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UNITED STATES  
DISTRICT COURT

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

Civil Action No. \_\_\_\_\_

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COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

Robert J. Sucarato d/b/a New York Financial Company,

Defendant.

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**COMPLAINT**

**I.**

**SUMMARY**

1. Commencing in at least September 2004 and continuing through the present (“the relevant period”), Robert J. Sucarato, doing

business as New York Financial Company, (“Sucarato” or “defendant”) fraudulently solicited and accepted at least \$1.5 million from at least five members of the general public to invest in two commodity interest pools or “hedge funds” he operates under the name New York Financial Company (“NYFC”). The NYFC funds purportedly invest in a variety of instruments, including commodity futures contracts (“commodity futures”) and options on commodity futures (“options”).

2. Sucarato, holding himself out as President of NYFC, fraudulently solicited prospective pool participants by, but not limited to, the following means: (1) falsely claiming he has managed the hedge funds since 1993 with over \$7 billion in assets under management; (2) falsely asserting his funds have achieved a ten year compounded return exceeding 1800% and outperformed the market; (3) creating a false audit report purportedly prepared by a major accounting firm and reflecting that NYFC had a net worth of approximately \$798 million; (4) misrepresenting that NYFC is registered as an investment adviser and portfolio manager; (5) failing to disclose that in 1998, Sucarato, then a Registered Representative, was fined by the National Association of Securities Dealers (“NASD”), now known as the Financial Industry Regulatory Authority (“FINRA”), and

barred from association with any NASD (FINRA) member in any capacity; and (6) otherwise creating the false impression that NYFC is a successful, well-established and “leading capital management and financial consulting firm” with offices in New York City and Chicago and staffed with “over 20 experienced traders.”

3. Sucarato provided performance reports to pool participants reflecting that NYFC was consistently highly profitable trading commodity futures and options on behalf of the pools. In reality, however, Sucarato held individual commodity futures and options trading accounts in his name only, funded those accounts with only \$850,000 and sustained net losses almost every month he traded futures and options. To the extent that pool participants’ funds have not been lost through futures and options trading, the disposition of the remainder of their funds by Sucarato remains unknown. Sucarato concealed his trading losses through the issuance of the false reports to the pool participants.

4. Since at least April 2007, pool participants, whose performance reports reflected that their investments had increased in value, demanded that Sucarato liquidate their accounts and return their funds. The checks written by Sucarato for these redemption requests were returned for

insufficient funds.

5. Defendant's fraudulent solicitations and issuance of false statements to pool participants violates Sections 4b(a)(2)(i) -(iii), 4c(b), and 4o(1) of the Commodity Exchange Act, as amended ("Act" or "CEA"), 7 U.S.C. §§ 6b(a)(2)(i) -(iii), 6c(b) and 6o(1) (2002) ,and Commission Regulations 33.10(a)-(c), 17 C.F.R. §§ 33.10 (a)-(c) (2007).

6. In soliciting and accepting funds from individuals for purposes of pooling the funds and investing in commodity futures and options, Sucarato was acting as a Commodity Pool Operator ("CPO") without being registered as required. Defendant's failure to register as a CPO violates Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002).

7. Defendant's failure to operate the pool as a legal entity separate from himself and his failure to provide pool participants with Disclosure Documents violate Commission Regulations 4.20 and 4.21, 17 C.F.R. §§ 4.20 and 4.21 (2007).

8. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), the Commodity Futures Trading Commission ("Commission" or "CFTC") brings this action to enjoin the unlawful acts and practices of the defendant. In addition, the Commission seeks civil monetary penalties for

each violation of the Act, disgorgement of defendant's ill-gotten gains, restitution to pool participants, prejudgment interest and such other relief as this Court may deem necessary or appropriate.

9. Unless enjoined by this Court, the defendant is likely to continue to engage in the acts and practices alleged in this Complaint, as more fully described below.

