UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES COMMODITY FUTURES TRADING COMMISSION,	
Plaintiff,	Civil Action No. _____
v.	**FILED UNDER SEAL**
CAPITAL BLU MANAGEMENT, LLC, a Florida limited liability company; DD INTERNATIONAL HOLDINGS, LLC, a Florida limited liability company; DONOVAN DAVIS, JR., an individual; BLAYNE DAVIS, an individual; and DAMIEN BROMFIELD, an individual,	COMPLAINT FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTIES, AND OTHER EQUITABLE RELIEF
Defendants,	
NAKANO CAPITAL PARTNERS, LP, a Florida limited partnership; NAKANO CAPITAL ADVISORS, LLC, a Florida limited liability company; and NAKANO CAPITAL MANAGEMENT, LLC, a Florida limited liability company,	
Relief Defendants.	

Plaintiff, the United States Commodity Futures Trading Commission ("Commission" or CFTC"). by its attorneys, alleges as follows:

I. SUMMARY

1. From at least January 2008 to the present, Capital Blu Management, LLC, ("Capital Blu"), through its principals and control persons. Donovan Davis, Jr. ("D.

Davis Jr.") (individually and as owner of DD International Holdings, LLC, ("DDIH")), Blayne Davis ("B. Davis"), and Damien Bromfield ("Bromfield") (hereinafter collectively "Defendants"), solicited approximately $17 million from approximately 100 members of the general public for the purported purpose of investing in off-exchange foreign currency futures contracts ("forex"). Defendants told prospective investors that, among other things, their funds would be pooled together in the CBM FX Fund, LP (the "FX Fund" or the "Pool"), a commodity pool established by Capital Blu in September 2007. Rather than invest all pool participant funds in forex, however, Defendants invested only some of the funds in forex and used other funds to purchase and sell on-exchange foreign currency futures ("on-exchange futures") and options on off-exchange foreign currency ("forex options").

2. D. Davis Jr., B. Davis, and Bromfield also misappropriated millions of dollars of pool participant funds from the Pool trading accounts, commingled them with funds in bank and trading accounts held in the name of Capital Blu, and, upon information and belief, used these funds for their personal use. In addition, B. Davis withdrew funds from the Pool trading accounts and deposited those funds into accounts held in the name of entities controlled by him, namely Nakano Capital Partners, LP, Nakano Capital Advisors, LLC, and/or Nakano Capital Management, LLC (collectively the "Nakano Entities" or "Relief Defendants"). None of the Nakano Entities had legitimate entitlement to the pool participant funds it received.

3. To conceal and perpetuate their fraud, Defendants provided pool participants with false account statements misrepresenting the earnings in their accounts,

i.e. that their accounts were increasing by as much as seven percent per month, when, in fact, the Pool was losing money. Additionally, Defendants instructed many of the pool participants to write checks or send money directly to an account in the name of Capital Blu, rather than to an account in the name of the Pool. Finally, Capital Blu never registered as a Commodity Pool Operator ("CPO") as required.

4. By virtue of this conduct and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of provisions of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2006), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and certain CFTC Regulations ("Regulations") 17 C.F.R. §§ 1.1 *et seq.* (2008).

5. D. Davis Jr., B. Davis, and Bromfield, as well as other Capital Blu employees, committed the acts and omissions described herein within the course and scope of their employment at Capital Blu. Therefore, Capital Blu is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), as principal for its agents' violations of the Act and Regulations.

6. D. Davis Jr. committed the acts and omissions described herein within the course and scope of his employment at DDIH. Therefore, DDIH is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), as principal for its agent's violations of the Act and Regulations.

7. D. Davis Jr., B. Davis, and Bromfield are liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), as controlling persons of Capital Blu for its violations of the Act and Regulations, because they did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations.

8. Accordingly, pursuant to Sections 6c and 2(c)(2)(B) and (C) of the Act, 7 U.S.C. §§ 13a-1 and 2(c)(2)(B) and (C) (2006), and Section 2(c)(2) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act and Regulations and to further enjoin Defendants from engaging in any commodity-related activity. 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.

