

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Action No.** \_\_\_\_\_

**U.S. COMMODITY FUTURES  
TRADING COMMISSION,**

**Plaintiff,**

**v.**

**MICHAEL GALE, individually and d/b/a  
CAPITAL MANAGEMENT GROUP,**

**Defendant.**

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**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF  
AND CIVIL MONETARY PENALTIES UNDER THE COMMODITY EXCHANGE ACT**

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

**I. SUMMARY**

1. From at least the summer of 2007 through the present (“relevant period”), Michael Bruce Gale (“Gale”), individually and doing business as Capital Management Group (“CMG”) (“Defendant”), fraudulently solicited and accepted at least \$742,606 from at least three individuals for the purpose of operating a commodity pool (the “Pool”) to trade commodity futures contracts on the Pool’s behalf. When soliciting and accepting funds, Defendant misrepresented his past trading success, the Pool’s profitability, and the value of the Pool. For example, proposed Defendant represented to prospective and actual Pool participants that (i) participants earned approximately a 100% return on their investments over the prior five years; (ii) he made over \$2.4 million in profits trading commodity futures at TransAct Futures (“Transact”), a registered futures commission merchant (“FCM”), for himself and others each

year between 2006 and 2008; (iii) the value of the Pool exceeded \$3.5 million; (iv) Pool participants' investments profited as a result of proposed Defendant's trading activities; and (v) Pool participants' investments would be used for trading commodity futures in accounts at TransAct. In reality, Defendant traded commodity futures contracts in two accounts in his and his wife's names, into which Defendant had deposited less than \$300,000. Defendant lost at least \$65,000 between approximately June 3, 2009 and September 15, 2011 trading CME-listed S&P 500 e-mini futures ("e-minis") and NYMEX-listed crude oil futures in those two accounts and withdrew the rest of the funds. Moreover, Defendant misappropriated a significant portion of the Pool participants' funds rather than trade those funds in the Pool as promised.

2. To conceal the fraud, Defendant provided false tax records to prospective and actual Pool participants, issued at least one fictitious trading account statement to at least one Pool participant that misrepresented the value of the Pool, reported false profits to Pool participants, and failed to disclose Defendant's trading losses and misappropriation of Pool participants' funds. Defendant commingled the funds he received from the Pool participants in his own business and personal bank and/or trading accounts and did not operate the Pool as a separate entity.

3. By engaging in this conduct and the conduct further described herein, Defendant has engaged, is engaging, or is about to engage in acts or practices that violate the Commodity Exchange Act ("Act"), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), 7 U.S.C. § 1 *et seq.* (2006 & Sup. Ill 2009), and the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Pub. L. No. 111-203, §§ 701-774, 124 Stat. 1376, 1641 *et seq.* (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1

*et seq.*, and Commission Regulations (“Regulation(s)”), 17 C.F.R. §§ 1 *et seq.* (2012). In particular, Defendant violated the anti-fraud provisions of the Act, Sections 4b(a)(2)(i)-(iii), 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and Section 4b(a)(1)(A)-(C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, and Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2006).

4. Defendant acted as a commodity pool operator (“CPO”) without the benefit of registration in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006). Additionally, by failing to operate the Pool as a legal entity separate from that of the CPO, by receiving funds in Gale’s name and by commingling Pool participants’ funds with his own funds and the funds of other persons, Defendant violated Regulation 4.20(a)-(c), 17 C.F.R. § 4.20(a)-(c) (2012).

5. Unless restrained and enjoined by this Court, Defendant is likely to continue to engage in the acts and practices alleged in this complaint and in similar acts and practices, as more fully described below.

6. Accordingly, the Commission brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin such acts and practices, prevent the dissipation of assets and compel compliance with the provisions of the Act. In addition, the Commission seeks civil monetary penalties, an accounting, restitution, rescission, disgorgement and such other statutory and equitable relief as the Court may deem necessary or appropriate under the circumstances.

## **II. JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006), which authorizes the Commission to seek injunctive relief in the proper district court of the United States 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 the Act or any rule, regulation, or order promulgated thereunder.

8. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Defendant resides in this District, he transacted business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District.

