


UNITED STATES DISTRICT COURT
for the NORTHERN DISTRICT OF GEORGIA
Civil Action No. _____

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

JAN 31 2007

By: JAMES N. HATTEN, Clerk

Deputy Clerk

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

CORNERSTONE CAPITAL MANAGEMENT,
LLC,
and JOSEPH T. PROFIT II

1:07-cv-0274

Defendants.

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

I.

SUMMARY

1. From at least May 2005 through January 24, 2007 ("the relevant period"), defendant Cornerstone Capital Management, LLC ("Cornerstone"), which was acting as a commodity pool operator ("CPO") and commodity trading adviser ("CTA") and was registered in those capacities with plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC"), and defendant Joseph T. Profit II ("Profit"), employed schemes to defraud, or have engaged in practices

that operated as a fraud or deceit upon, actual and prospective commodity pool participants and clients, by misrepresenting the rates of return Cornerstone generated for its pool participants and the value of assets it managed. Profit also willfully concealed material information from the National Futures Association (“NFA”), a registered futures association. Further, Cornerstone failed to submit a required Annual Report to the NFA for 2005.

2. Cornerstone, and Profit as an associated person of Cornerstone, thus have engaged, are engaging or are about to engage in acts and practices in violation of Sections 4o(1) and 9(a)(4) of the Commodity Exchange Act, as amended (“CEA”), 7 U.S.C. §§ 6o(1) and 13(a)(4) (2002), and Commission Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2006). Further, pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b), Profit is liable for every violation of Cornerstone and its employees as he is the controlling person of Cornerstone.

3. At all times relevant, and in regard to all conduct alleged herein, Profit was an agent of Cornerstone and acted within the scope of his employment. As such, Cornerstone is liable for Profit’s conduct pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B).

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

II.

JURISDICTION AND VENUE

5. Section 1a(5) of the CEA, 7 U.S.C. § 1(a)(5), defines a “commodity pool operator” as 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, has solicited, accepted or received funds, securities or property from others 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.

6. Section 1a(6) of the CEA, 7 U.S.C. § 1(a)(6), defines a “commodity trading advisor” as any person who "for compensation or profit ... advise[s] others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in" commodity futures or "issue(s) or promulgate(s) analyses or reports concerning" trading in commodity futures.

7. Section 4o(1) of the CEA, 7 U.S.C. § 6o (2002), prohibits commodity pool operators and commodity trading advisors or associated persons of commodity pool operators and commodity trading advisors from directly or indirectly: (1) employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or, (2) engaging 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.

8. Section 9(a)(4) of the CEA, 7 U.S.C. § 13(a)(4) (2002), prohibits any person from willfully falsifying, concealing, or covering up by any trick, scheme or artifice, a material fact to a registered entity, board of trade, or futures association designated or registered under the CEA, acting in furtherance of its official duties under the CEA.

9. Commission Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2006), provides that registered CPOs are required to submit to the NFA Annual Reports for the pools they operate.

10. Section 6c of the CEA, 7 U.S.C. § 13a-1 (2002), authorizes the Commission to seek injunctive relief against any person 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 CEA or any CFTC rule, regulation or order thereunder.

11. Venue properly lies with this Court pursuant to Section 6c(e) of the CEA, 7 U.S.C. § 13a-1(e) (2002), in that defendants are found in, inhabit, or transact business, among other places, in this District or the acts and practices in violation of the CEA and the Commission's Regulations have occurred, are occurring, or are about to occur within this District, among other places.

III.

THE PARTIES

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

13. Defendant **Cornerstone Capital Management, LLC** ("Cornerstone") is a business entity organized in Delaware, and lists its main office as being in New York, New York. Cornerstone was registered with the Commission as a CTA and a CPO beginning August 2005, and as of November 2005 the Cornerstone Capital Management Icon Fund LP ("Icon Fund") was listed as the only commodity pool it managed. On January 23, 2007, Cornerstone's registration was suspended by the NFA.

14. Defendant **Joseph T. Profit II** ("Profit") is an individual residing in Atlanta, Georgia. Profit purports to be the CEO of Cornerstone and the trading principal for all trading in the Icon Fund. Profit is a principal and is registered with the Commission as an associated person ("AP") of Cornerstone. On January 23, 2007, the NFA suspended Profit's registration.

