

CIVIL COVER SHEET

3:09cv484/MCR/EMT

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

I. (a) PLAINTIFFS

S. Commodity Futures Trading Commission

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

(c) Attorney's (Firm Name, Address, and Telephone Number)
mes Holl, III Chief Trial Attorney
55 21st St, NW Washington, DC 20581 202.418.5311

DEFENDANTS

David A. Owen

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

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

Attorneys (If Known)
David L. McGee

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

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 7 USC Section 13a-1 (2006)

Brief description of cause:
 Violations of the Commodity Exchange Act, as amended

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$ _____

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: October 29, 2009

SIGNATURE OF ATTORNEY OF RECORD:

RECEIPT # n/a AMOUNT _____ APPLYING IFP _____ JUDGE MCR MAG. JUDGE EMT

CLERK
 JUSTICE
 DISTRICT COURT
 OKALOOSA COUNTY, FLA.
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 OCT 30 AM 8:59

James H. Holl, III
Gretchen L. Lowe
U.S. Commodity Futures Trading Commission
1155 21st St, NW
Washington, DC 20581
Attorneys for PLAINTIFF

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

Civil Action No. 3:09cv484/MCR/EMT

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

DAVID A. OWEN, an individual,

Defendant.

COMPLAINT

I.

SUMMARY

1. Commencing in at least October 2006 and continuing through the present (“the relevant period”), David A. Owen (“Owen” or “Defendant”), an unregistered commodity pool operator (“CPO”), fraudulently solicited and accepted at least \$2.5 million from at least nine members of the general public to participate in commodity futures pools, through partnerships with the name of Oasis Futures.

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U.S. DISTRICT CT.
NORTHERN DIST. FLA.
PENSACOLA, FLA.

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2. Owen, holding himself out as a certified public accountant, tax attorney, and financial advisor, fraudulently solicited prospective and existing pool participants by, but not limited to, the following means: (1) falsely claiming he had expertise and a successful track record trading commodity futures for himself; (2) misrepresenting the risk of loss in trading commodity futures; (3) issuing false account statements showing profits on commodity futures trading that were, in fact, not realized; (4) pressuring individuals to participate in his pools by claiming that based upon his expert analysis, if they failed to invest, they would miss a huge opportunity in the market; and (5) failing to disclose his prior criminal convictions for fraud.

3. Throughout the relevant period, Owen provided periodic written and oral statements to pool participants reflecting that he was profitably trading futures on behalf of the pools and pool participants. Owen was not successfully trading futures on behalf of the pool or pool participants. Instead, Owen traded futures in personal trading accounts only and sustained losses of approximately more than \$1.6 million. Owen withdrew and misappropriated the remainder of the pool participants' funds, approximately \$800,000, to return funds to other pool participants or for personal use.

4. In January 2009, Owen notified the pool participants that he had lost their funds trading.

5. Owen's fraudulent solicitations, misappropriation, and issuance of false statements to pool participants violate Sections 4b(a)(2)(i)-(iii) and 4o(1) of the Commodity Exchange Act ("Act" or "CEA"), 7 U.S.C. §§ 6b(a)(2)(i)-(iii) and 6o(1) (2006), and Sections 4b(a)(1)(A)-(C) of the Act as amended by the Food, Conservation,

and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), § 13102, 122 Stat.1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C).

6. In soliciting and accepting funds from individuals for purposes of pooling the funds to trade commodity futures, Owen was acting as a CPO without being registered as required. Defendant’s failure to register as a CPO violates Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

7. Defendant also did not operate the pool as a separate legal entity, accepted funds in his own name, not the pool’s, and did not provide pool participants with required Disclosure Documents in violation of Commission Regulations (“Regulations”) 4.20(a)(1) and (b) and 4.21(a)(1) and (b), 17 C.F.R. §§ 4.20(a)(1) and (b), and 4.21(a)(1) and (b) (2009).

8. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), the Commodity Futures Trading Commission (“Commission” or “CFTC”) brings this action to enjoin Defendant’s unlawful acts and practices. In addition, the Commission seeks civil monetary penalties for each violation of the Act and Regulations, disgorgement of Defendant’s ill-gotten gains, restitution to pool participants, pre-judgment interest, post-judgment interest and such other relief as this Court may deem necessary or appropriate.

9. Unless enjoined by this Court, the Defendant is likely to continue to engage in the acts and practices alleged in this Complaint, as more fully described below.

II.

JURISDICTION AND VENUE

10. The CEA establishes a comprehensive system for regulating, in relevant part, the purchase and sale of commodity futures contracts and options on commodity futures. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006).

11. Section 6c of the Act provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), in that Defendant is found in or inhabits or transacts business in this District, and/or the acts and practices in violation of the Act have occurred, are occurring, or are about to occur, within this District, among other places.

III.

THE PARTIES

13. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 et seq., and the Regulations promulgated thereunder.

14. Defendant **David A. Owen** is an individual whose last known place of residence is Destin, Florida. Owen is engaged in the business of soliciting and accepting funds from prospective pool participants to participate in commodity futures pools. Owen has never been registered with the Commission in any capacity.

IV.

FACTS

Defendant's Fraudulent Solicitations

15. During the relevant period, Defendant solicited and accepted at least \$2.5 million from at least nine members of the general public to participate in commodity pools, for the purpose of trading commodity futures.

16. Commencing in October 2006, Owen initially solicited, through casual conversations, prospective participants who were his clients for whom he prepared tax returns and/or gave financial or legal advice. Specifically, Owen told certain clients that he watched the futures markets in his spare time, and that he had developed an expertise in determining market movements and trading commodity futures.

17. Eventually, Owen increased the pressure of his solicitations of prospective participants while suggesting that his knowledge of the markets, coupled with the impending economic crisis, necessitated that they invest with him in earnest. According to Owen, the need to invest immediately was to avoid missing potentially profitable movements in the commodity futures markets.

18. The prospective pool participants were generally unknowledgeable about the commodity futures markets.

19. In his solicitations, Owen told prospective participants of significant profits earned by current participants. Owen sometimes caused existing participants to share with prospective participants their email updates from Owen showing the profits. For example, one prospective pool participant received an email update showing that an initial pool participant's investment of \$100,000.00 "posted" a return of approximately \$41,000.00 during a nine month span. In addition, Owen told at least one prospective participant that he was 70% profitable in one year of trading commodity futures.

20. Owen also reassured prospective participants about the risks associated with trading commodity futures by claiming that he employed a "\$500 stop – loss" on all his trading. Owen explained that such a "stop – loss" meant that pool participants would lose no more than \$500 on any given trade.

21. Owen never disclosed to prospective or actual participants that he had prior criminal convictions for fraud, among other things.

22. Prospective participants relied on Owen's misrepresentations and omissions in deciding whether to participate in a pool.

23. Once the prospective participants were induced to participate in a pool, Owen had them each sign an "Oasis Futures Partnership Agreement." The partnership agreement detailed, among other things, the following information:

- the participants – usually limited to Owen as the managing partner and one to three additional investors;
- their percentage interest in the pool/partnership – based upon the amount invested;

- Owen's compensation – 20% of the net trading profit plus \$1000/mo. expenses;
- The account number and location of the trading account;
- The purpose of the partnership: to trade futures contracts on the Chicago Board of Trade, the Chicago Mercantile Exchange, and the New York Mercantile Exchange, among other places.

24. The partnership agreement required that pool participants receive a monthly report of the partnership's trading activity.

25. Pool participants wired funds or sent checks to a personal bank account held in Owen's name in order to participate in a pool. Most of the pool participants invested with Owen throughout 2008.

