

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**UNITED STATES COMMODITY FUTURES)
TRADING COMMISSION,)**

Plaintiff,)

v.)

Case No. _____

**NICK A. WURL and)
LUDIERA CAPITAL LLC,)**

Defendants.)

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

Plaintiff U.S. Commodity Futures Trading Commission (Commission) alleges as follows:

I. SUMMARY

1. Since at least July 2014 through at least May 26, 2015 (the Relevant Period), Nick A. Wurl (Wurl) and his company Ludiera Capital LLC (Ludiera) (together, Defendants) have defrauded at least 46 individuals and entities who contributed more than \$9 million to an investment pool operated by Ludiera that trades commodity future contracts (futures) and options on futures (options).

2. In approximately May 2013, Defendants established the Ludiera Diversified Opportunity Portfolio L.P. (the Pool). Defendants subsequently marketed the Pool to participants as a safe and well-capitalized limited partnership established to supply operating capital to Ludiera for its purported physical commodity trading. In reality, the Pool was little more than a shell company used to defraud Pool participants and enrich Defendants at their expense.

3. Defendants went to great lengths to convince Pool participants that Defendants operated a well-capitalized, reputable, and established physical commodity trading firm. To that end, Defendants solicited funds from individuals and entities for the represented purpose of investing in their physical commodity trading business. In making these solicitations, Defendants represented, among other things, that they were engaged in the purchase, transport, and sale of physical commodities. Defendants characterized the investment opportunity as a “no risk” strategy and assured Pool participants that the worst potential outcome was no gain on their investment.

4. This portrait of Defendants is a sham. In reality, Defendants never engaged in physical commodity trading. Instead of using Pool participants’ money to purchase, sell, and transport commodities, Defendants diverted Pool participants’ funds to their own bank and trading accounts. Defendants then used the bulk of the Pool participants’ funds—over \$6.8 million—to trade futures and options, including futures and options on equity indices, agricultural commodities, and energy commodities. Defendants also misappropriated over \$600,000 of Pool participants’ funds to pay their credit card debts, to make automobile purchases and to use for additional items and expenses.

5. Through their trading of futures and options, Defendants lost more than \$3.3 million of Pool funds. Defendants never disclosed to Pool participants that they used a significant portion of Pool participant funds to trade futures and options. Defendants never made any disclosures to Pool participants regarding the massive losses sustained by Defendants trading futures and options with Pool funds. Further, Defendants affirmatively misrepresented to Pool participants that Defendants were not engaged in the trading of futures and options.

6. Additionally, to perpetuate their fraud, Defendants operated the Pool as a Ponzi scheme through which they used Pool participant funds to pay other Pool participants a total of approximately \$1.8 million as redemptions.

7. Throughout the duration of the scheme, Defendants regularly prepared and distributed to Pool participants false monthly account statements. These false monthly account statements purport to reflect physical commodity transactions that never took place and falsely represent growth in value of Pool participants' interests in the Pool. Defendants consistently misrepresented to Pool participants, both orally and through these false account statements, that Pool participants' interests in the Pool were continuing to grow significantly in value.

8. By the aforementioned conduct, and the conduct described herein, Defendants have engaged, are engaging in, or are about to engage in practices that violate the provisions of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1 *et seq.* (2012), and Commission Regulations ("Regulations"), 17 C.F.R. §§ 1.1 *et seq.* (2014). Specifically, they have engaged, are engaging or are about to engage in acts or practices in violation of Sections 4b(a)(1)(A)-(C), 4c(b), 4k(2), 4m(1), 4o(1), and 6(c)(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6c(b), 6k(2), 6m(1), 6o(1), 9(1) (2012); and Regulations 4.20, 33.10, and 180.1, 17 C.F.R. §§ 4.20, 33.10, 180.1 (2014)

9. Pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the Commission brings this action to permanently enjoin Defendants' unlawful acts and practices, to compel their compliance with the Act and the Regulations thereunder, and to permanently enjoin them from engaging in any commodity-related activity.

