

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

PHILIP MILTON, WILLIAM CENTER,
GREGORY CENTER, and TRADE, LLC.

Defendants,

BD, LLC, CMI Capital, LLC, Center
Richmond, LLC, and TWTT, LLC.

Relief Defendants.

FILED by _____ D.C.
JUN 22 2010
STEVEN M. LAPIMORE
CLERK U.S. DIST. CT.
S. D. OF FLA. - W.F.B.

CIVIL ACTION NO.:

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

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

I. SUMMARY

1. From May 2, 2007 through July 9, 2009 ("relevant period") defendants Philip Milton ("Milton"), William Center, Gregory Center, and Trade, LLC ("Trade") (collectively, "Defendants"), fraudulently solicited and accepted approximately \$28 million from numerous individuals and entities to participate in a pool to trade commodity futures contracts and securities.

2. Throughout the relevant period, in order to induce participation in the pool, Trade, through its agents and employees, including Milton, William Center, and Gregory Center, acted

as an unregistered commodity pool operator ("CPO"), and omitted material facts, including that Defendants were misappropriating pool participant funds. Further, the Defendants made material misrepresentations, including misrepresenting that the pool was profitable when it was not; misrepresenting how funds loaned to Trade would be used, claiming they would be used for operating expenses when they were actually used to pay pool participants as profit; and misrepresenting and grossly inflating the total funds under management and traded in the pool.

3. Instead of trading pool participant funds as promised, Milton, William Center, and Gregory Center used a portion of the pool participant funds to pay principal and purported profit returns to existing pool participants in a manner typical of a Ponzi scheme and to pay business expenses. Additionally, Defendants misappropriated pool participant funds for their personal use, including paying personal expenses and salaries based on what they decided they should be paid rather than using objective criteria.

4. To conceal Defendants' trading losses, Ponzi scheme, and misappropriation, William Center issued or caused to be issued false monthly statements and/or other reports. These documents falsely reflected both highly profitable returns from trading commodity futures on behalf of the pool and that the pool was increasing in value and assets.

5. Contrary to their representations, Milton, William Center, and Gregory Center actually traded only approximately \$15 million of the \$28 million in pool participants' funds provided to Defendants. Defendants deposited a large portion of the funds for the benefit of the following relief defendants: BD, LLC; CMJ Capital, LLC; Center Richmond, LLC; and TWTT, LLC (collectively, "Relief Defendants"). Trade and the Relief Defendants are linked to each other through their corporate officers and were used by the Defendants as vehicles for misappropriating funds deposited with Trade.

6. Through their conduct, Defendants have engaged, are engaged, or are about to engage in acts and practices in violation of the anti-fraud provisions of Sections 4b(a)(2) and 4c(1) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 6(b)(a)(2) and 6c(1) (2006), and Section 4b(a)(1) of the Act, 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")), § 13102, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. § 6(b)(a)(1). Further, Trade acted as a CPO of the pool without being registered with the Commission as such in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

7. At all times relevant and in regard to all conduct alleged herein, Milton, William Center, and Gregory Center were agents of Trade and acted within the scope of their employment. As such, Trade is liable for Milton's, William Center's, and Gregory Center's conduct in violation of the Act pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2009).

8. At all times relevant and in regard to all conduct alleged herein, Milton and William Center were in control of Trade. They failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting Trade's violations. Therefore, Milton and William Center are liable for Trade's violations of the Act pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

9. Relief defendant BD, LLC is not charged with violations of the Act. However, it received funds from Defendants in which it had no legitimate interest or entitlement and which were derived from Defendants' fraudulent acts. BD, LLC, therefore, must return and repay these funds.

10. Relief defendant CMJ Capital, LLC is not charged with violations of the Act. However, it received funds from Defendants in which it had no legitimate interest or entitlement and which were derived from Defendants' fraudulent acts. CMJ Capital, LLC, therefore, must return and repay these funds.