9. 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.

II. JURISDICTION AND VENUE

10. Because the conduct at issue in this case overlaps the date of enactment of the CRA, the Commission's jurisdiction stems from both the Act and the Act as amended by the CRA. The Commission's jurisdiction in this matter is three-fold. First, for the on-exchange futures trading at issue in this case, Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), authorizes the Commission to seek injunctive 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 the Act or any rule, regulation, or order thereunder.

11. Second, the Commission has jurisdiction over the forex options at issue in this case pursuant to Sections 2(c)(2)(B) and (C), and 6c of the Act, 7 U.S.C. §§ 2(c)(2)(B) and (C), and 13a-1 (2006), for transactions that occurred before June 18, 2008, and, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2)(B) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(B), for conduct that occurred after June 18, 2008.

12. Third, the Commission has jurisdiction over the forex transactions at issue in this case pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), for conduct that occurred after June 18, 2008. The CRA was enacted on June 18, 2008. The CRA, among other things, clarified the Commission's anti-fraud jurisdiction over forex contracts, such as those in this matter. Defendants' forex transactions that occurred on or after June 18, 2008 are therefore subject to the Commission's jurisdiction.

13. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Defendants transacted business in the Middle District of Florida and certain of the transactions, acts, practices, and courses of business alleged occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

14. **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et. seq.* and the Regulations promulgated thereunder. 17 C.F.R. §§ 1.1 *et. seq.* The CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

15. **Capital Blu Management, LLC** is a Florida limited liability company formed on January 29, 2007, with its principal place of business at 709 S. Harbor City Blvd., Suite 530, Melbourne, Florida 32901. Capital Blu has additional offices in Naples and Orlando, Florida. Capital Blu is registered as a Commodity Trading Advisor ("CTA") with the CFTC and has been a National Futures Association ("NFA") member since October 2007. In addition, Capital Blu claimed an exemption from CFTC registration as a CPO under Regulation 4.13(a)(4), 17 C.F.R. § 4.13(a)(4) (2008).

16. **DD International Holdings, LLC** is a Florida limited liability company with its principal place of business at 1449 Pennykamp Street, NW, Palm Bay, FL 32909. DDIH is an owner of Capital Blu. D. Davis Jr. is the Manager and sole owner of DDIH. DDIH has never been registered with the CFTC.

17. **Donovan G. Davis Jr.** resides in Palm Bay, Florida and is Capital Blu's Manager and its Director of Corporate Affairs. D. Davis Jr. has been a principal of Capital Blu since March 2008.

18. **Blayne Davis** resides in Naples, Florida and was a Capital Blu Managing Member and Director of Portfolio Investments. From May 2007 to August 2008, B.

Davis was a Capital Blu principal and, from October 2007 to August 2008, he was a Capital Blu associated person ("AP"). At all times material hereto, B. Davis was Manager and/or owner and/or general partner of the Nakano Entities. Upon information and belief, B. Davis and D. Davis Jr. are not known to be related.

19. **Damien Bromfield** resides in Ocoee, Florida and is a Capital Blu Managing Member and Director of Operations and Business Development. From May 2007 to September 2008, Bromfield was a principal of Capital Blu.

20. **Nakano Capital Partners, LP**, is a Florida limited partnership and/or, in the alternative, a limited liability limited partnership, with its principal place of business at 1400 Gulfshore Blvd., Suite 142, Naples, Florida 34102.

21. **Nakano Capital Advisors, LLC**, is a Florida limited liability company with its principal place of business at 1400 Gulfshore Blvd., Suite 142, Naples, Florida 34102.

22. **Nakano Capital Management, LLC**, is a Florida limited liability company with its principal place of business at 1400 Gulfshore Blvd., Suite 142, Naples, Florida 34102. Nakano Capital Management, LLC is a general partner of Nakano Capital Partners, LP.