10. When Wurl committed the acts, omissions, and failures described herein, he did so within the scope of his agency, employment, and office with Ludiera; therefore, Wurl's acts,

omissions, and failures are deemed those of Ludiera pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014).

11. At all times relevant to this Complaint, Wurl controlled Ludiera, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, the acts of Ludiera described herein; therefore, Wurl is liable for the violations by Ludiera of the Act and Regulations described herein pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

12. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the Commission brings this action to permanently 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 other such relief as the Court may deem necessary and appropriate.

13. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants will continue to engage in the acts and practices alleged in this Complaint, and similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

14. The Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), because it appears to the Commission that Defendants have engaged, are engaging, or are about to engage in conduct that constitutes a violation of the Act and the Regulations.

15. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), in that Defendants reside and transact business in this District and acts and practices in violation of the Act and Regulations have occurred within this District.

III. PARTIES

16. 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 and the Regulations promulgated thereunder. The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

17. Defendant **Nick A. Wurl** is a resident of Chicago, Illinois. Wurl owns Ludiera and is the President, Director, Chairman, and Managing Member of Ludiera. At all times, and with respect to all conduct described in this Complaint, Wurl has exercised sole ownership and control over Ludiera. Wurl also has managed and directed other employees of Ludiera who acted on Ludiera's behalf. Wurl, either himself or through others acting at his direction, has solicited customers for Ludiera; has prepared and distributed or has directed others to prepare and distribute disclosure documents, transaction updates, marketing materials, and other literature used to solicit customers for Ludiera; and has executed or directed others to execute futures and options trades on behalf of Ludiera, all of which occurred within the scope of Wurl's agency, employment, or office with Ludiera. During the Relevant Period, Wurl was an associated person (AP) of Ludiera, though Wurl has never been registered with the Commission in any capacity.

18. Defendant **Ludiera Capital LLC** is a Delaware limited liability company with its principal place of business at 733 N. LaSalle St., 3rd Floor, Chicago, IL 60654. Wurl is the owner, President, Director, Chairman, and Managing Member of Ludiera. Ludiera is engaged in

a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and, in connection therewith, solicited, accepted, or received from others, funds, securities, or property, for the purpose of trading in commodity interests. During the Relevant Period, Ludiera was the commodity pool operator (CPO) for the Pool, though Ludiera has never been registered with the Commission in any capacity.

IV. FACTS

A. Background Information Regarding Defendants and the Pool

19. On March 13, 2013, Wurl formed Ludiera in Delaware as a limited liability company.

20. At all times during the Relevant Period, Wurl owned Ludiera and served as its President, Director, Chairman, and Managing Member.

21. According to its website, Ludiera was founded in 2009 and has since “grown from being a North America niche player in derivatives trading to a highly diversified commodity trading and investment management company integrating physical commodity trading, real asset management, and logistics services into one financially sound entity.”

22. Ludiera purports to trade physical commodities, including agricultural and energy products. Ludiera claims that, in conjunction with its physical commodity trading activities, it can provide “complex hedging structures as a part of each physical contract to provide customers with enhanced price risk mitigation.”

23. On May 15, 2013, Defendants created the Pool and named Ludiera as the Pool’s general partner.

24. Defendants created the Pool purportedly to provide operating capital to Ludiera in furtherance of its purchase, sale, and transport of commodities around the world through its network of trading counterparties.

25. The Pool's Private Placement Memoranda dated July 8, 2014 and October 1, 2014 (together, the PPMs) describe the Pool as a "physical commodity trading and asset management company." The PPMs claim that the Pool leverages "the network of commodity buyers and processing firms with the goal of providing reliable commodity supplies at competitive prices to end users around the world."

