

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ALABAMA

Northeastern Division

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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION

and

ALABAMA SECURITIES COMMISSION,

Plaintiffs,

v.

RANDALL NELSON
individually and doing business as
COMMODITY INVESTMENT CLUB
OF HUNTSVILLE,

Defendant.

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CV-04-B-2794-NE

COMPLAINT FOR INJUNCTIVE
RELIEF, ANCILLARY EQUITABLE
RELIEF, AND CIVIL MONETARY
PENALTIES FOR VIOLATIONS OF
THE COMMODITY EXCHANGE
ACT, 7 U.S.C. § 1 *ET SEQ.*, AND
THE CODE OF ALABAMA

I

SUMMARY

1. Since at least October 2000 until at least March 2003, defendant Randall Nelson ("Nelson") engaged in fraudulent practices while operating a commodity pool called the Commodity Investment Club of Huntsville ("Club").

2. By presenting historical testing data as actual trading results and thus causing prospective pool participants to believe that the Club was generating trading profits, Nelson solicited, directly or indirectly, at least 26 individuals residing in Alabama, Mississippi, Tennessee and Ohio to invest approximately \$680,000 in the Club for the purpose of trading cotton and sugar commodity futures contracts.

3. Contrary to Nelson's representations that the Club was generating trading profits, the Club sustained substantial trading losses. In order to conceal the trading losses, Nelson provided pool participants with false written reports showing fictitious trading activity and trading profits, engaged in a "Ponzi" scheme by issuing checks from the Club's bank account to various participants and falsely representing that the checks represented trading profits, made oral misrepresentations regarding non-existent commodity futures transactions, and issued or directed the issuance of partnership tax documents to pool participants that falsely represented profitable returns on investments in the Club.

4. Defendant Nelson has engaged, is engaged, or is about to engage in acts and practices that violate the antifraud, registration, and disclosure provisions of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 1 *et seq.*, and the Regulations of the United States Commodity Futures Trading Commission ("CFTC"), 17 C.F.R. § 1.1 *et seq.*, concerning the operation of a commodity pool. Defendant has violated Sections 4b(a) and 4g of the Act, 7 U.S.C. §§ 6b(a), 6g, by misrepresenting to prospective commodity pool participants the trading performance of the Club. Defendant has also violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1), by soliciting and accepting funds from the public for the purpose of trading commodity interests without being registered with the CFTC as a commodity pool operator ("CPO"). Defendant has further violated Section 4n of the Act, 7 U.S.C. § 6n, and CFTC Regulations 4.21, 4.22, 4.24, 4.25, and 4.26, 17 C.F.R. §§ 4.21, 4.22, 4.24, 4.25, 4.26, by failing to comply with reporting and disclosure requirements for a CPO.

5. Defendant has offered and sold unregistered securities in the form of interests in a commodity pool and acted as an unlicensed broker-dealer and/or salespersons in violation of the Title 8, Chapter 6, Sections 3-(a) and 4, Code of Alabama 1975 ("Code"). By making material

misrepresentations and omitting material information in connection with the purchase and sale of unregistered securities, defendant violated the antifraud provisions of Title 8, Chapter 6, Section 17-(a)(2) of the Code.

6. Accordingly, pursuant to Sections 6c and 6d of the Act, 7 U.S.C. §§ 13a-1 and 13a-2, plaintiffs, the CFTC and the State of Alabama Securities Commission ("ASC") bring this action to enjoin defendant's commodity-related unlawful acts and practices, to bar him from engaging in any commodity-related activities, and to compel his compliance with the Act and the CFTC Regulations. Plaintiff ASC also seeks to enjoin defendant's securities-related unlawful acts and practices, to bar him from engaging in any securities-related activities, and to compel his compliance with the Code. In addition, the CFTC and ASC seek civil monetary penalties, an accounting, restitution to investors, disgorgement of defendant's ill-gotten gains, identification and repatriation of assets located outside the United States, the appointment of a temporary and permanent receiver if necessary, and such other relief as this Court may deem necessary or appropriate.

7. Unless restrained and enjoined by this Court, defendant is likely, and will continue, to engage in the acts and practices alleged in this Complaint or in similar acts and practices, as more fully described below.

II.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the CFTC 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 promulgated there under, the CFTC may

bring an action against such person to enjoin such practice or to enforce compliance with the Act.

