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8 Attorneys for Plaintiff

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11	_____)	
12	U.S. Commodity Futures Trading)	
13	Commission,)	
14)	
15	Plaintiff,)	Case No.
16)	
17	v.)	
18)	COMPLAINT
19	Anthony Eugene Linton d/b/a)	
20	The Private Trading Pool,)	
21)	
22	Defendant.)	
23	_____)	

24 **COMPLAINT FOR INJUNCTIVE AND OTHER**
25 **EQUITABLE RELIEF AND FOR CIVIL MONETARY**
26 **PENALTIES UNDER THE COMMODITY EXCHANGE ACT**

27 **I. SUMMARY**

28 1. From at least October 2007 to the present (the “relevant time”), Anthony Eugene Linton, also known as Gene Linton (“Linton” or “Defendant”), individually and

1 doing business as The Private Trading Pool (“PTP”), solicited and accepted at least
2 \$650,000 from at least 19 individuals for the purported purpose of trading on their behalf
3 off-exchange foreign currency contracts (“forex”) in a PTP pooled account.

4
5 2. Linton misrepresented to prospective and existing PTP participants, both
6 orally and in writing, that they would receive a “100% annual return” on their PTP
7 investments and claimed that the software trading system Linton developed and tested
8 allowed PTP to “profit every time” from his forex trades. Linton further misrepresented
9 that (i) there were no risks whatsoever associated with trading forex through PTP, (ii)
10 participant funds were accessible to participants “within 24 hours” of a requested
11 redemption, and (iii) participants could receive their “profits” by check monthly.

12
13 3. Linton misappropriated the majority of the funds he solicited from
14 participants by using it for purposes other than forex trading, including (i) buying and
15 selling items on eBay (an online auction site), (ii) paying personal expenses, including
16 mortgage, car, and credit card payments, and (iii) paying purported profits to earlier PTP
17 participants in the manner of a Ponzi scheme. The limited forex trading Linton did engage
18 in with participant funds resulted in consistent net losses and, in the aggregate, Linton lost
19 over 91% of the funds he traded.

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22 4. Later, when Linton was unable to pay participants their promised monthly
23 “returns,” he attempted to conceal his fraud by misrepresenting to participants that he was
24 prevented from returning their funds due to (i) alleged “new restrictions” imposed by the
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1 United States Congress (“Congress”) and the National Futures Association (“NFA”), (ii)
2 prohibitions contained in a “Permanent Injunction” issued in his divorce case, and (iii)
3 other purported impediments.

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5 5. By making false statements to participants regarding PTP’s forex trading
6 profits and losses and the use of participant funds, and by misappropriating participant
7 funds, Linton cheated and defrauded, or attempted to cheat and defraud, and willfully
8 deceived, or attempted to deceive, his retail forex customers in violation of the Commodity
9 Exchange Act (the “Act” or the “CEA”), as amended by the Food, Conservation, and
10 Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of
11 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the
12 Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No.
13 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§
14 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et. seq.*,
15 specifically Sections 4b(a)(2)(A) and (C) of the Act, as amended, to be codified at 7 U.S.C.
16 §§ 6b(a)(2)(A) and (C).¹
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21 _____
22 ¹ The June 2008 legislation reauthorizing the Commodity Futures Trading Commission
23 revised Section 4b of the Act, among other things. *See* Section 1302 of the CRA. The
24 objective of the revision was to “clarify that the CEA gives the Commission the authority
25 to bring fraud actions in off-exchange ‘principal-to-principal’ futures transactions.” H.R.
26 REP. NO. 110-627, at 981 (2008) (Conf. Rep.). While the CRA did not change the Act’s
27 prohibition on misconduct such as that at issue here, it reorganized Section 4b so that
28 similar misconduct occurring on or after June 18, 2008 would be in violation of Sections

IV. FACTS OF DEFENDANT’S FRAUD

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A. Solicitation Fraud

13. During the relevant time, Linton solicited his friends and acquaintances to invest with PTP, which he represented was a pool he established and managed for the purpose of trading off-exchange forex, that profited “just from the movement in value of the U.S. Dollar” against other foreign currencies. Linton represented that he pooled the collective resources of PTP participants to trade a larger amount of funds simultaneously every day, thereby making greater profits every day and allowing participants to make money at a proportionate percentage relative to their deposits.

14. Linton claimed that participation interests were offered only to family members and friends. However, to some pool participants, Linton represented that PTP “had 160 plus” participants.

15. Linton typically solicited prospective participants in face-to-face meetings, but he also drafted, signed, and mailed at least six current and prospective participants offering memoranda and letters that described in detail the purported benefits of investing with PTP. According to Linton, these benefits included riskless and guaranteed profits, and the participants’ unfettered access to their principal, which Linton claimed was amply covered by his own assets.