B. Defendants' Fraudulent Solicitation of Pool Participants

26. Throughout the Relevant Period, Defendants, acting directly or through their agents, employees, or officers, solicited approximately \$9 million from at least 46 individuals and entities for the represented purpose of purchasing, selling, and transporting physical commodities.

27. Defendants solicited existing and prospective participants of the Pool through in-person meetings, phone calls, and email communications.

28. Defendants provided marketing materials for Ludiera and for the Pool to existing and prospective participants of the Pool. Wurl personally orchestrated and distributed these marketing materials and was responsible for Ludiera's solicitation practices.

29. Defendants utilized the mail and/or other means or instrumentalities of interstate commerce to (1) distribute the PPMs to existing and prospective participants of the Pool; (2) distribute transactional statements to participants; (3) portray Ludiera's purported business model and strategy to the public via its website; and (4) provide information to existing and

potential participants of the Pool regarding the purported business strategy, activity, and profitability of the Pool.

30. Throughout the Relevant Period, Defendants made numerous misrepresentations of material fact to existing and potential Pool participants to convince them to invest with Defendants and to remain invested with Defendants. Specifically, Defendants falsely told existing and prospective Pool participants that:

- a. Defendants would invest Pool participants' funds in the buying and selling of physical commodities;
- b. Defendants were in the business of "sourc[ing] and mov[ing] physical commodities from areas of high supply to areas of high demand through its network of end users and both United States and foreign domiciled entities";
- c. Defendants' trading in physical commodities was generating profits for Pool participants;
- d. Defendants were not engaged in the trading of futures or options;
- e. Defendants had established a segregated bank account with J.P. Morgan Chase in the name of the Pool into which the participants' funds would be deposited;
- f. Pool participants' investment with Defendants was low-risk, if not entirely risk-free; and
- g. The worst potential outcome for Pool participants was a 0% return on investment.

31. Defendants concocted elaborate and false stories about physical commodity transactions in order to convince participants to invest in their scheme. For example, Wurl falsely described to a then-prospective Pool participant a method of doing business that he claimed Defendants utilized:

The way we earn money for our partners is [] by negotiating an agreement to buy the requested physical commodity at a given price from one of our origination facilities and at the same time we sell the same commodities on contract to one of our contacts who is looking to purchase . . . [.] When they buy, they transfer the whole amount of money that we're due to an escrow account in Ludiera Capital's name so that we can verify that the funds exist before we sell the product. After we've determined the location that we are buying the commodities from, we then locate shipping capacity (either a train, barge, or ocean faring vessel) and arrange for the product to be picked up at the location where we bought it. When our contracted transportation picks the product up, our insurance policy, underwritten by the United States Export Import Bank (backed by the United States Government) protects Ludiera on the full value of the product [] in the event that some part of the transaction does not go as planned . . . When the product arrives to the buyer's port, the full value of the escrow account is released to Ludiera Capital and the profit on the transaction is divided amongst our partners.

* * *

In a worst case scenario, if no trading opportunities exist in the world, we would simply wait. Our worst possible outcome would be a return of 0% in a year (assuming no deals were available to be made, an occurrence that has not happened over a prolonged period in the history of global trade).

32. Defendants' misrepresentations caused participants to invest, invest additional money, and convince others to invest with Defendants.
33. Throughout the Relevant Period, Defendants failed to disclose material facts to the Pool's participants, including that:
 - a. A significant portion of participants' funds would be used to trade futures and options;
 - b. Defendants were sustaining significant losses trading futures and options; and
 - c. There is risk, including the risk of loss of principal, associated with the trading of futures and options.
34. Contrary to Defendants' representations regarding their operations, at no time were they engaged in the purchase, sale, or transportation of physical commodities. Instead,

Defendants utilized Pool participant funds for speculative trading in futures and options using accounts in Wurl's and Ludiera's names. Further, Defendants misappropriated Pool participant funds for their own use, as described below.