26. Owen did not provide Disclosure Documents to prospective or actual participants.

Owen Concealed Trading Losses Through False Statements

27. Owen provided pool participants with periodic statements through electronic mail consistently showing profitable monthly results purportedly from Owen's trading on behalf of the pool. Some participants received the statements on a monthly basis and others received them more frequently.

28. For some participants, in his periodic statements, Owen provided market forecasts, as well as explanations for his movements in the markets. Owen also provided complex trading charts and graphs to "explain" his market moves. He routinely touted his avoidance of risks and preservation of capital as important goals.

29. Owen's periodic statements to pool participants, as well as his claims of being a successful commodity futures trader were false. Owen was not successfully trading on behalf of the pool, pool participants or himself. Indeed, Owen never had been a successful commodity futures trader.

30. Before and after soliciting pool participants, Owen maintained personal commodity futures trading accounts held in his name at a futures commission merchant registered with the Commission.

31. In his personal trading accounts during the relevant period, Owen lost approximately \$1.69 million trading commodity futures and was sustaining net losses on a monthly basis.

32. In January 2009, Owen notified pool participants that their funds were gone. He admitted that the account statements he provided to them were false, and that he lost a substantial portion of their money in the market. Owen then offered to, and did execute promissory notes to several pool participants for their lost capital. Owen misappropriated approximately \$800,000.00 of customer funds for a combination of his personal use and to repay other pool participants.

33. Pool participants have demanded full return of their funds. However, Owen has made only partial refunds.

V.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND
COMMISSION REGULATIONS**

COUNT ONE

**VIOLATIONS OF SECTION 4b(a)(2) OF THE ACT AND SECTION 4b(a)(1)
OF THE ACT AS AMENDED BY THE CRA:
SOLICITATION FRAUD, MISAPPROPRIATION
AND FALSE STATEMENTS (Futures)**

34. The allegations set forth in paragraphs 1 through 33 are re-alleged and incorporated herein by reference.

35. Prior to being amended by the CRA, Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), made 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, or (B) determining the price basis of any transaction in interstate commerce in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—(i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made to such other person any false report or statement thereof, . . . [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 disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person.

36. 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] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any 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 . . . the other person.

37. During the relevant period, Defendant knowingly, willfully or recklessly made and is making false, deceptive, or misleading representations and omissions of material facts in the solicitations of prospective and existing pool participants, in violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), with respect to acts occurring before June 18, 2008, and 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), with respect to acts occurring on or after June 18, 2008.

38. By using funds solicited to trade commodity futures for pool participants for purposes other than trading, as set forth above, Defendant knowingly misappropriated funds in violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), with respect to acts occurring before June 18, 2008, and 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), with respect to acts occurring on or after June 18, 2008.

39. Furthermore, as set forth above, Defendant has willfully made or caused to

be made to other persons false reports and statements concealing commodity futures trading losses, in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006), with respect to acts occurring before June 18, 2008, and in violation of Section 4b(a)(1)(B) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(B), with respect to acts occurring on or after June 18, 2008.

40. Each act of solicitation fraud, misappropriation, and each false statement Defendant made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and in violation of 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), with respect to acts occurring on or after June 18, 2008.

COUNT TWO

VIOLATION OF SECTION 4o(1) OF THE ACT: FRAUD AS A CPO

41. Paragraphs 1 through 40 are re-alleged and incorporated herein.

42. During the relevant period, Defendant, while acting as a CPO, violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), in that Defendant directly or indirectly employed or is employing a device, scheme, or artifice to defraud participants or prospective pool participants, or has engaged or is engaged in transactions, practices or a course of business that operated or operates as a fraud or deceit upon participants or prospective pool participants by using the mails or other means or instrumentalities of

interstate commerce. Defendant's fraudulent acts consisted of, among other things, solicitation fraud, misappropriation and issuance of false statements as alleged above.

