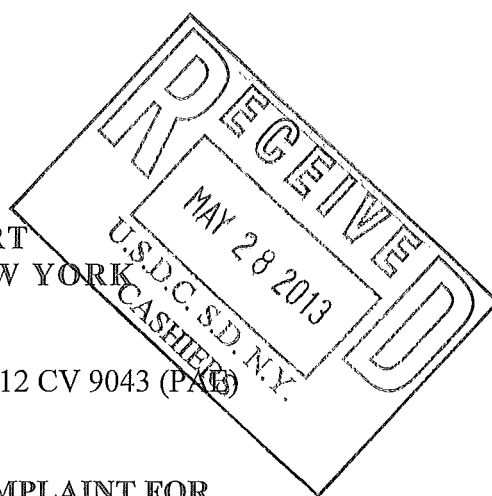


UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



U.S. COMMODITY FUTURES)
TRADING COMMISSION,)
)
Plaintiff,)
)
v.)
)
ARISTA LLC, ABDUL SULTAN)
WALJI a/k/a ABDUL SULTAN)
VALJI, and RENIERO FRANCISCO,)
)
Defendants.)

Civil Action No. 12 CV 9043 (PAB)

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

JURY TRIAL DEMANDED

ECF Case

By and for its Amended Complaint, the U.S. Commodity Futures Trading Commission (“Commission”) alleges as follows:

I. SUMMARY

1. From at least February 2010 through January 2012, Arista LLC (“Arista” or the “Company”) and its principals, Abdul Sultan Walji a/k/a Abdul Sultan Valji (“Walji”) and Reniero Francisco (together with Arista, “Defendants”), carried out a fraudulent scheme to misappropriate millions of dollars from investors in commodity futures and options. Defendants collected more than \$9.5 million from 39 investors, of which over \$4.8 million has been lost in trading, primarily in E-mini S&P 500 futures contracts on the Chicago Mercantile Exchange (“CME”) and U.S. Treasury Bond options contracts on the Chicago Board of Trade (“CBOT”), and \$4.125 million has been paid to Defendants Walji and Francisco as purported fees, leaving less than \$1 million remaining of the investors’ funds.

2. In furtherance of this fraudulent scheme, Defendants made false and misleading statements to the Arista investors and to regulators.

3. Defendants issued quarterly statements to investors that concealed Arista's trading losses and Walji and Francisco's fees and falsely indicated that Arista was realizing the ten percent annual returns that Walji and Francisco had told investors to expect.

4. In 2011, during an investigation by the Commission's Division of Enforcement (the "Division"), Defendants made false statements to the Division about Arista's assets, fee calculations and Defendants' purported lack of intent to defraud Arista investors in order to conceal Defendants' fraudulent statements to Arista investors and misappropriation of Arista investor funds. Specifically, in a letter to the Division, Defendants misrepresented Arista's total assets in its futures trading and bank accounts (i) as of the end of July 2010 to be \$8.9 million when the actual value was approximately \$4.8 million, and (ii) as of the end of July 2011 to be \$10.56 million when the actual value was approximately \$2.12 million. Defendants further misrepresented that Walji and Francisco were entitled to fees totaling approximately \$3.76 million as of the end of July 2010 and approximately \$400,000 as of the end of July 2011 when, in reality, they were entitled to negligible or no fees.

5. Defendants also willfully falsified, concealed, or covered up Arista's losing investment performance or made or used false writings or documents knowing them to contain a false, fictitious, or fraudulent entry in two quarterly filings with the National Futures Association ("NFA"), a registered futures association acting in furtherance of its official duties under the Commodity Exchange Act.

6. NFA examined records obtained from Arista and the two futures commission merchants ("FCMs") through which it traded. As a result of its examination, the NFA determined that Arista's September 2011 pool quarterly report ("PQR") had falsely reported a positive 99% rate of return in September 2011, when in reality Arista's rate of return in

September 2011 was *negative* 46.98%. NFA also determined that Arista's PQR had falsely reported a net asset value ("NAV") of \$8,421,139 as of September 30, 2011, when in reality Arista's NAV as of that date was approximately \$523,000.

7. By virtue of this conduct and the further conduct described herein, Defendants engaged, are engaging, or are about to engage in acts and practices in violation of Sections 4b(a)(1)(A)-(C), 4c(b), 4o(1), 4m(1), 6(c)(2), and 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6c(b), 6o(1), 6m(1), 9(2), and 13(a)(4), and Commission Regulation 33.10, 17 C.F.R. § 33.10.

8. Walji and Francisco committed the acts described herein within the scope of their employment, office, or agency with Arista. Arista is liable as principal, under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2, for its agents' acts, omissions, or failures in violation of the Act and Regulations.

9. At the same time, Walji and Francisco are liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b), as controlling persons of Arista for its violations of the Act and Regulations, as they controlled Arista and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Arista's violations.

10. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act and Regulations. In addition, the Commission seeks restitution and disgorgement, civil monetary penalties, and ancillary relief, including trading and registration bans, and such other relief as the Court may deem necessary and appropriate.

11. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and in similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person, or to enforce compliance with the Act, whenever it shall appear 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.

13. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), as Defendants transacted business in this District and acts and practices in violation of the Act occurred in this District. Specifically, Defendants transferred investor funds to accounts at financial institutions in New York, New York and caused funds to be wired from those accounts in order to misuse and misappropriate the funds.

III. PARTIES

A. Plaintiff U.S. Commodity Futures Trading Commission

14. The Commission is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.*

B. Defendants

15. **Defendant Arista** is a California limited liability company with its principal place of business in Newport Coast, California. Since April 20, 2011, Arista has been an NFA Member and Commission-registered commodity pool operator (“CPO”). Arista has maintained trading accounts with two registered FCMs.

16. **Defendant Walji** is a resident of San Juan Capistrano, California. Walji is the manager, Chief Executive Officer, Secretary, and Treasurer of Arista. Since April 20, 2011, Walji has been an NFA Associate Member and a Commission-registered associated person (“AP”) and listed with NFA as principal of Arista.

17. **Defendant Francisco** is a resident of Coastal Oak, California. Previously a consultant and adviser to Arista, Francisco became Arista’s President in or about September 2010. Since April 13, 2011, Francisco has been listed with NFA as a principal of Arista. Francisco is not an NFA member and has never been registered with the Commission.

C. Other Relevant Entity

18. The National Futures Association is a not-for-profit membership corporation formed as a futures industry self-regulatory organization pursuant to Section 17 of the Act and a registered futures association. The NFA performs several regulatory activities pursuant to the authority delegated to it by the Commission under Section 17, including but not limited to (1) maintaining a financial compliance program; (2) establishing and enforcing rules and standards for investor protection; (3) screening firms and individuals to determine fitness to become or remain an NFA member; and (4) performing registration functions under the Act.

IV. FACTS

A. Commencement of the Fraudulent Scheme

19. In or around February 2010, Defendants Walji and Francisco formed Arista and began soliciting investors to invest in various instruments, including on-exchange commodity futures and options contracts.

20. Pursuant to the terms of a March 2010 “Confidential Private Placement Memorandum” (the “Arista PPM”), Defendants offered to sell membership interests in Arista at

\$25,000 per unit. The Arista PPM specified that investors' funds would remain with Arista for at least three years.

21. Francisco sought investments from customers he had advised as a financial advisor at previous financial firms. Many of these investors are retirees, including retired firefighters and school administrators. Francisco made verbal guarantees to at least two investors that they would receive ten percent annual returns, and he told certain investors that their funds would be invested in diversified low-risk investments. He also told investors that Walji would manage all of the investments and was an experienced and successful trader.

22. Through their solicitation efforts, Defendants obtained more than \$9.5 million from 39 investors. These investors' funds were deposited initially into Arista's bank account.

B. Defendants' Trading Losses

23. Of the more than \$9.5 million obtained from investors, Defendants transferred approximately \$7.5 million into futures and options accounts in Arista's name at two FCMs.

24. This sum includes a total of more than \$5.3 million of investor funds that Defendants wired to the first FCM's account at a bank in New York, New York, beginning in or around April 2010.

25. The sum also includes a total of almost \$2.2 million of investor funds that Defendants wired to the second FCM's account at another bank in New York, New York, beginning in or around November 2010.

26. The \$7.5 million deposited into Arista's FCM accounts was used to finance Walji's trading strategy, which primarily involved selling thousands of Treasury bond options and also trading E-mini S&P 500 futures.

27. By January 2012, Defendants had lost approximately \$5 million of their investors' money.

C. Defendants' Simultaneous Misappropriation of Millions of Dollars of Investor Funds

28. Between August 2010 and May 2011, Defendants caused Arista to pay Walji and Francisco, directly and indirectly through entities controlled by each, a total of \$4.125 million in purported fees, including \$2.15 million to Walji and \$1.975 million to Francisco.

29. Pursuant to a Consulting Agreement between Arista and Walji dated March 1, 2010 (the "Consulting Agreement"), which the Arista PPM incorporated by reference, Arista was to pay Walji a fee for his services calculated as "the product of 75.0% times a number equal to: (i) 90.0% of the realized cash gain from investments (net of commissions, fees and expenses paid to third parties); less (ii) operating expenses of the Company incurred during the same period of time for which the Consulting Fee is being paid. The Consulting fee shall be paid every six months in the form of a company check."

30. In turn, pursuant to a separate Services Agreement between Walji and Francisco dated April 27, 2010 (the "Services Agreement"), Walji was to pay Francisco "one-half of the net cash proceeds [Walji] receives from [Arista] pursuant to the Consulting Agreement."

