

1 JAMES H. HOLL, III, CA Bar No.177885
2 jholl@cftc.gov
3 Attorney for Plaintiff
4 COMMODITY FUTURES
5 TRADING COMMISSION
6

7 KARIN N. ROTH, *pro hac vice pending*
8 kroth@cftc.gov
9 R. STEPHEN PAINTER, Jr., *pro hac vice pending*
10 spainter@cftc.gov
11 Attorneys for Plaintiff
12 COMMODITY FUTURES
13 TRADING COMMISSION
14 140 Broadway, 19th Floor
15 New York, NY 10005
16 Telephone: (646) 746-9764
17

18 **THE UNITED STATES DISTRICT COURT**
19 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
20 **WESTERN DIVISION**

21 **COMMODITY FUTURES TRADING**
22 **COMMISSION,**

23 **Plaintiff,**

24 **v.**

25 **MAIN & PROSPECT CAPITAL, LLC,**
26 **DANIEL ADAM HEWKO, and**
27 **DANIEL HEWKO,**

28 **Defendants.**

Civil Action No.

COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF AND FOR
CIVIL MONETARY
PENALTIES UNDER
THE COMMODITY
EXCHANGE ACT AND
COMMISSION REGULATIONS

DEMAND FOR JURY TRIAL

1 Plaintiff, Commodity Futures Trading Commission (“CFTC” or
2 “Commission”), by and through its attorneys, alleges as follows:

3 **I. JURISDICTION AND VENUE**

4
5 1. This Court possesses jurisdiction over this action pursuant to
6 28 U.S.C. § 1331 (2012) (codifying federal question jurisdiction) and 28 U.S.C.
7 § 1345 (2012) (providing that U.S. district courts have original jurisdiction over
8 civil actions commenced by the United States or by any agency expressly
9 authorized to sue by Act of Congress). In addition, Section 6c(a) of the
10 Commodity Exchange Act (the “Act”), 7 U.S.C. § 13a-1(a) (2012), provides that
11 U.S. district courts have jurisdiction to hear actions by the Commission for
12 injunctive relief or to enforce compliance with the Act or any rule, regulation, or
13 order thereunder whenever it shall appear to the Commission that any person has
14 engaged, is engaging, or is about to engage in any act or practice constituting a
15 violation of any provision of the Act or any rule, regulation, or order thereunder.
16
17
18

19 2. Venue properly lies with this Court pursuant to Section 6c(e) of the
20 Act, 7 U.S.C. § 13a-1(e) (2012), because Defendants conducted business in this
21 District, and acts and practices in violation of the Act have occurred, are occurring,
22 or are about to occur within this District.
23
24

25 **II. SUMMARY**

26 3. Since August 2014, Defendants Main & Prospect Capital, LLC
27

1 (“Main & Prospect Capital”), Daniel Adam Hewko (“Adam Hewko” or “Adam”),
2 and Daniel Hewko (“Daniel Hewko” or “Daniel”) (collectively, “Defendants”)
3 have operated a fraudulent pooled investment vehicle, generally referred to by
4 Defendants as Main & Prospect Capital’s Global Opportunity Fund (“Fund”).
5

6 4. Specifically, from at least August 2014 to the present (“Relevant
7 Period”), Defendants have solicited at least 19 individuals to invest more than \$2.3
8 million in the Fund.
9

10 5. Defendants have falsely told investors that the Fund would invest their
11 funds using, among other investment strategies, a global macro strategy, and that
12 the Fund would trade various financial instruments, including stocks, commodities,
13 and foreign currency.
14

15 6. Defendants have deposited more than \$1.1 million of the Fund’s
16 assets into a futures trading account and traded a limited amount of futures
17 contracts, on or subject to the rules of a designated contract market, with investor
18 funds. The trading has not been profitable and in fact has incurred losses.
19

20 7. In addition, Defendants have misappropriated Fund assets for the
21 benefit of themselves, their family, and entities owned or controlled by Adam
22 Hewko.
23

24 8. Furthermore, Adam Hewko has caused false account statements to be
25 created, and Daniel Hewko has sent the false account statements (among other
26
27

1 false and misleading materials) to investors to make it appear that the Fund had
2 been profitable from August 2014 through 2018, when in fact the Fund has either
3 sustained trading losses or been depleted by Defendants.
4

5 9. For example, Defendants claimed in account statements sent to Fund
6 investors that investors had enjoyed returns of over 20% in 2015, over 15% in
7 2016, and over 12% in 2017. Defendants further claimed in account statements for
8 the second quarter of 2018 that investors had enjoyed returns over the life of the
9 Fund ranging from over 38% to more than 76%. These purported returns were all
10 false. Far from earning double-digit gains every year, the Fund has actually
11 incurred trading losses, and Defendants have dissipated other of the funds for the
12 benefit of themselves, their family, and other unrelated entities owned or controlled
13 by Adam Hewko.
14
15

16
17 10. The account statements also have claimed, falsely or misleadingly,
18 that the Fund had a “strong asset allocation” and that the Fund employed a “global
19 macro strategy.”
20

21 11. Moreover, when investors have sought to redeem their investments,
22 Daniel Hewko has sought to cover up Defendants’ wrongdoing by telling
23 investors, falsely, that they have not been able to satisfy withdrawal requests
24 because the Fund was in his words, in a “trade,” or because of the Commission’s
25 investigation. Daniel Hewko also continued to tell investors, falsely, that their
26
27

1 investments have been profitable.

