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JUL 26 2012

Richard W. Wieking  
Clerk, U.S. District Court  
Northern District of California  
San Jose

8 Attorneys for Plaintiff U.S. Commodity Futures Trading Commission

9  
10 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN JOSE DIVISION**

**E-FILING**

12 **UNITED STATES COMMODITY** )  
**FUTURES TRADING COMMISSION,** )  
13 )  
14 **Plaintiff,** )  
**vs.** )  
15 )  
16 **VICTOR YU, d/b/a VISCO** )  
**INTERNATIONAL, LTD., CURRENCY** )  
**TRADING CLUB and VICTORY FX** )  
17 **CLUB, and VFRS, LLC,** )  
18 )  
**Defendants.** )

**CV 12-03921**  
Civil Action No.                     

**YGR**

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

19 **Summary**

20  
21 1. Since at least August 2009, Defendants Victor Yu, individually, doing  
22 business as Visco International, Ltd (“VIL”), Currency Trading Club (“CTC”) and  
23 Victory FX Club (“VFC”) (collectively “Yu”), and as a controlling person of VFRS, LLC  
24 (“VFRS”), and VFRS, have fraudulently solicited at least 100 individuals to open off-  
25 exchange foreign currency (“forex”) accounts and allow Defendants to place trades in  
26 their accounts using trading software that Yu claimed to have developed. Defendants  
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1 charged their clients various fees including for installation, monthly maintenance and  
2 30% of any profits earned in their trading accounts. Defendants did not disclose the  
3 significant risks that accompany forex trading, and claimed that the trading software they  
4 purportedly used to trade ensured that clients would never have a losing trade and made  
5 forex trading “extremely safe” with 20-100% annual returns. When certain clients  
6 experienced losses in their accounts, Defendants falsely told them that the losses were  
7 due to international news events or to improper manipulation of the clients’ accounts by  
8 third parties  
9

10 2. To date, Defendants’ clients have invested more than \$5 million in forex  
11 trading accounts and lost a total of \$2,148,328.77. During this time, Defendants received  
12 fees of at least \$273,355.46 from their clients.  
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14 3. By virtue of this conduct and the conduct further described herein,  
15 Defendants have engaged, are engaging in, or are about to engage in conduct in violation  
16 of the Commodity Exchange Act (“Act”), as amended by the Food, Conservation, and  
17 Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of  
18 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), 7 U.S.C. §§ 1  
19 *et seq.* (2006 and Supp. III 2009), and as amended by the Dodd-Frank Wall Street  
20 Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall  
21 Street Transparency and Accountability Act of 2010) (“Dodd-Frank Act”), §§ 701-774  
22 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.*, and Commission  
23 Regulations (“Regulations”), 17 C.F.R. §§ 1 *et seq.*, (2011). In particular, Defendants  
24 have cheated and defrauded their clients in violation of Section 4b(a)(2)(A) and (C) of the  
25 Act, as amended, 7 U.S.C. §§ 6b(a)(2)(A), (C).  
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1 to engage in any act or practice that constitutes a violation of any provision of the Act or  
2 any rule, regulation, or order promulgated thereunder, the Commission may bring an  
3 action against such person to enjoin such practice or to enforce compliance with the Act.

4 8. The CFTC has jurisdiction over the forex solicitations and transactions at  
5 issue in this case pursuant to Sections 6c and 2(c)(2)(C) of the Act, 7 U.S.C. §§ 13a-1,  
6 2(c)(2)(C).  
7

8 9. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as  
9 amended, to be codified at, 7 U.S.C. §13a-1(e), because Defendants are found in, inhabit,  
10 or transact business in this District, or the acts and practices in violation of the Act  
11 occurred, are occurring, or are about to occur within this District, among other places.