### III. THE PARTIES

9. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with administering and enforcing the provisions of the Act, as amended by the CRA and Dodd Frank, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

10. Defendant **Michael Bruce Gale** is sixty-four years old and resides in Littleton, Colorado. Gale has acted as a CPO by soliciting, accepting, and pooling participant funds for the purpose of trading them in commodity futures in accounts held in his and his wife's name. Gale has never been registered with the Commission in any capacity. Defendant conducted his trading activities on a laptop computer, primarily from his home and/or out of an office at AAdmiral Automotive & Performance ("AAdmiral"), a company in which Gale and/or at least one of his sons may have an ownership interest. Gale filed for bankruptcy protection in the United States District Court for the District of Colorado (Case 1:09:BK-28171) on August 31, 2009. The Bankruptcy Court issued an order discharging the debtor on December 23, 2009, and the bankruptcy case was closed on January 25, 2010.

11. Gale did business as Capital Management Group when soliciting and receiving Pool participants' funds. Capital Management Group has never been registered with the Commission in any capacity and, on information and belief, has never filed for incorporation, or registered as a limited liability company, sole proprietorship, or otherwise with any state.

#### **IV. STATUTORY BACKGROUND**

12. A "commodity pool" is defined in Section 1a(1) of the Act, 7 U.S.C. § 1a(10) and Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1) (2012), as any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity interests.

13. Prior to July 16, 2011, a CPO was defined in Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), as any firm or individual engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and that, in connection therewith, solicits, accepts, or receives from others funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market. Upon the effective date of Title VII of Dodd Frank on July 16, 2011, the definition of a CPO was expanded and re-designated in Section 1a(11) of the Act, as amended, to be codified at 7 U.S.C. § 1a(11).

14. A "participant" is defined in Regulation 4.10(c), 17 C.F.R. § 4.10(c) (2012), as any person who has any direct financial interest in a commodity pool.

#### **V. DEFENDANT'S FRAUDULENT SCHEME**

##### **A. Gale's Commodity Futures Trading Accounts**

15. Gale maintained and controlled two futures trading accounts carried at registered FCMs during portions of the relevant time. He maintained one as a joint futures trading account

in his and his wife's names at TransAct, account XXX81, and another at Dorman Trading, account XXX29, also in his and his wife's names.

16. Gale opened account XXX81 on or about May 13, 2009, and represented in opening account documents that the funds on deposit with TransAct were proprietary and did not represent the interests of any pools, third party individuals, or companies. Gale further represented that he did not hold himself out as engaging in the business of investing capital contributions from other participants in the commodity futures markets.

17. On approximately June 3, 2009, Gale funded account XXX81 with a \$100,000 wire transfer from one of Gale's accounts at BBVA Compass Bank. When TransAct questioned Gale about the source of the funds in his trading account, Gale responded that the funds originated from the sale of an investment property. Gale did not make any subsequent deposits into that trading account.

18. Between June 3, 2009 and May 20, 2010 Gale suffered net losses of approximately \$6,798 trading e-minis in account XXX81 at TransAct. Account XXX81 only netted profits in two months during the life of the account; \$108.40 in August 2009 and \$169.80 in May 2010. Gale also withdrew approximately \$92,500 from that account between June 3, 2009 and August 10, 2011. The account has been dormant since May 20, 2010, with a remaining balance of \$551.80.

19. Gale opened account XXX29 at Dorman Trading on approximately November 10, 2009, and he represented in opening account documents that the funds in the account were proprietary and that the account did not contain any third party customer funds.

20. Between November 13, 2009 and September 15, 2011, Gale deposited \$170,000 into account XXX29. From November 13, 2009 through March 30, 2012, Gale suffered net

losses of approximately \$58,640 trading e-minis and NY LT Crude futures contracts. Gale also withdrew approximately \$111,000 from account XXX29 during that time period. Account XXX29 netted profits in six months during the life of the account ranging from \$16.18 to \$7,737.10. As of the date of filing, Gale had not placed any trades in account XXX29 since approximately March 20, 2012 and the account has maintained a balance of \$1,880.22 since April 4, 2012.