9. Section 6d(1) of the Act, 7 U.S.C. § 13a-2, provides that whenever it shall appear to any State that the interests of the residents of the State have been, are being, or may be threatened or adversely affected because of such violations of the Act, the State may bring a suit in the district courts of the United States to enjoin such acts or practices and to enforce compliance with the Act, or to obtain such other and further relief as the court deems appropriate, including the Alabama claims brought pursuant to Section 12(e) of the Act, 7 U.S.C. § 16(e), over which this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

10. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because defendant is found in, inhabits, or transacts business in the Northern District of Alabama, and the acts and practices in violation of the Act have occurred within this District, among other places.

III.

THE PARTIES

A. Plaintiffs

11. Plaintiff **United States Commodity Futures Trading Commission** ("CFTC") is the independent federal regulatory agency charged with the administration and enforcement of the Act, 7 U.S.C. § 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. § 1.1 *et seq.*

12. Plaintiff **State of Alabama Securities Commission** ("ASC") is the regulatory agency of the State of Alabama charged with administering and enforcing the provisions of the securities provisions of the Code and the Regulations promulgated thereunder.

B. Defendant

13. Defendant **Randall Nelson** ("Nelson") resides at 570 Love Branch Road, Harvest, Alabama. Doing business at his residence through his sole proprietorship, **The Commodity Investment Club of Huntsville** ("Club"), Nelson has solicited individuals in Alabama to invest in the Club. Neither Nelson nor the Club has ever been registered with the CFTC or the State of Alabama in any capacity.

IV.

STATUTORY AND REGULATORY REQUIREMENTS

A. CFTC Statutes and Regulations

14. CFTC Regulation 4.10(d), 17 C.F.R. § 4.10, provides that a "commodity pool" is any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.

15. Section 1a(5) of the Act, 7 U.S.C. § 1a(5), provides that a CPO is any firm or individual engaged in a business which is in 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 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 or designated transaction execution facility.

16. Pursuant to Section 4o(1) of the Act, 7 U.S.C. § 6o(1), it is unlawful for any person, while acting as a CPO, to directly or indirectly employ a device, scheme, or artifice to defraud pool participants or prospective pool participants, or engage in transactions, practices or

courses of business which operate as a fraud or deceit upon pool participants or prospective pool participants.

17. Pursuant to Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), it is unlawful for any person to cheat or defraud or to attempt to cheat or defraud any person, willfully to make or cause to be made any false report or statement, or willfully to deceive or attempt to deceive any person in or in connection with any order to make, or the making of, any contract of sale of a commodity for future delivery.

18. With certain specified exceptions and exemptions not applicable here, CPOs are required to be registered with the CFTC pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

19. Section 4n of the Act, 7 U.S.C. § 6n, and CFTC Regulations 4.21, 4.22, 4.24, 4.25, and 4.26, 17 C.F.R. §§ 4.21, 4.22, 4.24, 4.25, 4.26, require that CPOs must disclose to prospective and actual pool participants material information regarding the operation of the commodity pool and file a disclosure report with CFTC setting forth specific information on the operation of the pool.

B. Alabama Statutes and Regulations

20. Pursuant to § 8-6-2(10) of the Code, a security means, *inter alia*, any investment contract, or certificate of interest in or participation in any profit-sharing arrangement.

21. Pursuant to § 8-6-2(3) of the Code, a broker-dealer means a person who engages, all or part of the time, in effecting transactions in securities for the account of others or for the person's own account.

22. Pursuant to § 8-6-2(18) of the Code, an investment advisor means a person who, for compensation, engages, all or part of the time of the person, in the State of Alabama, in the business of managing an investment or trading account in securities for other persons.

23. Pursuant to § 8-6-2(2) of the Code, an agent means a person, other than a broker-dealer, who represents or purports to represent a broker-dealer, issuer, or owner of securities in effecting or attempting to effect in any manner transactions in securities.

24. Pursuant to § 8-6-4 of the Code, it is unlawful to offer or sell within or from the State of Alabama any securities that are not registered or exempt therefrom under the Code.

25. Pursuant to § 8-6-3(a)(b) of the Code, it is unlawful for any person to transact business in the State of Alabama as a broker-dealer, investment advisor, investment advisor representative, or salesperson unless the person is licensed under the Code.

