

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CLERK'S OFFICE
APR 23 2012

U.S. COMMODITY FUTURES
TRADING COMMISSION
1155 21st Street, NW
Washington, DC 20581

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Civil Action No.: _____

Plaintiff,

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v.

THE BORROWING STATION, LLC
4003 Woodrow Lane
Bowie, MD 20715
Prince George's County

*

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and

*

SIDNEY J. CHARLES, JR.
4003 Woodrow Lane
Bowie, MD 20715
Prince George's County

*

Defendants.

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**COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL MONETARY
PENALTIES, AND OTHER EQUITABLE RELIEF**

Plaintiff U.S. Commodity Futures Trading Commission ("Commission" or "CFTC") alleges as follows:

I. SUMMARY

1. From at least October 2009 through at least July 2011 (the "relevant period"), The Borrowing Station, LLC ("Borrowing Station"), acting through its officers, employees, or agents, and

Sidney J. Charles, Jr. (“Charles” and, collectively with Borrowing Station, “Defendants”), individually and as officer, employee, and/or agent of Borrowing Station, orchestrated and operated a Ponzi scheme. Charles formed and controlled Borrowing Station.

2. Borrowing Station, through Charles and others, solicited and accepted approximately \$355,000 from at least 18 individuals and entities for the purpose of participating in a pooled investment vehicle that traded off-exchange leveraged or margined foreign currency contracts (“forex” or “foreign currency”). Borrowing Station, through Charles and others, solicited pool participants directly and through a website, www.earn25percent.com (“Borrowing Station website”), among other means. Through in-person and website solicitations, Defendants lured prospective pool participants with the prospect of earning substantial investment returns such as 25% per year or 10% per month. Borrowing Station, through Charles and at least one other individual, issued checks to pool participants that represented purported “monthly returns” or “return on investment.”

3. In reality, however, Borrowing Station, through at least Charles, paid pool participants with other pool participants’ funds. Borrowing Station, through at least Charles, deposited only a portion of pool participant funds – at most \$114,000 – in actual trading accounts, and Defendants lost over \$65,000 unsuccessfully trading forex. Defendants never told pool participants about the trading losses or that only a portion of their funds were being traded. Of the funds not lost in trading, Defendants, through at least Charles, used the remainder of pool participant funds, in total approximately \$290,000, to pay for personal expenses, to make purported profit or commission payments to other pool participants, and to fund Borrowing Station’s operations.

4. Through the issuance of false profit checks and other communications to pool participants, Defendants concealed their trading losses, their misappropriation, and their fraudulent scheme.

5. In addition, Borrowing Station operated the pooled investment that traded forex (“forex pool”) without being registered as a commodity pool operator (“CPO”), as required, and Charles solicited pool participants and/or supervised others who solicited pool participants without being registered as an associated person (“AP”) of Borrowing Station as required.

6. By virtue of the conduct described above and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts in violation of the Commodity Exchange Act (“Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII (Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.*, specifically Section 4b(a)(2)(A)-(C) of the Act, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C), and as of October 18, 2010, the effective date of new regulations relating to off-exchange forex transactions, Commission Regulation (“Regulation”) 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2011).

7. In addition, as of October 18, 2010, Borrowing Station operated the forex pool without being registered as a CPO as required under Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011), and without having any valid exemption from the requirement to register as a CPO. Also as of October 18, 2010, Charles solicited pool participants and/or supervised others who

solicited pool participants and accordingly, acted as an AP of Borrowing Station without being registered as such in violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), and Regulation 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii) (2011).

8. During the relevant period Charles, directly or indirectly, controlled Borrowing Station, and failed to act in good faith, or knowingly induced, directly or indirectly, the acts constituting Borrowing Station's violations alleged herein. Therefore, Charles is liable for Borrowing Station's violations of the Act and Regulations, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

9. During the relevant period Charles, and other individuals, committed the acts described herein within the course and scope of their employment, agency, or office with Borrowing Station. Therefore, 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 (2011), Borrowing Station, as the principal, is liable for the violations of the Act and Regulations committed by its agents, including Charles and other individuals.

10. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2)(C) of the Act, as amended by the CRA, 7 U.S.C. § 2(c)(2)(C) (Supp. III 2009), the Commission brings this action to enjoin Defendants' unlawful acts and practices, and to compel their compliance with the Act, as amended by the CRA and the Dodd-Frank 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, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

11. 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

12. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act 7 U.S.C. § 13a-1(a) (2006), which provides, in relevant part, that whenever it shall appear to the Commission that any 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, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

13. The Commission has jurisdiction over the forex transactions at issue in this case pursuant to Section 2(c)(2)(C) of the Act, as amended by the CRA, 7 U.S.C. § 2(c)(2)(C) (Supp. III 2009), which grants the Commission jurisdiction over agreements, contracts, and transactions in forex.