## II.

### JURISDICTION AND VENUE

10. The CEA establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts and options. This Court has jurisdiction over this action pursuant to Sections 6c of the Act, 7 U.S.C. § 13a-1 (2002).

11. Section 6c of the Act provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

12. Venue properly lies with this Court pursuant to Section 6c(e) of

the Act, 7 U.S.C. § 13a-1(e) (2002), in that defendant is found in or inhabits or transacts business in this District, and/or the acts and practices in violation of the Act have occurred, are occurring, or are about to occur, within this District, among other places.

### III.

#### THE PARTIES

13. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 et seq., and the Regulations promulgated thereunder.

14. Defendant **Robert J. Sucarato** is an individual whose last known place of residence is Westchester County, New York. Sucarato, d/b/a NYFC, is engaged in the business of soliciting prospective pool participants to invest in hedge funds, and has accepted funds from them to trade on their behalf in the commodity futures and options markets. Defendant has never been registered with the Commission in any capacity.

#### IV.

#### FACTS

##### **Sucarato's Fraudulent Solicitation of Prospective Pool Participants**

15. During the relevant period, Sucarato, doing business as NYFC, fraudulently solicited and accepted at least \$1.5 million from at least five individuals for the purpose of investing in two commodity interest pools or hedge funds, which he operates and manages, the NYFC Strategic Fund and the NYFC Diversified Strategic Fund (collectively, the "NYFC Funds").

16. Through a website, [www.nyfc.net](http://www.nyfc.net), Sucarato claims NYFC is a "capital management and financial consulting firm" located in New York City with an office also in Chicago, Illinois. Through the website and the offering memorandum Sucarato provides prospective participants (the "Offering Memorandum"), Sucarato holds himself out as founder, owner and president of NYFC, as well as the manager and advisor to the NYFC Funds. Sucarato identifies himself as the primary person responsible for the day-to-day operations of NYFC.

17. According to the website, the NYFC Funds "each continually experience strong performance annually," and "the combined assets under management are in excess of \$7.2 billion." The website further states that

“both funds invest in a number of investment vehicles including . . . commodities and currencies . . . and use(s) options for both hedging and speculation purposes.”

18. The NYFC website creates the impression of financial stability, longevity and expertise. The website boasts that NYFC “base[s] its premise on solid research and analysis with two goals in mind—invest carefully and be profitable;” that it employs “over twenty experienced traders and additional support staff;” that “[a]ll NYFC’s traders have proven track records;” . . . and that “[t]he majority of NYFC’s traders had previously traded for the major brokerage firms and/or other hedge funds before being ‘handpicked’ by management to join the NYFC team.” The website also touts Sucarato’s supposed trading experience and expertise, including claiming he is on the “advisory board of *BusinessWeek* magazine.”

19. Sucarato personally solicits individuals to invest in the NYFC Funds. As part of his solicitation, Sucarato provides the Offering Memorandum, a powerpoint slide presentation and an independent audit report purportedly from a nationally-known accounting firm.

20. Consistent with the website, the Offering Memorandum identifies NYFC as the Manager with its principal address in New York



City and as the Investment Advisor and Trustee of the NYFC Funds. The Offering Memorandum also specifies that the NYFC Funds may invest in a variety of instruments, including commodity futures and options.

21. The Offering Memorandum sets forth that NYFC, as the Manager, will collect a management fee of 1.5% of the Net Asset Value (“NAV”) of each of the NYFC Funds, calculated and payable weekly, and a performance fee equal to 20% of the increase in the NAV of the investment of each NYFC Fund unitholder or participant.

22. Contrary to the impression created by Sucarato through the website, Offering Memorandum and his solicitations, NYFC is not a well-established, successful New York investment firm staffed with experienced traders.

23. NYFC’s New York and Chicago offices are “virtual” offices providing Sucarato with a mailing address, telephone services and a conference room or merely a cubicle.

