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SOUTHERN DISTRICT OF CALIFORNIA

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10 **IN THE UNITED STATES DISTRICT COURT**  
 11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 **COMMODITY FUTURES**  
 13 **TRADING COMMISSION,**

14 **Plaintiff,**

15 **v.**

16 **CHARLES A. DEFAZIO, and**

17 **GALAXY RESOURCES 2000, LLC,**

18 **Defendants.**

19 **'06CV 0020**

**BEN WMc**

20 **CIVIL ACTION NO \_\_\_\_\_**

21 **COMPLAINT FOR INJUNCTIVE**  
 22 **AND OTHER EQUITABLE**  
 23 **RELIEF AND FOR CIVIL**  
 24 **PENALTIES UNDER THE**  
 25 **COMMODITY EXCHANGE ACT**

26 The U. S. Commodity Futures Trading Commission, by and through its attorneys, hereby  
 27 alleges as follows:

28 **I.**

**SUMMARY**

1. Starting no later than 1999, Charles A. DeFazio ("DeFazio") maintained and controlled a number of commodity futures trading accounts into which he deposited some \$1.5

1 million and lost \$1.175 million trading. More recently, between approximately March and  
2 September 2005, DeFazio and Galaxy held themselves out to the public as various registered  
3 entities under Commodity Exchange Act, as amended, 7 U.S.C. §§ 1 *et seq.* (2002) (“Act”), and  
4 solicited participation interests in a commodity pool operated by an entity he controls called  
5 Galaxy Resources 2000, LLC (“Galaxy”). During this recent period, Galaxy accepted at least  
6 \$900,000 from not less than 85 pool participants, deposited in excess of \$1,030,000 into  
7 commodity futures trading accounts held in Galaxy’s name, and lost at least \$937,000 trading.  
8 In the context of this activity, both individually and as an agent and controlling person of Galaxy,  
9 DeFazio willfully: misrepresented his success as a trader to actual and prospective pool  
10 participants, commingled participant funds with funds of unknown origin and used portions of  
11 those funds to pay personal expenses; and made false statements and reports to pool participants  
12 regarding DeFazio’s and Galaxy’s respective registration statuses and the status of the pool  
13 participants’ accounts. In fact, neither DeFazio nor Galaxy is registered with the Commodity  
14 Futures Trading Commission (“CFTC” or “Commission”) in any capacity permitting them to  
15 accept funds for trading commodity futures, or to engage in the business of advising others as to  
16 trading commodity futures contracts.  
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22           2.       Thus, Galaxy and its agent and controlling person, DeFazio, have engaged, are  
23 engaging, or are about to engage in acts and practices that violate anti-fraud, registration and  
24 other provisions of the Act and the Commission Regulations promulgated thereunder, 17 C.F.R.  
25 §§ 1 *et seq.* (2005).  
26

27           3.       Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, Plaintiff  
28 Commission brings this action to enjoin the unlawful acts and practices of defendants DeFazio

1 and Galaxy and to compel their compliance with the provisions of the Act and Regulations. In  
2 addition, the Commission seeks civil penalties, an accounting, restitution, disgorgement and such  
3 other and further equitable relief as the Court may deem necessary or appropriate.  
4

5  
6 **II.**

7 **JURISDICTION AND VENUE**

8 4. The Act prohibits fraud in connection with the trading of commodity futures  
9 contracts and options and establishes a comprehensive system for regulating the purchase and  
10 sale of such contracts and options. This Court has jurisdiction over this action pursuant to  
11 Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive  
12 relief against any person whenever it shall appear that such person has engaged, is engaging, or  
13 is about to engage in any act or practice constituting a violation of any provision of the Act or  
14 any rule, regulation or order thereunder.  
15  
16

17 5. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C.  
18 § 13a-1(e), in that defendants are found in, inhabit, or transact business in this district, and the  
19 acts and practices in violation of the Act have occurred, are occurring, or are about to occur  
20 within this district, among other places.  
21  
22

23 **III.**

24 **THE PARTIES**

25 6. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal  
26 regulatory agency that is charged with responsibility for administering and enforcing the  
27 provisions of the Act and Regulations.  
28



1 or receives from others, funds, securities, or property, either directly or through capital  
2 contributions, the sale of stock or other forms of securities or otherwise, for the purpose of  
3 trading in any commodity for future delivery on or subject to the rules of any contract market.  
4