26. Pursuant to § 8-6-17 of the Code, it is unlawful for any person, directly or indirectly, in connection with the purchase or sale of any security or the conduct of a securities business or for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, to: (1) employ any device, scheme, or artifice to defraud; (2) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

V

FACTS

A. Defendant Operated the Club as a Commodity Pool

27. In May 2000, Nelson began soliciting individuals in Alabama to invest in the Club. As part of his solicitation, he provided potential pool participants with a document/slide presentation about the Club ("Presentation").

28. The Presentation represents that the Club is the coordinating party for the collection of investment capital to purchase and sell commodity futures contracts on cotton and sugar and to distribute profitable trading returns to investors. The Presentation further represents that Nelson is the general partner of the Club and conducts all commodity futures trading for the Club.

29. According to the Presentation, Nelson designed a computer program trading system to trade cotton and sugar commodity futures contracts on the New York Board of Trade. The Presentation claims that Nelson developed the trading system using eleven years of historical data, and that testing on the system produced about \$1,500 a month in profits on a \$10,000 investment. According to the Presentation, the testing on Nelson's trading system produced 68.5% winning trades for sugar futures and 71.3 % winning trades for cotton futures, and the system never lost money in any 10 month period.

30. The Presentation represents that prospective pool participants can participate in the Club by purchasing \$10,000 investment units. According to the Presentation, returns are paid quarterly to pool participants from profits over their \$10,000 initial investment and profits are divided equally between the pool participants and Nelson.

31. Nelson prepared and provided participants in the Club with a Limited Partnership Agreement of the Commodity Investment Club of Huntsville ("Partnership Agreement"). The Partnership Agreement is an investment contract that sets forth the agreement between Nelson, who is designated as the General Partner, and the investor, who is designated as the Limited Partner. The Partnership Agreement states "the only purpose of the Club is to invest the assets of the Club solely in the commodity futures for the benefit of the partners." According to the

Partnership Agreement, each partner is required to make a minimum capital contribution of \$10,000 to become a member of the Club.

32. The Partnership Agreement further provides that all management functions are to be performed by the General Partner, which include: (a) transferring funds to the brokerage account; (b) placing all commodity futures trade orders; (c) conducting all communications with the broker; (d) maintaining all Club records; (e) withdrawing funds from brokerage accounts; and (f) preparing and mailing account statements and sending funds to investors.

33. Between May 2000 and March 2003, Nelson received a total of \$680,000 from – participants in the Club and deposited those funds into bank accounts maintained by the Club at AmSouth Bank in Huntsville, Alabama. Nelson was the sole signatory on the Club's accounts at AmSouth Bank.

34. In May 2000, Nelson, on behalf of the Club, sent account forms to Lind-Waldock & Company, LLC, a division of Refco, LLC ("Lind-Waldock"), a futures commission merchant located in Chicago, Illinois, to open a commodity pool trading account in the name of the Club. As part of the application for the commodity pool account, Nelson submitted a copy of the Partnership Agreement and identified himself as the general partner on the trading account. Nelson signed all the account forms as the general partner of the Club and certified that he was the only person authorized to handle funds for the account and conduct trading for the account. The Club's commodity pool trading account at Lind-Waldock was established and commenced trading on May 24, 2000.

35. Between May 2000 and February 2003, Nelson caused \$544,390 to be transferred from the Club's accounts at AmSouth Bank to the Club's trading account at Lind-Waldock.

During that time, Nelson caused \$186,543.24 to be transferred back from the Club's account at Lind-Waldock to the Club's accounts at AmSouth Bank.

36. Between May 2000 and March 2003, trading in the Club's commodity pool account at Lind-Waldock sustained substantial losses due to trading in cotton and sugar futures contracts. During that time and contrary to his representations to the participants in the Club, Nelson also purchased and sold stock index futures in the Club's trading account at Lind-Waldock that resulted in further losses.

37. In March 2003, trading ceased in the Club's trading account at Lind-Waldock and the account had a balance of \$230.39. At that time, the Club's trading account had sustained losses amounting to \$424,879.22.

B. Defendant Committed Fraud In Connection With Commodity Futures Transactions

38. From at least October 2000 to at least March 2003, Nelson fraudulently solicited at least 26 persons residing in Alabama, Tennessee, Mississippi, and Ohio to send funds to the Club for the purpose of becoming a participant in the Club.

