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12 **THE UNITED STATES DISTRICT COURT**
 13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 14 **WESTERN DIVISION**

15 UNITED STATES COMMODITY
 16 FUTURES TRADING COMMISSION,

17 Plaintiff,

18 v.

19 INTELLIGENT TRADES, LLC, and
 20 GHASSAN TAWACHI, an individual,

21 Defendants.

Civil Action No.

**COMPLAINT FOR INJUNCTIVE
 AND OTHER EQUITABLE RELIEF
 AND PENALTIES UNDER THE
 COMMODITY EXCHANGE ACT**

22 **I. INTRODUCTION**

23 1. After consenting to a Commodity Futures Trading Commission
 24 Administrative Order ("Commission" or "CFTC Order") issued on April 26, 2012, that,
 25 among other things, prohibited him from engaging in commodity futures trading on
 26 behalf of others, Ghassan Tawachi ("Tawachi "), continued to trade on behalf of clients
 27 contrary to the Commission Order. Further, from July 2011 until at least July 30,
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1 2012, (the “relevant period”), Tawachi made fraudulent representations to market his
2 commodity futures trading software.

3 2. Tawachi marketed his commodity futures trading system individually and
4 acting through his firm Intelligent Trades, LLC (“Intelligent Trades”), which
5 “licensed” the use of the Intelligent Trades software (“IT Software”). Under the
6 Intelligent Trades licensing agreements, Tawachi indirectly controlled the trading of
7 his licensees’ commodity futures accounts and collected substantial fees for the use of
8 his software for the trading.

9 3. Through sales misrepresentations, Tawachi and Intelligent Trades
10 (collectively the “Defendants”), have engaged, are engaging, or are about to engage in
11 acts and practices which violate the anti-fraud provisions of Sections 4b(a)(1)(A) and
12 (C), and 4o(1) of the Commodity Exchange Act (“the Act”), 7 U.S.C. §§ 6b(a)(1)(A),
13 (C), and 6o(1) (2012). By virtue of his indirect trading of clients’ accounts Tawachi
14 violated the Commission Order. In addition, during the time Tawachi traded clients’
15 accounts in violation of the Commission Order, he was not registered as a Commodity
16 Trading Advisor, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

17 4. At all relevant times, Tawachi was acting within the course and scope of
18 his employment, agency or office of Intelligent Trades. Therefore, pursuant to Section
19 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012) and Commission Regulation 1.2, 17
20 C.F.R. § 1.2 (2015)., Intelligent Trades is liable for Tawachi’s violations of Sections
21 4b(a)(1)(A) and (C), and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C), and 6o(1)
22 (2012).

23 5. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012),
24 the Commission brings this action to enjoin such acts and practices, and to compel
25 compliance with the provisions of the Act, and the Commission Order.

26 6. In addition, the Commission seeks disgorgement, civil monetary penalties,
27 a permanent trading ban and such other equitable relief as the Court may deem
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1 necessary and appropriate. Given Tawachi's pattern of fraudulent activity, unless
2 restrained and enjoined by this Court, the Defendants are likely to continue to engage
3 in the acts and practices alleged in this Complaint, or in similar acts and practices.
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5 **II. JURISDICTION AND VENUE**

6 7. The Commission has jurisdiction over the conduct and transactions at
7 issue in this case pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012). Section
8 6c of the Act authorizes the Commission to seek injunctive relief in district court
9 against any person whenever it shall appear to the Commission that such person has
10 engaged, is engaging, or is about to engage in any act or practice constituting a violation
11 of the Act or any rule, regulation, or order thereunder.

12 8. Venue properly lies with this Court pursuant to Section 6c(e), 7 U.S.C.
13 § 13a-1(e) (2012), because the transactions, acts, practices, and courses of business
14 alleged to have violated the Act have occurred within this District and the Defendant
15 Tawachi resides in this District.
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17 **III. THE PARTIES**

18 9. **Plaintiff** United States Commodity Futures Trading Commission is an
19 independent federal regulatory agency charged with the responsibility for
20 administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 et seq. (2012), and
21 the Regulations promulgated under it, 17 C.F.R. §§ 1 et seq. (2015).

22 10. **Defendant** Ghassan Tawachi, a/k/a “Marco” Tawachi, is an individual who
23 resides in Irvine, California. Tawachi was registered with the Commission as a
24 Commodity Trading Advisor from July 2010 to April 2012.

25 11. **Defendant** Intelligent Trades, LLC is currently an inactive Florida limited
26 liability company. The firm was registered as a limited liability company on October
27 14, 2011, and maintained an address at 340 Giraldi Ave. in Coral Gables, Florida.
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1 Intelligent Trades was wholly owned and managed by Tawachi. Intelligent Trades has
2 never been registered with the Commission.