IV. FACTS

23. In September 2007, Defendants formed a commodity pool, the FX Fund, in order to solicit funds from members of the general public for the purported purpose of investing those funds in forex. Capital Blu served as the pool's CPO. Capital Blu was wholly-owned and operated by D. Davis, Jr. (through DDIH), B. Davis, and Bromfield,

all of whom held themselves out to the public as the owners and operators of Capital Blu and all of whom solicited members of the public to invest with Capital Blu. As Director of Portfolio Investments, B. Davis managed Capital Blu's trading accounts for the Pool. Capital Blu's Orlando office was purportedly located at Bromfield's home. D. Davis Jr., Bromfield, and B. Davis are or were principals of Capital Blu with responsibility for hiring, training, and supervising Capital Blu employees.

24. From at least January 2008 to September 2008, Defendants and other Capital Blu employees solicited approximately $17 million from approximately 100 members of the general public to invest in the Pool. Defendants and other Capital Blu employees instructed many of their pool participants to write checks or send money directly to an account in the name of Capital Blu, rather than in the name of the FX Fund. Of the approximately $17 million received by Capital Blu from pool participants, approximately $14.7 million was deposited into trading accounts, only some of which were in the name of the FX Fund, located at multiple registered Futures Commission Merchants ("FCMs"). These accounts traded on-exchange futures from at least January 2008 to May 2008, forex from at least January 2008 to the present, and forex options from at least February 2008 to the present. Defendants never informed some or all of the pool participants that some of their funds would be used to trade on-exchange futures and forex options.

25. The Pool trading accounts incurred total trading losses, including commissions and fees, of more than $7.1 million. Another approximately $7.1 million of pool participant funds were withdrawn from these trading accounts and deposited into

multiple Capital Blu bank accounts and commingled with funds controlled by Capital Blu. For example, Defendants withdrew approximately $2 million of pool participant funds from the FX Fund trading accounts at two of the FCMs and sent the funds to two Capital Blu bank accounts. Neither of these bank accounts was held in the name of the Pool. Upon information and belief, less than $400,000 remains in any of the Capital Blu-controlled trading accounts located at FCMs. The remaining funds received by Capital Blu from pool participants are unaccounted for.

26. Upon information and belief, Defendants used at least some of the pool participants' funds to pay for personal items, such as luxury automobiles and private jet charters.

27. B. Davis withdrew more than $135,000 of the pool participants' funds from FX Fund trading account(s) and deposited those funds into account(s) held in the name of one or more of the Nakano Entities. The Relief Defendants provided no legitimate services to the Pool and otherwise have no legitimate entitlement to the pool participant funds.

28. In order to conceal and perpetuate their fraud, Defendants reported to pool participants consistent monthly profits for the FX Fund for 12 straight months (September 2007 through August 2008). The reported monthly profits were as high as 7 percent per month; not a single negative month was reported. In fact, however, Defendants' actual trading resulted in net losses every month.

29. This false information was reported to pool participants in the form of, among other things, monthly account statements that were sent by regular mail, e-mail,

and/or were made available on a Capital Blu website (www.capitalblu.com). Thus, for example, Defendants reported to pool participants profits of 5.10 percent for April 2008, when in fact the FX Fund trading accounts collectively lost almost $1 million that month. Pool participants were not informed of the losses for that month or any other month.

30. In October 2007, Capital Blu became a member of the NFA, registered as a CTA, and claimed a self-executing exemption from registration as a CPO under Regulation 4.13(a)(4). Under this Regulation, an entity that operates a pool is exempted from registration as a CPO if each participant in the pool is a "qualified eligible person" ("QEP") as defined by Regulation 4.7(a)(2) (*e.g.*, high net worth individuals (exceeding $1 million) or individuals with annual personal incomes over $200,000). Beginning at least as early as February 2008, however, one or more of Capital Blu's pool participants were not QEPs. Capital Blu never withdrew or supplemented its notice of exemption and never registered as a CPO.