5 11. A "commodity trading advisor" is defined in Section 1a(6) of the Act,  
6 7 U.S.C. § 1a(6) , as any person who for compensation or profit, engages in the business of  
7 advising others, either directly or through publications, writings, or electronic media, as to the  
8 value of or advisability of trading in any contract of sale of a commodity for future delivery  
9 made or to be made on or subject to the rules of any contract market or derivatives transaction  
10 execution facility; any commodity option or any leverage transaction; or, for compensation or  
11 profit, and as part of a regular business, issues or promulgates analysis or reports concerning any  
12 of the activities referred to above.  
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16 12. An "associated person" is defined in Regulation 1.3(aa)(3), 17 C.F.R. § 1.3(aa)(3)  
17 (2005), with certain qualifications, as a natural person associated with, among other things, a  
18 CPO as a partner, officer, employee, consultant, or agent (or any natural person occupying a  
19 similar status or performing similar functions), in any capacity which involves (i) the solicitation  
20 of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of  
21 any person or persons so engaged.  
22  
23

24 13. A "participant" is defined in Commission Regulation 4.10(c), 17 C.F.R. § 4.10(c)  
25 (2005), as any person who has any direct financial interest in a commodity pool.  
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V.

**FACTS**

**A. Overview of the Pool Size and Trading**

14. DeFazio maintained and controlled a number of different commodity trading accounts at various futures commission merchants (“FCMs”) beginning as far back as 1999. From 1999 through September 2005, DeFazio deposited at least \$1.5 million in at least nine (9) known trading accounts that he controlled or controls and lost approximately \$1.175 million trading those accounts.

15. DeFazio’s records reflect that more recently, during the period March 2005 through September 2005, he has accepted at least \$900,000 from not less than 85 participants in a commodity pool. He has further represented to participants that he intended to deposit \$500,000 of his own funds in the pool. During that same period, Galaxy trading account statements from FCMs reflect deposits of approximately \$1,030,000 and combined trading losses of approximately \$937,000.

**B. The Pool Agreement and Disclosure Documents**

16. Customarily, DeFazio provides pool participants with two documents. One is a Commodity Pool Operator Account Agreement (“Agreement”) and the other is a Galaxy Resources 2000, LLC Commodity Pool Operator Disclosure Document (“Disclosure”).

17. The Agreement describes Galaxy as a CPO and DeFazio as a CTA. The Agreement also states that the CPO is compensated solely with 15% of any monthly profits earned. The Agreement also states that the CPO will keep “a 70% cushion in the pool at all times to help reduce the Pool’s exposure to downside risk.”

1           18.     The Disclosure first identifies the name of the commodity pool operator as Galaxy  
2 Resources 2000, LLC Commodity Pool, but later states that the “name of the Commodity  
3 Trading Advisor and Commodity Pool Operator for the Pool is Charles A. DeFazio.”

4           19.     The Disclosure further states “Galaxy Resources 2000, LLC has been a private  
5 commodity trading account for Charles A. DeFazio since corporate inception in 2000.”  
6  
7 However, the disclosure statement fails to disclose the trading results for this “private account”  
8 or any other prior trading record for DeFazio.  
9

10           **C.     DeFazio’s Falsely Represented that He was a Successful Trader**

11           20.     In fact, from 1999 through February 2005, the period prior to formation and  
12 trading the Galaxy pool, DeFazio controlled and traded at least six commodity trading accounts  
13 at two FCMs. DeFazio’s trading in those accounts resulted in losses of approximately \$238,400.  
14 DeFazio did not disclose his history of prior trading losses when soliciting and accepting funds  
15 from the Galaxy pool participants. Rather, he told a least two pool participants that he had recent  
16 trading successes, and one document that he gave to a least five participants claimed that his  
17 trading techniques have enabled him to “enjoy a very high degree of success in trading  
18 commodity futures markets.”  
19  
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22           **D.     DeFazio’s Other Misrepresentations to Participants**

23           21.     DeFazio sent at least three participants an introductory letter (“Introductory  
24 Letter”). The Introductory Letter includes the following statements: “My name is Charles  
25 DeFazio.... I have established a Limited Liability Company as a vehicle in which to trade my  
26 own personal money and that of my family and friends.” The Introductory Letter also describes  
27 the CPO’s compensation as 15% from monthly profits.  
28

1           22.     In July 2005, DeFazio sent at least one participant another document in which  
2  
3 DeFazio represented that he is “a licensed Series 3 Futures and Options Specialist who is  
4 registered with the National Futures Association (“NFA”) and Commodity Futures Trading  
5 Commission.”

