

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

2014 OCT 30 AM 8:58

U.S. COMMODITY FUTURES  
TRADING COMMISSION

Plaintiff,

v.

EMINI EXPERTS LLC,  
CAPITAL TRADING CONCEPTS LLC, and  
DANTE S. GIOVANNETTI,

Defendants,

CAPITAL FUTURES LLC,

Relief Defendant.

6:14-cv-1766-ORL-406-JK

**COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL MONETARY  
PENALTIES AND OTHER EQUITABLE RELIEF**

Plaintiff U.S. Commodity Futures Trading Commission (the "Commission") alleges as follows:

**I. SUMMARY**

1. From at least July 2013 to the present, Defendants Emini Experts LLC ("Emini") and Capital Trading Concepts LLC ("Capital Trading") (collectively, "Company Defendants"), and their owner, Defendant Dante S. Giovannetti ("Giovannetti") (collectively, "Defendants"), have used fictitious trading account statements to fraudulently solicit approximately \$700,000 from investors and, despite repeated requests, have retained and not returned any of those funds to investors since at least May 2014. The false trading account statements show tens of millions of dollars in fictitious profits from trading E-mini S&P 500 futures contracts ("S&P futures") and

over \$53 million in cash on deposit as of July 31, 2014. In executing this fraud, Defendants illegally solicited, accepted, or received money from existing or prospective clients, and Defendants and Relief Defendant, Capital Futures LLC, commingled pool funds with non-pool property. Moreover, Giovannetti and Emini have concealed material facts from the National Futures Association (the “NFA”), a futures association registered with the Commission, for example that Emini had closed, in 2011, the bank account about which the NFA was inquiring, even though Defendants had used that account in connection with the solicitations described below in 2013 and 2014.

2. By this conduct, and the conduct further described herein, the Defendants engaged, are engaging, or are about to engage in acts and practices in violation of provisions of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 1 et seq. (2012), and regulations promulgated thereto by the Commission (the “Regulations”). Specifically, they have engaged, are engaging, or are about to engage in acts and practices in violation of Sections 4b(a)(1)(A)-(C), 4m(1), 4o(1), 6(c)(1) and 9(a)(4) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6m(1), 6o(1), 9(c)(1), and 13(a)(4) (2012); and Regulations 4.20(c), 4.30(a) and 180.1(a), 17 C.F.R. §§ 4.20(c), 4.30(a) and 180.1(a) (2013).

3. Giovannetti committed each act, omission, and failure described herein while acting within the scope of his agency, employment, and office of Company Defendants; therefore, such acts, omissions, and failures are deemed to be those of Company Defendants pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2013).

4. On information and belief, at all times relevant to this Complaint, Giovannetti controlled Company Defendants and Relief Defendant, directly or indirectly, and did not act in

good faith or knowingly induced, directly or indirectly, the acts of the Company Defendants described herein; therefore, Giovannetti is liable for the acts of Company Defendants described herein, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

5. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the Commission brings this action to permanently enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act, as amended, and Regulations and to further enjoin Defendants from engaging in any commodity-related activity. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and other such relief as the Court may deem necessary and appropriate.

## **II. JURISDICTION AND VENUE**

6. The Court has jurisdiction over this action, pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), because it appears to the Commission that Defendants have engaged, are engaging, or are about to engage in conduct that constitutes a violation of the Act, as amended, and the Regulations.

7. Venue properly lies with this Court, pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because the Defendants are found in this District and at least some of the acts and practices in violation of the Act or Regulations have occurred within this District.

## **III. PARTIES**

8. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act and Regulations promulgated thereunder.

9. Defendant Emini Express LLC is a Florida limited liability company formed on September 27, 2010, with its principal place of business at 9001 Leeland Archer Blvd., Orlando,

FL 32836-8839. Emini has been registered as a commodity trading advisor (“CTA”) since November 2, 2012. Emini has never been registered as a commodity pool operator (“CPO”).

