

1 Tara R. Kelly (D.C. Bar No. 438241, t_kelly@cftc.gov)
John Einstman (D.C. Bar No. 484539, jeinstman@cftc.gov)
2 Brian G. Mulherin (Cal. Bar No. 193297, bmulherin@cftc.gov)
3 **U.S. COMMODITY FUTURES TRADING COMMISSION**
3 Three Lafayette Center
1155 21st Street, N.W.
4 Washington, D.C. 20581
Telephone: (202) 418-5914 (Kelly)
5 Facsimile: (202) 418-5523

6 Attorneys for Plaintiff
U.S. COMMODITY FUTURES TRADING COMMISSION

7
8 **THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11
12 UNITED STATES COMMODITY FUTURES
TRADING COMMISSION,
13
14 Plaintiff,
15 vs.
16 PARON CAPITAL MANAGEMENT, LLC, and
JAMES D. CROMBIE,
17 Defendants.

Civil Action No.

CV 11 45 77

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

18
19 **I. SUMMARY**

20 1. In March 2011 Paron Capital Management, LLC ("Paron"), by and through James D.
21 Crombie ("Crombie"), (collectively, "Defendants"), and Crombie, individually, made, and provided
22 to the National Futures Association ("NFA"), false, fictitious, or fraudulent statements during an
23 NFA investigation and audit of Paron conducted pursuant to NFA's official duties under the
24 Commodity Exchange Act (the "Act"). Defendants made, and provided to NFA, these false,
25 fictitious, or fraudulent statements for the purpose of preventing NFA from discovering that
26 Defendants were soliciting clients to trade commodity futures on or subject to the rules of a
27 designated contract market using fraudulent promotional materials. The fraudulent promotional
28 material was based on falsified and counterfeit trading account statements.

ORIGINAL
FILED
2011 SEP 15 A 11:41
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

DMR

1 2. After providing NFA with the initial false, fictitious, and fraudulent statements, Paron,
2 by and through Crombie, and Crombie individually made subsequent false, fictitious, and fraudulent
3 statements to NFA in an attempt to further conceal Defendants' conduct and impede NFA's
4 investigation and audit of Paron.

5 3. During the period of August 2010 through March 2011 (the "relevant period"),
6 Defendants used promotional material in the form of a PowerPoint presentation, known as the "Flip
7 Book," a monthly newsletter ("Newsletter"), and a Due Diligence Questionnaire ("DDQ") in order to
8 solicit potential clients for Paron. These documents omitted material information and contained
9 material misrepresentations and misstatements about the historical rate of return achieved by Crombie
10 and Paron's predecessor in interest, JDC Ventures, LLC ("JDC").

11 4. Through this conduct and the conduct further described herein, Defendants have
12 violated Section 9(a)(4) of the Act, as amended by the Food, Conservation, and Energy Act of 2008,
13 Pub. L. No. 110-246, Title XIII (the Commodity Futures Trading Commission Reauthorization Act of
14 2008 ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C.
15 § 13(a)(4), and Defendants have engaged, are engaging, or are about to engage in acts or practices
16 that violate the anti-fraud provisions of Section 4b(a)(1)(A), (B) of the Act, as amended by the CRA,
17 to be codified at 7 U.S.C. § 6b(a)(1)(A), (B), and 40(1)(A), (B) of the Act, as amended by the CRA,
18 to be codified at 7 U.S.C. 60(1)(A), (B).

19 5. Crombie committed the acts described herein within the course and scope of his
20 employment at, or agency with, Paron. Therefore, Paron is liable for the violations committed by
21 Crombie under Section 2(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C.
22 § 2(a)(1)(B), and U.S. Commodity Futures Trading Commission (the "Commission" or "CFTC")
23 Regulation ("Regulation") 1.2, 17 C.F.R. § 1.2 (2011).

24 6. At the time Crombie committed the acts described herein, Crombie was in control of
25 Paron and failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting
26 Paron's violations. Therefore, Crombie is liable for Paron's violations of the Act pursuant to Section
27 13(b) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13c(b).

28 ///

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

4 8. Accordingly, the Commission brings this action pursuant to Section 6c of the Act, as
5 amended by the CRA, to be codified at 7 U.S.C. § 13a-1, to enjoin Defendants' unlawful acts and
6 practices and to compel their compliance with the Act. In addition, the Commission seeks
7 disgorgement, civil monetary penalties, and such other equitable relief as this Court may deem
8 necessary or appropriate.

