

Part 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

_____)	
)	
UNITED STATES COMMODITY)	CIVIL ACTION NO: 1:11-cv-06205
FUTURES TRADING COMMISSION,)	
)	
Plaintiff,)	Judge John W. Darrah
)	
v.)	Magistrate Judge Susan E. Cox
)	
TRADING POINT OF FINANCIAL)	
INSTRUMENTS LTD.,)	
)	
Defendant.)	
_____)	

**CONSENT ORDER FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF AND PENALTIES AGAINST
DEFENDANT TRADING POINT OF FINANCIAL INSTRUMENTS LTD.**

I. BACKGROUND

On September 7, 2011, Plaintiff Commodity Futures Trading Commission ("CFTC" or "Commission") filed a Complaint for Injunctive and Other Equitable Relief and Penalties Under the Commodity Exchange Act ("Complaint") against Defendant Trading Point of Financial Instruments Ltd. ("Trading Point" or "Defendant") seeking injunctive and other equitable relief and penalties for violations of the Commodity Exchange Act ("Act"), 7 U.S.C. § 1 *et seq.*, as amended by the Food, Conservation and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII §§ 701-774, 124 Stat. 1376 (enacted July

21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.*

II. CONSENTS AND AGREEMENTS

To effect settlement of the charges alleged in the Complaint against Defendant Trading Point, without a trial on the merits or any further judicial proceedings, Trading Point, by and through its attorney of record:

1. Consents to entry of this Consent Order for Permanent Injunction and Other Equitable Relief and Penalties Against Defendant Trading Point (“Consent Order”);
2. Affirms that Trading Point’s consent to entry of this Consent Order is voluntary, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent, or representative thereof, or by any other person, to induce it to consent to entry of this Consent Order;
3. Acknowledges service of the Complaint and summons;
4. Admits, solely for purposes of settlement, to the jurisdiction of this Court over it and the subject matter of this action pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, 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 thereunder;
5. Admits, solely for the purposes of settlement, to the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to Sections 6c and 2(c)(2)(C) of the Act, 7 U.S.C. § 13a-1, and § 2(c)(2)(C) (2006 and Supp. III 2009).

6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(e);

7. Waives:

- A. any and all claims that Trading Point may possess under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, relating to, or arising from, this action;
- B. any and all claims that Trading Point may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;
- C. any and all claims of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of this Consent Order or any order imposing restitution, a civil monetary penalty, or any other relief; and
- D. any and all rights of appeal from this action;

8. Consents to the continued jurisdiction of this Court over it for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Trading Point now or in the future resides outside the jurisdiction of this Court;

9. Agrees that it will not oppose enforcement of this Consent Order on the ground that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

10. Agrees that neither Trading Point nor any of its agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect

Trading Point's: (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Trading Point shall take all steps necessary to ensure that all of its agents and employees under its authority or control understand and comply with this agreement;

11. By consenting to the entry of this Consent Order, neither admits nor denies the allegations of the Complaint or the Findings of Fact and Conclusions of Law in this Consent Order, except as to jurisdiction and venue, which it admits. Further, Trading Point agrees and intends that the allegations of the Complaint shall be taken as true and correct and be given preclusive effect, without further proof, in the course of (a) any current or subsequent bankruptcy proceeding filed by, or on behalf of, or against the Defendant; (b) any proceeding pursuant to Section 8a of the Act, to be codified at 7 U.S.C. §§ 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.*; and (c) any proceedings to enforce the terms of this Consent Order;

12. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by Paragraph 43 of Part X of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against Trading Point, whether inside or outside the United States; and

13. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Trading Point in any other proceeding.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction

and other equitable relief pursuant to Sections 6c and 2(c)(2)(C) of the Act, 7 U.S.C. § 13a-1, and § 2(c)(2)(C) (2006 and Supp. III 2009).

A. Findings of Fact

15. **Plaintiff Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with administering and enforcing the Act, as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations, 17 C.F.R. §§ 1.1 *et seq.* (2011).

16. **Defendant Trading Point of Financial Instruments LTD.** is a company located in Limassol, Cyprus that solicits and accepts orders for off-exchange foreign currency (“forex”) transactions. Trading Point’s principal place of business is 12, Richard and Verengaria Street, Araouzos Castle Court, 3rd Floor, 3042 Limassol, Cyprus. Trading Point has never been registered with the Commission in any capacity.

17. On October 18, 2010, the Commission adopted new regulations implementing certain provisions of the Dodd-Frank Act and the CRA. For the purpose of forex transactions, the new regulations, among other things, require retail foreign exchange dealers (“RFEDs”) to register with the Commission before soliciting or accepting orders from a non-Eligible Contract Participant (“ECP”).

