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14 IN THE UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

SACV11 - 1718 JVS (MLGx)

16 U.S. COMMODITY FUTURES)
17 TRADING COMMISSION)

Case No.

18 Plaintiff,

19 v.

20 NATIONAL EQUITY HOLDINGS,)
21 INC., a California Corporation,)
22 ROBERT J. CANNONE, an individual,)
23 THOMAS B. BREEN, an individual,)
24 and FRANCIS FRANCO, an individual)

25 Defendants.)
26)
27)
28)

I. SUMMARY

1. From at least May 2009 through at least May 2010 (“relevant period”), Defendant National Equity Holdings, Inc. (“NEH”), an unregistered commodity pool operator (“CPO”), acting through its agents, Defendants Robert J.

*Use
NO SUMMARIES
instead*

1 Cannone (“Cannone”), Thomas B. Breen (“Breen”), and Francis Franco (“Franco”)
2 (collectively “Defendants”) fraudulently operated a commodity pool as a Ponzi
3 scheme. Defendants, by and through the individual and collective acts of Cannone,
4 Breen and Franco, fraudulently solicited and accepted at least \$1,487,930 from at
5 least 20 individuals (“pool participants” or “participants”) to participate in a
6 commodity pool called NEH that was to trade commodity futures contracts
7 (“futures”). Defendants traded only a portion of the pool participant funds in
8 proprietary accounts and sustained overall and significant losses of approximately
9 \$582,631. Defendants misappropriated the majority of the pool participants’ funds
10 to make so-called returns to participants in monthly payments that Defendants
11 claimed were the profitable proceeds of their trading. Defendants Cannone, Breen
12 and Franco each also misappropriated pool participant funds for personal use.
13 Defendants concealed their fraud and trading losses from the pool participants by
14 issuing false account statements reflecting profits. Approximately one year later,
15 Defendants claimed that participants’ fund were all lost in trading but promised to
16 return their funds. Pool participants have not received their principal back from
17 Defendants.
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24 2. By the aforementioned conduct, Defendant NEH, acting
25 through its agents, and Defendants Cannone, Breen and Franco have engaged, are
26 engaging in, or are about to engage in practices that violate the provisions of the
27 Commodity Exchange Act, as amended by the Food, Conservation, and Energy
28

1 Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of
2 2008) (“CRA”), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be
3 codified at 7 U.S.C. § 1 *et seq.* (2008).
4

5 3. Specifically, by their acts of fraudulent solicitation, false
6 statements and misappropriation, Defendant NEH, acting through its agents, and
7 Defendants Cannone, Breen and Franco violated the following anti-fraud
8 provisions of CRA: Sections 4b(a)(1)(A), (B), and (C) and 4o(1) of the CEA, 7
9 U.S.C. §§ 6b(a)(1)(A), (B) and (C) and 6o(1) (2009).
10
11

12 4. In soliciting and/or accepting funds from individuals for
13 purposes of pooling the funds to trade commodity futures, NEH, acting through its
14 agents, was acting as a CPO, and Cannone, Breen and Franco were acting as
15 Associated Persons (“AP”) of NEH without being registered with the Commission
16 as required, in violation of Sections 4m(1) and 4k(2), of the CRA, respectively, 7
17 U.S.C. §§ 6m(1) and 6k(2) (2008). NEH also violated Section 4k(2) by permitting
18 Cannone, Breen, and Franco to remain associated with NEH when NEH knew or
19 should have known that the individuals should have been registered with the
20 Commission. 7 U.S.C. § 6k(2) (2008).
21
22
23

24 5. At all relevant times, Cannone, Breen and Franco were acting
25 as officers, employees or agents of NEH and committed, are committing, or are
26 about to commit the acts and omissions described herein within the scope of their
27 office, employment or agency with NEH. Therefore, pursuant to Section
28

1 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2008), as amended by the CRA, and
2 Regulation 1.2, 17 C.F.R. § 1.2 (2011), NEH is liable for the actions and omissions
3 of Cannone, Breen and Franco constituting violations of the CEA, amended by the
4 CRA, as alleged herein, committed by Cannone, Breen and Franco.
5

6 6. Cannone, Breen and Franco are directly or indirectly
7 controlling persons of NEH and failed to act in good faith, or knowingly induced,
8 directly or indirectly, the acts and omissions described and alleged herein.
9