9 **II. JURISDICTION, VENUE, AND**
10 **INTRADISTRICT ASSIGNMENT**

11 9. Jurisdiction. This Court has jurisdiction over this action pursuant to Section 6c of the
12 Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1, which authorizes the Commission to
13 seek injunctive and other relief against any person whenever it shall appear to the Commission that
14 such person has engaged, is engaging, or is about to engage in any act or practice constituting a
15 violation of any provision of the Act or any rule, regulation, or order thereunder.

16 10. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, as amended
17 by the CRA, to be codified at 7 U.S.C. § 13a-1(e), because Defendants are found in, inhabit, or
18 transact business in the Northern District of California, and the acts and practices in violation of the
19 Act occurred, are occurring, or are about to occur within this district.

20 11. Intradistrict Assignment. Assignment to the San Francisco Division of the Northern
21 District is appropriate because the action arises in Marin County.

22 **III. THE PARTIES**

23 12. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal
24 regulatory agency that is charged by Congress with the administration and enforcement of the Act, as
25 amended by the CRA and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
26 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and
27 Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at
28 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2010).

1 The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, N.W.
2 Washington, D.C. 20581.

3 13. Defendant **James D. Crombie** is a resident of California. He has been listed with the
4 Commission (NFA ID # 0402375) as a principal and registered as an associated person (“AP”) of
5 Paron since August 2010. According to Article 3 of Paron’s June 2, 2010 Limited Liability Company
6 Agreement (“the Operating Agreement”), Crombie was designated as the company’s “Initial
7 Manager” for a period of three years, and Crombie possessed a 75% initial limited liability company
8 interest in Paron during the same period. According to Article 6 of the Operating Agreement,
9 Crombie was entitled to an “initial percentage” of 75% of Paron’s profits and losses (“P&L”).
10 Crombie was previously listed as a principal of JDC between January and May 2010, and as an AP of
11 JDC from February 2009 to May 2010.

12 14. Defendant **Paron Capital Management, LLC** is a Delaware corporation,
13 incorporated in March 2010, whose principal place of business is in Tiburon, California. Paron has
14 been registered in Nevada as a foreign business entity since December 2010. Paron has been
15 registered with the Commission as a commodity trading advisor (“CTA”) (NFA ID # 0422876) since
16 August 2, 2010. Crombie has been registered as an AP and listed as a principal of Paron since
17 August 2, 2010. Paron has two other APs, Peter J. McConnon (“McConnon”) and Timothy D. Lyons
18 (“Lyons”). McConnon and Lyons are not parties to the present suit. Paron has a total of seven
19 managed account customers. Paron was originally founded as JDC in 2005 as an entity solely owned
20 and managed by Crombie. In 2010, JDC was renamed as Paron and identified three members:
21 Crombie, Lyons, and McConnon.

22 **IV. OTHER RELEVANT ENTITIES AND INDIVIDUALS**

23 15. **The National Futures Association** is a futures association registered with the
24 Commission pursuant to Section 17 of the Act, as amended by the CRA, to be codified at 7 U.S.C.
25 § 21. NFA is a private corporation that serves as an industry self-regulatory organization. Its
26 membership is composed of futures commission merchants (“FCMs”), commodity pool operators
27 (“CPOs”), CTAs, Introducing Brokers (“IBs”), and other futures professionals registered with the
28 CFTC. Pursuant to delegated authority, NFA is responsible for certain aspects of the regulation of

1 these futures entities and their associated persons. NFA focuses primarily on the qualifications and
2 proficiency, financial condition, retail sales practices, and business conduct of its members.

3 16. **Peter J. McConnon** is a resident of Toronto, Canada. He has been listed with the
4 Commission (NFA ID # 0346212) as a principal and registered as an AP of Paron since March 2011.

5 17. **Timothy D. Lyons** is a resident of Nevada. His temporary license as an AP of Paron,
6 granted by NFA on February 10, 2011, was withdrawn on April 6, 2011. His “pending” registration
7 status with the Commission (NFA ID # 0428362) as a principal of Paron was withdrawn as of April
8 6, 2011.