11. Relief defendant Center Richmond, LLC is not charged with violations of the Act. However, it received funds from Defendants in which it had no legitimate interest or entitlement and which were derived from Defendants' fraudulent acts. Center Richmond, LLC, therefore, must return and repay these funds.

12. Relief defendant TWTT, LLC is not charged with violations of the Act. However, it received funds from Defendants in which it had no legitimate interest or entitlement and which were derived from Defendants' fraudulent acts. TWTT, LLC, therefore, must return and repay these funds.

13. Accordingly, pursuant to Section 6c of the Act, 17 U.S.C. § 13a-1 (2006), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act. In addition, the Commission seeks civil monetary penalties and other equitable relief, including restitution to pool participants, disgorgement of Defendants' ill-gotten gains, permanent registration and trading bans, and such other relief as the Court may deem necessary or appropriate.

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

II. JURISDICTION AND VENUE

15. The 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 to the Commission 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 there under.

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 Defendants are found in, inhabit, or transact 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

Plaintiff

17. **Plaintiff Commodity Futures Trading Commission** is a federal independent regulatory agency that is charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), and the Regulations there under, 17 C.F.R. §§ 1.1 *et seq.* (2009).

Defendants

18. **Defendant Trade LLC** is registered as a Limited Liability Corporation in Florida and operates out of Palm Beach Gardens, Florida. Trade LLC was never registered with the Commission as a CPO or in any other capacity.

19. **Defendant Philip Milton** is an individual who resides in Palm Beach Gardens, Florida. Milton is a Managing Member of Trade, and, along with other defendants, controls the

day to day operations of the pool. Mr. Milton has never registered with the Commission as a CPO or in any other capacity.

20. **Defendant William Center** is an individual who resides in Richmond, Virginia. William Center acted as a Managing Member of Trade and manages Trade's business planning and communications. He has never registered with the Commission as a CPO or in any other capacity.

21. **Defendant Gregory Center** is an individual who resides in McLean, Virginia. Gregory Center is a Managing Member of Trade and handled issues addressing "products and services," including regulatory issues. He has never registered with the Commission as a CPO or in any other capacity.

Relief Defendants

22. **Relief Defendant BD, LLC** is a Limited Liability Corporation incorporated in Florida. It has never registered with the Commission as a CPO or in any other capacity. Defendants Gregory Center, William Center, and Milton are registered as BD, LLC's Managing Members. Milton is the Registered Agent.

23. **Relief Defendant CMJ Capital, LLC** is a Limited Liability Corporation incorporated in Florida. It has never registered with the Commission as a CPO or in any other capacity. Defendants Gregory Center, William Center, and Milton are Managing Members of CMJ Capital, LLC. Lawrence Taube, former attorney for Defendants, is the Registered Agent.

24. **Relief Defendant Center Richmond, LLC** is a Limited Liability Corporation incorporated in Florida. It has never registered with the Commission as a CPO or in any other capacity. Defendants Gregory Center and William Center are Managing Members of Center

Richmond, LLC. Milton was the Registered Agent until July 19, 2009, when Lawrence Taube, former attorney for Defendants, was substituted as the Registered Agent.

25. Relief Defendant TWTT, LLC is a Limited Liability Corporation incorporated in Florida. It has never registered with the Commission as a CPO or in any other capacity. Defendants Gregory Center, William Center, and Milton are Managing Members of TWTT, LLC. Milton was the Registered Agent until April 29, 2009, when Lawrence Taube, former attorney for Defendants, was substituted as the Registered Agent.

IV. FACTS

Formation of the Pool

26. Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), defines a "commodity pool operator" as any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, has solicited, accepted or received funds, securities or property from others 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.

27. On May 2, 2007, Milton and Gregory Center formed Trade in Florida. Milton and Gregory Center were named Managing Members. William Center was not named in the Articles of Incorporation but, by his own admission, acted as a Managing Member. Trade was organized to commercialize a futures and securities trading system designed by Milton.