10. Defendant Dante S. Giovannetti is a resident of Orlando, Florida and, upon information and belief, is an owner and sole principal of Emini, Capital Trading, and Capital Futures. Since 2012, Giovannetti has been listed as a principal of and registered as the sole associated person (“AP”) of Emini.

11. Defendant Capital Trading Concepts LLC is a Delaware limited liability company with its principal place of business at 9001 Leeland Archer Blvd., Orlando, FL 32836-8839. Capital Trading has never been registered with the Commission in any capacity.

#### **IV. Other Relevant Entities**

12. Relief Defendant Capital Futures LLC is a Florida limited liability company formed on December 12, 2013, with its principal place of business at 9001 Leeland Archer Blvd., Orlando, FL 32836-8839.

13. 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.

#### **V. FACTS**

##### **A. Emini and Capital Trading**

14. Emini first became a registered CTA on January 12, 2011.

15. In or about 2011, Giovannetti established numerous forex accounts at a registered futures commission merchant that are still open. These accounts are in the name of Giovannetti or entities that he owns and/or controls.

16. On March 2, 2012, Emini withdrew its CTA registration.

17. On November 2, 2012, Emini registered again as a CTA.

18. At all relevant times, Giovannetti was registered as an AP of Emini and was listed as the sole principal of Emini.

19. From October 12, 2012, Emini had power of attorney to direct trading accounts for at least seven customers (the "CTA customers"). Those accounts were held at a registered futures commission merchant in the name of the customers.

20. On information and belief, Emini did not have any trading accounts in its own name at any time between January 1, 2009 and October 22, 2014.

**B. Giovannetti Fraudulently Solicited Investments in Unregistered CPOs**

21. In or about July 2013, a third party introduced Giovannetti to Investor 1.

22. Giovannetti showed Investor 1 a redacted trading account statement as of May 31, 2013 (the "May 2013 account statement") that showed monthly gross trading profits of \$37,337.50.

23. Giovannetti showed Investor 1 a redacted trading account statement as of June 30, 2013 (the "June 2013 account statement") that showed monthly gross trading profits of \$187,712.50.

24. Some of the redacted trading account statements retained metadata. An analysis of this metadata reveals that the account statements were fraudulent and, in fact, contained doctored information from an account held in the name of one of Emini's CTA customers.

25. Investor 1 decided to invest in Emini based on the representations made by Giovannetti about the profits shown in the fraudulent May 2013 and June 2013 account statements, as well as the trading strategy that Giovannetti represented that he would employ for Emini.

26. On or about July 25, 2013, Investor 1 wrote a check to Emini in the amount of \$100,000, which Giovannetti represented that Emini pool with other money and used to trade S&P futures (“Emini pool”).

27. After receiving periodic trading account statements showing consistent profits, over 100% profit per month, on or about October 4, 2013, Investor 1 invested an additional \$100,000. Giovannetti directed Investor 1 to wire the money to a JPMorgan Chase bank account held in the name of Emini (the “Chase account”).

28. After receiving monthly trading account statements continuing to show substantial trading profits, on or about January 21, 2014, Investor 1 subsequently wired another \$100,000 to the Chase account.

29. On February 13, 2014, Investor 1 sent a check for \$150,000 to Emini with the understanding that it would be used for the pool. Of this amount, \$50,000 was invested on behalf of another investor (“Investor 2”), who is a cousin of Investor 1.

30. In or about March 2014, Investor 1 formalized a pooling arrangement, in what was called a “silent partner” agreement, with a new pool operated by Capital Trading (“Capital Trading pool”). The agreement was backdated to August 10, 2013. Investor 1 signed the agreement and returned it to Giovannetti as a member of Capital Trading.

31. On or about March 1, 2014, Investor 2 formalized the pooling arrangement with Capital Trading by signing a “silent partner” agreement. Investor 2 signed the agreement and returned it to Giovannetti as a member of Capital Trading.

32. On Giovannetti’s encouragement, Investor 1 also introduced two other investors to Giovannetti.

33. In late February 2014, Investor 3 and his wife attended a meeting with Giovannetti in Orlando, Florida at which they were shown false trading account statements showing consistent, substantial trading profits.

