

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES COMMODITY FUTURES TRADING COMMISSION,	:	Case No.: 13–Civ–2041–EJM
	:	
Plaintiff,	:	<b>COMPLAINT SEEKING PERMANENT</b>
	:	<b>INJUNCTION, CIVIL MONETARY</b>
v.	:	<b>PENALTIES, AND OTHER EQUITABLE</b>
	:	<b>RELIEF</b>
	:	
U.S. BANK, N.A.,	:	<b>Jury Trial Demanded</b>
	:	
Defendant.	:	
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The U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”), by its attorneys, alleges as follows:

**I. SUMMARY**

1. From August 1992 to the present, U.S. Bank, N.A. (“U.S. Bank”) has been a depository institution serving Russell Wasendorf, Sr. (“Wasendorf”) and Peregrine Financial Group, Inc. (“Peregrine”), which has been a futures commission merchant (“FCM”) registered with the Commission since January 1992. Over approximately the past eight years, Peregrine deposited more than \$308 million of its customers’ funds with U.S. Bank. Pursuant to the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 *et seq.*, and Commission Regulations (“Regulations”), 17 C.F.R. §§ 1 *et seq.*, neither U.S. Bank nor Peregrine was permitted to “hold, dispose of, or use” these customer funds as though they belonged to anyone other than Peregrine’s customers.

2. From approximately September 2008 to July 2012, U.S. Bank, through its agents, officers, and employees, held and used Peregrine’s customer funds as security on loans it made to: (1) Wasendorf and his wife Connie Wasendorf (collectively, the “Wasendorfs”) and (2)

Wasendorf Construction, L.L.C. (“Construction”), for the purpose of constructing an office building complex to house Peregrine as the primary tenant in Cedar Falls, Iowa, in violation of Section 4d(b) of the Act, 7 U.S.C. § 6d(b) and Commission Regulation 1.20(a), 17 C.F.R. § 1.20(a).

3. From approximately June 2008 to July 2012 (the “relevant period”), U.S. Bank, through its agents, officers, and employees, improperly held Peregrine’s customer funds in an account U.S. Bank treated as if it were Peregrine’s commercial checking account and knowingly allowed and facilitated Wasendorf’s transfers of customer funds out of this account to pay for Wasendorf’s private airplane, his restaurant and his divorce settlement, among other things. U.S. Bank knew that these transfers were not for the benefit of Peregrine’s customers as required by the Act and Regulations and as a result violated Section 4d(b) of the Act, 7 U.S.C. § 6d(b) and Commission Regulation 1.20(a), 17 C.F.R. § 1.20(a).

4. Consequently, U.S. Bank has engaged, is engaging, or is about to engage in acts or practices that constitute violations of the Act and the Regulations thereunder. Accordingly, pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), the Commission brings this action to enjoin Defendant’s unlawful acts and practices, and compel the Defendant’s compliance with the provisions of the Act and the Regulations thereunder. In addition, the Commission seeks restitution, disgorgement and civil monetary penalties against U.S. Bank and such other equitable relief as this Court may deem necessary or appropriate.

## **II. JURISDICTION AND VENUE**

5. Section 6c(a) of the Act authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is

engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

6. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, because Defendant transacts business in this District and certain transactions, acts, practices, and business alleged in this Complaint occurred, are occurring, and/or are about to occur within this District.

### **III. PARTIES**

7. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act and the Regulations thereunder.

8. Defendant U.S. Bank, N.A., is a nationally chartered bank with its principal place of business in Minneapolis, Minnesota. U.S. Bank is a member of the Federal Reserve System and the Federal Deposit Insurance Corporation. U.S. Bank maintains several branches in this District, including branches in Cedar Falls, Iowa. U.S. Bank is a wholly-owned subsidiary of U.S. Bancorp, which was purchased by Firststar Corporation (“Firststar”) on or about February 27, 2001. Although Firststar was the surviving company, the combined entity changed its name to U.S. Bancorp, which is a holding company and parent company of U.S. Bank. Between August 1992 and the present, Firststar and U.S. Bank have been depositories for Peregrine and at least four other FCMs.

