UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

U.S. COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

SUMMIT TRADING & CAPITAL LLC, a dissolved Illinois Limited Liability Company, BRANT L. RUSHTON, an individual, and MELISSA C. RUSHTON, an individual,

Defendants.

CASE NO. 11-1436

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

Plaintiff U.S. Commodity Futures Trading Commission ("Commission" or "CFTC"), by its attorneys, alleges as follows:

I. SUMMARY

1. From at least August 2005 and continuing to the present (the "Relevant Period"), Defendants Summit Trading & Capital LLC ("Summit"), by and through its employees and agents Brant L. Rushton ("B. Rushton") and Melissa C. Rushton ("M. Rushton"), and B. Rushton and M. Rushton in their individual capacities, (collectively "Defendants"), defrauded members of the public in connection with pooled investments in commodity futures.

2. In soliciting pool participants, who provided at least $854,000 to Defendants, Summit and B. Rushston misrepresented the profitability of Defendants' trading program. Defendants also distributed false account statements to pool participants, and B. Rushton admitted doing so to some of the pool participants.

3. Rather than trade all of the pool participants' funds as promised, Defendants

misappropriated and illegally accepted and commingled some of these funds.

4. Summit operated a commodity pool without being properly registered and without operating the pool as a legal entity separate from Summit. B. Rushton acted as an Associated Person of Summit without being properly registered.

5. As a result of the conduct described above and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 1 *et seq.*, and Commission Regulations ("Regulations"), 17 C.F.R. §§ 1.1 *et seq.*

6. B. Rushton and M. Rushton committed the acts and omissions described herein within the course and scope of their agency, employment, or office with Summit; therefore, Summit is liable under 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 (2011), as principal for its agents' acts and omissions constituting violations of the Act and the Regulations.

7. B. Rushton and M. Rushton are liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), as controlling persons of Summit, for Summit's violations of the Act and the Regulations because they failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations.

8. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-l (2006), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

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

II. JURISDICTION AND VENUE

10. Section 6c(a) of the Act, 7 U.S.C. § 13a-l(a) (2006), authorizes the Commission to seek injunctive relief in district court against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

11. The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to Section 6c of the Act, 7 U.S.C. § 13a-l (2006).

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. §13a-1(e) (2006), and Local Rule 40.1 because (i) Defendant Summit was incorporated as an Illinois Limited Liability Company by B. Rushton and M. Rushton during the time they resided in McLean County, Illinois, (ii) certain of the transactions, acts, practices, and courses of business alleged to have violated the Act and Regulations occurred, are occurring, and/or are about to occur within this District, including McLean and Peoria Counties, and (iii) victims of these violations are found in, inhabit, and/or reside in this District, including McLean and Peoria Counties.

III. PARTIES

13. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§1.1 *et seq.*. The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street

NW, Washington, D.C. 20581.

14. Defendant **Summit Trading & Capital LLC** was an Illinois Limited Liability Company with its last principal place of business listed as 2755 NW Champion Circle, Bend, Oregon 97701. Summit was formed by B. Rushton and M. Rushton in Illinois on January 12, 2007 and acted as a Commodity Pool Operator ("CPO") for one or more commodity pools and offered interests in these pools to members of the general public. Summit was involuntarily dissolved by the Illinois Secretary of State on July 9, 2010. B. Rushton and M. Rushton are the sole managers of Summit. Summit has never been registered with the Commission in any capacity.

15. Defendant **Brant L. Rushton** is an individual who, during the Relevant Period, resided in or around Champaign, Illinois until approximately April 2007 and currently resides in Bend, Oregon. B. Rushton is (and was during the Relevant Period) a founder, principal, manager, and/or officer of Summit and was responsible for this company's acts. B. Rushton has never been registered with the Commission in any capacity.

16. Defendant **Melissa C. Rushton** is an individual who, during the Relevant Period, resided in or around Champaign, Illinois until approximately April 2007 and currently resides in Bend, Oregon. M. Rushton is (and was during the Relevant Period) a founder, principal, manager, and/or officer of Summit and was responsible for this company's acts. M. Rushton has never been registered with the Commission in any capacity.