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

III. PARTIES

15. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

16. Defendant **The Borrowing Station, LLC** is a Nevada limited liability company with its principal place of business in Bowie, Maryland. Borrowing Station has never been registered with the CFTC. Borrowing Station is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment banking company, and is not an AP of such entities.

17. Defendant **Sidney J. Charles, Jr.** currently resides in Raceland, Louisiana based on information and belief. During the relevant period, Charles resided at the same street address where Borrowing Station operated in Bowie, Maryland. Charles holds himself out as president and chief executive officer of Borrowing Station. Charles has never been registered with the CFTC. Charles is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment banking holding company, and is not an AP of such entities.

IV. FACTS

A. Defendants' Fraudulent Solicitation of Pool Participants

18. During the relevant period, Borrowing Station, Charles, and other agents, officers, and employees fraudulently solicited at least 18 individuals and entities to place funds with Borrowing Station for participation in a pooled investment vehicle managed by Borrowing Station, through Charles, that traded forex.

19. Defendants solicited pool participants through the Borrowing Station website, and through Charles's oral and written solicitations. Defendants also used other individuals to solicit pool participants in the name of Borrowing Station and made commission payments to those individuals.

20. The Borrowing Station website falsely created the impression of an established, successful, and safe investment firm. The website stated that Borrowing Station "is an established company in the United States, specializing in Retirement and Education Savings [sic]." Under a

webpage heading titled "Retire Early, Enjoy Life," the Borrowing Station website advertised an investment "program" that promised prospective individuals who became pool participants "consistent [sic] annual returns of 25% regardless of any market conditions." The Borrowing Station website further stated: "If for any reason we do not reach a return of 25%, we will subsidize your account with our money." The Borrowing Station website touted Borrowing Station's "guarantee [sic] investment strategies" that included trading forex "on a daily basis." Under a webpage heading titled, "50% Return Per Year," the Borrowing Station website explained that Borrowing Station "has created innovative solutions to make your financial [sic] goals a reality. After years of study, we've implemented innovative strategies to double our clients [sic] investments every two years. Our strategies . . . [include] trading currencies on a daily basis." All of these statements on the Borrowing Station website were false.

21. Charles solicited pool participants in person, at his home. In his oral solicitations, Charles promised prospective pool participants returns of 10% per month.

22. While luring prospective pool participants with claims of large profits, Defendants, through Charles and others, minimized the risks of trading leveraged foreign currency. In the website, and their oral and written solicitations, Defendants falsely claimed that pool participant funds were guaranteed against trading losses.

23. In their solicitations and throughout the relevant period, Defendants, through Charles and others, failed to disclose to pool participants and prospective pool participants that their claims of experience and success in trading forex were false and that there was no basis for their representations that pool participants could quickly earn enormous investment returns such as 25% per year or 10% per month.

24. Defendants, through Charles and others, further failed to disclose that they traded only a portion of pool participant funds, operated a Ponzi scheme designed to defraud pool participants, and misappropriated pool participant funds as further alleged below. Defendants, through Charles and others, failed to disclose that they used pool participant funds for Charles's personal expenses and to make payments to pool participants, as further alleged below.

25. Defendants, through Charles, knowingly or with reckless disregard of the truth made such material misrepresentations and omissions in order to induce pool participants to invest funds with them.

26. Pool participants and prospective pool participants relied on Defendants' representations and omissions of fact in making their decisions to invest and reinvest with Borrowing Station.

B. Defendants Traded Only Some Pool Participant Funds and Lost a Majority of Those Funds Trading

27. Lured by Defendants' misrepresentations and omissions, pool participants placed approximately \$355,000 with Borrowing Station to invest during the relevant period.

28. Charles, directly and through other individuals, instructed pool participants to wire their funds directly to Borrowing Station's corporate bank account or provide a check payable to Borrowing Station. During the relevant period, Borrowing Station maintained a corporate bank account. Charles was a signatory on the Borrowing Station bank account.

29. Of the approximately \$355,000 in pool participant funds that Borrowing Station received, Defendants, through at least Charles, deposited or transferred at most \$114,000 into trading accounts at any futures commission merchant ("FCM") or retail foreign exchange dealer ("RFED") registered with the Commission.