1 16. In one memorandum, entitled “The Private Trading Pool” (the “PTP
2 Memorandum”), which Linton authored and sent to at least five participants, he made the
3 following misrepresentations:

- 4 a. PTP will earn an “8.33% per month average” return, or “100% per year,”
5 allowing participants to “doubl[e] your money every year.”
6
7 b. The strategy of trading the U.S. Dollar against other foreign currencies at
8 precise times of the day and during “News Breaks” was profitable because
9 Linton: had access to future news releases a week before they are actually
10 released to the public; knew what news would be announced and the exact
11 time it would be announced to the public; and, based on such news, could “be
12 there in [his] currency Buys and Sells the instant the future happens, every
13 time,” and “profit every time.”
14
15 c. Linton traded a million dollars of forex every day.
16
17 d. There are no risks whatsoever associated with investing in PTP.
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19 e. Participants’ money is “safe” and “easily . . . covered” by Linton’s own
20 assets.
21
22 f. Participants’ money is available to them within 24 hours of a requested
23 redemption.
24
25 g. PTP and the participants would structure the investment as a “tax free gift
26 plan” in which participation interests would be considered to be “gifts” to
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PTP and returns from PTP would be “gifts” back to participants, with the result that the transactions would not have to be disclosed to the Internal Revenue Service (the “IRS”) and would be considered “tax free” by the IRS.

17. Linton made the same or substantially similar oral misrepresentations of material fact as those included in the PTP Memorandum to participants and prospective participants during the relevant time.

18. In addition to the foregoing misrepresentations included in the PTP Memorandum, Linton misrepresented that his own funds were in the “same place” as participant funds and safely held in his “own multi-million dollar asset balanced Forex Broker fund, backed up by a safe asset portfolio.”

19. Linton knew that his oral statements and those contained in the PTP Memorandum were false and misleading or recklessly disregarded the truth at the time he made them.

20. Instead of investing participants’ funds in forex, as Linton represented, he used the majority of those funds to buy and sell items on eBay, for personal expenses, and to pay purported forex trading profits to existing participants in the manner of a Ponzi scheme. Linton also converted participant funds into cash and transferred them to a safe in his home. Linton did not disclose to PTP participants that he would use their funds for these purposes or any other purpose other than trading forex.

1 35. In April 2010, after Linton learned that the CFTC was investigating him, he
2 told at least one participant that he had “talked to four accountants and a FBI agent,” all of
3 whom opined, according to Linton, that PTP was “okay.” This statement was also false,
4 and Linton knew it was false at the time he made it.
5

6 **D. Linton Misappropriated Customer Funds**

7 36. During the relevant time, Linton solicited and accepted at least \$650,000
8 from 19 pool participants, but used no more than \$36,000 of that amount to trade forex.
9 Specifically, during the relevant time, at which time Linton was unemployed, he spent
10 \$67,722 on personal mortgage payments, \$339,863 on car and credit card payments, and
11 \$199,573 to pay earlier PTP participants their purported “profits,” most or all of which was
12 done with funds received from more recent participants in the manner of a Ponzi scheme.
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14 37. For example, on March 24, 2009, Linton deposited \$18,000 he had solicited
15 from a PTP participant for the purpose of trading forex into Susan Linton’s Wells Fargo
16 checking account, which Linton controlled. Over the next two weeks, between March 24
17 and April 6, 2009, Linton paid \$13,699.66 of this money to 15 participants who had
18 previously invested in PTP and \$3,729.57 to the bank that held the mortgage on Linton’s
19 house, for a total of \$17,429.23 of the \$18,000 deposited.
20

21 38. Additionally, Linton used some of the funds from participants to buy and sell
22 items on eBay and also converted large sums of participant funds into cash, which he
23 stashed in a safe in his home. For example, on March 9, 2009, Linton deposited \$96,000
24

1 that he had solicited from a PTP participant for the purpose of trading forex into the Wells
2 Fargo account maintained in Susan Linton's name. At the time of the deposit, the Wells
3 Fargo account had a balance of \$1,406.73. The next day, Susan Linton withdrew \$66,000
4 in cash from the account and transferred an additional \$18,000 to a second Wells Fargo
5 account in her name, which Linton also controlled. Two days later, on March 12, 2009, a
6 portion of the \$18,000 was used to pay Linton's mortgage. None of the initial \$96,000
7 was ever used to trade forex.
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10 39. Between December 2006 and April 2010, Linton deposited \$76,000 of
11 commingled personal and participant funds into a forex account maintained in Susan
12 Linton's name at MB Trading Futures, Inc. No more than \$36,000 of these funds was
13 from participants. Of the \$76,000 total deposited, Linton lost approximately \$69,315, or
14 91%, trading forex during the same period. The MB Trading Futures, Inc. account was
15 the only account in which Linton ever traded forex.
16

