

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

**U.S. COMMODITY FUTURES )  
TRADING COMMISSION )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CARMINE GAROFALO, )  
 )  
Defendant. )  
 )**

**CASE NO. 1:10-cv-2417**

**COMPLAINT FOR INJUNCTIVE  
AND OTHER EQUITABLE  
RELIEF AND PENALTIES UNDER  
THE COMMODITY EXCHANGE ACT  
AS AMENDED, 7 U.S.C. §§ 1-25**

**I. SUMMARY**

The U.S. Commodity Futures Trading Commission ("Commission" or "CFTC"), by and through its attorneys, alleges as follows:

1. Carmine Garofalo ("Garofalo") is an individual who purports to engage in commodity futures trading for profit.

2. Garofalo has a personal account for trading on the Chicago Mercantile Exchange ("CME"), Acct. No. \*\*\*\*\*102, held at Futures Commission Merchant ("FCM") Interactive Brokers LLC (the "Personal Account"). Garofalo trades the Personal Account on CME's Globex electronic trading platform ("Globex").

3. Aleph Societe d'Investissement a Capitale Variable ("Aleph SICAV") is a Luxembourg based investment firm that operates four separate funds for investment.

4. Aleph SICAV has an account for trading on the CME, Acct. No. \*\*\*\*\*237, held at IW Bank S.p.A. ("IW Bank") and executed through FCM UBS Limited (the "Aleph SICAV Account"). Aleph SICAV trades the Aleph SICAV Account on Globex via a third-party platform provided by InvestNet Italia S.p.A.

5. Without permission or authorization, Garofalo fraudulently accessed the Aleph SICAV Account and executed trades purportedly on Aleph SICAV's behalf during after-hours trading on the evening of March 4, 2010, and early morning hours of March 5, 2010 (the "March 5, 2010 trading day").<sup>1</sup>

6. Because the aforementioned trades were executed without Aleph SICAV's permission or authorization, Garofalo engaged in a series of illegal commodity futures transactions involving E-mini S&P 500 and Euro/U.S. Dollar European Style Premium option contracts on the CME. Through this illegal scheme, Garofalo executed non-competitive trades between his Personal Account and the Aleph SICAV Account, which he controlled by fraudulent means, whereby Garofalo's Personal Account virtually always profited at the expense of the Aleph SICAV Account.

7. Specifically, between the hours of 7:18 p.m. CST on March 4, 2010, and 12:26 a.m. CST on March 5, 2010 (or between 12:18 a.m. and 5:26 a.m. on March 5, 2010, in Luxembourg, Italy and Tunisia, which is Greenwich Mean Time plus one hour), when the E-mini S&P 500 and Euro/U.S. Dollar European Style Premium options contract markets experienced limited liquidity, Garofalo repeatedly executed non-competitive trades by placing virtually simultaneous orders to buy in his Personal Account and orders to sell in the Aleph SICAV Account, or, conversely, placing virtually simultaneous orders to buy in the Aleph SICAV Account and orders to sell in his Personal Account. Subsequently, Garofalo offset these non-

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<sup>1</sup> Monday through Friday, the CME is generally open for trading via Globex for 23 to 23.5 hours per day, depending on the product at issue. Each day, trades executed after 3:30 p.m. CST for E-mini S&P 500 Options contracts and after 5:00 p.m. CST for Euro/U.S. Dollar European Style Premium Options contracts are credited to the following trading date. Thus, the trades at issue, which occurred after 7:00 p.m. CST on March 4, 2010, and in the early morning hours of March 5, 2010, were deemed executed on the March 5, 2010 trading day.

competitive trades at favorable prices that allowed his Personal Account to realize a gain, constituting a money pass between the two accounts. Garofalo's "money pass" trades guaranteed that his Personal Account would virtually always win and that the Aleph SICAV Account, with respect to trades entered opposite his Personal Account, would virtually always lose.

8. As a result of this trading activity, Garofalo's Personal Account profited by over 400,000€ or \$614,000 through this illegal scheme of non-competitive trades.

9. With this conduct, Garofalo violated Section 4c(b) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 6c(b) (2006), and Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a), (c) (2009), by cheating or defrauding another person in connection with a commodity option transaction.

10. Garofalo also violated Section 4c(a) of the Act, 7 U.S.C. 6c(a), by entering into a transaction that constitutes a fictitious sale, specifically a "money pass," involving the purchase or sale of an option on a commodity for future delivery which transaction was used or may have been used to hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity; or to determine the price basis of any such transaction in interstate commerce in the commodity; or to deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

11. Garofalo further violated Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2009), by entering into illegal noncompetitive transactions to buy and sell commodity options.

12. By dint of this conduct and the further conduct described herein, Garofalo has engaged, is engaging, or is about to engage in acts and practices in violation of the trade practice provisions of the Act, 7 U.S.C. §§ 1 et. seq., as amended by the Food, Conservation, and Energy

Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651) (enacted June 18, 2008).

13. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), the Commission brings this action to enjoin Garofalo’s unlawful acts and practices, and to compel Garofalo to comply with the Act and Regulations. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

14. Unless restrained and enjoined by this Court, defendant Garofalo is 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**

15. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

16. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), in that Garofalo is found in, inhabits, or transacts business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

### **III. PARTIES**

17. Plaintiff, the United States Commodity Futures Trading Commission, is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 et seq. (2006), and the Regulations promulgated thereunder, 17 CF.R. §§ 1.1 et seq. (2009).

18. Defendant Garufalo controls and trades a Personal Account at the CME in Chicago, Illinois. Under information and belief, Garofalo is a citizen of Italy residing in Tunisia.

### **IV. FACTS**

19. An options contract is a contract that gives the buyer the right, but not the obligation, to buy or sell a specified quantity of a commodity or other instrument at a specific price within a specified period of time, regardless of the market price of that instrument.

20. The E-mini S&P 500 option contract traded on the CME is a contract for the right to buy or sell one E-mini S&P 500 futures contract at the strike price specified in the contract during the month specified in the contract. An E-mini S&P 500 futures contract is equivalent to \$50.00 times the notional value of the S&P 500 index.

21. The Euro/U.S. Dollar European Style Premium option contract traded on the CME is a contract for the right to buy or sell one 125,000 €futures contract at the strike price specified in the contract during the month specified in the contract.

22. CME is a designated contract market under Section 5(b) of the Act and Regulations 38.3(a)(1)(ii) and (iii).

23. Globex is an electronic trading platform used to trade, i.e., buy or sell, futures and options contracts listed on the CME. Globex runs almost continuously and, therefore, it is not restricted by geography or time zones.

**Non-Competitive Trading**

24. During the period from 7:18 p.m. CST on March 4, 2010, to 12:26 a.m. CST on March 5, 2010, (the "Relevant Period"), Garofalo fraudulently obtained unauthorized access to the Aleph SICAV Account.

25. During the Relevant Period, Garofalo simultaneously entered trades in his Personal Account and the Aleph SICAV Account in E-mini S&P 500 options and Euro/U.S. Dollar European Style Premium options that were executed on CME's Globex platform. During this time, Garofalo repeatedly, illegally, and self-servingly, traded options contracts between his Personal Account and the Aleph SICAV Account.

26. Garofalo intentionally executed parallel orders to buy and sell during after-hours trading on the March 5, 2010 trading day -- a period of low volume options trading -- with the purpose of having the opposite orders find and match each other on Globex. During a 5 hour period on the March 5, 2010 trading day, Garofalo fraudulently executed 168 trades in the Aleph SICAV Account and was successful in matching 119 of the Aleph SICAV orders with orders placed in his own Personal Account.

27. These transactions, in which Garofalo's Personal Account bought from and sold to the Aleph SICAV Account at profitable prices, effected the transfer of money from Aleph SICAV to Garofalo.

28. Garofalo engaged in two patterns of inter-account trading activity, as follows:

(a) Garofalo would buy commodity options contracts for his Personal Account at lower prices from the Aleph SICAV Account and then sell them back, i.e., offset the previously established position, to the Aleph SICAV Account at higher prices, or

(b) Garofalo would sell commodity options contracts from his Personal Account at

higher prices to the Aleph SICAV Account and subsequently buy them back, i.e., offset the previously established position, from the Aleph SICAV Account at lower prices.

29. For example, during the Relevant Period, at 10:52:56 p.m. CST, Garofalo entered a buy order in his Personal Account and at 10:53:00 p.m. CST – a mere four seconds later – entered a sell order in the Aleph SICAV Account, designed to trade against his Personal Account, resulting in the execution of the following April 2010 Euro/U.S. Dollar European Style Premium options with a \$13.25 strike price on the CME: 50 at 0.0055. At 10:59 p.m., Garofalo offset those positions by entering a sell order in his Personal Account for 50 April 2010 Euro/U.S. Dollar European Style Premium options at a \$13.25 strike price at a cost of \$0.0085 per contract and a buy order for the exact same number of contracts only seconds later in the Aleph SICAV Account. This particular series of transactions resulted in a gain to Garofalo's Personal Account of \$18,750.<sup>2</sup>

30. Minutes later at 11:02 p.m., Garofalo repeated the same series of transactions and entered a buy order in his Personal Account designed to trade against the Aleph SICAV Account (50 April 2010 Euro/U.S. Dollar European Style Premium options with a \$13.25 strike price at a cost of \$0.0066 per contract), followed by a sell order in his Personal Account designed to trade against a buy order he executed in the Aleph SICAV Account, resulting in an additional gain of \$7,500 in Garofalo's Personal Account.