31. Neither the Defendants nor the FCMs that were the counterparties to the forex and forex options transactions were registered broker dealers, insurance companies, bank holding companies, or investment bank holding companies or the APs of registered broker dealers, insurance companies, bank holding companies, or investment bank holding companies.

32. Some or all of the Pool participants were not "eligible contract participants" as that term is defined in the Act. *See* Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12) (2006) (an "eligible contract participant" is an individual with total assets in excess of (i) $10 million, or (ii) $5 million and who enters the transaction "to manage

the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual").

33. The forex transactions conducted by Defendants for the Pool were entered into on a leveraged or margined basis. The Pool was required to provide only a percentage of the value of the forex contracts that it purchased.

34. The forex transactions conducted by Defendants neither resulted in delivery nor created an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these forex contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

35. Pursuant to federal common law, the Nakano Entities are relief defendants because one or more of them received ill-gotten gains from Defendants' fraudulent conduct and, therefore, the Nakano Entities must disgorge all ill-gotten gains regardless of whether any of them actually violated the anti-fraud provisions of the Act and/or the Act as amended by the CRA and the Regulations.

36. By virtue of their actions, Defendants have engaged, are engaging, or are about to engage in acts and practices that violate Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006); Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C); Sections 4c(b), 4m(1), and 4o(1) of the Act, 7 U.S.C. §§ 6c(b), 6m(1), and 6o(1) (2006); and Regulations 4.20(b) and (c), and 32.9(a)-(c), 17 C.F.R. §§ 4.20(b) and (c), and 32.9(a)-(c) (2008).

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS

COUNT I

Violations of Sections 4b(a)(2)(i)-(iii), 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006)
(Fraud in Connection with On-exchange futures)

37. The allegations set forth in paragraphs 1 through 36 are realleged and incorporated herein by reference.

38. Prior to being amended by the CRA, Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), made 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 for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be 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—(i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made to such other person any false report or statement thereof, . . .[or]; (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person.

39. As set forth above, from at least January 2008 through May 2008, in or in connection with on-exchange futures contracts made or to be made, for or on behalf of other persons, Defendants cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool participants and willfully deceived or attempted to

deceive pool participants or prospective pool participants by, among other things, knowingly (i) misappropriating pool participant funds, and (ii) misrepresenting that pool participant funds would be invested only in forex and by failing to disclose that participant funds were invested in on-exchange futures and forex options, all in violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006).

40. As set forth above, from at least January 2008 through May 2008, in or in connection with on-exchange futures contracts made or to be made, for or on behalf of other persons, Defendants willfully made or caused to be made false reports to pool participants or prospective pool participants by, among other things, knowingly providing pool participants fraudulent monthly account statements that misrepresented the value of pool participants' accounts and pool participants' holdings, in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006).

41. Defendants engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

42. The Nakano Entities are relief defendants. One or more of the Nakano Entities received at least $136,000 in ill-gotten gains as a result of the fraud committed by Defendants and, therefore, the Nakano Entities must disgorge this money.

43. D. Davis Jr., B. Davis, and Bromfield control (or during the relevant period controlled) Capital Blu, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Capital Blu's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), D. Davis Jr., B.

Davis, and Bromfield are liable for Capital Blu's violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006).

44. The foregoing acts, misrepresentations, omissions, and failures of D. Davis Jr., B. Davis, and Bromfield, as well as other Capital Blu employees, occurred within the scope of their employment with Capital Blu; therefore, Capital Blu is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

45. The foregoing acts, misrepresentations, omissions, and failures of D. Davis Jr. occurred within the scope of his employment with DDIH; therefore, DDIH is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

46. Each misappropriation, issuance of a false account statement, misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006).

COUNT II

Violations of Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C) (Fraud in Connection with Forex)

47. The allegations set forth in paragraphs 1 through 46 are realleged and incorporated herein by reference.

48. Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(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 for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market – (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 or, in the case of paragraph (2), with the other person.