39. As part of Nelson's fraudulent solicitations to prospective commodity pool participants, he made misrepresentations and omissions of material facts about the Club both orally and in writing. Although the Club's trading account sustained substantial losses, Nelson falsely represented to potential and actual pool participants that the Club's trading account was generating profits.

40. Contrary to the statements contained in the Club's Presentation and the Partnership Agreement, Nelson did not use all pool participant funds for the purpose of trading cotton and sugar futures contracts. Instead, Nelson only used approximately half of participant

funds to trade commodity futures contracts and used some of those funds to trade stock index futures.

41. In order to conceal his fraudulent representations about profitable trading for Club investors, Nelson provided Club pool participants with quarterly false trading reports. These reports showed fictitious trading profits and did not disclose that Nelson was using participant funds in an authorized manner to trade stock index futures. In addition, Nelson provided many pool participants with false K-1 partnership tax forms showing non-existent profits.

42. To further conceal his fraudulent representations that the Club's trading account was making profits, Nelson issued checks to pool participants drawn on the Club's accounts at AmSouth Bank and misrepresented to participants that those checks represented profitable returns on their investments in the Club. Between May 2000 and March 2003, Nelson wrote checks to pool participants totaling \$278,859.56 from the Club's accounts at AmSouth Bank and falsely represented that those funds were profits from the Club's trading account. By this conduct, Nelson engaged in a "Ponzi" scheme.

C. Defendant Acted As An Unregistered CPO

43. During the course of his solicitations to prospective and actual participants in the Club between May 2000 and March 2003, Nelson represented that the Club operated as a limited partnership whereby each partner purchased investment units of \$10,000 that were transferred to a commodity pool account at Lind Waldock for trading commodity futures contracts on cotton and sugar. Nelson further represented to potential and actual pool participants that he was the general partner of the Club and operated the Club's bank accounts at AmSouth Bank and trading account at Lind-Waldock.

44. Between May 2000 and March 2003, Nelson solicited and accepted at least \$680,000 from at least 26 persons for the purpose of investing those funds in a pooled investment to trade cotton and sugar futures contracts on the New York Board of Trade. During that time, Nelson acted as the CPO of the Club and was not registered as a CPO with the CFTC.

45. While acting as an unregistered CPO between May 2000 and March 2003, Nelson failed to provide prospective and actual pool participants with commodity pool disclosure documents and failed to comply with the reporting and disclosure requirements for a CPO.

46. While acting as an unregistered CPO between May 2000 and March 2003, Nelson failed to inform prospective and actual pool participants that he was required to be registered as a CPO with the CFTC.

D. Defendant Offered And Sold Unregistered Securities

47. Between May 2000 and March 2003, Nelson solicited members of the public to purchase interests or investments in the Club. Nelson offered and sold investments in the Club by informing customers that their funds would be pooled with the funds of others in the Club, that gains created by trading are applied to the total value of the pool of money, and that the gain is pro-rated to each customer's account based on the percentage of the pool which the investor's funds represent.

48. The investments in the Club offered and sold to members of the public by Nelson involved persons investing money in a common enterprise with other investors and with the investors expecting profits on their investments to be made through the management and control of Nelson. These investments therefore constitute investment contracts under the Code.

49. The offer and sale of such investment contracts are securities interests that have not been registered with the Securities and Exchange Commission. Nelson has not registered

these security interests with the ASC as securities required to be licensed under the Code. Nelson also has not been licensed with the ASC as a broker-dealer, investment adviser, or salesperson under the Code.

E. Defendant Engaged In Securities Fraud

50. The foregoing oral and written fraudulent representations and omissions of material fact by Nelson were made in connection with the purchase or sale of a security, or by a person who receives consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale.

51. In connection with the offer and sale of securities, Nelson employed a scheme to defraud investors by, among other things, making false oral and written representations that all investor funds would be deposited in the Club trading account and used for trading cotton and sugar commodity futures contracts, by making false oral and written representations that the Club's trading account was profitable, and by sending funds to investors and falsely representing that those funds represented profitable returns on their investments in the Club.