IV. FACTS

A. Statutory Background

17. Upon the effective date of the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, §§ 13101-13204, 122 Stat. 1651, 2189 *et seq.*, on June 18, 2008, Sections

4b(a)(2)(i) through (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), were renumbered as Sections 4b(a)(1)(A) through (C), 7 U.S.C. §§ 6b(a)(1)(A)-(C) (Supp. III 2009). No substantive changes were made to the operative language of these sections. For the sake of brevity, these sections are referred to herein only in their current enumeration – (a)(1)(A) through (C) – however Defendants' unlawful conduct spans both enumerations of Section 4b(a) of the Act, 7 U.S.C. § 6b(a) (2006) and 7 U.S.C. § 6b(a) (Supp. III 2009).

18. Prior to July 16, 2011, Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), defined a Commodity Pool Operator ("CPO") as any firm or individual engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and that, in connection therewith, solicits, accepts, or receives from others funds, securities, or property, either directly through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market. Upon the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §§ 701-774, 124 Stat. 1376, 1641 *et seq.* (2010), on July 16, 2011, the definition of a CPO was expanded and re-designated in Section 1a(11) of the Act, to be codified at 7 U.S.C. § 1a(11).

B. Factual Background

19. At least as early as August 2005, B. Rushton began soliciting prospective participants to invest in one or more commodity pools operated by Summit as a CPO. These pools included the "Fully Managed Intra-Day S&P 500 Account" (the "S&P 500 Pool"), the "Fully Managed Multi-Day Swing Account" (the "Swing Pool"), and the "Fully Managed Intra-day Dow-mini Account" (the "Dow-mini Pool") (collectively, the "Pools").

20. B. Rushton solicited prospective pool participants both orally and through

prospectuses pertaining to the purported Pools. For example, B. Rushton told at least one prospective participant in 2006 that he (B. Rushton) was averaging monthly profits of four (4) percent in his futures trading. In addition, B. Rushton provided prospectuses for the S&P 500 and Swing Pools to at least two prospective pool participants in order to entice them to become participants in the purported Pools.

21. According to the prospectuses, the S&P 500 Pool was to trade the e-mini S&P 500 futures contract and the Swing Pool was to trade in the "futures market," including "Metals, Agricultural Products, Stock Indices, and Currencies."

22. These prospectuses as well as Summit's website (www.tradethesummit.com) stated that Summit was formed in January 2004. This statement was false as Summit was not incorporated until January 2007.

23. Under the heading "What Type of Results to Expect," the prospectus for the S&P 500 Pool claimed a 46 percent net return since 2006 with "an average of 11 profitable months per year," and the prospectus for the Swing Pool claimed that it had earned an 86.98 percent net return since 2007 with positive gains in every quarter. These representations were false as demonstrated by Defendants' actual trading results, discussed below.

24. As a result of these false representations, during the Relevant Period, at least three pool participants provided Defendants a total of at least $854,000 for investment in the purported Pools. One pool participant provided his initial $20,000 to Defendants in August 2005.

25. Most if not all of these funds were accepted by Defendants in Summit's name rather than in the name of the purported Pools. Furthermore, Summit did not operate the purported Pools as legal entities separate and apart from Summit, the CPO.

26. Rather than opening futures trading accounts in the names of the Pools, in December

2005, B. Rushton opened a single futures trading account in his own name at Velocity Futures, LP ("Velocity"), a registered domestic Futures Commission Merchant ("FCM"). In July 2010, this account was converted to a joint account with M. Rushton. Neither B. Rushton nor M. Rushton ever opened a futures trading account at any domestic FCM in the name of Summit or any of the purported Pools.

27. During the Relevant Period, Defendants made 45 separate deposits into the Velocity trading account with funds that originated from bank accounts held in the names of B. Rushton, B. Rushton and M. Rushton, or Summit at three different banks.

28. During the Relevant Period, B. Rushton and M. Rushton traded the Dow-mini and e-mini S&P 500 futures contracts in the Velocity trading account. The trading of this futures account during this period resulted in cumulative net losses, including commissions and fees, of approximately $403,000. In fact, the account incurred net trading losses in 63 out of 69 months of trading between January 2006 and September 2011. Moreover, of the six profitable months during that period, the highest monthly net profit earned was $2,275.74.

29. During the Relevant Period, Defendants initiated 275 withdrawals from the Velocity trading account in separate wire transfer installments ranging in size from $100 to $60,200 and each of which incurred a wire transfer fee of either $20 or $30. These funds were transferred to bank accounts held in the name of B. Rushton individually or B. Rushton and M. Rushton jointly at four different banks. On September 19, 2011, the trading account was closed and the remaining $4,797.02 in the account was transferred to a bank account in the names of B. Rushton and M. Rushton at the fourth bank.