28. Gregory Center, William Center, and Milton gave trading advice, traded futures and/or traded securities through Trade. Defendants Trade, Gregory Center, William Center, and Milton also pooled various individuals' funds for the purpose of trading commodity futures, as well as equities, with these pooled funds.

29. Milton traded commodity futures accounts in the name of Trade at Penson GHCO and Velocity Futures LLC. Both of these entities are Futures Commission Merchants ("FCMs") registered with the CFTC.

30. From approximately May 18, 2007 through July 9, 2009, Gregory Center, William Center, and Milton traded on behalf of pool participants. The pool participants included, but were not limited to, four investment clubs consisting of at least 2,000 individuals. Gregory Center, William Center, and Milton claimed that Trade would pool the pool participants' funds and trade in commodity futures or equities. Milton traded the futures accounts. Gregory Center and William Center only traded equity accounts.

31. Throughout the relevant period, when Trade accepted money from pool participants for purposes of trading in the pool, none of the Defendants registered in any capacity with the Commission.

Fraudulent Solicitations

32. During the relevant period, William Center, Gregory Center, and Milton directly and indirectly solicited approximately \$28 million from pool participants, primarily from the four investment clubs. The funds were solicited to invest in the commodity pool to trade securities and commodity futures on pool participants' behalf. The \$28 million also included funds solicited as "seed" money to capitalize Trade and to keep the business operating until it was self sufficient. The seed money totaled between \$1.7 million and \$3 million, and was memorialized with Promissory Notes that typically provided for a return of 2% per month.

33. Gregory Center, William Center, and Milton directly solicited Cash Flow Financial, LLC ("Cash Flow"), an investment club the CFTC believes consists of over 600 members, through at least one direct mailing dated February 18, 2008.

34. Gregory Center directly solicited Cash Flow and its principal, A.J. Watson, on at least one occasion, through a letter dated March 6, 2008. Gregory Center's letter stated that he is Trade's general counsel and confirmed that Trade operates in a legal and ethical manner.

35. Gregory Center and William Center directly solicited pool participants through at least two seminars to New Life Club, LLC ("New Life"), an investment club of 1,400 members. New Life also ultimately provided pool participant funds to Trade for a commodity pool.

36. Milton and William Center directly solicited pool participants through conference calls, including a December 10, 2008 call with A.J. Watson and Cash Flow members.

37. Milton directly solicited customers through a speech he gave at a New Life convention explaining how his system worked.

38. Gregory Center directly solicited potential pool participants by fielding and responding to their legal advisors' questions, and by explaining to potential pool participants how Trade's business model complied with federal regulations.

39. Gregory Center, William Center, and Milton directly solicited pool participants through an open house held in or around March 2009, attended by approximately 150 people including New Life members, Cash Flow members, family, and friends.

40. Gregory Center indirectly solicited pool participants through his work helping A.J. Watson draft promotional material for Cash Flow.

41. Gregory Center, William Center, and Milton indirectly solicited pool participants through their work helping New Life draft material to be posted on its website.

42. At a minimum, Defendants made the following false or misleading representations in their solicitations:

- a. Gregory Center, William Center, and Milton falsely claimed to be in compliance with CFTC registration requirements;
- b. Gregory Center, William Center, and Milton falsely represented that the pool was profitable when it was not;
- c. William Center sent participants fraudulent documents supporting Defendants' claim that the pool was profitable when it was not; and
- d. Milton sent money to the pool participants, identifying the money as profits when in fact it was other participants' money invested with Trade.

43. At a minimum, Defendants omitted the following material facts from their solicitations:

- a. Gregory Center, William Center, and Milton failed to disclose the fact that they were using participants' funds for their personal use, including paying themselves a salary of up to \$10,000 per month and using pool funds to pay expenses;
- b. Gregory Center, William Center, and Milton failed to disclose the fact that the pool was losing money;
- c. Gregory Center, William Center, and Milton failed to disclose the fact that they were using pool participants' funds to pay principal and purported profit returns to existing pool participants in a manner typical of a Ponzi scheme.