30. Defendants, through Charles, opened four proprietary trading accounts in the name of Borrowing Station at two FCMs to whom Charles, via FCM account documentation, identified himself

as the chief executive officer of Borrowing Station. Charles was the only individual authorized to trade in two of the Borrowing Station trading accounts, which received the majority of pool participant funds that Defendants actually traded. Charles and one other person were the only individuals authorized to trade in the other two Borrowing Station trading accounts.

31. Contrary to their representations, Defendants were not successful foreign currency traders. Of the \$114,000 that Defendants deposited into the trading accounts, Defendants withdrew approximately \$48,000 and incurred total net trading losses of over \$65,000 between the four proprietary forex trading accounts.

32. As of December 21, 2011, the four Borrowing Station forex trading accounts had a net balance of \$50.

33. Charles never reported these trading losses to pool participants and prospective pool participants, or disclosed to them that only a portion of pool participant funds were being traded.

C. Defendants Misappropriated Approximately \$290,000 of Pool Participant Funds

34. During the relevant period, Defendants misappropriated approximately \$290,000 of the \$355,000 in pool participant funds to pay for personal expenses, to make purported profit or commission payments to other pool participants, and to fund Borrowing Station's operations.

35. Charles was a signatory on the Borrowing Station bank account, and assisted, directed, or controlled the handling of pool participant funds deposited into the bank account.

36. Defendants, through Charles and at least one other individual, used approximately \$119,000 of pool participant funds to pay purported profits and commissions to some pool participants. Consistent with the operation of a Ponzi scheme, these payments to Borrowing Station pool participants

were funded by deposits from existing or subsequent pool participants – not profits Defendants generated by trading forex.

37. Defendants, through Charles and at least one other individual, misappropriated at least \$89,000 of pool participant funds to open six accounts in the names of other individuals at a trading entity not registered with the Commission. These six accounts were funded almost entirely by deposits from certain Borrowing Station pool participants – not by the individual account holders.

38. Defendants, through Charles, also misappropriated pool participant funds to pay Charles's personal expenses.

D. Defendants Concealed Trading Losses and Misappropriation Through False Statements

38. Defendants, through Charles and at least one other individual, concealed their unsuccessful forex trading, misappropriation, and fraudulent scheme through checks and written communications that falsely represented Defendants were profitably trading on behalf of pool participants.

39. Defendants, through the acts of Charles and at least one other individual, caused statements in the form of checks to be issued to pool participants that consistently paid the investment returns promised to them. These checks, described on their memo lines as "return on investment" or "monthly returns," were drawn from the Borrowing Station bank account and executed by Charles and at least one other individual. The amount of funds that each check paid typically paralleled returns of 10% per month that Charles, directly and through others, promised to pool participants. The investment returns paid to pool participants were false. Any purported profits that Defendants, through Charles and at least one other individual, paid to pool participants came from the principal of other existing or subsequent pool participants.

40. At least one pool participant who received the purported “monthly returns” solicited prospective pool participants at Charles’s direction and with his knowledge. These pool participants represented to prospective pool participants that Defendants were investing profitably on behalf of pool participants and that Borrowing Station consistently paid the investment returns promised to them. Defendants made commission payments to these individuals for their solicitation of pool participants.

41. Starting in at least April 2011, certain pool participants requested that Defendants return their funds. Defendants, through Charles, responded to these requests with false statements. In May 2011, Charles sent letters under his name to several pool participants notifying them that Borrowing Station was no longer investing on their behalf. In these letters, Charles promised the pool participants that their funds would be returned to them within 90 days of the date of their respective letters.

42. Following the letters from Charles in May 2011, Defendants did not respond to inquiries from at least one pool participant regarding their promised repayment of funds. On information and belief, in or around August 2011, Charles moved from Bowie, Maryland to Raceland, Louisiana.

43. To date, Defendants have not repaid the pool participants as promised.

E. Charles Controlled Borrowing Station

44. At all material times during the relevant period, Charles was the president and chief executive officer of Borrowing Station. He had virtually complete authority over, and day-to-day control of, Borrowing Station. He did not report to anyone. Charles controlled the trading of most, if not all, pool participant funds. Charles also was an authorized signatory on the Borrowing Station bank account, was responsible for the handling and disposition of pool participant funds, and was the primary contact with pool participants.