34. On or about February 25, 2014, Investor 3 wire transferred \$100,000 to a bank account in the name of Capital Trading.

35. On or about February 25, 2014, Investor 3 formalized the pooling arrangement with Capital Trading by signing a “silent partner” agreement. The agreement was signed by Giovannetti as a member of Capital Trading.

36. Also in February 2014, Investor 4 flew to Orlando, Florida to meet with Giovannetti. Giovannetti showed Investor 4 copies of fraudulent trading account statements purporting to show consistent, substantial trading profits.

37. Giovannetti also described to Investor 4 the trading strategy that would be employed by the pool: a computer-based system designed by Giovannetti identified trading signals to buy or sell S&P futures based upon monitoring more than 80 parameters. Giovannetti explained to Investor 4 that the trading system employed backstops to exit trades that lost more than 1 or 2% or gained more than 5%.

38. Investor 4 invested approximately \$150,000 with Capital Trading.

39. Over three dates between February and April 2014, Investor 4 wire transferred a total of approximately \$140,000 to a Wells Fargo bank account that Investor 4 understood was held personally by Giovannetti. Giovannetti represented to Investor 4 that this money would be used to fund his investment in the Capital Trading pool.

40. Investor 4 also wrote two checks in February and March 2014 to Capital Trading totaling \$9,900 with the understanding that this money would be used to fund his investment in the Capital Trading pool.

41. Company Defendants, by and through Giovannetti, and Giovannetti individually engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

**C. Defendants Have Not Returned Any Money to the Investors**

42. Beginning in May 2014, Investors 1-4 (“the investors”) have made numerous attempts to withdraw some of their money from the pool.

43. Since May 2014, Giovannetti has repeatedly promised that the money would be forthcoming, and even that he would make the payments from his own personal account.

44. Giovannetti has provided numerous excuses to delay payment to the investors.

45. To date, Giovannetti has not paid any money to the investors.

46. As recently as October 21, 2014, Giovannetti contacted the investors by e-mail and text message regarding payment of the money. Giovannetti is currently conditioning payment on the investors agreeing to alter the first page of the “Silent Partner” agreement with Capital Trading to change the purpose of the business from “day trading” to “software development.” Giovannetti is also requiring that the investors sign releases against Capital Trading and its members (which would include Giovannetti), as well as affidavits swearing that they have destroyed all confidential information regarding Capital Trading and its members,



which is broadly described as "Customer information, business plans, financial reports and information, contracts, financial or negotiable instruments, written agreements, marketing plans, price lists, strategies and all other information regarding CTC and its business."

47. Company Defendants, by and through Giovannetti, and Giovannetti individually engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

**D. Trading Statement Used to Solicit Investments into CPO Are False**

48. Since August 2013, Giovannetti issued regular statements to the investors of the trading activity.

49. Giovannetti consistently sent the statements by e-mail to Investor 1. Generally, he would use Investor 1 to send copies of these statements to Investors 2, 3, and 4. At other times, Giovannetti, himself, would send them to all of the investors.

50. In August 2013, Giovannetti issued these statements to Investor 1 almost daily.

51. The statements routinely contained redactions, including redacting the name of the account holder, account number, and introducing broker.

52. Some of the redacted trading account statements retained metadata. An analysis of this metadata reveals that the account statements were fraudulent and that the account to which they were supposedly linked did not, in fact, exist.

53. After August 2013, Giovannetti generally issued statements monthly. Those statements were in a similar format and contained similar redactions to the August 2013 statements.