#### 12 Parties

13 10. The U.S. Commodity Futures Trading Commission is an independent federal  
14 regulatory agency charged by Congress with the responsibility for administering and  
15 enforcing the provisions of the Act, as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and  
16 the Commission's Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

17 11. Victor Yu resides in San Jose, California and owns and operates VFRS.  
18 He is doing or has done business under the names of VIL, CTC and VFC. He has never  
19 been registered with the Commission in any capacity.  
20

21 12. VFRS, LLC is a California company formed by Yu in 2009, with a  
22 principal place of business in Alameda, California. On information and belief, Yu is the  
23 majority owner and manages the daily operations of VFRS, and during the relevant time,  
24 held himself out to the public as such. Yu is an authorized signatory on at least one bank  
25 account in the name of VFRS that has accepted client fees. Yu is also VFRS's registered  
26 agent. VFRS has never been registered with the Commission in any capacity.  
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1 **Statutory Background**

2 13. Regulation 5.1(e)(1), 17 C.F.R. § 5.1(e)(1) (2011), defines a commodity  
3 trading advisor (“CTA”) as any person or entity who exercises discretionary trading  
4 authority over any account or on behalf of any person that is not an eligible contract  
5 participant as defined in section 1a(12) of the Act, in connection with retail forex  
6 transactions.

7  
8 14. Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a, defines  
9 an eligible contract participant (“ECP”) in forex transactions, in relevant part, as an entity  
10 with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the  
11 transaction “to manage the risk associated with an asset owned or liability incurred, or  
12 reasonably likely to be owned or incurred, by the individual.”

13 **Facts**

14 **A. Solicitation Fraud**

15  
16 15. In or before August 2009, Yu and VFRS, by and through Yu, began  
17 soliciting prospective clients for the purpose of trading forex for the clients’ individual  
18 accounts. Yu claimed to use an “algorithm software program” he developed that  
19 determines favorable trades and places those trades in clients’ accounts. Yu told at least  
20 some prospective clients that his business name was CTC or VFC.

21  
22 16. To solicit new clients, Yu and VFRS, by and through Yu, hold face-to-  
23 face meetings with prospective clients in various clients’ homes. Defendants obtain leads  
24 primarily through word-of-mouth. Yu asks for referrals from existing clients and  
25 frequently asks clients to invite their friends and acquaintances to meetings at their  
26 homes. In exchange for referring new clients, Yu promises existing clients a referral fee  
27 or a percentage of any profits earned in the new clients’ accounts.  
28

1           17.     At these meetings, Yu explains how the software allegedly places trades  
2 automatically in forex accounts and asks current clients to vouch for any profits they have  
3 earned. Yu also shows prospective clients account statements with very high returns that  
4 he claims resulted from trading pursuant to the software.

5           18.     Additionally, Yu has made the following misrepresentations in his  
6 solicitations of clients and prospective clients:  
7

- 8           • Yu's software makes forex trading "extremely safe" and prevents clients  
9 from ever reaching certain loss thresholds.
- 10          • Yu's software has successfully predicted activity in the currency markets  
11 back to the 1920s.
- 12          • Defendants have earned a positive return on all trades made pursuant to  
13 Yu's software and clients are guaranteed that they will not have a losing  
14 trade.
- 15          • Clients may expect to earn annual returns ranging from 20-100% if they  
16 allow Yu to trade their accounts.  
17

18          19.     In reality, Yu knew or acted in reckless disregard of the facts that all forex  
19 trading is risky, that modern forex markets have only been in existence since the 1970s,  
20 and that it is impossible to guarantee trading profits or annual returns for a forex account.  
21 Additionally, Yu knew that Defendants executed numerous losing trades in clients'  
22 accounts and that most of Defendants' clients lost most or all of the funds that  
23 Defendants traded for them.  
24

25          20.     Defendants also never disclosed to their clients that they were required to  
26 be registered with the Commission to trade client accounts.  
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1           21.     Once prospective clients express an interest in having Defendants trade  
2 forex for them, the clients sign a "Customer Agreement." The agreement is written on  
3 VIL letterhead and specifies that the clients will pay Defendants a "service fee" of 30%  
4 of any net profits earned from Defendants trading their account due the first and fifteenth  
5 of every month. Although the client agreement lists a minimum investment of \$100,000,  
6 most clients invested \$40,000-50,000.