IV.

FACTS

15. On or about May 2005, months before it registered with the Commission as a CPO, Cornerstone commenced operations as a CPO by accepting investments into the Icon Fund, a commodity pool and purported hedge fund. The purported minimum investment for investing in the Icon Fund is \$50,000.

16. Cornerstone also offers a managed trading program called the "Icon Trading Program" whereby Cornerstone manages the trading in individual client accounts via power of attorney. All trading for the Icon Trading Program is purportedly done by Profit with the trading purportedly mirroring that of the Icon Fund. The portfolio of the Icon Trading Program purportedly consists of "stock index futures, interest rate futures, currencies and energies." The purported minimum amount required to participate in the Icon Trading Program is \$150,000.

17. Cornerstone and Profit, by and through agents, solicited prospective pool participants and clients to invest in the Icon Fund and the Icon Trading Program. Cornerstone and Profit engaged in such solicitations through the use of the U.S. mail or through other means of interstate commerce. In particular, Cornerstone and Profit solicited participants and clients via the Internet on the website www.cornerstonecapitalmanagement.com, and via various databases and information providers that are well known in the hedge fund industry.

18. Profit has provided varying and inconsistent stories, and few records, in response to requests from officials of the NFA, the self-regulatory body for the futures industry, regarding the number of participants in the Icon Fund, the amount of funds in the Icon Fund, and the number of clients and amounts managed by the defendants under the Icon Trading Program. Profit represented to NFA officials that approximately \$1,800,000 in funds was invested into the Icon Fund by pool participants and approximately \$1,200,000 is no longer available due to trading losses and personal withdrawals. Profit later represented to NFA officials that approximately \$2,228,000 in funds was invested into the Icon Fund by pool participants and approximately \$728,000 is no longer available due to trading losses and personal withdrawals. As of January 25, 2007, Profit had not provided NFA officials with copies of any Net Asset Value (“NAV”) statement or any other type of account statement prepared for Icon Fund participants.

19. As of January 25, 2007, Profit has only provided NFA officials bank and trading account records showing no more than approximately \$1,200,000 in total pool participant investments. Participant investments were deposited in two bank accounts held in the name of the Icon Fund and controlled solely by Profit. A significant portion of these participant investments were not used to purchase futures contracts but instead were withdrawn by Profit and spent on personal items such as meals, greens fees, airline tickets, and hotels. Icon Fund participants

would have considered this information important to their determination of whether to participate in the fund. The bank and trading account records currently available show less than \$200,000 in client funds are available.

20. Profit knowingly made, or caused to be made, material misrepresentations to actual and prospective participants and clients regarding the Icon Fund's trading performance and its assets under management. Specifically, Profit falsely represented that the Icon Fund had generated exceptional annual returns of 42.18% in 2005 and 20.74% in 2006. These performance representations were made on Cornerstone's website and also were provided by Cornerstone and Profit to various databases and hedge fund information providers that are well known in the industry. These information databases published the performance results provided to them by the defendants.

21. Profit represented to a potential client and AP at a Futures Commission Merchant that the profits reported on the Cornerstone website and by the various hedge fund information providers were true and correct. Based on the losses Profit himself has admitted to NFA officials and the records available at this time, the reported performance of the fund is false. These false representations were made through the use of the U.S. mail or through other means of interstate commerce. Actual and prospective Icon Fund participants consider the Fund's

performance results important to their decision of whether to participate in that fund.

22. Profit also falsely represented to actual and prospective pool participants and clients the amount of assets Cornerstone had under management. Profit represented to a potential client and AP at a Futures Commission Merchant that Cornerstone had more than \$50 million in assets under management. In an interview with the hedge fund industry publication *Hedgeweek*, Profit represented that Cornerstone had more than \$20 million in assets under management. The defendants reported to various databases and hedge fund information providers that Cornerstone had assets under management ranging from \$20 million to \$60 million. These information databases published the performance results provided to them by the defendants. These statements were false and misleading. Profit made such representations through the use of the U.S. mail or through other means of interstate commerce. By Profit's own admission the Icon Fund had at most received approximately \$2,280,000 in assets from participants and as of January 23, 2007 the NFA can only locate less than \$500,000 in known available funds. Icon Fund participants would have considered such information important to their determination of whether to invest in that fund.

