

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**COMMODITY FUTURES TRADING  
COMMISSION,**

**Plaintiff,**

**v.**

**DONALD C. O'NEILL, an individual,  
FRECOM TECHNOLOGY  
CORPORATION,  
MOMENTUM TRADING  
GROUP, LTD.,  
NDT FUND, LLC,  
ORCA FUNDS, INC.,  
ORCA CAPITAL FUND A, LLC,  
ORCA MOHAVE A, LLC,  
ORCA HOPI A, LLC, and  
SHELALEY HOLDINGS, LLC,**

**Defendants, and**

**DANIELLE O'NEILL,  
NANCY IAGROSSI, and  
ROBERT O'NEILL,**

**Relief Defendants.**

**Case No. 02-61307-civ-gold**

**COMPLAINT FOR STATUTORY  
RESTRAINING ORDER, INJUNCTIVE  
AND OTHER EQUITABLE RELIEF  
AND FOR CIVIL PENALTIES UNDER  
THE COMMODITY EXCHANGE ACT,  
AS AMENDED, 7 U.S.C. §§ 1-25**

**I. SUMMARY**

1. Starting in January 2001 and continuing through at least July 2002, Donald O'Neill, the individual Defendant ("O'Neill"), operating through a series of companies he owned, controlled or managed, solicited investments totaling least \$13 million from at least 29 customers for the ostensible purpose of trading primarily foreign currency futures contracts. Through those companies, some of whose operations he referred to as a "hedge fund" or an "alternative asset management" firm, O'Neill misappropriated a minimum of \$10.6 million of those investor funds and used the money for business,

personal and luxury expenditures. When soliciting the funds initially, and in lulling certain investors who inquired about the value of their accounts, Defendants also made materially false statements about their experience and track record, sent fraudulent account statements, and made other blatant misrepresentations and falsifications.

2. The individual Defendant is Donald Craig O’Neill (“O’Neill”). The corporate Defendants comprise eight interrelated companies: Frecom Technology Corporation (“Frecom Technology”), a Delaware corporation, Shelaley Holdings, LLC (“Shelaley”), a Nevada corporation, and several Florida corporations: Momentum Trading Group, Inc. (“Momentum”), NDT Fund, LLC (“NDT”), Orca Funds, Inc. (“Orca”), Orca Capital Fund A, LLC of Florida (“Orca A”), Orca Mohave A, LLC (“Orca Mohave”) and Orca Hopi A, LLC (Orca Hopi). These entities together constitute a common enterprise (“Orca Common Enterprise”). O’Neill has or had control over all the entities of the Orca Common Enterprise. O’Neill and the Orca Common Enterprise are collectively “the Defendants.”

3. Investor funds collected by the Orca Common Enterprise, or assets purchased with those funds, have been transferred to relief Defendants Danielle O’Neill, O’Neill’s wife; Nancy Iagrossi, O’Neill’s mother-in-law; and Robert O’Neill, O’Neill’s brother.

4. Defendants’ scheme involves soliciting customer funds for the purpose of trading primarily foreign currency futures contracts. To date, Defendants have traded some portion of investors’ funds, sustaining an overall net trading loss of around \$487,000. They also misappropriated a minimum of \$10.6 million of customer funds.

5. O'Neill spent at least \$5.75 million of the misappropriated funds to finance an extravagant lifestyle that included a nearly-\$3 million home for himself and two other houses for his wife and mother-in-law in an exclusive Florida coastal community; several high-end automobiles; more than \$900,000 in airplane charters; and junkets to Las Vegas over a period of 45 days (accompanied by business colleagues and a high-priced call girl) that resulted in gambling losses of over \$800,000. O'Neill also wrote sizeable checks to cash, to himself and to the family members named as Relief Defendants, above, among others.

6. To maintain customer confidence, O'Neill sent phony account statements that completely misrepresented the customers' account balances and the trading activity in their accounts, including at least one account statement that was entirely fabricated using the "trading" output of a dummy account.

