

ACE

**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 Schenkler

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTY
AND OTHER EQUITABLE RELIEF AGAINST DEFENDANTS
JAY C. NOLAN AND LODGE CAPITAL GROUP, LLC**

I. BACKGROUND

On January 25, 2010, Plaintiff Commodity Futures Trading Commission ("CFTC" or "Commission") filed a Complaint against 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 ("Act"), 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")), to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2010). The Court entered an Order of Preliminary Injunction and Other Ancillary Relief against the Defendants on February 23, 2010. (Doc. 22)

II. CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint against Defendants Nolan and Lodge Capital without a trial on the merits or any further judicial proceedings, Defendants Nolan and Lodge Capital:

1. Consent to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief Against Defendants Nolan and Lodge Capital ("Order").
2. Affirm that they have agreed to this Order voluntarily, and that no threats or promises, other than as specifically contained herein, have been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order.
3. Acknowledge service of the Summons and Complaint.
4. Admit the jurisdiction of this Court over Nolan and Lodge Capital and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.
5. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.
6. Waive:
 - (a) any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2010), relating to, or arising from, this action;
 - (b) any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, §§ 201-253, 110 Stat. 857, 857-868 (1996), as amended by Pub. L. 110-28, § 8302, 121 Stat. 204-205 (2007), relating to, or arising from, this action;
 - (c) any and all claims that they may possess of Double Jeopardy based upon the institution of this proceeding and the order entered herein; and
 - (d) all rights of appeal in this action.

7. Admit all of the findings of fact and conclusions of law stated herein. Nolan and Lodge Capital agree and intend that all the allegations of the Complaint and findings of fact and conclusions of law contained in this Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: any subsequent action by the Commission to enforce the terms of this Order; any bankruptcy proceeding filed by, or on behalf of, or against Nolan and Lodge Capital; and/or any Commission registration proceeding relating to Defendants. Nolan and Lodge Capital shall provide the Commission with immediate notice of any bankruptcy filed by, or on behalf of, or against them.

8. Agree that no provision of this Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Nolan or Lodge Capital in any other proceeding.

9. Agree that neither Nolan, Lodge Capital nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in this Order, or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Defendants' (1) testimonial obligations; or (2) right to take legal positions in other proceedings to which the Commission is not a party. Nolan and Lodge Capital shall take all necessary steps to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

10. Consent to the continued jurisdiction of this Court over Nolan and Lodge Capital for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this case.

III. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact and Conclusions of Law.

A. Parties to this Consent Order

11. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with the responsibility for administering and enforcing the provisions of the Act, as amended by the CRA and by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations ("Regulations") promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2010).

12. Defendant Jay C. Nolan is 57 years old and resides in Wilmette, Illinois. Nolan formed Lodge Capital and was its managing member since its formation on June 21, 2002. At all times material to this action, Nolan directly or indirectly controlled Lodge Capital and its day-to-day operations. Nolan was registered with the Commission as a floor broker from July 1985 through November 30, 2009. On March 24, 2010, the United States Attorney's office filed an indictment against Nolan charging him with five counts of mail fraud. See *USA v. Jay Nolan*, Case No. 09 CR 974, United States District Court for the Northern District of Illinois. On December 22, 2010, Nolan entered a blind plea to one count of mail fraud. On March 11, 2011, a federal court judge sentenced Nolan to a term of 60 months imprisonment and ordered him to make restitution in the amount of \$3,308,595 to defrauded investors.

13. Defendant Lodge Capital Group, LLC was an Illinois limited liability company created on June 21, 2002, that had its principal place of business at 400 Central Avenue, Suite 202, Northfield, Illinois 60093-3039. During the relevant period, Lodge Capital filed a registration exemption with the Commission as an exempt commodity pool operator ("CPO").

B. Defendants' Fraudulent Conduct

14. From at least January 2005 through November 2009 (the "relevant period"), Nolan solicited and accepted at least \$3.9 million from approximately 10 customers for purposes of operating a commodity pool to trade commodity futures contracts on their behalf. Nolan formed Lodge Capital, a limited liability company, to operate the commodity pool and to receive pool participants' funds. Nolan traded a portion of the funds he accepted through commodity futures trading accounts carried at a registered futures commission merchant ("FCM") in the name of Lodge Diversified Fund, LP ("LDF" or the "pool").