31. Walji and Francisco were not entitled to the fees they received from Arista.

32. If Defendants had followed the Consulting Agreement and paid Walji by company check after six months – *i.e.*, September 1, 2010, March 1, 2011, and September 1, 2011 – Walji would have been entitled to negligible or no fees, because Arista's trading activities had *losses* of more than \$2 million as of the end of August 2010, gains of just \$539,000 as of the end of February 2011, and *losses* of approximately \$4.8 million as of the end of August 2011.

33. Instead, Defendants caused Arista to make numerous wire transfers to Walji and Francisco, beginning less than six months after the date of the Consulting Agreement and continuing at irregular intervals over the next year, notwithstanding Arista's losses during this period.

34. On August 25, 2010, Defendants caused Arista to transfer \$275,000 to Francisco, even though Arista suffered substantial net losses that month.

35. On October 13-14, 2010, Defendants caused Arista to transfer \$1 million to Walji and \$550,000 to Francisco, even though Arista had losses of more than \$1 million from inception of trading in April 2010 through the end of September 2010. One day earlier, on October 12, 2010, Defendants obtained funds to make these transfers to Walji and Francisco by causing a wire transfer of \$1.3 million to be made to Arista from one of Arista's FCM accounts at a bank in New York, New York.

36. On November 26, 2010, Defendants caused Arista to transfer \$500,000 to Walji and \$500,000 to Francisco, even though Arista had losses of \$185,000 as of the end of October 2010.

37. Finally, on May 17-19, 2011, Defendants caused Arista to transfer an additional \$650,000 to Walji and an additional \$650,000 to Francisco. Although Arista's trading produced temporary gains in April and May 2011, those gains had been wiped out and Arista had sustained cumulative losses of almost \$4.8 million by September 1, 2011, the next date on which the Consulting Agreement would have entitled Walji to a fee. Here again, immediately prior to the transfers, on May 17 and May 18, 2011, Defendants obtained funds to make these transfers to Walji and Francisco by causing wire transfers of \$1.4 million to be made to Arista from one of Arista's FCM accounts at a bank in New York, New York.

38. In all, Defendants caused Arista to pay \$2.15 million to Walji and \$1.975 million to Francisco.

39. Between December 2010 and September 2011, Francisco caused three wire transfers totaling \$731,614 to be made from his own accounts back into Arista's account at one of the FCMs.

40. On top of the purported fees, Walji and Francisco also withdrew more than \$11,500 of investors' funds from Arista's bank account for their own dining, entertainment, and merchandise expenses.

41. Defendants also caused Arista to pay \$72,342 to purchase four life insurance policies providing \$30 million in coverage for Walji. Defendants used funds of Arista's investors to pay for the policies, while naming Walji and Francisco themselves as the beneficiaries of the policies.

D. Defendants' False Statements to Arista Investors

42. Arista, by and through its employees including Francisco, mailed to individuals who invested with Arista quarterly "Investment Account" statements, commencing with the quarter ending on June 30, 2010 and continuing through the quarter ending on September 30, 2011. These statements, which varied in format and content over time, systematically misrepresented the performance of Defendants' trading activities, concealed the exorbitant fees paid to Walji and Francisco, and misled the investors about the value of their accounts.

43. First, the quarterly statements issued to investors as of June 30, 2010 and September 30, 2010 noted the amount deposited by each investor with Arista and reported an amount for undefined "Gains Accrued." "Gains Accrued" did not correspond to any actual investment performance or returns achieved by Arista. Instead, "Gains Accrued" was an

arbitrarily determined number reflecting Defendants' projection for the ten percent annual return that they had told investors to expect.

44. Second, the same quarterly statements issued by Defendants as of June 30, 2010 and September 30, 2010 had a line item for "Advisory Fees/Fees in lieu of Commission." The statements reported that there had been no advisory fees paid through September 30, 2010, even though Defendants had already caused Arista to transfer \$275,000 of advisory fees to Francisco in August 2010.

45. Third, the subsequent quarterly statements did not contain a line item for advisory fees or any other entry to inform investors of the exorbitant sums paid to Walji and Francisco. Thus, the quarterly statements issued by Defendants as of December 31, 2010 did not inform investors that a total of \$2.55 million had been paid to Walji and Francisco in October and November 2010. Similarly, the quarterly statements issued by Defendants as of June 30, 2011 and September 30, 2011 did not inform investors that an additional \$1.3 million had been paid to Walji and Francisco in May 2011.

46. Finally, the September 30, 2011 quarterly statements that Arista sent to each of its investors contained, among other entries, a list of deposits made by each investor and a line item entitled "Accrued Distribution for 2011." These statements included no offsetting liabilities or losses to give investors a true indication of the value of their investments. As a result, the sum of the values of their respective investments reported to investors as of September 30, 2011 was over \$10 million – the total amounts deposited by investors plus the total of their "Accrued Distributions for 2011." In reality, the true value of all Arista's accounts at the two FCMs, and Arista's bank account as of September 30, 2011 was only \$523,000.