### **IV. OTHER PARTIES**

9. Russell Wasendorf, Sr. has been the Chief Executive Officer and owner of Peregrine since he formed the company in 1990. He has been registered with the Commission as an associated person (“AP”) of Peregrine since 1992. Wasendorf defrauded more than 24,000 Peregrine customers over a period of two decades. He rented a post office box in Cedar Falls to

intercept mail intended for U.S. Bank, including mail sent by the National Futures Association (“NFA”), the self-regulatory agency for the United States’ futures industry, and Peregrine’s auditor, and used Photoshop and inkjet printers to create fake bank statements and to lie to federal regulators, employees and his family members. In doing so, Wasendorf was able to represent to the NFA and Peregrine’s auditor that Peregrine maintained a customer segregated account at U.S. Bank that eventually contained more than \$200 million, when in fact the average balance since May 2005 was only approximately \$15.7 million. Wasendorf misappropriated more than \$215 million and falsified numerous bank statements to conceal his fraud. On July 9, 2012, as authorities were about to uncover Wasendorf’s fraud, he attempted suicide and left a note for authorities admitting his fraud. On July 10, 2012, the CFTC instituted a civil action against Wasendorf and Peregrine, *CFTC v. Peregrine Financial Group, Inc. and Russell Wasendorf Sr.*, 12-cv-05383 (N.D. IL July 10, 2012). Wasendorf was indicted by the United States Attorney’s Office for the Northern District of Iowa, pled guilty, and was sentenced to 50 years in prison and ordered to pay more than \$215 million in restitution. *United States v. Russell Wasendorf, Sr.*, 12-cr-2021-LRR (sentenced Jan. 23, 2013).

10. Peregrine Financial Group, Inc. is a registered FCM. At the time of its failure in early July 2012, Peregrine was the nation’s second largest non-bank, non-clearing FCM. After the CFTC instituted a civil action against Peregrine, Peregrine immediately filed for Chapter 7 liquidation in the United States Bankruptcy Court for the Northern District of Illinois. *In re Peregrine Financial Group, Inc.*, Case No. 12-27488, (N.D. IL July 10, 2012). Over 24,000 former customers lost most of the money they had invested with Peregrine.

11. Wasendorf Construction, L.L.C. was formed on July 18, 2007, as an Iowa limited liability company. Its owners were Wasendorf and Russell Wasendorf, Jr. Construction was a

real estate holding company for Peregrine's corporate office building in Cedar Falls, Iowa. Construction entered into a commercial lease with Peregrine as the building's primary tenant, effective February 28, 2008.

## **V. STATUTORY BACKGROUND**

12. "Customer funds" are defined in Regulation 1.3(gg), 17 C.F.R. § 1.3(gg), to include all money, securities, and property received by an FCM or by a clearing organization from, for, or on behalf of, customers or option customers to margin, guarantee, or secure contracts for future delivery on or subject to the rules of a contract market and all money accruing to such customers as the result of such contracts.

13. An FCM is defined in § 1a(28) of the Act, 7 U.S.C. § 1a(28), and Regulation 1.3(p), 17 C.F.R. § 1.3(p), as an individual, association, partnership, corporation, or trust that is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility; and in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

## **VI. FACTS**

### **A. The Act and Commission Regulations Concerning FCMs and Depositories**

14. FCMs receive money, securities and other property ("funds") from their customers to margin, guarantee, or secure the customers' futures and options trades. Such customer funds are required to be separately accounted for and are prohibited from being commingled with the funds of the FCM, or to be used to margin or guarantee the trades of someone other than the customer for whom they are held. *See* 7 U.S.C. § 6d(a)(2). The accounts

in which such customer funds are held are commonly referred to as “customer segregated accounts.”

15. Customer segregated accounts are a critical customer protection feature of the United States commodity laws. These accounts are designed to ensure that customer funds are protected and available for immediate withdrawal or transfer, even if an FCM experiences financial distress or enters into bankruptcy.

