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9  
10 UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11  
12 COMMODITY FUTURES TRADING )  
COMMISSION, )  
13 )  
Plaintiff, )  
14 )  
v. )  
15 )  
16 INCREASE INVESTMENTS, INC., )  
SPIRIT INVESTMENTS, INC., AND )  
17 SCOTT BOTTOLFSON, )  
Defendants, )

CIVIL ACTION NO.:  
'11CV0032 JAH POR  
COMPLAINT FOR INJUNCTIVE AND  
OTHER EQUITABLE RELIEF AND  
FOR CIVIL PENALTIES UNDER THE  
COMMODITY EXCHANGE ACT, AS  
AMENDED, 7 U.S.C. §§1-25

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23 )  
24 Plaintiff, Commodity Futures Trading Commission (“Commission” or “CFTC”), by its  
25 attorneys, alleges as follows:

26  
27 I. SUMMARY

1           1.       From approximately 2002 through August 2010, (“relevant period”), defendants  
2 Increase Investments, Inc. (“Increase”), Spirit Investments, Inc. (“Spirit”), and Scott Bottolfson  
3 (“Bottolfson”), (collectively, “Defendants”), fraudulently solicited and accepted approximately  
4 \$14 million from approximately thirty individuals to participate in two commodity pools to trade  
5 commodity futures contracts and possibly other investments. Only approximately \$2.97 million  
6 of the \$14 million was deposited into the pools for trading, and the remainder, approximately  
7 \$11 million, was misappropriated. Of the \$2.97 million deposited into pools, Bottolfson suffered  
8 trading losses of approximately \$845,000.  
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10           2.       Throughout the relevant period, in order to induce client participation in Kingship  
11 Commodities Group, LP (“Kingship”), a commodity pool operated by Spirit, and in the pool  
12 operated by Increase, the “Increase pool”, Bottolfson omitted material facts, including that  
13 Bottolfson was misappropriating pool participant funds. Further, Bottolfson made material  
14 misrepresentations, including misrepresenting that the pools were profitable when they were not;  
15 misrepresenting how pool participant funds would be used, claiming they would be traded in  
16 futures when they were actually used for Bottolfson’s personal expenses and to pay pool  
17 participants as profit; and misrepresenting Bottolfson’s, Spirit’s and Increase’s trading records.  
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19           3.       Instead of trading pool participant funds as promised, Bottolfson used a portion of  
20 the pool participant funds to pay principal and purported profit returns to existing pool  
21 participants in a manner typical of a Ponzi scheme. Additionally, Bottolfson misappropriated  
22 pool participant funds for his personal use.  
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24           4.       Through his conduct, Bottolfson has engaged, is engaged, or is about to engage in  
25 acts and practices in violation of the anti-fraud provision of Section 4b(a)(2) of the Commodity  
26 Exchange Act (the “Act”), 7 U.S.C. § 6(b)(a)(2) (2006), and Section 4b(a)(1) of the Act, as  
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1 amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII  
2 (the CFTC Reauthorization Act of 2008 (“CRA”)), § 13102, 122 Stat. 1651 (enacted June 18,  
3 2008), to be codified at 7 U.S.C. § 6(b)(a)(1).

4 5. Through his conduct, Bottolfson has engaged, is engaged, or is about to engage in  
5 acts and practices in violation of the anti-fraud provision of Section 4o(1)(A) and (B) of the Act,  
6 7 U.S.C. § 6o(1) (2006).

7 6. At all times relevant hereto and in regard to all conduct alleged herein, Bottolfson  
8 was an agent of Increase and Spirit, and acted within the scope of his employment. As such,  
9 Increase and Spirit are liable for Bottolfson’s conduct in violation of the Act pursuant to Section  
10 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R.  
11 § 1.2 (2010).  
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13 7. At all times relevant hereto and in regard to all conduct alleged herein, Bottolfson  
14 was in control of Increase and Spirit. He failed to act in good faith or knowingly induced,  
15 directly or indirectly, the acts constituting Increase and Spirit’s violations. Therefore,  
16 Bottolfson is liable for Increase’s and Spirit’s violations of the Act pursuant to Section 13(b) of  
17 the Act, 7 U.S.C. § 13c(b) (2006).  
18

