

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

ALAN JAMES WATSON, MICHAEL POTTS  
and CASH FLOW FINANCIAL LLC.

Defendants,

and

THE JEDBURGH GROUP,  
Relief Defendant.

CIVIL ACTION NO.: 11-cv-10949

Judge Lawrence P. Zatkoff  
Magistrate Judge Mona K. Majzoub

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**PLAINTIFF’S MOTION FOR EMERGENCY EX PARTE STATUTORY  
RESTRAINING ORDER, ORDER FOR EXPEDITED DISCOVERY, AND ORDER TO  
SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT BE ENTERED**

Pursuant to Section 6c of the Commodity Exchange Act ("Act"), 7 U.S.C. § 13a-1 (2006), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008), § 13102, 122 Stat. 1651 (effective June 18, 2008), Plaintiff, Commodity Futures Trading Commission ("Commission"), moves this Court for an *ex parte* statutory restraining order freezing the Defendants’ and Certain of Relief Defendant’s assets and prohibiting all persons from destroying relevant documents.

Additionally, the Commission moves for an order authorizing expedited discovery and an order to show cause regarding a preliminary injunction. In support of these motions, the Commission respectfully refers the Court to the Commission's memorandum of law and exhibits filed contemporaneously herewith.

For at least two years, Watson and Potts fraudulently solicited funds and ran a Ponzi-type scheme in connection with the CFF pool, a pool formed to trade commodity futures contracts and securities. The pool accepted approximately \$45 million in pool participant funds. Watson misappropriated a large portion of the funds by diverting them to non-approved investments, using them for his own personal expenses, and paying excessive commissions to himself, Potts and others. Watson distributed false statements to hide his deception and then concocted a series of lies and omissions to delay the discovery of his fraud.

As more fully described below and in the attached exhibits and motion filed contemporaneously herewith, there is substantial evidence that Defendant Alan J. Watson (“Watson”) has engaged, is engaging, or may be about to engage in acts and practices, including fraudulent solicitation, misappropriation, issuance of false statements, and fraud in connection with a commodity pool, which constitute violations of the anti-fraud provisions of Sections 4b(a)(2) and 4o(1) of the Act, 7 U.S.C. §§ 6(b)(a)(2) and 6o(1) (2006), and Section 4b(a)(1) 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 (“CRA”)), § 13102, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. § 6(b)(a)(1). Defendant Michael S. Potts (“Potts”) has engaged, is engaging, or may be about to engage in acts and practices that constitute fraud in connection with a commodity pool in violation of the anti-fraud provisions of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) (2006). Further, Defendant Watson and Potts have engaged, are engaging, or may be about to engage in acts and practices which constitute violations of the registration requirements of Sections 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), and 4k(2) of the act, 7 U.S.C. § 6k(2) (2006), respectively. Defendant Cash Flow Financial LLC (“CFF”) is derivatively liable for Watson’s and Potts’ actions.

**I. Facts**

From at least November 27, 2007 through present (“relevant period”), Watson and Potts fraudulently solicited and accepted at least \$45 million from more than 600 individuals and entities to participate in a commodity pool to trade commodity futures contracts and securities under the guise of CFF.

Throughout the relevant period, in order to induce participation in the commodity pool, Watson, acting as an unregistered commodity pool operator (“CPO”) and Potts as an associated person (“AP”) of a CPO, failed to disclose material facts, including that Watson was misappropriating client funds for personal use, using pool participant funds to pay principal and purported returns to existing pool participants in a manner typical of a Ponzi scheme, to invest in non-approved schemes, and to repay investors in a prior unrelated Ponzi scheme.

Further, Watson and Potts made material misrepresentations, including that the commodity pool was profitable when it was not; and that all funds invested with CFF were being traded by a third-party named Trade LLC, when in fact they were employed in a variety of programs not approved by CFF pool participants.

To conceal Watson’s trading losses, Ponzi scheme, and misappropriations, Watson issued or caused to be issued false monthly statements and/or other reports. These documents falsely reflected returns of at least 10% profit each month from trading commodity futures and/or securities on behalf of the pool using the Trade LLC program, and failed to reflect the substantial losses incurred as a result of Watson’s use of CFF funds in non-Trade LLC programs.

Beginning in July 2009, after Trade LLC had ceased to do business, Watson issued additional false statements and omitted material information regarding the location and status of

pool participant funds in order to conceal his investment losses, Ponzi scheme, and misappropriations.

## **II. Statutory Restraining Order**

The Commission seeks a Statutory Restraining Order, pursuant to Section 6c of the Act, 7 U.S.C. §13a-1, which:

1. Prohibits Defendants their agents, attorneys, partners, servants, representatives, employees, any person(s) acting or purporting to act for or on their behalf, from dissipating, transferring or encumbering their assets, including any assets held outside the United States;

2. Prohibits Relief Defendant agents, attorneys, partners, servants, representatives, employees, any person(s) acting or purporting to act for or on their behalf, from dissipating, transferring or encumbering all assets held in Account No. xxxxxx4493 at Bank of America, N.A., or any other assets held for the benefit of, received from or in any way related to Defendants, including any assets held outside the United States (“Certain Assets of Relief Defendants”);

3. Requires any financial or brokerage institution, business entity, or person that holds, controls or maintains custody of any account or asset of, or at any time since May 2, 2007, has held, controlled, or maintained custody of, any account of the Defendants and Certain Assets of Relief Defendants, to:

(a) prohibit any person from transferring, dissipating, withdrawing or encumbering any such current assets,

(b) deny any person access to the Defendants’ and Relief Defendants’ safe deposit boxes; and

(c) provide the Commission with a statement describing assets held on behalf of the Defendants and Certain Assets of Relief Defendant and allowing representatives of the Commission access to inspect and copy records pertaining to the accounts;

4. Requires the Defendants and Relief Defendants to:

(a) provide the Commission with a full accounting of all funds, documents and assets held by or for Defendants and for Certain Assets of Relief Defendants; and

(b) transfer foreign-held assets and documents of Defendants to the United States;

(c) transfer any Certain Assets of Relief Defendant that are foreign-held and any documents held by or under the direction or control of Relief Defendant, which relate or refer to Defendants, to the United States;

5. Restrains and enjoins Defendants and Relief Defendant from directly or indirectly destroying, mutilating, concealing, altering, or disposing of any of the books, records, documents, correspondence, brochures, manuals, electronically stored data, tape recordings, or other property of Defendants and/or Relief Defendants wherever such materials may be situated, that refer or relate in any manner to any transaction or matter described in the Complaint in this case;

6. Authorizes representatives of the Commission to be allowed immediately to inspect the books, records, and other documents of Defendants, those of Relief Defendant that refer or relate to Defendants, and their agents, wherever the documents may be situated and whether they are in the person of Defendants and/or Relief Defendants, or others;

7. Requires Defendants and Relief Defendants to cooperate fully with the Commission to locate and provide to representatives of the Commission all books, and records of

Defendants and relevant books and records of Relief Defendant, wherever such assets, books, and records may be situated;

8. Appointing a receiver; and

9. Authorizes service of the Statutory Restraining Order by any means, including facsimile transmission, upon any entity or person that may have possession, custody, or control of any documents of Defendants and/Relief Defendant or that may be subject to any provision of the Statutory Restraining Order.

**III. Order Authorizing Expedited Discovery**

The Commission also requests that the Court issue an Order authorizing the Commission to take expedited discovery in order to ascertain the existence and location of assets, clarify the source of funds, and identify all customers.

**IV. Order To Show Cause Why A Preliminary Injunction Should Not Be Entered**

The Commission also requests that the Court issue an Order to Show Cause why a Preliminary Injunction should not be granted to prohibit further violations of the Act and Regulations, maintain the provisions of the Statutory Restraining Order and such other relief as this Court deems necessary and appropriate under the circumstances.

**WHEREFORE**, Plaintiff requests that the Court issue an *ex parte* Statutory Restraining Order and order authorizing expedited discovery in the form proposed by Plaintiff and enter the requested Order to Show Cause setting a hearing on Plaintiff's motion for a preliminary injunction.

Respectfully submitted on this 10th day of March, 2011,

U.S. COMMODITY FUTURES TRADING COMMISSION

/s/ Allison Baker Shealy

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P-30643

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POTTS, )

Defendants, )

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THE JEDBURGH GROUP, )  
Relief Defendant. )

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**PLAINTIFF’S MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF ITS *EX PARTE* MOTION  
FOR STATUTORY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A  
PRELIMINARY INJUNCTION SHOULD NOT BE ENTERED**



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Pursuant to Section 6c of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 13a-1 (2006), as amended, Plaintiff Commodity Futures Trading Commission (the “Commission”) moves this Court for: (1) an *ex parte* SRO to locate and freeze assets of the Defendants and Certain Assets of the Relief Defendant, so as to preserve customer funds; (2) an *ex parte* SRO providing the Commission immediate access to all of Defendants’ books, records or other documents wherever they might be situated; (3) an *ex parte* SRO providing the Commission immediate access to Relief Defendant’s books, records or other documents that relate or refer to any or all of the Defendants, wherever they might be situated; (4) an order authorizing expedited discovery; (5) an order granting the Commission authority and discretion to appoint a Receiver to take possession of the assets and property of Defendants and relevant property of the Relief Defendant; and (6) an order to show cause why Defendants should not be preliminarily enjoined from violating the Act and Regulations.

