

trading accounts, leaving the trading accounts empty. Defendants repaid four customers approximately \$36,000 of their principal, plus purported profits of approximately \$400. Defendants failed to refund the remaining \$45,000 which was withdrawn from the trading accounts and further failed to refund nearly \$31,000 in customer funds which were never deposited into trading accounts. Accordingly, Defendants misappropriated at least \$75,000 of customer funds.

2. In soliciting customers, Defendants told them that they would “double or triple” their investments within a year. To perpetuate their fraud, Defendants provided account statements to customers indicating that their supposed accounts had posted substantial gains of up to 259 percent in less than six months. Defendants did not make the gains they represented; rather, Defendants’ forex trading was wholly unsuccessful.

3. By virtue of this conduct and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of Section 4b(a)(2)(A)-(C) of the Commodity Exchange Act (the “Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), § 13102, 122 Stat. 1651 (effective June 18, 2008), to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C), and certain CFTC Regulations (“Regulations”), 17 C.F.R. §§ 1.1 *et seq.* (2009).

4. Cloud, upon information and belief, along with other C & R Financial employees and agents, committed the acts and omissions described herein within the course and scope of their employment at C & R Financial. Therefore, C & R Financial 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 (2009), as principal for its agents’ violations of the Act, as amended by the CRA.

5. Cloud is liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), as a controlling person of C & R Financial for its violations of the Act, as amended by the CRA, because he did not act in good faith or knowingly induced, directly or indirectly, the acts constituting C & R Financial's violations.

6. Accordingly, pursuant to Sections 6c of the Act, 7 U.S.C. §§ 13a-1 (2006), and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act, as amended by the CRA, and to further enjoin Defendants from engaging in any commodity-related activity. 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.

7. Unless 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

8. The Commission has jurisdiction over the forex transactions at issue in this case pursuant to Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), for conduct that occurred after June 18, 2008, the date of the CRA's enactment. The CRA, among other things, clarified the Commission's anti-fraud jurisdiction over forex contracts, such as those in this matter. Defendants' forex transactions that occurred on or after June 18, 2008, are therefore subject to the Commission's jurisdiction.

9. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Defendants transacted business in the Southern District of Texas and certain of the transactions, acts, practices, and courses of business alleged occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

10. **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.* (2006), the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations, 17 C.F.R. §§ 1.1 *et seq.* (2009). The CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

11. **C & R Financial, Inc. a/k/a C & R Financial Group** is a Texas corporation with its principal place of business at 3033 Chimney Rock Rd., Suite 610, Houston, Texas 77056. C & R Financial, upon information and belief, is operated from 2322 Sperber Lane, Houston, Texas 77003. C & R Financial has never been registered in any capacity with the CFTC.

12. **Willie Lee Cloud, Jr.** resides in Houston, Texas. He has been the Chief Executive Officer (“CEO”) and President of C & R Financial since at least October 2, 2006. Cloud has never been registered in any capacity with the CFTC.

IV. FACTS

13. Since April 2008, C & R Financial, by and through its principal and agent, Cloud, and Cloud directly, solicited at least \$200,000 from at least nine members of the general public for the purported purpose of trading forex. However, of the \$200,000 solicited, Defendants deposited only \$169,000 into trading accounts with registered FCMs. Defendants

lost over \$88,000 trading forex and withdrew over \$81,000 from the trading accounts, leaving the trading accounts with a zero balance. Defendants repaid approximately \$36,000 to customers as redemption of principal and \$400 as payment of purported profits. Defendants failed to refund the remaining \$45,000 which was withdrawn from the trading accounts, and further failed to refund nearly \$31,000 in customer funds which was never deposited into trading accounts. Accordingly, Defendants misappropriated at least \$75,000 of customer funds. Defendants' repayment of principal and purported profits to customers came from the principal of other existing or subsequent customers. Therefore, Defendants are operating a Ponzi scheme.

14. Defendants told customers that Defendants managed around \$2.5 million in customer funds from 40 customers, including several high net worth individuals.

15. Defendants promised customers that they could "double or triple" their investments within months or a year. For example, Defendants told one customer that she would be able to make her student loan payments of \$500 per month from gains on her \$5,000 investment. Defendants encouraged a second customer to take out a \$10,000 line of credit based on representations that she would be able to repay the line of credit with profits from forex trading. Defendants told this second customer that she would make "at least a few thousand dollars a month" on her investment and would be able to pay off her line of credit within "a few months." These representations were false.

16. Defendants made material misrepresentations to customers about where their investments would be placed. Defendants solicited some customers with the promise that their investments would be placed in individual trading accounts at an FCM from which Defendants would trade forex. Defendants induced customers to complete account application forms for registered FCMs, purportedly so that Defendants could open individual trading accounts for each

customer. However, with one exception, Defendants did not forward these account application forms to the FCMs and did not open accounts in the names of these customers with any FCM. Rather, Defendants pooled together customer funds and placed them into trading accounts in Cloud's name.

17. To disguise and perpetuate their fraud, Defendants periodically sent false account statements to existing customers purporting to show trading details for individual customers' accounts with C & R Financial. These false account statements indicated consistent and substantial profits, purportedly as high as 259 percent in less than six months, notwithstanding the fact that Defendants' forex trading was wholly unsuccessful.