35. Contrary to Defendants' representations, Defendants also failed to operate the Pool as a separate legal entity. In particular, Defendants never opened a separate bank account for the Pool as they claimed and deposited Pool participant funds directly into Ludiera's account, where it was then subsequently transferred to trading accounts in the names of Ludiera and Wurl, as well as Wurl's personal bank account.

36. Defendants made all of these false statements to Pool participants and prospective Pool participants knowingly or with reckless disregard for the truth.

C. Defendants Commingled and Misappropriated Pool Funds

37. The Pool was little more than a shell company used as a marketing device for soliciting contributions of capital. The Pool had no independent function or capitalization separate and apart from Ludiera itself, or even its own bank account.

38. Defendants deposited the Pool participants' funds into a checking account in the name of Ludiera at Bank A (the Ludiera bank account). Wurl is the sole signatory on the Ludiera bank account.

39. Defendants never used any Pool participants' funds for the purchase, sale, or transport of physical commodities.

40. Instead, Defendants transferred the bulk of Pool participants' funds from the Ludiera bank account to, and between, other bank and trading accounts in the name of Ludiera or Wurl:

a. Defendants made approximately \$1.4 million in net transfers of Pool participants' funds from the Ludiera bank account to Wurl's personal bank account at Bank A. Wurl then made approximately \$1.2 million in net transfers of those funds to his personal account at Futures Commission Merchant (FCM) A, where he lost the funds trading primarily futures and options.

b. Defendants transferred approximately \$5.6 million in Pool participants' funds from the Ludiera bank account to Ludiera's trading accounts at FCM A and FCM B, as well as to invest in a limited partnership interest with a hedge fund. Defendants lost approximately \$2.1 million in those accounts by trading primarily futures and options. Collectively, approximately \$3.5 million in Pool participants' funds, remains in Ludiera's trading accounts.

41. During the Relevant Period, Defendants spent at least \$500,000 of Pool participants' funds to pay for Ludiera's credit card debts, automobile purchases, and additional items and expenses.

42. During the Relevant Period, Wurl spent at least \$100,000 of the Pool participants' funds for his own personal use, including payments totaling at least \$68,000 for his credit card debts.

43. To disguise their trading losses and misappropriation, Defendants distributed a sum of approximately \$1.8 million to Pool participants as redemptions, *i.e.* "Ponzi payments," when in fact the majority of these funds consisted of other Pool participants' principal.

44. Defendants told pool participants that Ludiera would charge either a one percent or half a percent annual "management fee" based on the total Pool assets. Defendants never attempted to abide by this fee structure, however, and treated the entirety of Pool participants'

contributions as available for their use in Ludiera's and Wurl's futures and options trading accounts, as well as for their personal use.

45. Defendants committed these acts of misappropriation knowingly or with reckless disregard for the truth.

D. False Statements and Documents

46. Defendants created, distributed, or otherwise utilized with existing and potential Pool participants several types of documents that furthered their fraudulent scheme, including fake audited financial statements for Ludiera and its subsidiaries that purported to be conducted by a top international accounting firm; fake bank account statements; and fake statements documenting Ludiera's purchase, sale, and transport of commodities.

47. Defendants created, distributed or otherwise utilized these documents in an effort to convince existing and potential Pool participants of the legitimacy and profitability of Defendants' operations. For instance, Defendants used several fabricated documents to convince existing and potential Pool participants to contribute to the Pool, including:

- a. Ludiera bank statements reflecting transactions in the range of \$30-40 million per month;
- b. A document purportedly reflecting a grain purchase by Ludiera on October 19, 2014 of 1.75 million bushels of soybeans at \$10.85 per bushel and its shipment to Tokyo, Japan;
- c. A document purportedly reflecting a sale by Ludiera on October 31, 2014 of 720,000 metric tons of soybeans for shipment from the United States to China;
- d. An "Escrow Agreement" dated April 10, 2013 between LUDIERA CAPITAL, LLC and C[redacted]JP TRUSTEE COMPANY LIMITED; C[redacted]NK.