16. FCMs are authorized by the Act and Commission Regulations to place their customer segregated funds with a depository bank. *See* 7 U.S.C. § 6d(b) and 17 C.F.R. § 1.20(a) (2008). Such depository banks are also subject to certain sections of the Act and Commission Regulations imposing restrictions on the handling and use of customer segregated funds. As relevant here, the Act makes it unlawful for a depository to hold, dispose of, or use any such funds as belonging to the depositing FCM or any person other than customers of such FCM. 7 U.S.C. § 6d(b) (2006). *See also* CFTC Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2008) (containing same prohibition).

**B. Wasendorf’s and Peregrine’s Relationship with U.S. Bank**

17. Wasendorf was well known in Cedar Falls as a successful businessman. He owned a charitable foundation and a popular Cedar Falls restaurant called My Verona. Wasendorf was a valued customer of U.S. Bank for over 30 years and U.S. Bank was his primary financial institution.

18. During the relevant period, U.S. Bank entrusted primary responsibility for managing its relationship with Wasendorf and Peregrine to Banker A, an “Assistant Relationship Manager” who worked at a Cedar Falls branch of the bank.

19. Banker A and other U.S. Bank personnel perceived Wasendorf as a successful, desirable bank client with the potential to be a profitable, high growth client.

20. Banker A and U.S. Bank believed it was important to maintain Wasendorf's and Peregrine's goodwill in order to protect the bank's relationship with them.

21. U.S. Bank maintained more than 30 accounts for entities and individuals affiliated with Wasendorf and Peregrine, including personal accounts of Wasendorf and his family members and accounts for his other companies including: Wasendorf Air, L.L.C. (company created to hold title to Wasendorf's private airplane), Wasendorf & Associates Inc. (research and publishing firm), My Verona, L.L.C. (Cedar Falls restaurant), and Traders Press, Inc. (publishing company).

22. U.S. Bank allowed Wasendorf to limit access to, and information about, an account holding millions of dollars of Peregrine's customer funds to only Wasendorf. The account ended in 1845 (the "1845 Account"). Wasendorf told U.S. Bank that all communications, including written and telephonic communications, regarding the 1845 Account should be directed to and made exclusively with him. He required that no one at U.S. Bank should speak with any Peregrine personnel (apart from his personal assistant), including senior officers of the company, regarding the 1845 Account. In order to achieve this control, U.S. Bank's internal computer system stated that for the 1845 Account "Per Russ Wasendorf request no account balance confirmations authorized on acct" and "Any Information or Account Inquiries" had to be directed to Banker A or the Relationship Manager. U.S. Bank knew that Wasendorf's mandates concerning the 1845 Account were highly unusual.

**C. Peregrine's Customer Segregated Funds Account at U.S. Bank**

23. In August 1992, Peregrine opened the 1845 Account with Firststar, U.S. Bank's predecessor by merger. Firststar acted as depository for the 1845 Account until its merger with U.S. Bancorp in 2001, when U.S. Bank acted as depository. The 1845 Account maintained the same account number ending in 1845 after the merger.

24. Peregrine notified U.S. Bank that the 1845 Account was a Commodity Exchange Act Customer Segregated Account. The 1845 Account was titled as a Customer Segregated Funds account in bank records.

25. In approximately 1993 or 1994, Wasendorf had discussions with Firststar employees about the bank's ability to comply with Commodity Exchange Act rules and Regulations governing customer segregated funds accounts. At one point, the bank told Wasendorf it could not comply with the rules and Regulations relating to customer segregated funds. Wasendorf later provided the bank with updated rules and Regulations with which the bank assured Wasendorf it could comply.

26. Customer segregated funds designations, such as "CEA Customer Segregated Account," "Peregrine Financial Group, Inc. Customer Segregated Funds," and "Segregated Funds Account," appear on Firststar and U.S. Bank contracts, account statements, correspondence, computer screen shots, agreements and various other bank documents.

27. Thousands of checks and deposit slips labeled "Peregrine Financial Group, Inc. Customer Segregated Account" were deposited at U.S. Bank's Cedar Falls branch. In addition, U.S. Bank processed wire transfers from a Peregrine customer segregated account carried at JP Morgan Chase Bank ("JPM") into the 1845 Account.