10 Cannone, Breen and Franco are therefore liable for NEH violations, pursuant to
11 Section 13(b) of the CEA, as amended by the CRA, 7 U.S.C. § 13c(b) (2008).
12

13 7. Cannone, Breen and Franco willfully aided, abetted, counseled,
14 commanded, induced, procured, caused or acted in combination or concert with
15 each other and NEH the foregoing violations of the CEA by each of the
16 Defendants. Therefore, Cannone, Breen and Franco are each liable for NEH's and
17 each other's violations pursuant to Section 13(a) of the CEA, 7 U.S.C § 13c(a).
18

19 8. Accordingly, pursuant to Section 6c of the CEA, 7 U.S.C. §
20 13a-1 (2008), the Commission brings this action to enjoin Defendants' unlawful
21 acts and practices and to compel their compliance with the CEA. In addition, the
22 Commission seeks civil monetary penalties for each violation of the CRA,
23 remedial ancillary relief, and such other relief as the Court may deem necessary
24 and appropriate.
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1 9. Unless enjoined by this Court, Defendants are likely to continue
2 to engage in the acts and practices alleged in this Complaint, as more fully
3 described below.
4

5 **II. JURISDICTION AND VENUE**

6 10. This Court has jurisdiction over this action pursuant to Section
7 6c of the CRA, 7 U.S.C. § 13a-1 (2008), which provides that whenever it shall
8 appear to the Commission that any person has engaged, is engaging, or is about to
9 engage in any act or practice constituting a violation of any provision of the CRA
10 or any rule, regulation, or order promulgated thereunder, the Commission may
11 bring an action against such person to enjoin such practice or to enforce
12 compliance with the CRA.
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16 11. Venue properly lies with this Court pursuant to Section 6c(e) of
17 the CRA, 7 U.S.C. § 13a-1(e) (2008), in that Defendants transact business in this
18 District, and the acts and practices in violation of the CRA have occurred, are
19 occurring, or are about to occur, within this District, among other places.
20

21 **III. THE PARTIES**

22 12. Plaintiff **U.S. Commodity Futures Trading Commission** is an
23 independent federal regulatory agency that is charged by Congress with the
24 responsibility for administering and enforcing the provisions of the CRA, 7 U.S.C.
25 §§ 1 *et seq.* (2008), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1
26 *et seq.* (2011).
27
28

1 13. **National Equity Holdings, Inc.** is a California corporation
2 established in October 2006 with a business address in Laguna Niguel, California.
3 NEH acted as a commodity pool operator (“CPO”) by soliciting and/or accepting
4 funds for the purpose of pooling the funds to trade commodity futures. NEH has
5 never been registered with the Commission in any capacity.
6

7
8 14. **Robert J. Cannone** is the president, chairman of the board of
9 directors, and chief financial officer of NEH and at all relevant times, controlled
10 the operations of NEH. He was responsible for many of the key facets of NEH’s
11 operations, including soliciting prospective participants, and the opening and
12 maintenance of NEH’s bank and trading accounts. Cannone acted in concert and
13 coordination with Breen and Franco in operating and controlling NEH. Cannone
14 has never been registered with the Commission in any capacity.
15

16
17 15. **Thomas B. Breen** is the corporate secretary and director of
18 NEH, and, at all relevant times, controlled the operations of NEH. He was
19 responsible for key aspects of the operations of NEH, including soliciting and
20 communicating with participants and prospective participants, and creating and
21 issuing account statements concerning the pool’s trading to participants. Breen
22 acted in concert and coordination with Cannone and Franco in operating and
23 controlling NEH. Breen resides in San Juan Capistrano, California. Breen was
24 previously registered as an AP of two Futures Commission Merchants but has not
25 been registered in any capacity with the Commission since March 1988.
26
27
28

1 19. Cannone and Breen solicited most of the participants through
2 personal meetings or by telephone calls. At times, Franco participated in the
3 solicitations.
4

5 20. In their solicitations, Cannone, Breen and Franco jointly
6 prepared and provided prospective participants with a document entitled "Trading
7 System Discussion Points" ("NEH Discussion Points") which described the trading
8 program to be employed by NEH and touted the ability of the NEH trader, who
9 was Franco. The document referenced NEH's "experienced futures trader with 7
10 years of hands-on, real-time experience" who "brings proven trading success and a
11 long track record of consistent performance in a very niche market – Future
12 Indices." It also noted his "development of sophisticated technical models and
13 proprietary charts," and referenced his successful, yet false track record.
14
15
16