17 40. Of the \$6,685 remaining in the MB Trading Futures, Inc. account after the
18 losses set forth above, Linton transferred \$1,500 to a third Wells Fargo bank account in
19 Susan Linton's name, which he controlled, and issued a \$5,000 check to Susan Linton,
20 which was later deposited into the same bank account, co-mingled with Gene and Susan
21 Linton's personal funds, and then used to pay their personal expenses.
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1 **E. The Nature of the Transactions**

2 41. Neither Linton nor the purported counterparties to the forex transactions he
3 conducted were financial institutions, registered brokers or dealers, insurance companies,
4 financial holding companies, investment bank holding companies, or the associated
5 persons of financial institutions, registered brokers or dealers, insurance companies,
6 financial holding companies, or investment bank holding companies.
7

8 42. Some or all of Linton's participants were not "eligible contract participants"
9 as that term is defined in Section 1a(12)(A)(xi) of the Act, as amended, to be codified at 7
10 U.S.C. § 1a(12)(A)(xi). An "eligible contract participant," as relevant here, is an
11 individual who has total assets in an amount in excess of (i) \$10 million or (ii) \$5 million
12 and who enters into the transaction in order to manage risk.
13

14 43. The forex transactions Linton purportedly conducted on behalf of his
15 participants were entered into on a leveraged or margined basis. Accordingly, Linton was
16 required to provide only a percentage of the value of the forex contracts that he purchased.
17 The forex transactions Linton purportedly conducted neither resulted in the delivery of
18 actual currency within two days nor created an enforceable obligation to deliver actual
19 currency between a seller and a buyer that had the ability to deliver and accept delivery,
20 respectively, in connection with their lines of business. Rather, these forex contracts
21 purportedly remained open from day to day and ultimately were offset without anyone
22 making or taking delivery of actual currency (or facing an enforceable obligation to do so).
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1 **V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

2 **COUNT ONE**

3 **Violations of Sections 4b(a)(2)(A) and (C) of the Act:**
4 **Fraud by Misappropriation, Misrepresentation and Deceit**

5 44. The allegations set forth in paragraphs 1 through 43 are realleged and
6 incorporated herein by reference.

7
8 45. Sections 4b(a)(2)(A) and (C) of the Act, as amended, to be codified at 7
9 U.S.C. §§ 6b(a)(2)(A) and (C), make it unlawful:

10 for any person, in or in connection with any order to make, or the making of,
11 any contract of sale of any commodity for future delivery, or other
12 agreement, contract, or transaction subject to paragraphs (1) and (2) of
13 Section 5a(g), that is made, or is to be made, for or on behalf of, or with, any
other person, other than on or subject to the rules of a designated contract
market –

14 (A) to cheat or defraud or attempt to cheat or defraud the other person; or
15 (C) willfully to deceive or attempt to deceive the other person by any means
16 whatsoever in regard to any order or contract or the disposition or execution
17 of any order or contract, or in regard to any act of agency performed, with
respect to any order or contract for or, in the case of paragraph (2), with the
other person.

18 46. Pursuant to Section 2(c)(2)(C)(iv) of the Act, as amended, to be codified at 7
19 U.S.C. § 2(c)(2)(C)(iv), Section 4b of the Act, as amended, to be codified at 7 U.S.C. § 6b,
20 applies to Defendant's foreign currency transactions "as if" they were a contract of sale of
21 a commodity for future delivery.

22
23 47. As set forth above, Defendant cheated and defrauded, or attempted to cheat
24 and defraud, and willfully deceived, or attempted to deceive, his retail forex customers by,
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1 among other things, making material misrepresentations and/or failing to disclose material
2 facts to them, and by misappropriating their funds, in violation of Sections 4b(a)(2)(A) and
3 (C) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C).

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5 48. Each misrepresentation or omission of material fact and instance of
6 misappropriation of customer funds made from June 18, 2008 to the present, including, but
7 not limited to, those specifically alleged herein, is alleged as a separate and distinct
8 violation of Sections 4b(a)(2)(A) and (C) of the Act, as amended, to be codified at 7 U.S.C.
9 §§ 6b(a)(2)(A) and (C).
10

11 VI. RELIEF REQUESTED

12 WHEREFORE, the CFTC respectfully requests that this Court, as authorized by
13 Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, and pursuant to its
14 own equitable powers, enter:
15

16 A. An order finding that Defendant violated Sections 4b(a)(2)(A) and (C) of the
17 Act, as amended, to be codified at 7 U.S.C. § 6b(a)(2)(A) and (C);
18