24. The Offering Memorandum states that NYFC is a registered “investment advisor and portfolio manager.” Neither NYFC nor Sucarato is registered with the Securities and Exchange Commission, or, upon information and belief, anywhere as an investment advisor or portfolio

manager. Neither NYFC nor Sucarato is registered with the CFTC in any capacity. To the contrary, in 1997, Sucarato was subject to a disciplinary hearing by the NASD, fined \$20,000 and barred from associating with any NASD (FINRA) member in any capacity. Sucarato did not disclose the NASD action, the fine and his disbarment in his solicitations of prospective pool participants.

25. The Offering Memorandum identifies four individuals, including Sucarato, as the directors and officers of NYFC, and provides biographies detailing their education and investment experience.

26. For example, the biography of Sucarato claims, amongst other things, that he “holds a B.S. in finance and economics, *magna cum laude*, from New York University.” Sucarato did not attend New York University. Amongst other claims, he reiterates his website claim that he is on the advisory board of *BusinessWeek* magazine. That board is an on-line research panel made up of subscribers from the print and online versions of *BusinessWeek* and anyone can join.

27. Except for Sucarato, upon information and belief, none of the individuals identified in the Offering Memorandum are affiliated with NYFC. Instead, Sucarato used their names and created embellished

biographies that detailed their prior experience at established investment firms. For example, the biography of the purported president of Financial Management Consulting for NYFC identifies him as a former manager in the investment banking division of UBS. This individual never held any positions with NYFC and was not a manager at UBS.

28. In his personal solicitations, Sucarato provides the purported track record of the NYFC Strategic Fund for the years 1996 through 2005. In a chart, Sucarato shows that the NYFC Strategic Fund's total net return percentage ranged from a low of 26.5% to a high of 48.2% over the years and outperformed the S&P 500 each year. For example, in 2001, Sucarato claims a total net return of 29.6% for the Strategic Fund whereas the S&P 500 suffered a negative total return of 13%. He further claims a 10-year compounded return of over 1,800% for the NYFC Strategic Fund versus a return of 102.7% for the S&P 500.

29. Sucarato also provides to potential participants a purported Report of Independent Auditors from a major accounting firm. The report, dated March 24, 2006, claims to be a legitimate audit of NYFC's financial position for the years 2004 and 2005, including a detailed assessment of NYFC's assets, liabilities and equity. According to this purported audit,

NYFC had a net worth of approximately \$798 million as of December 31, 2005.

30. The audit report is fictitious. The accounting firm never performed an audit of NYFC.

31. Sucarato knowingly or recklessly made the material misrepresentations and omissions set forth above in soliciting prospective pool participants.

32. Individuals relied on Sucarato's false solicitations, including his oral solicitations, the NYFC website, the Offering Memorandum, the ten year track record of positive returns, and the audit report of NYFC's financial position, in making their decision to invest in the NYFC Funds.

33. At least five individuals invested approximately \$1 .5 million with Sucarato. The pool participants wired funds into bank accounts held in the name of NYFC for the purpose of investing in the NYFC Funds.

34. Sucarato did not provide pool participants with Disclosure Documents as required by or prepared in accordance with Commission Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25.

## **Sucarato Concealed Trading Losses and Fraud Through False Account Statements**

35. Throughout the relevant period, Sucarato provided some pool participants with quarterly account statements that falsely reported that NYFC was profitably trading commodity futures and options in the name of the NYFC Funds. The false statements also reflected that the participants' investments were increasing in value.

36. For example, in early 2007, Sucarato provided at least two pool participants with an electronic report entitled NYFC Strategic Fund Performance Report for the Period Ending December 31, 2006 ("Quarterly December 2006 Report"). In his "editorial" from the manager, Sucarato claims that the NYFC Strategic Fund was up 13.1 percent in the last quarter of 2006, and that the fund outperformed the Dow Jones Industrial Average, the S&P 500 index, and the Nasdaq Composite Index. For the year, he represents that the NYFC Strategic Fund increased in value by 55.03%.