30. During the Relevant Period, Defendants returned a total of approximately $133,000 to two of the aforementioned three participants in the purported Pools.

31. In sum, of the $854,000 received by Defendants from at least three participants for trading in the purported Pools, approximately $403,000 was lost in trading, approximately $133,000 was returned to participants, and the remaining approximately $318,000, including funds deposited in or transferred to bank accounts owned or controlled by Summit, B. Rushton, and/or M. Rushton, have not been returned to the pool participants despite repeated demands. Furthermore, as described below, B. Rushton admitted to at least one pool participant that some of the pool participants' funds were used to pay Defendants' expenses and to pay off other pool participants.

32. During the Relevant Period, Defendants distributed false monthly account statements to participants in the purported Pools via e-mail, U.S. mail, or on-line. Almost all of these statements reported profits supposedly earned in the participants' accounts as a result of Defendants' trading of the purported Pools, when in fact Defendants' actual trading resulted in losses virtually every single month. In addition, the account statements overstated the balance in each participant's account.

33. For example, monthly account statements sent to one pool participant for 2009 reported cumulative net profits every single month ranging from .39 percent to 2.99 percent. However, Defendants' actual futures trading in the Velocity account in 2009 resulted in *losses* every single month. As another example, between April 2007 and April 2008, another participant received seven distributions from Defendants ranging from $2,340 to $20,000 that purposefully represented profits purportedly earned in his account. During this same period, however, Defendants' actual futures trading resulted in cumulative net *losses* of almost $116,000.

34. The statements sent to pool participants indicate that they were authored and digitally signed by M. Rushton.

35. In addition, Defendants sent IRS 1099 forms to pool participants showing annual profits purportedly earned by the participants when in fact Defendants' actual trading resulted in net

losses each year.

36. As a result of these false statements and false profit payments, pool participants maintained and/or increased their investments in one or more of the purported Pools.

37. In late 2009, one of the pool participants was scheduled to receive a quarterly profit payment from his account which, at that time, was valued at more than $600,000 according to statements provided by Defendants. Though the pool participant received a check, Defendants had placed a stop payment on the check. A subsequent promise by Defendants to wire the funds to this pool participant was never honored. In response, the pool participant requested a complete redemption of his account. B. Rushton responded that he could not redeem the entire account and suggested a monthly payment plan by which the pool participant would receive some of his funds back. Between April 2010 and December 2010, this pool participant received from Defendants monthly redemption checks of between $3,050 and $5,500. In January 2011, B. Rushton contacted the pool participant and told him that Defendants could not make the payment that month, and requested the pool participant to wait until the following month. The pool participant received no further payments from Defendants.

38. In or about March 2011, another pool participant requested that Defendants redeem a portion of his account which, at that time, was valued at more than $800,000 according to statements provided by Defendants. After not receiving his funds for two to three weeks following his request, the pool participant contacted B. Rushton who claimed the payment had been sent. The pool participant never received the payment. During a subsequent telephone conference on or about May 3, 2011, B. Rushton and M. Rushton told this pool participant that only approximately $70,000 of all of the pool participants' funds remained. When questioned about the account statements received by this pool participant from Defendants, B. Rushton admitted that the pool participant's account was

never worth the approximately $800,000 represented in the March 2011 statement and that in fact the statements sent over the preceding two years were false. B. Rushton also admitted that some of the pool participants' funds were used to pay Defendants' expenses and that some of this pool participant's funds were used to pay off other pool participants. During this telephone conference, Defendants agreed to formulate a plan to pay back this pool participant, however the pool participant received no funds back from Defendants.

39. On or about July 6, 2011, at least two participants in the purported Pools received a letter from an attorney representing Defendants proposing a settlement of these pool participants' claims against Defendants regarding the balance of their investments with Defendants. The letter proposed, *inter alia*, that Defendants would issue the pool participants amended IRS Form 1099s reflecting losses, rather than the profits previously reported, and would make payments of approximately $25,000 and $107,000, respectively, to be paid in 60 monthly installments. Neither of these pool participants accepted the offer.

40. On September 20, 2011, B. Rushton submitted applications to open new futures trading accounts at an FCM other than Velocity, however his applications were declined by the FCM.