28. U.S. Bank knew that the funds in the 1845 Account were primarily customer deposits that came from one of two sources: (i) deposit of checks at the Cedar Falls branch, or (ii) wire transfers from a Peregrine customer segregated account at JPM. At varying times, Peregrine told customers to send their checks to an Iowa or Illinois address. Typically, checks sent to Peregrine in Iowa were deposited in the Cedar Falls branch.



29. Throughout the relevant period, Banker A personally processed wire transfers and cashier's checks that were initiated by Wasendorf either calling or faxing Banker A a request to facilitate the wire from the 1845 Account.

30. More than \$325,000,000 flowed through the 1845 Account between approximately May 2005 and June 2012. The balance in the 1845 Account ranged from approximately \$177,000 to \$54,000,000, and the average balance was approximately \$15,700,000 during that time.

31. Although the 1845 Account remains open, U.S. Bank cannot locate any account opening documentation or signature cards for the 1845 Account. U.S. Bank's record retention policy requires the bank to maintain those records for at least seven years after the account is closed. U.S. Bank retained account opening documents and signature cards for all of the other Peregrine and Wasendorf accounts held at U.S. Bank.

**D. U.S. Bank's and Peregrine's Sweep Repurchase Agreement Regarding the Investment of Peregrine's Customer Segregated Funds**

32. A repurchase agreement, also known as a repo or sale and repurchase agreement, is the sale of securities together with an agreement for the seller to buy back the securities at a later date.

33. Firststar and "Peregrine Financial Group, Inc. CEA Customer Segregated Accounts" entered into a Master Repurchase Agreement on December 12, 1994. This agreement governed the investment of Peregrine's customer segregated funds held in the 1845 Account and expressly recognized that the 1845 Account (and its subaccount ending in 1352) was a customer segregated account under the Commodity Exchange Act.

34. Firststar and U.S. Bank engaged in repurchase transactions with Peregrine using the customer segregated funds in the 1845 Account between approximately 1994 and June 2009.

35. U.S. Bank provided confirmations to Peregrine “Segregated Funds Account” for the repurchase agreements.

36. In June 2009, Banker A and U.S. Bank knew that “[n]ew broker/dealer rulings” required Peregrine to limit the type of investments used in the repo agreements. U.S. Bank determined that this change to the repurchase agreement program made the agreement insufficiently profitable for the bank. In June 2009, U.S. Bank stopped its repurchase program with Peregrine.

**E. Banker A and Other U.S. Bank Personnel Knew the 1845 Account Contained Peregrine’s Customer Funds**

37. During the relevant period, “CEA Customer Segregated Accounts” appears on the screen for the 1845 Account on at least two of the bank’s internal computer systems that were frequently accessed by Banker A and other bank personnel.

38. Banker A reviewed at least one Firststar bank statement for the 1845 Account dated August 31, 2000 stating that the account title was “Peregrine Financial Group, Inc. Segregated Funds Account.”

39. Banker A reviewed at least one financial statement from Peregrine dated August 31, 2004 that contained a line entry for “Firststar/U.S. Bank Customer Seg Account” under the heading “Funds Segregated in separate accounts pursuant to the CEAct.”

40. In approximately August 1999, Banker A drafted correspondence at Wasendorf’s request that was signed by a Firststar bank president regarding the gains on the purchase and sale of U.S. Treasuries under the repurchase agreement stating, “Each day we record the gain on these transactions and consider them as a portion of the balance of the PFG Customer Segregated Funds Account. At month end, we total the gains and post the deposit to the PFG Customer Segregated Funds Account.”

41. Throughout the relevant period, Banker A personally facilitated telephonic and in-branch deposits and wire transfers of Peregrine customer funds into and out of the 1845 Account.