As more fully described below and in the attached exhibits and motion filed contemporaneously herewith, there is substantial evidence that Defendant Alan J. Watson (“Watson”) has engaged, is engaging, or may be about to engage in acts and practices, including fraudulent solicitation, misappropriation, issuance of false statements, and fraud in connection with a commodity pool, which constitute violations of the anti-fraud provisions of Sections 4b(a)(2) and 4o(1) of the Act, 7 U.S.C. §§ 6(b)(a)(2) and 6o(1) (2006), and Section 4b(a)(1) 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 (“CRA”)), § 13102, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. § 6(b)(a)(1). Defendant Michael S. Potts (“Potts”) has engaged, is engaging, or may be about to engage in acts and practices that constitute fraud in connection with a commodity pool in violation of the anti-fraud provisions of Section 4o(1)(B)

of the Act, 7 U.S.C. § 6o(1)(B) (2006). Further, Defendant Watson and Potts have engaged, are engaging, or may be about to engage in acts and practices which constitute violations of the registration requirements of Sections 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), and 4k(2) of the act, 7 U.S.C. § 6k(2) (2006), respectively. Defendant Cash Flow Financial LLC (“CFF”) is derivatively liable for Watson’s and Potts’ actions.

For at least two years, Watson and Potts fraudulently solicited funds and ran a Ponzi-type scheme in connection with the CFF pool, a pool formed to trade commodity futures contracts and securities. The pool accepted approximately \$45 million in pool participant funds. Watson misappropriated a large portion of the funds by diverting them to non-approved investments, using them for his own personal expenses, and paying excessive commissions to himself, Potts and others. Watson distributed false statements to hide his deception and then concocted a series of lies and omissions to delay the discovery of his fraud.

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

## I. PARTIES

### A. Plaintiff

Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 (2006), and Regulations, 17 C.F.R. §§ 1.1 et seq. It maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

### B. Defendants

**Defendant Cash Flow Financial LLC (“CFF” or the “Club”)** is registered as a Limited Liability Corporation in Michigan and operates out of Clinton Township, Michigan. Ex. 4, CFF-MDCIS-401-000001.0001. Cash Flow Financial LLC was never registered with the Commission as a CPO or in any other capacity. Ex. 1, Declaration of George Malas (“Malas Decl.”) at ¶ 16; Ex. 5, Certificate of Non-Registration from NFA, CFF-NFA-0000001.

**Defendant Alan James Watson, more commonly referred to as A.J. Watson (“Watson”)** is an individual who resides in Clinton Township, Michigan, and controls the day to day operations of CFF. Ex. 6, CFF-SEC-005-0000006.0001 (Watson controls day to day operations of CFF). Watson has never been registered with the Commission as a CPO or in any other capacity. Ex. 1, Malas Decl. at ¶ 16; Ex. 5, Certificate of Non-Registration from NFA, CFF-NFA-0000001.

**Defendant Michael S. Potts** is an individual who resides in Mountville, Pennsylvania. *See generally* Ex. 7, CFF-CharterOne-0002797 (wire transfer confirmation indicating Potts’ address on Spruce Road in Mountville, Pennsylvania). Potts solicited investors for CFF and assisted Watson with the day to day operations of the pool. Ex. 8, E-mail from Watson to Bill Center (Dec. 14, 2007, 4:33 p.m.), TL-SEC-003-0002283.0000002 (Watson describes Potts as his “partner”). Potts has never been registered with the Commission as a CPO, associated person

or in any other capacity. Ex. 1, Malas Decl. at ¶ 16; Ex. 5, Certificate of Non-Registration from NFA, CFF-NFA-0000001.

**C. Relief Defendant**

**Relief Defendant The Jedburgh Group, also known as Jedburgh Group**

**International, Inc. (“Jedburgh”)**, is a Florida corporation. Ex. 1, Malas Decl. at ¶ 82. Its headquarters are in Longwood, Florida. Ex. 9. The Jedburgh Group was retained by Watson and CFF to provide investigative services and assist CFF in locating and recovering CFF pool participant funds invested by Watson in a variety of schemes. Ex. 1, Malas Decl. at ¶ 81. Jedburgh is believed to have been successful in thus far recovering at least \$3 million of pool participant funds, which it is holding in an escrow account. Ex. 1, Malas Decl. at ¶ 86.

**II. FACTS**

From at least November 27, 2007 through present (“relevant period”), Watson and Potts fraudulently solicited and accepted at least \$45 million from more than 600 individuals and entities to participate in a commodity pool to trade commodity futures contracts and securities under the guise of CFF. Ex. 1, Malas Decl. at ¶ 60.

Throughout the relevant period, in order to induce participation in the commodity pool, Watson, acting as an unregistered commodity pool operator (“CPO”) and Potts as an associated person (“AP”) of a CPO, failed to disclose material facts, including that Watson was misappropriating client funds for personal use and using pool participant funds to pay principal and purported returns to existing pool participants in a manner typical of a Ponzi scheme. Further, Watson and Potts made material misrepresentations, including that the commodity pool was profitable when it was not; and that all funds invested with CFF were being traded by a

third-party named Trade LLC, when in fact they were employed in a variety of programs not approved by CFF pool participants.

To conceal Watson's trading losses, Ponzi scheme, and misappropriations, Watson issued or caused to be issued false monthly statements and/or other reports. These documents falsely reflected returns of at least 10% profit each month from trading commodity futures and/or securities on behalf of the pool using the Trade LLC program, and failed to reflect the substantial losses incurred as a result of Watson's use of CFF funds in non-Trade LLC programs.

Beginning in July 2009, after Trade LLC had ceased to do business, Watson issued additional false statements and omitted material information regarding the location and status of pool participant funds in order to conceal his investment losses, Ponzi scheme, and misappropriations. He issued Schedule K-1's to pool participants for use in filing their tax returns that falsely reported profits on investment, and falsely promised that funds would be returned in the near future.

**D. Formation of the Pool**

On or about January 28, 2004, Watson formed Cash Flow Financial as a Michigan limited liability company. Ex. 4, CFF-MDCIS-401-0000001.0001. By at least November 27, 2007, Watson and Potts began soliciting pool participants to participate in an "investment club" operated through CFF for the purpose of trading in commodity futures and securities with Trade LLC. Ex. 10, E-mail from Watson to Bill Center (Nov. 27, 2007, 11:35 a.m.), TL-SEC-003-0002216.0000001 (indicating that Watson had spoken with all but one of his "people" about moving from Safevest to Trade LLC); *see also* Ex. 11, E-mail from Potts to James Oestreich (Dec. 15, 2007, 4:08 p.m.). Between November 27, 2007 and June 30, 2009, CFF had more than 600 pool participants throughout the United States and had received at least \$45 million in funds. Ex. 1, Malas Decl. at ¶¶ 60 and 72.



The CFF Operating Agreement, which Watson and each member signed and which sets forth the agreement between all CFF participants, states that Watson as CEO is granted

the power and authority to open and manage one or more brokerage or investment accounts on behalf of CFF-LLC. Notwithstanding this power and authority, such brokerage or investment accounts will be managed in accordance with an investment strategy proposed by the CEO, and approved by two-thirds majority of the Members (“Investment Strategy”).

Ex. 12, CFF-SEC-004-0000437 at § 3.8. The “Investment Strategy” as agreed to by the members and posted on the CFF website was to pool the participant funds to trade equities and futures on an intraday basis with the aid of a system developed by Trade LLC. Ex. 13, CFF-SEC-004-0000227; Ex.2, Declaration of James Oestreich (“Oestreich Decl.”) at ¶ 18; Ex. 3, Declaration of Bruce Baker (“Baker Decl.”) at ¶ 9.

Although Watson had represented that all pool participant funds would be traded using Trade LLC’s program, *see, e.g.*, Ex. 13, CFF-SEC-004-0000227; Ex. 2, Oestreich Decl. at ¶ 15; Ex. 3, Baker Decl. at ¶¶ 9 and 21, Watson provided only a portion (*i.e.*, less than 20%) of the pooled funds to Trade LLC for the purpose of trading futures and/or securities. Ex. 1, Malas Decl. at ¶ 61.