7  
8           22.     After clients sign the Customer Agreement, Yu directs them to open and  
9 fund an account with a particular retail foreign exchange dealer ("RFED") and then  
10 provide Yu with their personal log-in and password information so that Yu can "hook up"  
11 the trading software to the account.

12           23.     Defendants' clients did not sign powers of attorney or otherwise provide  
13 the RFED with documentation authorizing any Defendant to access their accounts.

14           24.     In all, at least 100 clients have set up forex trading accounts through the  
15 RFED specified by Yu and allowed Defendants to place trades in those accounts. Upon  
16 information and belief, each of those clients has an individual net worth of \$5 million or  
17 less.  
18

19           **B.     Defendants' Trading**

20           25.     After their accounts were opened, many of the clients initially received  
21 profits. Yu notified clients of their account status via email or over the telephone on a  
22 regular basis and requested that clients remit checks for the service fees due under the  
23 Customer Agreement. Yu instructs clients to make these checks payable either to Yu or  
24 to VFRS.  
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1           26.     After several months of trading, however, most clients experienced losses.  
2     When the clients expressed concerns to Yu about these losses, Yu attempted to reassure  
3     them by telling them that the software would automatically place hedge trades that would  
4     protect their accounts from additional losses and that their accounts would recover from  
5     any losses.

6           27.     Yu also told some concerned clients in March 2011 that international  
7     events including the European debt crisis and the major earthquake in Japan were causing  
8     the currency markets to become unstable and affecting the success of the software  
9     program. He told other clients at around that time that the software had placed trades  
10    involving the Chinese Yuan that would soon begin to show significant returns.

11           28.     Yu assured clients that as soon as the currency markets stabilized, he  
12    would personally day trade their accounts, which would allow them to recover their  
13    losses.  
14    losses.

15           29.     However, despite Yu's assurances, clients' accounts continued to suffer  
16    losses until the clients either closed out their accounts or their account balances reached  
17    zero and any remaining positions were closed out by the RFED. Overall, clients lost a  
18    total of \$2,148,328.77.  
19    total of \$2,148,328.77.

20           30.     In or about July 2011 when one client questioned Yu regarding the losses  
21    in her account, Yu blamed the losses on actions by the RFED. He told the client not to  
22    log into her account for several days because he wanted to gather evidence to prove that  
23    the RFED was logging into and manipulating the account. In fact, the RFED was not  
24    logging into or manipulating the account in any manner.  
25    logging into or manipulating the account in any manner.



1           31.     Two days later, Yu told the same client that all trades in the account had  
2 been closed by the RFED and that the account had a zero balance. Yu blamed these  
3 losses on a system outage at the RFED, but no system outage at the RFED had occurred.

4           **C.     Failure to Register**

5           32.     During the relevant period, Yu held himself out generally to the public as  
6 a CTA in that he solicited clients to open individual managed accounts that he would  
7 trade in exchange for various fees including for installation, monthly maintenance and/or  
8 30% of any profits earned in the accounts, and touted his trading expertise at face-to-face  
9 meetings at clients' homes. Therefore, Yu was required to be registered as a CTA, but  
10 was not registered as such or exempt from such registration.

11           **D.     The Nature of the Transaction**

12           33.     Defendants are not financial institutions, registered brokers or dealers,  
13 insurance companies, financial holding companies, or investment bank holding  
14 companies, nor are they associated persons of financial institutions, registered brokers or  
15 dealers, insurance companies, financial holding companies, or investment bank holding  
16 companies.

17           34.     Defendants and most, if not all, of their clients were and are not ECPs, as  
18 that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a.