47. Defendants also misled Arista investors in connection with distributions. In January 2011, Arista, by and through its employees including Francisco, sent distribution checks totaling \$294,823 to the twenty-five investors who invested with Arista in 2010. The amount of the checks to each investor corresponded to entries on the December 31, 2010 quarterly statements that listed “Accrued Gains for 2010.” In fact, Arista’s trading accounts had *losses* of more than \$1.38 million by the end of December 2010.

48. It was not until NFA issued an order in February 2012 suspending Arista’s activities that Arista’s investors discovered that nearly all of their money had been lost due to Defendants’ concealed unsuccessful trading activities and Defendants’ fraudulent fees.

49. At this time, it also came to light that Defendants’ misrepresentations to Arista investors included false and misleading tax documentation. In March 2011, Arista, by and through its employees including Francisco, sent one investor an IRS Schedule K-1 for tax year 2010 showing a capital increase of \$15,094 and an ending account value of \$309,341. In March 2012, after NFA had taken action against Arista, Defendants sent this investor an “amended” K-1 for tax year 2010, which showed that the investor had actually suffered a capital loss of \$181,332 in 2010 and had an ending account value that year of just \$112,915.

E. Defendants’ False Statements to the Commission

50. In March 2011, the Eastern Regional Office of the Commission’s Division of Enforcement (as defined above, the “Division”), located in New York, New York, requested the production of documents by Defendants.

51. After Defendants produced certain documents, the Division requested additional information, including that Defendants set forth the basis for purported fees paid by Arista to Walji and Francisco.

52. As described further below, Defendants responded to this request on September 21, 2011, by providing information to the Division through a letter sent by Defendants' then attorney (the "Defendants' Letter"), in which Defendants misrepresented certain Arista account balances, asset values, and fee calculations as of the end of July 2010 and July 2011, thereby concealing their misappropriation of investor funds. Defendants further misrepresented their purported basis for transmitting statements to investors and falsely asserted that they had no intention to provide inaccurate or misleading information to the Arista investors.

53. Defendants' attorney acted as Defendants' agent in submitting the Defendants' Letter to the Division. Because the attorney was retained by Defendants, the attorney was acting on behalf of the defendants in making statements in the Defendants' Letter. In addition, Defendants' Letter stated that the attorney was responding to questions recently asked by the Division and that the attorney had "met with Mr. Walji and Mr. Reniero C. Francisco regarding [the] questions." The attorney copied Walji and Francisco on the letter. Further, on information and belief, Walji and Francisco, on behalf of themselves and Arista, provided the information in the Defendants' Letter to the attorney and reviewed the contents of the Defendants' Letter prior to it being sent to the Division.

54. Balances and Values as of End of July 2010. The Defendants made a false and misleading statement in the Defendants' Letter concerning one of the "[a]ccount balances of assets of ARISTA as of the end of July 2010."

55. Defendants stated that the balance of a futures and options account held at the first FCM (described in paragraph 24 above) totaled \$6,513,309.43 when, in fact, the balance as of that date totaled only \$2,413,353 million.

56. Defendants did not include \$600,000 in losses that Arista incurred in the last week of the month or the substantial negative value of Arista's open positions in U.S. Treasury bond options.

57. When the losses and negative open positions were taken into account, the net liquidating value of the account totaled \$2,413,535.95—not the \$6,513,309.43 account balance asserted by Defendants.

58. Defendants knew or reasonably should have known, at the time of their statements to the Division in September 2011, that the \$6.5 million balance was false or misleading because similar negative values appeared in each of the daily account statements, which were available to Defendants during the last week of July 2010, and were also reflected in the monthly account statements for that month and subsequent months.

59. By misrepresenting the value as of the end of July 2010 for the account held at the first FCM, Defendants also misrepresented the “[t]otal assets of ARISTA as of the end of July 2010” as equaling \$8,906,625.54 when, in fact, the assets totaled only approximately \$4.8 million.

60. Balances and Values as of End of July 2011. Defendants also made false and misleading statements in the Defendants' Letter concerning the value of three separate assets listed among the “[a]ccount balances of assets of ARISTA as of the end of July 2011.”

61. First, Defendants stated that the account balance as of the end of July 2011 for the futures and options account held at the first FCM totaled \$3,283,692 when, in fact, the balance was *negative* \$172,196.30. As with the July 2010 account balance asserted by Defendants, this number omitted the offsetting negative value of open positions, which Defendants knew or reasonably should have known were part of the account.

62. Second, Defendants stated that the account balance as of the end of July 2011 for a futures and options account held at the second FCM (described in paragraph 25 above) was \$4,704,996.29 when, in fact, the total value of the account was only approximately \$1,020,824. Again, Defendants omitted the offsetting negative value of open positions that Defendants knew or reasonably should have known were part of the account and, as such, misrepresented the account balance.