31. Similarly, during the Relevant Period between 8:52 p.m. CST and 8:54 p.m. CST, Garofalo entered two separate orders in the Personal Account to sell 10 contracts each of March 2010

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<sup>2</sup> The gain to Garofalo's Personal Account for this transaction is calculated by using the following formula. First, the basic profit/loss calculation is as follows:

$$(\text{Price Difference} / \text{Tick size}) \times (\text{number of contracts}) \times (\text{tick value}) = \text{profit/loss}$$

Thus, for this example involving trading in Euro/U.S. Dollar European Style Premium options, because the tick size is 0.0001 with a value of \$12.50, the following would apply:

$$(.0085 - .0055) / (.0001) \times 50 \times 12.50 = 18,750.$$

Euro/U.S. Dollar European Style Premium options with a \$13.70 strike price at a price of \$.001 per contract and simultaneously entered corresponding orders to buy in the Aleph SICAV Account. Then at 8:57 p.m. CST, Garofalo offset those transactions by entering an order in his Personal Account to buy 20 options contracts for March 2010 Euro/U.S. Dollar European Style Premium options with a \$13.70 strike price at a price of \$0.0005 per contract and entering an order to sell 20 corresponding options in the Aleph SICAV Account, resulting in a gain of \$1,250 to Garofalo.

32. Garofalo executed similar series of transactions in E-mini S&P 500 options. For example, during the Relevant Period, at 7:38 p.m., he entered a buy order in his Personal Account of 50 June 2010 E-mini S&P 500 options with a \$12.25 strike price and entered a corresponding sell order in the Aleph SICAV Account designed to trade against his Personal Account; the transaction was executed at a price of \$5.00 per contract. Then, at 8:03 p.m., Garofalo entered a sell order in his Personal Account for 50 June 2010 E-mini S&P 500 options with a \$12.25 strike price and entered a corresponding buy order in the Aleph SICAV Account. The second transaction was executed at a price of \$6.50 per contract resulting in a gain of \$3,750 to Garofalo's Personal Account based on the series of transactions.<sup>3</sup>

33. At 8:07 p.m., Garofalo entered an order in his Personal Account to buy and an order in the Aleph SICAV Account to sell 39 September 2010 E-mini S&P 500 options with a \$12.00 strike price at a price of \$22.00 per contract. At 8:10 p.m. CST, Garofalo simultaneously entered an order in the Personal Account to buy and an order in the Aleph SICAV Account to sell 30 September 2010 E-mini S&P 500 options with a \$12.00 strike price at a price of \$27.00 per contract. Garofalo's Personal Account gained \$7,500 from this series of transactions, which resulted in a position of 9 open contracts in both the Personal Account and Aleph SICAV Account.

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<sup>3</sup> The gain to Garofalo's Personal Account for transactions in E-mini S&P 500 options is calculated using the same formula discussed in note 2 *supra*. However, for E-mini S&P 500 options, the tick size 0.25 with a value of \$12.50 per contract.



34. At 8:12 p.m. CST, Garofalo initiated a series of transactions in order to close out the open positions in September 2010 E-mini S&P 500 options with a \$12.00 strike price. He entered an order to buy 10 options in his Personal Account and an order to sell 10 options in the Aleph SICAV Account at a price of \$22.00. At 8:16 p.m. CST, he offset those transactions and ultimately closed out the positions by simultaneously entering an order in his Personal Account to buy 19 options contracts and an order in the Aleph SICAV Account to sell 19 options contracts for September 2010 E-mini S&P 500 options with a \$12.00 strike, but this time at a price of \$25.00 per contract. This second series of transactions resulted in an additional gain of \$2,850.

35. CME's rules do not allow Garofalo to execute trades in the manner described in this complaint.

#### **The Garofalo Personal Account**

36. Garofalo appears to have opened the Personal Account specifically for the purpose of engaging in the above-described fraud.

37. Garofalo opened the Interactive Brokers LLC account electronically on February 9, 2010, and funded the account with a single transfer of 10,000€ on February 23, 2010.

38. From February 23, 2010, when the Interactive Brokers LLC account was first funded, until March 4, 2010, when Garofalo began engaging in the illegal transactions with the Aleph SICAV Account, Garofalo entered into only *four* transactions in his Personal Account. On March 2, 2010, Garofalo executed four separate trades for one contract each of Euro/U.S. Dollar European Style Premium options.

39. By comparison, during a 5 hour period on the March 5, 2010 trading day, i.e., the Relevant Period, Garofalo executed 135 transactions in his Personal Account.

40. The following Tuesday, March 9, 2010, Garofalo attempted to withdraw all of the funds from his Interactive Brokers account. Garofalo's initial withdrawal requests were denied because they exceeded his account permissions for single withdrawals. However, his requests for withdrawal were ultimately denied by Interactive Brokers, who had been alerted by the CME of a potential fraud.

