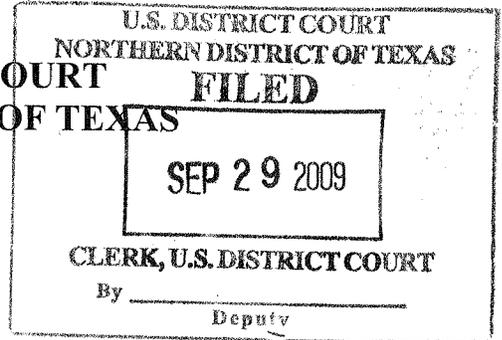


UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS



U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

M25 INVESTMENTS, INC., M37
INVESTMENTS, LLC, SCOTT P.
KEAR, SR., JEFFREY L. LYON and
DAVID G. SEAMAN,

Defendants.

CIVIL CASE NO. _____

3-09CV1831-M

**COMPLAINT FOR PERMANENT INJUNCTION, CIVIL MONETARY
PENALTIES, AND OTHER EQUITABLE RELIEF**

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

I. SUMMARY

1. From at least December 2007 through the present (the “Relevant
Period”), defendants M25 Investments, Inc. (“M25”) and M37 Investments, LLC
 (“M37”), individually and acting as a common enterprise, and Scott P. Kear, Sr.
 (“Kear”), Jeffrey L. Lyon (“Lyon”) and David G. Seaman (“Seaman”)
 (collectively, “Defendants”) have fraudulently operated a foreign currency trading
 firm with offices in Texas, West Virginia and Mississippi.

2. During the Relevant Period, Defendants, directly and through others, fraudulently solicited approximately \$8 million from approximately 224 members of the general public for the purported purpose of trading leveraged off-exchange foreign currency (“forex”) contracts and off-exchange options on forex (“forex options”). The Defendants, directly and through others, fraudulently solicited customers to trade forex and forex options by, among other acts, guaranteeing monthly returns of two percent (2 %) and annual returns of 24 percent (24%) and claiming to be successful forex traders.

3. Defendants, directly and through others, solicited prospective customers, many of whom were elderly and were affiliated through churches, in West Virginia, Mississippi, Texas, Maryland and other states.

4. Defendants pooled customer funds for purposes of trading, but traded only some of the customer funds. Overall, Defendants sustained losses trading off-exchange forex and forex options and on-exchange commodity futures contracts.

5. As of at least March 31, 2009, defendants M25 and M37 only had \$3.9 million in assets and did not have sufficient assets to make the promised interest payments and return of principal. Defendants did not disclose this to prospective customers or existing customers as they continued to solicit for funds for the purported purpose of trading forex and forex options. Defendants also did

not disclose that a significant portion of customer funds would not be used for trading forex and forex options but instead would be used for other purposes.

6. Defendants concealed their trading losses, lack of trading and other uses of customer funds by sending monthly statements to their customers that falsely assured them that they were earning two percent interest every month.

7. Although continually sustaining losses, Defendants continue to solicit funds based upon the fraudulent promise that customers would earn interest of two percent per month and 24 percent per year. Indeed, in May 2009 alone, Defendants successfully solicited approximately \$140,000 from more than a dozen additional customers.

8. 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 Sections 4b(a)(1)(A)-(C) and 4b(a)(2)(A)-(C) of the Commodity Exchange Act (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. §§ 6b(a)(1)(A)-(C) and 6b(a)(2)(A)-(C), Section 4c(b) of the Act, 7 U.S.C. §§ 6c(b) (2006), and Commission Regulation ("Regulation") 32.9, 17 C.F.R. § 32.9 (2009).

9. Additionally, by soliciting and pooling funds for purposes of trading on-exchange commodity futures contracts, M25 acted as an unregistered commodity pool operator (“CPO”) and individual Defendants Kear, Lyon, Seaman and others acted as unregistered associated persons (“APs”) thereof. Acting as unregistered CPOs and APS, Defendants have engaged, are engaging or are about to engage in acts and practices in violation of Sections 4o(1), 4m(1) and 4k(2) of the Act, 7 U.S.C. §§ 6o(1), 6m(1) and 6k(2) (2006).