3 **IV. STATEMENT OF FACTS**

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5 **A. The Statutory and Regulatory Background**

6 12. Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (2012), defines a Commodity
7 Trading Advisor (“CTA”), in relevant part, as any person who, for compensation or
8 profit, engages in the business of advising others, either directly or through publications,
9 writings, or electronic media, as to the value of or the advisability of trading in any contract
10 of sale of a commodity for future delivery made or to be made on or subject to the rules of a
11 contract market.

12 13. Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C § 6b(a)(1)(A), (C) (2012),
13 prohibits fraud in connection with any contract of sale of any commodity for future
14 delivery that is made, or to be made, for or on behalf of, or with, any other person,
15 other than on or subject to the rules of a designated contract market.

16 14. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), prohibits fraud by any
17 CTA, or an associated person of a CTA, by use of the mails or any means or
18 instrumentality of interstate commerce.

19 15. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), makes it unlawful for
20 any CTA, unless registered with the Commission, to make use of the mails or any
21 means or instrumentality of interstate commerce in connection with the business of the
22 CTA.

23 16. Commission Regulation 1.2, 17 C.F.R. § 1.2 (2015), provides that the act,
24 omission, or failure of any official, agent, or other person acting for any individual,
25 association, partnership, or corporation within the scope of his employment or office
26 shall also be deemed the act, omission, or failure of such individual, association,
27 partnership, or corporation.

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2 **B. The Commission Order Prohibited Tawachi from Trading**

3 17. On April 26, 2012, the CFTC issued a Commission Order instituting
4 administrative proceedings pursuant to Sections 6(c), 6(d), and 8a of the Act, 7 U.S.C.
5 §§ 9, 13b, and 12a(1) (2012), against Tawachi and simultaneously accepted Tawachi's
6 Offer of Settlement.

7 18. As recited in the Commission Order, in which the CFTC made findings of
8 fact and conclusions of law and imposed remedial sanctions, Tawachi defrauded
9 clients through fraudulent sales of a commodity software trading system he called
10 Bentley trading software. Tawachi touted his Bentley software trading system as the
11 product of his purported expertise as a successful professional commodity trader. In
12 addition, with respect to one client, Tawachi accepted \$40,000, which he
13 misappropriated.

14 19. Tawachi neither admitted nor denied the allegations and conclusions
15 contained in the Commission Order, yet Tawachi consented to the Commission Order
16 that required, among other things, that he cease and desist from violating the
17 provisions of the Act he was found to have violated, required the payment of a civil
18 monetary penalty and restitution, and required him to refrain from certain trading
19 activity. Specifically, the Commission Order prohibited Tawachi from, directly or
20 indirectly, engaging in trading on or subject to the rules of any registered entity (as that
21 term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)).

22 **C. Tawachi's Conduct in Violation of the Commission Order**

23 20. Starting in at least July 2011, Tawachi began promoting his IT Software
24 through licensing agreements offered by his firm Intelligent Trades. Intelligent Trades
25 licensed the software to several entities, but only one entity with multiple clients
26 utilized the IT Software for actual trading. Under the Tawachi licensing agreement,
27 clients using the system paid a monthly fee of approximately ten percent of their
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1 account value directly to Intelligent Trades. Clients' commodity futures accounts were
2 then traded through a single master account according to the IT Software system.

3 21. During the relevant period, however, the Intelligent Trades licensee was
4 never given a copy of the software program or autonomous control over the use of the
5 IT Software. Instead, the IT Software, which connected directly to the commodity
6 broker's trading platform, continued to undergo "development" under the control of
7 Tawachi. Acting through his software developer agent, Tawachi directed his agent to
8 start, stop and modify his clients' trading activities. As a result, Tawachi indirectly
9 controlled the trading of the licensee clients' accounts while collecting monthly fees
10 totaling over \$479,755.

11 22. Tawachi's indirect trading and control of his licensee clients' accounts
12 continued following the April 2012 Commission Order, which prohibited his
13 commodity futures trading, through at least June of 2012. In approximately early July
14 2012, trading ceased due to the business failure of the broker/futures commission
15 merchant where the licensees/clients held their trading accounts.

16 **D. Defendants' Fraudulent Solicitations**

17 23. In connection with the promotion of his IT Software, Tawachi made a
18 series of materially false claims to bolster the credibility of his trading system. He
19 fictitiously maintained to one or more clients or prospective clients that he formulated
20 his IT Software based upon his purported substantial professional commodity futures
21 trading experience. Tawachi further falsely stated that he earned a living using his IT
22 Software to conduct commodity futures trading, and that he earned profits for clients
23 through accounts he managed using his IT Software.

