

JUDGE DANIELS

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

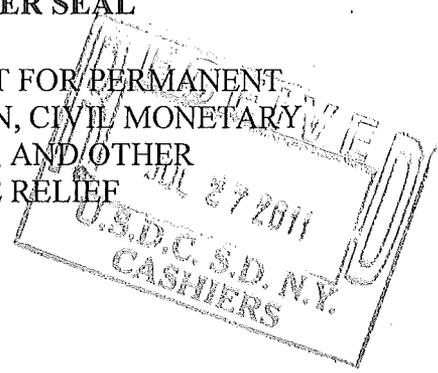
Plaintiff,

v.

ANTHONY J. KLATCH II; AMERICAN
PRIVATE EQUITY, LLC; ARM CAPITAL
MANAGEMENT, LLC; TASK CAPITAL
MANAGEMENT, LLC; VIGILANT
CAPITAL MANAGEMENT, LLC,

Defendants.

)
)
) Civil Action No. _____
)
) FILED UNDER SEAL
)
) COMPLAINT FOR PERMANENT
) INJUNCTION, CIVIL MONETARY
) PENALTIES, AND OTHER
) EQUITABLE RELIEF
)
)
)
)



Plaintiff, the United States Commodity Futures Trading Commission (“Commission” or “CFTC”), by its attorneys, alleges as follows:

I. SUMMARY

1. From at least December 2007 to the present (the “relevant period”), Anthony J. Klatch II (“Klatch”) managed a series of at least three commodity pools: ARM Capital Partners, LP (the “ARM Pool”); TASK Capital Partners, LP (the “TASK Pool”); and Vigilant Capital Partners, LP (the “Vigilant Pool”) (collectively the “Pools”). Klatch controlled the Pools through the use of three commodity pool operators (“CPOs”): ARM Capital Management, LLC (“ARM Management”), TASK Capital Management, LLC (“TASK Management”), and Vigilant Capital Management, LLC (“Vigilant Management”), respectively. Further, from at least December 2007 to December 2009, American Private Equity, LLC (“APE LLC”), by and through its employees including Timothy M. Sullivan (“Sullivan”), also managed the ARM Pool and TASK Pool through their CPOs: ARM Management and TASK Management, respectively.

2. Klatch, Task Management and Vigilant Management, by and through Klatch made misrepresentations to pool participants and prospective pool participants of the TASK and Vigilant Pools, and APE LLC, by and through its employees including Sullivan, made misrepresentations to pool participants and prospective pool participants of the ARM and TASK Pools, that, among other things, Klatch's trading had historically been highly successful. Klatch and APE LLC either did not disclose or misrepresented to pool participants and prospective pool participants the past poor performance of each of the Pools. In this way, Klatch and APE LLC collectively solicited over \$11.3 million for the three Pools. Over the lives of the three Pools, Klatch lost over \$8.6 million of the Pools' funds through trading exchange-traded commodity futures contracts ("futures") and options on futures, as well as stock index options and equities. Additionally, Defendants collectively took over \$2.5 million from the Pools, directly or through a series of management companies. Based on the Pools' performance, Defendants collectively were entitled to no more than \$400,000 in performance and management fees under the terms of the three Pools' private placement memoranda ("PPMs"). Therefore, Defendants collectively misappropriated at least \$2.1 million from the Pools. Collectively, pool participants received approximately \$86,000 back from the Pools.

3. By virtue of this conduct and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of provisions of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2006), the Act as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 1 *et seq.*, and CFTC Regulations ("Regulations") 17 C.F.R. §§ 1.1 *et seq.* (2011).

4. Klatch is liable under Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), as a controlling person of ARM Management, TASK Management and Vigilant Management for their violations of the Act, the Act as amended by the CRA, and the Regulations, because he did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations.