7. Furthermore, O'Neill told some customers that he traded their funds at two brokerage firms, when those firms in fact were only corporate accommodation addresses and never existed as going concerns. O'Neill even fabricated correspondence from one of the fictitious firms to himself that he later provided to customers.

8. O'Neill and the Orca Common Enterprise solicited customers using private placement memoranda and websites replete with material, flat-out falsehoods. O'Neill claimed to have hundreds of millions of dollars under management, although he never did. He also claimed to have substantial trading experience with a financial firm that did not exist. He further made material false statements about the Defendants' trading track record.

9. The Defendants have engaged, are engaging or are about to engage in acts and practices which violate Sections 4b(a)(2)(C)(i)-(iii) of the Commodity Exchange Act

(the “Act”), 7 U.S.C. §§ 6(b)(a)(2)(C)(i)-(iii) (2001), and Commission Regulation 1.1, 17 C.F.R. §1.1 (2002).

10. The Commission brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), to enjoin the unlawful acts and practices of Defendants and to compel their compliance with the Act. 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 set forth below. The Commission also seeks civil monetary penalties, a freeze of Defendants’ and relief Defendants’ assets, restitution to customers, disgorgement of Defendants’ and relief Defendants’ ill-gotten gains, identification and repatriation of assets located outside the United States, and such other relief as this Court may deem necessary or appropriate.

## **II. JURISDICTION AND VENUE**

11. Section 2(c)(2)(B) of the Act, as amended by the Commodity Futures Modernization Act of 2000 (“CFMA”), Appendix E, to Public L. No. 106-554, 114 Stat. 2763 (2001), provides that the Commission has jurisdiction over certain retail foreign currency futures. 7 U.S.C. §2(c)(2)(B) (2001). This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), 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.

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because the 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.

### III. THE PARTIES

#### A. Plaintiff

13. **Commodity Futures Trading Commission** (the “Commission”) is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1, et seq., and the regulations promulgated thereunder, 17 C.F.R. §§ 1, et seq. (2001).

#### B. Individual Defendant

14. **Donald Craig O’Neill** (“O’Neill”) is a Florida resident. O’Neill was the mastermind and central figure in the Orca Common Enterprise, and the principal beneficiary of the fraud alleged herein. He has never been registered with the Commission in any capacity.

#### C. Corporate Defendants

15. **Frecom Technology Corporation**, which sometimes did business as “Frecom Traders Group” or “Frecom Currency Traders Group, Ltd.” (“Frecom”), is a Delaware corporation that designates in its certificate of incorporation its principal place of business as One East Broward Boulevard, Suite 700, Fort Lauderdale, Florida 33301. Donald C. O’Neill is listed as President, Director, registered agent, and secretary in the corporate records filed with the State of Florida on May 23, 2001. Frecom has never been registered with the Commission in any capacity.

16. **Momentum Trading Group, Ltd.** (“Momentum”) is a Nevada corporation whose certificate of incorporation reflects its principal place of business as

500 East Broward, Suite 1620, Fort Lauderdale, Florida 33394. Momentum's incorporator and president is O'Neill. Momentum has never been registered with the Commission in any capacity. Momentum began soliciting customers in or around May 2001. On September 14, 2001, Momentum dissolved. Momentum has never been registered with the Commission in any capacity.

17. **NDT Fund, LLC** ("NDT") is a Florida company whose articles of organization identify its principal place of business as 14001 NW 22<sup>nd</sup> Court, Pembroke Pines, Florida 33028. NDT was formed by O'Neill on May 3, 2001. Its certificate of incorporation lists O'Neill and his brother, Robert O'Neill, as Managers. NDT solicited and accepted customer money since at least May 2001. NDT has never been registered with the Commission in any capacity.