15. Nolan, who solicited prospective pool participants from his circle of friends residing in the Chicago area, told them that LDF would trade financial, metals and currency futures contracts. Nolan falsely represented to participants that their funds would be invested in Treasury bills, which would be held in an account at Harris Bank ("Harris") in Winnetka, Illinois, and that the Treasury bills would serve as collateral for LDF's commodity trading account.

16. During the relevant period, Nolan made misrepresentations and failed to disclose material facts to pool participants and prospective pool participants regarding the profitability of LDF. Specifically, Nolan misrepresented to pool participants and prospective pool participants that LDF was making a profit of 1% to 2% each month when, in fact, the pool incurred significant losses during the relevant period.

17. Defendants mailed account statements to pool participants that purportedly detailed LDF's trading performance through and including the statement period October 1-31, 2009. The account statements Defendants sent to pool participants reported monthly profits of approximately 1% to 2% and annualized gains of approximately 12% to 20% during the relevant period. These account statements were also accompanied by a cover letter, signed by Nolan, which highlighted LDF's purported performance for the past month. These cover letters similarly represented that LDF was outperforming the Standard and Poor's ("S&P") 500 and the HedgeFund.net HFN CTA/Managed Futures Index of performance of participating hedge funds, funds of funds and CTAs.

18. These account statements and cover letters were false because the Defendants' investments did not earn the profits shown on the account statements, and because the statements over-stated the net asset value of the pool participants' interest in LDF. In fact, FCM-issued account statements for LDF's futures accounts show that the pool incurred significant losses during the relevant period, and had an overall negative return of approximately 95%.

19. During the relevant period, the Defendants sent account statements in two different formats to pool participants. For the reporting periods from 2006 through November 2008, Defendants sent pool participants account statements entitled "Fund Report" on Lodge Capital letterhead. These statements included a representation that the calculations on the statement were performed by a certified public accountant based on broker statements and information provided by Lodge Capital. They also were signed by Nolan as Principal of Lodge Capital, beneath an affirmation to the best of his knowledge and belief that the information contained in the account statement was accurate and complete. By these affirmations, Nolan misrepresented material facts to pool participants and omitted material facts concerning LDF's

actual trading performance. The Fund Reports that the Defendants issued on Lodge Capital letterhead did not report calculations performed by a certified public accountant and were not based upon the actual broker statements for LDF's accounts.

20. Beginning with the reporting period for December 2008 and continuing for the reporting period for October 2009, Defendants sent pool participants account statements on stationary purporting to be from ADM that reported the participants' purported monthly gains and/or losses and annual gains and/or losses. These account statements falsely reported the value of U.S. T-bills margining the trades ADM held on behalf of LDF, LDF's purported brokerage account and bank balances, as well as total pool assets, total pool liabilities and net pool assets.

21. For example, the account statements that Defendants distributed in November 2009 detailing the pool's performance and value in October 2009 falsely represented that LDF's net total pool assets were approximately \$6.3 million.

22. In fact, ADM never issued the foregoing account statements for the months of December 2008 through October 2009, and the valuations contained in these account statements were prepared by Defendants and falsely represented the value of pool assets and liabilities.

The Pool's Actual Commodity Trading Performance Record

23. During the relevant period, Nolan opened a total of ten commodity trading accounts in LDF's name at ADM Investor Services, Inc. ("ADM"), a registered FCM. During that time, Defendants deposited a total of approximately \$3.9 million into the ten accounts, withdrew a total of approximately \$1.5 million from the accounts, and lost approximately \$2.3 million trading commodity futures.

The Defendants Misappropriated Pool Participant Funds

24. During the relevant time, the Defendants misappropriated at least \$550,000 of pool participant funds by, among other things, paying themselves incentive fees based on the purported profits of the pool. Nolan spent the misappropriated funds on purchases to maintain an affluent lifestyle, such as country club dues and fees, tickets to sporting events and the payment of personal credit card bills.

25. The Defendants were able to repay some pool participants during the relevant time because the Defendants were repaying "earlier" pool participants with "new" pool participant funds, in a Ponzi-like manner.

Nolan's Admission that Defendants Defrauded Pool Participants

26. On or about November 19, 2009, one of LDF's pool participants contacted ADM to verify the consistent monthly profits reported on the account statements he received from Defendants. ADM personnel requested that the pool participant send ADM his October 2009 LDF account statement by facsimile. The pool participant sent ADM personnel his October 2009 LDF account statement by facsimile that same day.