N.A.; and C[redacted]NK INTERNATIONAL PLC governing custody of Ludiera's contribution of the "estimated transaction value of commodities."

48. These documents were presented to participants and potential participants during face-to-face meetings, as well as through emails sent by Defendants.

49. Defendants also sent fake transaction statements to Pool participants by email, generally monthly to bi-monthly, in conjunction with the purported completion of transactions by Ludiera. The transactional statements represented that they were statements of "Transaction History – Physical Commodity Trading Fund." The transactional statements identified the number of shares purportedly held by the respective Pool participant, consistently showing increases in the share value of the respective Pool participant.

50. The transactional statements contained information purportedly showing transactions associated with the physical purchase, transportation, and sale of commodities, including noting deductions for the price of the commodity purchased, insurance, shipping services, and tax withholding, as well as credits for the sale price of the commodity upon purported delivery. All of these statements were created by Defendants and all were completely false. Defendants did not buy, transport, or sell physical commodities. Likewise the associated entries for insurance on commodity transport, transportation costs, or taxes withheld were completely false.

51. Moreover, the Pool participants' investment did not increase in value. To the contrary, Defendants' trading in futures and options resulted in trading losses of approximately \$3.3 million and experienced additional losses on account of Defendants' misappropriation.

52. Participants relied on the false information contained in these statements in deciding to initially invest, to make additional investment, and/or to recommend to others that they also invest.

53. Defendants created, distributed, or otherwise utilized all of the false documents described herein knowingly or with reckless disregard for the truth.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND THE REGULATIONS**

Count I – Futures Fraud

**Violations of Sections 4b(a)(1)(A)-(C) of the Act
(All Defendants)**

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

55. Section 4b(a) of the Act, 7 U.S.C. § 6b(a) (2012), makes it unlawful:

(1) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person;

* * *

(A) to cheat or defraud or attempt to cheat or defraud the other person;

(B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record;

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

56. As described above, Defendants violated Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (2012), in or in connection with futures contracts made for or on

behalf of other persons, by misappropriating Pool funds, providing false account statements that misrepresented the Pool's profitability and/or the value of participants' interest in the Pool, and misrepresenting and omitting material facts.

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

58. When Wurl committed the acts, omissions, and/or failures described above, he acted within the scope of his agency, employment, and office at Ludiera; therefore, such acts, omissions, and/or failures are deemed to be those of Ludiera pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014).

59. At all times relevant to this Complaint, Wurl controlled Ludiera, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Ludiera's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Wurl is liable for Ludiera's violations of Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (2012).

60. Each act of misappropriation, issuance of a false report or account statement, and 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 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (2012).

Count II – Options Fraud

**Violations of Section 4c(b) of the Act and Regulation 33.10
(All Defendants)**

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

62. Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), provides:

No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an “option” . . . contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe. . . .

63. Regulation 33.10, 17 C.F.R. § 33.10 (2014), provides:

It shall be 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 an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction.

64. As described above, Defendants violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and Regulation 33.10, 17 C.F.R. § 33.10 (2014), in or in connection with options on futures made for or on behalf of other persons, by misappropriating Pool funds, providing false account statements that misrepresented the Pool’s profitability and/or the value of participants’ interest in the Pool, and misrepresenting and omitting material facts.

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

66. When Wurl committed the acts, omissions, and/or failures described above, he acted within the scope of his agency, employment, and office at Ludiera; therefore, such acts, omissions, and/or failures are deemed to be those of Ludiera pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014).

67. At all times relevant to this Complaint, Wurl controlled Ludiera, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Ludiera's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Wurl is liable for Ludiera's violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and Regulation 33.10, 17 C.F.R. § 33.10 (2014).

68. Each act of misappropriation, issuance of a false report or account statement, and 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 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and Regulation 33.10, 17 C.F.R. § 33.10 (2014).