41. Summit (by and through B. Rushton and M. Rushton), B. Rushton, and M. Rushton engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS

COUNT ONE

FRAUD IN CONNECTION WITH COMMODITY FUTURES CONTRACTS

Violations of Sections 4b(a)(1)(A)-(C) of the Act

42. The allegations set forth in paragraphs 1 through 41 are re-alleged and incorporated herein by reference.

43. Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (Supp. III 2009), provide, in relevant part, that it is unlawful for any person, in or in connection with any order to make or the making of a futures contract, for or on behalf of any other person, (A) to cheat or defraud or attempt to cheat or defraud another person, (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record, or (C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract.

44. As set forth above, from at least November 2006 through the present, Defendants violated Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (Supp. III 2009), by, among other things, (i) misappropriating pool participant funds, (ii) fraudulently soliciting pool participants or prospective pool participants, and (iii) making, causing to be made, and distributing reports and statements to pool participants or prospective pool participants that contained false information.

45. B. Rushton and M. Rushton controlled Summit, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Summit's conduct alleged in this count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), B. Rushton and M. Rushton are liable for Summit's violations of Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (Supp. III 2009).

46. The foregoing acts, misrepresentations, omissions, and failures of B. Rushton and M. Rushton occurred within the scope of their employment, office, or agency with Summit. Therefore, Summit is liable for these acts, misrepresentations, omissions, and failures 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 (2011).

47. Each act of misappropriation, misrepresentation or omission of material fact, and issuance of a false report, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (Supp. III 2009).

COUNT TWO

FRAUD BY A COMMODITY POOL OPERATOR

Violations of Section 4o(1) of the Act

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

49. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), prohibits CPOs and associated persons ("AP") of CPOs from using the mails or any other means of interstate commerce to:

> (A) employ any device, scheme or artifice to defraud any client or participant or prospective client or participant; or
>
> (B) engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or participant or prospective participant.

50. As set forth above, from at least November 2006 to the present, Summit acted as a CPO by soliciting, accepting, or receiving funds from others while engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of, among other things, trading in futures.

51. From at least November 2006 to the present, B. Rushton acted as an AP of Summit by, *inter alia*, soliciting and accepting funds from pool participants for the purported Pools.

52. Summit and its AP, B. Rushton, violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), in that they employed or are employing a device, scheme or artifice to defraud pool

participants and prospective pool participants or engaged or are engaging in transactions, practices, or a course of business which operated or operates as a fraud or deceit upon the pool participants or prospective pool participants. The fraudulent acts include (i) misappropriating pool participant funds, (ii) fraudulently soliciting pool participants or prospective pool participants, and (iii) making, causing to be made, and distributing reports and statements to pool participants or prospective pool participants that contained false information.

53. B. Rushton and M. Rushton controlled Summit, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Summit's conduct alleged in this count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), B. Rushton and M. Rushton are liable for Summit's violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

54. The foregoing acts, misrepresentations, omissions, and failures of B. Rushton occurred within the scope of his employment, office, or agency with Summit. Therefore, Summit is liable for these acts, misrepresentations, omissions, and failures 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 (2011).

55. Each act of misappropriation, misrepresentation or omission of material fact, and issuance of a false report, 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) (2006).

COUNT THREE

FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR

Violation of Section 4m(1) of the Act

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

57. Section 4m(1) of the Act, 7 U.S.C § 6m(1) (2006), provides that it is unlawful for

any CPO, unless registered, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO.

58. As set forth above, during the Relevant Period, Summit, by and through its employees, agents, and control persons, used the mails or instrumentalities of interstate commerce in or in connection with a commodity pool as a CPO while failing to register as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

59. B. Rushton and M. Rushton controlled Summit, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Summit's conduct alleged in this count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), B. Rushton and M. Rushton are liable for Summit's violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

60. Each use of the mails or any means or instrumentality of interstate commerce by Summit, by and through its employees, agents and control persons, while acting as a CPO including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

COUNT FOUR

FAILURE TO REGISTER AS AN ASSOCIATED PERSON

Violations of Section 4k(2) of the Act and Regulation 3.12

61. The allegations set forth in paragraphs 1 through 60 are re-alleged and incorporated herein by reference.

62. Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), prohibits persons from being associated with a CPO as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for participation in a commodity pool, or (ii) the

supervision of any person or persons so engaged, unless such person is registered. This section further prohibits CPOs from permitting such persons to become or remain associated with the CPO if the CPO knew or should have known that such persons were not so registered.

