

proprietary account at the expense of customer accounts managed and traded by Quiddity, a registered Commodity Trading Advisor (“CTA”) and Commodity Pool Operator (“CPO”). Newell owns and controls Quiddity and undertook the fraudulent scheme to allocate profitable trades to his corporate proprietary account to the detriment of Quiddity’s customers, which resulted in over \$1.1 million in profit for the corporate proprietary account.

2. Defendants also failed to retain records sufficient to demonstrate that allocations of trades were fair and equitable, and to permit the reconstruction of the handling of the order from the time of placement by the account manager to the allocation to individual accounts, as required by Commission Regulations.

3. In addition, Defendant Newell made false or misleading statements to officers of the Commission during his investigative testimony on September 23, 2011 and October 25, 2011.

4. By virtue of the conduct described above and further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, 7 U.S.C. §§ 6b(a)(1)(A) and (C) (Supp. III 2009); Section 4c(b) of the Act, as amended by the CRA, 7 U.S.C. §6c(b) (Supp. III 2009); Section 4n(3)(A) of the Act, 7 U.S.C. §6n(3)(A) (2006); Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006); Section 6(c)(2) of the Act, as amended Dodd-Frank Act, to be codified at 7 U.S.C. § 9(c)(2); Regulation 1.31, 17 C.F.R. § 1.31 (2012); Regulation 1.35(a-1)(5)(iv)(B), 17 C.F.R. §1.35(a-1)(5)(iv)(B) (2012); and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2012).

5. During the Relevant Period Newell, directly or indirectly, controlled Quiddity, and failed to act in good faith, or knowingly induced, directly or indirectly, the acts constituting

Quiddity's violations alleged herein. Therefore, Newell is liable for Quiddity's violations of the Act and Regulations, pursuant to Section 13(b) of the Act, 7 U.S.C. §13c(b) (2006).

6. During the Relevant Period Newell, and other individuals, committed the acts described herein within the course and scope of their employment, agency, or office with Quiddity. 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 (2012), Quiddity, as the principal, is liable for the violations of the Act and Regulations committed by its agents, including Newell and other individuals.

7. Accordingly, pursuant to Section 6c of the Act, 7 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 provisions of the Act and Regulations. In addition, the Commission seeks civil 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 or appropriate.

8. 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

9. 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.

10. 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 in, reside, or transact business in this District and certain transactions, acts, practices, and courses of business alleged to have violated the Act occurred, are occurring, or are about to occur within this District.

III. PARTIES

11. 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, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission's Regulations, 17 C.F.R. §§ 1.1 *et seq.* (2012). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

12. Defendant **Quiddity, LLC** is an Illinois limited liability company with its principal place of business in Chicago, Illinois. Quiddity has been a registered CTA and CPO since 2002. Quiddity solicits, accepts or receives funds from others while engaged in a business that is of the nature of an investment trust, syndicate or similar form of enterprise, for the purpose of, among other things, trading commodity futures and options. Additionally, Quiddity, for compensation, engages in the business of advising others as to value of or the advisability of trading commodity futures and options.

13. Defendant **Donald Alexander Newell** currently resides in Glenview, Illinois. During the Relevant Period, Newell was the president and majority owner of Quiddity. Newell controlled Quiddity; he had the power to hire and fire, controlled Quiddity's trading and bank accounts, and did not report to anyone. Newell has been a registered Associated Person ("AP") of Quiddity since 2002 and throughout the Relevant Period. Among other responsibilities,

Newell solicits, or supervises the solicitation, (a) of persons to participate in a commodity pool or (b) for a client or prospective client's discretionary trading account.

IV. FACTS

14. During the Relevant Period, Defendants engaged in a scheme to defraud their customers by allocating profitable commodity interest trades to their proprietary account at the expense of their customers. Defendants were able to perpetrate the fraud by placing orders with executing brokers without providing specific account identifiers and then allocating the trades to specific accounts post-execution. Thus, Defendants were able to wait until it was evident whether a trade was profitable or if the market had moved favorably with respect to an open position before allocating the trade. The trades that Defendants allocated to their proprietary account post-execution were disproportionately profitable. Defendants allocated these trades to the proprietary account at the expense of their customers.