10. Defendants Kear, Lyon, Seaman and other officers, agents and employees of M25 and M37 committed the acts and omissions described herein within the course and scope of their employment at M25 and M37. Therefore, M25 and M37 are liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2009), as principals for their agents’ violations of the Act and Regulations.

11. Defendants Kear, Lyon and Seaman are also liable for the violations of M25 and M37 pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), because they are controlling persons of those entities and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations of the Act and Regulations by M25 and M37.

12. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Sections 2(c)(2)(B) and (C) of the Act as amended by the CRA, to be

codified at 7 U.S.C. § 2(c)(2) (B) and (C), the Commission brings this action to enjoin Defendants' unlawful acts and practices, to compel their compliance with the Act and to further enjoin Defendants from engaging in any commodity-related activity. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, the appointment of a temporary receiver, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

13. Unless restrained and enjoined by the 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

14. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2)(B) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(B) and (C). Section 6c(a) of the Act authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

15. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Defendants have transacted, and continue to transact, business in this District and certain of Defendants' transactions, acts, practices, and courses of business have occurred, are occurring, or are about to occur within this District.

III. PARTIES

16. **Plaintiff Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act and the Regulations promulgated thereunder. The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

17. **Defendant M25 Investments, Inc.** is a Delaware corporation with its principal place of business at 1200 Kingdom Circle, Waxahachie, Texas 75167. M25 has branch offices in Berkeley Springs, West Virginia, Watauga, Texas and Pearl, Mississippi. The majority shareholder of M25 is the Kingdom Life Holdings Trust ("KLHT"), whose sole beneficiary is Kingdom Life Ministries. Defendants Kear, Lyon and another principal own M25. M25 has been registered with the Commission as a Commodity Trading Advisor ("CTA") since July 24, , 2008. On June 4, 2009, the National Futures Association ("NFA"), a self-regulatory organization for the commodity futures and options industry, issued a

Notice of Member Responsibility Action and Associate Responsibility Action

("MRA") against M25, M37, and other members based on the facts alleged herein and barred them from soliciting and accepting funds from customers, trading or transferring funds.

18. **Defendant M37 Investments, LLC** has been registered as a limited liability company in Michigan and Texas since at least May 2008. M37's principal place of business is co-located with defendant M25 at 1200 Kingdom Circle, Waxahachie, Texas 75167. M37 has branch offices in Berkeley Springs, West Virginia, Watauga, Texas and Pearl, Mississippi at the same addresses as the branch offices of M25. Upon information and belief, the owners of M37 are defendant Lyon and the KLHT. M37 has been registered with the Commission as a CTA since November 5, 2008. As alleged above, on June 4, 2009, NFA issued an MRA against M37.

19. **Defendant Scott P. Kear, Sr.** resides in Waxahachie, Texas, and is the chief executive officer of both M25 and M37. Kear is also a director of M25, and is its registered agent in Texas with respect to payment of state taxes. It appears that Kear owns and controls both M25 and M37 through the KLHT, which he also owns and controls. Kear has never been registered with the Commission.

20. **Defendant Jeffrey L. Lyon** resides in Waxahachie, Texas, is the chief financial officer of both M25 and M37 and is listed with the NFA as a

principal of both firms. Lyon is a part owner of M37, and is its registered agent in Texas with respect to payment of state taxes.

21. **Defendant David G. Seaman** resides in Arlington, Texas, is the chief operating officer of both M25 and M37, and is listed with the NFA as a principal of both M25 and M37.

IV. FACTS

A. Defendants' Fraudulent Solicitation of Customers

22. M25 and M37 solicited members of the general public to trade forex and forex options, often targeting elderly individuals through their churches. M25 and M37 successfully solicited individuals in West Virginia, Texas, Mississippi and Maryland as well as in other states.

23. In exchange for the funds to trade forex and forex options, on behalf of the customers, M25 and M37 provided customers with promissory notes guaranteeing interest payments of 2 percent per month and 24 percent per year.

24. Defendants M25 and M37 are engaged in a common scheme to solicit customers to trade forex. M25 and M37 share owners, officers, directors, offices, telephone numbers, web sites and solicitation materials. The individual Defendants control both M25 and M37. The customers of M25 and M37 often do not know the difference between the two companies.

