

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

SYSTEM CAPITAL, LLC, AND JOSHUA WALLACE,

Registrants.

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) CFTC Docket No. SD 13-02
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9:46 am, Jul 11, 2013

**NOTICE OF INTENT TO REVOKE REGISTRATION
PURSUANT TO SECTIONS 8a(2)(C), (D), (E) AND (H) OF
THE COMMODITY EXCHANGE ACT, AS AMENDED**

I.

The Commodity Futures Trading Commission (“Commission” or “CFTC”) has received information from its staff that tends to show, and the Commission’s Division of Enforcement (“Division”) alleges and is prepared to prove, that:

1. **SYSTEM CAPITAL, LLC** (“System Capital”) is an Oregon limited liability company whose registered address with the Commission is 5200 SW Meadows Road, Lake Oswego, OR 97035. Since April 3, 2009, System Capital has been registered with the Commission as a Commodity Trading Advisor (“CTA”), and from March 12, 2009 until February 24, 2010 was registered as a Commodity Pool Operator.

2. **JOSHUA WALLACE** (“Wallace”) is an Oregon resident and since March 12, 2009 has been registered with the Commission as an Associated Person (“AP”) of System Capital. Wallace is the founder, sole owner, principal and president of System Capital.

3. On March 14, 2013, the District Court in *CFTC v. System Capital, et al.*, Case No. 10 Civ. 8850 (KBF) (S.D.N.Y.), entered an Order for Entry of Default Judgment, Permanent Injunction and Ancillary Equitable Relief against System Capital and Wallace (the “Default

Judgment”) and found, in relevant part, that System Capital and Wallace (collectively, “Defendants”) engaged in fraud by misrepresenting to prospective and actual clients, through the use of fraudulent documents and statements, that Defendants had a successful history of trading futures contracts and that System Capital had assets under management of at least \$29 million; and that as a result of these fraudulent solicitations, Defendants successfully solicited at least seventeen clients, directed the trading of these clients’ commodity futures accounts, and managed approximately \$3.5 million of client funds. The Default Judgment also found that Wallace, on behalf of System Capital and himself, knowingly provided false information and documents to the National Futures Association (“NFA”), a futures association registered under the Commodity Exchange Act (the “Act”) acting in furtherance of its official duties under the Act.

4. The Default Judgment found, in relevant part, that System Capital and Wallace violated Sections 4b(a)(1)(A) and (C), 4o(1)(A)-(B), and 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), 6o(1)(A)-(B), and 13(a)(4).

5. The Default Judgment permanently restrains, enjoins and prohibits System Capital and Wallace from directly or indirectly:

- a. cheating or defrauding or attempting to cheat or defraud any other person, or by willfully deceiving or attempting to deceive any other person by any means whatsoever, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market for or on behalf of any other person in violation of Section 4b(a)(1)(A) and (C) of the Act, as amended, to be codified at 7 U.S.C. §6b(a)(1)(A) and (C);

- b. employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant, or by engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant by use of the mails or any means or instrumentality of interstate commerce, while acting as a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator in violation of Section 4o(1)(A)-(B) of the Act, 7 U.S.C. § 6o(1)(A)-(B);
- c. willfully falsifying, concealing, or covering up by any trick, scheme, or artifice a material fact, making any false, fictitious, or fraudulent statements or representations, or making or using any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade or futures association designated or registered under the Act acting in furtherance of its official duties under the Act in violation of Section 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. § 13(a)(4);
and
- d. trading on or subject to the rules of any registered entity; entering into any transactions involving commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or foreign currency for their own personal account or for any account in which they have a direct or indirect interest; having any of these contracts traded on their behalf; controlling or directing the trading of any of these contracts for or on behalf of any other person

or entity; and/or soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any of these contracts.

6. Also, on November 27, 2012, in a criminal action in the Southern District of New York, Wallace pleaded guilty to and was adjudged guilty and convicted of, *inter alia*, commodities fraud in violation of Sections 4o(1) and 9(a)(5) of the Act, 7 U.S.C. §§ 6o(1) and 13(a)(5). *U.S. v. Wallace*, No. 11 CR 124 (LTS) (S.D.N.Y.). The commodities fraud count was based on the same underlying facts as charged in *CFTC v. System Capital, et al.* On May 15, 2013, Wallace was sentenced in this matter to 27 months imprisonment .