Count III – Fraud by Commodity Pool Operator and Associated Person

**Violations of Section 4c(1) of the Act
(All Defendants)**

69. The allegations set forth in Paragraphs 1 through 68 are re-alleged and incorporated herein by reference.

Ludiera Acted as a CPO

70. A “commodity pool” is defined under Section 1a(10)(A) of the Act, 7 U.S.C. § 1a(10) (2012), as “any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity interests,” including for the trading of futures and options.

71. A commodity pool operator (“CPO”) is defined under Section 1a(11)(A) of the Act, 7 U.S.C. § 1a(11)(A)(i) (2012), as any person

engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including any—

(I) commodity for future delivery . . .[or]

* * *

(III) commodity option authorized under section 4c . . .

* * *

72. Ludiera has been operating as a CPO in that it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received funds, securities, or property from others for the purpose of trading futures and options.

Wurl Acted as an AP of a CPO

73. Regulation 1.3(aa), 17 C.F.R. § 1.3(aa) (2014), defines an associate person (“AP”) of a CPO as “any natural person who is associated in any of the following capacities with . . . (3) [a] commodity pool operator as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for participation in a commodity pool or (ii) the supervision of any person or persons so engaged”

74. At all times relevant to this Complaint, Wurl acted as an AP of Ludiera because he was a partner, officer, employee and/or agent of Ludiera and he solicited and accepted funds, securities, or property from investors for Ludiera for participation in a commodity pool.

Violations of Section 4o of the Act

75. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), makes it unlawful for a “commodity pool operator, or associated person of a commodity pool operator by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly–

- (A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or
- (B) to 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.

76. At all times relevant to this Complaint, Ludiera, acting as a CPO, and Wurl acting as an AP, through the use of the mails or others means or instrumentalities of interstate commerce (including through use of the telephone and internet), have violated Section 4o of the Act, 7 U.S.C. § 6o (2012), by misappropriating Pool funds, providing false account statements that misrepresented the Pool’s profitability and/or the value of participants’ interest in the Pool, and misrepresenting and omitting material facts.

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

78. When Wurl committed the acts, omissions, and/or failures described above, he acted within the scope of his agency, employment, and office at Ludiera; therefore, such acts, omissions, and/or failures are deemed to be those of Ludiera pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014).

79. At all times relevant to this Complaint, Wurl controlled Ludiera, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Ludiera’s conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Wurl is liable for Ludiera’s violations of Section 4o of the Act, 7 U.S.C. § 6o (2012).

80. Each act of misappropriation, issuance of a false report or account statement, and 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 of the Act, 7 U.S.C. §6o (2012).

Count IV – Fraudulent and Deceptive Practices

**Violations of Section 6(c)(1) of the Act and Regulation 180.1
(All Defendants)**

81. The allegations set forth in Paragraphs 1 through 80 are re-alleged and incorporated herein by reference.

82. Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), renders it unlawful for any person, directly or indirectly, to:

use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act [July 21, 2010] . . .

83. Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2014), effective August 15, 2011, provides:

It shall be unlawful for any person, directly or indirectly, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly:

- (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud;
- (2) Make, or attempt to make, any untrue or misleading statement of material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading;
- (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person

84. As described above, Defendants violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(c)(1) (2012), and Regulation 180.1, 17 C.F.R. § 180.1 (2014), in connection with futures contracts, by misappropriating Pool funds, providing false account statements that misrepresented the Pool's profitability and/or the value of participants' interest in the Pool, and misrepresenting and omitting material facts.

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

86. When Wurl committed the acts, omissions, and/or failures described above, he acted within the scope of his agency, employment, and office at Ludiera; therefore, such acts, omissions, and/or failures are deemed to be those of Ludiera pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014).

87. At all times relevant to this Complaint, Wurl controlled Ludiera, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Ludiera's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Wurl is liable for Ludiera's violations of Section 6(c)(1) of the Act, 7 U.S.C. § 9(c)(1) (2012), and Regulation 180.1, 17 C.F.R. § 180.1 (2014).