63. Third, Defendants stated that Arista's assets as of the end of July 2011 included an "[a]djustment" to an Arista bank account for a "May 2011 advance" in the amount of \$1.3 million. Arista's bank statements, however, reflected no such adjustment. In reality, Walji and Francisco had misappropriated this amount as purported fees from Arista in May 2011 (*see* paragraph 37 above) and never paid it back. Defendants' description of the \$1.3 million as an "adjustment" was also contradicted by Defendants' earlier statement in an August 2011 supplemental offering memorandum that a portion of these funds were paid as part of a balance for fees owed from the prior year.

64. By misrepresenting the values of the accounts held at the first and second FCMs as of the end of July 2011 and falsely listing a May 2011 advance, Defendants also misrepresented the "[t]otal assets of Arista as of the end of July 2011" as \$10,556,680.62 when, in fact, the value totaled only approximately \$2.12 million.

65. Calculation of Fees. Defendants' false and misleading statements regarding Arista's assets as of the end of July 2010 and the end of July 2011 were made in order to conceal Walji and Francisco's misappropriation of Arista investors' funds through withdrawals that Defendants classified as fee payments.

66. Defendants' Letter stated that Walji and Francisco were paid fees pursuant to the Consulting Agreement and Services Agreement totaling \$3,760,194.75 as of the end of June 2010 and \$411,938.58 as of the end of July 2011. In reality, the payments to Walji and Francisco were not made pursuant those agreements, the terms of which would have resulted in payment of negligible or no fees. As discussed above (*see* paragraph 32), Defendants were not entitled to fees as of these dates, nor were they entitled to calculate fees on the basis of falsely inflated assets. Defendants made these misrepresentations regarding the fee calculation to the Commission while knowing that Defendants had already lost most of the Arista investors' money and that Walji and Francisco were not entitled to the Arista funds they had misappropriated.

67. Intent to Mislead Investors. Defendants' Letter stated that the statements sent to Arista investors showed a ten percent rate of return "believed to be achievable as a periodic distribution to be made during the term of the existence of ARISTA;" however, Defendants knew at the time the Defendants' Letter was sent to the Division, that funds had been misappropriated by Walji and Francisco and that they had suffered trading losses such that a ten percent rate of return would not be achievable.

68. Defendants state in the Defendants' Letter that "[t]he quarterly statements do not provide values of the assets of ARISTA on a 'mark-to-market' basis" and that "[i]t has never been ARISTA's intention to provide inaccurate or misleading information to its members;" however, Defendants' representations to Arista investors, including through misleading tax documents (*see* paragraph 49), indicated that Defendants did, in fact, want the Arista investors to believe that the monthly statements reflected the market value of the investment.

69. Closure of the Division's Initial Investigation. On September 29, 2011, shortly after receiving Defendants' Letter and based upon the false and misleading statements contained therein, a memorandum prepared by the Division recommended closure of the investigation concerning Defendants given that it appeared at that time that Walji and Francisco had collected fees in accordance with the Consulting Agreement and Services Agreement, had not misappropriated Arista funds, had not made intentional misrepresentations to Arista investors, and had registered Arista as a CPO. As such, the Division closed its investigation.

70. As discussed in the paragraphs that follow, Defendants' fraud and misappropriation were subsequently discovered, and the true nature of Defendants' false and misleading statements to the Division became known.

F. Defendants' False Statements to the NFA

71. In April 2011, Arista applied and became registered as a CPO and NFA member.

72. As a registered CPO, Arista was required to provide to NFA on a quarterly basis certain financial information related to its activities as a CPO. Specifically, Arista was required to file PQRs with NFA approximately 45 days after the end of each quarterly reporting period. NFA received these reports in its capacity as a registered futures association, acting in furtherance of its official duties under the Act.

73. On November 21, 2011, Defendant Francisco filed Arista's PQR for the quarter ending September 30, 2011, using NFA's electronic EasyFile System.

74. Arista's September 2011 PQR reported rates of return of negative 70.62% for July, negative 99% for August, and positive 99% for September 2011. Despite the substantial negative rates of return for two of the three months and capital additions of only \$240,000, Arista

reported an ending NAV of \$8,421,139 for its fund, which was approximately \$1.2 million more than the fund's NAV at the beginning of the quarter.

75. Because of the contradictory information contained in the September 2011 PQR, NFA commenced an investigation of Arista in January 2012.

76. In a telephone conversation on or about January 10, 2012, Francisco admitted to an NFA supervisor that Arista had suffered trading losses and that Arista's NAV was then around \$750,000, rather than the \$8.4 million it had reported in the September 2011 PQR.

77. In another telephone conversation on or about January 10, 2012, Walji admitted to NFA supervisor that Arista had experienced trading losses, which he said had occurred mainly in July and August 2011 because of the European debt crisis and U.S. debt-ceiling talks.

