



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**U.S. COMMODITY FUTURES TRADING  
COMMISSION,**

**Plaintiff,**

**v.**

**JAY C. NOLAN and  
LODGE CAPITAL GROUP, LLC,**

**Defendants.**

**Civil No. 10-cv-000493**

**Honorable Charles R. Norgle**

**Magistrate Jude Sidney Schenkier**

**[PROPOSED] ORDER OF PRELIMINARY INJUNCTION AND OTHER  
ANCILLARY RELIEF AGAINST JAY C. NOLAN AND LODGE CAPITAL GROUP, LLC**

On January 25, 2010, Plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”) filed a Complaint against Defendants Jay C. Nolan (“Nolan”) and Lodge Capital Group, LLC, (“Lodge Capital”) (collectively “Defendants”), seeking injunctive and other equitable relief for violations of the Commodity Exchange Act (“the Act”), 7 U.S.C. §§ 1 *et seq.*, (2006), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 and the Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1, *et seq.* (2009).

On January 26, 2010, this Court entered a Statutory Restraining Order (“SRO”) against Defendants Nolan and Lodge Capital. (Doc. 14) On February 9, 2009, this Court extended the SRO to and including February 23, 2010. (Doc. 17) Service was properly effected upon Defendants pursuant to Fed. R. Civ. P. 4(d)(4), in that Nolan and Lodge Capital signed waivers of service of summons on February 9, 2010, which were filed by Plaintiff the same day. (Docs. 15, 16)

This matter comes before this Court on the Motion for Preliminary Injunction filed by Plaintiff CFTC. This Court having considered the evidence presented in the CFTC's pleadings, memoranda, declarations and other exhibits filed and made in support of the CFTC's Motion finds:

**THE COURT FINDS THAT:**

1. This Court has jurisdiction over the subject matter of this action and Defendants Nolan and Lodge Capital pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006), which authorizes the CFTC to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e) (2006), in that the Defendants transacted business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District.

3. There is good cause to believe that Defendants Nolan and Lodge Capital engaged in and are likely to engage in acts and practices that violate Sections 4b(a)(2)(i)-(iii), 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), and 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006). Furthermore, there is a reasonable likelihood that the CFTC will prevail on the merits of this action.

4. Defendants operated a commodity pool called Lodge Diversified Fund, LP ("LDF" or the "pool") and defrauded pool participants by, among other things, misrepresenting the pool's profitability and omitting material facts concerning the pool's performance, causing

false statements to be issued to pool participants that misrepresented the balance of their respective interests in the pool and the value of the pool, and misappropriating some participant funds for their personal benefit.

5. On November 24, 2009, Nolan was arrested by federal authorities in connection with a related criminal complaint. That case is pending. *See, U.S.A. v. Nolan*, Case No. 09-CR-974, United States District Court for the Northern District of Illinois, Eastern Division.

6. There is good cause for granting a preliminary injunction to protect the status quo, protect public customers from further loss and damage and enable the CFTC to fulfill its statutory duties.

#### **DEFINITIONS**

#### **FOR THE PURPOSES OF THIS ORDER, THE FOLLOWING DEFINITIONS APPLY:**

7. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, lines of credit, contracts, insurance policies, and all cash, wherever located.

8. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

**ORDER OF PRELIMINARY INJUNCTION**

**IT IS THEREFORE ORDERED THAT:**

9. The Defendants, and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee or attorney of the Defendants and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with the Defendants, are restrained, enjoined and prohibited, from directly or indirectly:

- A. Cheating, defrauding or deceiving or attempting to cheat, defraud or deceive other persons in or in connection with any order to make, or the making of any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person, in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii), as amended Section 4b(a)(1)(A) and (C);
- B. Willfully making or causing to be made to other persons false reports or statements, or willfully entering or causing to be entered for other persons false records in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii), as amended Section 4b(a)(1)(B);
- C. Directly or indirectly employing any device, scheme, or artifice to defraud any pool participant or prospective participant; or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any pool participant or prospective pool participant, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1);

10. Defendants and all of their officers, agents, servants, employees, nominees, or attorneys are further restrained, enjoined and prohibited, from directly or indirectly:

- A. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006));
- B. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2009)) ("commodity options"), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) ("forex contracts") for their own personal

account or for any account in which they have a direct or indirect interest;

- C. Having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;
- D. 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, and/or forex contracts;
- E. 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, and/or forex contracts;
- F. 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) (2009);
- G. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2009)), agent or any other officer or employee of any person 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) (2009);

**MAINTAIN ASSET FREEZE**

**IT IS FURTHER ORDERED THAT:**

11. Defendants and their agents, servants, employees, successors, assigns, attorneys and all persons insofar as they are acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are further restrained, enjoined and prohibited from directly or indirectly dissipating, withdrawing, transferring, removing, concealing or disposing of any cash, cashier's checks, funds, assets or other property of, or within the custody, control or actual or constructive possession of Defendants, including, but not limited to, all funds, personal property, money or securities held in Defendants' name, jointly or individually, whether held or maintained in safety deposit boxes, and including all funds on deposit in any financial or brokerage institution, futures commission merchant, bank or savings

and loan account held by, under the actual or constructive control, or in the name of Defendants, jointly or individually, funds or property of Defendants' investors, wherever located, whether held in the name of the Defendants, jointly or individually, or any other entity owned or controlled by Defendants.

12. Any bank, financial or brokerage institution, business entity, futures commission merchant or person that holds, controls, or maintains custody of any funds, assets or other property of Defendants, or has held, controlled, or maintained custody of any funds, assets or other property of Defendants, and who receives notice of this Order by personal service or otherwise, shall:

- A. Prohibit Defendants and any other person from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset except as directed by further order of the Court;
- B. Deny Defendants and all other persons access to any safe deposit box that is titled in the name of Defendants, whether individually or jointly; or otherwise subject to access by the Defendants;
- C. Cooperate with all reasonable requests of the CFTC relating to implementation of this Order, including producing records related to Defendants' accounts and Defendants' businesses.