6           23.     DeFazio also sent participants monthly statements regarding the status of their  
7  
8 respective interests in the pool. For the months April through June 2005, DeFazio sent the  
9 participants statements showing profits, even though the he knew or recklessly disregarded the  
10 fact that the Galaxy trading accounts had net losses in each of those months.  
11

12           24.     In September 2005, DeFazio sent many, if not all, the participants a document  
13 dated September 12, 2005 and addressed to “Commodity Pool Participants,” stating in part that  
14 “the Galaxy Resources Pool got wiped out completely” and which claimed losses of \$826,337.10  
15 during the period August 1, 2005 through September 12, 2005. The letter further claimed  
16 “[t]here is no residual balance left in the accounts.”  
17

18           25.     As of September 12, 2005, DeFazio managed and controlled at least three Galaxy  
19 trading accounts, namely accounts 19638, W1733 and 17174 at two different FCMs that  
20 collectively had a net liquidating value of approximately \$20,712. Moreover, the Galaxy bank  
21 account at Wells Fargo Bank had a balance of \$40,073 on September 12, 2005. Because he  
22 managed and controlled these accounts, DeFazio knew or recklessly disregarded the fact that  
23 these accounts still had some positive liquidating balances despite his statement to the contrary  
24 described in paragraph 24 above.  
25  
26

27           26.     DeFazio currently maintains Galaxy trading accounts 19638, W1733, and 21649.  
28 He also has another trading account open under the name Source of Life. As of October 20,



1 2005, Galaxy account 19638 had a liquidating value of \$58,482; Galaxy account W1733 had a  
2 liquidating value of \$3,470; Galaxy account 21649 had a liquidating value of and a \$4,551; and  
3 the Source of Life account had a liquidating value of \$302,869.

4  
5 **E. Galaxy, Through DeFazio, Commingled Participant Funds**

6 27. From at least May 2005 through September 2005, Galaxy, through DeFazio,  
7 maintained two bank accounts in the name of Galaxy at Wells Fargo Bank in which he deposited  
8 participant funds. Galaxy, through DeFazio, commingled participant funds in those bank  
9 accounts with funds of unknown origin and used the commingled funds to pay a mortgage, credit  
10 card charges and other personal expenses.  
11  
12

13 **VI.**

14 **VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

15 **COUNT I**

16 **Violations of Sections 4b(a)(2)(i), (ii), and (iii) of the Act: Fraud by Misrepresentations,**  
17 **Omissions and False Statements**

18 28. The allegations set forth in paragraphs 1 through 27 are re-alleged and  
19 incorporated herein.  
20

21 29. Sections 4b(a)(2)(i), (ii), and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (ii), and (iii),  
22 make it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully  
23 make or cause to be made to other persons false reports or statements, or willfully enter or cause  
24 to be entered for other persons false records; or willfully deceive or attempt to deceive by any  
25 means whatsoever other persons in or in connection with orders to make, or the making of,  
26 contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of  
27  
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1 such other persons where such contracts for future delivery were or may have been used for (a)  
2 hedging any transaction in interstate commerce in such commodity, or the produce or byproducts  
3 thereof, or (b) determining the price basis of any transaction in interstate commerce in such  
4 commodity, or (c) delivering any such commodity sold, shipped or received in interstate  
5 commerce for the fulfillment thereof.  
6

7  
8 30. DeFazio knowingly and intentionally violated § 4b(a)(2)(i), (ii), and (iii) of the  
9 Act by, among other things: (1) soliciting participant funds through fraudulent  
10 misrepresentations about his and Galaxy's registration statuses; and (2) misrepresenting his  
11 success as a trader; and (3) making or causing to be made false reports and false statements to  
12 participants and prospective participants, including but not limited to misrepresenting monthly  
13 results and the status of the Galaxy trading accounts on September 12, 2005.  
14

15  
16 31. The actions and omissions of DeFazio described in this count were done within  
17 the scope of his office with Galaxy. Therefore, pursuant to Section 2(a)(1)(B) of the Act,  
18 7 U.S.C. § 2(a)(1)(B), Galaxy is also liable for DeFazio's violations of Section 4b(a) of the Act.  
19