VI

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND THE ALABAMA SECURITIES ACT**

COUNT I

**FRAUDULENT STATEMENTS IN
CONNECTION WITH COMMODITY FUTURES CONTRACTS**

VIOLATIONS OF SECTION 4b(a) OF THE ACT, 7 U.S.C. § 6b(a)

52. Paragraphs 1 through 51 are realleged and incorporated herein by reference.

53. From at least October 2000 to at least March 2003, defendant violated Section 4b(a) of the Act, 7 U.S.C. § 6b(a), in that he cheated or defrauded or attempted to cheat or

defraud other persons by, among other things: (a) misrepresenting the profits and losses in the Club's trading account at Lind-Waldock; (b) providing false account statements to investors in the Club; (c) misrepresenting the nature of the commodity futures transactions in the Club's trading account at Lind-Waldock; (d) misrepresenting returns to investors as profits generated by trading in the Club's account at Lind-Waldock; (e) issuing false account statements to investors showing fictitious trading; (f) omitting to inform investors and Lind-Waldock that he was required to be registered as a commodity pool operator with the CFTC.

54. The acts and omissions alleged in this Count were made in or in connection with orders to make, or the making of contracts for future delivery, made, or to be made for or on behalf of 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.

55. Each misrepresentation of material facts, each failure to disclose material facts, and each act of issuing false reports by the defendant including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a) of the Act, 7 U.S.C. § 6b(a).

COUNT II

FRAUD BY A COMMODITY POOL OPERATOR

VIOLATIONS OF SECTION 4q(1) OF THE ACT, 7 U.S.C. § 6q(1)

56. Paragraphs 1 through 55 are realleged and incorporated herein by reference.

57. From at least October 2000 to at least March 2003, defendant, while acting as a CPO, violated Section 4q(1) of the Act, 7 U.S.C. § 6q(1), in that, directly and indirectly, he employed a device, scheme, or artifice to defraud pool participants or prospective pool participants, or engaged in transactions, practices or courses of business which operate as a fraud or deceit upon pool participants or prospective pool participants by, among other things, engaging in the acts and omissions set forth in Count I.

58. Each misrepresentation of material facts, each failure to disclose material facts, and each act of issuing false reports by defendant including, but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4q(1) of the Act, 7 U.S.C. § 6q(1).

COUNT III

ACTING AS AN UNREGISTERED COMMODITY POOL OPERATOR

VIOLATION OF SECTION 4m(1) OF THE ACT, 7 U.S.C. § 4m(1)

59. Paragraphs 1 through 58 are realleged and incorporated herein by reference.

60. Pursuant to CFTC Regulation 4.10(d), 17 C.F.R. § 4.10(d), a "commodity pool" is any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.

61. Section 1a(4) of the Act, 7 U.S.C. § 1a(4), provides that a CPO is any firm or individual engaged in a business which is in 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 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.

62. With certain specified exceptions and exemptions not applicable here, CPOs are required to be registered with the CFTC pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

63. The Club is a commodity pool.

64. Defendant solicited and accepted funds from others for deposit in the Club for the purpose of trading commodity futures contracts on a designated commodity futures exchange.

65. Defendant acted as a CPO by soliciting and accepting funds for the Club and by exerting total control over all operations of the Club.

66. From at least May 2000 to at least March 2003, defendant violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1), in that he solicited, accepted and received funds from the public for the purpose of trading in commodity interests without being registered, as required, with the CFTC as a CPO and made use of the mails or other means or instrumentalities of interstate commerce in connection with his business as a CPO.

67. Each instance of defendant acting as a CPO without being registered with the CFTC, 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).

COUNT IV

**FAILURE TO COMPLY WITH CPO
REPORTING AND DISCLOSURE REQUIREMENTS**

**VIOLATIONS OF SECTION 4n OF THE ACT, 7 U.S.C. § 6n,
AND CFTC REGULATIONS 4.21, 4.22, 4.24, 4.25 AND 4.26,
17 C.F.R. §§ 4.21, 4.22, 4.24, 4.25, 4.26**

68. Paragraphs 1 through 67 are realleged and incorporated herein by reference.

69. Section 4n of the Act, 7 U.S.C. § 6n, provides that CPOs shall make specific disclosure and reports to commodity pool investors and the CFTC

70. CFTC Regulation 4.21, 17 C.F.R. § 4.21, in effect during the relevant time period, provided that no CPO registered or required to be registered under the Act may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a pool that it operates or that it intends to operate unless, on or before the date it engages in that activity, the CPO delivers or causes to be delivered to the prospective participant a Disclosure Document for the pool containing the information set forth in CFTC Regulation 4.24, 17 C.F.R. § 4.24.