24 24. Tawachi, acting as an agent or officer of Intelligent Trades, marketed the
25 IT Software with untrue claims to support its alleged profitability. Tawachi maintained
26 that testing had established that the IT software had the ability to provide high trading
27 returns ranging from 15% to 20% a month, after fees. Defendants provided charts for
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1 IT Software that showed an unbroken line of increasing profits from the hypothetical
2 application of the software. In fact, the actual trading using the IT Software failed to
3 produce any profits for clients.

4 25. While falsely touting the profits that IT Software could allegedly produce,
5 Tawachi, acting both individually and as an agent or officer of Intelligent Trades,
6 downplayed the risk of trading losses with the use of the software system by making
7 invalid claims of its safety such as: “We have never seen a sequence that hasn’t
8 ultimately resulted in a win,” and “...the risk of absolute loss is minimized to virtually
9 zero.”

10 26. To gain additional revenues from the trading of clients’ funds, Tawachi
11 falsely maintained that the successful operation of the IT Software effectively required
12 an account size of \$1.4 million; thereby requiring additional deposits from clients. In a
13 further effort to boost the amount of money under his management, Tawachi
14 guaranteed one client against any loss of funds caused by trading pursuant to IT
15 Software, provided the client placed \$1.1 million in her trading account for a one-year
16 period. After the client added substantial funds to her account, Tawachi failed to sign
17 the written guarantee.

18 27. Tawachi also deceived his clients in order to prevent withdrawal of their
19 funds from his IT Software enterprise by giving them a phony account of the then-
20 current CFTC investigation into his commodity futures related activities which resulted
21 in the Commission Order. The Commission Order, once issued, described his
22 fraudulent sales of trading software and proscribed him from any commodity trading.
23 In his deceptive disclosure, Tawachi maintained he was under investigation by a non-
24 government agency, the National Futures Association, and made no mention of his
25 fraudulent sales claims regarding trading software and trading background. Further, he
26 maintained that a settlement with the National Futures Association would not “hinder
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1 or hurt any portion of what we are doing now,” when he knew that his settlement with
2 the CFTC would ban his trading of commodity futures.

3 **E. Tawachi Acted As a CTA Without Registration**

4 28. Following the Commission Order, Tawachi individually, and through his
5 employees and agents, acted as a CTA when, for compensation or profit, he advised
6 others through his agents and software trading system as to the advisability of trading
7 in commodity futures contracts, by controlling the trading in clients’ accounts.

8 29. Following the Commission’s Order, Tawachi was not registered in any
9 capacity with the Commission. Accordingly, during the trading period following the
10 Commission Order, Tawachi acted as a CTA without the required Commission
11 registration.

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13 **V. VIOLATIONS OF THE ACT OR A COMMISSION ORDER**

14 **COUNT ONE**

15 **VIOLATION OF A COMMISSION ORDER**

16 The allegations in the foregoing paragraphs are incorporated by reference
17 as if fully set forth herein.

18 30. Beginning on April 26, 2012, section VI, paragraphs B and F3(c) of the
19 Commission Order prohibited Tawachi, from directly or indirectly, trading for or on
20 behalf of any other person or entity, whether by power of attorney or otherwise, in any
21 account involving commodity futures, options on commodity futures, commodity
22 options, security futures products, and/or forex contracts.

23 31. Beginning on the day following the issuance of the Commission
24 Order, Tawachi violated Section VI, paragraphs B and F3(c) of the Commission Order
25 when he continued to indirectly trade the commodity futures accounts of his licensee
26 clients through his control of the IT Software through the purchase and sale of
27 commodity futures contracts through July 2012, when the trading stopped.
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1 32. Tawachi's indirect trading of commodity futures contracts directly
2 violated the Commission Order.

3 **COUNT TWO**

4 **VIOLATIONS OF SECTION 4b(a)(1)(A) and (C)**
5 **OF THE ACT: FRAUD BY MISREPRESENTATIONS**

6 The allegations in the foregoing paragraphs are incorporated by reference
7 as if fully set forth herein.

8 33. Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C § 6b(a)(1)(A), (C) (2012),
9 makes it unlawful for any person, in or in connection with any order to make, or the
10 making of, any contract of sale of any commodity in interstate commerce or for future
11 delivery that is made, or to be made, on or subject to the rules of a designated contract
12 market for or on behalf of, or with, any other person:

13 (A) to cheat or defraud or attempt to cheat or defraud the other
14 person;

15 ***

16 (C) willfully to deceive or attempt to deceive the other person
17 by any means whatsoever in regard to any order or contract or
18 the disposition or execution of any order or contract, or in
19 regard to any act of agency performed, with respect to any order
20 or contract for or . . . with the other person[.]

