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CHARLOTTE, NC
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U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

U.S. COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. PRESTIGE CAPITAL ADVISORS, LLC, a Delaware Limited Liability Company, D2W CAPITAL MANAGEMENT, LLC, a North Carolina Limited Liability Company, and TOBY D. HUNTER, an individual, Defendants.	)	CASE NO. 3:11cv431

COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL MONETARY PENALTIES, AND OTHER EQUITABLE RELIEF

Plaintiff U.S. Commodity Futures Trading Commission ("Commission" or "CFTC"), by its attorneys, alleges as follows:

I. SUMMARY

1. From in or about April 2008 and continuing to the present (the "Relevant Period"), Defendants Prestige Capital Advisors, LLC ("Prestige") and D2W Capital Management, LLC ("D2W"), by and through their employee and agent Toby D. Hunter ("Hunter"), and Hunter in his individual capacity, (collectively "Defendants"), fraudulently solicited and accepted at least $4.65 million from members of the public in connection with pooled investments in, among other things, commodity futures, options on commodity futures, and foreign currency ("forex") contracts and $2.36 million in connection with managed forex trading accounts.

2. In soliciting pool participants and managed account clients, Defendants misrepresented the profitability of Defendants' trading program. Defendants also distributed false account statements to pool participants and managed account clients.

3. Rather than trade all of the pool participants' funds as promised, Hunter and Prestige illegally commingled and misappropriated some of these funds. During an audit of Prestige conducted by the National Futures Association in June 2011, Hunter could not account for the disposition of these funds.

4. As a result of the conduct described above and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation 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 (subtitled "CFTC Reauthorization Act of 2008" ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 1 *et seq.*, and Commission Regulations ("Regulations"), 17 C.F.R. §§ 1.1 *et seq.* (2011).

5. Hunter committed the acts and omissions described herein within the course and scope of his agency, employment, or office with Prestige and D2W; therefore, Prestige and D2W are liable under Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(A)(1)(B), and Regulation 1.2, 17 C.F.R § 1.2 (2011), as principals for their agent's acts and omissions constituting violations of the Act, as amended by the CRA, and the Regulations.

6. Hunter is liable under Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), as a controlling person of Prestige and D2W, for Prestige's and D2W's violations of the Act, as amended by the CRA, and the Regulations because he failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations.

7. Accordingly, pursuant to Section 6c of the Act, to be codified at 7 U.S.C. § 13a-l, and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin Defendants' unlawful acts and practices, to compel their compliance with the Act, as amended by the CRA and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII, §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010). In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

8. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

9. Section 6c(a) of the Act, to be codified at 7 U.S.C. § 13a-l, authorizes the Commission to seek injunctive relief in district court 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 the Act or any rule, regulation, or order thereunder.

10. The Commission has jurisdiction over the conduct relating to futures and options transactions at issue in this case pursuant to Section 6c of the Act, to be codified at 7 U.S.C. § 13a-l. The Commission has jurisdiction over the conduct relating to forex transactions at issue in this case pursuant to Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2).

11. Neither Defendants nor the purported counterparties to the forex transactions at issue, specifically Gain Capital Group LLC, were financial institutions, registered brokers or dealers, associated persons of registered brokers or dealers, insurance companies, financial holding companies, or investment bank holding companies.

12. Neither Defendants nor the clients and pool participants who provided funds to Defendants were "eligible contract participants" as that term is defined in the Act. *See* Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a.

13. The forex transactions conducted by Defendants on behalf of the clients and pool participants were entered into on a margined or leveraged basis. The forex transactions conducted by Defendants neither resulted in delivery 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).

14. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, to be codified at 7 U.S.C. §13a-1(e), because Defendants are found in, inhabit, reside in, and/or transact business in the Western District of North Carolina, and certain of the transactions, acts, practices, and courses of business alleged to have violated the Act, as amended by the CRA, occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

15. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, to be codified at 7 U.S.C. §§ 1 *et seq.*, as amended by the CRA, and the Regulations

promulgated thereunder, 17 C.F.R. §§1.1 *et seq.* (2011). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street NW, Washington, D.C. 20581.