19 B. Enter an *ex parte* statutory restraining order and an order for preliminary
20 injunction pursuant to Section 6c(a) of the Act, as amended, to be codified at 7 U.S.C.
21 § 13a-1(a), restraining Defendant and all persons or entities insofar as they are acting in the
22 capacity of Defendant's agents, servants, employees, successors, assigns, and attorneys,
23 and all persons insofar as they are acting in active concert or participation with Defendant,
24 who receive actual notice of such order by personal service or otherwise, from directly or
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1 indirectly:

- 2 1. Destroying, mutilating, concealing, altering, or disposing of any books and
3 records, documents, correspondence, brochures, manuals, electronically
4 stored data, tape records, or other property of Defendant, wherever located,
5 including all such records concerning Defendant's business operations;
6
7 2. Refusing to permit authorized representatives of the Commission to inspect,
8 when and as requested, any books and records, documents, correspondence,
9 brochures, manuals, electronically stored data, tape records, or other
10 property of Defendant, wherever located, including all such records
11 concerning Defendant's business operations; and
12
13 3. Withdrawing, transferring, removing, dissipating, concealing, or disposing
14 of, in any manner, any funds, assets, or other property, wherever situated,
15 including, but not limited to, all funds, personal property, money, or
16 securities held in safes or safety deposit boxes, and all funds on deposit in
17 any financial institution, bank, or savings and loan account, whether
18 domestic or foreign, held by, under the control of, or in the name of
19 Defendant;
20
21 Defendant;

22 C. Enter orders of preliminary and permanent injunction enjoining Defendant
23 and all persons insofar as they are acting in the capacity of Defendant's agents, servants,
24 employees, successors, assigns, and attorneys, and all persons insofar as they are acting in
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1 active concert or participation with Defendant, who receive actual notice of such order by
2 personal service or otherwise, from directly or indirectly:

- 3 1. Engaging in conduct in violation of Sections 4b(a)(2)(A) and (C) of the Act,
4 as amended, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C);
- 5
6 2. Trading on or subject to the rules of any registered entity, as that term is
7 defined in Section 1a(29) of the Act, as amended, to be codified at 7 U.S.C. §
8 1a(29);
- 9
10 3. Entering into any transactions involving commodity futures, options on
11 commodity futures, commodity options (as that term is defined in Regulation
12 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2010)) (“commodity options”), and/or
13 foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the
14 Act, as amended, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)
15 (“forex contracts”)), for his own personal account or for any account in
16 which he has a direct or indirect interest;
- 17
18 4. Having any commodity futures, options on commodity futures, commodity
19 options, and/or forex contracts traded on his behalf;
- 20
21 5. Controlling or directing the trading for or on behalf of any other person or
22 entity, whether by power of attorney or otherwise, in any account involving
23 commodity futures, options on commodity futures, commodity options,
24 and/or forex contracts;
- 25

1 from October 1, 2007 to and including the date of such accounting;

2 E. Enter an order requiring Defendant immediately to identify and provide an
3 accounting of all assets and property that he currently maintains outside the United States,
4 including, but not limited to, all funds on deposit in any financial institution, futures
5 commission merchant, bank, or savings and loan accounts held by, under the control of, or
6 in the name of Anthony Linton, Anthony Gene Linton, Anthony Eugene Linton, Eugene
7 Linton, Gene Linton, Susan Linton, or The Private Trading Pool, or in which any such
8 person or entity has a beneficial interest of any kind, whether jointly or otherwise, and
9 requiring Defendant to repatriate all funds held in such accounts by paying them to the
10 Clerk of the Court, or as otherwise ordered by the Court, for further disposition in this case;

11 F. Enter an order requiring Defendant to disgorge to any officer appointed or
12 directed by the Court all benefits received including, but not limited to, salaries,
13 commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from
14 acts or practices that constitute violations of the Act as described herein, including
15 pre-judgment interest;

16 G. Enter an order directing Defendant and any of his successors to rescind,
17 pursuant to such procedures as the Court may order, all contracts and agreements, whether
18 implied or express, entered into between him and any of the participants whose funds were
19 received by Defendant as a result of the acts and practices that constitute violations of the
20 Act, as described herein;

1 H. Enter an order requiring Defendant to make restitution by making whole
2 each and every pool participant or other person whose funds were received or utilized by
3 him in violation of the provisions of the Act as described herein, including pre-judgment
4 interest;
5

6 I. Enter an order requiring Defendant to pay civil monetary penalties under the
7 Act, to be assessed by the Court, in amounts of not more than the higher of \$130,000 for
8 each violation prior to October 22, 2008, and \$140,000 for each violation on or after
9 October 22, 2008, or triple the monetary gain to Defendant for each violation of the Act;
10

11 J. Enter an order requiring Defendant to pay costs and fees as permitted by
12 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and
13

14 K. Enter an Order providing such other and further relief as this Court may
15 deem necessary and appropriate under the circumstances.
16

17 Dated: January 11, 2011
18

19 Respectfully Submitted,

20 /s/ David S. Slovick
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