20 32. Each material misrepresentation or omission, and each false report or statement  
21 made during the relevant time period, including but not limited to those specifically alleged herein,  
22 is alleged as a separate and distinct violation of Section 4b(a)(2)(i), (ii), and (iii) of the Act.  
23

## 24 **COUNT II**

### 25 **Violations of Sections 4o(1)(A) and (B) of the Act: Commodity Pool Fraud**

26 33. The allegations set forth in paragraphs 1 through 27 are re-alleged and  
27 incorporated herein.  
28

1           34.     Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B), prohibits any  
2 CPO and any AP of a CPO from directly or indirectly employing any device, scheme or artifice  
3 to defraud participants or prospective participants, or engaging in transactions, practices or a  
4 course of business which operate as a fraud or deceit upon participants or prospective  
5 participants by using the mails or other means or instrumentalities of interstate commerce.  
6

7  
8           35.     From at least March or April 2005 through September 2005, DeFazio, as an AP of  
9 a CPO, violated Sections 4o(1)(A) and (B) of the Act by willfully: (1) soliciting participant  
10 funds through fraudulent misrepresentations about his and Galaxy's registration statuses; (2)  
11 misrepresenting his success as a trader; and (3) making or causing to be made false reports and  
12 false statements to participants and prospective participants, including but not limited to  
13 misrepresenting monthly results and the status of the Galaxy trading accounts on September 12,  
14 2005.  
15

16  
17           36.     In connection with such conduct, DeFazio used or is using the mails and other  
18 means or instrumentalities of interstate commerce, directly or indirectly, to engage in business on  
19 behalf of Galaxy, a CPO.  
20

21           37.     The actions of DeFazio described in this count were done within the scope of his  
22 office with Galaxy. Therefore, pursuant to Section 2(a)(1)(B) of the Act, Galaxy is also liable for  
23 DeFazio's violations of Sections 4o(1)(A) and (B) of the Act.  
24

25           38.     Each use of the mails or any means or instrumentality of interstate commerce in  
26 connection with each act that constituted a device, scheme, or artifice to defraud commodity pool  
27 participants or each practice or a course of business which operated as a fraud or deceit upon  
28

1 commodity pool participants during the relevant time period, including but not limited to those  
2 specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act.  
3

### 4 **COUNT III**

#### 5 **Violation of Regulation 4.20(c): Commingling Pool Funds**

6 39. The allegations set forth in paragraphs 1 through 27 are re-alleged and  
7 incorporated herein.  
8

9 40. Commission Regulation 4.20(c), 17 C.F. R. § 4.20 (2005), provides that no  
10 commodity pool operator may commingle the property of any pool that it operates or that it  
11 intends to operate with the property of any other person.  
12

13 41. From at least May 2005 through September 2005, Galaxy, through its agent,  
14 DeFazio, commingled the pool funds with other funds of unknown origin, in violation of  
15 Commission Regulation 4.20(c).  
16

17 42. During the relevant time, DeFazio, as principal and manager of Galaxy, directly  
18 and indirectly controlled Galaxy and did not act in good faith or knowingly induced, directly or  
19 indirectly, the acts constituting the violations of Commission Regulation 4.20(c). Therefore,  
20 pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), DeFazio is also liable for the Galaxy's  
21 violations of Commission Regulation 4.20(c).  
22  
23

### 24 **COUNT IV**

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

26 43. The allegations set forth in paragraphs 1 through 27 are re-alleged and  
27 incorporated herein.  
28



1 or agent (or as a person occupying a similar status or performing similar functions), in a capacity  
2 that involves (i) the solicitation of funds, securities, or property for a participation in a  
3 commodity pool or (ii) the supervision of any person or persons so engaged, without being  
4 registered with the Commission as an associated person of such commodity pool operator.  
5

6 50. DeFazio engaged and continues to engage in these activities without the benefit of  
7 registration, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2002).  
8

9 51. Each use of the mails or any means or instrumentality of interstate commerce in  
10 connection with DeFazio's business as an AP of a CPO without proper registration during the  
11 relevant time period, including but not limited to those specifically alleged herein, is alleged as a  
12 separate and distinct violation of Section 4k(2) of the Act.  
13

## 14 VII.

### 15 RELIEF REQUESTED

16 Wherefore, the Commission respectfully requests that this Court, as authorized by  
17 Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:  
18