16. Defendant **Prestige Capital Advisors, LLC** is a Delaware Limited Liability Company with its principal place of business at 112 South Tryon Street, Suite 900, Charlotte, NC 28227. Prestige was formed in Delaware on April 12, 2010 and filed an Application for a Certificate of Authority for Limited Liability Company with the North Carolina Secretary of State's office on February 23, 2011. Prestige registered with the National Futures Association ("NFA") as a Commodity Trading Advisor ("CTA") on July 2, 2010.

17. Defendant **D2W Capital Management, LLC** was a North Carolina Limited Liability Company with its principal office listed as 218-5 Swing Road, Greensboro, NC 27409. D2W operated its business at 112 South Tryon Street, Suite 900, Charlotte, NC 28227. D2W was formed on April 16, 2008 as a single-manager limited liability company. D2W was administratively dissolved by the North Carolina Secretary of State on September 2, 2010 for failure to file an annual report. D2W registered with the NFA as a CTA on June 27, 2008.

18. Defendant **Toby D. Hunter** is an individual who resides in Waxhaw, NC. Hunter is (and was during the Relevant Period) the founder, principal, manager and officer of Prestige and D2W and was responsible for these companies' acts. On October 14, 2010, Hunter registered with the NFA as an Associated Person of CTAs Prestige and D2W.

IV. FACTS

A. Hunter and D2W

19. On April 16, 2008, Hunter formed D2W for the purpose of offering a managed account service to members of the general public. Under the terms of the managed account service, clients were to open accounts in their own names at Deutsche Bank, the counterparty to the forex

transactions, and authorize D2W to trade forex contracts on behalf of the clients in exchange for commissions to be paid by the clients to D2W.

20. During the Relevant Period, in order to entice members of the public to open accounts to be traded by D2W, D2W and Hunter, individually and in his capacity as principal, officer, and employee of D2W, e-mailed to at least one prospective client an informational memorandum that included false historical annual returns as high as 164.99 percent purportedly earned by D2W trading forex dating back to 2006. However, D2W was not formed until April 2008. In addition, D2W posted false purported returns earned by D2W on a website called BarclayHedge (www.barclayhedge.com) (hereinafter, "BarclayHedge"), a website whereby a CTA, like D2W, could post its historical returns for prospective clients to see. The returns and other information posted on the BarclayHedge website by firms such as D2W are not audited or verified by BarclayHedge. D2W referred prospective clients to the BarclayHedge website for information about D2W's performance history.

21. An analysis of D2W's actual trading indicates that the returns posted on the BarclayHedge website were false. As more fully discussed below, when questioned by NFA about this in June 2011, Hunter admitted that he had no data to support the purported returns posted by D2W on the BarclayHedge website.

22. At least 17 persons became clients of D2W and opened forex trading accounts in their own names at Deutsche Bank. These clients deposited a total of at least $2.36 million into these accounts which were to be managed by D2W. As a result of the purported returns posted by D2W on the BarclayHedge website, some of these clients made decisions to become clients of D2W and to allow D2W to trade their accounts.

23. One of the clients provided its funds directly to D2W which D2W placed in a

brokerage account held in D2W's name. In May 2011, this account was transferred from Deutsche Bank to a different counterparty, Gain Capital Group LLC, a registered futures commission merchant and retail forex dealer.

24. This client was instructed by Hunter to access its account via Prestige's website. When this client accessed its account on June 17, 2011, the website indicated that the client's account balance as of June 3, 2011 was approximately $94,000. According to the actual trading records associated with this account, the account balance at that time was only approximately $14,500.

25. During the Relevant Period, D2W traded the funds in the clients' forex trading accounts resulting in cumulative net losses, including commissions and fees, of approximately $1.61 million, more than 68 percent of the clients' funds.

26. D2W (by and through Hunter) and Hunter engaged in the acts and practices described above willfully, knowingly, or with reckless disregard for the truth.