18. Defendants used these fraudulently inflated returns to solicit customers to invest with C & R Financial. Defendants offered referral fees of \$200 to existing customers for each family member or friend who invested with Defendants. Defendants solicited existing customers to invest additional funds through a "trader appreciation program," by which Defendants promised to place additional funds in an existing customer's account if the existing customer increased an investment by at least \$5,000.

19. Neither Defendants nor the FCMs that were the counterparties to the forex transactions were financial institutions, registered broker dealers, insurance companies, bank holding companies, or investment bank holding companies or the associated persons of financial institutions, registered broker dealers, insurance companies, bank holding companies, or investment bank holding companies.

20. Defendants, along with some or all of Defendants' customers, were not "eligible contract participants" as that term is defined in the Act. *See* Section 1a(12)(A)(v) and (xi) of the Act, 7 U.S.C. § 1a(12)(A) (v) and (xi) (2006) (an "eligible contract participant," as relevant here,

is: (1) an individual with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction “to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual;” and (2) “a corporation . . . that has total assets exceeding \$10,000,000”

21. The forex transactions conducted by Defendants at FCMs, both on behalf of their customers and in accounts in Cloud’s name, were entered into on a leveraged or margined basis. Defendants were required to provide only a percentage of the value of the forex contracts that they purchased.

22. The forex transactions conducted by Defendants neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these forex contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

23. At all material times, C & R Financial was wholly-owned by Cloud, who held himself out to the public as the President and CEO of C & R Financial and solicited members of the general public to invest with C & R Financial. Cloud was the only person at C & R Financial with whom some or all customers dealt. Cloud made the forex trades through the FCMs, corresponded with customers regarding their accounts, and sent the false account statements. As such, Cloud is a controlling person of C & R Financial.

24. By virtue of their actions, Defendants have engaged, are engaging, or are about to engage in acts and practices that violate Section 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C).

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

**Violations of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA,
to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C)
(Fraud in Connection with Forex)**

25. The allegations set forth in paragraphs 1 through 24 are realleged and incorporated herein by reference.

26. Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), make it unlawful

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market – (A) to cheat or defraud or attempt to cheat or defraud the other 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 the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

27. As set forth above, from at least June 18, 2008, through the present, in or in connection with forex contracts, made, or to be made, for or on behalf of or with other persons, Defendants cheated or defrauded, or attempted to cheat or defraud, customers or prospective customers and willfully deceived or attempted to deceive customers or prospective customers by, among other things, knowingly: (i) misappropriating customer funds; (ii) misrepresenting that Defendants had opened individual trading accounts with registered FCMs for customers; (iii) misrepresenting that Defendants' forex trading was profitable, when, in fact, Defendants' forex trading resulted in substantial losses, and the purported "profits" were paid to customers from

existing customers' original principal and/or from money invested by subsequent customers; and (iv) knowingly providing customers with account statements that misrepresented the value of the customers' investments as well as claiming that Defendants' trading was producing profits, all in violation of Sections 4b(a)(2)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C).

28. As set forth above, from at least June 18, 2008, through the present, in or in connection with forex contracts, made or to be made, for or on behalf of other persons, Defendants willfully made or caused to be made false reports or statements to customers or prospective customers by, among other things, knowingly providing customers with fraudulent periodic account statements that misrepresented the value of customers' accounts, in violation of Section 4b(a)(2)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(B).

29. Defendants engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

30. Cloud controls C & R Financial, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, C & R Financial's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Cloud is liable for C & R Financial's violations of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

31. The foregoing acts, misrepresentations, omissions, and failures of Cloud, along with other C & R Financial employees and agents, occurred within the scope of their employment with C & R Financial; therefore, C & R Financial 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 (2009).

32. Each misappropriation, issuance of a false account statement, misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

VI. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers, enter:

- a) An order finding that Defendants violated Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C).
- 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 engaging, directly or indirectly, in:
 - i. conduct in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C); and
 - ii. any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (2006) (“commodity interest”), including but not limited to, the following:
 - (aa) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006));
 - (bb) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1)) (“commodity options”), and/or foreign currency

(as described in Section 2(c)(2)(C)(i) of the Act as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008), § 13101, 122 Stat. 1651 (enacted June 18, 2008)) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;

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

(dd) 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;

(ee) soliciting, receiving, or accepting any funds from any person for purposes of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;

(ff) applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009); and

(gg) acting as a principal (as that term is defined in Regulation 3.1(a)), agent, or any other officer or employee of any person registered, exempted from registration or required to be registered with the CFTC,

except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009).

c) An order directing Defendants, as well as any successors and/or agents 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, as amended by the CRA, 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, as amended by the CRA, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) 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 whose funds were received by them as a result of the acts and practices which constituted violations of the Act, as amended by the CRA, as described herein;

f) An order directing each Defendant to pay a civil monetary penalty under the Act, to be assessed by the Court, in amounts of not more than the higher of 1) triple the monetary gain to Defendant for each violation of the Act, as amended by the CRA, or 2) \$130,000 for each violation of the Act occurring from October 23, 2004 through October 22, 2008, and \$140,000 for each violation of the Act occurring on or after October 23, 2008, plus post-judgment interest;

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

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

Respectfully submitted,

/s/ Andrew Ridenour

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