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17  
18 **UNITED STATES DISTRICT COURT**  
19 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

20  
21 **U. S. COMMODITY FUTURES**  
22 **TRADING COMMISSION,**

23 Plaintiff,

24 vs.

25  
26 **MICHAEL J. LEIGHTON,**

27 Defendant  
28

CV12-4012 PSG (SSK)

Civil Action No:

Judge:

**COMPLAINT FOR INJUNCTIVE  
AND OTHER EQUITABLE RELIEF  
AND PENALTIES UNDER THE  
COMMODITY EXCHANGE ACT,  
AS AMENDED**

1  
2 The United States Commodity Futures Trading Commission (the  
3 “Commission” or the “CFTC”), by and through its attorneys, alleges as follows:  
4

5 **I. JURISDICTION AND VENUE**

6 1. This Court has jurisdiction over this action pursuant to the  
7 Commodity Exchange Act, as amended (“Act”), to be codified at 7 U.S.C. §§ 1  
8 *et seq.*<sup>1</sup> This Court also has jurisdiction over the subject matter of this action and  
9 the defendant pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006),  
10 which authorizes the Commission to seek injunctive relief against any person  
11 whenever it shall appear that such person has engaged, is engaging, or is about to  
12 engage in any act or practice constituting a violation of any provision of the Act or  
13 any rule, regulation, or order thereunder.  
14  
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16

17 2. Venue properly lies with this Court pursuant to Section 6c(e) of the  
18 Act, 7 U.S.C. § 13a-1(e) (2006), in that defendant is found in, inhabits and/or  
19 transacts or has transacted business in this District, and defendant’s acts and  
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22  
23

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24 <sup>1</sup> The Commodity Exchange Act, as amended by the Food, Conservation, and  
25 Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization  
26 Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008)  
27 and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,  
28 Pub. L. No. 111-203 (“Dodd-Frank Act”), Title VII (the Wall Street Transparency  
and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 16,  
2010).

1 practices in violation of this Act have occurred, are occurring, and/or are about to  
2 occur within this District, among other places.

## 3 4 **II. INTRODUCTION**

5 3. Defendant Michael J. Leighton (“Leighton”) has engaged, is  
6 engaging, or is about to engage in acts and practices that have defrauded and  
7 deceived or will defraud or deceive at least 42 participants who invested at least  
8 \$1.6 million in a commodity pool (the “Leighton pool”) that he operated from at  
9 least July 2008 and continuing through the present.  
10  
11

12 4. Leighton has solicited and accepted pool participant funds in his own  
13 name and commingled pool funds intended for commodity trading with his  
14 personal funds.  
15

16 5. Further, Leighton willfully or recklessly has made misrepresentations  
17 of material fact to pool participants, including, but not limited to,  
18 misrepresentations that: (1) the pool trading was profitable, and (2) a regulatory  
19 audit prevented him from making any distributions or payments to pool  
20 participants or from returning participant funds upon request, when in fact no such  
21 audit had occurred. Leighton also has issued false written statements to pool  
22 participants regarding the profitability and value of their respective shares of the  
23 Leighton pool.  
24  
25  
26  
27  
28





1 February 2011, Leighton had most, if not all, Leighton pool participants execute  
2 the Agreement and Certificate of Limited Partnership of S&P Investment  
3 Partnership, LP (the “S&P Partnership Agreement”). Leighton used the S&P  
4 Partnership as a vehicle to solicit funds from pool participants and prospective  
5 participants, and used S&P Partnership funds to operate the Leighton pool.  
6

7  
8 13. The National Futures Association (“NFA”) is a registered futures  
9 association pursuant to Section 17 of the Act, 7 U.S.C. § 21 (2006), that performs  
10 several regulatory functions on behalf of the Commission, including registration  
11 processing pursuant to Regulation 3.2, 17 C.F.R. § 3.2 (2011).  
12

13  
14 14. The CME Group, Inc. (“CMEG”) is a designated contract market as  
15 defined in Regulation 1.3(h), 17 C.F.R. § 1.3(h) (2011), whose functions include  
16 conducting periodic audits of its clearing members.  
17

## 18 V. STATUTORY BACKGROUND

19 15. A “commodity pool” is defined in Section 1a(10)(A) of the Act, as  
20 amended, to be codified at 7 U.S.C. § 1a(10)(A), as “any investment trust,  
21 syndicate or similar form of enterprise operated for the purpose of trading in  
22 commodity interests.”  
23

24  
25 16. A “commodity pool operator” or “CPO” is defined in Section  
26 1a(11)(A) of the Act, as amended, to be codified at 7 U.S.C. § 1a(11)(A), as any  
27 person “engaged in a business that is of the nature of a commodity pool,  
28

1 investment trust, syndicate, or similar form of enterprise, and who, in connection  
2 therewith, solicits, accepts or receives from others, funds, securities, or property. . .  
3 for the purpose of trading in commodity interests,” including any “commodity for  
4 future delivery.”

