

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

03-74206

CIVIL ACTION NO. _____

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

MARQUIS FINANCIAL MANAGEMENT
SYSTEMS, INC.,
THE MARQUIS GROUP, INC.,
JOHN DANIEL LEE,
DAVID PAUL KELLY II and
JOEL SOFIA,

Defendants.

LAWRENCE P. ZATKOFF

MAGISTRATE JUDGE CAPELLI

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

I. SUMMARY

1. From at least January 2000 and continuing through the present ("relevant time"), John Daniel Lee ("Lee"), David Paul Kelly ("Kelly") and Joel Sofia ("Sofia"), individually and as agents of Marquis Financial Management Systems, Inc. ("Marquis FMS") and The Marquis Group, Inc. ("Marquis Group") (hereinafter collectively referred to as the "defendants"), solicited, accepted and pooled approximately \$1.2 million (the "Pool") from members of the public in the United States and Canada and used these funds to trade commodity futures contracts and options on futures contracts.

2. During the course of operating this Pool, defendant Lee, while acting as an agent for Marquis FMS and Marquis Group, misrepresented to Pool participants and prospective participants, both orally and in writing: (i) the performance record of the Pool, (ii) the profits and losses for the Pool, and (iii) the value of the individual participant's share of the Pool. Lee made oral and written misrepresentations to conceal trading losses from participants and to conceal their misappropriation of Pool participants' funds. Lee, Marquis FMS and Marquis Group also prepared and distributed false account statements to participants.

3. During the relevant time, defendants Marquis FMS and Marquis Group, acted as commodity pool operators ("CPO") without being registered as such with the Commission and, while acting as CPOs, Marquis FMS and Marquis Group failed to provide participants with complete and accurate periodic account statements and disclosure documents. Lee, Kelly and Sofia operated as associated persons ("AP") of the CPOs without the benefit of registration with the Commission.

4. Marquis FMS and the Marquis Group, and Lee, have engaged, are engaging, or are about to engage in acts and practices which violate Sections 4b(a)(2)(i) and (iii), 4b(a)(2)(ii), 4c(b), 4k(2), 4m(1), 4n(4) and 4o(1)(B) of the Commodity Exchange Act, as amended ("the Act"), 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6b(a)(2)(ii), 6c(b), 6k(2), 6m(1), 6n(4) and 6o(1)(B) (2001), and Commission Regulations 4.21, 4.22 and 33.10 thereunder, 17 C.F.R. §§ 4.21, 4.22 and 33.10 (2003). Lee has engaged, is engaging, or is about to engage in acts and practices which violate Sections 4b(a)(2)(i) and (iii), 4b(a)(2)(ii), 4c(b), 4k(2), and 4o(1)(B) of the Act, as amended, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6b(a)(2)(ii), 6c(b), 6k(2), 6m(1), 6n(4) and 6o(1)(B) (2001), and Commission Regulations 4.21, 4.22 and 33.10 thereunder, 17 C.F.R. §§ 4.21, 4.22

and 33.10 (2003). Kelly and Sofia have engaged, are engaging, or are about to engage in acts and practices that violate Section 4k(2), 7 U.S.C. § 6k(2) (2001).

5. Accordingly, the Commission brings this action pursuant to Section 6c(a) of the Act, 7 U.S. C. § 13a-1 (2001), to enjoin the defendants' unlawful acts and practices and to compel their compliance with the Act. In addition, the Commission seeks disgorgement of the defendants' ill-gotten gains, restitution to investors, civil monetary penalties and such other relief as this Court may deem necessary and appropriate.

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

II. JURISDICTION AND VENUE

7. The Act prohibits fraud in connection with the trading of commodity futures contracts and options on commodity futures contracts and establishes a comprehensive system for regulating the purchase and sale of such contracts. This Court has jurisdiction over this action pursuant to Section 6c(a) 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 to the Commission 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.

8. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a(e) (2001), because the defendants are found in, inhabit, or transact business, among other places, in this District, or the acts and practices in violation of the Act have occurred, are occurring, or are about to occur, among other places, within this District. Specifically,

defendants Lee and Kelly both reside in this District and Lee, Kelly and Sofia have transacted investment business for the Pool within this District. Further, defendants Marquis FMS and Marquis Group each have mailing addresses within this district and defendants Marquis FMS and Marquis Group, both foreign corporations, have designated Lee, a resident of this District, as their agent and as having a general power of attorney to act on their behalf. He has transacted business on their behalf within this District.

9. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, including the mail, in connection with the acts, practices and courses of business complained of herein.

III. THE PARTIES

10. Plaintiff, Commodity Futures Trading Commission ("CFTC"), is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2001), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2003).

11. Defendant Marquis Financial Management Systems, Inc. is a company incorporated in the Republic of Panama with mailing addresses in Flint, Michigan and Bermuda. During the relevant time, Marquis FMS opened futures trading accounts at LFG, Inc. ("LFG"), a futures commission merchant ("FCM") located in Chicago, Illinois; in approximately February 2001, one of these accounts was transferred to another FCM, Refco, Inc. ("Refco"), also located in Chicago, Illinois. Marquis FMS has never been registered with the Commission in any capacity.

12. Defendant The Marquis Group, Inc. is a company incorporated in the Republic of Panama with mailing addresses in Flint, Michigan and Ancon, Panama. During the relevant

time, Marquis Group opened futures trading accounts at two FCMs, namely, Professional Market Brokerage, Inc. ("PMB") and Robbins Futures, Inc. ("Robbins"), each of which was located in Chicago, Illinois. The account at PMB was eventually transferred to Refco in approximately December 2001. Marquis Group has never been registered with the Commission in any capacity.

13. Defendant John Daniel Lee is 37 years old and resides in Flushing, Michigan.

During the relevant time, Lee was designated as an agent with a general power of attorney to act on behalf of Marquis FMS and the Marquis Group. Lee sometimes conducts business under the names "JDL & Associates," "Justice, Divinity and Liberty Association," "JDL Association," "JDLA" or "EMI," ("Elite Marketing Internationale, S.A.," with a mailing address in Grand Blanc, Michigan), the latter of which is a purported Panamanian corporation. Lee is also the pastor of a purported church in Flint, Michigan called "United Believers." He has also sometimes used the alias, "Jhon Leigh." Lee has never been registered with the Commission in any capacity.

14. Defendant David Paul Kelly II is 32 years old and resides in Flint, Michigan.

Kelly sometimes conducts business under the names "JDL & Associates," "Justice, Divinity and Liberty Association" or "JDLA" and has sometimes used the alias, "Dhavid Khelly." Kelly has never been registered with the Commission in any capacity. Kelly made presentations to group seminars hosted by Marquis, was formally given authority to act on behalf of Marquis Group in its dealings with PMB via a Corporate Resolution and Indemnification Agreement and also solicited participants for the Pool.

15. Defendant Joel Sofia is 22 years old and resides in Pitman, New Jersey. Sofia sometimes conducts business under the name "EMI" and held himself out as the purported president of EMI-NAS, EMI's alleged membership organization ("EMI-North American

Section"). He has sometimes used the alias, "Jhoel Sophia." Sofia has never been registered with the Commission in any capacity. Sofia solicited participants for the Pool.

IV. FACTS

16. During the relevant time, Lee, Kelly and Sofia, while operating as representatives of the organization called JDLA, solicited money from participants for an investment opportunity with a Pool operated by Marquis FMS and Marquis Group (Marquis FMS and Marquis Group are sometimes collectively referred to hereinafter as "Marquis"). They never disclosed to participants, however, that a significant portion of their funds would be pooled and used to trade commodity futures and options on futures contracts.

17. In his solicitations, Lee made the following fraudulent statements to participants and prospective participants:

- (a) Marquis had been accepting funds for 14-15 years;
- (b) Marquis had experienced "remarkable" returns, having consistently outperformed the U.S. stock market;
- (c) An investment with Marquis was very low risk, with only 25% of the investment placed at risk and the remaining 75% of the funds placed in a non-risk account;
- (d) Marquis had consistently achieved 300% annual returns; and
- (e) A \$100,000 investment would return amounts from \$100,000 to \$350,000 in the prescribed 410-day investment period.

18. Lee, Kelly and Sofia told participants that in order to participate they had to pay a fee of several thousand dollars for the creation of a purported off-shore corporation through which to invest. In addition, participants had to pay an administrative fee to Marquis of 10% of their investment amount.