49. As set forth above, from at least June 18, 2008 through the present in or in connection with forex contracts, made or to be made, for or on behalf of, or with, other persons. Defendants cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool participants and willfully deceived or attempted to deceive pool participants or prospective pool participants by, among other things, knowingly (i) misappropriating pool participant funds, and (ii) misrepresenting that pool participant funds would be invested only in forex and by failing to disclose that participant funds were invested in on-exchange futures and forex options, all in violation of Sections 4b(a)(2)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C).

50. As set forth above, from at least June 18, 2008 through the present in or in connection with forex contracts, made or to be made, for or on behalf of other persons, Defendants willfully made or caused to be made false reports to pool participants or prospective pool participants by, among other things, knowingly providing pool

participants fraudulent monthly account statements that misrepresented the value of pool participants' accounts and pool participants' holdings, in violation of Section 4b(a)(2)(B) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(B).

51. Defendants engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

52. The Nakano Entities are relief defendants. One or more of the Nakano Entities received at least $136,000 in ill-gotten gains as a result of the fraud committed by Defendants and, therefore, the Nakano Entities must disgorge this money.

53. D. Davis Jr., B. Davis, and Bromfield control (or during the relevant period controlled) Capital Blu, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Capital Blu's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), D. Davis Jr., B. Davis, and Bromfield are liable for Capital Blu's violations of Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

54. The foregoing acts, misrepresentations, omissions, and failures of D. Davis Jr., B. Davis, and Bromfield, as well as other Capital Blu employees, occurred within the scope of their employment with Capital Blu; therefore, Capital Blu is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

55. The foregoing acts, misrepresentations, omissions, and failures of D. Davis Jr. occurred within the scope of his employment with DDIH; therefore, DDIH is

liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

56. Each misappropriation, issuance of a false account statement, misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

COUNT III

Violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Regulations 32.9(a)-(c), 17 C.F.R. §§ 32.9(a)-(c) (2008) (Fraud in Connection with Forex Options)

57. The allegations set forth in paragraphs 1 through 56 are realleged and incorporated herein by reference.

58. Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), provides that no person shall engage in any commodity option transaction regulated under the Act contrary to any rule, regulation, or order of the Commission. Furthermore, Regulations 32.9(a)-(c), 17 C.F.R. §§ 32.9(a)-(c) (2008), make it 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; (c) to deceive or attempt to deceive any other person by any means whatsoever; in or in connection with . . . any commodity option transaction.

59. As set forth above, from at least February 2008 through the present, Defendants violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Regulations 32.9(a) and (c), 17 C.F.R. §§ 32.9(a) and (c) (2008), by engaging in forex options

transactions and, among other things, knowingly (i) misappropriating pool participant funds, and (ii) misrepresenting that pool participant funds would be invested only in forex and by failing to disclose that participant funds were invested in on-exchange futures and forex options.

60. As set forth above, from at least February 2008 through the present, Defendants violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Regulation 32.9(b), 17 C.F.R. § 32.9(b) (2008), by engaging in forex options transaction and, among other things, knowingly providing pool participants fraudulent periodic account statements that misrepresented the value of pool participants' accounts and pool participants' holdings.

61. Defendants engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

62. The Nakano Entities are relief defendants. One or more of the Nakano Entities received at least $136,000 in ill-gotten gains as a result of the fraud committed by Defendants and, therefore, the Nakano Entities must disgorge this money.

63. D. Davis Jr., B. Davis, and Bromfield control (or during the relevant period controlled) Capital Blu, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Capital Blu's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), D. Davis Jr., B. Davis, and Bromfield are liable for Capital Blu's violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Regulations 32.9(a)-(c), 17 C.F.R. §§ 32.9(a)-(c) (2008).