F. The Nature of the Transactions

45. Neither Defendants nor the FCMs that were the counterparties to the forex transactions conducted by Defendants were United States financial institutions, registered broker dealers, insurance companies, bank holding companies, or investment bank holding companies, or the associated persons of such entities.

46. At least some, if not all, of the pool participants were not “eligible contract participants” (“ECP”) as that term is defined in Section 1a(18)(A)(xi) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(18)(A)(xi). Nor were any of the pool participants ECPs as that term was defined prior to July 21, 2010. *See* 7 U.S.C. § 1a(12)(A)(xi) (Supp. III 2009). An ECP, as relevant here, is an individual who has total assets in excess of (i) \$10 million or (ii) \$5 million and who enters into the transaction in order to manage risk.

47. The forex pool operated by Defendants also was not an ECP. As of July 21, 2010, Section 1a(18)(A)(iv) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(18)(A)(iv), defines ECP to include a commodity pool that “(I) has total assets exceeding \$5,000,000; and (II) is formed and operated by a person subject to regulation under [the] Act . . . provided, however, that for purposes of section 2(c)(2)(B)(iv) and section 2(c)(2)(C)(vii), the term ‘eligible contract participant’ shall not include a commodity pool in which any participant is not otherwise an eligible contract participant.”

48. The forex transactions Defendants conducted on behalf of the pool participants or the pool were entered into on a leveraged or margined basis. Accordingly, Defendants were required to provide only a percentage of the value of the forex contracts that they purchased. The forex transactions Defendants conducted neither resulted in the delivery of actual currency within two days nor created an

enforceable obligation to deliver actual currency between a seller and a buyer that had 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 enforceable obligation to do so).

G. Borrowing Station Acted as an Unregistered CPO and Charles Acted as an Unregistered AP

49. Pursuant to Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), any person or entity must be registered with the Commission to operate or solicit funds, in connection with forex transactions, for any pooled investment vehicle that is not an ECP.

50. For the purposes of trading forex, a CPO is defined in Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2011), as any person or entity who operates or solicits funds, securities, or property for a pooled investment vehicle that is not an ECP, and that engages in retail forex transactions.

51. Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011), requires any person or entity engaged in retail forex transactions and acting as a CPO defined by Regulation 5.1(d)(1) to be registered as such.

52. As of October 18, 2010, Borrowing Station acted as a CPO as defined by Regulation 5.1(d)(1), relating to off-exchange foreign currency transactions, because it operated or solicited funds for a pooled investment vehicle, the pool was not an ECP as explained above, and the pool engaged in retail forex transactions.

53. As of October 18, 2010, Borrowing Station failed to register as a CPO in violation of Section 2(c)(2)(C)(iii)(I)(cc), as amended by the CRA, 7 U.S.C. § 2(c)(2)(c)(iii)(I)(cc) (Supp. III 2009), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011).

54. Regulation 5.1(d)(2), 17 C.F.R. § 5.1(d)(2) (2011), defines an AP of a CPO engaged in retail forex transactions as “any natural person associated with a commodity pool operator as defined in [Regulation 5.1(d)(1)] . . . as a[n] . . . officer, employee, . . . or agent . . . in any capacity which involves: (i) [t]he solicitation of funds . . . for a participation in a pooled investment vehicle; or (ii) [t]he supervision of any person or persons so engaged.”

55. Together, Section 2(c)(2)(C)(iii)(I)(cc), 7 U.S.C. §2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), and Regulation 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii) (2011), require that any person who acts as an AP of a CPO engaged in retail forex transactions to be registered with the Commission as such.

56. As of October 18, 2010, Charles acted as an AP of a CPO under Regulation 5.1(d)(2), because as president and chief executive officer of Borrowing Station, he solicited funds and/or supervised other persons who solicited funds for participation in the pooled investment vehicle that Borrowing Station operated.

57. During the relevant period, Charles was not registered as an AP of Borrowing Station.

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

COUNT ONE:

**Violations of Section 4b(a)(2)(A)-(C) of the Act and Regulation 5.2(b)(1)-(3):
Fraudulent Solicitation, False Statements, and Misappropriation**

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

59. Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009), makes 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; [or]

(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 contact for or, in the case of paragraph (2), with the other person

Section 4b(a)(2)(A)-(C) of the Act applies to the forex transactions, agreements, or contracts offered to or entered into by Defendants for or on behalf of pool participants as if they were contracts of sale of a commodity for future delivery. Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iv) (Supp. III 2009).