Quiddity's Business and Trading

15. During the Relevant Period, Quiddity, through Newell, operated a commodity pool called the QED Fund II, LLP (the "Pool"). Quiddity, through Newell, opened a trading account for the Pool at MF Global, Inc. ("MF Global") a registered Futures Commission Merchant ("FCM"). During the Relevant Period, Quiddity, through Newell, also acted as a CTA and exercised trading authority over between four and eight customer trading accounts (the "Managed Accounts"). The Managed Accounts were carried at a number of different FCMs. The Pool and the Managed Accounts are referred to collectively as the "Customer Accounts." Newell made all trading decisions for the Customer Accounts.

16. During the Relevant Period, Quiddity, through Newell, also held a proprietary trading account at MF Global (the "Proprietary Account"). The Proprietary Account was wholly owned by Quiddity. Newell was solely responsible for making trading decisions for, and

monitoring the profitability of, the Proprietary Account. The Proprietary Account traded in the same futures contracts and options on futures contracts as the Customer Accounts.

17. Quiddity, through Newell and other employees, placed orders for commodity interest trades for the Customer Accounts and the Proprietary Account through a number of FCMs and executing brokers, including MF Global, Mizuho Securities USA Inc. (“Mizuho”), Xchange Financial Access LLC (“XFA”), and Devonshire, a floor brokerage operation acting under the auspices of F.C. Stone, an FCM. The majority of trades unlawfully allocated to the Proprietary Account were executed by Mizuho and MF Global.

18. During the trading day, Newell and other Quiddity employees, acting at Newell’s direction, placed orders with the executing brokers. Newell placed all or nearly all of Quiddity’s orders that occurred after Quiddity’s normal business hours.

19. Upon receipt of customer orders, FCMs and executing brokers must immediately prepare a written record of each customer’s commodity interest orders, pursuant to Regulation 1.35(a-1)(1), 17 C.F.R. §1.35(a-1)(1) (2012). That record must include an account identifier. This ensures that a trade is executed for, and placed in, the correct account at all times and that improper, preferential trade allocations cannot occur.

20. Regulation 1.35(a) provides a limited exception to the general rule that the specific customer account identifier must be provided at the time the order is placed with the FCM or broker. Regulation 1.35(a-1)(5), 17 C.F.R. § 1.35(a-1)(5) (2012), provides that account managers may enter a “bunched order” for multiple accounts, without providing an account identifier for each customer account at the time the order is placed with the FCM as long as they meet certain requirements set out in the Regulation. Among other requirements, account managers who use “bunched orders” must: (1) provide allocations in a timely fashion and in any

event “no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customers for each trade”; (2) allocate trades fairly and equitably such that “no account or group of accounts may receive consistently favorable or unfavorable treatment”; and (3) must use an allocation methodology that is “sufficiently objective and specific” to permit regulators and auditors to verify the fairness of allocations. A proprietary account of the account manager may be included in a “bunched order” along with discretionary customer accounts. Account managers using “bunched orders” are also subject to additional record keeping requirements pursuant to Regulation 1.35(a-1)(5)(iv), 17 C.F.R. §1.35(a-1)(5)(iv), including the obligation to keep records “sufficient to demonstrate” that all allocations meet the requirements set out above, and to “permit the reconstruction of the handling of the order from the time of placement by the account manager to the allocation to individual accounts.”

21. Each of the Customer Accounts and the Proprietary Accounts had unique account identifiers assigned by the FCMs.

22. To handle the processing of any bunched orders from Quiddity, Mizuho and MF Global each established a suspense account in the name of Quiddity in which trades that appeared to be bunched were initially placed until Quiddity provided allocation instructions.