88. Each act of misappropriation, issuance of a false report or account statement, and misrepresentation or omission of material fact, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of 6(c)(1) of the Act, 7 U.S.C. § 9(c)(1) (2012), and Regulation 180.1, 17 C.F.R. § 180.1 (2014).

Count V- Failure to Register as CPO

**Violation of Section 4m(1) of the Act
(All Defendants)**

89. The allegations set forth in Paragraphs 1 through 88 are re-alleged and incorporated herein by reference.

90. Pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), it is unlawful for any CPO, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO.

91. Ludiera operated as a CPO because it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received funds, securities, or property from others for the purpose of trading futures and options.

92. Ludiera utilized the mails or others means or instrumentalities of interstate commerce (including email, telephone and internet), directly or indirectly, to engage in its business as a CPO.

93. At all times relevant to this Complaint, Ludiera was not registered with the Commission as a CPO.

94. At all times relevant to this Complaint, Ludiera was not entitled to exemption from registration with the Commission.

95. Ludiera engaged in activities described herein without having registered as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

96. At all times relevant to this Complaint, Wurl controlled Ludiera, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Ludiera's

conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Wurl is liable for Ludiera's violations of Section 4m(1), 7 U.S.C. § 6m(1) (2012).

97. Each use of the mails or any means or instrumentality of interstate commerce by Ludiera while acting as a CPO, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

Count VI – Failure to Register as AP

**Violation of Section 4k(2) of the Act
(Wurl)**

98. The allegations set forth in Paragraphs 1 through 97 are re-alleged and incorporated herein by reference.

99. Pursuant to Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012), it is unlawful for any AP of a CPO to not be registered with the Commission.

100. At all times relevant to this Complaint, Wurl was an AP of Ludiera, a CPO, because he was a partner, officer, employee and/or agent of Ludiera and he solicited and accepted funds, securities, or property from investors for Ludiera for participation in a commodity pool.

101. At all times relevant to this Complaint, Wurl was not been registered with the Commission, in violation of Section 4k(2) of the Act, 7 U.S.C. § 4k(2) (2012).

102. When Wurl committed the acts, omissions, and failures described herein, he did so within the scope of his agency, employment, and office with Ludiera; therefore, Wurl's acts, omissions, and failures are deemed those of Ludiera pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014).

Count VII – Failure to Operate CPO as Separate Legal Entity/Commingling of Funds

**Violations of Regulation 4.20
(All Defendants)**

103. The allegations set forth in Paragraphs 1 through 102 are re-alleged and incorporated herein by reference.

104. Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2014), requires a CPO to operate its commodity pool as a legal entity separate from that of the CPO.

105. Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2014), requires that all funds, securities and other property received by a CPO from a prospective or existing pool participant for purchase of an interest or as an assessment must be received in the commodity pool's name.

106. Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2014), prohibits a CPO from commingling the property of any pool it operates with the property of any other person.

107. At all times relevant to this Complaint, Ludiera, while acting through Wurl and while acting as a CPO, violated Regulation 4.20(a)-(c), 17 C.F.R. § 4.20(a)-(c) (2014), by: (i) failing to operate the Pool as a legal entity separate from Ludiera, the CPO; (ii) receiving Pool participant funds in the name of Ludiera, rather than in the name of the Pool; and (iii) commingling the property of the Pool with the funds of Defendants.

108. When Wurl committed the acts, omissions, and/or failures described above he acted within the scope of his agency, employment, and office at Ludiera; therefore, such acts, omissions, and/or failures are deemed to be those of Ludiera pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014).

109. At all times relevant to this Complaint, Wurl controlled Ludiera, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Ludiera's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b)

(2012), Wurl is liable for Ludiera's violations of Regulation 4.20(a)-(c) (2014), 17 C.F.R. § 4.20(a)-(c) (2014).