9 18. **JDC Ventures, LLC** is a California corporation, incorporated in July 2005, whose
10 principal place of business is in Tiburon, California. JDC was registered with the Commission as a
11 CTA (NFA ID # 0406518) from February 2009 to May 2010, and remains an active limited liability
12 company in California. According to the Operating Agreement, Crombie was obligated to “cause all
13 of the rights, title, and interest in the property and assets, tangible and intangible, of JDC Ventures,
14 LLC” to be transferred to Paron “as soon as practicable following the execution of [the] Agreement.”
15 JDC is listed as a d/b/a of Paron on NFA’s Online Registration System: thus, Paron can conduct
16 business as JDC.

17 V. FACTS

18 A. Statutory Background

19 19. A CTA is any person who, for compensation or profit, engages in the business of
20 advising others, either directly or through publications, writings, or electronic media, as to the value
21 of or advisability of trading in any contract of sale of a commodity for future delivery made or to be
22 made on or subject to the rules of a contract market, certain commodity options, and certain leverage
23 transactions authorized by the Act, or for compensation or profit, and as part of a regular business,
24 issues or promulgates analyses or reports concerning any of these activities. Section 1a of the Act, as
25 amended by the CRA, to be codified at 7 U.S.C. § 1a.

26 ///

27 ///

28

1 **B. False Statements Provided To NFA During NFA's Audit Of Paron**

2 20. In early 2011, NFA received anonymous complaints alleging that Defendants were
3 advertising fictitious performance information and that Crombie and JDC had been sued in civil
4 lawsuits for financial fraud in connection with loans totaling more than \$1 million.

5 21. As a result of the anonymous complaints, NFA commenced an audit of Paron pursuant
6 to the authority delegated to NFA by the Commission. NFA audit team commenced an onsite
7 examination of Paron on March 21, 2011.

8 22. During its audit of Paron, NFA obtained Paron promotional material consisting of the
9 Flip Book, the Newsletter, and the DDQ. The Flip Book and Newsletter each claimed that JDC and
10 Crombie had previously achieved annual rates of return as high as 38.6% in 2008. The DDQ claimed
11 that total assets "managed/advised" by Paron in 2011 were approximately \$35 million, and that the
12 largest current account was \$20 million. During the period of August 2010 through March 2011 (the
13 "relevant period"), Defendants used the Flip Book, the Newsletter, and the DDQ as promotional
14 material for the solicitation of potential clients for Paron.

15 23. NFA requested information from Defendants to determine whether Defendants were in
16 compliance with NFA rules and the Act. Specifically, NFA requested supporting documentation for
17 the historical returns cited in certain Paron promotional materials.

18 24. In response to NFA's request for support for the historical returns cited in certain
19 Paron promotional material, Crombie provided NFA with monthly account statements from Fimat
20 Futures USA LLC ("Fimat"), formerly an FCM.

21 25. NFA discovered that the Fimat monthly account statements provided by Crombie to
22 NFA during its audit of Paron were fraudulent after NFA requested that Newedge USA LLC
23 ("Newedge"), the successor FCM of Fimat, provide it with the Fimat account statements in
24 Newedge's possession. In comparing the Fimat monthly account statements provided by Crombie
25 with the Fimat monthly account statements provided by Newedge, NFA discovered that there were
26 significant material differences between them. For example, the Fimat monthly account statements
27 provided by Crombie showed a total net liquidating value for the two JDC owned and operated pool
28 accounts as \$24 million as of December 31, 2008. In contrast, the account statements provided by

1 Newedge indicated that the last trading activity in the accounts occurred in September 2007, and that
2 subsequent to that month, the accounts together maintained a balance of approximately \$80 until they
3 were closed in February 2008.

4 26. In further response to NFA's request for support for the historical returns cited in
5 certain Paron promotional material, Crombie also provided NFA with monthly account statements
6 from Access Securities, LLC ("Access"), an IB registered with the Commission.

7 27. NFA discovered on March 28, 2011, that the Access statements Crombie had provided
8 to NFA were fictitious because Access did not maintain any accounts managed by Crombie.

9 28. In further response to NFA's request for support for the historical returns cited in
10 Paron's promotional material, Crombie provided NFA with a Trading Advisory Agreement ("TAA")
11 dated December 13, 2007, purportedly signed by Richard Breck ("Breck"), an AP of Access.