18. **Orca Funds, Inc.** ("Orca Funds") was, until at least July 2002, located at 500 E. Broward Boulevard, Suite 1620, Fort Lauderdale, Florida 33394. Orca was incorporated in Florida on September 14, 2001, the same day that Momentum dissolved. Donald O'Neill was listed as an initial director. Orca purported at times to be a "hedge fund," and to manage three constituent funds, as follows:

- a. **Orca Capital Fund A, LLC** ("Orca A") was incorporated in Florida on September 24, 2001.
- b. **Orca Mohave A, LLC** ("Orca Mohave") was incorporated in Florida on October 31, 2001.
- c. **Orca Hopi, LLC** ("Orca Hopi") was incorporated in Florida on January 11, 2002.

19. **Shelaley Holdings, LLC** (“Shelaley”) is a Nevada company whose articles of incorporation list Danielle O’Neill as sole managing member. Shelaley gave Donald O’Neill trading power of attorney over customer funds that it managed at Global Futures and Forex, Ltd. Shelaley has never been registered with the Commission in any capacity.

**D. Relief Defendants**

20. **Danielle O’Neill** is O’Neill’s wife, a Florida resident and the owner of one of the properties O’Neill purchased at least partly with stolen funds. Ms. O’Neill also received cash payments, and may also have been the recipient of jewelry, furniture and other personal and household items whose purchases appear on the Orca Common Enterprise financial records.

21. **Nancy Iagrossi** is Danielle O’Neill’s mother and a Florida resident. In March 2002, she reportedly purchased from O’Neill for token consideration a property that she uses as her primary residence.

22. **Robert O’Neill** is Donald O’Neill’s brother, and an Illinois resident.

**IV. FACTUAL BACKGROUND**

**A. The Orca Common Enterprise**

23. The Defendants have engaged and may still be engaging in a common scheme orchestrated by O’Neill to solicit investments from customers for the purpose of foreign currency trading, and then steal their money. O’Neill is the primary salesman, trader and manager of the scheme. The latest company to be folded into the Orca Common Enterprise is Shelaley Holdings, which is currently active and has solicited \$1.1 million dollars since its formation in April 2002.

24. The Orca Common Enterprise consists of the entity Defendants, each of which was controlled, operated and/or managed by O'Neill. Orca Funds, an entity in the common enterprise was marketed at times as a "hedge fund." All common enterprise entities had either bank or brokerage accounts in their names, and many had both. O'Neill routinely moved money between and among accounts held in the name of various Orca Common Enterprise entities without regard to corporate niceties. Each entity operated out of wherever O'Neill was doing business at the time. Where multiple entities overlapped chronologically, they all operated out of a common office. Other than at formation, the companies in the Orca Common Enterprise held no directors' meetings and maintained no minutes of the approval of corporate actions. No person other than O'Neill had the ultimate say over the operation of any entity in the Orca Common Enterprise.

**B. Fraudulent Solicitation of Investors**

25. Defendants, claiming that one or more entities in the Orca Common Enterprise operated as "hedge funds," have solicited customers using a number of techniques, including advertisements on the website [www.thestreet.com](http://www.thestreet.com); relationships with persons employed by entities in the Orca Common Enterprise; investor conferences at which O'Neill gave presentations touting his management and trading services; private placement offering memoranda; and websites of several Orca Common Enterprise entities.

26. Some of the solicitation material, including the private placement offering memoranda and the websites, were rife with fraudulent representations, ranging from huge discrepancies between the amounts Defendants claimed to have under management



and the amounts they actually controlled, to flat-out lies about O'Neill's trading track record, professional experience and academic background.