71. CFTC Regulation 4.24, 17 C.F.R. § 4.24, sets forth the information that is required to be included in a commodity pool Disclosure Document, including, but not limited to, a specified statement regarding risk, a disclosure of the investment program and the use of proceeds, a description of past and future fees and expenses, and a disclosure of the pool's past performance.

72. CFTC Regulation 4.25, 17 C.F.R. § 4.25, specifies the performance disclosures a CPO must make regarding a commodity pool. CFTC Regulation 4.26, 17 C.F.R. § 4.26, requires that the Disclosure Document be filed with the CFTC.

73. CFTC Regulation 4.22, 17 C.F.R. § 4.22, requires a CPO who is registered or required to be registered under the Act to distribute to pool participants a monthly account statement and an annual report containing specified information.

74. From at least May 2000 to at least March 2003, defendant violated Section 4n of the Act, 7 U.S.C. § 6n, and CFTC Regulations 4.21, 4.22, 4.24, 4.25, and 4.26, 17 C.F.R. §§ 4.21, 4.22, 4.24, 4.25, 4.26, by failing to provide a Disclosure Document in the form specified by the CFTC's Regulations to prospective pool participants, failing to distribute to pool participants monthly account statements and an annual report, and failing to file a Disclosure Document with the CFTC.

75. Each failure by defendant to comply with the reporting and disclosure requirements of a CPO, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4n of the Act, 7 U.S.C. § 6n, and CFTC Regulations 4.21, 4.22, 4.24, 4.25, and 4.26, 17 C.F.R. §§ 4.21, 4.22, 4.24, 4.25, 4.26.

COUNT V

SALE OF UNREGISTERED SECURITIES

VIOLATION OF § 8-6-4 OF THE CODE

76. Paragraphs 1 through 75 above are realleged and incorporated herein by reference.

77. From at least May 2000 to at least March 2003, within or from the State of Alabama, defendant, either directly or through other persons or entities either under his employ, supervision and control or acting in combination or concert with him, offered and sold securities as that term is defined in § 8-6-2 (10) of the Code in the form of investment contracts or certificates of interest or participation in a profit sharing agreement.

78. The securities sold by defendant were not registered under § 8-6-4 of the Code, were not exempt securities under § 8-6-10 of the Code, were not offered or sold in exempt transactions under § 8-6-11 of the Code, were not securities exempt under any rule or order promulgated by the ASC, and were not subject to notice filing under § 8-6-5 of the Code. Therefore, defendant violated § 8-6-4 of the Code.

COUNT VI

SALES AND ADVISOR ACTIVITY BY UNLICENSED PERSONS

VIOLATION OF § 8-6-3 OF THE CODE

79. Paragraphs 1 through 78 above are realleged and incorporated herein by reference.

80. In connection with offers to sell and the sale of securities within or from the State of Alabama, as alleged in Count V above, defendant acted as a broker-dealer and/or salesperson, although not licensed pursuant to the provisions of the Code, or exempt therefrom. Therefore, defendant violated § 8-6-3 of the Code.

81. In managing an investment or trading account in securities for other persons, for compensation, defendant acted as an investment adviser or investment adviser representative, although not licensed pursuant to the provisions of the Code, or exempt therefrom. Therefore, defendant violated § 8-6-3 of the Code.

COUNT VII

SECURITIES FRAUD

VIOLATION OF § 8-6-17 OF THE CODE

82. Paragraphs 1 through 81 above are alleged and incorporated herein by reference.

83. In connection with the purchase and sale of any security, the conduct of a securities business, or while advising, for a fee, other persons as to the value of securities or the purchase or sale of securities, as alleged in Counts V and VI above, defendant directly or indirectly violated § 8-6-17 (a) of the Code by (1) employing a device, scheme, or artifice to defraud; (2) making untrue statements of material fact or omitting to state material facts which were necessary in light of the circumstances under which they were made; and (3) engaging in acts, practices, or a course of business which operated or would operate as a fraud or deceit upon any person in violation of § 8-6-17 (a) of the Code.

VII.