17 21. In an effort to mislead prospective participants regarding the
18 potential risks associated with trading futures, the NEH Discussion Points
19 represented that the "disciplined" trading approach used by Franco was
20 "characterized by capturing significantly high returns with low principal risk" and
21 that "[o]nce implemented, the National Equity trading method is designed to and
22 may substantially minimize overall equity risk and potentially increase the trader's
23 returns."
24
25

26 22. Accompanying the downplaying of risk in their solicitations,
27 Defendants promoted the likelihood of earning substantial profits. Specifically, in
28

1 their NEH Discussion Points, the Defendants claimed that the trading strategy
2 employed by Franco for NEH “has proven to be exceptionally successful in both
3 up and down markets.”
4

5 23. Drawing upon a false track record of largely hypothetical
6 trading “practice,” the NEH Discussion Points stated that “the data available has
7 shown the system to produce substantially high returns annually ... [and] a strong
8 emphasis on preservation of capital with the by-product being high returns.”
9

10 24. Attempting to instill confidence in the potential participants,
11 when discussing Franco’s approach to trading, the NEH Discussion Points
12 maintained that Franco’s unique trading methodology “allows for agility in
13 managing the trading platform and is not market performance driven.” Defendants
14 claimed that implementation of stop losses would limit the prospective pool
15 participants capital exposure.
16
17

18 25. Cannone and Breen reiterated and emphasized the information
19 contained in the NEH Discussion Points document through their oral solicitations,
20 including touting Franco’s purported experience and success, the likelihood of
21 substantial profits and the minimal risks of trading futures.
22
23

24 26. Cannone and Breen encouraged potential participants to invest
25 in order to avoid losing out on the unique opportunity to make money with NEH.
26

27 27. As part of the oral solicitations to further legitimize the scheme,
28 Cannone and Breen introduced Franco to prospective participants and had him

1 discuss his trading methodology and use trader jargon to impress the prospective
2 participants. Franco repeated the claims about his experience and success and even
3 traded in front of the prospective participants, without disclosing the fact that he
4 was trading a simulated account and not real money.
5

6 28. Franco was neither the experienced, nor the successful futures
7 trader Defendants claimed he was. As Cannone, Breen and Franco knew, Franco
8 had very limited experience with trading commodity futures and he had not been
9 successful. Also, Defendants all knew Franco's trading methodologies did not
10 reduce the inherent risks of trading futures.
11

12 29. Neither Cannone, Breen, nor Franco disclosed to prospective
13 participants that NEH was not registered with the Commission as required to
14 operate a commodity futures pool and trade on behalf of others through a
15 pool, and that Cannone, Breen or Franco were not registered as an Associated
16 Person of NEH, as required to solicit prospective pool participants.
17

18 30. In making their decisions to invest with Defendants, pool
19 participants relied upon these representations and omissions alleged above,
20 including but not limited to the claims that their funds were being traded by an
21 experienced and successful trader, the promises of high returns and low risk of
22 loss, and the failure to disclose their lack of required registration.
23

24 31. Once pool participants decided to participate in the pool,
25 Cannone and Breen provided participants with an informational questionnaire that
26
27
28

1 asked for information such as the customer's income, trading experience, and basic
2 contact information. Several participants said this added to the air of legitimacy of
3 Defendants.
4

5 32. Between June 2009 and April 2010, Defendants successfully
6 solicited and accepted over \$1.4 million from individuals to trade commodity
7 futures through the pool.
8

9 33. Cannone and Breen directed the pool participants to send their
10 money to the NEH corporate bank account. Cannone was the signatory on the
11 bank account.
12

13 34. Defendants required pool participants to execute a purchase
14 agreement/ promissory note that committed their funds to the trading program.
15 The note included language that NEH was to make a monthly distribution to the
16 holder of the note based upon the profits earned through the trading for each
17 month. Defendants Cannone and Breen encouraged participants to have their
18 monthly profit distributions reinvested, and most of the participants did reinvest
19 their purported monthly profit distributions. Some participants did receive
20 monthly distributions.
21
22
23

24 35. NEH pool participants understood that Cannone, Breen, and
25 Franco, through NEH, would pool their funds, use those funds to trade futures, and
26 that they would participate or share in the profits generated by the trading of
27 futures.
28