78. NFA subsequently examined records obtained from Arista and the two FCMs through which it traded. As a result of its examination, NFA determined that Arista's September 2011 PQR had falsely reported a positive 99% rate of return in September 2011, when in reality Arista's rate of return for September 2011 was *negative* 46.98%. NFA also determined that Arista's PQR had falsely reported a NAV of \$8,421,139 as of September 30, 2011, when in reality Arista's NAV as of that date was approximately \$523,000.

79. On February 2, 2012, as a result of its findings, the NFA initiated a Member Responsibility Action against Arista and Associate Responsibility Action against Walji (the "NFA Action"), which prohibited Walji, Arista, and any person acting on Arista's behalf from soliciting or accepting funds, disbursing or transferring funds, and placing trades other than liquidating or risk-reducing trades.

80. In August 2012, notwithstanding the NFA Action, Walji opened a futures trading account at a third FCM and transferred funds into that account from a securities account that he

maintained at that firm. In the account opening documents, Walji falsely answered “no” to the FCM’s question as to whether he had “ever been registered with the CFTC or a member of NFA.”

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE

Violations of Section 4b(a)(1) of the Act (Fraud in Connection with Commodity Futures)

81. The allegations set forth in paragraphs 1 through 80 are re-alleged and incorporated herein by reference.

82. Sections 4b(a)(1)(A)-(C) of the Act as amended, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), make it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person (A) to cheat or defraud or attempt to cheat or defraud such other person; (B) willfully to make or cause to be made to such other person any false report or statement or willfully to enter or cause to be entered for such other person any false record; or (C) willfully to deceive or attempt to deceive such 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 such other person.

83. Defendants violated Sections 4b(a)(1)(A)-(C) of the Act, in that they cheated or defrauded, or attempted to cheat or defraud, and willfully deceived, or attempted to deceive, Arista’s investors by (i) misappropriating investors’ funds, and (ii) providing investors with false and misleading quarterly account statements that misrepresented the value of the investors’

accounts and Arista's performance and concealed Walji and Francisco's exorbitant and unjustified fees.

84. Walji and Francisco committed the acts of misappropriation and misrepresentation described above within the scope of their employment, office, or agency with Arista. Therefore, Arista is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2, as principal for its agent's acts, omissions, or failures in violation of the Act and Commission Regulations.

85. Walji and Francisco controlled Arista directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Arista's acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Walji and Francisco are liable as controlling persons for Arista's violations of Sections 4b(a)(1)(A)-(C) of the Act.

86. Each act of misappropriation, issuance of a false account statement, and material misrepresentation or omission, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(1)(A)-(C) of the Act.

COUNT TWO
Violations of Section 4c(b) of the Act and Regulation 33.10
(Options Fraud)

87. The allegations set forth in paragraphs 1 through 80 are re-alleged and incorporated herein by reference.

88. Section 4c(b) of the Act, as amended, 7 U.S. C. § 6c(b), makes it unlawful to offer to enter into, enter into or confirm the execution of commodity option transactions contrary to any rule or regulation of the Commission prohibiting such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.

89. Regulation 33.10, 17 C.F.R. § 33.10, makes it unlawful for any person, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction, directly or indirectly to: (a) cheat or defraud or attempt to cheat or defraud; (b) make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or (c) to deceive or attempt to deceive any other person by any means whatsoever.

90. Defendants violated Sections 4c(b) of the Act, in that they cheated or defrauded, or attempted to cheat or defraud, and willfully deceived, or attempted to deceive, Arista's investors by (i) misappropriating investors' funds, and (ii) providing investors with false and misleading quarterly account statements that misrepresented the value of the investors' accounts and Arista's performance and concealed Walji and Francisco's exorbitant and unjustified fees.

91. Walji and Francisco committed the acts of misappropriation and misrepresentation described above within the scope of their employment, office, or agency with Arista. Therefore, Arista is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2, as principal for its agent's acts, omissions, or failures in violation of the Act and Commission Regulations.

92. Walji and Francisco controlled Arista directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Arista's acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Walji and Francisco are liable as controlling persons for Arista's violations of Sections 4b(a)(1)(A)-(C) of the Act.

93. Each act of misappropriation, issuance of a false account statement, and material misrepresentation or omission, including but not limited to those specifically alleged herein, is

alleged as a separate and distinct violation of Section 4c(b) of the Act, as amended, 7 U.S.C. § 6c(b) and Regulation 33.10.

COUNT THREE
Violations of Section 4o(1) of the Act
(Fraud by a Commodity Pool Operator)

94. The allegations set forth in paragraphs 1 through 80 are re-alleged and incorporated herein by reference.

95. As defined in Section 1a(11) of the Act, 7 U.S.C. § 1a(11), and Section 1.3(cc) of Commission Regulations, 17 C.F.R. § 1.3(cc) a Commodity Pool Operator (“CPO”) is any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

96. Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in relevant part, makes it unlawful for a CPO or an associated person of 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 client or participant or prospective client or participant; or (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

97. Arista, Walji, and Francisco operated as a CPO in that each of them engaged in a business that is of 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 or derivatives transaction execution facility.