Contrary to representations made to pool participants, Watson also deposited a portion of pool participants’ funds into accounts held in his own name at Alaron Trading Corporation, Account No. 5250xxxx (the “Alaron Account”), Ex. 14, TL-Alaron-122-000001, and at TradeStation Securities, Account No. 2107xxxx (the “TradeStation Account”). Ex. 15, CFF-TradeStation-102-000002.0001. Alaron and TradeStation are Futures Commission Merchants (“FCMs”) registered with the CFTC. Ex. 1, Malas Decl. at ¶¶ 36 and 48. In these personal accounts, Watson traded commodity futures, specifically E-mini S&P 500 futures, with pool participant funds. Ex. 15, CFF-TradeStation-102-000002.0001 (Watson TradeStation account);

Ex. 16, E-mail from Watson to Bill Center (Oct. 15, 2008, 4:13 p.m.), TL-SEC-003-0000565.0001 (Watson implies that funds in his Alaron account are CFF funds); Ex. 14, TL-Alaron-122-000004 (example of Watson trading E-mini S&P 500 futures in Alaron account).

In addition, Watson deposited a portion of pool participant funds into an account in CFF's name with TD Ameritrade, Account No. 788-90xxxx (the "TD Ameritrade Account"), for the purpose of trading securities. Ex. 17, CFF-SEC-005-0000011.0001.

Throughout the entire period when Proposed Defendants accepted funds from pool participants, Proposed Defendants did not register in any capacity with the Commission. Ex. 1, Malas Decl. at ¶ 16; Ex. 5, Certificate of Non-Registration from NFA.

#### **E. Fraudulent Solicitations**

Watson and Potts directly solicited pool participants through monthly conference calls and/or webinars occurring on the first Wednesday of each month beginning at least by May 2008 and at an event held in Perrysburg, Ohio on September 5-6, 2008. Ex. 18, CFF-SEC-004-0001113; Ex. 2, Oestreich Decl. at ¶¶ 13-14 and 19; Ex. 3, Baker Decl. at ¶ 12. Watson and Potts continued soliciting pool participants thereafter, including at an open house hosted at Trade LLC's headquarters in Palm Beach Gardens, Florida, on March 28, 2009 (Ex. 19, TL-SEC-003-0000796.0000001; Ex. 2, Oestreich Decl. at ¶¶ 20-23) – more than 2 weeks after Watson stopped sending funds to Trade LLC. Ex. 20, Answer Filed by CFF at p. 11-13 in *Trade LLC v. New Life Club*, No. 09-CV-81215 (S.D. Fla. Filed Sept. 11, 2009) (indicating that CFF only sent funds to Trade LLC during the period Jan. 31, 2008 through March 12, 2009).

Watson also directly solicited pool participants via promotional materials posted on the CFF Club website. *See, e.g.*, Ex. 21, CFF-SEC-004-0000121 – CFF-SEC-004-0000123. Potts provided materials for the website. Ex. 2, Oestreich Decl. at ¶ 22; Ex. 22, CFF-SEC-004-

0001921 (referencing video reflecting futures trading with narration by Philip Milton and Chuck Reeves).

In addition to direct solicitation, Watson and Potts indirectly solicited pool participants through a series of “Executive Club Members” or “ECMs,” who acted under Watson’s and Potts’ direction in identifying and soliciting new participants and were compensated in a manner similar to a multi-level marketing program. Ex. 2, Oestreich Decl. at ¶ 28; Ex. 23, CFF-Bajek-0000002; Ex. 11, E-mail from Potts to James Oestreich (Dec. 15, 2007, 4:08 p.m.). Watson and Potts represented to the other ECMs that all CFF deposits were being successfully traded by Trade LLC, which was not true. Ex. 2, Oestreich Dec. at ¶ 30. They advised potential ECMs that they would be compensated based on a proportion of the profits earned by any deposits they generated and arranged for payments to ECMs based on the purported profitability of investments they solicited even though no actual profits were generated. Ex. 2, Oestreich Decl. at ¶ 28; Ex. 24, TL-SEC-003-0001402; Ex. 11, E-mail from Potts to James Oestreich (Dec. 15, 2007, 4:08 p.m.).

The CFF Operating Agreement stated that CFF pool participant funds would be traded in a program selected by the CEO and approved by a vote of two-thirds of the members. Ex. 12, CFF-SEC-004-0000435 – 0446. The members approved pooling the pool’s funds for trading in commodity futures and securities with Trade LLC. Ex. 2, Oestreich Decl. at ¶ 18; Ex. 3, Baker Decl. at ¶ 12; Ex. 13, CFF-SEC-004-0000227. In all of the materials, e-mails, meetings, and webinars that Watson and Potts used to solicit pool participants, they represented that all CFF pooled funds would be traded using the Trade LLC programs. *See, e.g.*, Ex. 13, CFF-SEC-004-0000227 (CFF website indicating that funds would be traded with Trade LLC); . Ex. 2, Oestreich Decl. at ¶ 18; Ex. 2, Baker Decl. at ¶¶ 12 and 21.

All of the funds solicited were to be deposited with Trade LLC and employed in one of two programs:

1. The “Loan Program” allowed pool participants to provide a short term “loan” (ranging from 3 to 9 months), or participation, to Trade LLC in return for a fixed interest rate of 2% to 4.5% each month. (Ex. 2, Oestreich Decl. at ¶ 6; Ex. 13, CFF-SEC-004-0000227 – 0230). Funds deposited in the “Loan Program” were to be provided by CFF to Trade LLC to use for trading futures and/or securities until CFF could accumulate enough funds to begin actively trading in its own account. Ex. 2, Oestreich Decl. at ¶ 8. Watson represented to many of the pool participants that participation in the “Loan Program” was necessary in order to comply with federal statutes regarding investment clubs. Ex. 25, TL-SEC-003-0001340.
2. The “Trading Program” purportedly provided pool participants with higher rates of return (*i.e.*, 8% to 10% monthly). Ex. 2, Oestreich Decl. at ¶ 7. Watson represented that funds deposited in the “Trade Program” would be placed in a CFF account at Alaron, and Trade LLC would be given authority to execute trades in futures and/or securities in the account. Ex. 13, CFF-SEC-004-0000228. Trade LLC would not be able to withdraw funds from the account. Ex. 13, CFF-SEC-004-0000229. This fact was emphasized as a way that pool participants could be assured that their money was actually being traded and could not be stolen by Trade LLC – a fact that was material to many CFF members who had

previously been solicited by Watson and lost substantial sums of money by trading in a fraudulent Ponzi-like scheme known as Safevest LLC.<sup>1</sup> *See also* Ex. 26, TL-SEC-003-0001313 (indicating that original CFF website had a tab for Safevest clients, but the information was removed in order to get a “clean break”); Ex. 27, CFF-SEC-007-0000033.0007 through .0009 (examples of transfers of CFF funds to former Safevest investors as return of principal).

Many pool participants made an initial deposit in the “Loan Program” and, when the return of principal and profit became due and payable by Trade LLC, they agreed to roll the principal over into the “Trading Program” with Trade LLC. Ex. 2, Oestreich Decl. at ¶ 11; Ex. 3, Baker Decl. at ¶ 8; Ex. 13, CFF-SEC-004-0000227.

At a minimum, Watson and/or Potts made the following false or misleading representations in his solicitations:

- Watson falsely claimed to be in compliance with CFTC registration requirements, when he was not. *Compare* Ex. 12, CFF-SEC-004-0000437, *with* Ex. 5, CFF-NFA-0000001).
- Watson and Potts falsely claimed that all of the money deposited with CFF would be employed in either the Loan Program or Trading Program with Trade LLC, when it was not. *Compare* Ex. 2, Oestreich Decl. at ¶¶ 15 and 18, *and* Ex. 3, Baker Decl. at ¶¶ 12 and 21, *with* Ex. 1, Malas Decl. at ¶ 61.

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<sup>1</sup> The Commission previously brought an action in connection with Safevest LLC and obtained an order of restitution in excess of \$18 million. *See CFTC v. Safevest LLC*, No. 08-cv-00474 (C.D. Cal. Order of Final Judgment Entered July 13, 2009).