42. In May 2011, Banker A completed a bank balance confirmation form she received from the NFA for the 1845 Account that referred to the account as “Peregrine Financial Group, Inc. Customer Segregated Funds.” The form incorrectly contained a Wasendorf controlled post office box as U.S. Bank’s Cedar Falls branch’s address. Banker A returned the form to NFA, confirming a balance of \$7.1 million. Banker A informed Wasendorf of the confirmation form and provided him with a copy of the form she received from the NFA. Wasendorf then falsified the form by stating that the account had a \$218,650,550 balance, when the actual balance was \$7.1 million, and sent it to the NFA.

**F. Banker A Knew that Peregrine’s Customer Funds in the 1845 Account Were Subject to the Commodity Exchange Act’s Segregation Requirements**

43. U.S. Bank operates as a depository, holding customer segregated funds, for other FCM clients and has served in that capacity in the past. The bank is and was aware of the rules and Regulations applicable to depositories under the Act and Regulations during the relevant period alleged in this Complaint.

44. U.S. Bank and Banker A knew that Peregrine was regulated by the CFTC and was required to segregate customer funds pursuant to the Act.

45. Banker A accessed information about Peregrine on the CFTC’s website ([www.cftc.gov](http://www.cftc.gov)) and requested, received and reviewed CFTC-mandated financial disclosures from Peregrine.

46. Banker A stated in at least six loan documents that she prepared regarding a loan U.S. Bank made to Construction and a loan U.S. Bank made to Wasendorf personally that “Under the Commodity Exchange Act, the Corporation is required to segregate all balances due

to customers in connection with transactions in regulated commodities.” She also cited to Commodity Exchange Act Regulations in these documents. These loan documents were reviewed and approved by other U.S. Bank personnel.

47. Banker A calculated the amount of customer segregated funds Peregrine maintained at various times during the relevant period and she included those calculations in the loan documents she prepared.

48. Banker A also reviewed at least one financial statement from Peregrine dated August 31, 2004 that contained a line entry for “Firststar/U.S. Bank Customer Seg Account” with a corresponding balance of \$90,135,225. However, the balance in the 1845 Account never exceeded \$54 million. Banker A admitted that Peregrine’s average balance in the 1845 Account was approximately \$7.1 million and the \$90,135,225 balance was “high.”

49. U.S. Bank and Banker A were aware of changes to Commission Regulations and worked with Wasendorf to adjust to the regulatory changes affecting such things as Peregrine’s ability to guarantee a U.S. Bank loan to Construction and Peregrine’s ability to participate in a repurchase agreement program. As such, U.S. Bank acknowledged in loan documents that it could not rely upon Peregrine to guarantee the Construction loan, but later did so anyway.

50. Banker A and U.S. Bank also opened an account for Peregrine to hold foreign customers’ funds pursuant to Commission Regulation 30.7 titled “30.7 Secured Account,” which further demonstrated that Banker A and U.S. Bank knew Peregrine and certain of its deposit accounts at U.S. Bank were subject to the Commodity Exchange Act and Regulations.

**G. U.S. Bank Improperly Held and Used Peregrine's Customer Segregated Funds to Guarantee Loans to Construction and the Wasendorfs**

**i. \$6.4 Million Loan to Construction**

51. On or about September 10, 2008, U.S. Bank and Construction entered into a Construction and Term Loan Agreement for \$6.4 million, which would be used to build a multi-million dollar office building in Cedar Falls, Iowa to house Peregrine as the primary tenant.

52. On or about August 5, 2011, Peregrine executed a Continuing Guaranty (Unlimited) (the "2011 Guaranty") on the \$6.4 million loan to Construction. Pursuant to the 2011 Guaranty, Peregrine guaranteed all obligations, including all loans, drafts, overdrafts, checks, notes and all other debts, liabilities and obligations of every kind owing by Construction to U.S. Bank.

53. The 2011 Guaranty grants U.S. Bank a security interest in all property of Peregrine in U.S. Bank's possession, including the 1845 Account, and grants U.S. Bank a contractual right of setoff without notice or demand as to all amounts due under the 2011 Guaranty against any account balances, cash and other property of Peregrine in U.S. Bank's possession.