54. The statements indicated that all trading was of S&P futures.

55. The trading account statements show purported balances and trading profits as follows:

Statement Date	Cash Balance	Trading Profits
31-Aug-13	\$ 203,658.92	\$ 112,575.00
30-Sep-13	\$ 603,471.82	\$ 436,062.50
31-Oct-13	\$ 1,708,001.18	\$ 1,110,550.00
30-Nov-13	\$ 3,515,601.40	\$ 2,019,287.50
31-Dec-13	\$ 5,835,753.16	\$ 2,594,700.00
31-Jan-14	\$ 11,989,669.44	\$ 6,774,075.00
28-Feb-14	\$ 21,894,193.44	\$ 10,517,500.00
31-Mar-14	\$ 33,424,571.44	\$ 11,546,250.00
30-Apr-14	\$ 43,005,881.44	\$ 10,593,750.00
31-May-14	\$ 35,818,700.00	\$ 8,475,000.00
30-June-14	\$ 41,987,750.00	\$ 6,806,250.00
31-July-14	\$ 53,156,270.00	\$ 12,450,000.00

56. Upon information and belief, the statements falsely represented to the investors that their pooled investments had generated substantial profits through trading S&P futures.

57. Company Defendants, by and through Giovannetti, and Giovannetti individually engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

**E. Relief Defendant Capital Futures Received Funds To Which It Was Not Entitled**

58. Investor 1 was informed by Giovannetti that the investors' money had been transferred to an account held in the name of Relief Defendant Capital Futures.

59. Upon information and belief, Relief Defendant Capital Futures has no legitimate claim to the funds invested by Investor 1, or any of the investors, in the Emini or Capital Trading pools.

**F. Giovannetti and Emini Provided False Information and Documents to NFA During NFA's Examination**

60. On September 5, 2014, Giovannetti filed Emini's annual questionnaire with the NFA. The questionnaire stated that, although Emini was actively soliciting customers, it did not have any customers, and had not placed any customer trades in the past twelve months.

61. At the time, Emini had power of attorney over at least one customer trading account.

62. On October 14, 2014, NFA began an unannounced examination of Emini.

63. In the course of NFA's examination, Giovannetti knowingly made several false statements to or concealed material facts from NFA to hide his solicitation of and misrepresentations to the investors.

64. During the October 14 interview, Giovannetti concealed material facts regarding the status of Emini's Chase bank account, about which the NFA had inquired. Giovannetti represented that the Chase bank account was closed in 2011, and further represented that Emini had no current bank account. Two cancelled checks of Investor 1 made out to Emini in the amounts of \$100,000 and \$150,000 reflect that they were deposited in the Chase bank account in 2013 and 2014.

65. Giovannetti also represented that Emini had only recently been granted power of attorney over several customer accounts that were in the process of being funded.

66. NFA issued a Member Responsibility Action against Emini and an Associate Responsibility Action against Giovannetti (collectively, "MRA/ARA") on October 22, 2014.

67. The MRA/ARA, among other things: (1) prohibits Giovannetti, Emini and any other entity operated or owned by Giovannetti from soliciting or accepting any additional funds from customers or investors, soliciting investments for any managed accounts or investment vehicles controlled or operated by Giovannetti or Emini, or placing any trades except liquidation or risk reducing trades in any account or investment vehicle over which Giovannetti, Emini or any other entity operated or owned by Giovannetti exercise control; and (2) prohibits Giovannetti, Emini or any other entity operated or owned by Giovannetti from disbursing or

transferring any funds of customers, investors or investment vehicles over which they exercise control without prior approval from NFA.

68. Company Defendants, by and through Giovannetti, and Giovannetti individually engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

## **VI. VIOLATION OF THE COMMODITY EXCHANGE ACT AND COMMISION REGULATIONS**

### **COUNT I**

#### **Violations of Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1) (A)-(C) (Futures Trading Fraud)**

69. The allegations set forth in paragraphs 1 to 68 are re-alleged and incorporated herein by reference.

70. Section 4b(a)(1) of the Act, 7 U.S.C. § 6b(a), makes it unlawful

(1) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person . . .

(A) to cheat or defraud or attempt to cheat or defraud the other person;

(B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record;

(C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person....

71. As described above, beginning in at least July 2013 and continuing to at least April 21, 2014, Defendants violated Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C), in or in connection with futures contracts made for, on behalf of, or with other persons, by

soliciting funds from and misleading investors by use of fraudulent trading account statements, and by misrepresenting the cash balances and trading profits of the Emini and Capital Trading pools.