6 17. A “commodity trading advisor” or “CTA” is defined in Section 1a(12)  
7 of the Act, as amended, to be codified at 7 U.S.C. § 1a(12), as any person who,  
8 “for compensation or profit, engages in the business of advising others . . . as to the  
9 value or the advisability of” trading in any commodity futures and options contract.  
10  
11

12 18. A “participant” is defined in Regulation 4.10(c), 17 C.F.R. § 4.10(c)  
13 (2011), as “any person that has any direct financial interest in a [commodity] pool  
14 (e.g. a limited partner).”  
15

16 19. A “futures commission merchant” or “FCM” is defined in Section  
17 1a(28) of the Act, as amended, to be codified at 7 U.S.C. § 1a(28), as any  
18 individual, association, partnership, corporation or trust that is engaged in  
19 soliciting or accepting orders for the purchase or sale of any commodity for future  
20 delivery and, in or in connection with such solicitation or acceptance of orders,  
21 “accepts any money, securities or property (or extends credit in lieu thereof) to  
22 margin, guarantee, or secure any trades or contracts that result or may result  
23 therefrom.”  
24  
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28



1 deposited those funds into the Leighton bank account, where they were  
2 commingled with funds belonging to Leighton and/or his wife. Leighton  
3 transferred participant funds from the Leighton bank account to the futures trading  
4 accounts discussed in paragraphs 24 through 37, below.

6 23. In or before July 2010, Leighton opened a bank account in the name  
7 of S&P Investment Partnership LP with City National Bank (“the “S&P bank  
8 account”). Leighton has at all relevant times maintained exclusive control over the  
9 S&P bank account. After July 2010, certain Leighton pool participants made their  
10 funds payable to S&P Partnership, and Leighton deposited those funds into the  
11 S&P bank account. Leighton transferred participant funds from the S&P bank  
12 account to the futures trading accounts discussed in paragraphs 24 through 37,  
13 below.

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17  
18 **B. The Leighton Pool’s Commodity Futures Trading Accounts and**  
19 **Trading Losses**

20 24. As part of the Leighton pool enterprise, Leighton has opened,  
21 managed and controlled at least three commodity futures trading accounts at one  
22 FCM, and two other accounts at a second FCM. Leighton opened four of the  
23 accounts in his own name, and one account in the name of S&P Partnership.

25 25. Specifically, in April 2008, Leighton opened a futures trading account  
26 in his own name, account number xxx x334A (the “334A Account”). In the  
27 account opening documents, Leighton falsely represented that all funds deposited  
28

1 in the x334A Account were and would be his personal funds, that funds would not  
2 be solicited from any third party, and that no third party had or would have any  
3 direct or indirect ownership or financial interest in those funds or in any contracts,  
4 currencies, financial instruments or other property purchased with or through the  
5 use of such funds.  
6

7  
8 26. In connection with the opening of the 334A Account, Leighton  
9 executed an agreement for a license to use the FCM's proprietary software and  
10 data for online trading (the "OTS System"). In that agreement, Leighton  
11 represented that he was a non-professional subscriber entering into the agreement  
12 in his "own individual capacity and not on the behalf of a firm, corporation,  
13 partnership, trust or association."  
14  
15

16 27. Upon information and belief, Leighton began depositing participant  
17 funds into the 334A Account in approximately July 2008. Leighton entered trade  
18 orders for this account through the OTS System. Leighton last actively traded the  
19 334A Account in June 2009.  
20  
21

22 28. Between April 24, 2008 and June 30, 2009, Leighton deposited  
23 \$175,962.70 into the 334A Account. Upon information and belief, most if not all  
24 of those deposits were funds contributed by Leighton pool participants. During  
25 that same period, Leighton lost \$146,799.66, including commissions and fees,  
26  
27  
28

1 trading the 334A Account, and withdrew a total of \$29,163.04 from the account.

2 Leighton lost money in 10 of the 11 months that he actively traded the account.

3  
4 29. In June 2009, Leighton opened a second futures trading account in his  
5 own name, account number xxx x203A (the "203A Account"). In the account  
6 opening documents, Leighton represented that the 203A Account was identical in  
7  
8 all respects to the 334A Account. Leighton also entered trade orders for this  
9 account through the OTS System. Leighton last actively traded the account in June  
10 2010.

11  
12 30. Between June 9, 2009 and June 30, 2010, Leighton deposited  
13 \$586,846.45 into the 203A Account. Upon information and belief, most if not all  
14 of those deposits were funds contributed by Leighton pool participants. During  
15 that same period, Leighton lost \$379,100.40, including commissions and fees,  
16 trading the account, and withdrew a total of \$216,307.30 from the account.  
17  
18 Leighton lost money in 11 of the 12 months that he actively he traded the 203A  
19 Account.  
20

21  
22 31. In January 2010, Leighton opened a futures trading account in the  
23 name of S&P Partnership, account number xxx x6483 (the "6483 Account"). In  
24 the account opening documents, Leighton represented that the S&P Partnership  
25 was an investment club with net assets between \$500,000 and \$999,999. Leighton  
26 identified himself as the general partner of the S&P Partnership and primary  
27  
28

1 authorized representative for the account, and identified his wife, Patricia, as a  
2 trustee and partner of S&P Partnership and an associated person for the account.  
3  
4 Leighton also provided the FCM with a copy of the S&PII Agreement. Leighton  
5 again entered trade orders for the account on behalf of the Leighton pool through  
6 the OTS System.