43. Each act of solicitation fraud, misappropriation, and each false statement made during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

COUNT THREE

VIOLATIONS OF SECTIONS 4m(1) OF THE ACT: FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR

44. The allegations set forth in paragraphs 1 through 43 are re-alleged and incorporated herein by reference.

45. Defendant has used the mails or instrumentalities of interstate commerce in or in connection with his business as a CPO while failing to register with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

COUNT FOUR

VIOLATIONS OF COMMISSION REGULATION 4.20: CPO'S FAILURE TO TREAT THE POOL AS A SEPARATE ENTITY

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

47. As alleged above, by depositing participant funds into accounts not held in the name of the pool, Defendant failed to operate the pools as legal entities separate from himself as the pool operator and failed to accept funds in the name of the pools, in violation of Regulations 4.20(a)(1) and (b), 17 C.F.R. §§ 4.20(a)(1) and(b) (2009).

COUNT FIVE

VIOLATIONS OF REGULATION 4.21: FAILURE TO PROVIDE POOL DISCLOSURE DOCUMENTS

48. The allegations set forth in paragraphs 1 through 47 are re-alleged and incorporated herein by reference.

49. Regulation 4.21(a)(1), 17 C.F.R. § 4.21(a)(1) (2009), requires that a CPO must furnish a prospective pool participant with a written “Disclosure Document” containing specific language set forth by regulation by no later than the time the CPO delivers to the prospective participant a subscription agreement for the pool. In addition, prior to accepting or receiving funds from a prospective participant, Regulation 4.21(b), 17 C.F.R. § 4.21(b) (2009), requires that a CPO first receive from the prospective participant an acknowledgment signed and dated by the participant that they received the Disclosure Document.

50. As alleged above, Defendant failed to furnish prospective pool participants with a written Disclosure Document and failed to receive signed and dated acknowledgments from the prospective pool participants stating that they received the Disclosure Document, in violation of Regulations 4.21(a)(1) and (b), 17 C.F.R. §§ 4.21(a)(1) and (b) (2009).

VI.

RELIEF REQUESTED

WHEREFORE, the Plaintiff respectfully request that this 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 the Defendant violated Sections 4b(a)(2)(i)-(iii), 4m(1) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), 6m(1) and 6o(1) (2006), Sections 4b(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(1)(A)-(C), and Regulations 4.20(a)(1) and (b) and 4.21(a)(1) and (b), 17 C.F.R. §§ 4.20(a)(1) and (b) and 4.21(a)(1) and (b) (2009);

b) a permanent injunction prohibiting the Defendant from engaging in conduct violative of Sections 4m(1) and 4o(1) of the Act, 7 U.S.C. §§ 6m(1) and 6o(1) (2006), Sections 4b(1)(A)-(C) of the Act as amended by the CRA, and Regulations 4.20(a)(1) and (b) and 4.21(a)(1) and (b), 17 C.F.R. §§ 4.20(a)(1) and (b) and 4.21(a)(1) and (b) (2009);

c) an order directing the 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 or Regulations, as described herein, and interest thereon from the date of such violations;

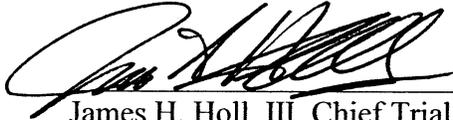
d) an order directing the Defendant to make full restitution to every participant whose funds he received as a result of acts and practices that constituted violations of the Act and Regulations, described herein, and interest thereon from the date of such violations;

e) an order directing the Defendant to pay a civil monetary penalty for each violation of the Act and Regulations described herein, plus pre-judgment and post-judgment interest, in the amount of the higher of: \$140,000 for each violation of the Act and Regulations committed on or after October 23, 2008; \$130,000 for each violation of the Act and Regulations committed on or between October 23, 2004 and October 22, 2008; or triple the monetary gain to Defendant for each violation of the Act and Regulations described herein; and

f) such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: 10/29, 2009

ATTORNEYS FOR THE PLAINTIFF
U.S. COMMODITY FUTURES TRADING
COMMISSION



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