**B. Solicitation Fraud**

21. During the relevant time, Gale acted as a CPO by soliciting and accepting at least \$742,606 from at least three participants for the purpose of trading futures contracts in a pooled account at TransAct. Gale also represented to at least two Pool participants that at least six other individuals also invested money with him in the Pool.

22. On multiple occasions when soliciting and accepting funds, Gale falsely represented to actual and prospective Pool participants that his personal trading and his trading for the Pool was profitable and that their funds would be used to trade e-minis in the Pool. Gale knew that these representations were false and/or recklessly disregarded the truth while making them.

23. For example, between summer 2007 and April 2009, Gale solicited funds for the Pool from two prospective participants by representing that he “specialized” in trading e-minis and that he had been successful trading commodity futures for his personal account and for others. He told one prospective Pool participant that “[n]ormal proceeds over the last 5 years is about \$2,000,000.00 on a 2,000,000.00 basis, or about a 100% ROI after expenses and my fee is deducted.” Gale also told that prospective Pool participant that the “fee for trading the account is 20% of the profits of the previous months earnings after trading commissions are taken out.” He further confirmed that the only fees charged to the Pool included the cost of a charting package,

exchange access fees, a subscription fee related to trading education, wire transfer fees, postage, and the cost of a new laptop computer when necessary.

24. Gale also misrepresented the risks associated with commodity futures trading. In an attempt to persuade another Pool participant to increase her investment, He promised a “net 20% return” and guaranteed that she could not “receive less than the initial investment.” Gale also told that Pool participant that her investment was secured by his life insurance policy and he gave her a copy of a “Codicil to amend life insurance from designated beneficiaries to the estate of Michael B. Gale,” to that effect. The insurance company has no record of any such Codicil.

25. To further perpetuate his fraud and induce actual and prospective Pool participants to invest money and/or remain in the Pool, Gale prepared and delivered false tax records for 2006, 2007, and 2008. Specifically, in approximately April 2009, Gale faxed at least one prospective Pool participant fictitious Form 1099-Bs from 2006 through 2008, all of which purportedly reflected profits exceeding \$2.4 million in TransAct account XX96 in the name of Michael Gale DBA Capital Management Group. In fact, TransAct carries account XX96 in the name of one of Gale’s sons; it was not opened until February 2007, and the account suffered losses in both 2007 and 2008.

26. In approximately October 2009, Gale sent two fictitious 1099-Bs for 2008 to at least one other Pool participant in response to that Pool participant’s and her husband’s concerns about the Pool and in an attempt to persuade her to increase her investment in the Pool. Specifically, Gale sent that Pool participant the same false Form 1099-B for 2008 for account XX96 referenced above, along with a second fictitious Form 1099-B for 2008, which purportedly reflected profits exceeding \$200,000 for TransAct account XX23 in the name of Michael Gale. In fact, TransAct carries account XX23 in the name of an unrelated individual.

Gale does not own or control the account in any way, and that account lost \$1,510 in 2008.

Nonetheless, Gale represented to that Pool participant that the Form 1099-Bs showed trading profits from his personal account and an account that he traded as a business.

27. On approximately August 31, 2009, less than two months before Gale sent at least one Pool participant the false Form 1099-Bs from 2008 and represented that he made “almost 3 million dollars last year[,]” he filed for bankruptcy protection in the United States Bankruptcy Court for the District of Colorado (Case 1:09-BK-28171). In his voluntary petition for Chapter 7 bankruptcy protection, Gale represented that he had no gross income in 2007 and 2008 and that he earned only \$32 in stock dividends in 2008.

28. Based on Gale’s solicitations and representations that his trading was profitable, at least three individuals sent him at least \$742,606 for investment in the Pool between February 9, 2008 and June 15, 2010.

**C. Defendant’s False Account Statement and Reports to Pool Participants**

29. During the relevant period, Gale faxed or emailed at least one Pool participant a fictitious trading account statement that misrepresented the value of the Pool. For example, in approximately April 2009, Gale faxed a Pool participant one page of a “brokerage statement,” purportedly from TransAct, which reflects a balance in the trading account exceeding \$3.5 million. He represented to that Pool participant that the balance shown on the account statement reflected the total amount of funds in the Pool.