18. Beginning in November 2010, and continuing through the filing of the Complaint (the “relevant period”), Trading Point solicited and accepted orders from United States customers who were not ECPs, to open leveraged forex trading accounts through its website, www.trading-point.com. Customers were instructed to open an account with Trading Point by submitting information online through Trading Point’s website, which directed customers to fill-in information under the title “Open a Real Account.”

19. During the relevant period, Trading Point held itself out to the public as an RFED by stating on its website in the Section titled "Terms and Conditions," that "the Company is in relation to a transaction the Client's immediate counterpart."

20. During the relevant period, Trading Point's website failed to inquire whether its customers are "eligible contract participants" and, in fact, appeared to allow individual customers who do not have total assets of \$5 million to open accounts. Trading Point inquired about an account holder's annual income and net worth, and asked that answers be provided in U.S. dollars. The "Net Worth" fill-in section included options to check boxes with a net worth less than \$10,000, \$10,000-\$50,000, \$50,000-\$100,000, \$100,000-\$500,000, \$500,000-\$1,000,000, and more than \$1,000,000.

21. During the relevant period, Trading Point's website did not impede United States residents from opening forex accounts. In fact, the website included a drop-down menu where the customer could select country of residence. This drop-down menu allowed customers to choose "United States."

22. During the relevant period, Trading Point offered three types of forex trading accounts through its website: "Micro" that requires no opening minimum deposit and has a maximum deposit of \$3,000; "Standard" that requires an opening minimum deposit of \$3,000 and imposes a maximum deposit of \$100,000; "Executive" that requires an opening minimum deposit of \$100,000 and has no maximum deposit. The amounts required to fund these accounts were quoted in United States dollars.

B. Conclusions of Law

i. Jurisdiction and Venue

23. This Court has jurisdiction over Trading Point and the subject matter of this action pursuant to Section 6c(a) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(a), which provides 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 any provision of the Act or any rule, regulation, or order thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

24. The Commission has jurisdiction over the forex solicitations at issue in this action pursuant to Sections 6c and 2(c)(2)(C) of the Act, 7 U.S.C. § 13a-1, and § 2(c)(2)(C) (2006 and Supp. III 2009).

25. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(e), because Trading Point transacts business in this District and certain transactions, acts, practices, and courses of business alleged in the Complaint occurred, are occurring, or are about to occur within this District.

ii. Defendant Trading Point Violated Section 2(c)(2)(C)(iii)(I)(aa) of the Act: Failure to Register

26. With certain exemptions that are not applicable here, Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2006 and Supp. III 2009), among other things, requires registration with the Commission for agreements, contracts or transactions in forex that are offered to, or entered into with, non-eligible contract participants on a leveraged or margined basis.

27. By (1) soliciting United States customers through its website, www.trading-point.com, (2) to open a variety of leveraged forex trading accounts, (3) from persons who were not ECPs, as defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a, (4) while not qualifying for an exemption from registration, Trading Point has violated Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. 2(c)(2)(C)(iii)(I)(aa) (2006 and Supp. III 2009).

iii. Defendant Trading Point Violated Commission Regulation 5.3(a)(6)(i): Failure to Register as an RFED

28. With certain exemptions that are not applicable here, Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011) requires RFEDs to register with the Commission. Regulation 5.1(h)(1), 17 C.F.R. § 5.1(h)(1) (2011) defines an RFED as “any person that is, or that offers to be, the counterparty to a retail forex transaction...”

29. During the relevant period, Trading Point offered to act as the counterparty to retail forex transactions with customers located in the United States without the benefit of registering as an RFED in violation of Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011).

iv. Permanent Injunctive and Other Equitable Relief and Penalties Under the Act are Warranted

30. Trading Point has engaged, is engaging, or is about to engage in acts and practices that violate Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2006 and Supp. III 2009), and Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011). Unless restrained and enjoined by this Court, there is a reasonable likelihood that Trading Point will continue to engage in the acts and practices alleged in the Complaint or in similar acts and practices that violate the Act and Regulations. Furthermore, the nature of Trading Point’s violations and the need to deter others from committing similar violations of the Act and Regulations warrants the imposition of ancillary equitable relief to carry out the objectives of the Act and Regulations.