25. Defendants solicited customers in person and through word-of-mouth, websites and promotional materials.

26. Defendants' representatives in West Virginia were acquainted with many of the West Virginia residents who became Defendants' customers. During the Relevant Period, Defendants' West Virginia representatives solicited many customers after church services they attended, and at meetings at the representatives' or the customers' homes.

27. Defendants Kear and Lyon solicited customers in person during solicitation meetings in West Virginia.

28. Other customers living outside West Virginia heard about these solicitations and contacted Defendants' primary West Virginia representative. The representative also solicited persons living outside West Virginia to trade forex with M25 or M37.

29. While soliciting potential customers in person, Defendants or their representatives obtained telephone numbers of other potential customers. Then, Defendants or their representatives solicited these additional potential customers through telephone calls.

30. During their solicitations, Defendants' representatives referred potential customers to the officers and directors of M25 and M37 who reside in

Texas. At least one M37 customer spoke directly to the individual Defendants, including Lyon and Seaman, who solicited his investment.

31. In their solicitations, Defendants utilized power point presentations, offered written documents and referred potential customers to websites operated by Defendants, including www.m25investments.com and www.mmoneygroup.com.

32. Defendants' websites expressly state that Defendants offer managed forex trading.

33. Through the power point slides and documents, Defendants offered two types of "accounts," one purportedly subject to regular taxes and the other purportedly in the form of an IRA. With both forms of account, M25 and M37 provided the customers with unsecured promissory notes.

34. Defendants' solicitation materials stated, for example, that their "self directed IRA" allowed the customer to "invest in more items," to "invest with few restrictions" and to "invest in liquid assets, plus real estate, private companies, commodities foreign currency [and] promissory notes."

35. Defendants' other solicitation materials stated that M37 is "a private investment company that operates like a discretionary hedge fund" to "only trade currencies, or Forex as this is what we know."

36. Defendants' oral and written solicitations guaranteed, repeatedly, to pay customers two percent interest per month, and 24 percent interest per year, on

all principal invested with M25 and M37. The Defendants also promised a 2% renewal bonus if the customer renewed the investment.

37. The Defendants, directly or through their representatives, provide a chart in their written promotional materials that shows the growth of an initial \$100,000 investment to over \$11 million after year 11, assuming a 24% annual return plus a 2% renewal bonus and all dollars remain in the account.

38. In their written promotional materials, Defendants also claimed to outperform other investments, by trading forex, including Warren Buffet's annual returns, despite the credit crunch. They further claim that their trading strategy is the fruit of 35 years of trading experience.

39. The promotional materials make clear that the guarantee of 24% annual return is based on their profitable trading of forex.

40. Defendant M37 successfully solicited approximately 185 customers, and M25 successfully solicited approximately 39 customers, for a total of approximately 224 customers giving funds to the Defendants for purposes of trading forex and forex options.

41. M25 and M37 collectively received approximately \$8 million from customers.

42. Customers understood that M25 and M37 use their investments to trade primarily forex, and that their guaranteed returns were based upon the profitability of Defendants' trading.

43. Customers wired their funds to bank accounts in the name of M25 or M37 or sent checks made payable to M25 or M37. Defendants pooled the funds in those accounts and then transferred funds to various trading accounts held in the name of M25 or M37.

44. Most of the Defendants' customers maintained their investments with the Defendants and re-invested the purported interest they were earning each month.

45. Customers relied upon Defendants' oral and written material misrepresentations and omissions when deciding whether to invest and reinvest with M25 and M37.

46. Upon information and belief, the funds used for the relatively few payments made to customers by Defendants came from funds that Defendants received from other customers. Therefore, when Defendants made payments to customers, they operated, and continue to operate, a Ponzi scheme.

B. Defendants Were Not Successful Traders

47. During the Relevant Period, Defendants opened forex and forex options trading accounts in the name of M25 and M37 at several Futures

Commission Merchants (“FCMs”) registered with the Commission to carry customer accounts. Of the approximately \$8 million received by Defendants from customers, Defendants deposited approximately \$6.1 million into these forex and forex options trading accounts but then withdrew a total of \$4.9 million and transferred other funds to other trading accounts.

48. With the remaining approximately \$500,000 left in the forex and forex options trading accounts, Defendants incurred net trading losses of approximately \$210,000 through June 30, 2009.

