

★ MAY 17 2010 ★

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING :
COMMISSION, :

Plaintiff, :

v. :

JEFFREY SHALHOUB, :
and :
JEFF SHALHOUB INVESTMENTS, :

Defendants. :

10 2242
Civil Case No. _____

SEYBERT J

BOYLE, M.J.

COMPLAINT FOR PERMANENT INJUNCTION, 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 at least July 2008 to January 2009, Jeffrey Shalhoub ("Shalhoub"), while acting as a commodity pool operator ("CPO") of The 9 Group, Ltd. ("The 9 Group" or "the pool") solicited at least \$300,000 from at least 12 people ("pool participants") for the purported purpose of investing in a commodity pool to trade on-exchange commodity futures contracts ("futures").

2. Pool participants wired money or wrote checks to The 9 Group, which were deposited into a bank account in the pool's name. Shalhoub then transferred a portion of the pool participants' funds to a bank account in the name of Jeff Shalhoub Investments ("JSI"). Shalhoub and JSI (collectively, "Defendants") commingled pool participant funds with Shalhoub's personal funds in this bank account. From the JSI bank account and other funding

sources, Defendants deposited funds into a futures trading account in Shalhoub's name at Interactive Brokers ("Interactive"), a registered futures commission merchant. Defendants traded and lost about 60 percent of the trading account's assets and, but for a small amount returned to the pool, kept the remaining trading account's assets for themselves.

3. In solicitations to prospective pool participants, Shalhoub represented that pool participants would receive and did receive profit returns ranging from 2.5 to 9 percent per week, *i.e.*, monthly returns ranging from 10 to 36 percent. Shalhoub claimed that the weekly profits were produced by the pool's successful futures trading. In fact, the pool's futures trading resulted in substantial losses and any purported "profits" paid to pool participants by Defendants came from existing participants' original principal and/or from money invested by subsequent pool participants. Thus, Defendants operated a Ponzi scheme.

4. To conceal and perpetuate the fraud, Defendants provided pool participants with false account statements misrepresenting the earnings in their accounts, *i.e.* that their accounts were increasing by as much as 5.2 percent per week. In fact, Defendants never achieved these returns.

5. By virtue of this conduct and the further conduct described herein, Defendants were engaged, are engaging, or are about to engage in acts and practices in violation of Section 4b(a)(1)(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 of 2008 ("CRA")), §§ 13102, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), Section 40(1) of the Act, 7 U.S.C. §§ 60(1), Regulations 4.20(a) and (c) and 4.41(a), 17 C.F.R. §§ 4.20(a), (c) and 4.41(a) (2009).

6. Shalhoub committed the acts of misappropriation and commingling described herein within the course and scope of his employment at JSI. Therefore, JSI is 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 principal for its agent's acts, omissions or failures of the Act, as amended by the CRA and Regulations.

7. Shalhoub is liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), as a controlling person of JSI for its violations of the Act and Regulations, because he did not act in good faith or knowingly induced, directly or indirectly, the acts constituting JSI's violations.

8. Accordingly, pursuant to Sections 6c of the Act, 7 U.S.C. §§ 13a-1 (2006), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act and Regulations 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, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

9. 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

10. Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), 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 the Act or any rule, regulation, or order thereunder.

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

III. PARTIES

12. The **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, 7 U.S.C. §§ 1 *et seq.* (2006), and the Regulations, 17 C.F.R. §§ 1.1 *et seq.* (2009). The CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

13. **Jeffrey Shalhoub** has a last-known residential address located in Staten Island, New York. Shalhoub was the CPO for the pool and JSI's sole founder, owner and bank signatory. Shalhoub was also the sole trader and bank account signatory for The 9 Group. Shalhoub has never been registered in any capacity with the CFTC.

14. **Jeff Shalhoub Investments** is a company with a last-known place of business of 514 51st Avenue, Lower Level, Long Island City, New York 11101-5816. JSI has never been registered in any capacity with the CFTC.

IV. FACTS

15. From at least July 2008 to January 2009, Shalhoub, while acting as a CPO, solicited at least \$300,000 from at least 12 of Shalhoub's then wife's friends and family to invest in the pool to trade futures.

16. Shalhoub told prospective pool participants that the pool would earn and did earn profit returns ranging from 2.5 to 9 percent per week from the pool's futures trading, *i.e.*, 10 to

36 percent per month. Shalhoub guaranteed that prospective pool participants' initial deposits would be safe and would be returned at any time on three days written notice. These representations were false.

17. Shalhoub instructed many of the pool participants to write checks or wire money to a bank account in the pool's name. Altogether, pool participants invested at least \$300,000.