- Watson falsely claimed that the funds employed in the Trading Program would not be provided directly to Trade LLC, but instead would be put in a brokerage account at Alaron, and Trade LLC would be given access and authority to execute trades in the account. Ex. 13, CFF-SEC-004-0000228. These assertions were false because: (i) to the extent any money was traded using the Trade LLC program, it was given directly to Trade LLC, (ii) no account was ever opened at Alaron in CFF's name, while an account was opened in Watson's name using pool participant funds (Ex. 14, TL-Alaron-122-0000001), and (iii) Trade LLC was never given legal authority to access and execute trades in Watson's personal Alaron account. Ex. 1, Malas Decl. at ¶ 46.
- Watson falsely claimed that he was allowing Trade LLC to trade futures using his own money to test their program (Ex. 13, CFF-SEC-004-0000227), when in fact he used CFF pool participant funds to trade futures in his personal account (Ex. 28, TL-Alaron-122-0000015) and never legally gave Trade LLC discretionary trading authority over that account (Ex. 29, CFF-Alaron-101-0000001). Ex. 1, Malas Decl. at ¶ 46.
- Watson falsely claimed that CFF was earning profits of at least 10% or more each month before fees on all pool participant profits, when it was not. Compare Ex. 2, Oestreich Decl. at ¶ 7 *and* Ex. 3, Baker Decl. at ¶ 14, *with* Ex. 1, Malas Decl. at ¶¶ 77-78.
- Watson falsely claimed in late May 2009 that he was going to stop accepting new pool participants effective June 1, 2009, because (i) he was

in the process of hiring an accountant and needed a clean break to allow them to take over the books, (ii) he required additional time to find bigger and better “bonus type deals,” and (iii) he wanted to prove once and for all that CFF was not a Ponzi scheme and could survive without additional infusions of cash. Ex. 30, CFF-SEC-004-0000607. In fact, Watson failed to provide an accounting to CFF members and had started realizing the losses incurred through his various schemes and needed an immediate influx of cash before investors learned of his deception and stopped the money flow. Ex. 1, Malas Decl. at ¶ 79.

- During the July 2009 monthly meeting, which Potts hosted alone while Watson was on vacation, Potts represented that CFF’s trading was going well and that there were no problems with Trade LLC (Ex. 2, Oestreich Decl. at ¶ 25), even though CFF had had difficulty in reaching Trade LLC for months and had ceased sending new investments to Trade LLC.

In addition to making affirmative false statements, Watson and/or Potts omitted material facts from their clients, to whom he owed a fiduciary duty, including but not limited to the following:

- Watson and Potts failed to disclose that Watson had invested CFF pool participant funds in a variety of unauthorized schemes as early as July 2008. *Compare* Ex. 2, Oestreich Decl. at ¶ 15, 18 and 32, *and* Ex. 3, Baker Decl. at ¶ 21, *with* Ex. 1, Malas Decl. at ¶ 79, *and* Ex. 33, Complaint in *Watson and Cash Flow Financial LLC v. Blue Diamond Excavation, Inc.*, No. 8:10-cv-00459 (C.D. Cal.).

- Watson and Potts failed to disclose that none of the funds deposited into the CFF pool on or after March 12, 2009, were traded by Trade LLC and instead were used in unauthorized schemes. Ex. 20, Answer Filed by CFF at p. 11-13 in *Trade LLC v. New Life Club*, No. 09-CV-81215 (S.D. Fla. Filed Sept. 11, 2009) (indicating that CFF only sent funds to Trade LLC during the period Jan. 31, 2008 through March 12, 2009; *see also* Ex. 3, Baker Decl. at ¶¶ 26-27. Notably, during a March 28, 2009 open house to solicit new pool participants and additional funds from existing ones (Ex. 19, TL-SEC-003-0000796.0000001 – .0000002), Watson and Potts failed to disclose that Watson had stopped sending funds to Trade LLC two weeks earlier (Ex. 20, Answer Filed by CFF at p. 11-13 in *Trade LLC v. New Life Club*, No. 09-CV-81215 (S.D. Fla. Filed Sept. 11, 2009)), or that the day before the Open House Watson had filed a lawsuit on behalf of CFF in an attempt to recover funds invested in an unauthorized scheme. Ex. 31, CFF-SEC-004-0000834.
- Watson and Potts failed to disclose that the CFF pool was losing money, both through Watson’s unauthorized investments and through Trade LLC. *Compare* Ex. 2, Oestreich Decl. at ¶ 30, *and* Ex. 3, Baker Decl. at ¶ 14, *with* Ex. 1, Malas Decl. at ¶ 79.
- Watson and Potts failed to disclose the fact that Watson was using pool participants’ funds for his own personal use, including excessive salaries beyond the agreed upon 20% commission on pool participants’ purported profits. *Compare* Ex. 2, Oestreich Decl. at ¶¶ 15 and 18, *and* Ex. 3, Baker



Decl. at ¶ 21, *with* Ex. 1, Malas Decl. at ¶¶ 64-67, *and* Ex. 32, CFF-SEC-007-0000068.0002.

- Watson and Potts failed to disclose that Watson was using pool participants' funds to pay principal and purported profit returns to existing pool participants in a manner typical of a Ponzi scheme. Ex. 2, Oestreich Decl. at ¶ 30; Ex. 3, Baker Decl. at ¶ 21.

#### **F. Misappropriation**

Watson misappropriated pool participant funds in a variety of ways. First, Watson falsely represented to existing and prospective pool participants that CFF would be paid a commission of 20% of the profits from the CFF pool's trading. Ex. 12, CFF-SEC-004-0000436 at § 3.4. Specifically, CFF's operating expenses and compensation for Watson, Potts and other individuals paid for soliciting new investors ("Executive Club Members" or "ECMs"), if any, was to be paid out of that 20% commission. Ex. 12, CFF-SEC-004-0000436 at § 3.4; Ex. 24, TL-SEC-003-0001402.0000003. Watson, however, paid fees and commissions in excess of the 20% agreed upon to himself, Potts, and Executive Club Members, without respect to the profitability of CFF or the purported profitability of CFF pool funds using the Trade LLC program. Ex. 1, Malas Decl. at ¶¶ 68-69 and 77-79. In addition to paying himself excessive commissions, Watson paid his own personal expenses directly from the CFF bank account, including payments on the mortgage for his home, daily purchases of food and gas, regular ATM cash withdrawals, and purchases at places such as Smokers Express, Toys R Us, Kmart, and General RV Center. Ex. 1, Malas Decl. at ¶¶ 64-67. In total, Watson has misappropriated at least \$1.1 million for his own personal expenses, in addition to wiring funds directly to accounts held personally by or for the benefit of Watson. Ex. 1, Malas Decl. at ¶ 59.

Potts also received excessive commissions. Potts received at least \$165,000 from CFF pool participant funds. Ex. 1, Malas Decl. at ¶ 69.

Second, Watson misappropriated pool participant funds when he used them to return other pool participants deposits and reimburse other pool participants purported profits when little or no actual profits had been generated.

Third, Watson misappropriated pool participant funds when he returned funds that had been invested and lost in a prior Ponzi scheme involving Safevest. Ex. 1, Malas Decl. at ¶ 70. Watson distributed at least \$325,000 in funds as “return of principal” invested in Safevest. Ex. 1, Malas Decl. at ¶ 70.

Fourth, no futures accounts were ever funded and traded in CFF’s name. Ex. 1, Malas Decl. at ¶ 18. Instead, Watson misappropriated at least \$1,422,961 of CFF pool participant funds when he deposited them in the Alaron and TradeStation accounts in his own name and for his own benefit. Ex. 1, Malas Decl. at ¶ 34. Watson made trading decisions and actively traded futures in those accounts himself, as well as giving trading authority to unauthorized persons including an individual named Stanley Williams, who was not approved by CFF pool participants as required by the CFF Operating Agreement. Ex. 1, Malas Decl. at ¶ 52.

Fifth, Watson further misappropriated pool participant funds by investing participant funds in a variety of unauthorized schemes unrelated to Trade LLC including, but not limited to, the following:

- In July 2008, Watson invested \$1 million of CFF pool participant funds in a California based scheme to invest in U.S. Treasury instruments with Blue Diamond Excavation, Olathe Mining Company and Sundial Investment Group

LLC. *See* Ex. 33, Complaint in *Watson and Cash Flow Financial LLC v. Blue Diamond Excavation, Inc.*, No. 8:10-cv-00459 (C.D. Cal.).

- In September 2008, Watson invested \$650,000 of CFF pool participant funds in an Arizona based money leasing scheme operated by Charles Bruce Ferguson. *See* Ex. 34, Indictment in *Arizona v. Ferguson*, No. 64 SGJ (Ariz. Sup. Ct., Maricopa County).
- In October 2008, Watson invested \$1 million of CFF pool participant funds in a California based money leasing scheme involving Soldado Corporation. *See* Ex. 35, Complaint in *Watson and Cash Flow Financial LLC v. Soldado Corp.*, No. 10-CV-1394 (N.D. Cal.).
- Beginning in December 2008, Watson invested \$4,850,000 of CFF pool participant funds in a money leasing scheme with Darlene Bishop and Paradize Funding Network in Texas. *See* Ex. 36, Complaint in *Cash Flow Financial LLC v. Bishop*, No. 09-CV-00029 (W.D. Tex.).
- By at least June 2009, Watson invested approximately \$3 million of CFF pool participant funds with a group of individuals and entities including Jason Meyer, M5 Enterprises LLC, Royal Sovereign Group, and 3 Hooligans Investment Properties in connection with a money leasing program for the purpose of ultimately investing in U.S. Treasury instruments. *See* Ex. 37, Complaint in *Cash Flow Financial LLC v. Meyer*, No. 2:09-CV-05002 (E.D.N.Y.).