110. Each failure to operate the Pool as a separate legal entity, receipt of participant funds in a name other than the Pool, and act of commingling the property of the Pool, including, but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.20(a)-(c) (2014), 17 C.F.R. § 4.20(a)-(c) (2014).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and pursuant to its own equitable powers:

- a.) Find that Defendants violated Sections 4b(a)(1)(A)-(C), 4c(b), 4k(2), 4m(1), 4o(1), and 6(c)(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6c(b), 6k(2), 6m(1), 6o(1), 9(1) (2012); and Regulations 4.20, 33.10, and 180.1, 17 C.F.R. §§ 4.20, 33.10, 180.1 (2014);
- b.) Enter orders of preliminary and permanent injunction enjoining each Defendant and his/its affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with them, who receive actual notice of such order by personal service or otherwise, from violating Sections 4b(a)(1)(A)-(C), 4c(b), 4k(2), 4m(1), 4o(1), and 6(c)(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6c(b), 6k(2), 6m(1), 6o(1), 9(1) (2012); and Regulations 4.20, 33.10, and 180.1, 17 C.F.R. §§ 4.20, 33.10, 180.1 (2014).
- c.) Enter orders of preliminary and permanent injunction restraining and enjoining each Defendant and his/its affiliates, agents, servants, employees, successors,

assigns, attorneys, and all persons in active concert with him/it, from directly or indirectly:

- 1) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. §1a(40) (2012));
- 2) Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2014)) for their own personal or for any account in which they have a direct or indirect interest;
- 3) Having any commodity interests traded on their behalf;
- 4) 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 interests;
- 5) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- 6) 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) (2014); and/or
- 7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2014)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012), 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) (2014).

- d.) Enter an order directing Defendants, as well as any successors thereof, 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 and the Regulations as described herein, and pre- and post-judgment interest thereon from the date of such violations;
- e.) Enter an order directing Defendants, as well as any successors to thereof, to rescind, pursuant to such procedure as the Court may order, all contracts and agreements, whether express or implied, entered into between, with, or among Defendants and any of the pool participants whose funds were received by Defendants as a result of the acts and practices which constituted violations of the Act and the Regulations, as described herein;
- f.) Enter an order directing Defendants, as well as any successors thereof, to make full restitution, pursuant to such procedure as the Court may order, to every customer, investor, and pool participant whose funds any Defendant received, or caused another person or entity to receive, as a result of the acts and practices constituting violations of the Act and Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;
- g.) Enter an order directing Defendants, as well as any successors thereof, to provide a full accounting of all customer, investor, and pool participant funds they have received as a result of the acts and practices constituting violations of the Act and Regulations, as described herein;

- h.) Enter an order directing Defendants to pay civil monetary penalties, plus post-judgment interest thereon, in the amount of the greater of: (1) \$140,000 for each violation of the Act and Regulations; or (2) triple Defendants' monetary gain from violation of the Act and Regulations;
- i.) Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2012); and
- j.) Enter an order for such other and further relief, including, but not limited to, disgorgement and trading and registration bans, as the Court deems just and proper.

Dated: June 23, 2015

Respectfully submitted,

PLAINTIFF U.S. COMMODITY
FUTURES TRADING COMMISSION

/s/Diane M. Romaniuk

Diane M. Romaniuk
Senior Trial Attorney
dromaniuk@cftc.gov
Illinois A.R.D.C. No. 0341649

Charles Marvine (MO Bar #44906)
Peter L. Riggs (MO Bar #57268)
Rachel Hayes (MO Bar #48713)
Rebecca S. Jelinek (MO Bar #53586)
U.S. Commodity Futures Trading Commission
4900 Main Street, Ste. 500
Kansas City, Missouri 64112
Telephone: (816) 960-7700
Facsimile: (816) 960-7751
cmarvine@cftc.gov
priggs@cftc.gov
rhayes@cftc.gov
rjelinek@cftc.gov

Attorneys for Plaintiff