7  
8 32. Leighton did not deposit funds into, or begin trading, the 6483  
9 Account until July 2, 2010, and last actively traded the account in January 2012.  
10 During that period, Leighton deposited \$747,205 into the 6483 Account. Upon  
11 information and belief, most if not all of those deposits were funds contributed by  
12 Leighton pool participants. Leighton also lost \$661,727.72, including  
13 commissions and fees, trading the 6483 Account, and withdrew a total of  
14 \$85,477.28 from the account. Leighton lost money in 18 of the 19 months that he  
15 actively traded the 6483 Account.  
16  
17  
18

19 33. In addition to the three trading accounts discussed above, Leighton  
20 also opened, managed and controlled two additional trading accounts at a second  
21 registered FCM. Specifically, in October 2008, Leighton opened a futures trading  
22 account in his own name, account number xx2100 (the "2100 Account"). In the  
23 account opening documents, Leighton falsely represented that the 2100 Account  
24 was an individual account. Leighton entered trade orders for the 2100 Account  
25  
26  
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28

1 through a proprietary software and data for online trading (the "RT System").  
2 Leighton last actively traded the 2100 Account in August 2009.

3  
4 34. Between October 27, 2008 and August 3, 2009, Leighton deposited  
5 \$125,863 into the 2100 Account. Upon information and belief, most if not all of  
6 those deposits were funds contributed by Leighton pool participants. During that  
7 same period, Leighton lost \$110,788.40, including commissions and fees, trading  
8 the 2100 Account, and withdrew a total of \$15,075.00 from the account. Leighton  
9 lost money in 4 of the 5 months that he actively traded the 2100 Account.  
10  
11

12 35. In January 2012, Leighton opened a futures trading account in his own  
13 name, account number xx7805 (the "7805 Account"). In the account opening  
14 documents, Leighton falsely represented that the 7805 Account was an individual  
15 account. Leighton entered trade orders for the 7805 Account through the RT  
16 System. Leighton last actively traded the 7805 Account in February 2012.  
17  
18

19 36. Between January 12, 2012 and February 29, 2012, Leighton deposited  
20 \$22,150.00 into the 7805 Account. Upon information and belief, most if not all of  
21 those deposits were funds contributed by Leighton pool participants. During that  
22 same period, Leighton lost \$21,028.58, including commissions and fees, trading  
23 the 7805 Account, and withdrew a total of \$1,121.42 from the account. Leighton  
24 lost money in both of months that he actively traded the account.  
25  
26  
27  
28

1 37. Through the OTS System, Leighton had constant access to  
2 information regarding the 334A, 203A and 6438 Accounts, including all open  
3 positions and account balances. Similarly, through the RT System, Leighton had  
4 constant access to information regarding the 2100 and 7805 Accounts, including  
5 all open positions and account balances. Additionally, Leighton received or had  
6 access to monthly statements from both FCMs which showed, among other things,  
7 all open positions, the profits or losses resulting from trading, and the month-end  
8 trade balances for those accounts.  
9  
10

11  
12 38. Overall, during the lifetimes of the five trading accounts described in  
13 paragraphs 24 through 37, above, Leighton deposited at least \$1,658,027.50 into  
14 the accounts and lost \$1,319,444.76, including commissions and fees, through  
15 trading.  
16

17  
18 39. Despite these actual losses, Leighton either willfully or recklessly  
19 issued false written statements to pool participants regarding the profitability and  
20 value of their respective shares of the Leighton pool. Leighton made these false  
21 statements through emails or other written statements issued by himself and/or  
22 S&PII. Among the more egregious false statements Leighton issued to pool  
23 participants are the following:  
24  
25

- 26 (a) that the Leighton pool had a 10.84% or 11.56% return, and a 10 to  
27 2 winning trade ratio, for the month of November 2009, when in  
28 fact Leighton had lost \$82,696.10 through trading the 203A  
account, resulting in a negative return;

1 (b) that the Leighton pool had a 14.07% return, and a 12 to 3 winning  
2 trade ratio, for the month of March 2010, when in fact Leighton  
3 had lost \$54,622.20 through trading the 203A resulting in a  
4 negative return; and

5 (c) that the Leighton pool had a 3.85% return, and a 8 to 3 winning  
6 trade ratio, for the month of January 2011, when in fact Leighton  
7 had lost \$28,822.26 through trading the 6483 account, resulting in  
8 a negative return.