19 8. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), the  
20 Commission brings this action to enjoin Defendants’ unlawful acts and practices and to compel  
21 their compliance with the Act. In addition, the Commission seeks civil monetary penalties and  
22 other equitable relief, including restitution to pool participants, disgorgement of Defendants’ ill-  
23 gotten gains, permanent registration and trading bans, and such other relief as the Court may  
24 deem necessary or appropriate.  
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1 9. Unless permanently restrained and enjoined by the Court, Defendants are likely to  
2 continue to engage in the illegal acts and practices alleged in this Complaint, as more fully  
3 described below.

4 **II. JURISDICTION AND VENUE**

5 10. The Court has jurisdiction over this action pursuant to Section 6c of the Act,  
6 7 U.S.C. § 13a-1 (2006), which authorizes the Commission to seek injunctive relief against any  
7 person whenever it shall appear to the Commission that such person has engaged, is engaging,  
8 or is about to engage in any act or practice constituting a violation of any provision of the Act or  
9 any rule, regulation, or order there under.  
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11 11. Venue properly lies with this Court pursuant to Section 6c(e) of the Act,  
12 7 U.S.C. § 13a-1(e) (2006), in that Defendants are found in, inhabit, or transact business in this  
13 District, and the acts and practices in violation of the Act have occurred, are occurring, or are  
14 about to occur within this District, among other places.

15 **III. PARTIES**

16 **Plaintiff**

17 12. **Plaintiff Commodity Futures Trading Commission** is a federal independent  
18 regulatory agency that is charged by Congress with the administration and enforcement of the  
19 Act, 7 U.S.C. §§ 1 *et seq.* (2006), and the Regulations there under, 17 C.F.R. §§ 1.1 *et seq.*  
20 (2010).  
21

22 **Defendants**

23 13. **Defendant Increase Investments, Inc.** is incorporated in Reno, Nevada. Its  
24 address is 5190 Neil Road, Suite 430 Reno, NV 89502. Increase has never registered with the  
25 Commission in any capacity, however it acted as a commodity pool operator. Scott Bottolfson  
26  
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1 and his wife Lori Bottolfson are the only officers of the corporation. Increase Investments, Inc.  
2 is owned by Spirit Increase Revocable Trust (“SIRT”). Increase Investments, Inc. opened its  
3 first futures trading account in March of 2002. The account was opened with R.J. O’Brien, a  
4 registered futures commission merchant (“FCM”).

5 14. **Spirit Investments, Inc.** is an NFA member commodity pool operator (“CPO”)  
6 with a business address of 619 South Vulcan Ave., Suite 103, Encinitas, CA 92024. It is  
7 registered in Delaware. Scott Bottolfson is the President of Spirit Investments, Inc. Lori  
8 Bottolfson is the only other Principal (she does not have a title). Spirit Investments, Inc.  
9 operates a single pool, Kingship Commodities Group, LP. Spirit Investments, Inc. is owned by  
10 SIRT.  
11

12 15. **Defendant Scott Bottolfson** resides in Encinitas, California. Bottolfson is an  
13 officer in Increase Investments, Inc. and Spirit Investments, Inc. Bottolfson is registered with  
14 the NFA as an Associated Person of Spirit Investments, Inc. He is also a principal and agent of  
15 Spirit Investments, Inc. Bottolfson is the “initial Trustee” of SIRT.  
16

#### 17 **IV. FACTS**

##### 18 **Formation of the Pools**

19 16. Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), defines a “commodity pool  
20 operator” as any person engaged in a business that is of the nature of an investment trust,  
21 syndicate, or similar form of enterprise and in connection therewith, has solicited, accepted or  
22 received funds, securities or property from others for the purpose of trading in any commodity  
23 for future delivery on or subject to the rules of any contract market or derivatives transaction  
24 execution facility.  
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1           17.     During the Relevant Period, Bottolfson solicited pool participants to trade in two  
2 commodity pools, through his companies, Increase and Spirit.   Bottolfson pooled various  
3 individuals' funds for the purpose of trading commodity futures and options on futures with the  
4 pooled funds.