64. The foregoing acts, misrepresentations, omissions, and failures of D. Davis Jr., B. Davis, and Bromfield, as well as other Capital Blu employees, occurred within the scope of their employment with Capital Blu; therefore, Capital Blu is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

65. The foregoing acts, misrepresentations, omissions, and failures of D. Davis Jr. occurred within the scope of his employment with DDIH; therefore, DDIH is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

66. Each misappropriation, issuance of a false account statement, misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Regulations 32.9(a)-(c), 17 C.F.R. §§ 32.9(a)-(c) (2008).

COUNT IV

Violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006) (Fraud by Commodity Pool Operators)

67. The allegations set forth in paragraphs 1 through 66 are realleged and incorporated herein by reference.

68. As defined in Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), a CPO is

> any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property . . . for the purpose of trading in any commodity for future delivery

> on or subject to the rules of any contract market or derivatives transaction execution facility.

69. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), prohibits CPOs and APs of CPOs from using the mails or any other means 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 client or participant.

70. From at least January 2008 through May 2008, Capital Blu, while not registered with the Commission as a CPO, solicited, accepted, or received funds from others and engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in any commodity for future delivery.

71. Defendants Capital Blu (while acting as an unregistered CPO), D. Davis Jr. and Bromfield (while acting as unregistered APs of an unregistered CPO), and B. Davis (while acting as a registered AP of an unregistered CPO) employed a device, scheme, or artifice to defraud pool participants and prospective pool participants or engaged in a transaction, practice, or course of business knowingly or which operated as a fraud or deceit upon pool participants and prospective pool participants in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), by, among other things, knowingly (i) misappropriating pool participant funds, (ii) misrepresenting that pool participant funds would be invested only in forex and by failing to disclose that participant funds were invested in on-exchange futures and forex options, and (iii) providing pool participants

fraudulent periodic account statements that misrepresented the value of pool participants' accounts and pool participants' holdings.

72. The Nakano Entities are relief defendants. One or more of the Nakano Entities received at least $136,000 in ill-gotten gains as a result of the fraud committed by Defendants and, therefore, the Nakano Entities must disgorge this money.

73. D. Davis Jr., B. Davis, and Bromfield control (or during the relevant period controlled) Capital Blu, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Capital Blu's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), D. Davis Jr., B. Davis, and Bromfield are liable for Capital Blu's violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

74. The foregoing acts, misrepresentations, omissions, and failures of D. Davis Jr., B. Davis, and Bromfield, as well as other Capital Blu employees, occurred within the scope of their employment with Capital Blu; therefore, Capital Blu is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

75. The foregoing acts, misrepresentations, omissions, and failures of D. Davis Jr. occurred within the scope of his employment with DDIH; therefore, DDIH is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

76. Each misappropriation, issuance of a false account statement, misrepresentation or omission of material fact, including but not limited to those

specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

COUNT V

Violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006) (Failure to Register as a Commodity Pool Operator)

77. The allegations set forth in paragraphs 1 through 76 are realleged and incorporated herein by reference.

78. Section 4m(1) of the Act provides that it is unlawful for any CPO, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as a CPO.

79. From at least January 2008 through May 2008, Capital Blu acted as a CPO by soliciting, accepting, or receiving funds from others and engaging in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in any commodity for future delivery.

80. Since at least January 2008, Capital Blu has used the mails or instrumentalities of interstate commerce, including faxes, in or in connection with its 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) (2006).

81. D. Davis Jr., B. Davis, and Bromfield control (or during the relevant period controlled) Capital Blu, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Capital Blu's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), D. Davis Jr., B.