19. In December 2001, Lee prepared and provided a single account statement to at least some participants after the expiration of their 410-day investment period called "Membership Overview for the Year 2001" ("statements"). These statements were ostensibly issued by JDLA and falsely projected to different participants that for the investment period just completed their "anticipated yield" on a \$100,000 deposit was \$250,000 or \$350,000. However, the statements said that the time for payouts was extended for two additional 410-day terms (820 days), with the earning of additional profits during the second two terms subject to a "best efforts" basis. The statements never disclosed to participants that the Pool had suffered trading losses or that any portion of their investments had been lost.

20. In reality, between June 2000, when Marquis FMS first opened a commodity futures trading account at LFG, and through the present, the Pool lost \$625,818 trading commodity futures and options in Marquis Group's accounts at PMB and Robbins and the Marquis FMS and Marquis Group accounts at Refco.

21. During the last quarter of 2001, Lee prepared and sent additional correspondence to persons who had deposited funds in the Pool through his association called JDLA. The letters stated that although JDLA had not downgraded any of its expected yields for participants, a number of factors were causing JDLA to ask participants to wait beyond the expiration of their investment term for a payout from their investment. In particular, Lee falsely stated that the September 11, 2001 tragedy and the implementation of the new U.S.A. Patriot Act had caused the U.S. government to more closely monitor the banking activities of organizations worldwide and had caused JDLA to place an "immediate moratorium" on disbursements to participants.

22. As recently as March 2003, a website was operating under the name EMI at <http://www.emi-nas.org> and was soliciting new participants for the Pool. On the EMI website, Sofia says that EMI-NAS is the exclusive promoter for increasing membership in Marquis FMS.

23. During the relevant time, based upon their misrepresentations, defendants collected approximately \$1.2 million from participants in the United States and Canada. Further, and more specifically, between June 2000 when the defendants first traded money from the Pool in commodity futures and July 2003, there was never less than \$200,000 of pooled participant funds and from August 2003 to the present, there has been not less than \$400,000 in pooled participant funds, thereby exceeding the level of total gross capital contributions for a person to be exempt from registration as a commodity pool operator under Commission Regulation 4.13(a)(2)(i), 17 C.F.R. § 4.13(a)(2)(i).

24. On information and belief, the defendants made some payments to some participants, using newly acquired funds from newer participants to repay earlier participants, in a manner akin to a Ponzi scheme.

25. The defendants currently owe at least ten participants approximately \$943,000.

26. Upon information and belief, defendants Marquis FMS, Marquis Group and Lee misappropriated at least \$313,000 of participants' funds.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND COMMISSION REGULATIONS
COUNT ONE**

**VIOLATIONS OF SECTIONS 4b(a)(2)(i) and (iii) OF THE ACT:
FRAUD BY MISAPPROPRIATION AND MISREPRESENTATIONS**

(Lee, Marquis FMS and Marquis Group)

27. The allegations set forth in paragraphs 1 through 26 are re-alleged and incorporated herein.

28. During the relevant time, Lee violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2001), in that he cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive Pool participants or prospective Pool participants by soliciting participants for the Pool by, among other things:

- (a) fraudulently omitting to tell participants that they were investing in commodity futures contracts;
- (b) fraudulently promising participants and prospective participants profitability while claiming to be able to limit risks;
- (c) fraudulently misrepresenting the past performance for the Pool;
- (d) fraudulently misrepresenting the profits and losses for the Pool;
- (e) fraudulently misrepresenting the value of each participant's investment in the Pool;
- (f) misappropriating participants' funds; and
- (g) using funds solicited for investment purposes for, among other things, reimbursing earlier participants.

29. Lee engaged in this conduct 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 such other persons where such contracts for future delivery were or may have been 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.

30. The actions and omissions of defendant Lee described in this Count were done individually and as an agent on behalf of Marquis FMS and Marquis Group. Therefore, Marquis

FMS and Marquis Group are also liable for Lee's violations of Section 4b(a)(2)(i) and (iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

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

COUNT TWO

VIOLATIONS OF SECTION 4b(a)(2)(ii) OF THE ACT: PROVIDING FALSE ACCOUNT STATEMENTS TO PARTICIPANTS

(Lee, Marquis FMS and Marquis Group)

32. The allegations set forth in paragraphs 1 through 26 are re-alleged and incorporated herein.

33. During the relevant time, Lee violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2001), in that he willfully made or caused to be made false reports or statements thereof by preparing and issuing false account statements to participants. These statements misrepresented profits for the just completed investment period, omitted losses and overstated the value of each participant's interest in the Pool.

34. Lee engaged in this conduct, 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 have been 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.