21 34. As set forth above, during the relevant period in connection with contracts
22 for future delivery made on or subject to the rules of a designated contract market for
23 or on behalf of other persons, Tawachi knowingly or recklessly made the material
24 misrepresentations set forth above, to induce members of the public to use through
25 licensing, or to purchase, commodity trading software, that generates specific buy and
26 sell signals for commodity futures trading, including but not limited to:

27 (1) misrepresenting Tawachi's purported substantial professional commodity futures
28 trading experience; (2) misrepresenting that Tawachi earned profits for clients through

1 accounts he managed using his IT Software; (3) misrepresenting IT software had the
2 ability to provide high trading returns ranging from 15% to 20% a month, after fees;
3 (4) misrepresenting that the risk of absolute loss using IT Software as virtually zero;
4 (5) misrepresenting the fact that operation of the IT Software effectively required an
5 account size of \$1.4 million; (6) falsely guaranteeing one client against any loss of
6 funds caused by trading pursuant to IT Software; and (7) misrepresenting the facts and
7 circumstances regarding the CFTC investigation into Tawachi's commodity futures
8 software trading system activities.

9 35. Tawachi, acting both individually and as agent and principal of Intelligent
10 Trades, engaged in the acts and practices described above knowingly, willfully or with
11 reckless disregard for the truth using instrumentalities of interstate commerce,
12 including but not limited to, the use of interstate wires for the transfer of funds and
13 other electronic communication devices

14 36. The forgoing fraudulent acts of Tawachi occurred within the scope of his
15 employment, office or agency with Intelligent Trades. Therefore, pursuant to Section
16 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012) and Regulation 1.2, 17 C.F.R.
17 § 1.2 (2015), Intelligent Trades is liable for Tawachi's violations of Sections
18 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2012).

19 37. Each act of fraudulent solicitation, during the relevant period, including
20 but not limited to those specifically alleged herein, is alleged as a separate and distinct
21 violation of Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A),(C) (2012).

22 **COUNT THREE**

23 **VIOLATION OF SECTION 4m(1) OF THE**
24 **ACT: ACTING AS A COMMODITY TRADING**
25 **ADVISOR WITHOUT REGISTRATION**

26 The allegations in the foregoing paragraphs are incorporated by
27 reference as if fully set forth herein.
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1 38. Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (2012), defines a Commodity
2 Trading Advisor (“CTA”) as any person who for compensation or profit, engages in the
3 business of advising others, either directly or through publications, writings, or electronic
4 media, as to the value of or the advisability of trading in any contract of sale of a
5 commodity for future delivery made or to be made on or subject to the rules of a contract
6 market.

7 39. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), makes it unlawful for
8 any CTA, unless registered with the Commission, to make use of the mails or any
9 means or instrumentality of interstate commerce in connection with his business as a
10 CTA.

11 40. Following the Commission Order prohibiting trading, Tawachi
12 individually, and through his employees and agents, acted as a CTA when for
13 compensation or profit he advised others through his software trading system as to the
14 advisability of trading in commodity futures contracts by controlling the trading in
15 their accounts, while failing to register with the Commission as a CTA, in violation of
16 Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

17 41. Each instance of Tawachi acting as a CTA while failing to be registered as
18 such, both individually and through his employees and agents, during the relevant
19 period, including but not limited to those specifically alleged herein, is alleged as a
20 separate and distinct violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

21 **COUNT FOUR**

22 **VIOLATIONS OF SECTION 4o(1) OF THE ACT:**
23 **FRAUD BY A COMMODITY TRADING ADVISOR**

24 The allegations in the foregoing paragraphs are incorporated by reference as if
25 fully set forth herein.
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1 42. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), makes it unlawful for a
2 CTA, or an associated person of a CTA, by use of the mails or any means or
3 instrumentality of interstate commerce, directly or indirectly—

4 (A) to employ any device, scheme, or artifice to defraud any
5 client or participant or prospective client or participant; or

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7 (B) to engage in any transaction, practice, or course of business
8 which operates as a fraud or deceit upon any client or
9 participant or prospective client or participant.