5           18.     Bottolfson solicited a total of approximately \$14 million from pool participants.  
6 The transfers of funds from participants to the pools were executed through the use of  
7 promissory notes with Bottolfson informing the participants that the funds would be traded in  
8 futures and options on futures.

9           19.     From approximately 2002, Bottolfson solicited to trade on behalf of pool  
10 participants. The pool participants included approximately thirty individuals, all or most of  
11 whom were Bottolfson's family and friends. Bottolfson claimed he was pooling the  
12 participants' funds to trade in futures and options on futures.

13           20.     Bottolfson traded some of the participants' funds in commodity futures accounts  
14 at FCMs in the names of Increase and Kingship.

15           21.     Defendants returned to pool participants approximately \$7 million of the \$14  
16 million solicited from pool participants. Defendants currently owe the remaining approximately  
17 \$7 million in principal to pool participants.

18           22.     Throughout the relevant period, when Bottolfson accepted funds from pool  
19 participants for purposes of trading in the Increase pool, Increase was not registered or listed in  
20 any capacity with the Commission, nor was Bottolfson registered as an associated person of  
21 Increase.

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25 **Fraudulent Solicitations**

1           23. As noted above, during the relevant period, Bottolfson solicited approximately  
2 \$14 million from approximately thirty participants. The funds were solicited to invest in  
3 commodity pools to trade futures and options on futures. However, only about \$2.97 million  
4 was actually put into commodity pool trading accounts. The rest was put into Bottolfson's  
5 personal accounts, used in a Ponzi scheme, or deposited somewhere other than commodity pool  
6 trading accounts.

7           24. Bottolfson made the following false or misleading representations in his  
8 solicitations:  
9

- 10           a. he promised a fixed rate of return of approximately 20% on investments in  
11 commodity futures;
- 12           b. he claimed that investing in commodity futures was risk free;
- 13           c. he claimed that his investments were protected by something similar to the  
14 FDIC's protection provided to bank customers;
- 15           d. he claimed that the pool was profitable when it was not;
- 16           e. he sent money to the pool participants, identifying the money as principal  
17 and profits when in fact it was other participants' money;
- 18           f. he claimed that the pool investments were guaranteed; and
- 19           g. he claimed he was a successful investor and that his investments were  
20 profitable.  
21

22           25. Bottolfson omitted the following material facts from his solicitations:

- 23           a. he failed to disclose that he was using participants' funds for his personal  
24 use, including depositing funds provided to him by pool participants into  
25 his personal accounts;  
26  
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- b. he failed to disclose that the pools were losing money on trading commodity futures; and
- c. he failed to disclose that he was using pool participants' funds to pay principal and purported profit returns to existing pool participants in a manner typical of a Ponzi scheme.

26. Spirit and Increase, through their agent and employee, Bottolfson, acted as CPOs. As such, Spirit and Increase owed fiduciary duties to pool participants. They were obliged to disclose all material information to participants. Pool participants would have found it important to learn that the pools were not profitable, that participant funds were being misappropriated for Bottolfson's personal use, and that Bottolfson used pool participant funds to pay principal and purported profit returns to existing pool participants in a manner typical of a Ponzi scheme. Consequently, Increase and Spirit should have disclosed this material information. Failure to provide this information is a material and fraudulent omission.

27. Bottolfson knew that his solicitations were untrue, and/or that they were made in reckless disregard of their truthfulness, because:

- a. he controlled the money that pool participants provided to the Defendants;
- b. he controlled the pools' trading accounts;
- c. he knew that he was placing only a fraction of the participants' funds into trading accounts;
- d. he knew that he was using pool participants' funds to pay principal and purported profit returns to existing pool participants in a manner typical of a Ponzi scheme; and

1 e. he personally solicited the participants on his own behalf and on behalf of  
2 the other Defendants.

3 **Misappropriation**

4 28. Instead of trading pool participant funds as promised, Bottolfson used pool  
5 participant funds to repay principal and pay purported profitable returns to existing pool  
6 participants in a manner typical of a Ponzi scheme.