5. Klatch committed the acts and omissions described herein within the course and scope of his employment at ARM Management, TASK Management, and Vigilant Management. Therefore, ARM Management, TASK Management, and Vigilant Management are liable under Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), as principals for their agent's acts constituting violations of the Act and Regulations.

6. Sullivan committed the acts and omissions described herein within the course and scope of his employment at APE LLC, ARM Management, and TASK Management. Therefore, APE LLC, ARM Management, and TASK Management are liable under Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), as principals for their agent's acts constituting violations of the Act, the Act as amended by the CRA and Regulations.

7. Accordingly, pursuant to Section 6c of the Act, to be codified at 7 U.S.C. §§ 13a-1, the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act, the Act as amended by the CRA, and as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), and the Regulations. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not

limited to, trading and registration bans, restitution, disgorgement, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

8. Unless restrained and enjoined by this Court, 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

9. The Act, the Act as amended by the CRA, and the Regulations together establish a comprehensive system for regulating the purchase and sale of futures and options. The Court has jurisdiction over this action pursuant to Section 6c of the Act, to be codified at 7 U.S.C. § 13a-1, 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, the Act as amended by the CRA or any rule, regulation, or order thereunder.

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

III. PARTIES

11. **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, the Act as amended by the CRA, and the Regulations promulgated thereunder. The CFTC

maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

12. **Anthony J. Klatch II** resides in Tampa, Florida. He is the investment manager for the Pools and Managing Director and Chief Investment Officer of ARM Management, TASK Management and Vigilant Management. Klatch has never been registered in any capacity with the Commission.

13. **American Private Equity, LLC** is located at 1999 Avenue of the Stars, Los Angeles, CA. Upon information and belief, this is a mail-drop address and APE LLC is or was actually operated from Sullivan's residence. Until his death in April 2011, Sullivan was the manager and member of APE LLC. During the relevant period, upon information and belief, at least three other individuals acted as agents or employees of APE LLC. APE LLC was the manager for ARM Management and TASK Management. APE LLC has never been registered in any capacity with the Commission.

14. **ARM Capital Management, LLC** is located at 730 Fifth Avenue, 9th Floor, New York, New York. Upon information and belief, this was a mail-drop address and ARM Management was operated from Klatch's and/or Sullivan's residence. ARM Management was the CPO for the ARM Pool. ARM Management filed a registration exemption as an exempt CPO and commodity trading advisor ("CTA") with the National Futures Association ("NFA") on or about December 21, 2007. Klatch and APE LLC are ARM Management's sole managers and members. Klatch was the Managing Director and Chief Investment Officer and Sullivan was the Managing Director and Chief Marketing Officer.

15. **TASK Capital Management, LLC** is located at 575 Madison Avenue, 10th Floor, New York, New York. Upon information and belief, this was a mail-drop address and

ARM Management was operated from Klatch's and/or Sullivan's residence. TASK Management was the CPO for the TASK Pool. TASK Management filed a registration exemption as an exempt CPO with NFA on or about January 12, 2009. Klatch and APE LLC are TASK Management's sole managers and members. Klatch was the Managing Director and Chief Investment Officer and Sullivan was the Managing Director and Chief Marketing Officer of TASK Management.

16. **Vigilant Capital Management, LLC** is located in Center Valley, Pennsylvania. Upon information and belief, the listed address for Vigilant Management is Klatch's former address and Vigilant Management is actually operated from Klatch's residence in Tampa, Florida. Vigilant Management is the CPO for the Vigilant Pool. Vigilant Management filed a registration exemption as an exempt CPO with NFA on or about December 16, 2009. Klatch is Vigilant Management's Managing Director, Chief Investment Officer, and member.

IV. STATUTORY BACKGROUND

17 A "commodity pool" is defined in Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1) (2011), as any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.

18. A "commodity pool operator" is defined in Section 1a(5) of the Act, to be codified at 7 U.S.C. § 1a(5), 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 or derivatives transaction execution facility (*i.e.*, futures). Regulation 33.2(a)(2), 17 C.F.R.