23. Mizuho recorded orders from Quiddity upon receipt on paper trade tickets. Mizuho employees generally wrote “Q0000” on the order tickets when Quiddity did not provide a specific account identifier at the time Quiddity placed the order. On some occasions, the specific account numbers were added later to the trade ticket, once Mizuho received the allocation instructions from Quiddity.

24. When placing trades for execution by MF Global, Quiddity, through Newell or other Quiddity employees acting at Newell's direction, usually used an electronic trade entry system called Patsystem ("Pats"). In using Pats, Quiddity had to provide an account number for the order at the time of placing it with MF Global. When Quiddity executed a trade in its suspense account, MF Global's electronic trading records contained the Quiddity suspense account number as the account identifier for the trade.

Defendants' Allocation Scheme

25. During the Relevant Period, Quiddity, through Newell or other Quiddity employees acting at Newell's direction, routinely placed commodity interest orders with its executing brokers without providing specific account numbers.

26. As discussed above, Quiddity's executing brokers treated any orders placed by Quiddity without account identification as bunched orders, and placed them in Quiddity's suspense accounts until Quiddity provided allocation instructions. Quiddity, through Newell or other Quiddity employees acting at Newell's direction, provided allocation instructions to the executing brokers post-execution sometime after receiving the prices at which the trades were executed, in a manner that favored the Proprietary Account at the expense of the Customer Accounts.

27. Quiddity often allocated trades post-execution solely to the Proprietary account. Because the trades were for a single account, the trades were not properly part of a bunched order.

28. MF Global's electronic records and Mizuho tickets containing the Quiddity suspense account number "Q0000," show that Defendants placed numerous orders without

providing a specific account identifier. Confirmation emails and other email correspondence are further evidence of this.

29. By using post-execution allocation, Quiddity, through Newell, had the benefit of knowing whether a trade was profitable or if the market had moved favorably with respect to an open position before providing an allocation. Thus, Quiddity, through Newell, was able to allocate profitable trades to the Proprietary Account at the expense of the Customer Accounts, and with limited to no risk to the equity in the Proprietary Account.

30. During the Relevant Period, Quiddity, through Newell, allocated at least 66 trades to the Proprietary Account post-execution, after it was apparent whether the trades were profitable or if the market had moved favorably to an open position. 85% of these trades were profitable, resulting in a net profit of over \$1.1 million for the Proprietary Account. The average profit per trade for the 56 profitable trades Defendants allocated to the Proprietary Account post-execution was approximately \$21,800. In contrast, the average loss per unprofitable trade was approximately \$6,700.

31. In contrast, during the Relevant Period, Quiddity, through Newell, allocated at least 64 trades to the Pool post-execution, after the profitability of the trades was apparent. Only 39% of these trades were profitable, resulting in a loss of over \$70,000 for the Pool.

32. As a result of Defendants' misallocation scheme, the Proprietary Account had higher profitability than the Customer Accounts throughout the Relevant Period. In October 2008, for example, the Proprietary Account had net profits of approximately \$693,000, with a rate of return of 1,868%. In contrast, the Pool had net losses of approximately \$757,000 in October of 2008, and with a rate of return of -14.33%.

33. The Proprietary Account grew exponentially during the Relevant Period. The net liquidating value of the Proprietary Account rose from \$17,144.55 on October 15, 2008 to \$1,372,275.18 on March 19, 2009, even after Defendants made net withdrawals of over \$178,000 during that time.

34. The trades listed below are the 56 profitable trades, described in paragraph 30 above, that Quiddity placed with the executing brokers without providing account identification and later, after the trades were executed and reported back to Quiddity, allocated to the Proprietary Account.