7 29. Bottolfson solicited a total of approximately \$14 million to be traded in the  
8 Increase and Kingship commodity futures pools. Instead of trading the pool participant funds as  
9 promised, Bottolfson deposited only approximately \$2.97 million into trading accounts. The  
10 remaining \$11.03 million was deposited into Bottolfson's personal accounts, used for his  
11 personal expenses, was used to pay pool participants what Bottolfson alleged was capital and  
12 profits in the manner of a Ponzi scheme, or was otherwise misappropriated. Of the \$2.97  
13 million deposited into trading accounts, Bottolfson lost approximately \$845,000 trading.  
14

15 30. Bottolfson knew that he was misappropriating participant funds because he  
16 personally solicited funds, managed the pools' trading accounts, deposited the funds into  
17 personal accounts, sent participant funds to other participants claiming that the funds were  
18 interest or profit on investments, and used funds that were to be traded for purposes other than  
19 trading.  
20

21 31. Throughout the relevant period, Bottolfson was an employee or agent of Increase  
22 and Spirit, and acted within the scope of his employment or agency. He was an officer of  
23 Increase and the President of Spirit. He conducted the day-to-day business of Spirit and  
24 Increase. In these roles, he was acting as an employee or agent of Increase and Spirit within the  
25 scope of his employment or agency when he fraudulently solicited pool participants by making  
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1 false or misleading representations, fraudulently solicited pool participants by making material  
2 omissions, and misappropriated pool participant funds through a Ponzi scheme and by  
3 depositing pool funds in his personal bank accounts.

4 32. During the relevant period, Bottolfson was in control of Increase and Spirit.  
5 While acting as a controlling person of Increase and Spirit, Bottolfson failed to act in good faith  
6 or knowingly induced, directly or indirectly, the acts constituting the violations. For example,  
7 he managed Increase and Spirit's day-to-day operations and finances, and was the sole person in  
8 charge. He personally determined whom to solicit as a potential pool participant and then  
9 solicited those participants. He personally accepted participants' funds and determined where  
10 the funds would be deposited. He personally calculated and executed the fraudulent payments  
11 to participants.  
12

13 **V. VIOLATIONS OF THE ACT**  
14 **COUNT ONE**

15 **Fraud in Connection with Futures Contracts**

16 **(Violations of Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2006), and Section 4b(a)(1) of**  
17 **the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1))**

18 33. Paragraphs 1 through 32 are re-alleged and incorporated herein.

19 34. It is a violation of the Act, as amended by the CRA, for any person, in or in  
20 connection with any order to make, or the making of, any on-exchange futures contract, for or  
21 on behalf of any other person: (i) to cheat or defraud or attempt to cheat or defraud such other  
22 person; or (iii) willfully to deceive or attempt to deceive such other person by any means  
23 whatsoever in regard to any such order or contract or the disposition or execution of any such  
24 order or contract, or in regard to any act or agency performed with respect to such order or  
25 contract for such person. Section 4b(a)(2)(i) and (iii), 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006)  
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1 (with respect to conduct before June 18, 2008); and Section 4b(a)(1)(A) and (C) of the Act, as  
2 amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C) (with respect to  
3 conduct on or after June 18, 2008).

4 35. As alleged above, during the relevant period, Bottolfson knowingly, or with  
5 reckless disregard for the truth, violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C.  
6 §§ 6b(a)(2)(i) and (iii) (2006), with respect to acts occurring before June 18, 2008, and Sections  
7 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C.  
8 §§ 6b(a)(1)(A) and (C), with respect to acts occurring on or after June 18, 2008, by, among  
9 other things, (1) omitting material information, including the fact that he was misappropriating  
10 pool participant funds; (2) making false statements while soliciting pool participants; (3)  
11 misappropriating pool participant funds by using such funds to pay principal and purported  
12 returns to other pool participants; and (4) misappropriating pool participant funds for personal  
13 use.  
14

15 36. Bottolfson was acting as an agent of Increase and Spirit when he violated the Act,  
16 and, therefore, Increase and Spirit, as his principals, are liable for his violations of Sections  
17 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), and Sections 4b(a)(1)(A)  
18 and(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C),  
19 pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission  
20 Regulation 1.2, 17 C.F.R. § 1.2 (2010).  
21

22 37. Bottolfson was in control of Increase and Spirit, and did not act in good faith or  
23 knowingly induced Increase and Spirit's conduct alleged in this Complaint; therefore, pursuant  
24 to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Bottolfson is liable for Increase's and  
25 Spirit's violations of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii)  
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1 (2006), and Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at  
2 7 U.S.C. §§ 6b(a)(1)(A) and (C).