27. Specifically, on the [www.orcafunds.com](http://www.orcafunds.com) website, in private placement memoranda and on account statements provided to customers, O'Neill claimed that he or entities in the Orca Common Enterprise managed either \$200 or \$300 million in investor funds. In private placement memoranda soliciting investments in Orca Common Enterprise entities, O'Neill claimed that he was a highly successful currency trader, such that he "consistently outperformed the leading market indices over the past three years." Also in those memoranda, O'Neill claimed to be a highly experienced trader, with a "wealth of international business and global finance expertise" with "several years of trading experience in the hedge/currency environment, ... work[ing] with respected trading houses such as Nakamura Security Holdings in Munich ... ." Finally, O'Neill claimed to be a graduate of the University of Nebraska, to have lettered on Nebraska's football team, and to have garnered a graduate degree in business organizations from Clemson University,.

28. All those statements, which were designed to gain investor confidence by bolstering O'Neill's apparent experience, training and ability to handle the funds of his prospective and existing investors, were completely false. O'Neill had no such trading track record. In fact, he sustained almost a half-million dollar net loss in the limited trading he did for customers. Further, O'Neill had no such business experience. Nakamura was a virtual business address in Munich that O'Neill himself created with the assistance of an overseas business services company. It never operated as a going concern. Finally, O'Neill had no such education. He attended the University of Nebraska for one year, and neither received a

degree nor a letter in any sport. Clemson University does not even offer the degree O'Neill claimed to have received, and states that O'Neill was never a student there.

29. The Defendants collected at least \$13 million from at least 29 customers during the period January 1, 2001 through July 2002.

30. Once the Defendants collected customer money, they commingled the funds with other customer funds in various bank accounts at First Union National Bank in Florida, in brokerage accounts at Global Futures and Forex Trading, Inc. in Michigan, and in at least three other commodity futures accounts and one other securities brokerage account. The money flowed in large quantities, and frequently, between and among the different financial accounts, usually winding up far from where it was initially supposed to go.

**C. Defendants Sustained Net Losses Trading Customer Funds**

31. Trading only a minority of the funds invested with them, and generally only for short time periods at that, Defendants nevertheless transferred substantial investor funds into and out of foreign currency futures trading firms such as Hotspot FX, Inc. of New Jersey, Global Futures and Forex, Ltd. of Michigan ("GFT"), Refco Capital Group Ltd., LLC of New York, and Forex Capital Markets, LLC. All of those firms are registered with the Commission as futures commission merchants ("FCMs"). For a brief period, Defendants also used customer funds to trade securities at Blackwood Securities, a day-trading securities firm no longer in existence, which cleared through Penson Financial, a registered securities broker-dealer located in Texas. Most of those funds, however, were either parked at those firms briefly before being transferred out again to non-trading accounts, or were traded for only brief periods.

32. Defendants lost approximately \$372,000 trading foreign currency futures contracts.

33. Defendants also lost approximately \$115,000 trading securities at Blackwood Securities through Penson Financial.

34. In total, O'Neill and the Orca Common Enterprise sustained trading losses totaling approximately \$487,000.

**D. Defendants Provided Customers with False and Fabricated Account Statements and with Fictitious Correspondence and Insurance Policies**

35. After investing funds with O'Neill through one or more of the various entities of the Orca Common Enterprise, several customers discovered they were not getting timely account statements that described the status and value of their accounts. Customers reported that getting account statements required numerous telephone calls to O'Neill. If he sent the statements at all, O'Neill generally sent false statements. O'Neill even provided at least one customer with a trading statement that O'Neill had phoned up from a computer run of "trades" in a dummy or "demo" account that did not involve the trading of real funds.

36. O'Neill told certain customers that he was trading with or transferring their funds to a brokerage firm in Germany, Nakamura Securities ("Nakamura"). In fact, no such firm exists in Germany. Nakamura existed only as a "virtual company" that O'Neill established with a corporate hosting company in Munich, as a website that O'Neill registered but never activated, and as e-mail addresses O'Neill established with Microsoft's free e-mail service, Hotmail.