19           35.     The forex transactions conducted by Defendants were entered into on a  
20 leveraged or margined basis, and they neither resulted in delivery of actual currency  
21 within two days nor created an enforceable obligation to deliver between a seller and a  
22 buyer that had the ability to deliver and accept delivery, respectively, in connection with  
23 their lines of business. Rather, these forex contracts purportedly remained open from day  
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1 to day and ultimately were offset without anyone making or taking delivery of actual  
2 currency or facing an obligation to do so.

3 **VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

4 **Count One**

5 **Violations of Section 4b(a)(2)(A) and (C) of the Act, as amended:**  
6 **Fraud by Misrepresentation and Omission**

7 36. Paragraphs 1 through 35 are re-alleged and incorporated herein.

8 37. Section 4b(a)(2)(A) and (C) of the Act, as amended, 7 U.S.C. §  
9 6b(a)(2)(A), (C), prohibits any person, in or in connection with any order to make, or the  
10 making of, any contract of sale of any commodity for future delivery that is made, or to  
11 be made, for or on behalf of, or with, any other person, other than on or subject to the  
12 rules of a designated contract market, (A) to cheat or defraud or attempt to cheat or  
13 defraud the other person; or (C) willfully to deceive or attempt to deceive the other  
14 person by any means whatsoever in regard to any order or contract or the disposition or  
15 execution of any order or contract, or in regard to any act of agency performed.

16 38. Pursuant to Section 2(c)(2)(C)(iv), Section 4b of the Act applies to forex  
17 transactions entered into by non-ECPs "as if" they were a contract of sale for a  
18 commodity for future delivery.

19 39. As set forth above, beginning in or before August 2009, in or in  
20 connection with forex transactions entered into by non-ECPs, Defendants Yu and VFRS,  
21 by and through Yu, cheated, defrauded or attempted to cheat or defraud other persons and  
22 willfully deceived or attempted to deceive other persons by, among other things, telling  
23 clients and prospective clients that: (a) they would earn a 20-100% annual return from  
24 forex trading with Defendants' software; (b) Defendants' software made trading forex  
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1 “extremely safe” and guaranteed that clients would not have losing trades; (c)  
2 Defendants’ existing clients were making money trading forex; and (d) certain client  
3 losses were the result of the RFED improperly logging into client accounts or a system  
4 outage at the RFED. Defendants also failed to inform clients that Defendants were not  
5 registered with the CFTC and that, as non-registrants, Defendants were prohibited from  
6 trading their accounts.  
7

8 40. Defendants engaged in the acts and practices described above knowingly,  
9 willfully or with reckless disregard for the truth.

10 41. By this conduct, Defendants violated Section 4b(a)(2)(A) and (C) of the  
11 Act, as amended, 7 U.S.C. § 6b(a)(2)(A), (C).

12 42. The acts, omissions and failures of Yu, as described in this Count One,  
13 were committed within the scope of his employment with VFRS and, therefore, VFRS is  
14 liable for Yu’s acts, omissions and failures constituting violations of Section 4b(a)(2)(A)  
15 and (C) of the Act, as amended, 7 U.S.C. § 6b(a)(2)(A), (C), pursuant to Section  
16 2(a)(1)(B) of the Act, as amended, 7 U.S.C. § 2(a)(1)(B), and Commission Regulation  
17 1.2, 17 C.F.R. § 1.2 (2011).  
18

19 43. During the relevant time, Yu directly and indirectly controlled VFRS, and  
20 did not act in good faith or knowingly induced, directly or indirectly, the acts constituting  
21 VFRS’s violations described in this Count One. Pursuant to Section 13(b) of the Act, as  
22 amended, 7 U.S.C. § 13c(b), Yu is therefore liable for VFRS’ violations described in this  
23 Count One to the same extent as VFRS.  
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1 registered with the CFTC and that, as non-registrants, Defendants were prohibited from  
2 trading their accounts.

3 48. Defendants knowingly or recklessly engaged in the acts and practices  
4 described in this Count Two.