30. Gale also provided reports to at least one Pool participant reflecting positive returns in the Pool. For example, he wrote to one Pool participant during an online Skype discussion that his share of the Pool netted a profit each month between May and December 2009 ranging from \$17,570 to \$25,125. Similarly, between May and September 2010, Gale sent at least eight emails to at least one Pool participant reporting on the Pool’s performance from

January through July 2010. The emails noted profits for that Pool participant ranging from \$7,850 to \$12,225 for each month, and monthly profits ranging from \$21,150 to \$23,225 for another Pool participant.

31. In reality, Gale's trading of e-minis in account XXX81 at TransAct resulted in overall losses of at least \$6,798. Moreover, the balance in account XXX81 never exceeded \$100,000 and it only netted profits for two months during the life of the account ranging from \$108.40 to \$169.80.

**D. Defendant Commingled and Misappropriated Pool Participants' Funds**

32. During the relevant period, Gale solicited and accepted at least \$742,606 from at least three participants for the purpose of trading commodity futures in the Pool at TransAct.

33. Between approximately April 9, 2009 and June 15, 2010, two Pool participants sent via Federal Express and/or hand delivered four checks made out to Gale for a total of approximately \$700,000 for the purpose of trading e-minis. On information and belief, Gale deposited those Pool participants' funds in one or more bank accounts at BBVA Compass Bank. He represented to those two Pool participants that their funds would be pooled in TransAct account XX96 for the purpose of trading e-minis. However, according to account opening documents, account XX96 belongs to one of Gale's sons, and Gale does not own, control, or have authority to trade in that account. Moreover, statements for account XX96 only show deposits of \$29,870 from an account in Gale's son's name at Wells Fargo Bank N.A. on or before February 25, 2009.

34. Another Pool participant sent Gale at least three checks made out to him for a total of approximately \$30,000 between February 9, 2008 and October 16, 2008. He told that Pool participant that her funds would be pooled in TransAct account XXX81. On information and belief, Gale deposited that Pool participant's funds in one or more bank accounts at BBVA

Compass Bank. Gale opened account XXX81 the next year, on approximately May 13, 2009, and transferred approximately \$100,000 into the account on approximately June 3, 2009 from an account at BBVA Compass Bank.

35. Gale made payments to at least three Pool participants totaling at least \$411,913.50 between approximately August 30, 2008 and February 13, 2012.

36. Gale misappropriated almost half of Pool participants' funds between at least February 9, 2008 and the present. On information and belief, Gale used some Pool participants' funds for personal and/or business expenses and to pay other Pool participants in the manner of a Ponzi scheme. He never disclosed to Pool participants that their funds would be, or had been, used for these purposes.

37. Gale failed to operate the Pool as a separate legal entity and accepted monies from Pool participants for the purchase of interests in the Pool made payable to him. While acting as a CPO, Gale commingled funds received from Pool participants by depositing such monies into bank and trading accounts containing his and his wife's personal funds as well as funds of others received by him.

38. Although required to be registered, Defendant was not registered with the Commission in any capacity during the relevant time.

39. Gale engaged in the acts and practices described above in Paragraphs 1 through 37 knowingly or with reckless disregard for the truth.

## **VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

### **COUNT I**

#### **Violations of Section 4b of the Act: Commodity Futures Fraud**

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

41. Prior to being amended by the CRA, Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), made it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully make or cause to be made to other persons false reports or statements, or willfully enter or cause to be entered for other persons false records; or willfully deceive or attempt to deceive by any means whatsoever other persons 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 or on behalf of such other persons where such contracts for future delivery were or may 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, in connection with acts committed before June 18, 2008.

42. Similarly, Section 4b(a)(1)(A)-(C) of the Act as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), 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 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; (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 contract for the other person, in connection with acts committed on or after June 18, 2008.