49. Defendants also held funds in on-exchange commodity futures trading accounts commodity futures they controlled at other FCMs. In those accounts, Defendants sustained trading losses of approximately \$632,000.

50. Overall, Defendants sustained net losses of approximately \$842,000 trading forex contracts, forex options and on-exchange futures contracts at FCMs located in the United States.

51. Defendants also hold forex trading accounts outside the United States in the name of M25 and in the name of M37. During the relevant period, Defendants deposited approximately \$1.3 million and withdrew approximately \$1 million in those accounts. Defendants sustained profits of approximately \$186,000 trading.

52. Overall, in their trading, inside and outside of the United States, Defendants sustained net trading losses of approximately \$656,000.

53. Kear and Lyon controlled the trading of one of the forex and forex options trading account, and with respect to that account, Kear represented to the FCM that it was not trading on behalf of clients. That trading account was funded with customer money.

54. As of as of March 31, 2009, M25 and M37 owed customers approximately \$7.6 million on their guarantees, but had assets of only approximately \$3.9 million. Defendants did not disclose to potential customers or existing customers that their liabilities to customers exceeded their assets.

55. Defendants did not disclose to prospective or existing customers that a significant portion of their funds would not be used for trading.

56. Neither Defendants nor the FCMs that were the counterparties to the forex transactions were financial institutions, registered brokers or dealers, insurance companies, financial holding companies, or investment bank holding companies or the APs of financial institutions, registered brokers or dealers, insurance companies, financial holding companies, or investment bank holding companies.

57. Some or all of Defendants' customers were not "eligible contract participants" as that term is defined in Section 1a(12)(A)(xi) of the Act, 7 U.S.C.

§ 1a(12)(A)(xi) (2006) (an “eligible contract participant,” as relevant here, is an individual with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction in order to hedge risk).

58. The forex transactions conducted by Defendants at the FCMs on behalf of their customers were entered into on a leveraged or margined basis. Defendants were required to provide only a percentage of the value of the foreign currency contracts that they purchased.

59. The forex transactions conducted by Defendants neither resulted in delivery of actual currency within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these forex contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

C. Defendants’ False Account Statements

60. During the Relevant Period, Defendants concealed their trading losses as well as their lack of trading by issuing or causing to be issued monthly account statements that consistently show two percent monthly interest and 24 percent annual interest for each customer.

61. Customers believe, and continue to believe, that that the interest they were purportedly earning came from the Defendants' profitable trading.

62. Customers relied upon Defendants' monthly account statements when deciding whether to reinvest any purported earnings, whether to keep their principal investments, and whether to invest additional funds with Defendants.

D. Kear, Lyon, and Seaman Are Controlling Persons of M25 and M37

63. Kear is a controlling person of M25 and M37. He is the chief executive officer of M25 and M37, and a director and registered agent of M25. Kear appears involved in all material business aspects of M25 and M37, and is one of the primary representatives of M25 and M37 in responding to inquiries of the NFA. He also directly solicited prospective customers and controlled trading accounts, including executing account opening documentation.

64. Lyon is a controlling person of M25 and M37. He is the chief financial officer of both M25 and M37 and is listed with the NFA as a principal of both firms. Lyon is a part owner of M37, and is its registered agent in Texas with respect to payment of state taxes. Lyon oversees the accounting and finance operations of M25 and M37. Lyon also directly solicited prospective customers, and controlled trading and bank accounts for M25 and M37. Lyon is one of the primary representatives of M25 and M37 in responding to inquiries of the NFA.

65. Seaman is a controlling person of M25 and M37. He is the chief operating officer and a principal of both M25 and M37. Seaman is the day-day manager of M25 and M37. He manages the relationships between M25, M37, their commercial banks, the FCMs that carried their forex and commodity futures trading accounts and the customers. Seaman handles telephonic inquiries from customers. Seaman is one of the primary representatives of M25 and M37 in responding to inquiries of the NFA.