	Trade Date	Lot Size¹ and Contract	Executing Broker	Profit
1.	October 15, 2008	300 December 08 E-mini S&P 500	MF Global	\$22,500.00
2.	October 15, 2008	250 Put October 08 E-mini S&P 500	Mizuho	\$25,000.00
3.	October 16, 2008	100 December 08 E-mini S&P 500	Mizuho	\$107,500.00
4.	October 17, 2008	396 Call October IMM S&P 500	XFA	\$47,500.00
5.	October 21, 2008	10 Call November 08 E-mini S&P 500	Mizuho	\$50.00
6.	October 23, 2008	75 December 08 E-mini S&P 500	Mizuho	\$112,812.50
7.	October 24, 2008	100 December 08 IMM JPY/USD	Mizuho	\$257,500.00
8.	October 24, 2008	30 December 08 E-mini S&P 500	Mizuho	\$24,375.00
9.	October 27, 2008	70 December 08 IMM JPY/USD	Mizuho	\$15,750.00
10.	November 4, 2008	50 Put November 08 IMM EUR/USD	Mizuho	\$57,500.00
11.	November 7, 2008	50 December 08 E-mini S&P 500	Mizuho	\$22,500.00
12.	November 11, 2008	25 December 08 E-mini S&P 500	Mizuho	\$6,875.00
13.	November 12, 2008	353 December 08 IMM JPY/USD	MF Global	\$99,281.25
14.	November 14, 2008	85 December 08 E-mini S&P 500	Mizuho	\$7,500.00
15.	November 18, 2008	10 December 08 E-mini S&P	Mizuho	\$6,125.00
16.	November 20, 2008	205 December 08 E-mini S&P 500	Mizuho	\$58,937.50

¹ Lot size indicates the number of contracts traded in a round-turn trade, *i.e.*, long and short positions in the same contract that offset each other for a realized profit or loss, with the exception of the October 17, 2009 and November 21, 2008 options trades, which consisted of 396 and 18 lots, respectively, of options that expired that day.

	Trade Date	Lot Size¹ and Contract	Executing Broker	Profit
17.	November 21, 2008	45 December 08 E-mini S&P 500	Mizuho	\$14,062.50
18.	November 21, 2008	18 Put November 08 IMM S&P 500	XFA	\$1,800.00
19.	November 24, 2008	65 December 08 E-mini S&P 500	MF Global	\$15,437.00
20.	November 25, 2008	50 December 08 E-mini S&P 500	Mizuho	\$6,562.50
21.	November 28, 2008	150 December 08 E-mini S&P 500	Mizuho	\$14,312.50
22.	November 28, 2008	80 December 08 IMM JPY/USD	Mizuho	\$7,750.00
23.	December 1, 2008	60 December 08 E-mini S&P	MF Global	\$3,000.00
24.	December 2, 2008	40 December 08 IMM JPY/USD	MF Global	\$250.00
25.	December 4, 2008	2 December 08 E-mini S&P 500	MF Global	\$375.00
26.	December 17, 2008	50 March 09 E-mini S&P 500	Mizuho	\$2,812.00
27.	January 12, 2009	25 March 09 IMM JPY/USD	Mizuho	\$9,437.50
28.	January 15, 2009	60 March 09 IMM JPY/USD	Mizuho	\$16,687.50
29.	January 16, 2009	60 March 09 IMM JPY/USD	Mizuho	\$21,450.00
30.	January 27, 2009	20 March 09 IMM JPY/USD	Mizuho	\$12,500.00
31.	January 28, 2009	25 March 09 IMM JPY/USD	Mizuho/MF Global	\$8,750.00
32.	February 2, 2009	20 March 09 IMM JPY/USD	Mizuho	\$2,500.00
33.	February 3, 2009	25 March 09 IMM EUR/USD	Mizuho	\$14,662.50
34.	February 3, 2009	25 March 09 IMM JPY/USD	Mizuho	\$4,687.50
35.	February 4, 2009	50 March 09 IMM JPY/USD	Mizuho	\$7,812.50
36.	February 6, 2009	25 March 09 IMM JPY/USD	Mizuho	\$18,825.00
37.	February 9, 2009	25 March 09 IMM EUR/USD	Mizuho	\$4,062.50
38.	February 9, 2009	25 March 09 S&P 500	Mizuho	\$17,187.50
39.	February 11, 2009	25 March 09 IMM JPY/USD	Mizuho	\$3,125.00
40.	February 12, 2009	25 March 09 E-mini S&P 500	Mizuho	\$9,375.00
41.	February 12, 2009	25 March 09 IMM EUR/USD	Mizuho	\$15,000.00
42.	February 12, 2009	25 March 09 IMM JPY/USD	Mizuho	\$2,093.00
43.	February 13, 2009	25 March 09 IMM EUR/USD	Mizuho	\$3,750.00
44.	February 17, 2009	50 March 09 IMM JPY/USD	Mizuho	\$7,187.50
45.	February 18, 2009	25 March 09 IMM JPY/USD	Mizuho	\$12,812.50
46.	February 19, 2009	25 March 09 IMM EUR/USD	Mizuho	\$3,037.50
47.	February 20, 2009	25 March 09 IMM EUR/USD	Mizuho	\$3,125.00
48.	February 23, 2009	7 March 09 IMM EUR/USD	Mizuho	\$10,762.50
49.	February 23, 2009	25 March 09 IMM JPY/USD	Mizuho	\$2,500.00
50.	February 24, 2009	25 March 09 IMM JPY/USD	Mizuho	\$23,437.50
51.	March 2, 2009	25 March 09 IMM JPY/USD	Mizuho	\$4,687.50