35. The actions and omissions of defendant Lee described in this Count were done individually and as an agent on behalf of Marquis FMS and Marquis Group. Therefore, Marquis FMS and Marquis Group are also liable for Lee's violations of Section 4b(a)(2)(ii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

36. Each false report or statement thereof during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(ii) of the Act.

COUNT THREE

VIOLATIONS OF SECTION 4c(b) OF THE ACT AND REGULATION 33.10: OPTIONS FRAUD

(Lee, Marquis FMS and Marquis Group)

37. The allegations set forth in paragraphs 1 through 26 are re-alleged and incorporated herein.

38. During the relevant time, Lee: (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, or willfully entered or caused to be entered for other persons false records; and (iii) willfully deceived or attempted to deceive other persons, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, commodity option transactions, by the following acts:

- (a) fraudulently omitting to tell participants that they were investing in options on commodity futures contracts;
- (b) fraudulently promising participants and prospective participants profitability while claiming to be able to limit risks;
- (c) fraudulently misrepresenting the past performance for the Pool;

- (d) fraudulently misrepresenting the profits and losses for the Pool;
- (e) fraudulently misrepresenting the value of each participant's investments in the Pool;
- (f) misappropriating participants' funds;
- (g) using funds solicited for investment purposes for, among other things, reimbursing earlier participants; and
- (h) preparing and issuing false account statements to participants,

all in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2001), and Commission Regulation 33.10, 17 C.F.R. § 33.10 (2003).

39. The actions and omissions of defendant Lee described in this Count were done individually and as an agent on behalf of Marquis FMS and Marquis Group. Therefore, Marquis FMS and Marquis Group are liable for Lee's violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2001), and Commission Regulation 33.10, 17 C.F.R. § 33.10 (2003), pursuant to Section 2a(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

40. Each act of misappropriation, each material misrepresentation or omission, and each false report or statement thereof made during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 33.10, 17 C.F.R. § 33.10.

COUNT FOUR

VIOLATION OF SECTION 4m(1) OF THE ACT: ACTING AS A CPO WITHOUT BENEFIT OF REGISTRATION

(Marquis FMS and Marquis Group)

41. The allegations set forth in paragraphs 1 through 26 are re-alleged and incorporated herein.

42. A CPO is defined in Section 1a(5) of the Act, 7 U.S.C. § 1(a) (2001), as any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market.

43. With certain specified exceptions and exemptions, not applicable here, all CPOs are required to be registered with the Commission, pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2001).

44. During the relevant time, Marquis FMS and Marquis Group engaged in a business that was of the nature of an investment trust, syndicate, or similar form of enterprise by soliciting, accepting and receiving more than approximately \$1.2 million from participants and pooling and utilizing a portion of those monies for the trading of commodity futures and options on futures.

45. In connection with the conduct described above in this Count, Marquis FMS and Marquis Group used the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CPO.

46. Defendants Marquis FMS and Marquis Group engaged in these activities without the benefit of registration as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2001).

47. Each use of the mails or any means or instrumentality of interstate commerce in connection with defendant Marquis FMS and Marquis Group's business as a CPO without proper registration during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act.

COUNT FIVE

**VIOLATIONS OF SECTION 4k(2) OF THE ACT:
ACTING AS AN AP OF A CPO WITHOUT BENEFIT OF REGISTRATION
AND EMPLOYING SUCH AN AP**

(Marquis FMS, Marquis Group, Lee, Kelly and Sofia)

48. The allegations set forth in paragraphs 1 through 26 are re-alleged and incorporated herein.

49. An AP of a CPO is defined in Commission Regulation 1.3(aa)(3) (2003) as any natural person who is associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions) in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged.

50. Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2001), makes it unlawful for any person to associate with a CPO as a partner, officer, employee, consultant or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves: (i) the solicitation or acceptance of customers' orders, discretionary accounts, or participation in a commodity pool; or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under the Act as an AP of such CPO and such registration has not expired, been suspended or revoked.

51. During the relevant time, Lee, Kelly and Sofia associated with Marquis FMS and Marquis Group, and were involved in the solicitation of funds from participants whose funds were pooled and, in part, used to fund commodity futures trading, while they were not properly registered as APs of a CPO, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2001).