§ 33.2(a)(2) (2011) states that Section 1a of the Act, to be codified at 7 U.S.C. § 1a, including the definition of a CPO, also applies to options.

V. FACTS

19. From at least December 2007 to March 2009, Klatch, Sullivan on behalf of APE LLC, and ARM Management solicited individuals to invest in, and misappropriated funds from, the ARM Pool. From at least January 2009 to December 2009, Klatch, Sullivan on behalf of APE LLC, and TASK Management solicited individuals to invest in, and misappropriated funds from, the TASK Pool. Finally, from at least June 2009 to the present, Klatch and Vigilant Management solicited individuals to invest in, and misappropriated funds from, the Vigilant Pool. Collectively, Defendants solicited at least 62 individuals to invest at least \$11.3 million into the three Pools, while collectively misappropriating over \$2.1 million from the Pools.

ARM Pool – December 2007 to March 2009

20. Klatch, Sullivan on behalf of APE LLC, and ARM Management organized the ARM Pool in or around December 2007. ARM Management is the ARM Pool's CPO. Klatch and APE LLC, in turn, are the managers and members of ARM Management. Klatch was ARM Management's Managing Director and Chief Investment Officer and controlled the ARM Pool's trading accounts, in which he actively traded e-mini S&P 500 index futures ("E-mini S&P futures"), other stock-index futures, option on futures, and securities in this Pool. Sullivan was ARM Management's Managing Director and Chief Marketing Officer. Klatch had signatory authority over bank accounts in the name of ARM Management and the ARM Pool.

21. Sullivan, on behalf of APE LLC and ARM Management, knowingly made various material misrepresentations to pool participants and prospective pool participants as well as omitted other material facts. Sullivan solicited pool participants with an investor presentation

for the ARM Pool that touted Klatch's trading abilities based on the performance of an earlier fund Klatch operated, TheOpenFund, LP ("TheOpenFund"). The investor presentation stated that Klatch had been "recruited to run TheOpenFund, LP, a long/short equity and options writing fund where he was able to create a staggering 169.4% return in 2006." Sullivan, however, did not disclose that Klatch's trading of the TheOpenFund resulted in losses of over \$262,000 in 2006.

22. The ARM Pool investor presentation also discussed purported risk controls designed to limit the amount of money that the ARM Pool could lose in trading its index futures trading strategy. According to the investor presentation a pool participant's investment could never be completely depleted through the index futures trading strategy. However, Klatch's index futures trading of the ARM Pool accounts did result in the loss of the entire value of the ARM Pool, along with Klatch, APE LLC, and ARM Management's large withdrawals of pool participant funds.

23. Based on these material misrepresentations and omissions, seventeen people invested a total of over \$5.5 million in the ARM Pool.

24. Klatch extensively traded E-mini S&P futures, along with other futures and equities products. Rather than earning the returns claimed by the investor presentation or limiting losses, Klatch's trading resulted in losses of more than \$4.9 million between January and December 2008, accounting for approximately 89% of pool participant funds.

25. In addition to funds lost in trading, Klatch, APE LLC, and ARM Management took over \$563,000 of pool participant funds from the ARM Pool. Based on the losses suffered by the ARM Pool, Klatch, APE LLC, and ARM Management were entitled to only \$355,000 under the fees disclosed in the ARM Pool's PPM and subscription agreements. Therefore,

Klatch, APE LLC, and ARM Management, by and through its agents and employees, misappropriated \$208,000 from the ARM Pool.

26. No pool participants received any funds back from the ARM Pool.

TASK Pool – January 2009 to December 2009

27. In or around January 2009, less than a month after the ARM Pool lost most of its funds, Klatch, Sullivan on behalf of APE LLC, and TASK Management, organized the TASK Pool. TASK Management was CPO for the TASK Pool. Klatch and APE LLC, in turn, were members of TASK Management. Klatch was TASK Management's Managing Director and Chief Investment Officer and controlled the TASK Pool's trading accounts, in which he actively traded E-mini S&P futures, other stock index futures, options on futures, and securities. Sullivan was TASK Management's Managing Director and Chief Marketing Officer. Klatch had signatory authority over bank accounts in the name of TASK Management and the TASK Pool.