	Trade Date	Lot Size¹ and Contract	Executing Broker	Profit
52.	March 3, 2009	25 March 09 IMM JPY/USD	Mizuho	\$3,125.00
53.	March 3, 2009	25 March 09 E-mini S&P 500	Mizuho	\$10,937.50
54.	March 9, 2009	25 March 09 IMM JPY/USD	Mizuho/MF Global	\$1,562.50
55.	March 12, 2009	15 June 09 IMM JPY/USD	Mizuho	\$5,012.50
56.	March 18, 2009	145 June 09 IMM EUR/USD	MF Global	\$23,562.50
Total Net Profit:				\$1,221,723.25

Defendants Failed to Retain Required Records

35. During the Relevant Period, Quiddity, through Newell and its agents, did not create or retain records sufficient to demonstrate that all allocations of trades by Quiddity were fair and equitable, and to permit the reconstruction of the handling of the order from the time of placement by the account manager to the allocation to individual accounts. Quiddity only kept an internal log of trades executed throughout the course of the day, which was finalized at the end of the day.

Newell's False or Misleading Statements to the Commission

36. During sworn testimony before the staff of the Commission's Division of Enforcement on September 23, 2011 and October 25, 2011, Newell testified that he always, or almost always, provided a specific account identifier when he called Mizuho to place trades after the close of Quiddity's normal business hours. Newell testified that if a trade was meant for the Proprietary Account, he communicated that fact to the person taking the order at Mizuho. However, Newell's statements are belied by the testimony of the Mizuho personnel who took the orders, the information recorded on the trade tickets, and the email confirmations sent by Mizuho, all reflecting that Newell rarely, if ever, provided specific account identifiers until after the trades were executed and reported back to Quiddity.

Newell Controlled Quiddity

37. At all material times during the relevant period, Newell was the president and majority owner of Quiddity. He had virtually complete authority over, and day-to-day control of, Quiddity. He did not report to anyone. Newell controlled the trading of all of the Customer Accounts and the Proprietary Account, had the power to hire and fire, and controlled Quiddity's trading and bank accounts.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

VIOLATIONS OF SECTION 4b(a)(1)(A) and (C) OF THE ACT: FRAUD IN CONNECTION WITH ON-EXCHANGE COMMODITY FUTURES CONTRACTS

38. The allegations set forth in paragraphs 1 through 37 are re-alleged and incorporated herein by reference.

39. Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, 7 U.S.C. §§ 6b(a)(1)(A) and (C) (Supp. III 2009), make it unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person... (A) to cheat or defraud or attempt to cheat or defraud the other person; [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 contract for ... the other person.

40. During the Relevant Period, Defendants violated Section 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, 7 U.S.C. §§ 6b(a)(1)(A) and (C) (Supp. III 2009), in that they knowingly or recklessly cheated and defrauded customers by fraudulently allocating commodity futures contracts in order to benefit the Proprietary Account to the detriment of the Customer Accounts.