44. Trade, through its agents and employees, including Gregory Center, William Center, and Milton, acted as a CPO. As such, it owed a fiduciary duty to pool participants. It was obligated to disclose all material information to participants. Pool participants would have

found it important to learn that the pool was not profitable, that Trade was not in compliance with the relevant federal regulatory agencies, that participant funds were being misappropriated through the Relief Defendants and through a participant payoff scheme typical of a Ponzi scheme, and that William Center circulated fraudulent documents falsely showing that the pool was profitable. Consequently, Trade should have disclosed this material information. Failure to provide this information is a material and fraudulent omission.

45. Contrary to their claims of successful trading, profitable returns, and increasing funds under management, Gregory Center, William Center, and Milton were misappropriating large sums of the funds invested by pool participants.

46. Despite taking in approximately \$28 million in participant funds, Gregory Center, William Center, and Milton placed only a fraction of the funds into trading accounts.

47. Gregory Center, William Center, and Milton knew that their solicitations were untrue, or were reckless with regard to the truthfulness of their solicitations, because they controlled the trading accounts and saw the trading results during the relevant period. Therefore, they knew that their trading was unsuccessful. Defendants also knew or recklessly disregarded the fact that they were not registered with the National Futures Association and thus were not in compliance with CFTC registration requirements as claimed. Further, while acting as controlling persons, Milton and William Center failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting Trade's violations.

Misappropriation

48. Gregory Center, William Center, and Milton told prospective participants that they intended to keep a commission based on profits. Trade was only profitable two months of

the relevant period. However, Gregory Center, William Center, and Milton took a commission in months other than the two profitable months.

49. Gregory Center, William Center, and Milton compensated themselves on a monthly basis without regard to whether Trade was profitable. Rather, Gregory Center, William Center, and Milton determined how much they wanted to take as a draw, taking up to \$10,000 a month. Additionally, they used Trade funds to pay their expenses. In total, Gregory Center, William Center, and Milton paid themselves approximately \$9.6 million in salary and expenses. Thus, instead of trading pool participants' funds as promised, Gregory Center, William Center, and Milton used participant funds for salary and expenses.

50. Instead of trading pool participant funds as promised, Gregory Center, William Center, and Milton used pool participant funds to repay principal and pay purported profitable returns to existing pool participants in a manner typical of a Ponzi scheme.

51. Gregory Center, William Center, and Milton knew that they were misappropriating participant funds because they used the funds for purposes other than trading. Further, while acting as controlling persons, Milton and William Center failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations.

52. Gregory Center, William Center, and Milton used relief defendants BD, LLC, CMJ Capital, LLC, Center Richmond, LLC, and TWTT, LLC as a means of misappropriating pool participants' funds. Approximately \$6 million was paid to the Relief Defendants in the form of salaries, business expenses, and other fraudulent expenses.

Issuance of False Account Statements

53. From the inception of the pool, William Center issued monthly account statements to participants. Those statements falsely indicated that the pool participants were profiting and that the pool was increasing in size.

54. William Center knew that the monthly account statements were untrue, or was reckless with regard to their truthfulness, because he, along with Milton, controlled the trading accounts and saw the trading results during the relevant period. Therefore, he knew that their trading was unsuccessful.

V. VIOLATIONS OF THE ACT**COUNT ONE****Fraud in Connection with Futures Contracts**

(Violations of Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2006), and Section 4b(a)(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1))

55. Paragraphs 1 through 54 are re-alleged and incorporated herein.

56. It is a violation of the Act and Act, as amended by the CRA, for any person, in or in connection with any order to make, or the making of, any on-exchange futures contract, for or on behalf of any other person: (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 willfully to enter or cause to be entered for such person any false record 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 the disposition or execution of any such order or contract, or in regard to any act or agency performed with respect to such order or contract for such person. Section 4b(a)(2)(i), (ii), and (iii), 7 U.S.C. §§ 6b(a)(2)(i), (ii), (iii) (2006) (with respect to conduct before June 18, 2008); and Section 4b(a)(1)(A), (B) and (C) of

the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (B), and (C) (with respect to conduct on or after June 18, 2008).