63. Regulation 3.12, 17 C.F.R. § 3.12 (2011), prohibits a person from being associated with a commodity pool operator unless the person is registered as an AP of the sponsoring CPO.

64. As set forth above, B. Rushton solicited funds for participation in a commodity pool operated by Summit. Because B. Rushton was not registered as an AP of Summit, B. Rushton violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), and Regulation 3.12, 17 C.F.R. § 3.12 (2011).

65. As set forth above, Summit, by and through its employees, agents, and control persons, permitted B. Rushton to become or remain associated with Summit knowing that he was not registered as an AP, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

COUNT FIVE

IMPROPER RECEIPT AND COMMINGLING OF POOL PARTICIPANT FUNDS

Violations of Regulation 4.20

66. The allegations set forth in paragraphs 1 through 65 are re-alleged and incorporated herein by reference.

67. Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2011), provides that a CPO "must operate its pool as an entity cognizable as a legal entity separate from that of the pool operator."

68. Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2011), provides that all funds received by a CPO from a pool participant must be accepted in the name of the pool, and the CPO may not accept funds in its own name.

69. Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011), provides that commodity pool funds may not be commingled with the funds of the CPO or any other person.

70. Beginning as early as November 2006, Summit violated Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2011), by failing to operate the Pools as legal entities separate from Summit, the CPO.

71. Beginning as early as November 2006, Summit violated Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2011), by receiving pool participant funds in its own name, rather than in the name of the purported Pools.

72. Beginning as early as November 2006, Summit violated Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011), by depositing pool participant funds in accounts held in the name of Summit, B. Rushton, and/or M. Rushton, or in the name of other persons or entities, rather than in an account held in the name of the purported Pools.

73. B. Rushton and M. Rushton controlled Summit, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Summit's conduct alleged in this count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), B. Rushton and M. Rushton are liable for Summit's violations of Regulations 4.20(b) and (c), 17 C.F.R. §§ 4.20(b) and (c) (2011).

74. The foregoing acts of B. Rushton and M. Rushton occurred within the scope of their employment, office, or agency with Summit. Therefore, Summit is liable for these acts 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 (2011).

75. Each act of improper receipt and commingling of pool participant funds, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulations 4.20(b) and (c), 17 C.F.R. §§ 4.20(b) and (c) (2011).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-l (2006), and pursuant to its own equitable powers, enter:

a) An order finding that Defendants violated Sections 4b(a)(2)(i)-(iii) and, as subsequently enumerated, 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006) and 7 U.S.C. §§ 6b(a)(1)(A)-(C) (Supp. III 2009), Sections 4k(2), 4m(1), and 4o of the Act, 7 U.S.C. §§ 6k(2), 6(m)1, and 6o (2006), and Regulations 3.12 and 4.20, 17 C.F.R. §§ 3.12 and 4.20 (2011);

b) An order of permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, from, directly or indirectly:

(i) engaging in conduct in violation of Sections 4b(a)(1)(A)-(C), 4k(2), 4m(1), and 4o of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6k(2), 6(m)1, and 6o, and Regulations 3.12 and 4.20, 17 C.F.R. §§ 3.12 and 4.20 (2011);

(ii) trading on or subject to the rules of any registered entity (as that term is defined in Section la of the Act, as amended, to be codified at 7 U.S.C. § la);

(iii) 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) (2011)) ("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, 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;

(iv) having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;

(v) 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;

(vi) 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;

(vii) 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) (2011);

(viii) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), 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) (2011);

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

d) An order directing Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act and the Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) An order directing each Defendant to pay a civil monetary penalty for each violation of the Act and the Regulations described herein, plus post-judgment interest, in the amount of the higher of: 1) $140,000 for each violation of the Act and Regulations committed on or after October 23, 2008; 2) $130,000 for each violation of the Act and Regulations committed between October 23, 2004 and October 22, 2008; or 3) triple the monetary gain to the Defendants for each violation of the Act and the Regulations, plus post-judgment interest;

f) An order directing Defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the customers and pool participants whose funds were received by them as a result of the acts and practices which constituted violations of the Act and the Regulations, as described herein;

g) An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

h) Such other and further relief as the Court deems proper.

November 29, 2011

Respectfully Submitted,

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