41. Defendants engaged in this conduct in or in connection with orders to make or the making of contracts of sale of commodities for future delivery, made or to be made for future delivery, made or to be made for or on behalf of other persons, where such contracts for future delivery were or could have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity, sold, shipped, or received in interstate commerce for the fulfillment thereof.

42. Newell controlled Quiddity, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Quiddity'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), Newell is liable for Quiddity's violations of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, 7 U.S.C. §§ 6b(a)(1)(A) and (C) (Supp. III 2009).

43. The foregoing acts, omissions, and failures of Newell occurred within the scope of his employment, office or agency with Quiddity. 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 (2012), Quiddity is liable for Newell's violations of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, 7 U.S.C. §§ 6b(a)(1)(A) and (C) (Supp. III 2009).

44. Each trade that Defendants fraudulently allocated is alleged as a separate and distinct violation of Section 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, 7 U.S.C. §§ 6b(a)(1)(A) and (C) (Supp. III 2009).

COUNT II

VIOLATIONS OF SECTION 4c(b) OF THE ACT AND REGULATIONS 33.10 (a) AND (c): FRAUD IN CONNECTION WITH COMMODITY OPTIONS TRANSACTIONS

45. The allegations set forth in paragraphs 1 through 44 are re-alleged and incorporated herein by reference.

46. Section 4c(b) of the Act, as amended by the CRA, 7 U.S.C. §6c(b) (Supp. III 2009), makes it illegal to offer to enter into, enter into, or confirm the execution of, any options transaction contrary to the provisions of the Act or Commission Regulations. Regulations 33.10 (a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2012) make it illegal “(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 in or in connection with any offer to enter into, the entry into, the confirmation of the execution or, or the maintenance of, any commodity option transaction.”

47. During the Relevant Period, Defendants violated Section 4c(b) of the Act, as amended by the CRA, 7 U.S.C. §6c(b) (Supp. III 2009) and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2012), in that they knowingly or recklessly cheated and defrauded customers by fraudulently allocating options on commodity futures contracts trades in order to benefit the Proprietary Account to the detriment of the Customer Accounts.

48. Newell controlled Quiddity, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Quiddity’s conduct. Therefore, pursuant to Section 13(b) of the Act, as amended, to be codified at 7 U.S.C. § 13c(b), Newell is liable for Quiddity’s violations of Section 4c(b) of the Act, as amended by the CRA, 7 U.S.C. §6c(b) (Supp. III 2009) and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2012).

49. The foregoing acts, omissions, and failures of Newell occurred within the scope of his employment, office or agency with Quiddity. Therefore, pursuant to Section 2(a)(1)(B) of

the Act, 7 U.S.C. § 13c(b) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012), Quiddity is liable for Newell's violations of Section 4c(b) of the Act, as amended by the CRA, 7 U.S.C. §6c(b) (Supp. III 2009) and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2012).

50. Each options trade that Defendants fraudulently allocated is alleged as a separate and distinct violation of Section 4c(b) of the Act, as amended by the CRA, 7 U.S.C. §6c(b) (Supp. III 2009) and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2012).

COUNT III

VIOLATIONS OF SECTION 4o(1) OF THE ACT: FRAUD BY COMMODITY TRADING ADVISOR AND COMMODITY POOL OPERATOR

51. The allegations set forth in paragraphs 1 through 50 are re-alleged and incorporated herein by reference.

52. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), in relevant part, prohibit CPOs, CTAs and their APs, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

53. During the Relevant Period, Defendant Quiddity, acting as a CTA and CPO, and Defendant Newell, acting as an AP of Quiddity, violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), in that they employed devices, scheme or artifices by use of the mails or other means or instrumentalities of interstate commerce to defraud pool participants or prospective pool participants, or engaged in transactions, practices or a course of business which operated as a fraud or deceit upon pool participants or prospective pool participants by fraudulently allocating commodity interest contracts, *i.e.*, commodity futures contracts trades and options on

commodity futures contracts trades in order to benefit the Proprietary Account to the detriment of the Customer Accounts.