52. Lee allowed himself, Kelly and Sofia to become and remain associated with them and knew, or should have known, that he, Kelly and Sofia were not registered as associated persons of Marquis FMS and Marquis Group, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2001). The actions and omissions of defendant Lee described in this Count were done individually and as an agent on behalf of Marquis FMS and Marquis Group. Therefore, Marquis FMS and Marquis Group are liable for Lee's violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2001), and Commission Regulation 33.10, 17 C.F.R. § 33.10 (2003), pursuant to Section 2a(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

53. Each solicitation of funds for participation in the Pool by Lee, Kelly and Sofia during the relevant time, and each time such a solicitation was allowed by Lee, is alleged as a separate and distinct violation of Section 4k(2) of the Act.

COUNT SIX

**VIOLATIONS OF SECTION 4o(1)(B) OF THE ACT:
FRAUD BY A CPO
AND BY AN AP OF A CPO**

(Marquis FMS, Marquis Group and Lee)

54. The allegations set forth in paragraphs 1 through 26 are re-alleged and incorporated herein.

55. During the relevant time, defendants Marquis FMS and Marquis Group, while acting as CPOs, and Lee, while acting as an AP of Marquis FMS and Marquis Group in their capacity as CPOs, have violated Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) (2001), have engaged or are engaging in transactions, practices or a course of business which operated as a fraud or deceit upon pool participants or prospective pool participants by using the mails or other

means or instrumentalities of interstate commerce. Their fraudulent acts included, but were not limited to:

- (a) fraudulently omitting to tell participants that they were investing in commodity futures contracts and options on futures contracts;
- (b) fraudulently promising participants and prospective participants profitability while claiming to be able to limit risks;
- (c) fraudulently misrepresenting the past performance for the Pool;
- (d) fraudulently misrepresenting the profits and losses for the Pool; and
- (e) fraudulently misrepresenting the value of each participant's investments in the Pool;
- (f) misappropriating participants' funds;
- (g) using funds solicited for investment purposes for, among other things, reimbursing earlier participants; and
- (h) preparing and issuing false account statements to participants.

56. The actions and omissions of defendants Lee described in this Count were done as an agent on behalf of Marquis FMS and Marquis Group. Therefore, Marquis FMS and Marquis Group are also liable for Lee's violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) (2001), pursuant to Section 2a(1)(B) of the Act, 7 U.S.C. § 2a(1)(B) (2001).

57. Each act of misappropriation, each material misrepresentation or omission, and each false report or statement made during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1)(B) (2001).

COUNT SEVEN**VIOLATIONS OF SECTION 4n(4) OF THE ACT AND REGULATION 4.22:
FAILURE TO PROVIDE PERIODIC ACCOUNT STATEMENTS****(Marquis FMS and Marquis Group)**

58. The allegations set forth in paragraphs 1 through 26 are re-alleged and incorporated herein.

59. During the relevant time, Marquis FMS and Marquis Group, acting as CPOs registered or required to be registered under the Act, were required to furnish annual and periodic monthly account statements to participants. Marquis FMS and Marquis Group only provided some participants with one statement called a "Membership Overview" instead of satisfying the monthly distribution requirement. Further, the account statement they provided did not include the accurate information required by Section 4n(4) of the Act, 7 U.S.C. § 6n(4) (2001), and Commission Regulation 4.22, 17 C.F.R. § 4.22 (2003). In addition, the Membership Overview statement that the defendants sent to some pool participants was not an Annual Report within the meaning of the statute and rules, as Marquis FMS and Marquis Group did not prepare an accurate Annual Report, certified by an independent accountant, as required by Regulation 4.22. Accordingly, Marquis FMS and Marquis Group failed to provide the required account statements and Annual Reports to participants, in violation of Section 4n(4) of the Act, 7 U.S.C. § 6n(4) (2001), and Regulation 4.22, 17 C.F.R. § 4.22 (2003).

60. Each failure to deliver an accurate account statement and Annual Report to participants during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4n(4) of the Act, 7 U.S.C. § 6n(4) (2001), and Regulation 4.22, 17 C.F.R. § 4.22 (2003).

COUNT EIGHT**VIOLATIONS OF REGULATION 4.21:
FAILURE TO PROVIDE DISCLOSURE DOCUMENTS****(Marquis FMS and Marquis Group)**

61. The allegations set forth in paragraphs 1 through 26 are re-alleged and incorporated herein.

62. During the relevant time, while directly or indirectly operating as a CPO, registered or required to be registered under the Act, Marquis FMS and Marquis Group solicited, accepted and received funds, securities or other property from participants without first delivering to prospective Pool participants a true and accurate Disclosure Document containing the information required by Regulation 4.24, 17 C.F.R. § 4.24 (2003), including a risk disclosure statement, in violation of Regulation 4.21, 17 C.F.R. § 4.21 (2003).