28. Klatch, Sullivan on behalf of APE LLC, and TASK Management knowingly made various material misrepresentations to pool participants and prospective pool participants as well as omitted other material facts. For example, Klatch told at least one pool participant that the TASK Pool had tens of millions of dollars under management. In actuality, the TASK Pool never contained more than \$2.0 million in pool participant funds.

29. Sullivan sent one prospective pool participant an email in August 2009 stating that the TASK Pool was up 16.8% for the year, right before this pool participant invested in the Pool. Sullivan also sent pool participants promotional materials purporting to show that the TASK Pool had been trading and earning significant profits since 1997, when Klatch would have been in elementary school. The investor presentation, for example, stated that the TASK Pool had earned cumulative returns of 242.1% between 1997 and 2008. However, the investor

presentation and promotional materials do not disclose that such trades were hypothetical and that the TASK Pool only began trading in January 2009.

30. The TASK Pool investor presentation also stated that “[n]o more than 1% of the portfolio [will be] allocated to any trade.” Therefore, this would prevent any one trade from wiping out the entire value of the Pool. Further, the investor presentation states that “every trader is limited to a certain percentage of profit and loss.” At least one pool participant relied on these statements as an indication that the TASK Pool was a relatively safe investment and could lose no more than ½ of a percent on any one trade. Despite this representation, Klatch later told another pool participant that the TASK Pool was eventually brought down by one bad trade.

31. Klatch and Sullivan failed to disclose to pool participants and prospective pool participants and omitted from both the TASK Pool investor presentation and promotional materials any mention of the ARM Pool’s losses. Instead, the TASK Pool promotion materials repeated the claim that TheOpenFund enjoyed 169.4 % returns in 2006. Klatch and Sullivan did not disclose that TheOpenFund actually lost considerable funds, including losses of over \$262,000 in 2006.

32. Based on these material misrepresentations and omissions, seven people invested a total of over \$2.3 million in the TASK Pool.

33. Similar to the ARM Pool, Klatch’s trading resulted in losses of over \$1.6 million between April and December 2009, accounting for nearly 70% of pool participant funds. Monthly rates of return ranged from losses of 0.17% to losses of approximately 178%; the TASK Pool never had a profitable month’s trading.

34. In addition to the over \$1.6 million lost in trading, Klatch, APE LLC, and TASK Management withdrew over \$669,000 of Pool funds; accounting for approximately 30% of total

pool participant's funds. Many payments were styled as "performance fees," "performance allocations," "expenses," or "reimbursements." Based on the losses suffered by the TASK Pool, Klatch, APE LLC, and TASK Management were entitled to only approximately \$8,000 under the fees disclosed in the TASK Pool's PPM and subscription agreements. Therefore, Klatch, APE LLC, and TASK Management, by and through its agents and employees, misappropriated over \$660,000 from the TASK Pool.

35. Only two pool participants received any funds back from the TASK Pool, totaling only \$40,000.

Vigilant Pool – June 2009 to Present

36. Klatch formed the Vigilant Pool in or around June 2009, while still operating the TASK Pool. Vigilant Management is the Vigilant Pool's CPO. Klatch is Vigilant Management's Managing Director and Chief Investment Officer. Klatch has signatory authority over bank accounts in the name of Vigilant Management and the Vigilant Pool.

37. Klatch knowingly made numerous material misrepresentations to pool participants and prospective pool participants as well as omitted other material facts regarding the Vigilant Pool through investor presentations given to pool participants and prospective pool participants and through emails with pool participants and prospective pool participants.