1 36. As alleged below, Defendants made the monthly distribution
2 payments to participants not from trading profits, but rather from other
3 participants' funds, in a manner akin to a Ponzi scheme.
4

5 **Defendants Concealed Trading Losses and Misappropriation**

6 37. During the relevant period, NEH, through Cannone, opened
7 commodity futures trading accounts at a registered Futures Commission Merchant.
8 In the account opening documents, Cannone, on behalf of NEH, identified the
9 trading done by NEH as proprietary: trading on behalf of NEH only and not on
10 behalf of any pool of participants. Specifically, Cannone represented that the
11 funds in the account were corporate funds.
12
13

14 38. In executing the account opening documentation, NEH, through
15 Cannone, represented that NEH was not operating in any capacity that required
16 registration.
17

18 39. NEH, through Cannone, gave power of attorney to trade the
19 NEH account to Franco.
20

21 40. Cannone funded the NEH proprietary trading account by wiring
22 pool participant funds from the NEH bank account into the trading account.
23

24 41. Of the approximately \$1,487, 930 deposited by participants into
25 the NEH bank account Cannone transferred only approximately \$905,408 to the
26 NEH trading account. NEH, through Cannone, withdrew approximately \$322,657
27 from the trading account. Of the funds actually traded, Franco sustained massive
28

1 trading losses and his trading overall resulted in a total loss of the funds, with
2 overall losses of approximately \$582,631.

3
4 42. Defendants misappropriated a significant portion of funds in
5 order to make payments of purported profits or returns of principal to pool
6 participants, to forward funds to others, and for personal use. Defendants returned
7 approximately \$422,375 to known pool participants, transferred approximately
8 \$356,707 to various unknown third individuals and entities, with several payments
9 noted as payments on promissory notes or quarterly payments, and used
10 approximately \$272,825 for their personal use. Cannone and his wife received
11 approximately \$140,600 from the NEH bank accounts; Breen received
12 approximately \$86,625 from the NEH bank accounts; and Franco received
13 approximately \$30,800 from the NEH bank accounts. Cannone also transferred
14 approximately \$14,800 from the NEH bank accounts to a company named Desert
15 Concepts – a business Cannone and Breen started as their potential “exit strategy”
16 from NEH.
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21 43. Defendants never disclosed to the pool participants that their
22 funds were being used for these purposes.
23

24 44. To conceal the losses, the misappropriation and the Ponzi
25 scheme, Cannone and Breen prepared and issued false account statements via
26 email that reflected profitable trading and substantial overall gains on a daily and
27 monthly basis. Cannone and Breen conferred with Franco regarding the
28

1 preparation of the account statements. Cannone and Breen sent the false account
2 statements to the NEH pool participants on a monthly basis throughout the relevant
3 period.
4

5 45. A year after commencing their fraudulent scheme, Defendants
6 had depleted the pool participant funds through their trading losses and
7 misappropriation. Cannone, on behalf of the Defendants, dispatched a letter to the
8 pool participants notifying them of the complete loss of their investment with NEH
9 and blaming the wild market turns and the trading losses incurred as a result.
10

11 46. Personally, at meetings between Cannone, Breen and several of
12 the pool participants, Defendants made promises, and sometimes even gave written
13 guarantees to return the funds invested.
14

15 47. To date, participants have not received the promised funds.
16

17 **V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

18 **COUNT ONE**

19 **VIOLATIONS OF SECTIONS 4b(a)(1)(A), (B) and (C):**
20 **FRAUD BY FRAUDULENT SOLICITATION, FALSE ACCOUNT**
21 **STATEMENTS, MISAPPROPRIATION**

22 48. The allegations set forth in paragraphs 1 through 47 are re-
23 alleged and incorporated herein by reference.
24

25 49. As set forth above, during the relevant period, in or in
26 connection with orders to make, or the making of, contracts of sale of commodities
27 for future delivery, made, or to be made, for or on behalf of any other persons,
28