60. Effective October 18, 2010, Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2011), makes it unlawful:

for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction:

(1) [t]o cheat or defraud or attempt to cheat or defraud any person;

(2) [w]illfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or

(3) [w]illfully deceive or attempt to deceive any person by any means whatsoever.

61. As set forth in detail above, during the relevant period, in or in connection with forex contracts, made, or to be made, for or on behalf of, or with, other persons, Borrowing Station through their agent Charles and others, and Charles, 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) fraudulently soliciting pool participants and prospective pool participants by making material misrepresentations and/or failing to disclose material facts to them; (ii) misappropriating pool participant funds; (iii) misrepresenting the profitability of pool trading accounts; and (iv) failing to disclose that Defendants were operating a Ponzi scheme and misappropriating pool participant funds, all in violation of Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA, 7 U.S.C. § 6b(a)(2)(A), (C) (Supp. III 2009), and Regulation 5.2(b)(1), (3), 17 C.F.R. § 5.2(b)(1), (3) (2011).

62. As set forth in detail above, during the relevant period, in or in connection with forex contracts, made, or to be made, for or on behalf of, or with, other persons, Borrowing Station through their agent Charles and others, and Charles, willfully made or caused to be made to the other persons false reports or statements by, among other things, knowingly issuing false profit checks to pool participants, in violation of Section 4b(a)(2)(B) of the Act, as amended by the CRA, 7 U.S.C. § 6b(a)(2)(B) (Supp. III 2009), and Regulation 5.2(b)(2), 17 C.F.R. § 5.2(b)(2) (2011).

63. Borrowing Station through Charles and others, and Charles, engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

64. Charles controlled Borrowing Station, directly or indirectly, and did not act in good faith or knowingly induce, directly or indirectly, Borrowing Station's conduct constituting the violations alleged in this Complaint. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Charles is liable for Borrowing Station's violations of Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009) and Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2011).

65. The foregoing acts, misrepresentations, omissions, and failures of Charles and others occurred within the scope of their employment, office, or agency with Borrowing Station. Therefore, Borrowing Station is liable for these acts, misrepresentations, omissions, and failures 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 (2011).

66. Each act of fraudulent solicitation, misrepresentation or omission of material facts, misappropriation, and making or causing to be made a false report or statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009) and Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(2)(1)-(3) (2011).

COUNT TWO:

**Violations of Section 2(c)(2)(C)(iii)(I)(cc) of the Act and Regulation 5.3(a)(2)(i):
Failure to Register as a CPO**

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

68. With limited exceptions not applicable here, pursuant to Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), any person or entity must be registered with the Commission to operate or solicit funds in connection with forex transactions for any pooled investment vehicle that is not an ECP.

69. Effective October 18, 2010, Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011), requires any person or entity engaged in retail forex transactions and acting as a CPO defined by Regulation 5.1(d)(1) to be registered as such.

70. As of October 18, 2010, Borrowing Station acted as a CPO under Regulation 5.1(d)(1) because it operated or solicited funds for a pooled investment vehicle, the pool was not an ECP, and the pool engaged in retail forex transactions.

71. As of October 18, 2010, Borrowing Station failed to register with the Commission as a CPO in violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011).

72. Charles controlled Borrowing Station, directly or indirectly, and did not act in good faith or knowingly induce, directly or indirectly, Borrowing Station's conduct constituting the violations alleged in this Complaint. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Charles is liable for Borrowing Station's violations of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011).

73. Each day that Borrowing Station acted as a CPO under Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2011), but failed to register with the Commission as a CPO, is alleged as a separate and distinct violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011).

COUNT THREE:

Violations of Section 2(c)(2)(C)(iii)(I)(cc) of the Act and Regulation 5.3(a)(2)(ii): Failure to Register as an AP of a CPO

74. The allegations set forth in paragraphs 1 through 74 are realleged and incorporated herein by reference.

75. With limited exceptions not applicable here, pursuant to Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), any person or entity must be registered with the Commission to operate or solicit funds in connection with forex transactions for any pooled investment vehicle that is not an ECP.

76. Pursuant to Regulation 5.1(d)(2), 17 C.F.R. § 5.1(d)(2) (2011), effective October 18, 2010, an AP of a CPO means “any natural person associated with a commodity pool operator as defined in [Regulation 5.1(d)(1)] . . . as a[n] . . . officer, employee, . . . or agent . . . in any capacity which involves: (i) [t]he solicitation of funds . . . for a participation in a pooled investment vehicle; or (ii) [t]he supervision of any person or persons so engaged.”