18. Shalhoub transferred approximately \$134,250 from the pool bank account into a bank account in JSI's name. A portion of the remaining \$165,750 in the pool's bank account was transferred to other accounts controlled by Shalhoub, including an account in the name of Broadway Maintenance Service, a company of which Shalhoub was the president and sole signatory and that shared the same address as The 9 Group and JSI.

19. Shalhoub used JSI as an entity through which the pool's funds, Shalhoub's own money, and funds from other sources were commingled. The JSI bank account served as Shalhoub's intermediary so that Shalhoub could easily move money between the futures account at Interactive and other accounts controlled by him. It also enabled him to deceive Interactive into believing that Shalhoub was trading with his own money, rather than pool participants' funds.

20. Defendants opened a futures trading account at Interactive in Shalhoub's name with \$20,000 of Shalhoub's own money. Between April 2008 and December 2008, Defendants transferred \$207,500 from the JSI bank account into the Interactive trading account, of which approximately \$146,000 was pool participant funds. Defendants deposited a total of \$227,500 into the Interactive trading account.

21. Shalhoub's Interactive account traded futures from at least April 2008 to December 2008 and incurred total trading losses, including commissions and fees, of \$168,900, leaving a balance of \$58,600.

22. Defendants withdrew the remaining \$58,600 from Shalhoub's Interactive trading account and deposited it into the JSI bank account. There are no funds remaining in the Interactive trading account.

23. Defendants repaid approximately \$58,100 to pool participants as purported principal and profits on the pool's futures trading. Because the trading at Interactive resulted in losses, these repayments came from the principal of other existing or subsequent pool participants. Indeed, Shalhoub admitted that the money sent by one of the pool participants to The 9 Group was never actually invested, and that the money was instead used to pay off another investor who wanted his money back. Therefore, Defendants operated a Ponzi scheme.

24. Ultimately, Defendants misappropriated at least \$154,500.

25. Defendants used pool participant funds for, among other things, computer equipment, golfing equipment, clothing, car payments on a Land Rover, and to pay a \$3,500 tab at a Manhattan restaurant. Upon information and belief, Defendants also used some of the funds to gamble and to assist friends and family.

26. In order to conceal and perpetuate their fraud, Defendants reported to pool participants consistent weekly profits for the pool for at least four straight months (September 2008 through December 2008). The reported profits were as high as 5.2 percent per week; not a single negative week was reported. In fact, other than the first month of April 2008, Defendants' actual trading resulted in net losses every month.

27. This false information was reported to pool participants in the form of, among other things, weekly account “recaps” that were sent by e-mail. Thus, for example, Defendants reported to pool participants profits totaling 16.3 percent for September 2008, when, in fact, the trading account lost over \$33,000 that month. Pool participants were not informed of the losses for that month or any other month.

28. At all material times, JSI was wholly owned by Shalhoub. Shalhoub was the sole signatory on the JSI bank account and was responsible for the fraudulent transfers into and out of that bank account. As such, Shalhoub is a controlling person of JSI.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS

COUNT I

**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)
(Fraud in Connection with Futures)**

29. The allegations set forth in paragraphs 1 through 28 are realleged and incorporated herein by reference.

30. 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; [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever

31. As set forth above, from at least July 2008 through January 2009, Shalhoub cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool

participants and willfully deceived or attempted to deceive pool participants or prospective pool participants by, among other things, knowingly (i) misappropriating pool participant funds; (ii) misrepresenting to pool participants and prospective pool participants the profit returns that they would receive from the pool; (iii) providing pool participants fraudulent monthly account statements that misrepresented the value of pool participants' accounts and pool participants' holdings; and (iv) misrepresenting to pool participants or prospective pool participants that their original investments could be returned at any time, all in violation of Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C).

32. As set forth above, from at least July 2008 through January 2009, Shalhoub willfully made or caused to be made false statements to pool participants or prospective pool participants by, among other things, knowingly providing pool participants fraudulent monthly account statements that misrepresented the value of pool participants' accounts and pool participants' holdings, all 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).

33. Shalhoub engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

34. Shalhoub committed the acts of misappropriation and commingling described above, within the course and scope of his employment at JSI. Therefore, JSI is 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 principal for its agent's acts, omissions or failures of the Act, as amended by the CRA, and Regulations.

35. Shalhoub controlled JSI directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, JSI's conduct alleged in this Count. Therefore,

pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Shalhoub is liable for JSI'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).

36. Each misappropriation, issuance of a false account statement, misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(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 II

Violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006) and Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2009) (Fraud by Commodity Pool Operator)

37. The allegations set forth in paragraphs 1 through 36 are realleged and incorporated herein by reference.

38. As defined in Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), a CPO is any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property . . . for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

39. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), prohibits CPOs and associated persons 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 client or participant.