38. For example, Klatch sent at least one pool participant two investor presentations for the Vigilant Pool for 2011 and 2010. The 2011 Vigilant Pool investor presentation misrepresents the Pool's performance, claiming that the Pool earned 10.2% returns in 2009 and 64.3% returns in 2010. The 2011 investor presentation further states that the Vigilant Pool has suffered no "down months" and that its' worst month's performance was a 1.7% gain. In

actuality, the Vigilant Pool suffered 18 losing months while having only four profitable months from June 2009 to March 2011.

39. The 2011 Vigilant Pool investor presentation, repeating and expanding on claims made in investor presentations for the ARM and TASK Pools, misrepresents that TheOpenFund earned 27.2% returns in 2005, 169.4% returns in 2006, and 39.3% returns in 2007. In fact, TheOpenFund had losses of over \$252,000 in 2005, \$262,000 in 2006, and \$463 in 2007.

40. The 2010 Vigilant Pool investor presentation further misrepresented that Klatch had earned “net returns of 39.2% from October 2007 until September 2009” while managing \$42 million in funds for “a private firm in Los Angeles.” However, Klatch actually lost millions trading for the ARM and TASK Pools and APE LLC, the “private firm in Los Angeles,” never had funds approaching \$42 million. Klatch failed to disclose to pool participants and prospective pool participants and omitted from both the investor presentations any mention of the losses incurred by the ARM or TASK Pools.

41. In soliciting a pool participant who ultimately invested in the Vigilant Pool, Klatch represented in November 2009 that “TASK is up for the year about 21%.” Klatch made this misrepresentation only weeks after losing over \$1 million trading the TASK Pool accounts, which never had a profitable month’s trading.

42. Based on these material misrepresentations and omissions, at least 36 individuals invested a total of over \$3.5 million into the Vigilant Pool.

43. Similar to the other Pools, from June 2009 to March 2011, the Vigilant Pool lost over \$2.0 million trading in E-mini S&P futures and other futures products, including options on futures. From June 2009 to March 2011, the Vigilant Pool had four profitable months, including gains of up to 16%, while suffering 18 losing months, with losses of up to 160%.

44. From July 2009 to March 2011, Klatch and Vigilant Management withdrew over \$1.3 million from the Vigilant Pool, far more than the \$43,000 which he personally invested in the Pool. Based on the losses suffered by the Vigilant Pool, Klatch and Vigilant Management were entitled to only \$36,000 in performance and management fees under the terms disclosed in the TASK Pool's PPM and subscription agreements. Therefore, Klatch and Vigilant Management, by and through its agents and employees, misappropriated nearly \$1.3 million from the Vigilant Pool.

45. As of March 31, 2011, twelve pool participants received approximately \$46,000 back from the Vigilant Pool, including partial redemptions.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS

COUNT I

**Violations of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (for acts before June 18, 2008) and Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A) and (C) (for acts on or after June 18, 2008)
(Fraud in Connection with Futures)**

46. The allegations set forth in paragraphs 1 through 45 are realleged and incorporated by reference herein.

47. With respect to conduct occurring prior to June 18, 2008, Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) make it unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof – (i) to cheat or defraud or attempt to cheat or defraud such other person; [or] (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for such person.

48. With respect to conduct occurring on or after June 18, 2008, Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), make it unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person – (A) to cheat or defraud or attempt to cheat or defraud the other person; ...[or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever... .

49. **ARM Pool:** From at least December 2007 to March 2009, in or in connection with futures contracts made or to be made, for or on behalf of other persons, APE LLC and ARM Management, by and through their employees, cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool participants and willfully deceived or attempted to deceive pool participants or prospective pool participants by, among other things, (1) misappropriating pool participant funds; and (2) knowingly making misrepresentations or omissions, as described in paragraphs 1 through 45 above, all in violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (for acts before June 18, 2008) and Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A) and (C) (for acts on or after June 18, 2008).