9 40. Further, Leighton distributed to certain pool participants written  
10 monthly statements purportedly issued by the FCM carrying the 334A, 203A and  
11 6438 Accounts, which were in fact total fabrications. For example, in February  
12 2012 and during an in person meeting, Leighton provided at least two participants  
13 with a monthly statement for the 6483 Account for the period of December 2011  
14 (the "Fake FCM Statement"), and falsely represented that the FCM had prepared  
15 and issued the statement. The Fake FCM Statement reflected an account ending  
16 balance of \$4,674,581.28, when, in fact, the ending balance for the 6483 Account  
17 as of December 30, 2011 was only \$3,902.54. Upon information and belief,  
18 Leighton prepared the Fake FCM Statement and other similar documents not  
19 specifically identified herein with knowledge that the account balance was a total  
20 fabrication.  
21  
22  
23  
24

25 41. Upon information and belief, Leighton also utilized a component of  
26 the OTS System commonly known as a "Simulator Account" to falsely represent  
27 the value and performance of at least one Leighton pool trading account. A  
28

1 Simulator Account is designed to allow customers to practice trading on the OTS  
2 System, and therefore does not reflect actual trades or funds. In an email dated  
3 January 5, 2012 and accompanying attachment that purported to be a screen shot of  
4 the 6483 Account (and was in fact a screen shot of a Simulator Account), Leighton  
5 falsely represented to at least one participant that the account had a real-time cash  
6 balance and beginning day account equity of \$2,614,547.60. In fact, the 6483  
7 Account had a balance of less than \$3,000 on January 5, 2012.  
8  
9

10 42. In sum, Leighton, either willfully or recklessly, has continuously  
11 failed to disclose his actual trading losses to pool participants, and has  
12 continuously made false statements to pool participants regarding the profitability  
13 and value of their respective shares of the Leighton pool.  
14  
15

16 **C. The Fake NFA Audit, Fabricated CMEG Review and Formation of**  
17 **the S&P Partnership**

18 43. Beginning on or before July 12, 2010 and continuing through at least  
19 January 17, 2012, Leighton misrepresented to pool participants, in emails, phone  
20 calls, and in-person meetings, that the NFA was conducting an audit of Leighton  
21 and the Leighton pool, when in fact the NFA did not conduct any such audit of  
22 Leighton or any commodity pool that he operated. Leighton further falsely  
23 asserted that the ongoing audit prevented him from making any distributions or  
24 cash withdrawals to pool participants, but generally did allow Leighton to continue  
25 trading the futures accounts.  
26  
27  
28

1           44. Beginning in or before June 2011 and continuing through at least  
2 January 25, 2012, Leighton also made a number of misrepresentations to pool  
3 participants about purported efforts by Leighton to file for CMEG membership on  
4 behalf of the Leighton pool and a related review of the Leighton pool by CMEG  
5 staff. Leighton further misrepresented to certain pool participants that he could not  
6 trade the futures trading accounts during the months of September through  
7 November 2011 due to the CMEG review. In fact, Leighton never filed an  
8 application for membership with the CMEG, and the CMEG did not conduct any  
9 such audit of Leighton or any commodity pool that he operated.  
10

11  
12  
13           45. Specific egregious written misrepresentations regarding the NFA and  
14 CMEG include the following:  
15

16           (a) In a series of emails dated May 9 and 11, 2011, Leighton falsely  
17 represented to pool participants that his attorney had filed an  
18 injunction against the “auditor” to compel the release of participant  
19 funds and closing of the trading account until S&P is approved as a  
20 CPO and Leighton as a CTA;

21           (b) In emails dated June 9 and 10, 2011, Leighton falsely represented  
22 to pool participants that the “powers that be” are amicable to the  
23 some release of funds if S&P Partnership became a member of the  
24 CMEG and “back[ed] away from the filing of the arbitration for  
25 financial damages.” In a subsequent email, dated June 28, 2011,  
26 Leighton falsely represented to pool participants that the CMEG  
27 “head of business” had confirmed that the CMEG would complete  
28 S&P Partnership’s registration within two weeks, and allow  
Leighton to access pool funds within two days of registration;

          (c) In an email dated July 28, 2011, Leighton falsely represented to  
pool participants that “the NFA has not released the funds and is

1 requiring a hearing . . . to close the audit.” Leighton subsequently  
2 and falsely represented that he attended a series of meetings with  
3 the NFA and his attorney in Chicago; and

4 (d) In an email dated November 30, 2011, Leighton falsely  
5 represented to pool participants that he was “going through” the  
6 participants’ numbers with the CMEG. In an email dated  
7 December 9, 2011, Leighton falsely represented to pool  
8 participants that the CMEG required review of all customer funds  
9 accounts in the futures industry, and that the CMEG “account  
10 processor” hoped to be able to release participant funds by  
11 Christmas. In an email dated January 25, 2012, Leighton falsely  
12 represented to pool participants that the CMEG review continued.