66. Kear, Lyon and another owner represented to NFA that they would use their personal assets to meet their guarantees of principal and interest customers; they have not done so.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I (All Defendants)

Violations of Sections 4b(2)(A)-(C) of the Act, as amended by the CRA (Off-Exchange Conduct: Solicitation Fraud and False Statements)

67. The allegations set forth in paragraphs 1 through 66 are realleged and incorporated herein by reference.

68. Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(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 for future delivery . . . that is made, or 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 – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to 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 or, in the case of [this] paragraph (2), with the other person . . .¹

Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, apply to the forex transactions, agreements or contracts offered by Defendants. *See* Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iv).

69. During the Relevant Period, in or in connection with forex contracts, made, or to be made, for or on behalf of customers, Defendants cheated or defrauded or attempted to cheat or defraud customers or prospective customers, willfully made or caused to be made false reports to customers or willfully deceived or attempted to deceive customers or prospective customers by, among other things, knowingly or recklessly: (i) guaranteeing profits of two percent monthly interest and 24 percent annual interest when any such interest income would

¹ Subsection (2) of Section 4b(a) of the Act, as amended by the CRA, addresses transactions not entered into on an exchange, such as the Chicago Mercantile Exchange (*i.e.*, “off-exchange” or “over-the-counter” transactions). Subsection (1) of Section 4b(a) of the Act, as amended by the CRA (addressed in Count II, *infra*), concerns futures trading conducted *on* exchanges regulated by the Commission.

come from Defendants' speculative and risky trading; (ii) falsely claiming to be successful forex traders; (iii) failing to disclose that they did not have sufficient assets to make the promised interest payments and return of principal; (iv) failing to disclose that a significant portion of customer funds would not be used for trading; and (v) issuing or causing to be issue monthly account statements to customers showing the consistent 2% interest credits when Defendants' consistently lost customer funds trading or were not using their funds for trading.

70. By such conduct, Defendants violated, and continue to violate Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

71. Defendants Kear, Lyon and Seaman controlled M25 and M37, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, the conduct of M25 and M37 alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), defendants Kear, Lyon and Seaman are liable for the violations by M25 and M37 of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA.

72. When they committed the foregoing acts, misrepresentations, omissions, and failures, defendants Kear, Lyon and Seaman acted as agents of M25, M37 or both. Therefore, M25, M37 or both are liable for their actions

pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2009).

73. Each misrepresentation or omission of material fact, and each false or misleading account statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA.

COUNT II
(All Defendants)

Violations of Sections 4b(a)(1)(A)-(C) of the Act,
as amended by the CRA
(On-Exchange Conduct: Solicitation Fraud and False Statements)

74. The allegations set forth in paragraphs 1 through 66 are realleged and incorporated herein by reference.

75. Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(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; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to 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 . . .
the other person . . .

76. During the Relevant Period, in or in connection with commodity futures contracts, made, or to be made, for or on behalf of customers, Defendants cheated or defrauded or attempted to cheat or defraud customers or prospective customers, willfully made or caused to be made false reports to customers or willfully deceived or attempted to deceive customers or prospective customers by, among other things, knowingly or recklessly (i) guaranteeing monthly profits of two percent monthly interest and 24 percent annual interest when any such interest income would come from Defendants' speculative and risky trading; (ii) falsely claiming to be successful forex traders; (iii) failing to disclose that they did not have sufficient assets to make the promised interest payments and return of principal; (iv) failing to disclose that a significant portion of customer funds would not be used for trading; and (v) issuing or causing to be issue monthly account statements to customers showing the consistent 2% interest credits when Defendants' consistently lost customer funds trading or were not using their funds for trading.

77. By such conduct, Defendants violated, and continue to violate Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C).

78. Defendants Kear, Lyon and Seaman controlled M25 and M37, directly or indirectly, and did not act in good faith or knowingly induced, directly

or indirectly, the conduct of M25 and M37 alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), defendants Kear, Lyon and Seaman are liable for the violations by M25 and M37 of Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA.

79. When they committed the foregoing acts, misrepresentations, omissions, and failures, defendants Kear, Lyon and Seaman acted as agents of M25, M37 or both. Therefore, M25, M37 or both are liable for their actions pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2009).

80. Each misrepresentation or omission of material fact, each misappropriation and each false or misleading account statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA.