57. As alleged above, during the relevant period, Milton, Gregory Center, and William Center knowingly, or with reckless disregard for the truth, violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), with respect to acts occurring before June 18, 2008, and Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), with respect to acts occurring on or after June 18, 2008, by, among other things, (1) omitting material information, including the fact that they were misappropriating pool participant funds; (2) falsely representing that they were generating profits from trading on behalf of the pool and pool participants; (3) misappropriating pool participant funds by using such funds to pay principal and purported returns to other pool participants; and (4) misappropriating pool participant funds to pay business expenses and for personal use.

58. As alleged above, during the relevant period, William Center knowingly, or with reckless disregard for the truth, violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii), with respect to acts occurring before June 18, 2008, and Section 4b(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(B), with respect to acts occurring on or after June 18, 2008, by issuing or causing to be issued false account statements and reports reflecting positive returns for the pool and increases in the value of pool participants' interests.

59. Milton, Gregory Center, and William Center were acting as agents of Trade when they violated the Act as alleged in this count, and, therefore, Trade, as their principal, is liable for their violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), and Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C.

§§ 6b(a)(1)(A)-(C), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2009).

60. Milton and William Center were in control of Trade, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Trade's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Milton and William Center are liable for Trade's violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), and Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006).

61. Each misrepresentation or omission of material fact, issuance of a false statement or report, and misappropriation, 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), with respect to acts occurring before June 18, 2008, and Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008.

COUNT TWO

Fraud By Commodity Pool Operator

(Violations of Section 4(a)(1)(A) & (B) of the Act, 7 U.S.C. § 6(a)(1)(A) & (B) (2006))

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

63. During the relevant period, Trade, through its agents and employees, including Milton, Gregory Center, and William Center, acted as a CPO for the pool 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 commodities for future delivery on or subject to the rules of a contract market.

64. As alleged above, during the relevant period, Trade, through its agents and employees, including Milton, Gregory Center, and William Center, employed a device, scheme or artifice to defraud prospective and existing pool participants, or engaged in a transaction, practice or course of business that operated as a fraud or deceit upon prospective and existing pool participants in violation of Sections 40(1)(A) & (B) of the Act, 7 U.S.C. §§ 60(1)(A) & (B) (2006), by (1) omitting material information, including the fact that Defendants were misappropriating pool participant funds; (2) falsely representing that Defendants were generating profits from their trading on behalf of the pool and pool participants; (3) misappropriating pool participant funds by using such funds to pay principal and purported returns to other pool participants; and (4) misappropriating pool participant funds to pay business expenses and for personal use.

65. In addition, Trade, through its agent William Center, employed a device, scheme or artifice to defraud prospective and existing pool participants, or engaged in a transaction, practice or course of business that operated as a fraud or deceit upon prospective and existing pool participants in violation of Sections 40(1)(A) & (B) of the Act, 7 U.S.C. §§ 60(1)(A) & (B) (2006), by issuing or causing to be issued false account statements and reports reflecting positive returns for the pool and increases in the value of pool participants' interests.

66. Milton, Gregory Center, and William Center were acting as agents of Trade when they engaged in the violative conduct alleged in this count and, therefore, Trade, as their principal, is liable for their conduct in violation of Sections 40(1)(A) & (B) of the Act, 7 U.S.C.

§§ 60(1)(A) & (B) (2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2009).

67. Milton and William Center were in control of Trade, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Trade's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Milton and William Center are liable for Trade's violations of Sections 40(1)(A) & (B) of the Act, 7 U.S.C. §§ 60(1)(A) & (B) (2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006).