40. Regulation 4.41(a) provides that no CPO or principal of a CPO may advertise in a manner that:

- (1) Employs any device, scheme or artifice to defraud any participant or client or prospective participant or client; or
- (2) Involves any transaction, practice, or course of business which operates as a fraud or deceit upon any participant or client or any prospective participant or client.

41. From at least July 2008 through January 2009, Shalhoub while acting as a CPO, solicited, accepted, or received funds from others and engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in any commodity for future delivery.

42. Shalhoub, while acting as a CPO, employed a device, scheme, or artifice to defraud pool participants and prospective pool participants or engaged in a transaction, practice, or course of business knowingly or which operated as a fraud or deceit upon pool participants and prospective pool participants in violation of Section 40(1) of the Act, 7 U.S.C. § 60(1) (2006), by, among other things, knowingly (i) misappropriating pool participant funds; (ii) providing pool participants fraudulent weekly account statements that misrepresented the value of pool participants' accounts and pool participants' holdings; (iii) misrepresenting to pool participants or prospective pool participants the profit returns that they would receive from the pool; and (iv) misrepresenting to pool participants or prospective pool participants that their original investments could be returned at any time. These material misrepresentations and omissions also violate Regulation 4.41(a), 17 C.F.R. § 4.41(a).

43. Shalhoub committed the acts of misappropriation and commingling described above, within the course and scope of his employment at JSI. Therefore, JSI is 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 principal for its agent's acts, omissions or failures of the Act, as amended by the CRA and Regulations.

44. Shalhoub controlled JSI directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, JSI's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Shalhoub is liable for JSI's violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006) and Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2009).

45. Each misappropriation, issuance of a false account statement, misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006) and Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2009).

COUNT III

Violations of Regulation 4.20(a) and (c), 17 C.F.R. §§ 4.20(a) and (c) (2009) (Commingling of Pool Participant Funds by a CPO)

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

47. Regulation 4.20(a) requires a CPO to operate its pool as an entity cognizable as a legal entity separate from that of the CPO. Regulation 4.20(c) prohibits a CPO from commingling the property of any pool that it operates, or that it intends to operate, with the property of any other person.

48. Shalhoub never established separate pool entities or trading accounts in the names of The 9 Group. Although Shalhoub initially deposited pool participants' funds into a pool account, he transferred money to JSI and then to, among other things, a futures trading account at

Interactive in Shalhoub's name. Shalhoub thereby failed to operate the pool separate from himself or JSI, in violation of Regulation 4.20(a), 17 C.F.R. § 4.20(a).

49. From at least July 2008 through January 2009, Shalhoub violated Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2009), by depositing pool participant funds in JSI's bank account, rather than in a trading account held in the name of the pool, and commingling those funds with other monies that JSI received from other sources.

50. Shalhoub committed the acts commingling described above within the course and scope of his employment at JSI. Therefore, JSI is 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 principal for its agent's acts, omissions or failures of the Regulations.

51. Shalhoub controlled JSI directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, JSI's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Shalhoub is liable for JSI's violations of Section 4.20(a) and (c) of the Regulations, 17 C.F.R. § 4.20(a) and (c) (2009).

52. Each failure to operate a pool as an entity separate from the CPO and each instance of commingling of pool funds is alleged as a separate and distinct violation of Regulation 4.20(a) and (c), 17 C.F.R. § 4.20(a) and (c) (2009).

VI. RELIEF REQUESTED

WHEREFORE, the CFTC 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 Section 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); Section 4q(1) of the Act, 7

U.S.C. § 60(1) (2006), Regulations 4.20(a) and (c), and 4.41(a), 17 C.F.R. §§ 4.20(a) and (c) and 4.41(a) (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 engaging, directly or indirectly in conduct in violation of Section 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); Section 40(1) of the Act, 7 U.S.C. § 60(1) (2006), Regulations 4.20(a) and (c), and 4.41(a), 17 C.F.R. §§ 4.20(a) and (c) and 4.41(a) (2009).

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

- i) 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));
- ii) 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;
- iii) having any commodity futures, options on commodity futures, commodity options and/or forex contracts traded on their behalf;

iv) 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;

v) 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;

vi) 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); and

vii) 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).

d) 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 pre- and post-judgment interest thereon from the date of such violations;

e) An order directing Defendants to make full restitution to every person or entity whose funds they 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, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

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 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, as described herein;

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

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.

Dated: May 14, 2010

Respectfully submitted,

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