Davis, and Bromfield are liable for Capital Blu's violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

82. The foregoing acts of D. Davis Jr., B. Davis, and Bromfield occurred within the scope of their employment with Capital Blu; therefore, Capital Blu is liable for these acts pursuant to Section 2(a)(1)(B) of the Act. 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

83. The foregoing acts of D. Davis Jr. occurred within the scope of his employment with DDIH; therefore, DDIH is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

COUNT VI

Violation of Regulations 4.20(b) and (c), 17 C.F.R. §§ 4.20(b) and (c) (2008) (Improper Receipt and Commingling of Pool Participant Funds by a CPO)

84. The allegations set forth in paragraphs 1 through 83 are realleged and incorporated herein by reference.

85. Regulation 4.20(b), 17 CFR § 4.20(b), provides that all funds received by a CPO from a pool participant must be accepted in the name of the pool, and the CPO may not accept funds in its own name.

86. Regulation 4.20(c), 17 CFR § 4.20(c), provides that commodity pool funds may not be commingled with the funds of the CPO or any other person.

87. From at least January 2008 through May 2008, Capital Blu violated Regulation 4.20(b), 17 CFR § 4.20(b) (2008), by receiving pool participant funds in its own name, rather than in the name of the pool.

88. From at least January 2008 through May 2008, Capital Blu violated Regulation 4.20(c), 17 CFR § 4.20(c) (2008), by depositing pool participant funds in accounts held in the name of Capital Blu, the CPO, rather than in an account held in the name of the pool that was wholly separate from Capital Blu's accounts.

89. D. Davis Jr., B. Davis, and Bromfield control (or during the relevant period controlled) Capital Blu, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Capital Blu's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), D. Davis Jr., B. Davis, and Bromfield are liable for Capital Blu's violation of Regulations 4.20(b) and (c), 17 CFR §§ 4.20(b) and (c) (2008).

90. The foregoing acts of D. Davis Jr., B. Davis, and Bromfield, as well as other Capital Blu employees, occurred within the scope of their employment with Capital Blu: therefore, Capital Blu is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

91. The foregoing acts of D. Davis Jr. occurred within the scope of his employment with DDIH; therefore, DDIH is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

92. Each act of improper receipt and commingling of pool participant funds is alleged as a separate and distinct violation of Regulations 4.20(b) and (c), 17 CFR §§ 4.20(b) and (c) (2008).

VI. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers, enter:

a) An order finding that Defendants violated Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006); Section 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C); Sections 4c(b), 4m(1), and 4o(1) of the Act, 7 U.S.C. §§ 6c(b), 6m(1), and 6o(1) (2006), and Regulations 4.20(b) and (c), and 32.9(a)-(c). 17 C.F.R. §§ 4.20(b) and (c), and 32.9(a)-(c) (2008).

b) An order of permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof from engaging, directly or indirectly:

(i) in conduct in violation of Sections 4c(b), 4m(1), and 4o(1) of the Act, 7 U.S.C. §§ 6c(b), 6m(1), and 6o(1) (2006), Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), and Regulations 4.20(b) and (c) and 32.9(a)-(c), 17 C.F.R. §§ 4.20(b) and (c) and 32.9(a)-(c) (2008); and

(ii) in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (2006) ("commodity interest"), including but not limited to, the following:

(aa) from trading any commodity interest account for themselves or on behalf of any other person or entity;

(bb) from soliciting, receiving, or accepting any funds in connection with the purchase or sale of any commodity interest contract;

(cc) from 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) (2008), or acting as a principal, 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 Regulation 4.14(a)(9); and

(dd) from engaging in any business activities related to commodity interest trading.

c) An order directing Defendants and Relief Defendants, as well as any successors to any Defendant and/or Relief Defendant, 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 Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

d) An order directing Defendants 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 Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) An order directing 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 customers whose funds were received by them as a result of the acts and practices which constituted violations of the Act, as described herein;

f) An order directing each Defendant to pay a civil monetary penalty in the amount of the higher of (1) triple the monetary gain to Defendant for each violation of the Act and/or Regulations or (2) $130,000 for each violation of the Act and/or Regulations from October 23, 2004 through October 22, 2008, and $140,000 for each violation of the Act and/or Regulations on or after October 23, 2008, plus post-judgment interest;

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

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

Dated: March 23, 2009

Respectfully submitted.

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