54. Newell controlled Quiddity, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Quiddity's conduct. Therefore, pursuant to Section 13(b) of the Act, as amended, to be codified at 7 U.S.C. § 13c(b), Newell is liable for Quiddity's violations of Section 4o(1) of the Act, to be codified as 7 U.S.C. § 6o(1).

55. The foregoing acts, omissions, and failures of Newell occurred within the scope of his employment, office or agency with Quiddity. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 13c(b) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012), Quiddity is liable for Newell's violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

56. Each trade that Defendants fraudulently allocated is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

COUNT IV

VIOLATIONS OF SECTION 4n(3)(A) OF THE ACT, AND REGULATIONS 1.31 and 1.35(a-1)(5)(iv)(B): FAILURE TO RETAIN REQUIRED RECORDS

57. The allegations set forth in paragraphs 1 through 56 and re-alleged and incorporated herein by reference.

58. Section 4n(3)(A) of the Act, 7 U.S.C. § 6n(3)(A) (2006), and Regulation 1.31, 17 C.F.R. § 1.31 (2012), require registered CTAs and CPOs to keep and make available all records required under the Act or Commission regulations. Regulation 1.35(a-1)(5)(iv)(B), 17 C.F.R. § 1.35(a-1)(5)(iv)(B) (2012), requires account managers who use post-execution allocation, to keep and make available upon request, records "sufficient to demonstrate that all allocations meet the standards" of Regulation 1.35(a-1)(5)(iii), 17 C.F.R. § 1.35(a-1)(5)(iii) (2012), "and to

permit the reconstruction of the handling of the order from the time of placement by the account manager to the allocation to the individual accounts.”

59. Defendants did not create or keep any records showing that they allocated trades to the Proprietary Account fairly and equitably, or to permit reconstruction of the handling of the order from the time of placement by the account manager to the allocation to individual accounts, as required by the Regulation. Defendants did not create or keep contemporaneous records of their trades or of the methodology they used to allocate trades to the Proprietary Account.

60. Newell controlled Quiddity, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Quiddity’s conduct. Therefore, pursuant to Section 13(b) of the Act, as amended, to be codified at 7 U.S.C. § 13c(b), Newell is liable for Quiddity’s violations of Section 4n(3)(A) of the Act, 7 U.S.C. §6n(3)(A) (2006), Regulation 1.31, 17 C.F.R. §1.31 (2012), and Regulation 1.35(a-1)(5)(iv)(B), 17 C.F.R. §1.35(a-1)(5)(iv)(B) (2012).

61. The foregoing acts, omissions, and failures of Newell occurred within the scope of his employment, office or agency with Quiddity. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 13c(b) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012), Quiddity is liable for Newell’s violations of Section 4n(3)(A) of the Act, 7 U.S.C. §6n(3)(A) (2006), Regulation 1.31, 17 C.F.R. §1.31 (2012), and Regulation 1.35(a-1)(5)(iv)(B), 17 C.F.R. §1.35(a-1)(5)(iv)(B)(2012).

62. Each day that Defendants failed to comply with their record-keeping obligations is alleged as a separate and distinct violation of Section 4n(3)(A) of the Act, 7 U.S.C. §6n(3)(A) (2006), Regulation 1.31, 17 C.F.R. §1.31 (2012), and Regulation 1.35(a-1)(5)(iv)(B), 17 C.F.R. §1.35(a-1)(5)(iv)(B)(2012).

COUNT V

**VIOLATIONS OF SECTION 6(c)(2) OF THE ACT:
FALSE STATEMENTS TO THE COMMISSION**

63. The allegations set forth in paragraphs 1 through 62 are re-alleged and incorporated herein by reference.

64. Section 6(c)(2) of the Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 2010), to be codified at 7 U.S.C. § 9(c)(2), makes it unlawful “for any person to make any false or misleading statement of a material fact to the Commission...or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.”