98. Defendants violated Section 4o(1)(A) and (B) of the Act in that, while acting as CPOs, they directly or indirectly employed a device, scheme, or artifice to defraud investors and engaged in transactions, practices, or a course of business which operated as a fraud or deceit upon investors by (i) misappropriating their participants' funds, and (ii) providing their participants with false and misleading quarterly account statements that misrepresented the value of the participants' accounts and Arista's performance and concealed Walji and Francisco's exorbitant and unjustified fees.

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

100. Walji and Francisco committed the acts of misappropriation and misrepresentation described above within the scope of their employment, office, or agency with Arista. Therefore, Arista is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2, as principal for its agent's acts, omissions, or failures in violation of the Act and Commission Regulations.

101. Walji and Francisco controlled Arista directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Arista's acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Walji and Francisco are liable as controlling persons for Arista's violations of Sections 4o(1) (A) and (B) of the Act.

102. Each act of misappropriation, issuance of a false account statement, and material misrepresentation or omission, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act.

COUNT FOUR
Violations of Section 9(a)(4) of the Act
(False Statements to the National Futures Association)

103. The allegations set forth in paragraphs 1 through 80 are re-alleged and incorporated herein by reference.

104. Section 9(a)(4) of the Act makes it an unlawful felony for “[a]ny person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, swap data repository, or futures association designated or registered under this Act acting in furtherance of its official duties under this Act.” 7 U.S.C. § 13(a)(4).

105. As set forth above, Francisco knowingly made false statements to NFA in the PQRs that Arista filed with NFA on November 21, 2011 for the preceding quarters. In the report, Arista concealed its investment losses and misrepresented its performance and asset values for one or more months during the quarter. Arista’s September 2011 PQR falsely reported a positive 99% rate of return in September 2011, when in reality Arista’s rate of return was *negative* 46.98% for that month. In the report, Arista also falsely reported an ending net asset value of \$8,421,139, when in reality Arista’s net asset value as of September 30, 2011 was approximately \$523,000.

106. Walji and Francisco controlled Arista directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Arista’s acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Walji and Francisco are liable as controlling persons for Arista’s violations of Section 9(a)(4) of the Act, 7 USC §13(a)(4).

107. Moreover, Francisco, as the person who electronically submitted the reports to the NFA on behalf of Arista, made the false statements described above within the scope of his employment, office, or agency with Arista. Therefore, Arista is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2, as principal for its agent's acts, omissions, or failures in violation of the Act and Commission Regulations.

108. Each misrepresentation or omission of a material fact, or filing of false or misleading financial information, including but not limited to those specifically alleged herein, is alleged as a separate violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4).

COUNT FIVE
Violations of Section 4m(1) of the Act
(Failure to Register as a CPO)

109. The allegations set forth in paragraphs 1 through 80 are re-alleged and incorporated herein by reference.

110. From February 2010 through January 2012, Arista engaged in a business that was of the nature of an investment trust, syndicate, or similar form of enterprise, and, in connection therewith, solicited, accepted, or received from others, funds, securities, or property, either directly or indirectly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading a commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, thus making it a commodity pool operator as defined by Section 1a(11) of the Act, 7 U.S.C. § 1a(11) and Section 1.3(cc) of Commission Regulations, 17 C.F.R. § 1.3(cc).

111. From February 2010 through April 20, 2011, Arista was not exempt from registration as a CPO under Regulation 4.13, 17 C.F.R. § 4.13.

112. From February 2010 through April 20, 2011, Arista made use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO, while

failing to register with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

113. At all relevant times, Walji and Francisco controlled Arista, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Arista's acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Walji and Francisco are liable for Arista's violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

COUNT SIX
Violations of Section 6(c)(2) of the Act
(False Statements to the Commission)

114. The allegations set forth in paragraphs 1 through 80 are re-alleged and incorporated herein by reference.

115. Section 6(c)(2) of the Act makes it "unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the Commission under this Act, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading." 7 U.S.C. § 9(2).

116. As set forth above, Defendants made false or misleading statements to the Commission about Arista's account balances, asset values and fee calculations as of the end of July 2010 and July 2011, and intent to mislead investors. Defendants' September 21, 2011 letter, submitted through their attorney to the Eastern Regional Office of the Commission's Division of Enforcement in New York, New York, misrepresented the value of an Arista futures and options

account as of the end of July 2010 by more than \$4 million. It also misrepresented the value of this futures and options account and another futures and options account as of the end of July 2011 by a total of more than \$7 million. Further, Defendants' Letter falsely stated that Arista's assets as of the end of July 2011 included a \$1.3 million adjustment to Arista's bank account for a purported advance to Walji and Francisco. These false and misleading statements, in turn, resulted in Defendants making false and misleading statements concerning Arista's total assets as of end of July 2010 and July 2011, and the calculation of fees due to Walji and Francisco. Each of these false and misleading statements concerned the assets of Arista, which was comprised of funds solicited from investors to invest in various instruments, including on-exchange commodity futures and options contracts. Finally, Defendants misrepresented the purported basis for transmitting statements to investors and falsely asserted that they had no intention to provide inaccurate or misleading information to the Arista investors.