Watson invested CFF pool participant funds in additional, unauthorized schemes that are not yet the subject of litigation including, but not limited to transferring \$1 million to an entity called Acquiesce Investments that is the subject of an investigation by the Ontario Securities

Commission in Canada (Ex. 1, Malas Decl. at ¶ 71; *see also id.* at ¶ 33 (indicating Watson issued a Power of Attorney delegating trading authority to Acquiesce Investments for the CFF TD Ameritrade account), and transferring over \$100,000 to an entity called InfrAegis, which was the subject of a Cease and Desist Order by the Alabama Securities Division and the subject of an action for fraud brought by the Illinois State Securities Division. Ex. 1, Malas Decl. at ¶ 71. Watson did not begin disclosing the existence of these other investments until late 2009, even though he initiated litigation on behalf of CFF to recover the funds as early as March 27, 2009. *See Ex. 36, CFF v. Bishop*, No. 09-CV-00029 (W.D. Tex. filed March 27, 2009). Watson has yet to disclose the full scope of his misappropriation.

#### **G. Fraudulent Account Statements**

From at least November 27, 2007, when Watson began pooling CFF participant funds, until July 23, 2009, Watson issued monthly account statements to participants. Ex. 1, Malas Decl. at ¶ 74. Those statements falsely indicated that the pool participants were profiting at a rate of 10% per month as a result of participating in the Trade LLC Trading Program. Ex. 1, Malas Decl. at ¶ 74. The statements reflected Promissory Note or Loan Program participation and “Trade” Program participation, but failed to disclose the other investments made by Watson with CFF pool participant funds. Ex. 1, Malas Decl. at ¶¶ 74-75.

Watson knew that the account statements were untrue, or was reckless with regard to their truthfulness, because he was aware that (1) only a small portion of pool participant funds was actually traded using the Trade LLC program and (2) the pool was incurring significant losses as a result of Watson’s investments in schemes unrelated to Trade LLC and was not profitable.<sup>2</sup>

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<sup>2</sup> Potts also assisted Watson with the preparation of the 2008 Schedule K-1’s for pool participants, which falsely showed profits on deposits with CFF when in fact no profits were generated.

Watson directed persons affiliated with Trade LLC to refrain from providing any statements directly to CFF pool participants and from providing information regarding the total amount invested with Trade LLC by CFF in order to hide the unauthorized investments and substantial losses incurred by Watson on behalf of the pool. Ex. 38, E-mail from Watson to Bill Center (Dec. 11, 2008, 8:20 a.m.), TL-SEC-003-0000684 (“I do not want Darren or Phil to disclose the total number of dollars in the general fund. This is VERY important!!!”).

**H. The Cover Up – Additional False Statements Defrauding Pool Participants**

Throughout July 2009, many CFF members requested withdrawals of their deposits and/or profits. Ex. 39, CFF-SEC-004-0000453 - 0455. Watson deflected those requests, claiming that he was unable to access CFF accounts because he was traveling with his family in an RV and driving cross-country. Ex. 39, CFF-SEC-004-0000453 - 0455.

During this same time period, however, Watson charged his family’s hotel stays at a Disney resort to the main CFF bank account (Ex. 40, CFF-CharterOne-0000198), paid for RV expenses from the CFF bank account (Ex. 41, CFF-SEC-007-0000008.0003), and executed wire transactions transferring more than \$1.2 million out of the main CFF bank account to various sources. Ex. 40, CFF-CharterOne-0000196 - 0201.

While Watson was away on vacation, Potts hosted the monthly meeting for pool participants and represented that everything was going fine and CFF’s trading, which was being conducted by Trade LLC, was successful. Ex. 2, Oestreich Decl. at ¶ 25.

However, many pool participants became concerned when they were unable to reach Watson and/or obtain a withdrawal of funds. Ex. 39, CFF-SEC-004-0000453 at 8/1/2009 Entry. Rumors also began to spread regarding problems with Trade LLC. Ex. 39, CFF-SEC-004-0000453. On July 18, 2009, Watson, via the CFF Club website, advised CFF pool participants that

CFF is as sound and as strong as it has ever been. We have no issues or problems and anything going on with other groups or entities is not related to, nor affecting us. We are all good and it's business as usual. If that ever changes, I'll certainly let everyone know. When you hear things from me or read them here, then you'll know that they are true, accurate, and correct.

Ex. 39, CFF-SEC-004-0000454. In fact, by July 18, 2009, Watson had lost and/or misappropriated millions of dollars of CFF pool participant funds. As described more fully above, as early as March 27, 2009, Watson began filing lawsuits on behalf of CFF in an attempt to recover CFF pool participant funds diverted by Watson to various unauthorized schemes. *See, e.g.,* Ex. 36, *CFF v. Bishop*, No. 09-CV-00029 (W.D. Tex. filed March 27, 2009); *see also* Ex. 35, *Watson and Cash Flow Financial LLC v. Soldado Corp.*, No. 10-CV-1394 (N.D. Cal. filed Apr. 1, 2010).

Watson caused to be issued 2008 and 2009 Schedule K-1's to CFF pool participants reflecting profits on investment for 2008 and through at least the end of May 2009, when he knew that CFF pool participants had not in fact profited, but instead had suffered substantial losses. Ex. 1, Malas Decl. at ¶¶ 77-79. Potts assisted Watson with the preparation of the false 2008 Schedule K-1's. Ex. 2, Oestreich Decl. at ¶ 31. Throughout April and May 2010, Watson promised CFF pool participants a full accounting of pooled funds and repeatedly promised that funds would be returned in the near future. Ex. 2, Oestreich Decl. at ¶ 33.

### **I. Involvement of Relief Defendant**

The Jedburgh Group is a private investigation firm. Ex. 1, Malas Decl. at ¶ 81. Jedburgh was hired by Watson and CFF to recover CFF pool participant funds transferred to entities other than Trade LLC. Ex. 1, Malas Decl. at ¶ 81. Watson transferred at least \$3.4 million to the Jedburgh Group's escrow account, in addition to fees for services rendered. Ex. 1, Malas Decl. at ¶¶ 84-86. The Jedburgh Group escrow account funds were illegally solicited and misappropriated by Watson.

### **III. JURISDICTION AND VENUE**

The Act establishes a comprehensive system for regulating the purchase and sale of futures contracts and options. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2001),<sup>3</sup> empowers the Court to issue a restraining order freezing assets and prohibiting any person from destroying records or denying Commission officials access thereto, and appointing a temporary receiver to administer such

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<sup>3</sup> Section 6c(a), 7 U.S.C. § 13a-1, provides:

Whenever it shall appear to the CFTC that any . . . person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this Act . . . the CFTC may bring an action in the proper district court of the United States . . . to enjoin such act or practice, or to enforce compliance with this Act . . . and said courts shall have jurisdiction to entertain such actions: *Provided*, That no restraining order (other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the CFTC to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property, and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate) or injunction for violation of the provisions of this Act shall be issued ex parte by said Court. Emphasis added.

restraining order whenever it shall appear that a person has engaged or is engaging in an act or practice that violates the Act or Commission regulations.

Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), in that Defendants are found in, inhabit, or transact business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur, within this District, among other places.

#### **IV. ARGUMENT**

##### **A. Injunctive Relief is Necessary and Appropriate**

An *ex parte* Statutory Restraining Order (“SRO”) and preliminary injunction is necessary and appropriate to locate and freeze assets, obtain documents immediately from Defendants and Relief Defendant and prevent Defendants from further violating the Act pending a trial in this matter. Accordingly, pursuant to Section 6c(a) of the Act, the Commission seeks: (1) an *ex parte* SRO to locate and freeze assets of the Defendants and Relief Defendant, so as to preserve customer funds; (2) an *ex parte* SRO providing the Commission immediate access to all of Defendants’ books, records or other documents wherever they might be situated; (3) an *ex parte* SRO providing the Commission immediate access to Relief Defendant’s books, records or other documents that relate or refer to any or all of the Defendants, wherever they might be situated; (4) an order authorizing expedited discovery; (5) an order granting the Commission authority and discretion to appoint a Receiver to take possession of the assets and property of Defendants and relevant property of the Relief Defendant; and (6) an order to show cause why Defendants should not be preliminarily enjoined from violating the Act and Regulations.

Section 6c of the Act provides United States district courts with broad discretion to fashion appropriate relief and take such action as is necessary in the futures realm to prevent



injury to the public, afford redress to aggrieved parties, and deter violations of the Act. *CFTC v. Co Petro Mktg. Group, Inc.*, 680 F.2d 573, 583 (9th Cir. 1982) (holding that Section 6c of the Act provides the court with authority to issue a broad variety of orders). More specifically, Section 6c(a) authorizes district courts to enjoin any acts or practices in violation of the Act or Regulations. Pursuant to this authority, the Court, after providing Defendants an opportunity to respond, should enter a preliminary injunction prohibiting any future violations of the Act and Regulations by Defendants.