37. Sucarato included in his Quarterly December 2006 Report specific trades he purportedly executed on behalf of the NYFC Strategic Fund, including approximately 60 "futures, futures options, and spot trades." He reported realized gains from his alleged futures, options, and

spot trading that exceed \$134 million.

38. During the relevant period, Sucarato did not open or maintain any commodity futures or options accounts in the name of the NYFC Funds or NYFC at any of the Futures Commission Merchants (“FCM[s]”) registered with the Commission. Sucarato instead opened two accounts in his individual name at two FCMs, and represented to the FCMs in his account opening documents that he was trading with personal funds. Sucarato deposited approximately \$850,000 into those personal trading accounts.

39. During the relevant period, contrary to his claims to pool participants, Sucarato consistently experienced net losses trading commodity futures and options, which totaled approximately \$725,000.

40. Sucarato did not enter into the specific commodity futures or options trades he listed in his Quarterly December 2006 Report. Moreover, contrary to his claims of significant gains, his commodity futures and options trading from September 2006 to December 2006 amounted to a net loss of \$384,219.53.

41. Quarterly reports provided pool participants also show their individual investments increasing in value. For example, two pool

participants received a quarterly report showing that their initial \$450,000 investment, made in February 2006, was worth over \$676,000. Another pool participant's account statement showed his initial investment of \$600,000 in October 2006 being worth over \$673,000 as of December 31, 2006.

42. Commencing in April 2007 and continuing to the present, pool participants have demanded that Sucarato return their invested funds. After several delays and excuses by Sucarato, Sucarato issued redemption checks to pool participants that were returned for insufficient funds.

## **VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

### **COUNT ONE**

#### **VIOLATIONS OF SECTIONS 4b(a)(2) OF THE ACT : SOLICITATION FRAUD AND FALSE STATEMENTS (Futures)**

43. The allegations set forth in paragraphs 1 through 42 are re-alleged and incorporated herein by reference.

44. By making false, deceptive, or misleading representations and omissions of material facts in his solicitations of prospective pool participants, defendant has: (1) cheated or defrauded or attempted to cheat or defraud other persons; and/or (2) willfully deceived or attempted to

deceive other persons, 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 persons, where such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2), all in violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii)(2002).

45. Furthermore, as set forth above, defendant has willfully made or caused to be made to other persons false reports and statements concealing commodity futures trading losses, in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii)(2002).

46. Each act of solicitation fraud and each false statement defendant made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(i)-(iii) (2002).



## COUNT TWO

### VIOLATION OF SECTION 4c(b) OF THE ACT and REGULATION 33.10: SOLICITATION FRAUD AND FALSE STATEMENTS (Options)

47. Paragraphs 1-46 are re-alleged and incorporated herein.

48. In or in connection with an offer to enter into, the entry into, the confirmation of, the execution of, or the maintenance of commodity options transactions, the defendant cheated, defrauded, or deceived or attempted to cheat, defraud, or deceive, other persons, by making false, deceptive, or misleading representations and omissions of material facts in his solicitations of investors, all in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Regulations 33.10(a) and(c), 17 C.F.R. §§ 33.10(a) and (c) (2007).

49. As set forth above, defendant willfully made or caused to be made to other persons false reports and statements concerning losses in the trading of commodity options, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Regulation 33.10(b), 17 C.F.R. §33.10(b) (2007).

50. Each act of solicitation fraud, and each false statement made

during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Regulations 33.10(a)-(c), 17 C.F.R. §§ 33.10(a)-(c) (2007).