50. Further, Klatch cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool participants and willfully deceived or attempted to deceive pool participants or prospective pool participants by, among other things, misappropriating pool participant funds, all in violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (for acts before June 18, 2008) and Sections 4b(a)(1)(A) and (C) of the Act

as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C) (for acts on or after June 18, 2008).

51. **TASK Pool:** From at least January 2009 to December 2009, in or in connection with futures contracts made or to be made, for or on behalf of other persons, Klatch, APE LLC and TASK Management, by and through Klatch, Sullivan and their employees, cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool participants and willfully deceived or attempted to deceive pool participants or prospective pool participants by, among other things, (1) misappropriating pool participant funds; and (2) knowingly making misrepresentations or omissions, as described in paragraphs 1 through 45 above, all in violation of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C).

52. **Vigilant Pool:** From at least June 2009 to the present, in or in connection with futures contracts made or to be made, for or on behalf of other persons, Klatch and Vigilant Management, by and through Klatch and its employees, cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool participants and willfully deceived or attempted to deceive pool participants or prospective pool participants by, among other things, (1) misappropriating pool participant funds; and (2) knowingly making misrepresentations or omissions, as described in paragraphs 1 through 45 above, all in violation of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C).

53. Each misappropriation, misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i) and (iii), 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (for acts occurring before June

18, 2008) and 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C) (for acts occurring on or after June 18, 2008).

54. Klatch controlled ARM Management, TASK Management and Vigilant Management, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, ARM Management, TASK Management and Vigilant Management's conduct as alleged in this Complaint. Therefore, pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), Klatch is liable for ARM Management, TASK Management and Vigilant Management's violations of Sections 4b(a)(2)(i) and (iii) of the Act (for acts occurring before June 18, 2008) and Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA (for acts occurring on or after June 18, 2008).

55. The foregoing acts, misrepresentations, omissions, and failures of Klatch, as well as other employees or agents of ARM Management, TASK Management and Vigilant Management, occurred within the scope of their agency, employment or office with ARM Management, TASK Management and Vigilant Management; therefore, ARM Management, TASK Management and Vigilant Management are liable for these acts pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

56. The foregoing acts, misrepresentations, omissions, and failures of Sullivan, as well as other employees or agents of APE LLC, occurred within the scope of their agency, employment or office with APE LLC, therefore APE LLC is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

57. The foregoing acts, misrepresentations, omissions, and failures of APE LLC and Sullivan, as well as other employees or agents of ARM Management and TASK Management, occurred within the scope of their agency, employment or office with ARM Management and TASK Management, therefore ARM Management and TASK Management, respectively, are liable for these acts pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

COUNT II

Violations of Section 4o(1) of the Act, to be codified at 7 U.S.C. § 6o(1) (Fraud By Commodity Pool Operators)

58. The allegations set forth in paragraphs 1 through 57 are realleged and incorporated herein by reference.

59. As defined in Section 1a(5) of the Act, to be codified at 7 U.S.C. § 1a(5) a CPO is:

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 . . . for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

60. Section 4o(1) of the Act, to be codified at 7 U.S.C. § 6o(1), prohibits CPOs from using the mails or any other means of interstate commerce to:

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

61. **ARM Pool:** From at least December 2007 March 2009, ARM Management, by and through Sullivan, Klatch and its employees, employed a device, scheme or artifice to defraud

pool participants and prospective pool participants or engaged in a transaction, practice or course of business, which operated as a fraud or deceit upon commodity futures and options pool participants and prospective commodity futures and options pool participants in violation of Section 4o(1) of the Act, to be codified at 7 U.S.C. § 6o(1), by, among other things, (1) misappropriating pool participant funds; and (2) knowingly making misrepresentations or omissions, as described in paragraphs 1 to 57, above.