77. Effective October 18, 2010, Regulation 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii) (2011), requires any person who acts as an AP of a CPO engaged in retail forex transactions to be registered with the Commission as such.

78. As of October 18, 2010, Charles acted as an AP of Borrowing Station under Regulation 5.1(d)(2), because as president and chief executive officer of Borrowing Station, a CPO, he solicited funds and/or supervised other persons who solicited funds for participation in the pooled investment vehicle that Borrowing Station operated.

79. As of October 18, 2010, Charles failed to register with the Commission as an AP of a CPO in violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), and Regulation § 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii) (2011).

80. The foregoing acts, misrepresentations, omissions, and failures of Charles and others occurred within the scope of his employment, office, or agency with Borrowing Station. Therefore,

Borrowing Station is liable for these acts, misrepresentations, omissions, and failures 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 (2011).

81. Each day that Charles acted as an AP of a CPO, as defined by Regulation 5.3(a)(2)(ii), 17 C.F.R. § 5.1(d)(1) (2011), but failed to register with the Commission as a CPO, is alleged as a separate and distinct violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011).

VI. RELIEF REQUESTED

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 the Court's own equitable powers, enter:

- (a) An order finding that Defendants violated:
 - (i) Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009), and Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2011); and
 - (ii) Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), and Regulation 5.3(a)(2)(i)-(ii), 17 C.F.R. § 5.3(a)(2)(i)-(ii) (2011);

(b) An *ex parte* statutory restraining order and an order for preliminary injunction pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006), restraining Defendants and all persons or entities insofar as they are acting in the capacity of Defendants' agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with

Defendants, who receive actual notice of such orders by personal service or otherwise, from directly or indirectly:

(i) destroying, mutilating, concealing, altering, or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records, or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;

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

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

c) Orders of preliminary and permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of Defendants' agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants and any successor thereof, who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

(i) engaging in conduct in violation of Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified 7 U.S.C. §§ 6b(a)(2)(A)-(C);

Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2011); Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc); and Regulation 5.3(a)(2)(i)-(ii), 17 C.F.R. §§ 5.3(a)(2)(i)-(ii) (2011).

(ii) trading on or subject to the rules of any registered entity as that term is defined in Section 1a(40) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(40).

(iii) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2011)) (“commodity options”), security futures products, 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 and the Dodd-Frank Act, to be codified at 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;

(iv) having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on their behalf;

(v) 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, security futures products, and/or forex contracts;

(vi) 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, security futures products, and/or forex contracts;

(vii) 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) (2011); and

(viii) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011), agent or any other officer or employee of any person (as the term “person” is defined in section 1a(38) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(38)) registered, required to be registered, or exempted from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011);

d) An order directing Defendants, as well as any successors to any Defendant, to disgorge, pursuant to such procedure as the Court may order, all benefits including, but not limited to, salaries, commissions, loans, fees, revenues, and trading profits derived, directly or indirectly, from the acts or practices which constitute violations of the Act, as described herein, and pre-judgment interest thereon from the date of such violations, and post-judgment interest;

e) An order directing Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act, as described herein, and pre-judgment interest thereon from the date of such violations, and post-judgment interest;

f) 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 participants whose funds were received by them as a result of the acts and practices, which constitute violations of the Act, as described herein;

g) An order directing Defendants to pay a civil monetary penalty for each violation of the Act described herein, plus post-judgment interest, in the amount of the higher of: \$140,000 for each violation of the Act or triple the monetary gain to Defendants for each violation of the Act described herein, plus post-judgment interest;

h) An order appointing a receiver, if necessary, to secure assets held by, under the control of, or in the name of Defendants;

i) An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

j) Such other and further relief as the Court deems necessary and appropriate under the circumstances.

Dated: April 23, 2012

Respectfully submitted,



Kassra Goudarzi
Trial Attorney
D.C. Bar No. 490709, *pro hac vice* pending

Michael Solinsky
Chief Trial Attorney
D.C. Bar No. 433754, *pro hac vice* pending

Gretchen L. Lowe
Associate Director
D.C. Bar No. 421955, *pro hac vice* pending

Attorneys for Plaintiff
U.S. Commodity Futures Trading Commission

Division of Enforcement
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581
(202) 418-5416 (Goudarzi)
(202) 418-5384 (Solinsky)
(202) 418-5531 (facsimile)
kgoudarzi@cftc.gov
msolinsky@cftc.gov
glowe@cftc.gov