COUNT III
(All Defendants)

Violations of Section 4c(b) of the Act and
Commission Regulations 32.9(a)-(c)
(Forex Options: Solicitation Fraud and False Statements)

81. The allegations set forth in paragraphs 1 through 66 are realleged and incorporated herein by reference.

82. Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), 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 32.9(a)-(c), 17 C.F.R. §§ 32.9(a)-(c) (2009), make it unlawful for any person, directly or indirectly:

- (a) to cheat or defraud or attempt to cheat or defraud any other person;
- (b) to make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof;
- (c) to deceive or attempt to deceive any other person by any means whatsoever;

in or in connection with the offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction.

83. During the Relevant Period, Defendants violated Section 4c(b) of the Act and Regulations 32.9(a)-(c) by engaging in forex options transactions and, among other things, knowingly or recklessly: (i) guaranteeing monthly profits of two percent monthly interest and 24 percent annual interest when any such interest income would come from Defendants' speculative and risky trading; (ii) falsely claiming to be successful forex traders; (iii) failing to disclose that they did not have sufficient assets to make the promised interest payments and return of principal; (iv) failing to disclose that a significant portion of customer funds would not be used for trading; and (v) issuing or causing to be issue monthly account statements to

customers showing the consistent 2% interest credits when Defendants' consistently lost customer funds trading or were not using their funds for trading.

84. By such conduct, Defendants violated, and continue to violate Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Regulations 32.9(a)-(c), 17 C.F.R. §§ 32.9(a)-(c) (2009).

85. Defendants Kear, Lyon and Seaman controlled M25 and M37, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, the conduct of M25 and M37 alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), defendants Kear, Lyon and Seaman are liable for the violations by M25 and M37 of Section 4c(b) of the Act and Regulations 32.9(a)-(c).

86. When they committed the foregoing acts, misrepresentations, omissions, and failures, defendants Kear, Lyon and Seaman acted as agents of M25, M37 or both. Therefore, M25, M37 or both are liable for their actions pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2009).

87. Each misrepresentation or omission of material fact and each false or misleading account statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act and Regulations 32.9(a)-(c).

COUNT IV
(M25, Kear, Lyon and Seaman)

Violations of Section 4o(1) of the Act
(Fraud by a CPO)

88. The allegations set forth in paragraphs 1 through 66 are realleged and incorporated in this count.

89. Since at least March 2009, M25 acted as a CPO in that it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, has solicited, accepted or received funds, securities or property from others for the purpose of trading in commodity interests on or subject to the rules of contract markets or derivatives transaction execution facilities.

90. Since at least March 2009, M25 violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), in that as a CPO it has directly or indirectly employed and is employing, a device, scheme, or artifice to defraud commodity pool participants, or has engaged and is engaging in transactions, practices or a course of business which operated as a fraud or deceit upon commodity pool participants by, among other acts, knowingly or recklessly: (i) guaranteeing monthly profits of two percent monthly interest and 24 percent annual interest when any such interest income would come from Defendants' speculative and risky trading; (ii) falsely claiming to be a successful forex trader; (iii) failing to disclose that it did not have sufficient assets to

make the promised interest payments and return of principal; (iv) failing to disclose that a significant portion of customer funds would not be used for trading; and (v) issuing or causing to be issue monthly account statements to customers showing the consistent 2% interest credits when Defendants' consistently lost customer funds trading or were not using their funds for trading.

91. M25 perpetrated the foregoing acts by use of the mails and other means or instrumentalities of interstate commerce, directly or indirectly.

92. Defendants Kear, Lyon and Seaman controlled M25, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, M25's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), defendants Kear, Lyon and Seaman are liable for M25's violations Section 4o(1) of the Act.

93. Each misrepresentation or omission of material fact and each false or misleading account statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act.

COUNT V
(M25, Kear, Lyon and Seaman)

Violation of Sections 4m(1) and 4k(2) of the Act
(Failure to Register as a CPO and as APs)

94. The allegations set forth in paragraphs 1 through 66 are realleged and incorporated in this count.

95. With certain exemptions and exclusions not applicable here, all CPOs operating a commodity pool are required to be registered with the Commission pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

96. M25 did not register with the Commission as a CPO and did not file with the Commission a request for an exemption from CPO registration.

97. Section 4m(1) of the Act provides that it is unlawful for any CPO, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO.