72. Defendants engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

73. When Giovannetti committed the acts, omissions, and/or failures described above, he acted within the scope of his agency, employment, and office with Company Defendants; therefore, such acts, omissions, and/or failures are deemed to be those of Company Defendants pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.21 (2013).

74. At all times relevant to this Count, Giovannetti controlled Company Defendants, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Company Defendants' conduct alleged in this count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Giovannetti is liable for Company Defendants' violations of Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1) (A)-(C) (2012).

75. Each act of misappropriation and issuance of a false report or account statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1) & (2)(A)-(C) (2012).

## COUNT II

### **Violations of Section 6(c)(1) of the Act and Regulation 180.1(a)(1)-(3) 7 U.S.C. § 9(c)(1) and 17 C.F.R. § 180.1(a)(1)-(3)**

#### **(Fraud in Connection with Swaps or Commodity Futures)**

76. The allegations set forth in paragraphs 1 to 75 are re-alleged and incorporated herein by reference.

77. Section 6(c)(1) of the Act, 7 U.S.C. § 9(c)(1), in relevant part, prohibits any person from directly or indirectly using or employing, in connection with any contract of sale of any commodity in interstate commerce, any manipulative, deceptive device or contrivance in contravention of such rules and regulations as the Commission shall promulgate.

78. Pursuant to Section 6(c)(1) of the Act, the Commission promulgated Regulation 180.1(a), 17 C.F.R. § 180.1(a) which, in relevant part, prohibits any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly: (1) use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; or, (3) engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.

79. As described above, beginning in at least July 2013 and continuing to at least April 21, 2014, Defendants violated Section 6(c)(1) of the Act and Rule 180.1(a) by, among other things, soliciting funds from and misleading investors by use of fraudulent trading account statements and misrepresenting the cash balances and trading profits of the Emini and Capital Trading pools.

80. Defendants, through their agents and employees, directly and indirectly, employed a scheme or artifice to defraud in connection with contracts of sale of commodities in interstate commerce.

81. Defendants engaged in misrepresentations and omissions concerning facts that are material to the investment decisions of the investors.

82. Defendants made these representations and omissions knowingly or with a reckless disregard for their truth or falsity.

83. The acts, practices, and the course of business of Defendants, as described in paragraphs 14-68, operated as a fraud upon the investors.

84. When Giovannetti committed the acts, omissions, and/or failures described above, he acted within the scope of his agency, employment, and office with Company Defendants; therefore, such acts, omissions, and/or failures are deemed to those of Company Defendants pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.21 (2013).

85. At all times relevant to this Count, Giovannetti controlled Company Defendants, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Company Defendants' conduct alleged in this count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Giovannetti is liable for Company Defendants' violations of Section 6(c)(1) of the Act, and Regulation 180.1(a)(1)-(3).

86. Each material misrepresentation or omission made between July 2013 and the present, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 6(c)(1) of the Act and Rule 180.1(a)(1)-(3).

### COUNT III

#### **Violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (Commodity Pool Operator and Commodity Trading Advisor Fraud)**

87. The allegations set forth in paragraphs 1 to 86 are re-alleged and incorporated herein by reference.

88. A CPO is defined in Section 1a(11) of the Act, 7 U.S.C. § 1a(11) (2012), as any person

engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise for the purpose of trading in commodity interests, including any—

(I) commodity for future delivery...;

89. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), states that “It shall be unlawful for a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, 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.

90. Beginning in at least July 2013 and continuing to the present, Company Defendants have been operating as CPOs in that they 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 futures, options, and forex.



91. Beginning in at least July 2013, Company Defendants, acting as CPOs, through the use of the mails or other means or instrumentalities of interstate commerce (including through use of U.S. mail to pool participants and the Internet), violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), by soliciting funds from and misleading pool participants and prospective pool participants by use of fraudulent trading account statements and misrepresenting the cash balances and trading profits of the Emini and Capital Trading pools.