54. U.S. Bank required the 2011 Guaranty in order to comply with the bank's internal Commercial Real Estate Policies and would not have made the loan to Construction had Peregrine refused to execute the 2011 Guaranty.

55. Peregrine was a guarantor on the \$6.4 million loan from August 2011 to July 2012, when Peregrine stopped operating.

56. Banker A and U.S. Bank considered the 1845 Account as part of the 2011 Guaranty.

57. The 1845 Account had the largest balance of any of Peregrine's and Wasendorf's accounts maintained at U.S. Bank during the time of the 2011 Guaranty, which ranged from \$5 million to \$7.6 million. For example, in August 2011, when U.S. Bank executed the 2011 Guaranty the 1845 Account balance was approximately \$7.6 million and Peregrine's house account at U.S. Bank held less than \$680,000.

58. Banker A and U.S. Bank used the 1845 Account balance to calculate U.S. Bank's risk in making the loan to Construction and the applicable terms for Construction's obligations to U.S. Bank. Construction was able to extend the term of the loan as a result of the 2011 Guaranty.

59. On information and belief, U.S. Bank collected more than \$290,000 in interest on the loan to Construction while Peregrine was a guarantor during the relevant period.

60. On December 13, 2012, U.S. Bank filed a proof of claim in the Peregrine bankruptcy proceeding for \$6,662,505.38 of outstanding obligations owed by Construction to U.S. Bank pursuant to the 2011 Guaranty.

**ii. \$3 Million Loan to the Wasendorfs**

61. On or about September 9, 2008, U.S. Bank and the Wasendorfs entered into a Term Loan Agreement for \$3 million. A corresponding Term Note was executed with the Term Loan Agreement. The Term Note had a face amount of \$3 million.

62. On or about September 9, 2008, Peregrine executed a Continuing Guaranty (Unlimited) (the "2008 Guaranty") on the \$3 million loan to the Wasendorfs. Pursuant to the 2008 Guaranty, Peregrine guaranteed all obligations, including all loans, drafts, overdrafts, checks, notes and all other debts, liabilities and obligations of every kind owing by the Wasendorfs to U.S. Bank.

63. Peregrine guaranteed all obligations, including all loans, drafts, overdrafts, checks, notes and all other debts, liabilities and obligations of every kind owing by the Wasendorfs to U.S. Bank and granted U.S. Bank a security interest in all property of Peregrine in U.S. Bank's possession, including the 1845 Account, and granted U.S. Bank a contractual right of setoff without notice or demand as to all amounts due under the 2008 Guaranty against any account balances, cash and other property of Peregrine in U.S. Bank's possession.

64. On or about January 2010, U.S. Bank and the Wasendorfs executed a First Amendment to Term Loan Agreement and Term Note, which extended the maturity date of the \$3 million loan. Peregrine signed this amendment acknowledging that it continued to guarantee the obligations of the Wasendorfs to U.S. Bank.

65. Peregrine was a guarantor on the \$3 million loan from September 9, 2008 until the loan was paid off in mid-February 2010.

66. Banker A and U.S. Bank considered the 1845 Account as part of the 2008 Guaranty of the \$3 million loan to the Wasendorfs.

67. During the period Peregrine guaranteed the \$3 million loan to the Wasendorfs, the 1845 Account had the largest balance of all of Wasendorf's and Peregrine accounts at U.S. Bank. For example, in September 2008 the 1845 Account and its subaccount balances were more than \$33 million and the house account held less than \$250,000.

68. Banker A and U.S. Bank used the 1845 Account balance to calculate U.S. Bank's risk in making the loan to the Wasendorfs and the applicable terms of the Wasendorfs' loan.

69. On information and belief, U.S. Bank collected more than \$29,000 in interest on the loan to Construction while Peregrine was a guarantor.

**H. U.S. Bank Improperly Held Peregrine's Customer Funds Allowing Wasendorf to Use Them for His Other Businesses and Divorce Settlement**

70. Although the 1845 Account was a customer segregated account containing Peregrine's customer funds, U.S. Bank and Banker A treated the account as if it were a Peregrine commercial checking account. This allowed Wasendorf to transfer customer funds from the 1845 Account to various entities he owned that U.S. Bank and Banker A knew were not customers of Peregrine.