1 where such contracts for future delivery were or could be used for the purposes set
2 forth in Sections 4b(a)(1)(A), (B) and (C) of the CEA, 7 U.S.C. §§ 6b(a)(1)(A),
3 (B) and (C) (2008), Defendants each cheated or defrauded or attempted to cheat or
4 defraud other persons, and/or willfully deceived or attempted to deceive other
5 persons by: (1) misrepresenting the experience and success of the designated trader
6 for the pool; (2) misrepresenting the likelihood of profits and the risks associated
7 with trading commodity futures; (3) issuing false account statements; (4)
8 misappropriating participants' funds; (5) failing to disclose that they were not
9 properly registered; and (6) failing to disclose their intended uses of pool
10 participant funds.
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14 50. Cannone, Been and Franco, acting on behalf of and through
15 NEH, engaged in the acts and practices alleged above knowingly, willfully or with
16 reckless disregard for the truth.
17

18 51. By making material misrepresentations and omissions as
19 alleged above, Defendants violated Section 4b(a)(1)(A) and (C) of the CEA,
20 7 U.S.C. §§ 6b(a)(1)(A) and (C) (2008).
21

22 52. By using funds solicited from participants to trade commodity
23 futures for personal benefit, to pay for personal expenses, to funnel to third parties
24 under Cannone's, Breen's and Franco's control and to make payments to
25 participants in a manner akin to a Ponzi scheme, Defendants knowingly
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27
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1 misappropriated funds in violation of Sections 4b(a)(1)(A) and (C) of the CRA,
2 7 U.S.C. §§ 6b(a)(1)(A) and (C) (2008).

3
4 53. By issuing false account statements to pool participants in an
5 attempt to hide Defendants' unsuccessful trading, Defendants knowingly acted in
6 violation of Section 4b(a)(1)(B) of the CRA, 7 U.S.C. §6b(a)(1)(B)(2008).

7
8 54. During the relevant period, Cannone, Breen and Franco each
9 directly or indirectly, controlled NEH and did not act in good faith, or knowingly
10 induced, directly or indirectly, the acts constituting NEH's violations of Sections
11 4b(a)(1)(A), (B) and (C) of the CRA, 7 U.S.C. §§ 6b(a)(1)(A), (B) and (C) (2008).
12 Cannone, Breen and Franco are therefore liable for these violations pursuant to
13 Section 13(b) of the CEA, 17 U.S.C. § 13c(b) to the same extent as NEH.
14

15
16 55. The foregoing misappropriation, fraudulent acts,
17 misrepresentations, omissions and false statements of Cannone, Breen and Franco
18 occurred within the scope of their employment, office or agency with NEH, they
19 are therefore liable for NEH's violations of Sections 4b(a)(1)(A), (B) and (C) of
20 the CRA, 7 U.S.C. §§ 6b(a)(1)(A), (B) and (C) (2008), pursuant to Section
21 2(a)(1)(B) of the CRA, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2
22 (2011).
23

24
25 56. Cannone, Breen, and Franco willfully aided, abetted, counseled,
26 commanded, induced, procured, caused or acted in combination or concert with
27 each other in the foregoing violations of the Act by NEH and each other. Cannone,
28

1 Breen and Franco are therefore responsible for violations of NEH and each other
2 by operation of Section 13(a) of the Act, 7. U.S.C § 13c(a).

3
4 57. Each act of fraudulent misrepresentation or omission,
5 solicitation, misappropriation, and false statements during the relevant period,
6 including but not limited to those specifically alleged herein, is alleged as a
7 separate and distinct violation of Sections 4b(a)(1)(A), (B) and (C) of the CRA,
8 7 U.S.C. §§ 6b(a)(1)(A), (B) and (C) (2008).

10 **COUNT TWO**

11
12 **VIOLATION OF SECTION 4o(1) OF THE CRA:**
13 **FRAUD AS A CPO and ASSOCIATED PERSON**

14 58. Paragraphs 1 through 57 are re-alleged and incorporated herein
15 by reference.

16 59. During the relevant period, NEH acted as a CPO by soliciting,
17 accepting or receiving funds from others and engaging in a business that is of the
18 nature of an investment trust, syndicate, or similar form of enterprise, for the
19 purpose of trading in commodities for future delivery on or subject to the rules of a
20 contract market.
21

22
23 60. During the relevant period, Cannone, Breen and Franco acted
24 as APs of NEH by soliciting funds for participation in a pool or supervising the
25 solicitation of funds or participation in a pool.
26

27 61. During the relevant period, NEH, while acting as a CPO, and
28 Cannone, Breen and Franco, while acting as APs of NEH, violated Section 4o(1)