12 29. On March 29, 2011, via letter from Breck's and Access's attorney, NFA discovered
13 that the TAA Crombie provided to NFA was fictitious. The letter stated that Breck had never
14 executed a TAA with Crombie, Breck's signature on the TAA appeared to be a forgery, and neither
15 Defendants nor JDC had ever managed any account maintained at Access.

16 30. In response to NFA's questions concerning the existence of any lawsuits against
17 Paron, Crombie represented to NFA that there had been no litigated actions, arbitrations, or
18 settlements against Paron or its principals and APs within the two years prior to March 2011.
19 Crombie's statement was false.

20 31. In fact, two separate lawsuits had been filed against Crombie (and JDC) in the
21 Superior Court of California by Paul Porteous ("Porteous") (on January 5, 2011) and Steven Lamar
22 ("Lamar") (on May 18, 2010). These lawsuits stemmed from Crombie and JDC's failure to repay
23 loans received from Porteous and Lamar, and resulted in judgments against Crombie and JDC
24 totaling more than \$4 million.

25 32. In response to NFA's questions concerning a \$200,000 payment from JDC to Porteous
26 on May 6, 2009, Crombie informed NFA that Porteous had previously contributed capital to JDC in
27 2008, and that the \$200,000 payment to Porteous was in repayment of Porteous' capital contribution.
28 Crombie's statements to NFA concerning the \$200,000 payment from JDC to Porteous were false.

1 33. The \$200,000 payment from JDC to Porteous was a partial payment of a promissory
2 note, dated September 24, 2008, which Crombie had issued to Porteous, and which later became the
3 subject of Porteous' lawsuit against Crombie and JDC discussed above.

4 34. In response to NFA's questions concerning deposits into a JDC bank account of
5 \$50,000 and \$250,000 on May 4 and May 5, 2010, respectively, Crombie stated that these deposits
6 were payments from Lamar to JDC for "financial engineering services." Crombie's statements to
7 NFA concerning these deposits were false. According to Lamar's complaint, these deposits were
8 instead in the nature of loans from Lamar to JDC and Crombie, and the agreement between Lamar
9 and JDC specified that the \$300,000 would be repaid with revenue generated by Crombie and JDC.
10 Thus, the deposits of \$50,000 and \$250,000 on May 4 and May 5, 2010, respectively, were not
11 payments for "financial engineering services."

12 35. In response to NFA's questions concerning whether Defendants had any outstanding
13 loans, Crombie identified only one loan from his brother-in-law. Crombie's statement to NFA
14 concerning the number of outstanding loans owed by Defendants was false. During the course of its
15 audit of Paron, NFA identified several loans to Crombie from multiple individuals and entities since
16 2009.

17 36. In response to NFA's questions concerning a \$50,000 payment from JDC to Mark
18 Steele ("Steele"), Crombie stated that the payment was for services, specifically building computer
19 models, preparing research sheets, and working on valuation models, that Steele and Steele's
20 company had provided to JDC. Crombie's statements concerning the payment to Steele were false.
21 When NFA contacted Steele to verify the accuracy of Crombie's statements, Steele explained that the
22 \$50,000 payment he had received from JDC was repayment of a personal loan owed to him by
23 Crombie.

24 37. On March 29, 2011, NFA had a teleconference with Crombie. During this
25 teleconference, Crombie claimed that he had received the fraudulent Fimat account statements from
26 individuals who worked at SCR Capital LLC ("SCR Capital").

27 ///

28 ///

1 38. During the March 29, 2011 teleconference, Crombie also claimed that he had received
2 the fraudulent Access account statements from individuals who worked at Source Trading (“Source”),
3 which is a division of Access.

4 39. NFA contacted the individuals from whom Crombie claimed he received the
5 fraudulent FIMAT and Access account statements. All of them denied that they had provided these
6 fraudulent documents to Crombie.

7 **C. Fraudulent Solicitation**

8 40. During the course of business, as recently as March 2011, Crombie, individually and
9 on behalf of Paron, used the Flip Book, the Newsletter, and the DDQ to solicit potential clients to
10 trade commodity futures on or subject to the rules of a designated contract market. McConnon, one
11 of the three principals in Paron, informed NFA that the DDQ was most recently distributed to
12 potential clients on March 8, 2011, and the Flip Book was most recently distributed on March 21,
13 2011. The Newsletter was most recently distributed to potential clients on March 10, 2011.