62. **TASK Pool:** From at least January 2009 to December 2009, TASK Management, by and through Klatch, Sullivan and its employees, employed a device, scheme or artifice to defraud pool participants and prospective pool participants or engaged in a transaction, practice or course of business, which operated as a fraud or deceit upon commodity futures and options pool participants and prospective commodity futures and options pool participants in violation of Section 4o(1) of the Act, to be codified at 7 U.S.C. § 6o(1), by, among other things, (1) misappropriating pool participant funds; and (2) knowingly making misrepresentations or omissions, as described in paragraphs 1 to 57, above.

63. **Vigilant Pool:** From at least June 2009 to the present, Vigilant Management, by and through Klatch and its employees, employed a device, scheme or artifice to defraud pool participants and prospective pool participants or engaged in a transaction, practice or course of business, which operated as a fraud or deceit upon commodity futures and options pool participants and prospective commodity futures and options pool participants in violation of Section 4o(1) of the Act, to be codified at 7 U.S.C. § 6o(1), by, among other things, (1) misappropriating pool participant funds; and (2) knowingly making misrepresentations or omissions, as described in paragraphs 1 to 57, above.

64. Each misappropriation, misrepresentation or omission of material fact, actual or attempted to cheat, defraud, or deceive, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, to be codified at 7 U.S.C. § 6o(1).

65. Klatch controlled ARM Management, TASK Management and Vigilant Management, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, ARM Management, TASK Management and Vigilant Management's conduct alleged in this Complaint. Therefore, pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), Klatch is liable for ARM Management, TASK Management and Vigilant Management's violations of Sections 4o(1) of the Act, 7 U.S.C. § 6o(1) of the Act.

66. The foregoing acts, misrepresentations, omissions, and failures of Klatch, as well as other employees or agents of ARM Management, TASK Management and Vigilant Management, occurred within the scope of their agency, employment or office with ARM Management, TASK Management and Vigilant Management; therefore, ARM Management, TASK Management and Vigilant Management are liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

67. The foregoing acts, misrepresentations, omissions, and failures of Sullivan as well as other employees or agents, on behalf of APE LLC, occurred within the scope of their agency, employment or office with APE LLC, therefore APE LLC is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

68. The foregoing acts, misrepresentations, omissions, and failures of APE LLC and Sullivan, as well as other employees or agents, occurred within the scope of their agency,

employment or office with ARM Management and TASK Management, therefore ARM Management and TASK Management, respectively, are liable for these acts pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

COUNT III

**Violations of Section 4c(b) of the Act, to be codified at 7 U.S.C. § 6c(b),
and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2011)
(Fraud in Connection with Options Trading)**

69. The allegations set forth in paragraphs 1 through 68 are realleged and incorporated herein by reference.

70. Section 4c(b) of the Act, to be codified at 7 U.S.C. § 6c(b), provides that no person shall engage in any commodity option transaction regulated under the Act contrary to any rule, regulation, or order of the Commission. Furthermore, Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2011), make it unlawful for any person, directly or indirectly:

- (a) to cheat or defraud or attempt to cheat or defraud any other person; [or]
- (c) to deceive or attempt to deceive any other person by any means whatsoever in or in connection with . . . any commodity option transaction.

71. **TASK Pool:** As set forth above, from at least January 2009 through December 2009, Klatch, APE LLC, and TASK Management, by and through Klatch, Sullivan and its employees, violated Section 4c(b) of the Act, to be codified at 7 U.S.C. § 6c(b), and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2011), and have cheated or defrauded or attempted to cheat or defraud the Pools' participants and prospective pool participants by among other things, (1) misappropriating pool participant funds; and (2) knowingly making misrepresentations or omissions, as described in paragraphs 1 through 68, above, all in violation

of Section 4c(b) of the Act, to be codified at 7 U.S.C. § 6c(b), and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2011).