65. During sworn testimony before Commission staff on September 23, 2011 and October 25, 2011, Newell stated that he always, or almost always, provided the Proprietary Account numbers when entering orders for that account by telephone with Mizuho after the close of Quiddity’s normal business day.

66. In fact, Newell rarely, if ever, provided a specific account number when he called Mizuho’s trade-desk to initiate trades after the close of Quiddity’s normal business day.

67. Newell knew or should have known these statements were false or misleading.

68. Newell’s statements were material because they go to the heart of whether or not a given trade was allocated post-execution.

69. Each false or misleading statement made by Newell during his testimony is alleged as a separate and distinct violation of Section 6(c)(2) of the Act, as amended by the

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 2010), to be codified at 7 U.S.C. § 9(c)(2).

70. The foregoing acts, omissions, and failures of Newell occurred within the scope of his employment, office or agency with Quiddity. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 13c(b) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012), Quiddity is liable for Newell's violations of Section 6(c)(2) of the Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 2010), to be codified at 7 U.S.C. § 9(c)(2).

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 its own equitable powers, enter:

- A. An order finding that Defendants violated Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, 7 U.S.C. §§ 6b(a)(1)(A) and (C) (Supp. III 2009) ; Section 4c(b) of the Act, as amended by the CRA, 7 U.S.C. §6c(b) (Supp. III 2009); Section 4n(3)(A) of the Act, 7 U.S.C. §6n(3)(A) (2006); Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006); Section 6(c)(2) of the Act, as amended Dodd-Frank Act, to be codified at 7 U.S.C. § 9(c)(2); Regulation 1.31, 17 C.F.R. § 1.31 (2012); Regulation 1.35(a-1)(5)(iv)(B), 17 C.F.R. §1.35(a-1)(5)(iv)(B) (2012); and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2012);
- B. An order of 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, who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

- 1) Engaging in conduct in violation Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, 7 U.S.C. §§ 6b(a)(1)(A) and (C) (Supp. III 2009) ; Section 4c(b) of the Act, as amended by the CRA, 7 U.S.C. §6c(b) (Supp. III 2009); Section 4n(3)(A) of the Act, 7 U.S.C. §6n(3)(A) (2006); Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006); Section 6(c)(2) of the Act, as amended Dodd-Frank Act, to be codified at 7 U.S.C. § 9(c)(2); Regulation 1.31, 17 C.F.R. § 1.31 (2012); Regulation 1.35(a-1)(5)(iv)(B), 17 C.F.R. §1.35(a-1)(5)(iv)(B) (2012); and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2012);
- 2) 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 Dodd-Frank Act, to be codified at 7 U.S.C. §1a(40);
- 3) 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)(2012) (“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 or proprietary account or for any account in which they have a direct or indirect interest;
- 4) Having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on their behalf;

- 5) 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;
 - 6) 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;
 - 7) 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) (2012); and,
 - 8) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent or any other officer or employee of any person (as that term 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, 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) (2012).
- C. Enter an order requiring Defendants, as well as any successors to any Defendant, 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 that constitute violations of the Act and/or Commission Regulations as described herein, including pre-judgment interest thereon from the date of such violations and post-judgment interest;

- D. Enter an order requiring 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, including pre-judgment interest thereon from the date of such violations and post-judgment interest;
- E. An order directing Defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the participants whose funds were received by them as a result of the acts and practices, which constitute violations of the Act, as described herein;
- F. Enter an order requiring Defendants to pay a civil monetary penalty under the Act, to be assessed by the Court, in amounts of the higher of: \$130,000 for each violation of the Act and Regulations occurring before October 22, 2008 and \$140,000 for each violation of the Act and Regulations occurring on or after October 22, 2008, or triple the monetary gain to Defendants for each violation of the Act and Regulations described herein, plus post-judgment interest;
- G. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and
- H. Enter an Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Respectfully submitted,

PLAINTIFF UNITED STATES COMMODITY
FUTURES TRADING COMMISSION

Dated: August 23, 2012

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