98. Since at least March 2009, M25 acted as a CPO and used the mails or instrumentalities of interstate commerce in or in connection with its business as a CPO while failing to register as such, in violation of Section 4m(1) of the Act.

99. Kear, Lyon and Seaman each associated with M25 as a partner, officer, employee or agent and solicited or accepted customer orders or supervised others soliciting customer funds, while failing to register as APs in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006). Further, M25 violated Section

4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), by permitting Kear, Lyon and Seaman to become or remain associated with it in such capacity when it knew or should have known they were not registered as APs.

100. Defendants Kear, Lyon and Seaman controlled M25, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, M25's conduct alleged in this Court. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), defendants Kear, Lyon and Seaman are liable for M25's violations of Section 4m(1) of the Act.

101. Each use of the mails or means or instrumentality of interstate commerce in or in connection with M25's business as a CPO without registration, including but not limited to those specifically alleged herein, is a separate violation of Section 4m(1) of the Act.

VI. RELIEF REQUESTED

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

a) An order finding that Defendants violated Sections 4b(a)(2)(A)-(C) and 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), and 6b(a)(1)(A)-(C), Sections 4c(b), 4o(1), 4k(2) and 4m(1) of

the Act, 7 U.S.C. §§ 6c(b), 6o(1), 6(k)(2) and 6m(1) (2006), and Regulations 32.9(a)-(c), 17 C.F.R. §§ 32.9(a)-(c) (2009);

b) 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, directly or indirectly:

(i) engaging in conduct in violation of Sections 4b(a)(2)(A)-(C) and/or 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C) and/or 6b(a)(1)(A)-(C); Sections 4c(b), 4k(2), 4o(1) and 4m(1) of the Act, 7 U.S.C. §§ 6c(b), 6k(2), 6o(1) and 6m(1) (2006); and/or Regulations 32.9(a)-(c), 17 C.F.R. §§ 32.9(a)-(c) (2009);

(ii) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006);

(iii) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2009)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 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;

(iv) having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;

(v) 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;

(vi) 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;

(vii) 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) (2009);

(viii) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2009)), 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) (2009);

c) An order directing Defendants and all successors to any Defendant to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices that constitute violations of the Act and/or Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

d) 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 and/or Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) An order directing Defendants and all successors to any Defendant 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/or Regulations, as described herein;

f) An order directing Defendants to make an accounting to the Court of all their assets and liabilities, together with all funds they received from and paid to customers and other persons in connection with transactions or purported transactions alleged in the Complaint, and all disbursements for any purpose whatsoever of funds received from or relating to the transactions alleged in the

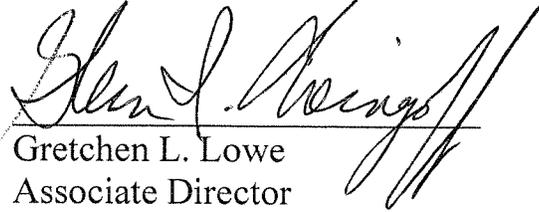
Complaint, including salaries, commissions, interest, fees, loans, and other disbursements of money and property of any kind from January 1, 2007 to the date of such accounting;

g) An order directing each Defendant to pay a civil monetary penalty in amounts of not more than the higher of (1) triple the monetary gain to Defendants for each violation of the Act and/or Regulations or (2) \$130,000 for each violation of the Act and/or Regulations from October 23, 2004 through October 22, 2008, and \$140,000 for each violation of the Act and/or Regulations on or after October 23, 2008;

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

i) Such other and further relief as the Court deems proper.

Respectfully submitted,



Gretchen L. Lowe

Associate Director

Luke B. Marsh

Chief Trial Attorney

Glenn I. Chernigoff

Trial Attorney

gchernigoff@cftc.gov

U.S. Commodity Futures

Trading Commission

Division of Enforcement

1155 21st Street, N.W.

Washington, DC 20581

(202) 418-5305 (Chernigoff)

(202) 418-5523 (fax)

Lisa R. Hasday

Assistant U.S. Attorney

U.S. Attorney's Office for the

Northern District of Texas

1100 Commerce Street, Third Floor

Dallas, TX 75242-1699

(214) 659-8737

(214) 767-2916 (fax)

Counsel for Plaintiff