14 41. The purported gains claimed on the promotional material were based on the falsified
15 monthly statements allegedly from FIMAT and Access. Both the Flip Book and the Newsletter
16 touted a fictitious 38.6% annual rate of return purportedly achieved by Crombie and JDC in 2008,
17 when, in fact, the two existing JDC accounts were only open for two months of that year, each had a
18 0.001% rate of return.

19 42. Paron, by and through Crombie, and Crombie individually solicited potential
20 customers using the DDQ. The DDQ falsely represented that the total assets managed or advised by
21 the firm in 2011 were approximately \$35 million, and that the largest current count was \$20 million.
22 During the course of the audit, Crombie admitted to NFA that these amounts were incorrect.

23 43. On March 31, 2011, NFA filed a Member Responsibility Action (“MRA”) against
24 Paron and an Associate Responsibility Action (“ARA”) against Crombie. As a result of these actions,
25 NFA suspended Defendants’ NFA memberships.

26 ///

27 ///

28 ///

1 **VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

2 **COUNT ONE**

3 **VIOLATIONS OF SECTION 9(a)(4) OF THE ACT:**
4 **CONCEALING MATERIAL FACTS AND MAKING FALSE STATEMENTS**
5 **OR REPRESENTATIONS TO NFA**

6 44. The allegations set forth in Paragraphs 1 through 43 are re-alleged and incorporated
7 herein by reference.

8 45. Section 9(a)(4) of the Act, as amended by the CRA, to be codified at 7 U.S.C.
9 § 13(a)(4), makes it unlawful for any person:

10 [W]illfully to falsify, conceal or cover up by any trick, scheme, or artifice
11 a material fact, make any false, fictitious, or fraudulent statements or
12 representations, or make or use any false writing or document knowing the
13 same to contain any false, fictitious, or fraudulent statement or entry to a
14 registered entity, board of trade, or futures association designated or
15 registered under this Act acting in furtherance of its official duties under
16 the Act.

17 Section 9(a)(4) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13(a)(4).

18 46. As discussed above, NFA is a futures association registered with the Commission.
19 Pursuant to the authority delegated to NFA by the Commission and acting in furtherance of its
20 official duties under the Act, NFA requested information from the Defendants to determine whether
21 Defendants were in violation of any provisions of the Act, Commission Regulations or NFA Rules.

22 47. In March 2011, in response to NFA investigation and audit, Paron, by and through
23 Crombie, and Crombie, individually, willfully made false statements and misrepresentations to NFA,
24 including, but not limited to: (1) providing fraudulent account statements to NFA; (2) providing a
25 fraudulent TAA to NFA; (3) making false statements to NFA concerning the existence of lawsuits in
26 which the Defendants were named parties; (4) making false statements to NFA concerning capital
27 contributions to Paron; (5) making false statements to NFA concerning large-sum payments to and
28 from JDC; (6) making false statements to NFA concerning the number of outstanding loans owed by
Paron; and (7) making false statements to NFA regarding the sources of the fraudulent documents
Defendants had provided to NFA during its audit. All of these actions are violations of Section
9(a)(4) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13(a)(4).

///

1 48. The acts, omissions, and misrepresentations to NFA, and willful concealment from
2 NFA, by Crombie occurred within the scope of his employment or agency with Paron; therefore,
3 Paron is liable for these acts, omissions, misrepresentations, and willful concealment in violation of
4 the Act, as set forth herein, pursuant to Section 2(a)(1)(B) of the Act, as amended by the CRA, to be
5 codified at 7 U.S.C. § 2(a)(1)(B) and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

6 49. During the time period relevant to this action, Crombie was in control of Paron and
7 failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting Paron's
8 violations. Therefore, Crombie is liable for Paron's violations of the Act, pursuant to Section 13(b)
9 of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13c(b).

10 50. Each willful false, fictitious, or fraudulent statement, representation, or omission made
11 to NFA during its investigation and audit of Paron, and each willful act of concealment from NFA,
12 including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct
13 violation of Section 9(a)(4) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13(a)(4).

14 COUNT TWO

15 **VIOLATIONS OF SECTION 4b(a)(1)(A), (B) OF THE ACT:
16 SOLICITATION FRAUD**

17 51. The allegations set forth in paragraphs 1 through 43 are re-alleged and incorporated
18 herein by reference.