92. Furthermore, as a registered CTA, Emini and its registered AP, Giovannetti, violated Section 4o(1) by defrauding Investors 1 and 4 into sending money to Emini and Giovannetti, personally, when the purpose of the money was to invest in commodity pool for the purpose of trading S&P futures.

93. Defendants engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

94. When Giovannetti committed the acts, omissions, and/or failures described above, he acted within the scope of his agency, employment, and office with Company Defendants; therefore, such acts, omissions, and/or failures are deemed to those of Company Defendants pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.21 (2013).

95. At all times relevant to this Count, Giovannetti controlled Company Defendants, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Company Defendants' conduct alleged in this count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Giovannetti is liable for Company Defendants' violations of Section 4o(1) of the Act.

96. Each solicitation using, or the issuance of, a false report or account statement, and misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1).

#### **COUNT IV**

##### **Violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (Failure to Register as a CPO)**

97. The allegations set forth in paragraphs 1 to 96 are re-alleged and incorporated herein by reference.

98. Section 4m(1) of the Act, 7 U.S.C. § 6m(1), provides that it is unlawful for any CPO, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as a CPO.

99. Company Defendants are not registered as a CPO.

100. Company Defendants do not qualify for a registration exemption under either the Act or the CFTC Regulations.

101. Company Defendants used the mails, wires, or other instrumentalities of interstate commerce in or in connection with its business as a CPO while failing to register as a CPO and violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

102. At all times relevant to this Count, Giovannetti controlled Company Defendants, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Company Defendants' conduct alleged in this count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Giovannetti is liable for Company Defendants' violations of Section 4m(1) of the Act.

## **COUNT V**

### **Violations of Commission Regulation § 4.20(c), 17 C.F.R. § 4.20(c) (Commingling of Funds by a Commodity Pool Operator)**

103. The allegations set forth in paragraphs 1 to 102 are re-alleged and incorporated herein by reference.

104. Section 4.20(c) of the Commission Regulations, 17 C.F.R. § 4.20(c) (2013) states that “No commodity pool operator may commingle the property of any pool that it operates or that it intends to operate with the property of any other person.”

105. When Capital Trading solicited pool funds from Investors 1 and 4 and caused the funds to be commingled in bank accounts held in Giovannetti’s name and in the name of other companies, Capital Trading violated Section 4.20(c) of the Regulations, 17 C.F.R. § 4.20(c) (2013).

106. When Emini solicited pool funds from Investors 1 and 4 and caused the funds to be commingled in bank accounts held in the name of other companies, Emini violated Section 4.20(c) of the Regulations, 17 C.F.R. § 4.20(c) (2013).

107. Each separate commingling of pool funds entrusted to the pool by investors with property of any other person, including but not limited to the commingling of property of the pool specifically alleged herein, is alleged as a separate and distinct violation of Section 4.20(c) of the Regulations, 17 C.F.R. § 4.20(c) (2013).

108. At all times relevant to this Count, Giovannetti controlled Company Defendants, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Company Defendants’ conduct alleged in this count. Therefore, pursuant to Section 13(b) of the

Act, 7 U.S.C. § 13c(b) (2012), Giovannetti is liable for Company Defendants' violations of Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2013).

## COUNT VI

### **Violations of Commission Regulation § 4.30(a), 17 C.F.R. § 4.30(a) (Illegal Receipt of Funds by a Commodity Trading Advisor)**

109. The allegations set forth in paragraphs 1 to 108 are re-alleged and incorporated herein by reference.

110. Section 4.30(a) of the Commission Regulations, 17 C.F.R. § 4.30(a) (2013) states that "no commodity trading advisor may solicit, accept or receive from an existing or prospective client funds, securities or other property in the trading advisor's name (or extend credit in lieu thereof) to purchase, margin, guarantee or secure any commodity interest of the client."

111. When Emini accepted or received from Investor 1 funds in the Chase account, Emini violated Section 4.30(a) of the Regulations, 17 C.F.R. § 4.30(a) (2013).