37. O'Neill also provided certain customers with copies of e-mails and letters purportedly sent by Nakamura staff to O'Neill, discussing certain funds transfers and investments. However, O'Neill actually created and sent to himself the purported

correspondence from Nakamura, and then provided it to customers to exonerate himself from blame for, and to obfuscate queries about, delays in transferring and returning customer funds and responding to customer inquiries.

38. O'Neill also provided a phony "insurance policy" to the Native American tribal investors, purporting to insure their investments against fraud, among other things. The policy was ostensibly issued by or through Nakamura.

39. O'Neill also told at least one customer that his funds were being transferred to Alexis Capital Group, purportedly an Australian financial services company. In fact, Alexis Capital Group is not registered with the Australian authorities, but is instead a purported "shelf company" offered through an Internet corporate hosting company to businesses in need of a corporate shell. The hosting company is located in the Pacific island nation of Vanatu. O'Neill never transferred any funds to Alexis Capital Group, if it even exists.

**E. Defendants Misappropriated At Least \$10.6 Million in Customer Funds**

40. O'Neill misappropriated at least \$10.6 million of customer funds. Among the customers whose investments were stolen to feed O'Neill's wastrel lifestyle were family members and friends of his Orca business colleagues, and two tribes of Native Americans.

41. The Native Americans were particularly hard-hit by the fraud O'Neill perpetrated with the Orca Common Enterprise. The Hopi Tribal Housing Authority, an agency of the Hopi tribe located in New Mexico, and the Fort Mojave tribe located in Arizona, separately invested a total of nearly \$10 million with Orca through its purported constituent funds, Orca Mohave and Orca Hopi, between October 2001 and January 2002.

42. O'Neill subsequently sent fictitious account statements to the trading advisor for those tribes, showing that the investments were profitable.

43. In the meantime -- although he was, in fact, trading a minority of the invested funds and eventually returned some of the funds to the tribes -- O'Neill misappropriated most of the money and converted it to other purposes, principally for his own use and benefit.

44. Representative of the fate of funds provided by smaller investors are the following two examples:

a. In January 2002, one customer invested \$50,000 with Orca through its purported constituent fund, Orca Capital A. No portion of his funds was ever used for trading or investment purposes; instead, O'Neill converted it all, spending it on payroll, office and personal expenditures, and to provide payments to certain customers; and

b. In June 2002, a customer invested \$100,000 through Orca Capital Fund A, and O'Neill converted all of those funds to non-investment, non-trading uses. Nearly \$60,000 was sent to the Native American tribes, and another \$25,000 disappeared into payroll, office and O'Neill's personal expenditures.

45. Overall, of the minimum of \$13 million collected by the Orca Common Enterprise, it appears that O'Neill and his entities sustained aggregate net trading losses of at least \$487,000, and refunded approximately \$1.9 million to customers. O'Neill therefore misappropriated at least \$10.6 million.

46. O'Neill used the misappropriated funds for various purposes, including payments for the following personal expenditures, among many others:

- a. Three trips to Las Vegas between January and March 2002, during which O'Neill lost nearly \$800,000 gambling;
- b. A down payment of approximately \$1 million and subsequent monthly mortgage payments on the \$3 million house he purchased in the exclusive Lighthouse Point neighborhood of Broward County, Florida;
- c. At least \$900,000 in private jet charters;
- d. Frequent cash gifts of \$5,000, \$10,000 and \$20,000 to Relief Defendants Danielle O'Neill, Nancy Iagrossi, Robert O'Neill, friends and others;
- e. personal goods and services, some of which he gave to or shared with Relief Defendant Danielle O'Neill, including clothing, vacations, expensive cars, a JetSki, and watches; and
- f. online wine auctions, online gambling enterprises, call girls and a mistress.

**F. Controlling Person**

47. O'Neill is a director, officer and/or manager of every company in the Orca Common Enterprise. He signed checks, directed that checks be signed, authorized wire transfers, signed correspondence, dealt with customers, ordered computer trading interfaces from forex futures commission merchants, hired and fired staff, solicited customers, opened, closed and traded forex accounts and directed the expenditure of the investors' proceeds.