117. Defendants knew or reasonably should have known that each of these statements was false or misleading.

118. Walji and Francisco made the misrepresentations described above within the scope of their employment, office, or agency with Arista. Therefore, Arista is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2, as principal for its agents' acts, omissions, or failures in violation of the Act and Commission Regulations.

119. Walji and Francisco controlled Arista, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Arista's acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Walji

and Francisco are liable as controlling persons for Arista's violations of Section 6(c)(2) of the Act, 7 U.S.C. § 9(2).

120. Each false or misleading statement of a material fact, including but not limited to those specifically alleged herein, is alleged as a separate violation of Section 6(c)(2) of the Act, 7 U.S.C. § 9(2).

VI. RELIEF REQUESTED

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

A. Find Defendants liable for violating Sections 4b(a)(1)(A)-(C), 4c(b), 4o(1), 4m(1), 6(c)(2) and 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6c(b), 6o(1), 6m(1), 9(2) and 13(a)(4), and Commission Regulation 33.10, 17 C.F.R. § 33.10; and

B. Enter an *ex parte* statutory restraining order and/or 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 Defendants and all persons insofar as they are acting in the capacity of Defendants' agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

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

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 Defendants, wherever located, including all such records concerning Defendants' 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, whether domestic or foreign, held by, under the actual or constructive control of, or in the name of Arista LLC, Abdul Sultan Walji, and/or Reniero Francisco, whether jointly or otherwise.

C. Enter an order directing that Defendants make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds Defendants received from and paid to investors and other persons in connection with commodity futures or commodity options or options on commodity futures or forex transactions, or purported commodity futures or commodity options or options on commodity futures or forex transactions, including the names, mailing addresses, email addresses, and telephone numbers of any such persons from whom they received such funds from February 2010 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from investors, including salaries, commissions, fees, loans, and other disbursements of money and property of any kind, from February 2010 to and including the date of such accounting;

D. Enter an order requiring Defendants immediately to identify and provide an accounting for all assets and property that they currently maintain 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 Arista LLC, Abdul Sultan Walji, and/or Reniero Francisco, whether jointly or otherwise, and requiring them 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;

E. Enter orders of preliminary and permanent injunction restraining Defendants and all persons insofar as they are acting in the capacity of Defendants' agents, servants, employees,

successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Engaging in conduct in violation of Sections 4b(a)(1)(A)-(C), 4c(b), 4o(1), 4m(1), 6(c)(2), and 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6c(b), 6o(1), 6m(1), 9(2), and 13(a)(4) and Commission Regulation 33.10, 17 C.F.R. § 33.10;

2. 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. § 1a), including, but not limited to, trading for themselves or others;

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)) (“commodity options”), swaps (as that term is defined in Section 1a(47) of the Act, as amended, and as further defined by Commission Regulation 1.3(xxx), 17 C.F.R. 1.3(xxx)), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”), for their own personal account or for any account in which they have a direct or indirect interest;

4. Having any commodity futures, options on commodity futures, commodity options, swaps, security futures products, and/or forex contracts traded on their behalf;

5. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, swaps, 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, swaps, 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); and

8. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)), 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);

F. Enter an order requiring Defendants, and any third-party transferees or successors thereof, to disgorge to any officer appointed or directed by the Court, or directly to investors, 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 Defendants and any successors thereof to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between Defendants and any of the investors whose funds were received by Defendants as a result of the acts and practices which constitute violations of the Act as described herein;

H. Enter an order requiring Defendants to make restitution by making whole each and every investor 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 for each violation of the Act described herein, plus post-judgment interest, in the amount of the greater of (1) triple the monetary gain to Defendants for each violation of the Act; or (2) \$140,000 for each violation of the Act;

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

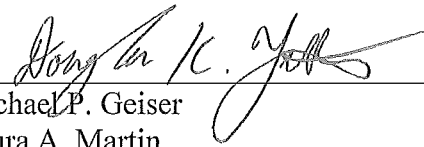
K. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

VII. JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: New York, New York
May 28, 2013

U.S. COMMODITY FUTURES
TRADING COMMISSION

By: 
Michael P. Geiser
Laura A. Martin
Douglas K. Yatter
Trial Attorneys

Manal M. Sultan
Chief Trial Attorney

Stephen J. Obie
Regional Counsel

Division of Enforcement
Eastern Regional Office
140 Broadway, 19th Floor
New York, New York 10005

Phone: (646) 746-9783
Fax: (646) 746-9939
mgeiser@cftc.gov
lmartin@cftc.ov
dyatter@cftc.gov
msultan@cftc.gov