112. At all times relevant to this Complaint, Giovannetti controlled Emini, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Emini's conduct alleged in this count. Therefore, Giovannetti is liable for Emini's violations of Regulation 4.30(a), 17 C.F.R. § 4.30(a) (2013), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

113. Each separate acceptance or receipt of funds by Emini from investors in the pool including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4.30(a) of the Regulations, 17 C.F.R. § 4.30(a) (2013).

## COUNT VII

### **Violations of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (False Statements to the NFA)**

114. The allegations set forth in paragraphs 1 to 113 are re-alleged and incorporated herein by reference.

115. Section 9(a)(4) of the Act, 7 U.S.C § 13(a)(4), makes it unlawful 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.”

116. NFA is a futures association organized and registered with the Commission pursuant to Section 17 of the Act that was acting in furtherance of its official duties when it conducted the October 2014 examination of Emini.

117. As described above, Emini, by and through Giovannetti, made misrepresentations to or concealed material facts from NFA during its October 2014 examination of Emini, including but not limited to misrepresentations that Emini’s Chase account was closed in 2011.

118. When Giovannetti committed the acts, omissions, and/or failures described above, he acted within the scope of his agency, employment, and office with Emini; therefore, such acts, omissions, and/or failures are deemed to those of Emini pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.21 (2012).

119. Each misrepresentation, false statement, omission of material fact, and act of concealment made by Defendants Giovannetti or Emini to NFA, including but not limited to

those specifically alleged herein, is alleged as a separate and distinct violation of Section 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. § 13(a)(4).

### **RELIEF REQUESTED**

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

A. An order finding that Defendants are liable for violating Sections 4b(a)(1)(A)-(C), 4m(1), 4o(1), 6(c)(1) and 9(a)(4) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6m(1), 6o(1), 9(c)(1), and 13(a)(4) (2012); and Regulations 4.20(c). 4.30(a) and 180.1, 17 C.F.R. §§ 4.20(c), 4.30(a) and 180.1 (2013).

B. An order of a preliminary and permanent injunction prohibiting Defendants, and any other person or entity associated with Defendants, from engaging in conduct that violates Sections 4b(a)(1)(A)-(C), 4m(1), 4o(1), 6(c)(1) and 9(a)(4) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6m(1), 6o(1), 9(c)(1), and 13(a)(4) (2012); and Regulations 4.20(c). 4.30(a) and 180.1, 17 C.F.R. §§ 4.20(c), 4.30(a) and 180.1 (2013).

C. An order of preliminary and permanent injunction restraining, enjoining, and prohibiting Defendants from directly or indirectly:

1. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a);
2. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2012)) (“commodity options”), 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, 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;

3. Having any commodity futures, options on commodity futures, commodity options, swaps, security futures products, and/or forex contracts traded on their behalf;
4. 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;
5. 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;
6. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and/or
7. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

D. An order directing Defendants, as well as any successors to any Defendant, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act; the Act, as amended, and the Regulations, as described herein, and pre- and post- judgment interest thereon from the date of such violations;

E. An order directing the Defendants, as well as any successors to any Defendant, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between, with, or among Defendants and any of the pool participants whose funds were received by Defendants as a result of the acts and practices which constituted violations of the Act; the Act, as amended, and the Regulations, as described herein;

F. An order requiring Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive, from the acts or

practices that constitute violations of the Act; the Act, as amended, and the Regulations, as described herein, and pre- and post- judgment interest thereon from the date of such violations;

G. An order requiring Defendants to pay civil monetary penalties, to be assessed by the Court, in amounts of not more than the higher of: (1) triple the monetary gain to each Defendant for each violation of the Act; the Act, as amended, and the Regulations; or (2) a penalty of \$140,000 for each violation committed;

H. An order requiring Relief Defendants to disgorge the amount of any funds received from Defendants or from any pools that they operated;

I. An order requiring Defendants to pay costs and fees, as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2012); and

J. An order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.



**VII. JURY DEMAND**

Plaintiff hereby demands a trial by jury.

Dated: October 29, 2014

Respectfully submitted,

U.S. COMMODITY FUTURES  
TRADING COMMISSION

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