27. On November 20, 2009, ADM personnel contacted the pool participant and told him that the October 2009 account statement he received from Defendants was not issued by ADM. ADM personnel referred the matter to its compliance department. ADM's compliance department subsequently contacted and notified the pool participant that the October 2009 account statement he received was not issued by ADM and appeared to be a false statement.

28. After the pool participant received this information from ADM, he contacted Nolan. Nolan agreed to meet with two pool participants on November 20, 2009. At this meeting, the pool participants confronted Nolan with the information received from ADM and

Nolan then admitted to them that the statements he sent pool participants were fictitious and that he misappropriated some of the pool participants' funds.

C. Conclusions of Law

Jurisdiction and Venue

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

30. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. §13a-1, because during the relevant period, Defendants resided in and transacted business in the Northern District of Illinois.

Nolan and Lodge Capital Violated the Act and Regulations

31. During the relevant period, Nolan and Lodge Capital, through the acts and omissions of its agents and employees, including Nolan, violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), with respect to acts occurring before June 18, 2008, and violated Sections 4b(a)(1)(A) and (C) of the, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), with respect to acts occurring on or after June 18, 2008, in that they cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive pool participants by misrepresenting the pool's profitability and omitting material facts concerning the pool's performance, by 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 by misappropriating participant funds for their personal benefit.

32. During the relevant period, Nolan and Lodge Capital, through the acts of its agents and employees, including Nolan, also violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. §§ 6b(a)(2)(ii) (2006), with respect to acts occurring before June 18, 2008, and violated Sections 4b(a)(1)(B) of the Act, to be codified at 7 U.S.C. §§ 6b(a)(1)(B), with respect to acts occurring on or after June 18, 2008, in that they willfully made or caused to be made false reports to the pool participants who invested money with Defendants to trade commodity futures contracts.

33. During the relevant time, Lodge Capital acted as a CPO because it engaged in a business that is in 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 pool participants for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

34. During the relevant period, Nolan acted as an associated person ("AP") of a CPO in that he solicited funds for Lodge Capital and supervised other persons so engaged.

35. During the relevant period, Lodge Capital, through the acts and omissions of its agents and employees, including Nolan, and Nolan violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), because while acting as a CPO and an AP of a CPO, they directly or indirectly employed a device, scheme, or artifice to defraud commodity pool participants, or engaged in transactions, practices or a course of business which operated as a fraud or deceit upon commodity pool participants by means of the acts and practices described above.

36. In connection with such conduct, Nolan and Lodge Capital used the mails or other means or instrumentalities of interstate commerce, directly or indirectly, to engage in the business of an AP of a CPO and a CPO, respectively.

37. The acts and omissions engaged in by Nolan were done willingly or with reckless disregard for the truth.

38. During the relevant time, Nolan directly or indirectly controlled Lodge Capital and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Lodge Capital's violations of Sections 4b(a)(2)(i)-(iii) of the Act, Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, and Section 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), 6b(a)(1)(A)-(C), and 6o(1) (2006). Nolan is thereby liable for Lodge Capital's violations of Sections 4b(a)(2)(i)-(iii) of the Act, Sections 4b(a)(1)(A)-(C) of the Act, and Section 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), 6b(a)(1)(A)-(C), and 6o(1) (2006), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

39. Nolan was acting as an agent of Lodge Capital when he violated the Act and, therefore, Lodge Capital, as Nolan's principal, is liable for Nolan's acts and omissions constituting violations of Sections 4b(a)(2)(i)-(iii) of the Act, Sections 4b(a)(1)(A)-(C) of the Act, and Section 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), 6b(a)(1)(A)-(C), and 6o(1) (2006), 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. § 1.2 (2010).