7. Pursuant to Section 8a(2)(C) of the Act, 7 U.S.C. § 12a(2)(C), the Commission may revoke the registration of any person who has been permanently enjoined by order of a court of competent jurisdiction, from engaging in or continuing any activity involving embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or any transaction in or advice concerning contracts of sale of a commodity for future delivery.

8. Pursuant to Section 8a(2)(D) of the Act, 7 U.S.C. § 12a(2)(D), the Commission may revoke the registration of any person who has been convicted within ten years preceding the filing of the application for registration or at any time thereafter of any felony that, among other things, (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery; (ii) arises out of the conduct of the business of a CTA or an AP of any registrant under the Act, or (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling.

9. Pursuant to Section 8a(2)(E) of the Act, 7 U.S.C. § 12a(2)(E), the Commission may revoke the registration of any person who has been found, in a proceeding brought by the Commission or any Federal agency, to have violated any provision of the Act by committing embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, within ten years preceding the filing of the registration application or at any time thereafter.

10. Furthermore, pursuant to Section 8a(2)(H) of the Act, 7 U.S.C. § 12a(2)(H), the Commission may revoke the registration of any person if revocation of the registration of any principal of such person is warranted pursuant to Section 8a(2) of the Act, 7 U.S.C. § 12a(2). Pursuant to Commission Regulation (“Regulation”) 3.1(a)(1), 17 C.F.R. § 3.1(a)(1) (2012), if an entity is organized as a limited liability company, “principal” includes any director, president, chief executive officer, manager, managing member or members vested with the management authority for the entity, any person in charge of a principal business unit, division or function subject to regulation by the Commission, and any person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity’s activities that are subject to regulation by the Commission.

11. The facts set forth above constitute a valid basis for the Commission to revoke System Capital’s registration as a CTA and Wallace’s registration as an AP.

II.

12. Pursuant to Regulation 3.60(a), 17 C.F.R. § 3.60(a) (2012), System Capital and Wallace are hereby notified that a public proceeding shall be conducted on the following questions:

- a. Whether System Capital is subject to statutory disqualification from registration under Section 8a(2)(C), (E) and (H) of the Act, as set forth in Section I above;
- b. Whether Wallace is subject to statutory disqualification from registration under Section 8a(2)(C), (D) and (E) of the Act, as set forth in Section I above;
- c. If the answer to questions “a” and “b” above is affirmative, then whether the registration of System Capital as a CTA and the registration of Wallace as an AP should be revoked.

13. Such proceeding shall be held before an Administrative Law Judge or a Presiding Officer in accordance with Regulations 3.60 and 10.8, 17 C.F.R. §§ 3.60 and 10.8 (2012), and all post-hearing procedures shall be conducted pursuant to Regulations 3.60(i)-(j), 17 C.F.R. § 3.60(i)-(j) (2012).

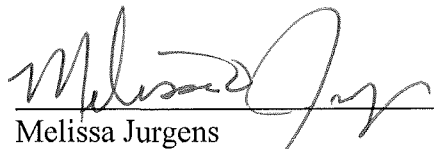
14. In accordance with the provisions of Regulation 3.60(a)(3), 17 C.F.R. § 3.60(a)(3) (2012), System Capital and Wallace are entitled to file responses challenging the evidentiary basis of the statutory disqualification or show cause why, notwithstanding the accuracy of the allegations, their registrations should not be suspended, revoked, or restricted. Such responses must be filed with the Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and served upon Mark A. Picard, Division of Enforcement, Eastern Regional Office, 140 Broadway, 19th Floor, New York, NY 10005, within thirty (30) days after the date of service of this Notice upon System Capital and Wallace, in accordance with the provisions of Regulation 3.60(b), 17 C.F.R. § 3.60(b) (2012). If System Capital and Wallace fail to file a timely response to this Notice, the allegations set forth herein shall be deemed to be true, and the Administrative Law

Judge or the Presiding Officer may issue an Order of Default in accordance with the provisions of Regulation 3.60(g), 17 C.F.R. § 3.60(g) (2012).

III.

15. The Proceedings Clerk shall serve this Notice of Intent to Revoke the Registrations of System Capital, LLC and Joshua Wallace in accordance with Regulation 3.50, 17 C.F.R. § 3.50 (2012), or by any other means permitted under the Act or Regulations.

By the Commission.



Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission

Dated: July 11, 2013