### **COUNT THREE**

#### **VIOLATION OF SECTION 4o(1) OF THE ACT: FRAUD AS A CPO**

51. Paragraphs 1 through 50 are re-alleged and incorporated herein.

52. During the relevant period, defendant, while acting as a CPO, violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1)(2002), in that defendant directly or indirectly employed or is employing a device, scheme, or artifice to defraud participants or prospective pool participants; or has engaged or is engaged in transactions, practices or a course of business which operated or operates as a fraud or deceit upon participants or prospective pool participants by using the mails or other means or instrumentalities of interstate commerce. Defendant's fraudulent acts consisted of, among other things, solicitation fraud and issuance of false statements as alleged above.

53. Each act of solicitation fraud and each false statement made during the relevant period, including but not limited to those specifically

alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2002).

#### **COUNT FOUR**

##### **VIOLATIONS OF SECTION 4m(1) OF THE ACT: FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR**

54. The allegations set forth in paragraphs 1 through 53 are re-alleged and incorporated herein by reference.

55. Defendant has used the mails or instrumentalities of interstate commerce in or in connection with his business as a CPO while failing to register with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1)(2002).

#### **COUNT FIVE**

##### **VIOLATIONS OF COMMISSION REGULATION 4.20: CPO'S FAILURE TO TREAT THE POOL AS A SEPARATE ENTITY**

56. The allegations set forth in paragraphs 1 through 55 are re-alleged and incorporated herein by reference.

57. As alleged above, by depositing participant funds into accounts not held in the name of the pool, defendant failed to operate the pool as a legal

entity separate from himself as the pool operator and failed to accept funds in the name of the pools, in violation of Commission Regulations 4.20(a)(1) and(b), 17 C.F.R. § 4.20(a)(1) and(b).

### **COUNT SIX**

#### **VIOLATIONS OF REGULATION 4.21: FAILURE TO PROVIDE POOL DISCLOSURE DOCUMENTS**

58. The allegations set forth in paragraphs 1 through 57 are re-alleged and incorporated herein by reference.

59. Commission Regulation 4.21, 17 C.F.R. § 4.21, requires that, prior to soliciting, accepting or receiving funds, a CPO must furnish the pool participant with a written "Disclosure Document" containing specific language set forth by regulation. In addition, prior to accepting or receiving funds, a CPO is required to receive from pool participants an acknowledgment signed and dated by the participants that they received the Disclosure Document.

60. As alleged above, Defendant failed to furnish pool participants with a written Disclosure Document and failed to receive signed and dated acknowledgments from the pool participants stating that they received the Disclosure Document in violation of Regulation 4.21, 17 C.F.R. § 4.21.


## RELIEF REQUESTED

WHEREFORE, the Plaintiffs respectfully request that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), and pursuant to its own equitable powers enter:

- a) a permanent injunction prohibiting the defendant from engaging in conduct violative of Sections 4b(a)(i)-(iii), 4c(b), 4m(1) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(i)-(iii), 6c(b), 6m(1) and 6o(1) (2002), and Commission Regulations 4.20, 4.21, and 33.10(a)-(c), 17 C.F.R. §§ 4.20(a)(1), 4.21, and 33.10(a)-(c) (2007);
- b) an order directing the defendant to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices that constitute violations of the Act or Commission Regulations, as described herein, and interest thereon from the date of such violations;
- c) an order directing the defendant to make full restitution to every participant whose funds he received as a result of acts and practices that constituted violations of the Act and Commission Regulations, described herein, and interest thereon from the date of such violations;
- d) an order directing the defendant to pay a civil monetary penalty in the amount of not more than the higher of \$120,000 or triple the monetary gain to Defendant for each violation of the Act or Commission Regulations committed before October, 24, 2004, and the higher \$130,000 or triple the monetary gain to defendant for each violation of the Act or Commission Regulations committed from October 24, 2004 to the present; and
- e) such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: April 22, 2008

ATTORNEYS FOR THE PLAINTIFF  
U.S. COMMODITY FUTURES TRADING  
COMMISSION

A handwritten signature in black ink, appearing to read "James H. Holl, III", written over a horizontal line.

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