23. Cornerstone is required to provide the NFA with an Annual Report for each pool it operates pursuant to Commission Regulation 4.22(c). The NFA is a

registered futures association designated as such under the CEA. As of January 25, 2007, Cornerstone failed to provide any Annual Report to the NFA.

24. On March 22, 2006, in response to a request from the NFA for an Annual Report for the Icon Fund, Profit stated to NFA that the pool had not yet accepted funds from participants, or begun trading. In September 2006, Profit, on behalf of Cornerstone, again represented to NFA in response to a question on an annual NFA questionnaire provided to Cornerstone, that the Icon Fund had not yet commenced operations. Based on Profit's recent representation to NFA officials that the pool began accepting subscriptions as early as May 2005, the representations that the pool had not accepted funds or commenced operations in March and September 2006 were false. On the same questionnaire response, Profit represented that Cornerstone did not have any funds under management. The September 2006 questionnaire response to the NFA by Profit on behalf of Cornerstone was false. Account records from various Futures Commission Merchants demonstrate that Cornerstone was conducting CTA activity and managing the trading in client accounts via power of attorney as early as March 2006.

25. On January 22, 2007, NFA officials, in furtherance of their duties, met with Profit. During this meeting, the NFA officials requested pertinent records, including, among other things, Icon Fund's balance sheet and general ledger, and

any account statements Cornerstone had sent out. Profit stated that he did not have any of these records. Further, he stated that he had not prepared or provided any monthly account statements to participants.

26. During this January 22, 2007 meeting, in response to questions from NFA officials in furtherance of their duties, Profit represented that Cornerstone did not have any CTA clients. Later, after further NFA questioning about Cornerstone's CTA activity, Profit conceded that Cornerstone in fact had three CTA clients. Upon further inquiry by the NFA officials in furtherance of their duties, Profit changed his story again and represented that Cornerstone actually had six CTA clients.

27. Profit willfully concealed from the NFA the identities of clients for which Cornerstone was conducting CTA activity. The identity of these clients and Cornerstone's CTA activity was material to the NFA for it will assist them in determining whether Profit or Cornerstone have complied with the CEA and Commission Regulations.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND COMMISSION REGULATIONS**

COUNT I

**VIOLATIONS OF SECTION 4o(1) OF THE CEA:
FRAUD BY A CPO AND CTA AND ASSOCIATED PERSON OF A CPO
AND CTA**

28. Paragraphs 1 through 27 are realleged and incorporated herein.

29. During the relevant period, Cornerstone acted as a CPO in that it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, has solicited, accepted or received funds, securities or property from others 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.

30. During the relevant period, Cornerstone acted as a CTA in that it, for compensation or profit, advised others as to the value of or the advisability of trading in commodity futures.

31. During the relevant time period, Profit acted as an AP and principal of Cornerstone, a registered CPO and CTA, and his conduct occurred during and within the scope of his employment with Cornerstone.

32. From at least May 2005 to the present, defendants Cornerstone and Profit have violated Section 4o(1) of the CEA, 7 U.S.C. § 6o(1), in that

they directly or indirectly employed or are employing a device, scheme, or artifice to defraud commodity pool participants, or have engaged or are engaging in transactions, practices or a course of business which operated as a fraud or deceit upon commodity pool participants by means of the acts and practices described above. Cornerstone is also liable for Profit's conduct pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B).

33. Profit, directly or indirectly, controlled Cornerstone and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Cornerstone's violations alleged in this count. Profit is thereby liable for Cornerstone's violations of Section 4o(1), pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b).

34. Each act of making false reports, false statements, and material omissions that occurred during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the CEA, 7 U.S.C. § 6o(1).

COUNT II

VIOLATIONS OF SECTION 9(a)(4) OF THE CEA: WILLFUL CONCEALMENT OF MATERIAL INFORMATION AND MAKING USE OF A FALSE WRITING TO A REGISTERED ENTITY

35. Paragraphs 1 through 27 are realleged and incorporated herein.

36. During the relevant period, Profit willfully concealed material information from a futures association designated or registered under the Act acting in furtherance of its official duties under the Act, thereby violating Section 9(a)(4) of the CEA, 7 U.S.C. § 13(a)(4).