1 of the CRA, as amended, to be codified at 7 U.S.C. § 60(1), in that Defendants
2 directly or indirectly employed or are employing a device, scheme, or artifice to
3 defraud participants or prospective participants, or have engaged or are engaged in
4 transactions, practices or a course of business which operated or operate as a fraud
5 or deceit upon participants or prospective participants by using the mails or other
6 means or instrumentalities of interstate commerce. Defendants' fraudulent acts
7 consisted of, among other things as alleged above, the fraudulent solicitation of
8 participants, the issuance of false account statements, and the misappropriation of
9 participant funds.
10
11
12

13 62. Cannone, Breen and Franco, acting on behalf of and through
14 NEH, engaged in the acts and practices described above knowingly, willfully or
15 with reckless disregard for the truth.
16

17 63. Cannone, Breen and Franco each directly or indirectly,
18 controlled NEH and did not act in good faith, or knowingly induced, directly or
19 indirectly, the acts constituting NEH's violations of Section 40(1) of the CRA, 7
20 U.S.C. § 60(1) (2008). Cannone, Breen and Franco are therefore liable for these
21 violations pursuant to Section 13(b) of the CRA, 17 U.S.C. § 13c(b) (2008) to the
22 same extent as NEH.
23
24

25 64. The foregoing misappropriation, fraudulent acts,
26 misrepresentations, omissions and failures of Cannone, Breen and Franco occurred
27 within the scope of their employment, office or agency with NEH and NEH is
28

1 therefore liable for Cannone's, Breen's and Franco's violations of Section 4o(1) of
2 the CRA, 7 U.S.C. § 6o(1) (2008), pursuant to Section 2(a)(1)(B) of the CRA, 7
3 U.S.C. § 2(a)(1)(B) (2008), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).
4

5 65. Cannone, Breen and Franco's foregoing conduct aided and
6 abetted NEH's violations of the CRA in violation of Section 13(a) of the CRA, 7
7 U.S.C. § 13(c)a (2008).
8

9 66. Each act of fraudulent solicitation, misappropriation and false
10 statement made during the relevant period, including but not limited to those
11 specifically alleged herein, is alleged as a separate and distinct violation of Section
12 4o(1) (A) and (B) of the CRA, 7 U.S.C. § 6o(1) (A) and (B) (2008).
13

14 **COUNT THREE**

15 **VIOLATIONS OF SECTIONS 4k(2) AND 4m(1) OF THE CRA:**
16 **FAILURE TO REGISTER AS AN ASSOCIATED PERSON**
17 **AND A COMMODITY POOL OPERATOR**

18 67. The allegations set forth in paragraphs 1 through 66 are re-
19 alleged and incorporated herein by reference.
20

21 68. NEH used the mails or instrumentalities of interstate commerce
22 in or in connection with its business as CPO while failing to register with the
23 Commission as a CPO, in violation of Section 4m(1) of the CRA, 7 U.S.C. § 6m(1)
24 (2008).
25

26 69. Cannone, Breen and Franco, directly or indirectly, controlled
27 NEH and did not act in good faith, or knowingly induced, directly or indirectly, the
28

1 acts constituting NEH's violations of Section 4m(1) of the CRA, 7 U.S.C. § 6m(1)
2 (2008). Cannone, Breen and Franco are therefore liable for this violation pursuant
3 to Section 13(b) of the CRA, 17 U.S.C. § 13c(b) (2008).
4

5 70. In soliciting prospective participants, on behalf of NEH,
6 Cannone, Breen and Franco each failed to register as APs of NEH which was
7 acting as a CPO, in violation of Section 4k(2) of the CRA, 7 U.S.C. § 6k(2) (2008).
8

9 71. The foregoing failures of Cannone, Breen and Franco to register
10 as APs occurred within the scope of their employment, office or agency with NEH,
11 and NEH is therefore liable for his violations of Section 4k(2) of the CRA, 7
12 U.S.C. § 6k(2) (2008), pursuant to Section 2(a)(1)(B) of the CRA, 7 U.S.C. §
13 2(a)(1)(B) (2008), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).
14

15 72. NEH violated Section 4k(2), 7 U.S.C. § 6k(2) (2009), by
16 allowing Cannone, Breen and Franco to act as unregistered APs of the company
17 when they knew or should have known that Cannone, Breen and Franco were not
18 registered with the Commission.
19
20