19 52. Section 4b(a)(1)(A), (B) of the Act, as amended by the CRA, to be codified at
20 7 U.S.C. § 6b(a)(1)(A), (B), makes it unlawful for any person to cheat or defraud or attempt to cheat
21 or defraud any other person; or willfully make or cause to be made to another person any false report
22 or statement, or willfully to enter or cause to be entered for another person any false record, in
23 connection with any order to make, or the making of, any contract of sale of any commodity for
24 future delivery on or subject to the rules of a designated contract market.

25 53. Paron, by and through Crombie, and Crombie, individually, violated Section
26 4b(a)(1)(A), (B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A), (B),
27 because in connection with the making of contracts for sale of commodities for future delivery on or
28 subject to the rules of a designated contract market, they attempted to cheat or defraud clients by

1 soliciting customers to trade commodity futures with Paron using promotional documentation that
2 omitted material information and contained material misrepresentations and misstatements about the
3 historical rate of return Defendants had achieved in two JDC owned and operated CPO accounts. As
4 support for the misrepresentations in the JDC promotional materials, Crombie crafted counterfeit and
5 fictitious account statements for Fimat and Access accounts.

6 54. As a principal and Initial Manager of Paron, Crombie was acting as an agent of that
7 entity when he violated the Act and, therefore, Paron is liable for violations by Crombie of Section
8 4b(a)(1)(A), (B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A), (B),
9 pursuant to Section 2(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C.
10 § 2(a)(1)(B).

11 55. During the time period relevant to this action, Crombie was in control of Paron and
12 failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting Paron's
13 violations. Therefore, Crombie is liable for Paron's violations of the Act, pursuant to Section 13(b)
14 of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13c(b).

15 56. Each material misrepresentation or omission, and each misappropriation made during
16 the relevant time period, including but not limited to those specifically alleged herein, is alleged as a
17 separate and distinct violation of Section 4b(a)(1)(A), (B) of the Act, as amended by the CRA, to be
18 codified at 7 U.S.C. § 6b(a)(1)(A), (B).

19 **COUNT THREE**

20 **VIOLATIONS OF SECTION 4q(1)(A), (B) OF THE ACT:**
21 **FRAUD BY CTAs**

22 57. The allegations set forth in paragraphs 1 through 43 are re-alleged and incorporated
23 herein by reference.

24 58. Section 4q(1) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6q(1),
25 makes it unlawful for any CTA:

26 (A) to employ any device, scheme, or artifice to defraud any client or
27 participant or prospective client or participant; or (B) to engage in any
28 transaction, practice, or course of business which operates as a fraud or
deceit upon any client or participant or prospective client or participant.

1 Section 40(1)(A), (B), as amended by the CRA, to be codified at 7 U.S.C. § 60(1)(A), (B).

2 59. Paron was registered as a CTA with the Commission at all relevant times.

3 60. Paron, by and through Crombie, violated Section 40(1)(A), (B) of the Act, as amended
4 by the CRA, to be codified at 7 U.S.C. § 60(1)(A), (B), because, as a CTA, it directly or indirectly
5 employed, or is employing, a device, scheme, or artifice to defraud clients, or engaged or are
6 engaging in transactions, practice, or a course of business which operated as a fraud or deceit upon
7 clients by misrepresenting the CTA's expected returns when soliciting prospective clients.

8 61. As a principal and Initial Manager of Paron, Crombie was acting as an agent of that
9 entity when he violated the Act, and, therefore, Paron is liable for violations by Crombie of Section
10 40(1)(A), (B), of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 60(1)(A), (B),
11 pursuant to Section 2(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C.
12 § 2(a)(1)(B).

13 62. During the time period relevant to this action, Crombie was in control of Paron and
14 failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting Paron's
15 violations. Therefore, Crombie is liable for Paron's violations of the Act, pursuant to Section 13(b)
16 of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13c(b).

17 63. Each act of misrepresentation, material omission, and each misappropriation that
18 occurred at all relevant times, including but not limited to those specifically alleged herein, is alleged
19 as a separate and distinct violation of Section 40(1)(A), (B) of the Act, as amended by the CRA, to be
20 codified at 7 U.S.C. § 60(1)(A), (B).