13 46. In an email dated February 11, 2011, Leighton further misrepresented  
14 to pool participants that the NFA had fined the Leighton pool \$50,000 for acting  
15 outside the guidelines for an exempt CPO. Leighton proposed that this fine be  
16 “split evenly amongst the 21 partners (\$2,380/each).” Leighton used the audit as a  
17 vehicle to delay the release of pool participant funds, and, upon information and  
18 belief, may have used the audit to misappropriate participant funds.

19 47. In February 2011, Leighton distributed to at least one participant a  
20 purported audit report issued by the NFA dated February 16, 2011 (hereinafter the  
21 “Fake NFA Audit Report”), which was in fact a total fabrication. Leighton  
22 provided the Fake NFA Audit Report to at least one additional participant in  
23 October 2011. The Fake NFA Audit Report contains purported audit findings,  
24 issues a “summary judgment” against S&P Partnership allegedly filed with the  
25  
26  
27  
28

1 state of California on March 1, 2010, and imposes a fine of \$50,000 against  
2 Leighton individually.

3  
4 48. In or around February 2011, Leighton had most, if not all, Leighton  
5 pool participants execute the Agreement and Certificate of Limited Partnership of  
6 S&P Investment Partnership, LP (the "S&P Partnership Agreement"), and become  
7  
8 limited partners in the S&P Partnership. As discussed in paragraph 12, above,  
9 Leighton had formed the S&P Partnership approximately 13 months earlier, on or  
10 around January 1, 2010. The S&P Partnership Agreement identifies Leighton as  
11  
12 the sole general partner authorized to arrange all financing, enter contracts, and  
13 complete all other arrangements needed to affect the purpose of the partnership. It  
14  
15 incorporates by reference, but does not identify, the limited partners.

16  
17 **VII. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND**  
18 **COMMISSION REGULATIONS**

19 **Count I**

20 **Violations of Section 4b(a)(1)(A), (C) of the Act, as amended:**  
21 **Fraud by Misrepresentations**

22 49. Paragraphs 1 through 48 are realleged and incorporated herein by  
23 reference.

24  
25 50. Section 4b(a)(1)(A), (C) of the Act, as amended, to be codified at  
26 7 U.S.C. § 6b(a)(1)(A), (C), makes it unlawful for any person, in or in connection  
27  
28 with any order to make, or the making of, any contract of sale of any commodity in

1 interstate commerce or for future delivery that is made, or to be made, on or  
2 subject to the rules of a designated contract market, for or on behalf of any other  
3 person: (A) to cheat or defraud or attempt to cheat or defraud such other person; or  
4 (C) willfully to deceive or attempt to deceive such other person by any means  
5 whatsoever in regard to any order or contract or the disposition or execution of any  
6 order or contract, or in regard to any act of agency performed, with respect to any  
7 order or contract for such other person.  
8  
9

10 51. As set forth above, from at least July 2008, Leighton cheated,  
11 defrauded or deceived, and/or attempted to cheat, defraud or deceive Leighton pool  
12 participants by, among other things, willfully or recklessly making false  
13 representations of material fact to pool participants and prospective participants,  
14 including:  
15  
16

17 (a) various oral representations touting the profitability of the Leighton pool  
18 to prospective pool participants;  
19

20 (b) various representations about the existence of and the results of the Fake  
21 NFA Audit, including but not limited to the representations that it  
22 occurred, that Leighton pool participant funds could not be released due  
23 to it, and that Leighton was fined as a result of it; and

24 (c) various representations about the existence and the results of a purported  
25 application for CMEG membership and review of the Leighton pool by  
26 CMEG staff.

27 52. By this conduct, defendant violated Section 4b(a)(1)(A), (C) of the  
28 Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C).



1 results of the pool trading accounts, including the Fake FCM Statement and  
2 Simulator Account screen shot.

3  
4 58. By this conduct, defendant violated Section 4b(a)(1)(B) of the Act, as  
5 amended, to be codified at 7 U.S.C. § 6b(a)(1)(B).

6  
7 59. Leighton engaged in the acts and practices described above knowingly  
8 or with reckless disregard for the truth.

9  
10 60. Each false statement or report, including without limitation those  
11 specifically alleged herein, is alleged as a separate and distinct violation of Section  
12 4b(a)(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(B).

13  
14 **Count III**

15 **Violations of Section 6(c)(1) of the Act, as Amended, and Regulation 180.1(a):**  
16 **Fraud by Manipulative or Deceptive Devices or Contrivances**

17 61. Paragraphs 1 through 48 are realleged and incorporated herein by  
18 reference.

19  
20 62. Section 6(c)(1) of the Act, as amended, to be codified at 7 U.S.C. §  
21 9(1), provides, in relevant part:

22  
23 It shall be unlawful for any person, directly or indirectly,  
24 to use or employ or attempt to use or employ, in  
25 connection with any swap, or a contract of sale of any  
26 commodity in interstate commerce, or for future delivery  
27 on or subject to the rules of any registered entity, any  
28 manipulative or deceptive device or contrivance, in  
contravention of such rules and regulations as the  
Commission shall promulgate . . . .