**VIOLATIONS OF THE  
COMMODITY EXCHANGE ACT AND REGULATIONS**

48. Section 2(c)(2)(B)(i)-(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)-(ii) (2001), provides that the CFTC shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a contract of sale of a commodity for future delivery, so long as the

contract is “offered to, or entered into with, a person that is not an eligible contract participant” unless the counterparty, or the person offering to be the counterparty, is a regulated person or entity, as defined therein.

49. Section 1a(12)(A) of the Act, 7 U.S.C. § 1a(12)(A) (2001), defines eligible contract participants using a number of criteria. For example, Section 1a(12)(A)(xi) identifies an eligible contract participant as an individual who has total assets in excess of: a) \$10 million; or b) \$5 million and who enters the transaction to manage the risk associated with the asset he owns or liability incurred, or reasonably likely to be owned or incurred by the individual. Many of the foreign currency futures investments Defendants accepted, including various transactions described in this Complaint, were offered to or entered into with persons who were not eligible contract participants under this subsection and others.

50. O'Neill and the various entities of the Orca Common Enterprise acted either as the counterparties to their customers' transactions or as fraudulent intermediaries between customers and registered futures commission merchants. No Defendant is or was a proper counterparty for retail foreign currency transactions, or acts or acted as a legal intermediary. Therefore the CFTC has jurisdiction over the transactions in retail foreign currency alleged in this Complaint.

## COUNT I

### **VIOLATIONS OF SECTION 4b(a)(2)(C)(i)-(iii) OF THE ACT: Fraud And Deceit By Means of Misappropriation And Material Misrepresentations, and By Providing False Statements To Investors**

51. Paragraphs 1 through 50 are re-alleged and incorporated herein.

52. Beginning in at least January 2001 and continuing through at least July 2002, and possibly longer, by the conduct outlined above, through the use of the mails and other means and instrumentalities of interstate commerce, Defendants violated Section 4b(a) of the Act, 7 U.S.C. § 6b(a)(2001), in that they have, directly or indirectly, in or in connection with an order to make, or the making of, a contract of sale of a commodity for future delivery (i) cheated or defrauded or attempted to cheat or defraud other persons; (ii) willfully made or caused to be made to other persons false reports or statements relating to futures transactions, or willfully entered or caused to be entered for other persons false reports thereof; or (iii) willfully deceived or attempted to deceive other persons.

53. By the conduct described in Paragraphs 1-50 above, Defendants cheated or defrauded or attempted to cheat or defraud investors or prospective investors and willfully deceived or attempted to deceive investors or prospective investors by, among other things: inducing customers to invest funds for the purposes of trading foreign currency futures contracts based on materially misleading solicitations; misappropriating funds from investors; and materially misrepresenting to investors the profits from and value of their investments. Defendants therefore violated Section 4b(a)(2)(C)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(C)(i) and (iii) (2001).



54. Also by the conduct described in Paragraphs 1-50, above, Defendants further violated Section 4b(a)(2)(C)(ii) of the Act, 7U.S.C. §6b(a)(2)(C)(ii) (2001), in that they willfully made or caused to be made materially false reports or statements thereof by preparing and issuing false trading statements to investors.

55. Each material misrepresentation or omission, each false report or statement, and each willful deception made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(C)(i) - (iii) of the Act, 7 U.S.C. §§6b(a)(2)(C)(i) - (iii) (2001).

56. Defendants engaged in the conduct described above in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may be used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof, pursuant to Section 4b(a)(2) of the Act, 7 U.S.C. §6b(a)(2) (2001).

57. By the conduct described in Paragraphs 1- 50, above, Orca Common Enterprise is liable under Sections 4b(a)(2)(C)(i)-(iii), 7 U.S.C. §§ 6b(a)(2)(C)(i)-(iii)(2001), for the foregoing acts and omissions of its agents, including O'Neill, by operation of Section 2(a)(B) of the Act, 7 U.S.C. § 2 (2001), and Section 1.2 of the Regulations, 17 C.F.R. § 1.2 (2002).