Unlike private actions for equitable relief, a Commission action for injunctive relief is a creature of statute designed to prevent injury to the public and to deter future illegal conduct. "The function of a court in deciding whether to issue an injunction authorized by a statute of the United States to enforce and implement Congressional policy is a different one from that of the court when weighing claims of two private litigants." *United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 174-75 (9th Cir. 1987). Restrictive concepts ordinarily associated with private litigation, such as proof of irreparable injury or inadequacy of other remedies, are inapplicable. *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978) (holding that, in an action for a statutory injunction, "the agency need not prove irreparable injury or the inadequacy of other remedies as required in private injunctive suits. A prima facie case of illegality is sufficient."); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979) ("Actions for statutory injunctions need not meet the requirements for an injunction imposed by traditional equity jurisprudence. Once a violation is demonstrated, the moving party need show only that there is some reasonable likelihood of future violations."); *CFTC v. Intern. Berkshire Group Holdings, Inc.*, 2006 WL 3716390 at \*10 (S.D.Fla. 2006) (citing *Muller*, 570 F.2d at 1300); *CFTC v. Crown Colony Commodity Options, Ltd.*, 434 F. Supp. 911, 919 (S.D.N.Y. 1977). Upon a showing that the Act

has been violated, irreparable injury may be presumed. *Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984), *cert. denied sub nom., Windrush Partners, Ltd. v. Metro Fair Housing Svcs.*, 469 U.S. 882 (1984) (finding presumption of irreparable injury in statutory enforcement action); *SEC v. R.J. Allen & Assoc., Inc.*, 386 F. Supp. 866, 875 (S.D. Fla. 1974) (no showing of irreparable injury required where statute requires only a proper showing of need for injunctive relief).

Accordingly, the Commission is entitled to a preliminary injunction against Defendants that prohibits future violations of the Act and Regulations upon a showing that a violation has occurred and violations likely are to continue unless enjoined. *SEC v. Unique Financial Concepts, Inc.*, 196 F.3d 1195, 1199 n.2 (11th Cir. 1999)(holding that SEC entitled to preliminary injunction when it establishes a prima facie violation of securities laws and a reasonable likelihood that violations will be repeated); *Muller*, 570 F.2d at 1300; *Hunt*, 591 F.2d at 1220; *CFTC v. British Am. Commodity Options Corp.*, 560 F. 2d 135, 141 (2d Cir. 1977) (holding that injunctive relief is justified whenever it appears that a person has engaged, is engaging or is about to engage in any act or practice constituting a violation of the Act or Regulations). Significantly, "the commission of past illegal conduct is highly suggestive of the likelihood of future violations." *Crown Colony Commodity Options, Ltd.*, 434 F. Supp. at 919; see also *CFTC v. American Bd. of Trade, Inc.*, 803 F.2d 1242 (2d Cir. 1986); *CFTC v. Heritage Capital Advisory Servs., Ltd.*, No. 82 C 5955 [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,627 at 26,385 (N.D. Ill. Nov. 8, 1982). Here, there is ample evidence establishing Defendant violated and may continue to violate the anti-fraud provisions of Sections 4b(a) and 4o(1), and the registration requirements of 4m(1) and 4k(2) of the Act.

The Commission is also entitled to this relief temporarily on an *ex parte* basis.

Recognizing that notice to Defendants may “result in the destruction of books and records and the dissipation of customer funds,” Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a)(see footnote 2 for the text to this section of the Act), authorizes courts to issue the requested relief *ex parte*, including freezing assets and prohibiting any person from destroying records or denying Commission officials access thereto, in order “to prevent possible removal or destruction of potential evidence or other impediments to legitimate law enforcement activities and to prohibit movement or disposal of funds, assets, and other property which may be subject to lawful claims of customers.” H.R. Rep. No. 97-565, at 53-54, 93 (1982), *reprinted in* 1982 U.S.C.C.A.N. 3871, 3902-03, 3942.

The Commission is requesting that the Court freeze the Defendants’ and certain of the Relief Defendant’s assets to preserve any funds available for restitution to the customers harmed as a result of the Defendants’ conduct and to appoint a receiver to collect, manage and eventually distribute the assets. Such relief will “ensure that the court maintains jurisdiction over [the defendants’] assets, in order to allow the court the opportunity to determine later whether disgorgement of illegally acquired profits is appropriate.” *CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669, 679 (S.D.N.Y. 1979). The district court has inherent power as a court of equity to order such temporary, ancillary relief in order to preserve the status quo so that an ultimate decision for the Commission could be effective. *Levi Strauss & Co. v. Sunrise International Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995) (finding that a request for equitable relief invokes the district court's inherent equitable powers to order preliminary relief, including an asset freeze, in order to assure the availability of permanent relief); *FTC v. United States Oil and Gas Corp.*, 748 F.2d 1431, 1433-34 (11th Cir. 1984) (district court may exercise its full

range of equitable powers, including a preliminary asset freeze, to ensure that permanent equitable relief will be possible); *Muller*, 570 F.2d at 1300.

In addition, an order prohibiting the destruction of records and granting the Commission immediate access to inspect and copy records will allow the Commission to identify the Defendants' and Relief Defendant's assets, the identity of other victims of the Defendants' scheme, and identify the extent of Defendants' conduct. Such relief will "preserve the status quo while an investigation is conducted to clarify the sources of various funds." *Morgan, Harris & Scott*, 484 F. Supp. at 678. This relief is appropriate in this case, given that the Defendants are not registered with the Commission and therefore are under no regulatory obligation to maintain records that may be material to determining the full extent of the defendants' violative conduct.

**B. The Evidence Justifies Entry of a Statutory Restraining Order**

The record filed in support of the Commission's motion—most importantly the evidence that Defendants made material misrepresentations and omissions about the futures pool's earnings, the pool's trading activity, and misappropriation of the pool participants' funds — establishes that Watson violated anti-fraud Sections 4b(a)(2) and 4o(1) of the Act and that Potts violated Section 4o(1)(B) of the Act. The record also demonstrates that Watson violated Section 4m(1) by operating as an unregistered CPO and Potts violated Section 4k(2) by failing to register as an associated person of a CPO.

**1. Futures Fraud: Violation of Section 4b(a) of the Act**

It is a violation of the Act for any person, in or in connection with any order to make, or the making of, any on-exchange futures contract, for or on behalf of any other person: (i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof; or (iii) 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, or in regard to any act or agency performed with respect to such order or contract for such person. Section 4b(a)(2)(i), (ii), and (iii), 7 U.S.C. § 6b(a)(2)(i) - (iii) (2006) (with respect to conduct before June 18, 2008); and Section 4b(a)(1)(A) - (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A), (B), and (C) (with respect to conduct on or after June 18, 2008).<sup>4</sup>

Through misrepresentations and omissions of material fact, misappropriation, and issuance of false account statements, Proposed Defendants violated Section 4b(a)(2)(i), (ii), and (iii) of the Act and Section 4b(a)(1)(A), (B) and (C) of the Act, as amended by the CRA.

**a. Watson Committed Fraud by Material Misrepresentations and Omissions in Violation of Section 4b of the Act**

Misrepresentations and omissions of material facts intentionally made in connection with futures transactions constitute fraud under Section 4b(a)(2)(i) and (iii) of the Act for violations prior to June 18, 2008 and Section 4b(a)(1)(A) and (C) of the Act, as amended, for violations on or after June 18, 2008. *See* note 5 *supra* regarding amendment of the Act. Solicitation fraud under 4b(a) of the Act may be established by proving “three elements: (1) the making of a misrepresentation, misleading statement, or a deceptive omission; (2) scienter; and (3) materiality.” *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002).

The evidence gathered from the CFF website, court pleadings, account statements, and e-mails to CFF pool participants and persons affiliated with Trade LLC reveal a fabric of lies and

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<sup>4</sup> The June 2008 legislation reauthorizing the CFTC revised Section 4b of the Act, among other things. *See* Section 1302 of the CRA. The objective of the revision was to “clarify that the CEA gives the Commission the authority to bring fraud actions in off-exchange ‘principal-to-principal’ futures transactions.” H.R. REP. NO. 2419, at 981 (2008) (Conf. Rep.). While the CRA did not change the Act’s prohibition on misconduct such as that at issue here, it reorganized Section 4b so that similar misconduct occurring on or after June 18, 2008 would be in violation of Section 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C).

deception built on more lies, half-truths and omissions. Watson's affirmative false statements include, but are not limited to representations that all of the money invested with CFF would be traded with Trade LLC (Ex. 13, CFF-SEC-004-0000227), when it was not; representations that Watson was allowing Trade LLC to trade futures using his own money to test their program (Ex. 13, CFF-SEC-004-0000227), when in fact Watson used CFF pool participant funds to trade futures in an account in his own name and never legally gave Trade LLC discretionary trading authority over that account (Ex. 28, TL-Alaron-122-0000015; Ex. 29, CFF-Alaron-101-0000001); and representing that CFF was earning profits of at least 10% or more from Trade LLC trading each month before fees, when it was not.