1           63. Regulation 180.1(a) provides, in relevant part:

2           It shall be unlawful for any person, directly or indirectly,  
3           in connection with any swap, or contract of sale of any  
4           commodity in interstate commerce, or contract for future  
5           delivery on or subject to the rules of any registered entity,  
6           to intentionally or recklessly:

7           (1) Use or employ, or attempt to use or employ, any  
8           manipulative device, scheme, or artifice to defraud;

9           (2) Make, or attempt to make, any untrue or  
10           misleading statement of a material fact or to omit to state  
11           a material fact necessary in order to make the statements  
12           made not untrue or misleading;

13           (3) Engage, or attempt to engage, in any act, practice,  
14           or course of business, which operates or would operate as  
15           a fraud or deceit upon any person . . . .

16           64. Since August 15, 2011<sup>2</sup> and continuing through the present, Leighton  
17           has used or employed manipulative or deceptive devices or contrivances in  
18           connection with the Leighton pool including, but not limited to, making untrue or  
19           misleading statements of material facts to pool participants and/or prospective  
20           participants such as the following:

21           (a) written statements touting the profitability and value of participants'  
22           shares of the Leighton pool

23           (b) written statements regarding the balance and results of the pool trading  
24           accounts, including the Fake FCM Statement and Simulator Account  
25           screen shot

26           (c) various oral representations touting the profitability of the Leighton pool;

27           

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28           <sup>2</sup> The amendment to Section 6(c)(1) and Regulation 180.1 both became effective on August 15,  
29           2011, and therefore Count III only applies to conduct on or after that date. *See* 76 F.R. 41,398,  
30           July 14, 2011 (¶31,990).

1 (d) various representations about the existence of and the results of the Fake  
2 NFA Audit, including but not limited to the representations that it  
3 occurred, that Leighton pool participant funds could not be released due  
4 to it, and that Leighton was fined as a result of it; and

5 (e) various representations about the existence and the results of a purported  
6 application for CMEG membership and review of the Leighton pool by  
7 CMEG staff.

8 65. By this conduct, defendant violated Section 6(c)(1) of the Act, as  
9 amended, to be codified at 7 U.S.C. § 9, and Regulation 180.1(a),  
10 17 C.F.R. § 180.1(a) (2011).

11 66. Leighton engaged in the acts and practices described above knowingly  
12 or with reckless disregard for the truth.

13 67. Each manipulative or deceptive device or contrivance used or  
14 employed on or after August 15, 2011, including but not limited to those  
15 specifically alleged herein, is alleged as a separate and distinct violation of Section  
16 6(c)(1) of the Act, as amended, to be codified at 7 U.S.C. § 9, and Regulation  
17 180.1(a), 17 C.F.R. §180.1(a) (2011).

18 **Count IV**

19 **Violations of Section 4o(1)(A), (B) of the Act:**  
20 **Fraud by a CPO**

21 68. Paragraphs 1 through 48 are realleged and incorporated herein by  
22 reference.  
23  
24  
25  
26  
27  
28

1           69. Section 4o(1)(A), (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2006), in  
2 relevant part, makes it unlawful for any commodity trading advisor, commodity  
3 pool operator, or associated person directly or indirectly “to employ any device,  
4 scheme, or artifice to defraud any client or participant or prospective client or  
5 participant” or “to engage in any transaction, practice, or course of business which  
6 operates as a fraud or deceit upon any client or participant or prospective client or  
7 participant.”  
8  
9

10           70. During all relevant times, Leighton acted as a CPO by engaging in a  
11 business that is the nature of an investment trust, syndicate or similar form of  
12 enterprise and by soliciting, accepting and receiving from others funds, securities  
13 and/or property for the purpose of trading commodities.  
14  
15

16           71. As set forth above, Leighton violated Section 4o(1) (A), (B) of the  
17 Act, 7 U.S.C. § 6o(1) (A), (B) (2006), by defrauding and deceiving pool  
18 participants by, among other things, making:  
19

- 20           (a) written statements touting the profitability and value of participants’  
21           shares of the Leighton pool;
- 22           (b) written statements regarding the balance and results of the pool trading  
23           accounts, including the Fake FCM Statement and Simulator Account  
24           screen shot;
- 25           (c) various oral representations touting the profitability of the Leighton pool;
- 26           (d) various representations about the existence of and the results of the Fake  
27           NFA Audit, including but not limited to the representations that it  
28           occurred, that Leighton pool participant funds could not be released due  
            to it, and that Leighton was fined as a result of it; and

1 (e) various representations about the existence and the results of a purported  
2 application for CMEG membership and review of the Leighton pool by  
3 CMEG staff.

4 72. Leighton engaged in the acts and practices described above knowingly  
5 or with reckless disregard for the truth.