37. Because Profit was an agent of Cornerstone and was acting within the scope of his employment when violating Section 9(a)(4) of the CEA, 7 U.S.C. § 13(a)(4), Cornerstone is liable for Profit's conduct pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B).

38. Each act of willful concealment from a registered futures association that occurred during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 9(a)(4) of the CEA, 7 U.S.C. § 13(a)(4).

COUNT III

VIOLATION OF COMMISSION REGULATION 4.22(c): FAILING TO SUBMIT ANNUAL REPORTS

39. Paragraphs 1 through 27 are re-alleged and incorporated herein.

40. Pursuant to Commission Regulation 4.22(c), Cornerstone is required to submit to the NFA Annual Reports for the pools it operated. 17 C.F.R. § 4.22(b) (2004). Cornerstone has never filed an Annual Report to the NFA, thereby violating Commission Regulation 4.22(c).

41. Profit, directly or indirectly, controlled Cornerstone and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Cornerstone's violations alleged in this count. Profit is thereby liable for Cornerstone's violations of Commission Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2006), pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b).

42. Each failure to submit an Annual Report during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Commission Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2006).

RELIEF REQUESTED

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

- A. Find Defendants liable for violating Sections 4o(1) and 9(a)(4) of the CEA, 7 U.S.C. §§ 6o(1) and 13(a)(4), and Commission Regulation 4.22(c), 17 C.F.R. § 4.22(c);
- B. Enter a permanent injunction prohibiting the Defendants and any other person or entity associated with them, or any successor thereof,

from engaging in conduct violative of the provisions of the CEA and Commission Regulations as alleged in this Complaint, and from engaging in any activity relating to commodity interest trading, including but not limited to, soliciting, accepting or receiving funds, revenue or other property from any person, giving advice for compensation, or soliciting prospective clients, participants or customers, related to the purchase and sale of any commodity futures or options on commodity futures contracts;

- C. Enter an order directing the Defendants and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constituted violations of the CEA and Commission Regulations, as described herein, and interest thereon from the date of such violations;
- D. Enter an order directing the Defendants to make full restitution to every client, participant or customer whose funds were received by them as a result of acts and practices which constituted violations of the CEA and Commission Regulations, as described herein, and interest thereon from the date of such violations;
- E. Enter an order directing the Defendants to pay a civil monetary penalty in the amount of not more than the higher of (i) triple the

monetary gain to Defendants for each violation of the CEA and Regulations or (ii) \$120,000 for each violation of the CEA and Regulations prior to October 23, 2004 or \$130,000 for violations occurring after October 23, 2004;

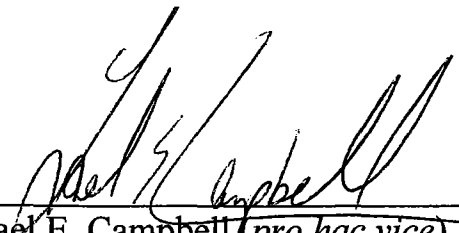
- F. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- G. Enter an order providing such other and further remedial ancillary relief as the Court may deem appropriate.

Respectfully Submitted,



Daniel A. Caldwell (Georgia Bar No.
102510)

Assistant United States Attorney
600 U.S. Courthouse
75 Spring Street, S.W.
Suite 600
Atlanta, Georgia 30303
(404) 581-6224 telephone
(404) 581-6181 facsimile
dan.caldwell@usdoj.gov



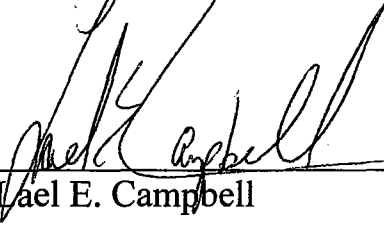
Lael E. Campbell (*pro hac vice*)
Luke Marsh (*pro hac vice*)
John W. Dunfee (*pro hac vice*)
U.S. Commodity Futures Trading
Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
(202) 418-5000 telephone
(202) 418-5538 facsimile

Attorneys for Plaintiff

Dated: January 30, 2007

CERTIFICATE OF COMPLIANCE WITH L.R. 5.1B

I hereby certify that the foregoing COMPLAINT was prepared using Times New Roman, 14 point font.



Lael E. Campbell