5 49. Defendants, therefore, have violated Regulation 5.2(b)(1) and (3) with  
6 respect to conduct occurring on or after October 18, 2010.

7 50. The acts, omissions and failures of Yu, as described in this Count Two,  
8 were committed within the scope of Yu's employment with VFRS and, therefore, VFRS  
9 is liable for his acts, omissions and failures constituting violations of Regulation 5.2(b)(1)  
10 and (3), 17 C.F.R. § 5.2(b)(1), (3) (2011), pursuant to Section 2(a)(1)(B) of the Act, as  
11 amended, 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2011).  
12

13 51. During the relevant time, Yu directly and indirectly controlled VFRS, and  
14 did not act in good faith or knowingly induced, directly or indirectly, the acts constituting  
15 VFRS's violations described in this Count Two. Pursuant to Section 13(b) of the Act, as  
16 amended, 7 U.S.C. § 13c(b), Yu is therefore liable for VFRS's violations described in  
17 this Count Two to the same extent as VFRS.  
18

19 52. Each misrepresentation or omission of material fact, including but not  
20 limited to those specifically alleged herein, occurring on or after October 18, 2010, is  
21 alleged as a separate and distinct violation of Regulation 5.2(b)(1) and (3)  
22

### 23 **COUNT THREE**

#### 24 **Violation of Section 2(c)(2)(C)(iii)(I)(bb) of the Act** 25 **and Regulation 5.3(a)(3)(i): Acting as a CTA without Registration**

26 53. Paragraphs 1 through 35 are realleged and incorporated herein by  
27 reference.  
28



1           B.       An *ex parte* statutory restraining order and an order for preliminary  
2 injunction pursuant to Section 6c(a) of the Act, as amended, 7 U.S.C. § 13a-1(a),  
3 restraining Defendants and all persons or entities insofar as they are acting in the capacity  
4 of Defendants' agents, servants, employees, successors, assigns, and attorneys, and all  
5 persons insofar as they are acting in active concert or participation with Defendants, who  
6 receive actual notice of such order by personal service or otherwise, from directly or  
7 indirectly:  
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9           1.       Destroying, mutilating, concealing, altering, or disposing of any  
10 books and records, documents, correspondence, brochures, manuals,  
11 electronically stored data, tape records, or other property of Defendants,  
12 wherever located, including all such records concerning Defendants'  
13 business operations;  
14

15           2.       Refusing to permit authorized representatives of the Commission  
16 to inspect, when and as requested, any books and records, documents,  
17 correspondence, brochures, manuals, electronically stored data, tape  
18 records, or other property of Defendants, wherever located, including all  
19 such records concerning Defendants' business operations; and  
20

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

3 C. Orders of preliminary and permanent injunction prohibiting Defendants  
4 and any other persons or entities in active concert with them from engaging in conduct in  
5 violation of Sections 2(c)(2)(C)(iii)(I)(bb), and 4b(a)(2)(A), (C) of the Act, as amended,  
6 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), and 6b(a)(2)(A), (C) and Regulations 5.2(b)(1), (3) and  
7 5.3(a)(3)(i), 17 C.F.R. §§ 5.2(b)(1), (3) and 5.3(a)(3)(i) (2011);  
8

9 D. Orders of preliminary and permanent injunction prohibiting Defendants  
10 and any of their affiliates, agents, servants, employees, successors, assigns, attorneys and  
11 all persons in so far as they are acting in active concert or participation with them who  
12 receive actual notice of such order by personal service or otherwise, from engaging,  
13 directly or indirectly, in:  
14

15 1. trading on or subject to the rules of any registered entity, as that  
16 term is defined in Section 1a(29) of the Act, as amended, 7 U.S.C. § 1a(29);