58. By the conduct described in Paragraphs 1- 50, above, O'Neill, is liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), for the foregoing acts and omissions of

Orca Common Enterprise in violation of Section 4b(a) of the Act, 7 U.S.C. §6b(a) (2001). O'Neill actually exercised control or possessed the authority to exercise control over Orca Common Enterprise, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting these violations.

## **COUNT II**

### **VIOLATIONS OF COMMISSION REGULATION 1.1(b) Fraud In or In Connection With Foreign Currency Transactions**

59. Paragraphs 1 through 58 are re-alleged and incorporated herein.

60. By the conduct alleged in Paragraphs 1 - 58 above, Defendants directly or indirectly, in or in connection with any account, agreement, contract or transaction in foreign currency futures, cheated or defrauded or attempted to cheat or defraud, willfully made or caused to be made false reports or records or caused to be entered any false record, or willfully deceived, persons who are not eligible contract participants pursuant to Section 1a(12) of the Act, 7 U.S.C. §1a(12) (2001).

61. Defendants therefore violated Commission Regulation 1.1, 17 C.F.R. §1.1(b)(2002).

### **RELIEF REQUESTED**

WHEREFORE, Plaintiff respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), and pursuant to its own equitable powers, enter:

- A. An order of permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns or attorneys of Defendants, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of the order by personal service or otherwise, from directly or indirectly:

1. Cheating or defrauding or attempting to cheat or defraud other persons, willfully making or causing to be made to other persons false reports or statements thereof or willfully deceiving or attempting to deceive other persons in or in connection with any order to make, or the making of any contract of sale of any commodity for future delivery (including but not limited to foreign currencies), made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (B) determining the price basis of any transaction in interstate commerce in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b of the Act, 7 U.S.C. § 6b (2001).
  2. in or in connection with any account, agreement, contract or transaction in foreign currency futures, cheating or defrauding or attempting to cheat or defraud, willfully making or causing to be made false reports or records or causing to be entered any false record, or willfully deceiving, persons who are not eligible contract participants pursuant to Section 1a(12) of the Act, 7 U.S.C. §1a(12) (2001), in violation of Commission Regulation 1.1, 17. C.F.R. §1.1 (2002).
- B. An order enjoining Defendants from 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, wherever such materials may be situated, relating or referring to commodity interest transactions, Orca Common Enterprise banking records, records relating to any assets, investments, securities or other property owned or

controlled by O'Neill, Orca Common Enterprise, or any of the customers of those entities;

C. An Order directing Defendants:

To cooperate fully with the Commission to locate all assets, books and records of O'Neill and Orca Common Enterprise.

1. To cooperate fully with the Commission to locate all assets, books and records of O'Neill and Orca Common Enterprise.
2. To make an accounting of all assets and liabilities of O'Neill and Orca Common Enterprise.

D. An order requiring Defendants to disgorge all benefits received from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest;

E. An order requiring Defendants immediately to identify and provide an accounting for all accounts they currently maintain outside the United States, and to repatriate all such funds by paying them to the Clerk of Court or as otherwise ordered by the Court, for further disposition in this case;

F. An order requiring Defendants to make restitution to every customer whose funds were received or utilized by them as a result of acts and practices which constituted violations of the Act, as described herein, including pre-judgment interest;

G. An order requiring each Defendant to pay civil penalties under the Act in the amount not to exceed the higher of \$110,000 (or \$120,000 for violations occurring after October 23, 2001) or triple the monetary gain to them for each violation of the Act, as described herein; and,

H. Such other remedial ancillary relied as the court may deem necessary and appropriate.

Dated: September 17, 2002

Respectfully submitted,

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