B. Hunter and Prestige

27. On April 12, 2010, Hunter formed Prestige for the purpose of operating one or more commodity pools and offering interests in these pools to members of the general public. One of the pools established by Hunter and Prestige was Prestige Multi-Strategy Fund, LP, a Delaware Limited Partnership formed on April 12, 2010 (hereinafter, the "M-S Fund").

28. In or about June 2010, Hunter and Prestige prepared a Private Placement Memorandum ("PPM") that set forth the structure, purpose, and terms of participation in the M-S Fund. According to the PPM, the M-S Fund was formed for the purpose of pooling participants' funds to invest in, among other things, "spot currencies, precious metals, other commodities, index options, futures contracts, and various other financial instruments and asset classes." Prestige was the General Partner and was primarily responsible for the management of the partnership, and the limited

partners were to be the M-S Fund participants who invested funds in the M-S Fund and who would share on a pro rata basis in the profits and losses generated by the M-S Fund.

29. According to the PPM, "[a]ll funds invested in the [M-S Fund] by [the M-S Fund participants] will be held in the [M-S Fund]'s name and the [M-S Fund] will not commingle its funds with any other party."

30. To entice members of the public to become participants in the M-S Fund, Prestige posted on the BarclayHedge website returns purportedly earned by the M-S Fund. In addition, Prestige sent via e-mail a "Monthly Performance Update" to at least one prospective pool participant containing purported returns earned by the M-S Fund from June to December 2010.

31. An analysis of Prestige's actual trading indicates that the returns posted on the BarclayHedge website and contained in the "Monthly Performance Update" were false. As more fully discussed below, when questioned by NFA about this in June 2011, Hunter admitted that some of the purported returns posted by Prestige on the BarclayHedge website were false.

32. As a result of these false representations, during the Relevant Period, at least six participants provided a total of at least $4.65 million for investment in the M-S Fund.

33. Approximately $550,000 of these funds were accepted by Prestige in its own name rather than in the name of the M-S Fund and deposited into Prestige's bank account rather than an account in the name of the M-S Fund.

34. During the Relevant Period, a portion of the approximately $4.65 million accepted by Prestige for trading in the M-S Fund was deposited by Prestige in trading accounts held in the name of the M-S Fund at multiple financial institutions to be traded on behalf of the M-S Fund. The financial instruments traded in these accounts included futures, options on futures, forex, securities, and options on securities. The trading of these brokerage accounts resulted in cumulative net losses, including

commissions and fees, of approximately $1.16 million.

35. During the Relevant Period, approximately $2.26 million of M-S Fund participant funds was withdrawn from M-S Fund accounts and deposited in bank accounts held in Prestige's name.

36. During the Relevant Period, a total of approximately $84,000 of M-S Fund participant funds was redeemed by and returned to M-S Fund participants.

37. In sum, of the total approximately $4.65 million received by Prestige from M-S Fund participants for trading in the M-S Fund, approximately $1.16 million was lost in trading, approximately $84,000 was returned to M-S Fund participants, approximately $370,000 remains in one or more the M-S Fund's bank and brokerage accounts, and the remaining approximately $3.04 million, including funds deposited into bank accounts owned or controlled by Prestige and/or Hunter, remain unaccounted for.

38. During the Relevant Period, Prestige sent false account statements to M-S Fund participants. Specifically, at least one participant accessed its account information on Prestige's website which contained a balance that was overstated. Another participant received account statements from Prestige via email which also overstated that participant's balance in the M-S Fund.

39. As a result of these false statements, M-S Fund participants maintained and/or increased their investments in the M-S Fund.

40. Prestige (by and through Hunter) and Hunter engaged in the acts and practices described above willingly, knowingly, or with reckless disregard for the truth.

C. The NFA's Audit of D2W and Prestige

41. On June 6, 2011, NFA commenced an audit of Prestige and D2W at Prestige's and D2W's offices in Charlotte, North Carolina.

42. During the course of the audit, NFA interviewed Hunter, requested that he produce various records pertaining to the operations of Prestige and D2W, and questioned Hunter about many of these records.