10 43. Through the foregoing conduct described in paragraph 36 Tawachi, while
11 acting as a CTA, by using the mails or instrumentalities of interstate commerce,
12 (i) employed devices, schemes, or artifices to defraud clients or prospective clients;
13 and (ii) engaged in transactions, practices, or courses of business which operated as a
14 fraud or deceit upon clients, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1)
15 (2012).

16 44. During the relevant period, Tawachi, acting both individually and as agent
17 and officer of Intelligent Trades, acted as a CTA when, for compensation or profit, he
18 engaged in the business of advising others, either directly or through the control of his
19 Intelligent Trading software , as to the value of or the advisability of trading in
20 commodity futures contracts.

21 45. During the relevant period, the foregoing fraudulent acts,
22 misrepresentations, and other unlawful conduct of Tawachi occurred within the scope
23 of his employment, office, or agency of Intelligent Trades. Therefore, pursuant to
24 Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012) and Regulation 1.2, 17
25 C.F.R. § 1.2 (2015), Defendant Intelligent Trades is liable for Tawachi's violations of
26 Sections 4o(1) of the Act, 7 U.S.C. §6o(1) (2012).

1 46. Each act of fraudulent solicitation, during the relevant period, including
2 but not limited to those specifically alleged herein, is alleged as a separate and distinct
3 violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012).

4 **V. RELIEF REQUESTED**

5 WHEREFORE, the Commission respectfully requests that this Court, as
6 authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and pursuant to the
7 Court's inherent equitable powers, enter:

8 A. An order finding that Tawachi violated a Commission Order, and further
9 violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012);

10 B. An order finding that Defendants violated Sections 4b(a)(1)(A) and (C), and
11 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C), and 6o(1) (2012);

12 C. An order of permanent injunction prohibiting Tawachi from directly or
13 indirectly violating Section VI, paragraphs B and F3(c) of the Commission Order;

14 D. An order of permanent injunction prohibiting Defendants, and any other
15 person or entity associated with them, from engaging in conduct that violates Sections
16 4b(a)(1)(A) and (C), and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C), and 6o(1)
17 (2012);

18 E. An order of permanent injunction prohibiting Defendants, and any of their
19 agents, servants, employees, successors, assigns, attorneys, and persons acting in active
20 concert or participation with Defendants, including any successor thereof, from,
21 directly or indirectly:

22 (1) Trading on or subject to the rules of any registered entity (as that
23 term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012));

24 (2) Entering into any transactions involving "commodity interests" (as
25 that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2015) for
26 Defendants' personal or proprietary account or for any account in which
27 Defendants have a direct or indirect interest;
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- 1 (3) Having any commodity interests traded on any Defendants' behalf;
- 2 (4) Controlling or directing the trading for, or on behalf of, any other
- 3 person or entity, whether directly or indirectly, by power of attorney or
- 4 otherwise, in any account involving commodity interests;
- 5 (5) Offering to the public any software trading system or other type of
- 6 trading system, whether for sale, lease, operation or other commercial
- 7 arrangement, for the purpose of trading or analyzing commodity interests;
- 8 (6) Soliciting, receiving, or accepting any funds from any person for
- 9 the purpose of purchasing or selling any commodity interests;
- 10 (7) Applying for registration or claiming exemption from registration
- 11 with the Commission in any capacity, and engaging in any activity
- 12 requiring such registration or exemption from registration with the
- 13 Commission;
- 14 (8) Acting as a principal (as that term is defined in Regulation 3.1(a),
- 15 17 C.F.R. § 3.1(a) (2015)), agent or any other officer or employee of any
- 16 person or entity registered, exempted from registration or required to be
- 17 registered with the Commission; and
- 18 (9) Engaging in any business activity related to commodity interests.

19 F. An order directing Defendants, as well as any successors thereof, to make full
20 disgorgement, pursuant to such procedure as the Court may order, to every client
21 whose funds any Defendant received, or caused another person or entity to receive, as
22 a result of the acts and practices constituting violations of the Act and Regulations, as
23 described herein, and pre- and post-judgment interest thereon from the date of such
24 violations; and

25 G. An order directing Defendants, as well as any successors thereof, to pay a
26 civil monetary penalty, plus post-judgment interest, for each violation of the Act and
27 Regulations described herein, in the amount of the greater of: (i) \$140,000 for each
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1 violation committed; or (ii) triple Defendants' monetary gain for each violation
2 committed.

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4 Dated: January 7, 2016

Respectfully submitted,

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6 By: /S/ James H. Holl, III

7 James H. Holl, III

8 Thomas J. Kelly (*pro hac vice pending*)

9 Attorneys for the Plaintiff

10 UNITED STATES COMMODITY

11 FUTURES TRADING COMMISSION
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