3 38. Each misrepresentation or omission of material fact and each misappropriation,  
4 including but not limited to those specifically alleged herein, is alleged as a separate and distinct  
5 violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), with  
6 respect to acts occurring before June 18, 2008, and Sections 4b(a)(1)(A) and (C) of the Act, as  
7 amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), with respect to acts  
8 occurring on or after June 18, 2008.  
9

10 **COUNT TWO**

11 **Fraud By Commodity Pool Operator and an Associated Person of a CPO**

12 **(Violations of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2006))**

13 39. Paragraphs 1 through 38 are re-alleged and incorporated herein.

14 40. During the relevant period, Spirit and Increase, through Bottolfson, acted as CPOs  
15 for the Kingship and Increase pools, respectively, by soliciting, accepting or receiving funds  
16 from others and engaging in a business that is of the nature of an investment trust, syndicate, or  
17 similar form of enterprise, for the purpose of trading in commodities for future delivery on or  
18 subject to the rules of a contract market. During the relevant period, Bottolfson acted as an  
19 associated person of these two CPOs.  
20

21 41. As alleged above, during the relevant period, Bottolfson, employed a device,  
22 scheme or artifice to defraud prospective and existing pool participants, or engaged in a  
23 transaction, practice or course of business that operated as a fraud or deceit upon prospective  
24 and existing pool participants by (1) omitting material information, including the fact that  
25 Bottolfson was misappropriating pool participant funds; (2) making false statements while  
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1 soliciting pool participants;; (3) misappropriating pool participant funds by using such funds to  
2 pay principal and purported returns to other pool participants; and (4) misappropriating pool  
3 participant funds for personal use. Consequently, he violated Sections 4o(1)(A) and (B) of the  
4 Act, 7 U.S.C. §§ 6o(1)(A) and (B) (2006).

5 42. Bottolfson was acting as an agent of Increase and Spirit when he engaged in the  
6 violative conduct alleged in this count and, therefore, Increase and Spirit, as his principals,  
7 violated Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (2006), pursuant to  
8 Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17  
9 C.F.R. § 1.2 (2020).

10 43. Bottolfson was in control of Increase and Spirit, and did not act in good faith or  
11 knowingly induced, directly or indirectly, Increase's and Spirit's conduct alleged in this  
12 Complaint; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Bottolfson  
13 is liable for Increase's and Spirit's violations of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C.  
14 §§ 6o(1)(A) and (B) (2006).

15 44. Each misrepresentation or omission of material fact and each misappropriation,  
16 including but not limited to those specifically alleged herein, is alleged as a separate and distinct  
17 violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (2006).

## 20 VI. RELIEF

21 WHEREFORE, the Commission respectfully requests that the Court, as authorized by  
22 Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers, enter:

23 (a) an order finding that Bottolfson, Increase, and Spirit violated Sections 4b(a)(2)(i) and  
24 (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), and Sections 4b(a)(1)(A) and(C) of the  
25 Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C);  
26  
27

1 (b) an order finding that Bottolfson, Increase and Spirit, violated Section 4o(1)(A) and  
2 (B) of the Act, 7 U.S.C. § 6o;

3 (d) an order of permanent injunction prohibiting Defendants, and any other person or  
4 entity associated with them, including any successor thereof, from engaging in conduct violative  
5 of the sections of the Act that Defendants have been alleged to have violated;

6 (e) an order of permanent injunction prohibiting Defendants from engaging, directly or  
7 indirectly, in:

- 8 1. trading on or subject to the rules of any registered entity (as that term is  
9 defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006));
- 10 2. entering into any transactions involving futures, options, commodity  
11 options (as that term is defined in Commission Regulation 32.1(b)(1), 17 C.F.R.  
12 § 32.1(b)(1)) (“commodity options”), and/or foreign currency (as described in  
13 Section 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA, to be  
14 codified in 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for their  
15 own personal account or for any account in which they have a direct or indirect  
16 interest;
- 17 3. having any futures, options, commodity options, and/or forex contracts  
18 traded on their behalf;
- 19 4. controlling or directing the trading for or on behalf of any other person or  
20 entity, whether by power of attorney or otherwise, in any account involving  
21 futures, options, commodity options, and/or forex contracts;  
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1           5.       soliciting, receiving or accepting any funds from any person for the  
2           purpose of purchasing or selling any futures, options, commodity options, and/or  
3           forex contracts;

4           6.       applying for registration or claiming exemption from registration with the  
5           CFTC in any capacity, and engaging in any activity requiring such registration or  
6           exemption from registration with the CFTC except as provided for in Commission  
7           Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010); and

8           7.       acting as a principal (as that term is defined in Commission Regulation  
9           3.1(a), 17 C.F.R. § 3.1(a)(2010)), agent or any other officer or employee of any  
10          person registered, exempted from registration or required to be registered with the  
11          CFTC except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R.  
12          § 4.14(a)(9) (2010);

13  
14          (g) an order directing Defendants, as well as any other person or entity associated with  
15          them, including any successor thereof, to disgorge, pursuant to such procedure as the Court may  
16          order, all benefits received from the acts or practices which constitute violations of the Act, as  
17          described herein, and interest thereof from the date of such violations;

18  
19          (h) an order directing Defendants, as well as any other person or entity associated with  
20          them, including any successor thereof, to make full restitution, pursuant to such procedure as the  
21          Court may order, to every pool participant whose funds were received by them as a result of acts  
22          and practices which constitute violations of the Act, as described herein, and interest thereon  
23          from the date of such violations;

24  
25          (i)       An order directing Defendants, and any successors thereof, to rescind, pursuant to  
26          such procedures as the Court may order, all contracts and agreements, whether implied or  
27

1 express, entered into between them and any of the pool participants whose funds were received  
2 by them as a result of the acts and practices that constituted violations of the Act, as amended by  
3 the CRA, described herein.

4 (j) an order requiring Defendants to pay civil monetary penalties under the Act, to be  
5 assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain to  
6 Defendants for each violation of the Act or (2) higher of \$120,000 for each violation of the Act  
7 committed on October 23, 2000 through October 22, 2004, \$130,000 for each violation of the  
8 Act on or between October 23, 2004 through October 22, 2008, and \$140,000 for each violation  
9 of the Act on or after October 23, 2008; and  
10

11 (k) an order for such other and further remedial ancillary relief as the Court may deem  
12 appropriate.

13  
14 Date: January 7, 2011

15  
16 Respectfully submitted,

17 PLAINTIFF UNITED STATES COMMODITY  
18 FUTURES TRADING COMMISSION

19  
20 By: s/Jason Mahoney

21 Jason Mahoney  
22 Trial Attorney  
23 [jmahoney@cftc.gov](mailto:jmahoney@cftc.gov)  
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25 Paul Hayeck  
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Facsimile (202) 418-5523

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**CIVIL COVER SHEET**

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

**I. (a) PLAINTIFFS**

U.S. Commodity Futures Trading Commission

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
Jason Mahoney; 1155 21st St., N.W; Washington DC 20581 (202) 418-5289

**DEFENDANTS**

Increase Investments, Inc., Spirit Investments, Inc., and Scott Bottolfson

County of Residence of First Listed Defendant San Diego County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

**'11CV0032 JAH POR**

Attorneys (If Known)  
Michael L. Lipman; Coughlan, Semmer & Lipman, LLP  
501 W. Broadway, Suite 400; San Diego, CA 92101

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN**

- (Place an "X" in One Box Only)
- 1 Original Proceeding
  - 2 Removed from State Court
  - 3 Remanded from Appellate Court
  - 4 Reinstated or Reopened
  - 5 Transferred from another district (specify)
  - 6 Multidistrict Litigation
  - 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 7 U.S.C. § 1 et seq. (2006)

Brief description of cause: Fraud

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 01/07/2011 SIGNATURE OF ATTORNEY OF RECORD: s/ Jason A. Mahoney

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.