71. U.S. Bank and Banker A knew the nature of Wasendorf's entities because the Wasendorf entities were U.S. Bank customers subject to the bank's "know your customer" obligations, and from conversations with Wasendorf, patronizing his restaurants, visiting his offices in Chicago and Iowa, news stories, and providing contributions to his charities.

72. On information and belief, U.S. Bank and Banker A had specific knowledge of the flow of funds out of the 1845 Account because U.S. Bank's procedures required them to verify the transmission of each outgoing transaction over \$10,000 with Wasendorf.

73. Between June 2008 and June 2012, more than \$118 million was deposited into the 1845 Account, more than 94% of which represented customer funds. During the same time, more than 30% of those funds were used by Wasendorf for personal expenditures and his other companies.

74. More than \$10.5 million was sent to an account in the name of Construction; however Construction never put any funds into the 1845 Account. Banker A and U.S. Bank knew that Construction was a real estate holding company for the Peregrine office building.

75. Likewise, Wasendorf & Associates, Inc. ("Wasendorf & Associates"), which received more than \$13.5 million, and My Verona, L.L.C., which received more than \$5 million, never put any funds into the 1845 Account. More than \$2.5 million was sent out of the 1845



Account for Wasendorf's personal investment in Romania. U.S. Bank and Banker A knew of the nature of this personal investment.

76. On June 13, 2008, Wasendorf called Banker A and requested to transfer \$400,000 from the 1845 Account to a U.S. Bank account for Wasendorf & Associates. Banker A then asked another bank employee to process that request.

77. On November 12, 2008, Banker A asked another U.S. Bank employee to process four transfers Wasendorf requested from the 1845 Account to other U.S. Bank accounts, \$500,000 and \$1,114,115 respectively to Wasendorf & Associates; \$160,000 to Construction; and \$5,000 to My Verona, L.L.C.

78. On December 31, 2010, as a part of his divorce, Wasendorf requested that U.S. Bank transfer \$2,469,692 from the 1845 Account to Connie Wasendorf's U.S. Bank savings account. U.S. Bank and Banker A were aware of Wasendorf's divorce and had discussed its impact on his finances.

79. Between June 2008 and June 2012, Wasendorf transferred more than \$1.1 million from the 1845 Account to the U.S. Bank account for Wasendorf Air, L.L.C., the holding company for Wasendorf's private airplane. U.S. Bank and Banker A were aware of Wasendorf's airplane and provided banking services to Wasendorf Air, L.L.C.

## **VII. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

### **COUNT ONE –**

#### **VIOLATION OF SECTION 4d(b) AND REGULATION 1.20(a)** **IMPROPER USE OF PEREGRINE'S CUSTOMER SEGREGATED FUNDS**

80. Paragraphs 1 through 79 are re-alleged and incorporated herein.

81. Section 4d(b) of the Act, 7 U.S.C. § 6d(b), makes it unlawful for any person including any depository, that has received any money, securities, or property for deposit in a

separate account as provide for in Section 4d(a)(2) of the Act, to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such FCM.

82. Regulation 1.20(a), 17 C.F.R. § 1.20(a) makes it unlawful for any person including any depository, that has received customer funds for deposit in a segregated account as provided for in this section, to hold, dispose of, or use any such funds as belonging to any other person other than the option or commodity customers of the FCM which deposited such funds.

83. Between September 2008 and July 2012, U.S. Bank violated Section 4d(b) of the Act, 7 U.S.C. § 6d(b), and Regulation 1.20(a), 17 C.F.R. § 1.20(a), by holding and/or using Peregrine's customer segregated funds to secure the \$6.4 million loan U.S. Bank made to Construction pursuant to the 2010 Guaranty and the \$3 million loan and its extension to the Wasendorfs pursuant to the 2008 Guaranty.