During the relevant period, Watson acted as a CPO and consequently had a fiduciary duty to disclose *all* material information to pool participants. *See CFTC v. Savage*, 611 F.2d 270, 285 (9th Cir. 1980) (purpose of § 60(1) is to “implement[ ] the fiduciary capacity that characterizes the advisor's [and CPO's] relationship to his clients.”); *see also United States v. Dial*, 757 F.2d 163, 168 (7th Cir. 1985) (fiduciaries are required to disclose all material information to whom they owe such a duty; finding a commodity broker, who is a fiduciary to his customer, is under an obligation to disclose all material information); *Weinberg v. NFA*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,087 at 32,219 (CFTC June 6, 1986) (CPO “held fiduciary relationships in soliciting and advising commodity clients and in handling the money of commodity pool participants”). The fiduciary nature of the relationship sets the bar of duty and loyalty that pool operators owe to their clients at a very high level. One acts in a “fiduciary capacity” to another person “as to whom he stands in a relation *implying and necessitating great confidence and trust* on the one part and *a high degree of good faith* on the other part . . .” *Aronow v. First National Monetary Corp.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep.

(CCH) ¶ 22,282 at 29,429 n.4 (CFTC July 13, 1984), *citing* Black's Law Dictionary, 5th ed., 1979, at 564 (emphasis added). Federal courts have concluded that Congress intended to hold fiduciaries to "a higher standard of care" under the CEA. *First National Monetary Corp. v. Weinberger and CFTC*, 819 F.2d 1334, 1342 (6th Cir. 1987) (clients of registered CPO "were subjected to misleading material information from an entity that owed them a duty of complete and accurate disclosure"). Watson's most egregious omissions include his failure to disclose that he had only traded a small portion of the CFF pooled funds with Trade LLC, while the remainder had been lost in unprofitable money-leasing schemes, which were not approved by pool participants, or were used for Watson's personal benefit. Ex. 32, CFF-SEC-007-0000068.0002.

Watson acted with scienter in making false statements and omitting material information from his communications with pool participants. The scienter requirement to establish a fraud claim entails "highly unreasonable omissions or misrepresentations . . . that present a danger of misleading [customers] which is either known to the defendant[s] or so obvious that defendant must have been aware of it." *R.J. Fitzgerald*, 310 F.3d at 1328 (quoting *Ziembra v. Cascade International, Inc.*, 256 F.3d 1194, 1202 (11th Cir. 2001)). Establishing scienter for the purpose of proving fraud requires proof that a defendant committed the alleged wrongful acts "intentionally or with reckless disregard for his duties under the Act." *Hammond v. Smith Barney, Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,657 (CFTC Mar. 1, 1990) (scienter is a necessary element to establish Section 4b futures fraud). The extent of Watson's deception as well as contradictory communications by Watson and e-mails in which Watson directs persons affiliated with Trade LLC to refrain from disclosing the total amount of CFF's deposits with Trade LLC, *see, e.g.*, Ex. 38, E-mail from Watson to Bill Center (Dec. 11, 2008, 8:20 a.m.), TL-SEC-003-0000684 ("I do not want Darren

or Phil to disclose the total number of dollars in the general fund. This is VERY important!!!”), provide clear and direct evidence of Watson’s knowledge of guilt, intent to defraud pool participants and hide his deception.

Watson’s misstatements and omissions were material. A statement or omitted fact is material if a reasonable investor would consider the matter important in making an investment decision. *R.J. Fitzgerald*, 310 F.3d at 1328-1329 (internal citations omitted); *In re Citadel Trading Co.*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,082 (CFTC May 23, 1986); *R&W Tech. Serv., Ltd. v. CFTC*, 205 F.3d 165 (5th Cir. 2000) (“[B]ecause extravagant claims understate the inherent risks in commodities trading, a reasonable investor would find [such] fraudulent misrepresentations to be material”); *In re JCC, Inc.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,080 at 41,576 n.23 (CFTC May 12, 1994) (“When the language of a solicitation obscures the important distinction between the possibility of substantial profit and the probability that it will be earned, it is likely to be materially misleading to customers”).

The misstatements, misrepresentations and omissions regarding the location and methods used to invest pool participant funds, returns on investment and Watson’s misappropriation of funds were all material because a reasonable investor would have found such information important in determining whether to deposit funds in the CFF commodity pool. Pool participants and prospective pool participants would have found it important to learn that Watson had only invested a small portion of pool participant funds with Trade LLC and instead had invested the majority of funds in non-approved money-leasing schemes, which were losing money, while continuing to report a profit. Similarly, pool participants would have found it important to know that what little funds were traded using the Trade LLC program were provided directly to Trade



LLC and not put in an account for which Trade LLC had limited trading authority; some of the CFF investors had been solicited by Watson and/or Potts and became victims in a prior Ponzi scheme and relied on this separation between the trader and account funds as a balance check and means to prevent fraud.

Consequently, Watson should have disclosed this material information. Failure to provide this information is a material and fraudulent omission in violation of Section 4b(a)(2)(i) and (iii) of the Act and Section 4b(a)(1)(A) and (C) of the Act, as amended by the CRA.

**b. Watson Committed Fraud by Misappropriation in Violation of Section 4b(a) of the Act.**

Misappropriation of pool participant funds violates Section 4b(a) of the Act. *CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (holding that defendant violated Section 4b when he misappropriated customer funds by soliciting funds for trading and then trading only a small percentage of those funds, while disbursing the rest of the funds to investors, herself and her family); *CFTC v. Weinberg*, 287 F. Supp. 2d 1100, 1106 (C.D. Cal. 2003) (commodity trading advisor violated Section 4b(a)(2)(i) and (iii) of the Act by misappropriating investor funds); *In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,315 (CFTC July 19, 1999), *aff'd in relevant part sub nom. Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000) (respondents violated Section 4b by surreptitiously retaining money in their own bank accounts that should have been traded on behalf of participants); *CFTC v. Noble Wealth Data Info. Servs.*, 90 F. Supp. 2d 676 (D. Md. 2000), *aff'g in part and rev'g on other grounds sub nom. CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002), *cert. denied* 537 U.S. 950 (defendants violated Section 4b(a)(2)(i) and (iii) by diverting investor funds for operating expenses and personal use).

Although misappropriation frequently takes the form of diverting customer funds for one's own benefit, *see, e.g., In re Lincolnwood Commodities, Inc.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,986 at 28,255 (CFTC Jan. 31, 1984) (holding that defendant violated Section 4b when he “diverted to his own use funds entrusted to him by or on behalf of his customers”), it may also include trading only a small portion of collected funds in the manner represented. *See, e.g., Skorupskas*, 605 F. Supp. at 932 (holding that defendant misappropriated customer funds entrusted to her by soliciting investor funds for trading and then trading only a small percentage of those funds, while disbursing the rest of the funds to other investors, herself, and her family). Misappropriation is an egregious form of futures fraud and constitutes “willful and blatant” violations of the Act. *Id.*

Watson used pool participant funds to pay personal expenses (Ex. 1, Malas Decl. at ¶¶ 63-67), to make payments to other participants, to invest in non-approved schemes (Ex. 1, Malas Decl. at ¶ 71), and to invest in accounts in Watson's own name and for his own benefit. Ex. 1, Malas Decl. at ¶ 34. Accordingly, Watson misappropriated pool participant funds in violation of Sections 4b(a)(2)(i) and (iii) of the Act (with respect to conduct before June 18, 2008) and Section 4b(a)(1)(A) and (C) of the Act, as amended by the CRA (with respect to conduct on or after June 18, 2008).

**c. Watson Defrauded Pool Participants By Manufacturing and Distributing False Reports and/or Statements in Violation of Section 4b(a)(2)(ii) of the Act.**

Watson violated Section 4b(a)(2)(ii) of the Act and Section 4b(a)(1)(B) of the Act, as amended by the CRA, by knowingly providing false reports or statements to the participants. Watson prepared and delivered to participants false reports and statements that purported to show the participants' deposit into a CFF account that was profitably traded by Trade LLC each month. Ex. 1, Malas Decl. at ¶¶ 74-75. Watson knew these statements to be false because he

knew that only a small portion of the pool participants' funds had been invested in Trade LLC and that large portions of pool participant funds invested elsewhere were not profitable. Ex. 1, Malas Decl. at ¶¶ 61 and 76.