43. As part of the audit, NFA obtained the M-S Fund's bank and trading records from financial institutions which carried accounts in the name of the M-S Fund and used those records to, among other things, trace the flow of the M-S Fund participants' funds and verify the returns purportedly earned by Prestige and D2W that were posted on the BarclayHedge website.

44. Based on NFA's calculation of Prestige's and D2W's actual returns, NFA concluded that the returns posted by Prestige and D2W on the BarclayHedge website were false. When NFA questioned Hunter about the returns posted for Prestige, Hunter admitted that some of the returns were false, that he employed inconsistent methodology to calculate these returns, and that some of the posted returns were mere estimates that were never updated with the actual returns. When NFA questioned Hunter about the false returns posted for D2W, Hunter admitted that he had no data to support these purported returns.

45. In tracing the flow of M-S Fund participants' funds, NFA determined that during the Relevant Period approximately $2.26 million of M-S Fund participants' funds was withdrawn from the M-S Fund's accounts and deposited into Prestige's bank account over which Hunter and another individual had sole signatory authority. When questioned by NFA about these transfers, Hunter did not provide any credible explanation. For example, Hunter claimed that some of the withdrawals were for redemptions by the M-S Fund participants. However, when NFA questioned the M-S Fund participants about the purported redemptions, the participants stated that they never received them. Furthermore, NFA's examination of Prestige's bank account records revealed no evidence of such redemptions.

46. As a result of the false returns reported by Prestige and D2W and Hunter's inability to account for all of the M-S Fund participants' funds, on June 22, 2011 the NFA issued an emergency Member Responsibility Action ("MRA") against Prestige and D2W and an Associate Responsibility Action ("ARA") against Hunter.

47. The MRA and ARA prohibit D2W, Prestige and, Hunter from, among other things, (i) soliciting or accepting any funds from customers or participants, (ii) placing any trades, except liquidation or risk-reducing trades in the M-S Fund or any other customer account or fund over which D2W, Prestige, or Hunter exercise control, and (iii) disbursing or transferring customer or participant funds without prior approval from the NFA.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS

COUNT ONE
(Against Prestige and Hunter)

FRAUD IN CONNECTION WITH COMMODITY FUTURES CONTRACTS

Violations of Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA

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

49. 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), provide, in relevant part, that it is unlawful for any person, in or in connection with any order to make or the making of a futures contract, for or on behalf of any other person, (A) to cheat or defraud or attempt to cheat or defraud another 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, or (C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract.

50. As set forth above, from at least April 2010 through the present, in or in connection with futures contracts, made, or to be made, for or on behalf of or with, other persons, Prestige, by and through Hunter, and Hunter cheated or defrauded or attempted to cheat or defraud, willfully made or caused to be made false reports, and willfully deceived or attempted to deceive pool participants or prospective pool participants by, among other things, knowingly (i) misappropriating pool participant funds; (ii) fraudulently soliciting pool participants or prospective pool participants; and (iii) making, causing to be made, and distributing reports and statements to pool participants or prospective pool participants that contained false information, all 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).

51. Hunter controlled Prestige, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Prestige's conduct alleged in this count. Therefore, pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), Hunter is liable for Prestige's violations 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).

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

53. Each act of misappropriation, misrepresentation or omission of material fact, and issuance of a false report, 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, to

be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C).

COUNT TWO
(Against Prestige and Hunter)

FRAUD IN CONNECTION WITH COMMODITY OPTIONS

Violations of Section 4c(b) of the Act, as amended by the CRA, and Regulation 33.10

54. The allegations set forth in paragraphs 1 through 53 are re-alleged and incorporated herein by reference.

55. Section 4c(b) of the Act, to be codified at 7 U.S.C. § 6c(b), provides that no person shall engage in any commodity option transaction regulated under the Act contrary to any rule, regulation, or order of the Commission. Furthermore, Regulation 33.10, 17 C.F.R. §§ 33.10 (2011), makes 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 . . . any commodity option transaction.