43. During the relevant period, Defendant violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii), with respect to acts occurring before June 18, 2008, and violated Section 4b(a)(1)(A) and (C) of the Act as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C), with respect to acts occurring on or after June 18, 2008, in that he cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive pool participants by: i) misrepresenting to actual and prospective Pool participants the value of the Pool, that the Pool was profitable, and that he was a successful commodity futures trader; ii) failing to disclose trading losses and failing to inform participants that he filed for Bankruptcy protection; iii) misrepresenting that commodity trading accounts were opened and funded for the Pool's customers and that commodity trades were placed for their accounts, when in fact, no accounts in the name of the Pool were opened; iv) misappropriating a portion of Pool participants' funds; and v) making or causing to be made false statements, tax records, and/or reports to actual and prospective Pool participants while acting as a CPO.

44. Defendant also violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii), with respect to acts occurring before June 18, 2008, and violated Section 4b(a)(1)(B) of the Act as amended, to be codified at 7 U.S.C. § 6b(a)(1)(B), with respect to acts occurring on or after June 18, 2008, in that he willfully made or caused to be made false reports or statements to the Pool participants, including by sending at least one Pool participant a fictitious trading account

statement misrepresenting the value of the Pool and providing false reports to at least one Pool participant reflecting positive returns in the Pool.

45. Each material misrepresentation or omission, each false report or statement, and each misappropriation made during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and a violation of Section 4b(a)(1)(A)-(C) of the Act as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008.

## **COUNT II**

### **Violations of Section 4o(1)(A) and (B) of the Act: Fraud by a CPO**

46. Paragraphs 1 through 38 are re-alleged and incorporated herein by reference.

47. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), in relevant part, makes it unlawful for a CPO, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly: (A) to employ any device, scheme, or artifice to defraud any participant; or (B) to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any participant.

48. Defendant acted as a CPO in that he engaged in a business in the nature of an investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received funds, securities, or property from others for the purpose of trading in commodities for future delivery on or subject to the rules of any contract market.

49. Defendant violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2006), in that, while acting as a CPO, he directly or indirectly employed a device, scheme, or artifice to defraud Pool participants and engaged in transactions, practices, or a course of

business which operated as a fraud or deceit upon Pool participants by, *inter alia*, i) misrepresenting to actual and prospective Pool participants the value of the Pool, that the Pool was profitable, and that he was a successful commodity futures trader; ii) failing to disclose trading losses and failing to inform participants that he filed for Bankruptcy protection; iii) misrepresenting that commodity trading accounts were opened and funded for the Pool's customers and that commodity trades were placed for their accounts, when in fact, no accounts in the name of the Pool were opened; iv) misappropriating a portion of Pool participants' funds; and v) making or causing to be made false statements, tax records, and/or reports to actual and prospective Pool participants while acting as a CPO.

50. Defendant engaged in such acts by use of the mails or other means or instrumentalities of interstate commerce.

51. Each material misrepresentation or omission, each false report or statement, and each misappropriation made during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2006).

### **COUNT III**

#### **Violations of Section 4m(1) of the Act: Failure to Register as a CPO**

52. Paragraphs 1 through 38 are re-alleged and incorporated herein by reference.

53. It is unlawful for any CPO to make use of the mails or other means or instrumentalities of interstate commerce in connection with its CPO business unless registered with the Commission pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

54. Defendant violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), in that he acted as a CPO without the benefit of registration with the Commission as a CPO, and in

connection with his CPO businesses, made use of the mails or other means or instrumentalities of interstate commerce.

55. Each use of the mails or other means or instrumentalities of interstate commerce in connection with Defendant's operation as a CPO without proper registration, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

#### COUNT IV

##### **Violation of Commission Regulation 4.20: Failure to Operate the Pool as a Separate Legal Entity, Accepting Funds in His Own Name, and Commingling of Pool Funds.**

56. Paragraphs 1 through 38 are re-alleged and incorporated herein.

57. Regulation 4.20(a)-(b), 17 C.F.R. § 4.20(a)-(b) (2012), requires a CPO to operate its pool as a legal entity separate from that of the CPO and requires that all funds, securities or other properties received by a CPO from a pool participant for the purchase of an interest in the pool it operates be received in the pool's name. Regulation 4.20(c), 17 C.F.R. §4.20(c) prohibits a CPO from commingling the property of any pool it operates with the property of any other person.