63. Each failure to deliver a true and accurate Disclosure Document containing the information set forth in Regulation 4.24 during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.21, 17 C.F.R. §§ 4.21 (2003).

VI. RELIEF REQUESTED

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

- A. Find that defendants Marquis FMS and Marquis Group violated Sections 4b(a)(2)(i) and (iii), 4b(a)(2)(ii), 4c(b), 4k(2), 4m(1), 4n(4) and 4o(1)(B) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6b(a)(2)(ii), 6c(b), 6k(2), 6m(1), 6n(4) and 6o(1)(B) (2001), and Commission Regulations 4.21, 4.22 and 33.10 thereunder, 17 C.F.R. §§ 4.21, 4.22 and 33.10 (2003);
- B. Find that defendant Lee violated Sections 4b(a)(2)(i) and (iii), 4b(a)(2)(ii), 4c(b), 4k(2) and 4o(1)(B) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6b(a)(2)(ii), 6c(b), 6k(2) and 6o(1)(B) (2001), and Commission Regulation 33.10 thereunder, 17 C.F.R. § 33.10 (2003);

- C. Find that defendants Sofia and Kelly violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2001);
- D. Enter a statutory restraining order and an order of preliminary injunction restraining and enjoining defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:
1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendants, wherever located, including all such records concerning defendants' business operations;
 2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendants, wherever located, including all such records concerning defendant's business operations; and
 3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control of, or in the name of, defendants Marquis FMS, Marquis Group and Lee.
- E. Enter orders of preliminary and permanent injunction against the defendants and any other person or entity associated with them, including any successor thereof, that:
1. prohibit defendants Marquis FMS and Marquis Group from violating Sections 4b(a)(2)(i) and (iii), 4b(a)(2)(ii), 4c(b), 4k(2), 4m(1), 4n(4) and 4o(1)(B) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6b(a)(2)(ii), 6c(b), 6k(2), 6m(1), 6n(4) and 6o(1)(B) (2001), and Commission Regulations 4.21, 4.22 and 33.10 thereunder, 17 C.F.R. §§ 4.21, 4.22 and 33.10 (2003);
 2. prohibit defendant Lee from violating Sections 4b(a)(2)(i) and (iii), 4b(a)(2)(ii), 4c(b), 4k(2) and 4o(1)(B) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6b(a)(2)(ii), 6c(b), 6k(2) and 6o(1)(B) (2001), and Commission Regulation 33.10 thereunder, 17 C.F.R. § 33.10 (2003);
 3. prohibit defendants Sofia and Kelly from violating Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2001);

4. prohibit each of the defendants from engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
 5. prohibit each of the defendants from applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for an Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2003), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2003). This includes, but is not limited to, soliciting, accepting, or receiving any funds, revenue or other property from any other person, giving commodity trading advice for compensation, except as provided in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2003), or soliciting prospective customers related to the purchase or sale of commodity futures or options.
- F. Enter an order directing the defendants and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or Regulations, as described herein, and interest thereon from the date of such violations;
- G. Enter an order directing the defendants to make full restitution to every customer whose funds were received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;
- H. Enter an order assessing a civil monetary penalty against each defendant in the amount of not more than the higher of \$110,000 or triple the monetary gain to the defendant for each violation by the defendant of the Act or Regulations occurring before October 23, 2000, and assessing a civil monetary penalty against each defendant in the amount of not more than the higher of \$120,000 or triple the monetary gain to the defendant for each violation by the defendant of the Act or Regulation on or after October 23, 2000;
- I. Enter an order directing that the defendants make an accounting to the court of all their assets and liabilities, together with all funds they received from and paid to investors and other persons in connection with commodity futures and options on commodity futures transactions or purported commodity futures or options on commodity futures transactions, and all disbursements for any purpose whatsoever of funds received from commodity investors, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from, but not limited to, January 1999 to and including the date of such accounting;

- J. Enter an order requiring defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- K. Order such other and further remedial ancillary relief as the Court may deem appropriate.

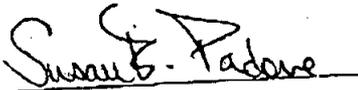
Dated: October 20, 2003

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