material misrepresentation or omission from at least March 2006 to the present, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i) and (iii) of the Act.

## COUNT TWO

### **VIOLATIONS OF SECTION 4b(a)(2)(ii) OF THE ACT: FRAUD BY MAKING FALSE STATEMENTS**

44. The allegations set forth in paragraphs 1 through 36 are re-alleged and incorporated herein.

45. Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii), makes it unlawful for any person to willfully make or cause to be made to other persons false reports or statements, or willfully to enter or cause to be entered for other

persons false records in or in connection with 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 such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.

46. Hays violated 4b(a)(1)(B) of the Act, 7 U.S.C. §4b(a)(1)(B), for conduct occurring on or after June 18, 2008; and violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. §§6b(a)(2)(ii)(2000), the pre-CFTC Reauthorization Act of 2008 precursors to Sections 4b(a)(1)(B) of the Act for conduct occurring before June 18, 2008 by, among other things, making or causing to be made at least one false statement issued or communicated to at least two pool participants who invested money with Hays and Crossfire to trade commodity futures contracts.

47. The actions and omissions of Hays, as described in this Count Two, were done within the scope of his employment with Crossfire and, therefore, Crossfire is liable for his violations of Sections 4b(a)(2)(ii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2.

48. During the relevant time, Hays directly and indirectly controlled Crossfire, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count Two. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Hays is liable for the violations described in this Count Two to the same extent as Crossfire.

49. Each false report or statement made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(ii) of the Act.

### **COUNT THREE**

#### **VIOLATIONS OF SECTION 4o(1) OF THE ACT: FRAUD BY COMMODITY POOL OPERATORS**

50. The allegations set forth in paragraphs 1 through 36 are re-alleged and incorporated herein.

51. Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B), prohibit any CPO and any AP of a CPO from directly or indirectly employing any device, scheme or artifice to defraud any client, participant or prospective client or participant, or engaging in transactions, practices or a course of business which operate as a fraud or deceit upon any client or participant or prospective client or participant by using the mails or other means or instrumentalities of interstate commerce.

52. Beginning in or about January 2006 and continuing through the present, Hays, while acting as an AP of a CPO, and Crossfire, while acting as a CPO, violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that they have employed or are employing, schemes or artifices to defraud pool participants or prospective pool participants or have engaged or are engaging in transactions, practices or a course of business which operate and operated as a fraud or deceit upon pool participants or prospective pool participants by using the mails or other means or instrumentalities of interstate commerce. The fraudulent acts included, but are not limited to the following: (1) soliciting investments through fraudulent misrepresentations about Crossfire's past and current trading performance; and (2) misappropriating funds received from pool participants for the purpose of trading commodity futures.

53. The actions and omissions of Hays, as described in this Count Three, were done within the scope of his employment with Crossfire and, therefore, Crossfire is liable for his violations of Section 4o(1) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2.

54. During the relevant time, Hays directly and indirectly controlled Crossfire and its employees, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count



Three. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Hays is liable for the violations described in this Count Three to the same extent as Crossfire.

55. Each material misrepresentation or omission made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act.

#### **COUNT FOUR**

##### **VIOLATION OF SECTION 4m(1) OF THE ACT: FAILURE TO REGISTER AS A CPO**

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

57. With certain exemptions and exclusions not applicable here, all CPOs operating a commodity pool are required to be registered with the Commission pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

58. Crossfire engaged in activities as a CPO without the benefit of registration as a CPO in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

59. Hays, directly or indirectly controlled Crossfire and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Crossfire's violations alleged in this count. Hays is thereby liable for Crossfire's violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

60. Each use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO without proper registration

during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

### **COUNT FIVE**

#### **VIOLATION OF SECTION 4k(2) OF THE ACT: HAYS' FAILURE TO REGISTER AS AN AP OF CROSSFIRE**

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

62. With certain specified exceptions and exemptions not applicable here, all APs of CPOs are required to be registered with the Commission pursuant to Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

63. Hays engaged in his solicitation activities for Crossfire without the benefit of registration as an AP of a CPO in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

64. Crossfire, as principal, allowed Hays to engage in his solicitation activities for Crossfire without the benefit of registration as an AP of a CPO and, therefore, Crossfire is liable for Hays' violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

### **VI: RELIEF REQUESTED**

WHEREFORE, the CFTC 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. An order finding that Defendants violated Sections 4b, 4o(1), 4m(1) and 4k(2) of the Act, 7 U.S.C. §§ 6b, 6o(1), 6m(1) and 6k(2);

B. Enter an *ex parte* statutory restraining order and an order of preliminary injunction pursuant to Section 6c(a) of the Act restraining Defendants and all persons or entities insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. 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 located, including all such records concerning Defendants' business operations;
2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations; and

3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account, whether domestic or foreign, held by, under the control, or in the name of the Defendants;

C. Enter orders of preliminary and permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);
2. entering into any transactions involving commodity futures, options on commodity futures, and/or commodity options as that term is defined in Regulation 32.1(b)(1) ("commodity options"), for their own personal account or for any account in which they have a direct or indirect interest;

3. Directly or indirectly soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity futures or options contracts;
4. Engaging in, controlling, or directing the trading of any commodity futures or options accounts, on their own behalf or for or on behalf of any other person or entity, whether by power of attorney or otherwise;
5. Introducing customers to any other person engaged in the business of commodity futures and options trading;
6. Issuing statements or reports to others concerning commodity futures or options trading; and
7. 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 that the Defendants shall be permitted to engage in activity as a commodity trading advisor, as that term is defined by Section 1a(6) of the Act, 7 U.S.C. § 1a(6) ("CTA"), provided that they do not engage in any of the activities proscribed by Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2008).

D. Enter an order directing that Defendants make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds Defendants received from and paid to pool participants and other persons in connection with commodity futures and options transactions or purported commodity futures and options transactions, including the names, mailing addresses, email addresses and telephone numbers of any such persons from whom they received such funds from January 1, 2006 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from pool participants, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from January 1, 2006 to and including the date of such accounting;

E. Enter an order requiring Defendants immediately to identify and provide an accounting for all assets and property that they currently maintain outside the United States, including, but not limited to, all funds on deposit in any financial institution, futures commission merchant, bank, or savings and loan accounts held by, under the control of, or in the name of Hays and Crossfire, whether jointly or otherwise, and requiring them to repatriate all funds held in such accounts by paying them to the Clerk of the Court, or as otherwise ordered by the Court, for further disposition in this case.

F. Enter an order requiring Defendants to disgorge to any officer appointed or 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 acts or practices that constitute violations of the Act as described herein, including pre-judgment interest;

G. Enter an order directing the Defendants and 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 them and any of the investors whose funds were received by them as a result of the acts and practices which constituted violations of the Act and Regulations, as described herein;

H. Enter an order requiring Defendants to make restitution by making whole each and every pool participant or other person whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre-judgment interest;

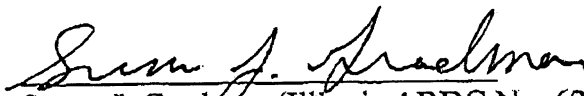
I. Enter an order requiring Defendants to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of: (1) triple the monetary gain to Defendants for each violation of the Act, Regulations, and Order, or (2) a penalty of \$130,000 for each violation;

J. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and

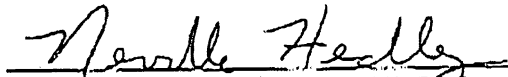
K. Enter an Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: February 5, 2009

Respectfully Submitted,



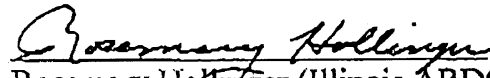
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