84. Each instance in which U.S. Bank held and/or used Peregrine's customer funds to secure, extend, or calculate the terms and/or risk of the loans made by U.S. Bank to Construction and the Wasendorfs between September 2008 and July 2012, is alleged as a separate and distinct violation of Section 4d(b)of the Act, 7 U.S.C. § 6d(b), and Regulation 1.20(a), 17 C.F.R. § 1.20(a).

85. The acts, omissions and failures of Banker A and the officials, agents or persons acting for U.S. Bank described in this Count One were done within the scope of their employment, agency or office with U.S. Bank and are deemed to be the acts, omissions and failures of U.S. Bank pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

**COUNT TWO –**  
**VIOLATION OF SECTION 4d(b) AND REGULATION 1.20(a)**  
**IMPROPERLY HOLDING PEREGRINE’S CUSTOMER SEGREGATED FUNDS**

86. Paragraphs 1 through 79 are re-alleged and incorporated herein.

87. Section 4d(b) of the Act, 7 U.S.C. § 6d(b), makes it unlawful for any person including any depository, that has received any money, securities, or property for deposit in a separate account as provide for in Section 4d(a)(2) of the Act, to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such FCM.

88. Regulation 1.20(a), 17 C.F.R. § 1.20(a) makes it unlawful for any person including any depository, that has received customer funds for deposit in a segregated account as provided for in this section, may hold, dispose of, or use any such funds as belonging to any other person other than the option or commodity customers of the FCM which deposited such funds.

89. Between June 2008 and July 2012, U.S. Bank violated Section 4d(b) of the Act, 7 U.S.C. § 6d(b) and Regulation 1.20(a), 17 C.F.R. § 1.20(a) by holding Peregrine’s customer segregated funds in the 1845 Account, which they treated as if it were Peregrine’s and/or Wasendorf’s checking account, and knowingly allowing Wasendorf to transfer customer funds from the 1845 Account to his various entities that U.S. Bank and Banker A knew were not for the benefit of Peregrine’s customers.

90. Each instance in which U.S. Bank improperly held Peregrine’s customer segregated funds in an account it treated as if it were a Peregrine checking account and each transfer of Peregrine’s customer funds for the benefit of Wasendorf and others who were not Peregrine’s customers between June 2008 and July 2012, including but not limited to those

specifically alleged herein, is alleged as a separate and distinct violation of Section 4d(b) of the Act, 7 U.S.C. § 6d(b), and Regulation 1.20(a), 17 C.F.R. § 1.20(a).

91. The acts, omissions and failures of Banker A and the officials, agents or persons acting for U.S. Bank described in this Count Two were done within the scope of their employment, agency or office with U.S. Bank and are deemed to be the acts, omissions and failures of U.S. Bank pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

### **VIII. RELIEF REQUESTED**

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

- A. An order finding that Defendant violated Section 4d(b) of the Act, as amended, to be codified at 7 U.S.C. § 6d(b), and Regulation 1.20(a), 17 C.F.R. § 1.20(a);
- B. An order of permanent injunction prohibiting Defendant, and any other person or entity associated with Defendant, from engaging in conduct in violation of Section 4d(b) and Regulation 1.20(a);
- C. An order requiring that Defendant, as well as any of Defendant's successors, make full restitution to each and every Peregrine customer whose funds Defendant improperly held in the 1845 Account, pursuant to such procedure as the Court may order, plus pre-judgment interest thereon from the date of such violations, plus post-judgment interest;
- D. An order requiring that Defendant, as well as any of Defendant's successors, disgorge to any officer appointed by the Court or directed to the Court all benefits

received including, but not limited to, salaries, commissions, loans, fees, interest and revenues derived, directly or indirectly, from acts or practices that constitute violations of the Act, as amended, and the Regulations, including pre and post-judgment interest;

- E. An order requiring Defendant to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the greater of: (1) triple their monetary gain for each violation of the Act, as amended, and the Regulations, or (2) \$130,000 for each violation committed on or after October 23, 2004, or (3) \$140,000 for each violation committed on or after October 23, 2008;
- F. An order requiring Defendant to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and
- G. An order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Date: June 5, 2013

Respectfully submitted,

/s/ Robert Howell

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