56. As set forth above, from at least April 2010 through the present, in or in connection with commodity option transactions, Prestige and Hunter cheated or defrauded or attempted to cheat or defraud, willfully made or caused to be made false reports, and willfully deceived or attempted to deceive pool participants or prospective pool participants by, among other things, knowingly (i) misappropriating pool participant funds, (ii) fraudulently soliciting pool participants or prospective pool participants, and (iii) making, causing to be made, and distributing reports and statements to pool participants or prospective pool participants that contained false information, all in violation of Section 4c(b) of the Act, to be codified at 7 U.S.C. § 6c(b), and Regulation 33.10, 17 C.F.R. §§ 33.10 (2011).

57. Hunter controlled Prestige, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Prestige's conduct alleged in this count. Therefore, pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), Hunter is liable for Prestige's violations of Section 4c(b) of the Act, to be codified at 7 U.S.C. § 6c(b), and Regulation 33.10, 17 C.F.R. § 33.10 (2011).

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

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

COUNT THREE
(Against D2W and Hunter)

FRAUD IN CONNECTION WITH FOREX CONTRACTS

Violations of Section 4b(a)(2)(B) of the Act, as amended by the CRA

60. The allegations set forth in paragraphs 1 through 59 are re-alleged and incorporated herein by reference.

61. Section 4b(a)(2)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(B), provides, in relevant part, that it is unlawful for any person, in or in connection with any order to make or the making of a forex contract, for or on behalf of any 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.

62. As set forth above, between May and June 2011, in or in connection with forex contracts, made, or to be made, for or on behalf of or with other persons through a registered futures commission merchant, D2W, by and through Hunter, and Hunter willfully made or caused to be made reports or statements to at least one client that contained false information in violation of Section 4b(a)(2)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(B).

63. Hunter controlled D2W, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, D2W's conduct alleged in this count. Therefore, pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), Hunter is liable for D2W's violations of Section 4b(a)(2)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(B).

64. The foregoing acts, misrepresentations, omissions, and failures of Hunter, as well as other D2W employees, occurred within the scope of their employment, office or agency with D2W. Therefore, D2W is liable for these acts, misrepresentations, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

65. Each act of issuance of a false report, including but not limited to that specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(B).

COUNT FOUR
(Against Prestige and Hunter)

FRAUD BY A COMMODITY POOL OPERATOR

Violations of Section 4o(1) of the Act, as amended by the CRA

66. The allegations set forth in paragraphs 1 through 65 are re-alleged and

incorporated herein by reference.

67. As defined in Section 1a of the Act, to be codified at 7 U.S.C. § 1a, a commodity pool operator ("CPO") is

> any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property . . . for the purpose of trading in any commodity for future delivery. . . .

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

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

69. As set forth above, from at least April 2010 to the present, Prestige acted as a CPO by soliciting, accepting, or receiving funds from others while engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of, among other things, trading in futures.

70. From at least April 2010 to the present, Hunter acted as an AP of Prestige by, *inter alia*, soliciting and accepting prospective pool participants for the M-S Fund.

71. Prestige and its AP, Hunter, employed a device, scheme or artifice to defraud pool participants and prospective pool participants or engaged in a transaction, practice, or course of business which operated as a fraud or deceit upon the pool participants or prospective pool participants by, among other things, knowingly (i) misappropriating pool participant funds, (ii) fraudulently soliciting pool participants or prospective pool participants, and (iii) making,

causing to be made, and distributing reports and statements to pool participants or prospective pool participants that contained false information, all in violation of Section 4o(1) of the Act, to be codified at 7 U.S.C. §§ 6o(1).

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

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

74. Each act of misappropriation, misrepresentation or omission of material fact, and issuance of a false report, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, to be codified at 7 U.S.C. § 6o(1).

COUNT FIVE
(Against Prestige and Hunter)

IMPROPER RECEIPT AND COMMINGLING OF POOL PARTICIPANT FUNDS

Violations of Regulations 4.20(b) and (c)

75. The allegations set forth in paragraphs 1 through 74 are re-alleged and incorporated herein by reference.

76. Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2011), provides that all funds received by a CPO from a pool participant must be accepted in the name of the pool, and the CPO may not accept funds in its own name.

77. Regulation 4.20(c), 17 C.F.R. § 4.20(c), provides that commodity pool funds may not be commingled with the funds of the CPO or any other person.