58. Defendant violated Regulation 4.20(a)-(b), 17 C.F.R. § 4.20(a)-(b) (2012), in that while acting as a CPO, Defendant failed to operate the Pool as a legal entity separate from that of the CPO and accepted monies from Pool participants for the purchase of interests in the Pool in his own name.

59. Defendant violated Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2012), in that while acting as a CPO, he commingled funds he received from Pool participants by depositing such funds into bank and trading accounts containing his and/or his wife's personal funds as well as funds of others received by Defendant.

60. Each act of failing to operate the Pool as a legal entity separate from that of the CPO, accepting monies from Pool participants for the purchase of interests in the Pool in Gale's name, and commingling by Defendant while as acting as a CPO during the relevant time period is alleged as a separate and distinct violation of Regulation 4.20.

## **VII. RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

A. Find Defendant liable for violating Section 4b(a)(2)(i) and (iii), 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect to acts committed before June 18, 2008; find Defendant liable for violating Section 4b(a)(1)(A)-(C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C) (2006), with respect to acts committed on or after June 18, 2008, and Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A), (B) (2006); find Defendant liable for violating Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006); and find Defendant liable for violating Regulation 4.20, 17 C.F.R. 4.20 (2012);

B. Enter a statutory restraining order and an order of preliminary injunction pursuant to Section 6c(a) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(a), restraining Defendant and all persons insofar as they are acting in the capacity of Defendant's agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendant who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

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

2. 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 Defendant, wherever located, including all such records concerning Defendant's business operations; and

3. 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 held by, under the actual or constructive control of, or in the name of Defendant, whether jointly or otherwise;

C. Enter orders of preliminary and permanent injunction restraining Defendant and all persons insofar as they are acting in the capacity of Defendant's agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendant who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. engaging in conduct in violation of Section 4b(a)(1)(A)-(C), as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), Sections 4o(1)(A) and (B), 7 U.S.C. § 6o(1)(A), (B), 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), and Regulation 4.20(a)-(c), 17 C.F.R. 4.20(a)-(c) (2012);

2. trading on or subject to the rules of any registered entity, as that term is defined in Section 1a of the Act, to be codified at 7 U.S.C. § 1a;

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 Section 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(B), 2(c)(2)(C)(i)) ("forex contracts") for his own personal account or for any account in which he has 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 his 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 of the Act, as amended, to be codified at 7 U.S.C. § 1a) 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);

D. Enter an order directing that Defendant make an accounting to the Court of all of Defendant's assets and liabilities, together with all funds Defendant received from and paid to Pool participants and other persons in connection with commodity futures, or purported commodity futures, including the names, mailing addresses, email addresses, and telephone numbers of any such persons from whom they received such funds from January 1, 2008 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from Pool participants, including salaries, commissions, fees, loans, and other disbursements of money and property of any kind, from January 1, 2008 to and including the date of such accounting;

E. Enter an order requiring Defendant to immediately identify and provide an accounting for all assets and property that he currently maintains outside the United States, including, but not limited to, all funds on deposit in any financial institution, FCM, bank, or savings and loan account held by, under the actual or constructive control of, or in the name of Defendant, whether jointly or otherwise, and requiring him to repatriate all funds held in such

accounts by paying them to the Registry of the Court, or as otherwise ordered by the Court, for further disposition in this case;

F. Enter an order requiring Defendant to disgorge to any officer appointed or directed by the Court, or directly to Pool participants, all benefits received, including, but not limited to, salaries, commissions, loans, fees, revenues, and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment and post-judgment interest;

G. Enter an order directing Defendant to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between Defendant and any of the Pool participants whose funds were received by Defendant as a result of the acts and practices which constitute violations of the Act as described herein;

H. An order requiring Defendant to make restitution by making whole each and every pool participant whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre-judgment interest;

I. Enter an order directing each Defendant to pay a civil monetary penalty in the amount of not more than the greater of: (1) triple the monetary gain to Defendant for each violation of the Act; or (2) \$130,000 for each violation of the Act occurring from October 23, 2004 through October 22, 2008 and/or \$140,000 for each violation of the Act occurring on or after October 23, 2008;

J. Enter an order requiring Defendant to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

K. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Date: July 25, 2012

Respectfully submitted,

*/s/ Allison Passman*

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