68. Each misrepresentation or omission of material fact, issuance of a false statement or report, and misappropriation, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 40(1)(A) & (B) of the Act, 7 U.S.C. §§ 60(1)(A) & (B) (2006).

COUNT THREE

Failure to Register As a Commodity Pool Operator

(Violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1))

69. Paragraphs 1 through 68 are re-alleged and incorporated herein.

70. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), 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.

71. As alleged, during the relevant period, Trade, through its agents and employees, including Milton, Gregory Center, and William Center, acted as a CPO within the meaning of Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), and used the mails or instrumentalities of

interstate commerce in or in connection with its business as a CPO while failing to register as such, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

72. Milton and William Center were in control of Trade, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Trade's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Milton and William Center are liable for Trade's violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006).

COUNT FOUR

Disgorgement of Funds from Relief Defendants

73. Paragraphs 1 through 72 are re-alleged and incorporated herein.

74. Defendants have defrauded pool participants and misappropriated pool funds.

75. Relief defendants BD, LLC; CMJ Capital, LLC; Center Richmond, LLC; and TWTT, LLC received funds as a result of the Defendants' fraudulent conduct and misappropriation, and have been unjustly enriched thereby.

76. Relief Defendants have no legitimate entitlement to or interest in the funds received as a result of the Defendants' fraudulent conduct and/or misappropriation.

77. Relief Defendants should be required to disgorge funds up to the amount they received from Defendants' fraudulent conduct and misappropriation, or the value of those funds that they may have subsequently transferred to third parties.

VI. RELIEF

WHEREFORE, the Commission 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 all Defendants violated Sections 4b(a)(2)(i) and(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and(iii) (2006), and Sections 4b(a)(1)(A) and(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and(C);

(b) an order finding that Trade, Milton, and William Center violated Sections 4o(1)(A) & (B) and 4m(1) of the Act, 7 U.S.C. §§ 6o(1)(A) & (B) and 6m(1) (2006);

(b) an order finding that Trade and William Center violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006), and Section 4b(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(B);

(c) an order of permanent injunction prohibiting Defendants, and any other person or entity associated with them, including any successor thereof, from engaging in conduct violative of the sections of the Act that the Defendants have been alleged to have violated;

(d) an order of permanent injunction prohibiting Defendants from engaging, directly or indirectly, in:

1. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006));
2. entering into any transactions involving futures, options, commodity options (as that term is defined in Commission Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1)) ("commodity options"), and/or foreign currency (as described in Section 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA, to be codified in 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) ("forex contracts") for their own personal account or for any account in which they have a direct or indirect interest;

3. having any futures, options, commodity options, and/or forex contracts traded on their 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 futures, options, commodity options, and/or forex contracts;
5. soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any futures, options, commodity options, and/or forex contracts;
6. 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009); and
7. acting as a principal (as that term is defined in Commission 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 CFTC except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009);

(e) an order directing Defendants and Relief Defendants, as well as any other person or entity associated with them, including any successor thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act, as described herein, and interest thereof from the date of such violations;

(f) an order directing Defendants, as well as any other person or entity associated with them, including any successor thereof, to make full restitution, pursuant to such procedure as the Court may order, to every pool participant whose funds were received by them as a result of acts and practices which constitute violations of the Act, as described herein, and interest thereon from the date of such violations;

(g) 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 pool participants whose funds were received by them as a result of the acts and practices that constituted violations of the Act and Act, as amended by the CRA, described herein.

(h) an order requiring Defendants to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain to Defendants for each violation of the Act or (2) \$130,000 for each violation of the Act on or between October 23, 2004 through October 22, 2008, and \$140,000 for each violation of the Act on or after October 23, 2008; and

(i) an order for such other and further remedial ancillary relief as the Court may deem appropriate.

June 22nd, 2010

Respectfully submitted,

PLAINTIFF UNITED STATES COMMODITY
FUTURES TRADING COMMISSION

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