19 A. Find that Defendant DeFazio violated Sections 4b(a)(2)(i), (ii), and (iii), 4k(2),  
20 4m(1) and 4o(1)(A) and (B) of the Act and Commission Regulation 4.20(c), and Defendant  
21 Galaxy violated Sections 4b(a)(2)(i), (ii), and (iii), 4m(1) and 4o(1)(A) and (B) of the Act, and  
22 Commission Regulation 4.20(c).  
23

24 B. Enter orders pursuant to Section 6c(a) of the Act restraining and enjoining  
25 Defendants and all persons insofar as they are acting in the capacity of their agents, servants,  
26 successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or  
27  
28

1 participation with them who receive actual notice of such order by personal service or otherwise,  
2 from directly or indirectly:

3  
4 1. Destroying, mutilating, concealing, altering or disposing of any books and  
5 records, documents, correspondence, brochures, manuals, electronically stored data, tape records  
6 or other property of Defendants, wherever located, including all such records concerning  
7 defendants' business operations;

8  
9 2. Refusing to permit authorized representatives of the Commission to inspect, when  
10 and as requested, any books and records, documents, correspondence, brochures, manuals,  
11 electronically stored data, tape records or other property of Defendants, wherever located,  
12 including all such records concerning Defendants' business operations; and

13  
14 3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in  
15 any manner, any funds, assets, or other property, wherever situated, including but not limited to,  
16 all funds, personal property, money or securities held in safes, safety deposit boxes and all funds  
17 on deposit in any financial institution, bank or savings and loan account held by, under the  
18 control, or in the name of Defendants.

19  
20  
21 C. Enter orders of preliminary and permanent injunctions prohibiting the Defendants  
22 and any other person or entity associated with them, including any successor thereof, from:

23  
24 1. engaging in conduct, in violation of Sections 4b(a)(2)(i), (ii), and (iii), 4k(2),  
25 4m(1) and 4o(1)(A) and (B) of the Act and Commission Regulation 4.20(c); and

26  
27 2. soliciting funds for, engaging in, controlling, or directing the trading of any  
28 commodity futures or options accounts for or on behalf of any other person or entity, whether by  
power of attorney or otherwise.

1 D. Enter an order directing the Defendants, and any successors thereof, to disgorge,  
2 pursuant to such procedure as the Court may order, all benefits received including, but not  
3 limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or  
4 indirectly, from acts or practices which constitute violations of the Act as described herein,  
5 including pre-judgment interest thereon from the date of such violations.  
6

7  
8 E. Enter an order directing the Defendants to make full restitution to every customer  
9 whose funds were received by them as a result of acts and practices which constituted violations  
10 of the Act, as described herein, and interest thereon from the date of such violations.  
11

12 F. Enter an order assessing a civil monetary penalty against each Defendant in the  
13 amount of not more than the higher of \$130,000 or triple the monetary gain to the Defendant for  
14 each violation by the Defendant of the Act.  
15

16 G. Enter an order directing that the Defendants make an accounting to the Court of  
17 all their assets and liabilities, together with all funds they received from and paid to clients and  
18 other persons in connection with commodity futures transactions or purported commodity futures  
19 transactions, and all disbursements for any purpose whatsoever of funds received from  
20 commodity transactions, including salaries, commissions, interest, fees, loans and other  
21 disbursements of money and property of any kind, from November 2000 to and including the  
22 date of such accounting.  
23

24  
25 H. Enter an order requiring Defendants to pay costs and fees as permitted by  
26 28 U.S.C. §§ 1920 and 2412(a)(2).

27 I. Order such other and further remedial ancillary relief as the Court may deem  
28 appropriate.

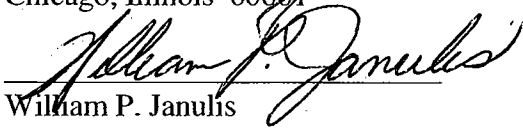


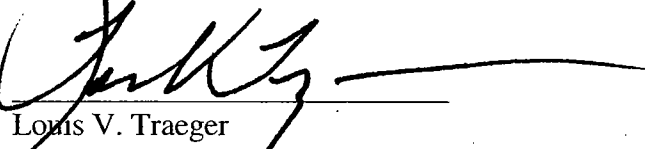
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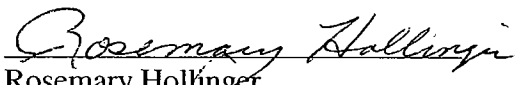
Dated: \_\_\_\_\_

Respectfully submitted,

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