IV. ORDER OF PERMANENT INJUNCTION

40. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, Defendants Nolan and Lodge Capital are permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Cheating or defrauding, or attempting to cheat, or defraud other persons and willfully deceiving or attempting to deceive other persons by making false, deceptive or misleading representations of material facts, by failing to disclose material facts, or by misappropriating customer funds in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made for or on behalf of

any other person, in violation of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C);

- b. Making or causing to be made to any other person any false report or statement thereof or causing to be entered for any person any false record thereof, in violation of Section 4b(a)(1)(B) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 6b(a)(1)(B);
- c. Employing any device, scheme, or artifice to defraud any participant or prospective participant, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any participant or prospective participant, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 6o(1); and,

41. Defendants Nolan and Lodge Capital are further permanently restrained, enjoined and prohibited from engaging, directly or indirectly, in:

- a. trading on or subject to the rules of any registered entity, as that term is defined in Section 1a of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a (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) (2010)) ("commodity options"), and/or foreign currency (as described in Sections 2(c)(2)(B) and/or 2(c)(2)(C)(i) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and/or 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 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) (2010); and

g. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2010)), agent or any other officer or employee of any person (as that term is defined in Section 1a(28) of the Act, 7 U.S.C. § 1a(28) (2006)) 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) (2010).

42. The injunctive provisions of this Consent Order shall be binding upon Defendants Nolan and Lodge, upon any person who acts in the capacity of their agent, employee, attorney, successor and/or assign and upon any person who receives actual notice of this Consent Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with Defendants.

V. CIVIL MONETARY PENALTY

43. Defendants Nolan and Lodge shall pay to the Commission a civil monetary penalty in the amount of eight hundred twenty-five thousand dollars (\$825,000) ("CMP Obligation"). Defendants are jointly and severally liable for payment of the CMP Obligation. Post-judgment interest on the CMP Obligation shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

44. Defendants Lodge and Nolan shall pay the CMP Obligation after Nolan has paid the \$3,308,595 in restitution ordered by the Court in *United States of America v. Jay Nolan*, Case No.09 CR 974, United States District Court for the Northern District of Illinois

45. Defendants shall pay the CMP Obligation by making electronic funds transfer, U.S. Postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
Attn: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, Oklahoma 73169
Telephone: 405-954-6569

46. If payment is to be made by electronic funds transfer, Defendants shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Defendant or Defendants and the name and docket number of the proceedings. The paying Defendant or Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

47. Any acceptance by the Commission of partial payment of Defendants' CMP Obligation shall not be deemed a waiver of the respective requirement to make further payments pursuant to this Order, or a waiver of the Commission's right to compel payment of any remaining balance.

VI. MISCELLANEOUS PROVISIONS

48. This Order incorporates all of the terms and conditions of the settlement among the Parties hereto to date. Nothing shall serve to amend or modify these orders in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all Parties hereto; and (c) approved by order of this Court.

49. If any provision of this Order or if the application of any provisions or circumstances is held invalid, the remainder of the Order and the application of the provisions to any other person or circumstance shall not be affected by the holding.

50. The failure of any Party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such Party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Order.

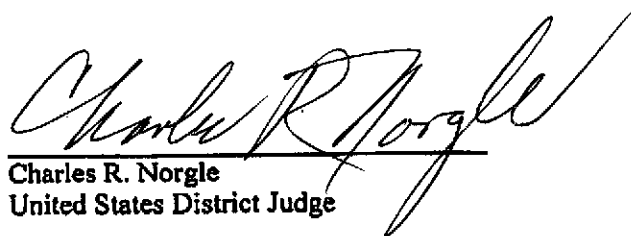
51. This Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action, including any motion by a Party to modify or for relief from the terms of this Order.

52. Authority: Nolan hereby warrants that he is the managing member of Lodge Capital, and that this Order has been duly authorized by Lodge Capital and he has been duly empowered to sign and submit this Order on behalf of Lodge Capital.

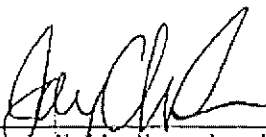
53. There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief against Defendants Nolan and Lodge Capital.

IT IS SO ORDERED.

DATED: 7-21-, 2011

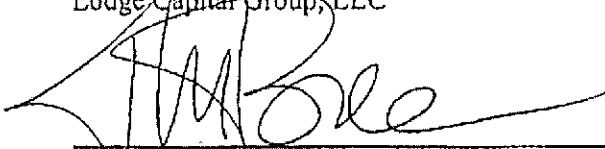

Charles R. Norgle
United States District Judge

Consented to and Approved by:




Jay C. Nolan, individually and on behalf of
Lodge Capital Group, LLC

Dated: 5/11/11



Thomas M. Breen, Attorney for
Defendants Jay C. Nolan and Lodge Capital Group, LLC

Dated: 5/11/11



Diane M. Romaniuk for Plaintiff, U.S. Commodity Futures Trading Commission

Dated: 5/12/11