13. The injunctive provisions of this Order shall be binding on Defendants, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of Defendants, and upon any person who receives actual notice of this order by personal service or otherwise, including Federal Express or other commercial overnight service, email or facsimile, insofar as he or she is acting in active concert or participation with Defendants.

**MAINTAIN PROHIBITION OF DESTRUCTION OF BOOKS AND RECORDS**

**IT IS FURTHER ORDERED THAT:**

14. Defendants and their agents, servants, employees, successors, assigns, attorneys and all persons insofar as they are acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly destroying, mutilating, concealing, altering or disposing of, in any manner, any of the books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants wherever located, including all such records concerning the Defendants' business operations.

**MAINTAIN ACCESS TO AND INSPECTION OF BOOKS AND RECORDS**

**IT IS FURTHER ORDERED THAT:**

15. Defendants shall permit representatives of the Plaintiff CFTC to immediately inspect the books, records and other electronically stored data, tape recordings, and other documents of the Defendants and their agents, including all such records of Defendants' business operations, wherever they are situated and whether they are in the possession of the Defendants or others and to copy said documents, data, and records either on or off the premises where they may be situated and whether they are in the possession of the Defendants or others.

16. Defendants and their agents, servants, employees, successors, assigns, attorneys and all persons insofar as they are acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly refusing to make available for inspection by the CFTC, when as requested, any books, records, documents, correspondence, brochures, manual, electronically stored data,

tape records or other property of Defendants wherever located, including, but not limited to, all such records of Defendants' business operations.

**REQUIRED ACCOUNTING**

**IT IS FURTHER ORDERED THAT:**

17. Defendants shall prepare, sign and file with the Court, by March 23, 2010, a complete and accurate accounting for the period of November 2004 to the date of such accounting, which shall be no earlier than the date of this Order. Such accounting shall include, without limitation, the identification of:

- A. All banks, futures commission merchants, financial or brokerage institutions, including account numbers, which hold or have held funds, securities, commodity interests, assets, liabilities, and other property currently owned or controlled (legally, equitably or otherwise) directly or indirectly by Defendants, whether individually or jointly;
- B. All funds, securities, commodity interests, assets, liabilities, and other property currently owned or controlled (legally, equitably or otherwise) directly or indirectly by Defendants, whether individually or jointly;
- C. All funds, securities, commodity interests, assets and other property received directly or indirectly by Defendants, describing the source, amount, disposition, and current location of each listed item;
- D. All funds, securities, commodity interests, assets and other property transferred or otherwise disposed of directly or indirectly by the Defendants, describing the source, amount, disposition, and current location of each listed item, including accounts or assets of Defendants held by any bank, futures commission merchant, financial or brokerage institutions located inside and/or outside the territorial United States;
- E. All customers of Defendants, including name, address, telephone number and email, account number, deposit and withdrawal dates and amounts; and
- F. The names and last known addresses of each bailee, debtor or other person or entity currently holding any funds, securities, commodity interests, assets or other property owned or controlled (legally, equitably or otherwise) by Defendants, whether individually or jointly.



18. Defendants are further ordered to immediately identify and provide an accounting for all assets and property that is currently maintained outside the United States, including but not limited to all funds on deposit in any bank, futures commission merchant, financial or brokerage institution, including but not limited to funds held by, under the control of, or in the name of the Defendants, whether jointly, individually or otherwise.

19. It is further ordered that Defendants shall immediately take all steps within their power to repatriate all funds, securities, assets and other property held by, under the control of, or in the name of Defendants, whether individually or jointly, outside the United States, including but not limited to all funds on deposit in any firms, banks, financial or brokerage institutions, futures commission merchants, or other financial institutions, by paying to the Clerk of the Court or as otherwise ordered by the Court, for further disposition in this case.

**DIRECTIVES TO FINANCIAL INSTITUTIONS**

20. It is further ordered, that any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Nolan and Lodge Capital, or has held, controlled, or maintained custody of any account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Nolan or Lodge Capital any time since December 2004, shall:

- A. Provide counsel for the CFTC, within five (5) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each and every such account or asset titled in the name, individually or jointly, of Nolan or Lodge Capital, or owned, controlled, managed, or held by, on behalf of, or for the benefit of Nolan or Lodge Capital; (b) the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or

other asset was remitted; and (c) the identification of any safe deposit box that is either titled in the name, individually or jointly, of Nolan or Lodge Capital or is otherwise subject to access by Nolan or Lodge Capital; and

- B. Upon request by the CFTC, promptly provide the CFTC with copies of all records or other documentation pertaining to such account or asset, including but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instructions or slips, currency transactions reports, 1099 forms, and safe deposit box logs.

**SERVICE OF THE ORDER**

21. It is further ordered that copies of this Order may be served by any means, including by way of personal service, Federal Express or other commercial overnight service, email or facsimile or pursuant to Federal Rule of Civil Procedure 5 and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of the Defendants, or that may be subject to any provision of this Order. Mary Beth Spear and Venice Bickham, employees of the CFTC, are hereby specially appointed to serve process, and/or effectuate service of process, including this Order and all other papers in this cause.

**FORCE AND EFFECT**

22. This Order shall remain in effect until further order of the Court and the Court shall retain jurisdiction over this action to ensure compliance with this Order and for all other purposes related to this action.

IT IS SO ORDERED.

Date: 2/23, 2010

  
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Charles R. Norgle  
United States District Judge