17 2. entering into any transactions involving commodity futures,  
18 options on commodity futures, commodity options (as that term is defined in  
19 Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2011)) (“commodity options”), security  
20 futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and  
21 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i))  
22 (“forex contracts”) for their own personal account or for any account in which  
23 they have a direct or indirect interest;  
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1           3.     having any commodity futures, options on commodity futures,  
2 commodity options, security futures products, and/or forex contracts traded on  
3 their behalf;

4           4.     controlling or directing the trading for or on behalf of any other  
5 person or entity, whether by power of attorney or otherwise, in any account  
6 involving commodity futures, options on commodity futures, commodity options,  
7 security futures products, and/or forex contracts;

8           5.     soliciting, receiving, or accepting any funds from any person for  
9 the purpose of purchasing or selling any commodity futures, options on  
10 commodity futures, commodity options, security futures products, and/or forex  
11 contracts;

12           6.     applying for registration or claiming exemption from registration  
13 with the Commission in any capacity, and engaging in any activity requiring such  
14 registration or exemption from registration with the Commission, except as  
15 provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011);

16           7.     acting as a principal (as that term is defined in Regulation 3.1(a),  
17 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person  
18 or entity registered, exempted from registration or required to be registered with  
19 the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. §  
20 4.14(a)(9) (2011);

21           E.     An order directing that Defendants make an accounting to the Court of all  
22 of (i) Defendants' assets and liabilities, together with all funds Defendants received from  
23 their clients in connection with forex transactions or purported forex transactions,  
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1 including the names, mailing addresses, email addresses, and telephone numbers of any  
2 such persons from whom Defendants received such funds from January 1, 2009 to the  
3 date of such accounting, and (ii) all disbursements for any purpose whatsoever of funds  
4 received from their clients and other persons, including salaries, commissions, fees,  
5 loans, and other disbursements of money and property of any kind, from January 1, 2009  
6 to and including the date of such accounting;  
7

8 F. Enter an order requiring Defendants immediately to identify and provide  
9 an accounting of all assets and property that they currently maintain outside the United  
10 States, including, but not limited to, all funds on deposit in any financial institution,  
11 futures commission merchant, bank, or savings and loan accounts held by, under the  
12 control of, or in the name of Yu, or VFRS or in which any such person or entity has a  
13 beneficial interest of any kind, whether jointly or otherwise, and requiring Defendants to  
14 repatriate all funds held in such accounts by paying them to the Clerk of the Court, or as  
15 otherwise ordered by the Court, for further disposition in this case;  
16

17 G. An order directing Defendants to pay civil monetary penalties under  
18 Section 6c of the Act, as amended, 7 U.S.C. § 9a, to be assessed by the Court separately  
19 against each of them, in amounts not more than the higher of \$140,000 for each violation  
20 of the Act, or triple the monetary gain to Defendants for each violation of the Act, plus  
21 post-judgment interest;  
22

23 H. An order directing Defendants to disgorge, pursuant to such procedure as  
24 the Court may order, all benefits received from the acts or practices that constitute  
25 violations of the Act, as described here, and prejudgment interest thereon from the date of  
26 such violations;  
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1 I. An order directing Defendants to make restitution by making whole each  
2 and every client of Defendants whose funds were received or used by them in violation of  
3 the provisions of the Act as described herein, including pre-judgment interest;

4 J. An order directing Defendants, and any successors thereof, to rescind,  
5 pursuant to such procedures as the Court may order, all contracts and agreements,  
6 whether implied or express, entered into between them and any of the clients whose  
7 funds were received by them as a result of the acts and practices which constituted  
8 violations of the Act, as amended, as described herein;

9 K. An order requiring Defendants to pay costs and fees as permitted by 28  
10 U.S.C. §§ 1920 and 2412 (2006); and

11 L. Such further relief as the Court deems appropriate.

12 Dated: July 26, 2012

13 Respectfully submitted,

14 ATTORNEYS FOR PLAINTIFF  
15 U.S. COMMODITY FUTURES  
16 TRADING COMMISSION

17 

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