21 **VII. RELIEF REQUESTED**

22 WHEREFORE, the Commission respectfully requests that the Court, as authorized by Section 6c of
23 the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1, and pursuant to its own equitable
24 powers, enter:

25 a) An order finding that Defendants violated Section 9(a)(4) of the Act, as amended by
26 the CRA, to be codified at 7 U.S.C. § 13(a)(4);

27 ///

28 ///

1 b) An order finding that Defendants violated Sections 4b(a)(1)(A), (B) and 4q(1)(A), (B)
2 of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (B) and
3 6q(1)(A), (B), respectively;

4 c) An order of permanent injunction prohibiting Defendants and any of their agents,
5 servants, employees, assigns, attorneys, and persons in active concert or participation with the
6 Defendants, including any successor thereof, from engaging, directly or indirectly:

7 (i) In conduct in violation of Section 9(a)(4) of the Act, as amended by the CRA,
8 to be codified at 7 U.S.C. § 13(a)(4), and the Dodd-Frank Act, Pub. L. No.
9 111-203, Title VII (the Wall Street Transparency and Accountability Act of
10 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at
11 7 U.S.C. § 13(a)(4);

12 (ii) Trading on or subject to the rules of any registered entity as that term is defined
13 in Section 1a of the Act, as amended;

14 (iii) Entering into any transactions involving commodity futures, options on
15 commodity futures, commodity options (as that term is defined in Regulation
16 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2011) (“commodity options”), swaps,
17 and/or foreign currency (as described in Section 2(c)(2)(B) and 2(c)(2)(C)(i) of
18 the Act, as amended) (“forex contracts”) for their own personal account or for
19 any account in which they have a direct or indirect interest;

20 (iv) Having any commodity futures, options on commodity futures, commodity
21 options, swaps, and/or forex contracts traded on their behalf;

22 (v) Controlling or directing the trading for or on behalf of any other person or
23 entity, whether by power of attorney or otherwise, in any account involving
24 commodity futures, options on commodity futures, commodity options, swaps,
25 and/or forex contracts;

26 (vi) Soliciting, receiving, or accepting any funds from any person for the purpose
27 of purchasing or selling any commodity futures, options on commodity futures,
28 commodity options, swaps, and/or forex contracts;

1 (vii) Applying for registration or claiming exemption from registration with the
2 Commission in any capacity, and engaging in any activity requiring such
3 registration or exemption from registration with the Commission, except as
4 provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and

5 (viii) Acting as a principal (as that term is defined in Commission Regulation 3.1(a),
6 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any
7 person registered, exempted from registration or required to be registered with
8 the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R.
9 § 4.14(a)(9) (2011);

10 d) An order directing Defendants, as well as any other person or entity associated with
11 them, including any successor thereof, to make full restitution, pursuant to such procedure as
12 the Court may order, to every person or entity whose funds Defendants received or caused
13 another person or entity to receive as a result of acts and practices that constituted violations of
14 the Act, as described herein, and pre- and post-judgment interest thereon from the date of such
15 violations;
16

17 e) An order requiring Defendants, as well as any successors and/or agents of Defendants,
18 to disgorge, pursuant to such procedure as the Court may order, all benefits received from the
19 acts or practices that constitute violations of the Act, as described herein, including pre- and
20 post-judgment interest thereon from the date of such violations;

21 f) An order requiring Defendants to pay a civil monetary penalty under the Act, to be
22 assessed by the Court, in amounts of not more than the higher of \$140,000 or triple the
23 monetary gain to each Defendant for each violation of the Act occurring on or after October
24 23, 2008, plus post-judgment interest;

25 g) An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C.
26 §§ 1920 and 2412(a)(2) (2006); and

27 h) Such other and further relief as the Court deems just and appropriate.
28

1 Dated: September 15, 2011

Respectfully submitted,

2
3 By: Tara R. Kelly

4 Tara R. Kelly

5 Tara R. Kelly (t_kelly@cftc.gov)
6 John Einstman (jeinstman@cftc.gov)
7 Brian G. Mulherin (bmulherin@cftc.gov)
8 U.S. COMMODITY FUTURES TRADING COMMISSION
9 Three Lafayette Center
10 1155 21st Street, N.W.
11 Washington, D.C. 20581
12 Telephone: (202) 418-5914 (Kelly)
13 Facsimile: (202) 418-5523

14 Attorneys for Plaintiff UNITED STATES
15 COMMODITY FUTURES TRADING
16 COMMISSION
17
18
19
20
21
22
23
24
25
26
27
28