41. When Garofalo was unable to withdraw the funds from his account, he attempted to close the account.

42. In totem, under information and belief, Garofalo's Personal Account has gained at least \$614,000 based on Garofalo's illegal commodity futures transactions. Likewise, Aleph SICAV's Account has lost at least \$614,000.

43. By executing trades between his Personal Account and the Aleph SICAV Account during periods of low volume trading in order to pass money from the Aleph SICAV Account to his Personal Account, Garofalo entered into transactions without intent to take a genuine, bona fide position in the market.

44. In addition, by gaining unauthorized access to the Aleph SICAV Account, executing trades between his Personal Account and the Aleph SICAV Account during periods of low volume trading in order to pass money from the Aleph SICAV Account to his Personal Account, attempting to immediately withdraw fraudulently obtained gains from the Personal Account, Garofalo knowingly defrauded Aleph SICAV and knowingly misappropriated funds from the Aleph SICAV Account.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT  
AND COMMISSION REGULATIONS**

**COUNT I – Fraud In Connection With Commodity Options Contracts  
(Violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) (2009))**

45. Paragraphs 1 through 44 are re-alleged and incorporated herein.

46. Pursuant to Section 4c(b) of the Act, 7 U.S.C. § 6c(b), no person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”, contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.

47. Pursuant to Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a), (c) (2009), in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction, it shall be unlawful for any person directly or indirectly (a) to cheat or defraud or attempt to cheat or defraud any other person; or (c) to deceive or attempt to deceive any other person by any means whatsoever.

48. As alleged supra, during the Relevant Period, Garofalo knowingly or willfully, violated Section 4c(b) of the Act and Regulation 33.10(a) and (c), by, among other things, executing unauthorized, fraudulent trades on Aleph SICAV’s behalf in order to misappropriate Aleph SICAV’s funds for his own personal use.

49. Each misappropriation, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act and Regulation 33.10(a) and (c).

**COUNT II – Fictitious Sales**  
**(Violations of Section 4c(a) of the Act, 7 U.S.C. § 6c(a))**

50. Paragraphs 1 through 44 are re-alleged and incorporated herein.

51. Garofalo violated Section 4c(a) of the Act, 7 U.S.C. 6c(a), (2006), by entering into a transaction that is of the character of or is commonly known to the trade as a fictitious sale, specifically a money pass, involving the purchase or sale of a commodity for future delivery which transaction was used or may have been used to hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity; or to determine the price basis of any such transaction in interstate commerce in the commodity; or to deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

52. Each transaction entered into by the Garofalo, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (2006).

**COUNT III – Noncompetitive Transactions**  
**(Violations of Regulation 1.38(a), 17. C.F.R. § 1.38(a))**

53. Paragraphs 1 through 44 are re-alleged and incorporated herein.

54. Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2009), requires that all purchases and sales of commodity option contracts be executed "openly and competitively."

55. Garofalo violated Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2009), by engaging in a series of improper noncompetitive commodity option transactions.

56. Each transaction entered into by the Garofalo, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2009).

**VI. RELIEF REQUESTED**

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

- A. Find that Garofalo violated Sections 4c(a) and 4c(b) of the Act, 7 U.S.C. §§ 6c(a), 6c(b) (2006), Regulations 1.38(a) and 33.10(a) and (c), 17 C.F.R. §§ 1.38(a) and 33.10(a), (c)(2009);
- B. Enter an order of permanent injunction prohibiting Garofalo and any other person or entity associated with him, including any successor thereof, from engaging, directly or indirectly, in:
1. conduct in violation of Sections 4c(a) and 4c(b) of the Act, 7 U.S.C. §§ 6c(a), 6c(b) (2006), Regulations 1.38(a) and 33.10(a) and (c), 17 C.F.R. §§ 1.38(a) and 33.10(a), (c)(2009);
  2. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2009)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for Garofalo’s own personal account or for any account in which Garofalo has a direct or indirect interest;
  3. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on Garofalo’s behalf;
  4. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;
  5. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;
  6. 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 as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009); and/or
  7. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2009)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009)..

C. Enter an order directing Garofalo, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act and Commission Regulations as described herein, including pre-judgment interest thereon from the date of such violations;

D. Enter an order directing Garofalo, and any successors thereof, to make full restitution to every investor who suffered losses as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations.

E. Enter an order assessing a civil monetary penalty against Garofalo and any successors thereof, in the amount of not more than the higher of \$140,000 or triple the monetary gain to Garofalo for each violation by Garofalo of the Act and Commission Regulations;

F. Enter an order requiring Garofalo, and any successors thereof, to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006);

G. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: April 19, 2010, Chicago, Illinois

U.S. COMMODITY FUTURES TRADING COMMISSION

/s/ Joseph A. Konizeski

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