78. Beginning as early as April 2010, Prestige violated Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2011), by receiving pool participant funds in its own name, rather than in the name of the M-S Fund.

79. Beginning as early as April 2010, Prestige violated Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011), by depositing pool participant funds in accounts held in the name of Prestige, the CPO, or in the name of other persons or entities, rather than in an account held in the name of the M-S Fund.

80. Hunter controlled Prestige, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Prestige's conduct alleged in this count. Therefore, pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), Hunter is liable for Prestige's violations of Regulations 4.20(b) and (c), 17 C.F.R. §§ 4.20(b) and (c) (2011).

81. The foregoing acts of Hunter, as well as other Prestige employees, occurred within the scope of their employment, office, or agency with Prestige. Therefore, Prestige is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

82. Each act of improper receipt and commingling of pool participant funds, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulations 4.20(b) and (c), 17 C.F.R. §§ 4.20(b) and (c) (2011).

COUNT SIX
(Against D2W and Hunter)

IMPROPER RECEIPT OF CLIENT FUNDS

Violations of Regulation 4.30

83. The allegations set forth in paragraphs 1 through 82 are re-alleged and incorporated herein by reference.

84. Regulation 4.30, 17 C.F.R. § 4.30 (2011), provides that no commodity trading advisor ("CTA") may solicit, accept, or receive funds from a client in the name of the CTA.

85. Beginning as early as April 2008, D2W violated Regulation 4.30, 17 C.F.R. § 4.30 (2011), by receiving funds from at least one customer in D2W's own name.

86. Hunter controlled D2W, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, D2W's conduct alleged in this count. Therefore, pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), Hunter is liable for D2W's violations of Regulation 4.30, 17 C.F.R. § 4.30 (2011).

87. The foregoing acts of Hunter, as well as other D2W employees, occurred within the scope of their employment, office, or agency with D2W. Therefore, D2W is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

88. Each act of improper receipt of CTA client funds, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.30, 17 C.F.R. § 4.30 (2011).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court, as authorized by Section

6c of the Act, to be codified at 7 U.S.C. § 13a-l, and pursuant to its own equitable powers, enter:

a) An order finding that Defendants violated Sections 4b(a)(1)(A)-(C), 4b(a)(2)(B), 4c(b), and 4o of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6b(a)(2)(B), 6c(b), and 6o, and Regulations 4.20(b) and (c), 4.30, and 33.10, 17 C.F.R. §§ 4.20(b) and (c), 4.30, and 33.10 (2011), as described herein;

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)(1)(A)-(C), 4b(a)(2)(B), 4c(b), and 4o of the Act, as amended by the CRA, and as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6b(a)(2)(B), 6c(b), and 6o, and Regulations 4.20(b) and (c), 4.30, and 33.10, 17 C.F.R. §§ 4.20(b) and (c), 4.30, and 33.10 (2011);

(ii) trading on or subject to the rules of any registered entity (as that term is defined in Section la of the Act, as amended by the CRA and Dodd-Frank Act, to be codified at 7 U.S.C. § la);

(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) (2011)) ("commodity options"), swaps, 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 and the Dodd-Frank Act, 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, swaps, 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, swaps, 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, swaps, 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) (2011);

(viii) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011);

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

e) An order directing each Defendant to pay a civil monetary penalty for each violation of the Act, as amended by the CRA, and the Regulations described herein, plus post-judgment interest, in the amount of the higher of: 1) $140,000 for each violation of the Act, as amended by the CRA, committed on or after October 23, 2008; 2) $130,000 for each violation of the Act, as amended by the CRA, committed between October 23, 2004 and October 22, 2008; or 3) triple the monetary gain to the Defendants for each violation of the Act, as amended by the CRA, described herein, and the Regulations, plus post-judgment interest;

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

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

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

Respectfully Submitted,
Attorneys for Plaintiff
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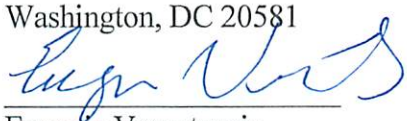

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