IV. PERMANENT INJUNCTION

THE PARTIES AGREE AND IT IS HEREBY ORDERED THAT:

31. Trading Point, all persons insofar as they are acting in the capacity of Trading Point's officers, agents, servants, employees, and attorneys, and all persons insofar as they are acting in active concert or participation with Trading Point who receive actual notice of this Consent Order by personal service or otherwise, are permanently restrained, enjoined, and prohibited from directly or indirectly:

- A. Engaging in any conduct in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2006 and Supp. III 2009), including, but not limited to, soliciting or accepting orders from any United States customer or potential United States customer who is a non-ECP in connection with forex transactions without registering with the Commission; and
- B. Engaging in any conduct in violation of Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2011), including, but not limited to, offering to be the counterparty to United States customers' forex transactions without registering with the Commission.

V. TRADING POINT WEBSITE

IT IS FURTHER ORDERED THAT:

32. Trading Point and all persons insofar as they are acting in the capacity of Trading Point's officers, agents, servants, employees, and attorneys shall within three days of the date of entry of this Consent Order, publish on all websites owned or otherwise maintained by Trading Point, including, but not limited to, www.trading-point.com, a prominently displayed notice stating, "Trading Point does not provide services for United States customers" ("Website Notification").

33. Trading Point, all persons insofar as they are acting in the capacity of Trading Point's officers, agents, servants, employees, and attorneys, and all persons insofar as they are acting in active concert or participation with Trading Point who receive actual notice of this

Consent Order by personal service or otherwise, are permanently restrained, enjoined, and prohibited from directly or indirectly contradicting, in any manner whatsoever, the Website Notification.

34. The provisions contained in Part V of this Consent Order shall remain in effect unless and until Trading Point properly registers with the Commission.

VI. LIQUIDATION OF UNITED STATES CUSTOMER ACCOUNTS

IT IS FURTHER ORDERED THAT:

35. Trading Point and all persons insofar as they are acting in the capacity of Trading Point's officers, agents, servants, employees, and attorneys shall:

- A. Within three days of the date of entry of this Consent Order, deliver electronically to all United States customers the following notice ("Customer Notification"):

On September 7, 2011, the Commodity Futures Trading Commission ("CFTC") filed a Complaint against Trading Point of Financial Instruments Ltd. ("Trading Point") in the United States District Court for the Northern District of Illinois ("District Court"). The Complaint alleges that Trading Point failed to register with the CFTC as a retail foreign exchange dealer prior to engaging in certain forex transactions in violation of certain provisions of the Commodity Exchange Act and CFTC Regulations.

Trading Point has consented to an Order of the District Court not to conduct such business regulated by the Commodity Exchange Act and CFTC Regulations without properly registering with the CFTC in violation of the Commodity Exchange Act and CFTC Regulations. This requires, among other things, that Trading Point liquidate your open positions and close your account.

Therefore, Trading Point has liquidated all open positions in your account at prevailing market prices and closed your account.

- B. Immediately liquidate all remaining open positions in United States customers' accounts held at Defendant at closing prices for that day as determined by Bloomberg or www.x-rates.com, Currenex or www.oanda.com; and immediately thereafter close all

open United States customers' accounts such that no further forex trading can be executed in such accounts;

- C. Immediately return to each United States customer all funds in the customer's account(s) in the same manner in which funds were received by Trading Point from such customer (wire, check, etc.); and
- D. Transfer any funds not able to be returned to United States customers into an escrow account held for the benefit of United States customers ("Escrow Account"), to be distributed according to further order of this Court.

36. Failure to follow the procedures contained in Part VI of this Consent Order shall be considered prima facie evidence that Trading Point is in contempt of court.

VII. TRADING PROHIBITION

IT IS FURTHER ORDERED THAT:

37. Trading Point, all persons and entities insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Trading Point, and all persons and entities insofar as they are acting in concert or participation with Trading Point who receive actual notice of this order by personal service or otherwise, shall be permanently prohibited, enjoined and restrained from directly or indirectly:

- A. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1(a)), on behalf of any U.S. customers;
- B. 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) ("forex contracts"), for any U.S. customers;
- C. Controlling or directing the trading for or on behalf of any U.S. customer, 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; and

- D. Soliciting, receiving, or accepting any funds from any U.S. customers for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts.

38. The provisions contained in Part VII of this Consent Order shall remain in effect unless and until Trading Point properly registers with the Commission.