21 VI. RELIEF REQUESTED

22 WHEREFORE, Plaintiff respectfully requests that this Court, as authorized
23 by Section 6c of the Act, as amended, to be codified at 7 U.S.C. §13a-1, and
24 pursuant to its own equitable powers enter:
25

26 A. An order finding Defendants violated: Section 4b(a)(1)(A), (B), and
27 (C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A), (B) and (C);
28

1 and Sections 4k(2), 4m and 4o(1)(A), (B) of the Act, as amended, to be codified at
2 7 U.S.C. §§ 6k(2), 6m, and 6o(1)(A), (B);
3

4 B. An order of permanent injunction prohibiting Defendants and any
5 other persons or entities in active concert with them from engaging in conduct in
6 violation of Sections 4b(a)(1)(A), (B) and (C), 4k(2), 4m, and 4o(1)(A), (B) of the
7 Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (B) and (C), 6k(2), 6m,
8 and 6o(1)(A), (B);
9

10 C. An order of permanent injunction prohibiting Defendants and any of
11 their affiliates, agents, servants, employees, successors, assigns, attorneys and
12 persons in active concert with them who receive actual notice of such order by
13 personal service or otherwise, from engaging, directly or indirectly, in:
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16 1. trading on or subject to the rules of any registered entity, as that
17 term is defined in Section 1a(29) of the Act, as amended, to be codified at 7
18 U.S.C. § 1a(29);
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20 2. entering into any transactions involving commodity futures,
21 options on commodity futures, swaps, commodity options (as that term is
22 defined in Commission Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1)
23 (2011)) (“commodity options”), and/or foreign currency (as described in
24 Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, to be codified
25 at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for their own
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1 personal account or for any account in which they have a direct or indirect
2 interest;

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4 3. having any commodity futures, options on commodity futures,
5 swaps, commodity options, and/or forex contracts traded on their behalf;

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7 4. controlling or directing the trading for or on behalf of any other
8 person or entity, whether by power of attorney or otherwise, in any account
9 involving commodity futures, options on commodity futures, swaps,
10 commodity options, and/or forex contracts;

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12 5. soliciting, receiving, or accepting any funds from any person
13 for the purpose of purchasing or selling any commodity futures, options on
14 commodity futures, swaps, commodity options, and/or forex contracts;

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16 6. applying for registration or claiming exemption from
17 registration with the Commission in any capacity, and engaging in any
18 activity requiring such registration or exemption from registration with the
19 Commission, except as provided for in Commission Regulation 4.14(a)(9),
20 17 C.F.R. § 4.14(a)(9) (2011);

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22 7. acting as a principal (as that term is defined in Commission
23 Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or
24 employee of any person or entity registered, exempted from registration or
25 required to be registered with the Commission, except as provided for in
26 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011);
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1 D. An order directing Defendants to pay civil monetary penalties under
2 Section 6c of the Act, as amended, to be assessed by the Court separately against
3 each of them, in amounts not more than the higher of \$140,000 for each violation
4 occurring after October 22, 2008, or triple the monetary gain to Defendants for
5 each violation of the Act;
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8 E. An order directing Defendants to disgorge, pursuant to such procedure
9 as the Court may order, all benefits received from the acts or practices that
10 constitute violations of the Act, as described here, and prejudgment interest thereon
11 from the date of such violations;
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13 F. An order directing Defendants to make restitution by making whole
14 each and every pool participant whose funds were received or used by them in
15 violation of the provisions of the Act as described herein, including pre-judgment
16 interest;
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18 G. An order directing Defendants, and any successors thereof, to rescind,
19 pursuant to such procedures as the Court may order, all contracts and agreements,
20 whether implied or express, entered into between them and any of the participants
21 whose funds were received by them as a result of the acts and practices which
22 constituted violations of the Act, as amended, as described herein;
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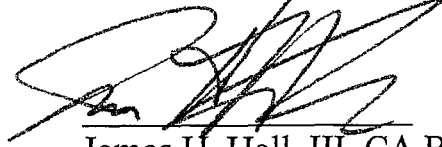
24 H. An order requiring Defendants to pay costs and fees as permitted by
25 28 U.S.C. §§ 1920 and 2412 (2006); and
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27 I. Such further relief as the Court deems appropriate.
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Dated: *7 November 2011*

ATTORNEYS FOR THE PLAINTIFF
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