72. **Vigilant Pool:** As set forth above, from at least June 2009 through the present, Klatch and Vigilant Management, by and through Klatch and its employees, violated Section 4c(b) of the Act, to be codified at 7 U.S.C. § 6c(b), and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2011), and have cheated or defrauded or attempted to cheat or defraud the Pools' participants and prospective pool participants by among other things, (1) misappropriating pool participant funds; and (2) knowingly making misrepresentations or omissions, as described in paragraphs 1 through 68 above, all in violation of Section 4c(b) of the Act, to be codified at 7 U.S.C. § 6c(b), and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2011).

73. Each misappropriation, misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act, to be codified at 7 U.S.C. § 6c(b), and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2011).

74. Klatch controlled TASK Management and Vigilant Management, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, TASK Management and Vigilant Management's conduct alleged in this Complaint. Therefore, pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), Klatch is liable for TASK Management and Vigilant Management's violations of Section 4c(b) of the Act, to be codified at 7 U.S.C. § 6c(b), and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2011).

75. The foregoing acts, misrepresentations, omissions, and failures of Klatch, as well as other employees or agents of TASK Management and Vigilant Management, occurred within

the scope of their agency, employment or office with TASK Management and Vigilant Management; therefore, TASK Management and Vigilant Management are liable for these acts pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

76. The foregoing acts, misrepresentations, omissions, and failures of Sullivan as well as other employees or agents, on behalf of APE LLC, occurred within the scope of their agency, employment or office with APE LLC, therefore APE LLC is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

77. The foregoing acts, misrepresentations, omissions, and failures of APE LLC and Sullivan, as well as other employees or agents, occurred within the scope of their agency, employment or office with ARM Management and TASK Management, therefore ARM Management and TASK Management, respectively, are liable for these acts pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

VII. RELIEF REQUESTED

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

78. An order finding that Defendants violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (for acts occurring before June 18, 2008); and Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C) (for acts occurring on or after June 18, 2008).

79. An order finding that Defendants violated Section 4o(1) of the Act, to be codified at 7 U.S.C. § 6o(1).

80. An order finding that Klatch, APE LLC, Task Capital Management, LLC and Vigilant Capital Management, LLC violated Section 4c(b) of the Act, to be codified at 7 U.S.C. § 6c(b), and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c).

81. An order of permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, from engaging, directly or indirectly in conduct in violation of Sections 4b(a)(1)(A) and (C), 4o(1) and 4c(b) of the Act, as amended by the CRA, and as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and(C), § 6o(1) and § 6c(b); and Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2011).

82. An order of permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, from engaging, directly or indirectly, in:

- a. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, to be codified at 7 U.S.C. § 1a(29));
- b. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and Section 2(c)(2)(C)(i) of the Act, to be codified at § 2(c)(2)(B) and § 2(c)(2)(C)(i) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;

- c. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;
- d. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;
- e. soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;
- f. 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 in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and
- g. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

83. An order directing Defendants, as well as any successors thereto, 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, the Act as amended by the CRA, and the Regulations as described herein, and pre- and post-judgment interest thereon from the date of such violations.

84. An order directing Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act, the Act as amended by the CRA, and the Regulations as described herein, and pre- and post-judgment interest thereon from the date of such violations.

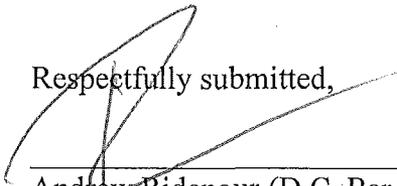
85. An order directing each Defendant to pay a civil monetary penalty under the Act, to be assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain to Defendant for each violation of the Act or (2) \$130,000 for each violation of the Act, the Act as amended by the CRA, and the Regulations occurring from October 23, 2004 through October 22, 2008, and \$140,000 for each violation of the Act and the Regulations occurring on or after October 23, 2008, plus post-judgment interest.

86. An order directing the Defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the customers whose funds were received by them as a result of the acts and practices which constituted violations of the Act and Regulations, as described herein.

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

88. Such other and further relief as the Court deems proper.

Respectfully submitted,



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Dated this 27 day of July, 2011.