6 73. The aforementioned uses of mails or other instrumentalities of  
7 interstate commerce include, but are not limited to: (1) making wire transfers  
8 between bank accounts; and (2) using e-mail to send investment solicitation and  
9 account statements to participants in California, North Carolina and Washington,  
10 among other places.  
11

12 74. By the conduct set forth in this count, Leighton violated Section  
13 4o(1)(A), (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2006).  
14

15 75. Each fraudulent or deceptive act, including without limitation those  
16 specifically alleged herein, is alleged as a separate and distinct violation of Section  
17 4o(1) (A), (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2006).  
18

19  
20 **Count V**

21  
22 **Violations of Section 4m(1) of the Act, as Amended:**  
23 **Failure to Register as a CPO**

24 76. Paragraphs 1 through 48 are realleged and incorporated herein by  
25 reference.  
26

27 77. With certain exemptions and exclusions not applicable here, all CPOs  
28 operating a commodity pool are required to be registered with the Commission

1 pursuant to Section 4m(1) of the Act, as amended, to be codified at 7 U.S.C. §  
2 6m(1).

3  
4 78. Leighton has engaged in activities as a CPO without the benefit of  
5 registration as a CPO, and in connection therewith used the mails or other means or  
6 instrumentalities of interstate commerce, in violation of Section 4m(1) of the Act,  
7  
8 as amended, to be codified at 7 U.S.C. § 6m(1).

9  
10 79. By this conduct, defendant violated Section 4m(1) of the Act, as  
11 amended, to be codified at 7 U.S.C. § 6m(1).

12  
13 80. Each use of the mails or any means or instrumentality of interstate  
14 commerce in connection with its business as a CPO without proper registration  
15 during the relevant time period, including but not limited to those specifically  
16 alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of  
17  
18 the Act, as amended, to be codified at 7 U.S.C. § 6m(1).

19  
20 **Count VI**

21 **Violations of Regulation 4.20: Commingling of Pool Funds**

22  
23 81. Paragraphs 1 through 48 are realleged and incorporated herein by  
24 reference.

25  
26 82. Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2011), requires that a  
27  
28 “commodity pool operator must operate its pool as an entity cognizable as a legal  
entity separate from that of the pool operator.”

1           83. Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2011), requires in part that  
2 all funds, securities or other property received by a CPO from an existing or  
3 prospective pool participant for the purchase or an interest in a pool that it operates  
4 or that it intends to operate must be received in the pool's name.

5  
6           84. Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011), prohibits any CPO  
7 from commingling the property of any pool that it operates or that it intends to  
8 operate with the property of any other person.

9  
10           85. As set forth above, Leighton accepted and traded pool participant  
11 funds in his own name and, at least prior to February 2011, failed to operate the  
12 pool as a separate legal entity. Leighton had most, if not all, pool participants  
13 make their funds payable to Leighton, and Leighton deposited most, if not all, of  
14 those funds into the Leighton bank account, where they were commingled with  
15 funds belonging to Leighton and/or his wife.

16  
17           86. By this conduct, defendant violated Regulation 4.20, 17 C.F.R. § 4.20  
18 (2011).

19  
20           87. Each occasion that Leighton accepted funds, securities or other  
21 property in his own name and deposited those funds into his personal bank account  
22 where they were commingled with funds belonging to Leighton and/or his wife,  
23 traded pool participant funds in his own name, or failed to operate the pool as a  
24  
25  
26  
27  
28

1 separate legal entity is alleged as a separate and distinct violation of Regulation  
2 4.20, 17 C.F.R. § 4.20 (2011).

3  
4 **VIII. RELIEF REQUESTED**

5 WHEREFORE, for the reasons stated above, the Commission respectfully  
6 requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1  
7 (2006), and pursuant to its own equitable powers:  
8

9 A. Find defendant Leighton liable for violating Sections 4b(a)(1)(A)-(C),  
10 4m(1) and 6(c)(1) of the Act, as amended, to be codified at 7 U.S.C. §§  
11 6b(a)(1)(A)-(C), 6(m) and 9; Section 4o(1) of the Act, 7 U.S.C. §  
12 4o(1)(A), (B) (2006); and Regulations 4.20 and 180.1(a), 17 C.F.R. §§  
13 4.20 and 180.1(a)(2011).  
14

15  
16 B. Enter a statutory restraining order with notice and/or order of preliminary  
17 injunction pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a)  
18 (2006), restraining defendant Leighton, and all persons insofar as they are  
19 acting in the capacity of defendant's agents, servants, successors,  
20 employees, assigns and attorneys, and all persons insofar as they are  
21 acting in active concert or participation with defendant, who receive  
22 actual notice of such order by personal service or otherwise, from directly  
23 or indirectly.  
24  
25  
26  
27  
28