VIII. CERTIFICATION OF COMPLIANCE

IT IS FURTHER ORDERED THAT:

39. Within twenty days of the date of entry of this Consent Order, Trading Point shall deliver to the Commission in the manner required by Part X of this Consent Order a written certification that it has complied with the requirements contained in Part V of this Consent Order. Such certification shall further include:

- A. A list of all websites on which the Website Notification has been published;
- B. A copy of all websites showing the Website Notification;
- C. A list of all United States customers to whom the Customer Notification was delivered, including name, account number, date of delivery, and means of delivery;
- D. A list of all United States customer accounts, including name, account number, email address, phone number, and mailing address;
- E. A list of all United States customers, including name, account number, email address, phone number, and mailing address, for which Trading Point transferred funds to the Escrow Account, including a description of the attempt(s) made to return funds to each customer and the amount of funds transferred to the Escrow Account for each customer.

IX. CIVIL MONETARY PENALTY

IT IS FURTHER ORDERED THAT:

40. Upon the date of entry of this Consent Order, Trading Point is hereby liable for, and a judgment is entered against Trading Point to pay, a civil monetary penalty in the amount of one hundred forty thousand dollars (\$140,000) ("CMP Obligation"), plus post-judgment interest.

41. If Trading Point fails to satisfy its CMP Obligation within ten (10) days of the date of the entry of this Consent Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

42. Trading Point shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the following address:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, Trading Point shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Trading Point shall accompany payment of the CMP Obligation with a cover letter that identifies Trading Point and the name and docket number of this proceeding. Trading Point shall simultaneously transmit a copy of the cover letter and the form of payment to: (1) the

Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address.

X. NOTICES

IT IS FURTHER ORDERED THAT:

43. All notices required to be given by this Consent Order shall be filed electronically with the Court and/or sent via certified mail, return receipt requested, as follows:

Notice to Plaintiff Commission:

Director of the Division of Enforcement
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581

and

Jon J. Kramer
Senior Trial Attorney
Division of Enforcement
Commodity Futures Trading Commission
525 W. Monroe St.
Suite 1100
Chicago, IL 60661

Notice to Defendant Trading Point:

Harris L. Kay
Counsel for Trading Point
HENDERSON & LYMAN
175 West Jackson Boulevard
Suite 240
Chicago, Illinois 60604

All such notices to the Commission shall reference the name and docket number of this action.

44. **Change of Address/Phone:** Until such time as Trading Point satisfies its obligations as set forth in this Consent Order, Trading Point shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

XI. CONTINUING JURISDICTION OF THIS COURT

IT IS FURTHER ORDERED THAT:

45. This Court shall retain jurisdiction over this action to implement and carry out the terms of this Consent Order, to ensure compliance with this Consent Order, and for any purpose relevant to this action.

XII. MISCELLANEOUS PROVISIONS

IT IS FURTHER ORDERED THAT:

A. Entire Agreement and Amendments

46. This Consent Order incorporates all of the terms and conditions of the settlement between the Commission and Trading Point. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever unless it is: (1) reduced to writing; (2) signed by all parties hereto; (3) approved by order of this Court.

B. Invalidation

47. If any provision of this Consent Order or the application of any provision to any person or circumstance is held to be invalid, the remainder of the Consent Order and the application of the provision to any other person or circumstance shall not be affected by such holding.

C. Waiver

48. The failure of any party hereto at any time to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

D. Counterparts and Execution

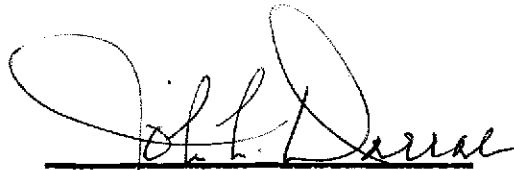
49. This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by facsimile, email, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by facsimile or email shall be deemed for all purposes as constituting good and valid execution and delivered by such party of this Consent Order.

E. Authorization

50. Costas Kleanthous hereby warrants that he is the Director and Chief Executive Officer of Trading Point, that this Consent Order has been duly authorized by Trading Point, and that he has been duly empowered to sign and submit this Consent Order on behalf of Trading Point.

IT IS SO ORDERED.


Date: 4.25, 2012



**John W. Darrah
United States District Judge
Northern District of Illinois**


CONSENTED TO AND APPROVED BY:

Date: February 7, 2012




**Costas Kleantous
Director and Chief Executive Officer
Trading Point of Financial Instruments Ltd.**

Date: 7 February, 2012



**Harris L. Kay
Counsel for Trading Point
HENDERSON & LYMAN
175 West Jackson Boulevard
Suite 240
Chicago, Illinois 60604**

Date: April 18, 2012



**Jon J. Kramer
Senior Trial Attorney
Commodity Futures Trading Commission
525 W. Monroe St., Suite 1100
Chicago, IL 60661
Counsel for Plaintiff**