RELIEF REQUESTED

WHEREFORE, plaintiffs CFTC and ASC respectfully request that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to the Court's own equitable powers:

A. Enter orders of preliminary and permanent injunction enjoining defendant and all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of defendant, and all persons insofar as they are acting in active concert or participation with defendant, from directly or indirectly engaging in conduct violative of the provisions of the Act, CFTC Regulations, and the Code alleged herein;

B. Enter an order prohibiting defendant, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of defendant, and all persons insofar as they are acting in active concert or participation with defendant, who receive actual notice of the 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 situated, including, but not limited to, all such records concerning defendant's business and banking operations; and
2. refusing to permit authorized representatives of the CFTC and ASC to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendant, whenever located, including all such records concerning defendant's business operations.

C. Enter an order prohibiting defendant, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of defendant, and all persons insofar as they are acting in active concert or participation with defendant who receive actual notice of the Order by personal service or otherwise, from directly or indirectly:

1. soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest contract;
2. placing orders or giving advice or price quotations, or other information in connection with the purchase or sale of commodity interest contracts for themselves and others;

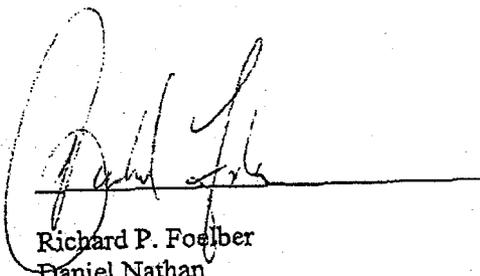
3. introducing customers to any other person engaged in the business of commodity interest trading;
4. issuing statements or reports to others concerning commodity interest trading;
5. engaging in any business activities related to commodity interest trading.
6. soliciting or accepting any funds from any person in connection with the purchase or sale of any security;
7. placing orders or giving advice or price quotations, or other information in connection with the purchase or sale of any security interest for themselves and others;
8. introducing customers to any other person engaged in the business of securities;
9. issuing statements or reports to others concerning securities; and
10. engaging in any business activities related to securities.

C. Enter an order directing defendant to make an accounting to the Court of all assets and liabilities, together with all funds received from and paid to investors and other persons in connection with the acts and practices alleged in this Complaint, and all disbursements for any purpose whatsoever of funds received from customers of defendant and other commodity interest investors, including salaries, commissions, fees, loans and other disbursements of money and property of any kind;

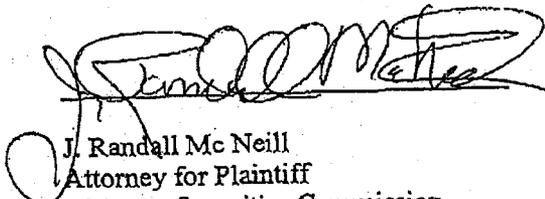
D. Enter an order directing defendant immediately to identify and provide an accounting for all assets and financial accounts he currently maintains or controls, either directly or indirectly, outside the United States, and to repatriate all such assets and funds by paying them to the Registry of the Court or as otherwise ordered by the Court;

- E. Enter an order requiring defendant to disgorge to any officer appointed and directed by the Court all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from the unlawful acts and practices as described herein, including pre-judgment and post-judgment interest.
- F. Enter an order requiring defendant to make restitution for harm caused by his violations of the provisions of the Act, CFTC Regulations, and the Code as described herein, including pre-judgment and post-judgment interest.
- G. Enter an order requiring defendant to pay civil penalties under Section 6c of the Act, 7 U.S.C. § 13a-1, in amounts not more than the higher of \$110,000 for each violation (or \$120,000 for each violation occurring after October 23, 2001), or triple the monetary gain to defendant for each violation of the Act;
- H. Enter an order requiring defendant to pay an administrative assessment under § 8-6-19(j)(2) of the Code in an amount not to exceed \$5,000 for each act or omission that constitute the basis of this complaint. Additionally, plaintiffs requests this court enter an order under § 8-6-19(1) of the Code to reimburse the Alabama Securities Commission the actual cost of the investigation resulting from the violations set forth in this complaint, in an amount not exceed \$5,000;
- I. Enter an order directing defendant to cooperate fully with the CFTC and ASC to locate all assets, books, and records of defendant and to make an accounting of all assets and liabilities of defendant from May 2000 to the date of such accounting; and
- J. Such other equitable relief as the Court may deem necessary or appropriate under the circumstances.

Respectfully submitted by,



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Dated: 9/23/04