1. 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 or safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the actual or constructive control of, or in the name of Leighton, the Leighton pool, S&P Partnership, and/or S&P II;
2. destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Leighton, wherever located, including all such records concerning defendant's business operations; and
3. 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 defendant Leighton, wherever located, including all such records concerning defendant's business operations;

1 C. Enter orders of preliminary and permanent injunction prohibiting  
2 defendant Leighton, along with any of his affiliates, agents, servants,  
3 employees, successors, assigns, attorneys and persons in active concert  
4 with him who receive actual notice of such order by personal service or  
5 otherwise, from:  
6

- 7  
8 1. engaging in conduct in violation of Sections 4b(a)(1)(A)-(C),  
9 4m(1) and 6(c)(1) of the Act, as amended, to be codified at 7  
10 U.S.C. §§ 6b(a)(1)(A)-(C), 6(m) and 9; Section 4o(1) of the Act, 7  
11 U.S.C. § 4o(1)(A), (B) (2006); and Regulations 4.20 and 180.1(a),  
12 17 C.F.R. §§ 4.20 and 180.1(a)(2011).  
13
- 14  
15 2. trading on or subject to the rules of any registered entity, as that  
16 term is defined in Section 1a of the Act, as amended, to be codified  
17 at 7 U.S.C. § 1a;  
18
- 19  
20 3. entering into any transactions involving commodity futures,  
21 options on commodity futures, commodity options (as that term is  
22 defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2011))  
23 (“commodity options”), security futures products, and/or foreign  
24 currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of  
25 the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i))  
26  
27  
28

1 (“forex contracts”) for his own personal account or for any account  
2 in which he has a direct or indirect interest;

3  
4 4. having any commodity futures, options on commodity futures,  
5 commodity options, security futures products, and/or forex  
6 contracts traded on his behalf;

7  
8 5. controlling or directing the trading for or on behalf of any other  
9 person or entity, whether by power of attorney or otherwise, in any  
10 account involving commodity futures, options on commodity  
11 futures, commodity options, security futures products, and/or forex  
12 contracts;

13  
14  
15 6. soliciting, receiving, or accepting any funds from any person for  
16 the purpose of purchasing or selling any commodity futures,  
17 options on commodity futures, commodity options, security futures  
18 products, and/or forex contracts;

19  
20  
21 7. applying for registration or claiming exemption from registration  
22 with the Commission in any capacity, and engaging in any activity  
23 requiring such registration or exemption from registration with the  
24 Commission, except as provided for in Commission Regulation  
25 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and  
26  
27  
28

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

9 D. Enter an order directing that defendant make an accounting to the Court  
10 within thirty (30) days of the date of the Court's order of all of  
11 defendant's assets and liabilities, together with all funds defendant  
12 received from and paid to Leighton pool participants, customers,  
13 investors and/or other persons in connection with commodity futures and  
14 options transactions or purported commodity futures and options  
15 transactions, including the names, mailing addresses, email addresses and  
16 telephone numbers of any such persons from whom they received such  
17 funds from at least January 2008 to the date of such accounting, and all  
18 disbursements for any purpose whatsoever of funds received from  
19 Leighton pool participants, S&P customers, investors and/or other  
20 persons including salaries, commissions, fees, loans and other  
21 disbursements of money and property of any kind, from at least January  
22 2008 to and including the date of such accounting;  
23  
24  
25  
26  
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28

1 E. Enter an order directing defendant Leighton to make restitution by  
2 making whole each and every Leighton pool participant whose funds  
3 were received or used by him in violation of the provisions of the Act as  
4 described herein, including pre- and post-judgment interest;  
5

6 F. Enter an order directing defendant, as well as any of his successors  
7 and/or agents, to disgorge, pursuant to such procedure as the Court may  
8 order, all benefits received from the acts or practices that constitute  
9 violations of the Act, as described herein, and pre- and post-judgment  
10 interest thereon from the date of such violations;  
11  
12

13 G. Enter an order directing defendant to pay civil monetary penalties in  
14 amounts not more than the greater of: (1) \$130,000 for each violation  
15 occurring from October 23, 2004 through October 22, 2008 and \$140,000  
16 for each violation occurring after October 22, 2008 or (2) triple the  
17 monetary gain to defendant for each violation of the Act;  
18  
19

20 H. Enter an order directing defendant and any successors thereof, to rescind,  
21 pursuant to such procedures as the Court may order, all contracts and  
22 agreements, whether implied or express, entered into between him and  
23 any of the participants or customers whose funds were received by him as  
24 a result of the acts and practices which constituted violations of the Act,  
25 as amended, as described herein;  
26  
27  
28

- 1 I. Enter an order requiring defendant to pay costs and fees as permitted by  
2 28 U.S.C. §§ 1920 and 2412 (2006); and  
3  
4 J. Enter an order providing such further relief as this Court may deem  
5 necessary and appropriate under the circumstances.  
6  
7

8 Date: May 8, 2012

Respectfully submitted,

9 U.S. Commodity Futures Trading  
10 Commission

11 

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