Delivering, or causing the delivery of, false account statements to customers relating to commodity futures trading constitutes a violation of Section 4b(a)(2)(ii) of the Act and Section 4b(a)(2)(B) of the Act, as amended by the CRA. *See, e.g., Skorupskas*, 605 F. Supp. at 932-33 (finding that defendant violated Section 4b(a) of the Act by issuing false monthly statements to customers); *CFTC v. Sorokin*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,855 at 27,585 (S.D.N.Y. Aug. 25, 1983) (determining that distribution of false account statements which falsely report trading activity or equity is a violation of Sections 4a and 4b of the Act); *Weinberg*, 287 F. Supp. 2d at 1107 (false and misleading statements as to the amount and location of customers' money violated Section 4b(a) of the Act); *Noble Wealth*, 90 F. Supp. 2d at 685-87 (defendants violated Section 4b(a) of the Act through the delivery of false account statements).

## **2. Watson and Potts Committed Fraud in Connection with a Commodity Pool in Violation of Section 4g of the Act.**

Section 4g(1)(A) and (B) of the Act, in relevant part, makes it unlawful for a CPO, or an AP of a CPO, by using the mails or any means or instrumentality of interstate commerce, to directly or indirectly: (i) employ any device, scheme or artifice to defraud any existing or prospective pool participant, or (ii) engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any pool participant. 7 U.S.C. § 6g(1)(A) and (B) (2006). This section of the Act applies to all CPOs and APs of CPOs whether registered, required to be registered, or exempt from registration. *Skorupskas*, 605 F. Supp. at 932-933. Although scienter must be proved to establish violations of Sections 4b and 4g(1)(A) of the Act, it is not necessary

to prove scienter to establish a violation of Section 4o(1)(B) of the Act. *See Messer v. E.F. Hutton & Co.*, 847 F.2d 673, 678-79 (11th Cir. 1988).

By operating a business in the nature of an investment trust, syndicate or similar form of enterprise and by soliciting, accepting or receiving funds and pooling those funds in bank accounts for the purpose of trading commodity futures or options, Watson was acting as a CPO. 7 U.S.C. § 1(a)(5) (2006). *See, e.g., CFTC v. Equity Fin. Group LLC*, 572 F.3d 150, 152 (3d Cir. 2009) (holding that defendant, which was a feeder fund that did not itself trade futures, was a CPO because it engaged in the business of providing “a vehicle for a collective or group investment” and solicited for the purpose of trading commodity futures; actual futures trading is not required); *Slusser*, ¶ 27,701 at 48,310 (respondent acted as a CPO when it accepted investment funds from individual investors who deposited funds in respondent’s bank account for the purpose of trading in a commodity pool). The same fraudulent conduct that violates Section 4b(a) of the Act - the fraudulent solicitations, false statements, and misappropriation set forth above - also violates Section 4o(1)(A) & (B) of the Act. *Skorupskas*, 605 F. Supp. at 932-33 (finding that the defendants’ violation of Section 4b of the Act also violated Section 4o). Accordingly, Watson violated Sections 4o(1)(A) and (B) of the Act.

Potts, as an AP of a CPO, also violated Section 4o(1)(B). His actions operated as a fraud or deceit upon pool participants for instance when he falsely represented to pool participants that all of the funds deposited with CFF were being traded by Trade LLC, which was not true; when represented that CFF was profitable, which was not true; when he supervised and advised ECMs to represent the same in soliciting new deposits for the pool; when he assisted in the preparation of Schedule K-1 tax documents that falsely reflected profits by pool participants. As noted *supra*, courts hold that while the language of Section 4o(1)(A) requires a defendant to act with

scienter, Section 6o(1)(B) does not. *See, e.g., CTS v. CFTC*, 233 F.3d 981, 993 (7th Cir. 2000).

The fact that Potts' actions *effected* a fraud, is sufficient and a violation of the Act. *CFTC v.*

*Perkins*, 2009 WL 806576, at \* 7 (D.N.J. 2009).

**3. Watson Failed to Register as a CPO in Violation of Section 4m(1) of the Act.**

Section 4m(1) of the Act 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 CPO business. As discussed *supra*, Watson acted as a CPO. Watson used the mails and other means of interstate commerce in connection with his CPO business in that he distributed, or caused to be distributed false documents and other information to pool participants via mail, e-mail, and/or over the Internet. In addition, Watson moved funds to and between trading and bank accounts in his own name and in the name of CFF using interstate wires. Ex. 1, Malas Decl. at ¶¶ 34 and 59. Because Watson was not registered as a CPO, he violated Section 4m(1) of the Act.

**4. Potts failed to Register as an AP of a CPO in Violation of Section 4k(2) of the Act.**

Section 4k(2) of the Act, in relevant part, provides that it shall be unlawful for any person to be associated with a CPO as an employee or agent or consultant in a capacity that involves the solicitation of funds unless registered as an AP of such CPO. 7 U.S.C. § 6k(2) (2006). Potts solicited new pool participants and additional deposits from existing pool participants directly, through events held in Ohio and Florida, and indirectly through other Executive Club Members. Potts acted as an AP of a CPO by soliciting funds from pool participants, but failed to register as an AP or associated person as required by Section 4k(2) of the Act.

**5. CFF is Derivatively Liable for Watson's and Potts' Actions Pursuant to Section 2(a)(1)(B) of the Act.**

Strict liability is imposed on principals for the actions of their agents under Section 2(a)(1)(B), 7 U.S.C. § 2(a)(1)(B). *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988). Watson was acting as an agent of CFF when he violated the Act. Watson was identified as the Chief Executive Officer of CFF on its website and in the Operating Agreement. Ex. 12, CFF-SEC-004-0000436, at § 3.3. As CEO, Watson solicited investors on behalf of CFF, entered contracts binding CFF, made investment decisions on behalf of CFF, managed CFF's finances, and generally performed the day to day operations of the organization. *See generally Id.* Potts also acted as an agent of CFF. Potts solicited investors on behalf of CFF and assisted with the day to day operations of the organization. Therefore, CFF, as his principal, is liable for his conduct in violation of Sections 4b(a)(2), and 4o(1)(A) & (B) of the Act, 7 U.S.C. §§ 6(b)(a)(2), 6o(1)(A) & (B) (2006), and Section 4b(a)(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2008), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2009).

#### **6. The Relief Defendant Is Not Entitled to Ill-Gotten Gains.**

A district court may freeze the assets of Relief Defendant. *CFTC v. Kimberlynn Creek Ranch*, 276 F.3d 187, 193 (4th Cir. 2002) (“[W]hen a plaintiff seeks equitable relief..., a district court possesses ‘inherent equitable powers to order preliminary relief, including an asset freeze, in order to assure the availability of permanent relief.’”) (quoting *Levi Strauss & Co. v. Sunrise Int’l Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995); *SEC v. Heden*, 51 F. Supp. 2d 296, 299 (S.D.N.Y. 1999).

A nominal or relief defendant is a person or entity that has received ill-gotten funds, and does not have a legitimate claim to those funds. *SEC v. Cavanagh*, 155 F.3d 129, 136 (2nd Cir. 1998). A relief or nominal defendant is joined to aid in full relief without asserting

separate subject matter jurisdiction over the person or entity. *Kimberlynn Creek Ranch*, 276 F.3d at 191; *SEC v. Cherif*, 933 F.2d 403, 414 (7th Cir. 1991) (providing that a nominal defendant is joined as a means of facilitating collection, no subject matter jurisdiction needs to be asserted as the relief defendant has no ownership interest, but merely possession of the funds that are at the center of the controversy.); *SEC v. Colello*, 139 F.3d 674, 677 (9th Cir. 1998) (holding that, in order to effect full relief in recovering assets that are the fruit of the underlying fraud, SEC could name a non-party depository as a relief defendant.)

The Jedburgh Group was hired by Watson and CFF to recover CFF pool participant funds. Ex. 1, Malas Decl. at ¶ 81. Jedburgh has been paid, at least in part, for its legitimate services and has purportedly been successful in recovering approximately \$3.4 million of the funds illegally solicited and misappropriated by Watson. Ex. 1, Malas Decl. at ¶¶ 84-86. Although Jedburgh may be entitled to payment for services rendered, it has no legal right to the pool participants' funds it has recovered and lacks the authority and means to equitably distribute the funds to its rightful owners – the CFF pool participants. These funds should be disgorged.

## **V. CONCLUSION AND RELIEF REQUESTED**

For the foregoing reasons, the Commission respectfully requests that the Court issue the Commission's proposed order, among other things: (1) freezing the Defendants' and Certain of Relief Defendant's assets, (2) prohibiting the Defendants and Relief Defendant from destroying books and records and allowing Plaintiffs immediate access to such books and records, (3) authorizing expedited discovery, (4) granting Plaintiff the authority and discretion to appoint a Receiver to take possession of the assets and property of Defendants and (5) ordering Defendants

to show cause why they should not be preliminarily enjoined from further violations of the Act and/or Regulations.

Respectfully submitted on this 10th day of March, 2011,

U.S. COMMODITY FUTURES TRADING COMMISSION

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