2 12. Main & Prospect Capital also has violated commodity pool disclosure
3 requirements, failed to operate its commodity pool as a separate legal entity—by
4 receiving pool participant funds in a name other than that of the pool and
5 commingling pool funds with non-pool property—and failed to register with the
6 Commission as a commodity pool operator (“CPO”) as required.
7

8
9 13. Because Adam Hewko and Daniel Hewko have solicited investor
10 funds for participation in the Fund, they were required to register with the
11 Commission as associated persons (“APs”) of Main & Prospect Capital, but failed
12 to do so.
13

14 14. By virtue of their false and misleading statements and omissions of
15 material facts to investors and by misappropriating investor funds, Defendants
16 have used or employed (or attempted to use or employ) a device, scheme, or
17 artifice to defraud investors; made (or attempted to make) untrue or misleading
18 statements of material fact or omitted to state a material fact necessary in order to
19 make the statements made not untrue or misleading; and engaged (or attempted to
20 engage) in transactions, practices, or courses of business that operated as a fraud or
21 deceit on investors in violation of Sections 4o(1)(A)-(B) and 6(c)(1) of the Act,
22 7 U.S.C. §§ 6o(1)(A)-(B), 9(1) (2012), and Commission Regulation (“Regulation”)
23 180.1(a), 17 C.F.R. § 180.1(a) (2019).
24
25
26
27

1 15. Additionally, Main & Prospect Capital has failed to register as a CPO
2 and comply with certain CPO requirements, in violation of Section 4m(1) of the
3 Act, 7 U.S.C. § 6m(1) (2012), and Regulations 4.20(a)-(c), 4.21, and 4.22,
4
5 17 C.F.R. §§ 4.20(a)-(c), 4.21, 4.22 (2019).

6 16. Adam Hewko and Daniel Hewko have failed to register as APs of a
7 CPO in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012), and
8
9 Regulation 3.12, 17 C.F.R. § 3.12 (2019), and Main & Prospect Capital has
10 permitted itself to be associated with unregistered APs, in violation of Section
11
12 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012).

13 17. Adam Hewko has controlled Main & Prospect Capital throughout the
14 Relevant Period and has not acted in good faith or has knowingly induced Main &
15 Prospect Capital's violations of the Act and Regulations. Therefore, Adam Hewko
16
17 is also liable pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), for
18 Main & Prospect Capital's violations of Sections 4k(2), 4m(1), 4o(1)(A)-(B), and
19
20 6(c)(1) of the Act, 7 U.S.C. §§ 6k(2), 6m(1), 6o(1)(A)-(B), 9(1) (2012), and
21 Regulations 4.20(a)-(c), 4.21, and 4.22, 17 C.F.R. §§ 4.20(a)-(c), 4.21, 4.22 (2019).

22 18. Main & Prospect Capital's employees and agents, including Adam
23
24 Hewko and Daniel Hewko, have committed the acts and omissions alleged herein
25
26 within the course and scope of their employment, agency, or office with Main &
27
28 Prospect Capital. Therefore, Main & Prospect Capital is liable, pursuant to Section

1 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R.
2 § 1.2 (2019), as principal for the violative acts and omissions of Main & Prospect
3 Capital’s employees and agents, including Adam Hewko and Daniel Hewko.
4

5 19. Unless restrained and enjoined by this Court, Defendants are likely to
6 continue to engage in the acts and practices alleged in this Complaint, and in
7 similar illegal acts and practices.
8

9 20. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1
10 (2012), the Commission brings this action to permanently enjoin Defendants from
11 further violations of the Act and Regulations and to seek civil monetary penalties
12 and ancillary relief, including but not limited to permanent trading and registration
13 bans, restitution, and disgorgement.
14

15 **III. THE PARTIES**

16
17 21. Plaintiff **Commodity Futures Trading Commission** is an
18 independent federal regulatory agency charged by Congress with the
19 administration and enforcement of the Act, 7 U.S.C. §§ 1-26 (2012), and
20 regulations promulgated thereunder, 17 C.F.R. pt. 1-190 (2019).
21

22 22. Defendant **Main & Prospect Capital, LLC** is a Wyoming limited
23 liability corporation. According to the Wyoming Secretary of State website, Main
24 & Prospect Capital’s principal office is located in Cheyenne, Wyoming, and its
25 status is listed as “Inactive—Administratively Dissolved (Tax).” During the
26
27

1 Relevant Period, Main & Prospect Capital has operated the Global Opportunity
2 Fund. Main & Prospect Capital has never been registered with the Commission in
3 any capacity.

4
5 23. Defendant **Adam Hewko** is the owner, operator, manager, and
6 President of Main & Prospect Capital. Adam Hewko's last known residence is in
7 Irvine, California. Adam Hewko has never been registered with the Commission
8 in any capacity.

9
10 24. Defendant **Daniel Hewko**, Adam Hewko's father, maintains Main &
11 Prospect Capital's books and records, is signer on Main & Prospect Capital's bank
12 account, and is Main & Prospect Capital's primary contact with investors. Daniel
13 Hewko's last known address is in Fairfield, California. Daniel Hewko has never
14 been registered with the Commission in any capacity.

15
16
17 **IV. FACTS**

18 **A. Defendants Solicited and Accepted Investor Funds**
19 **for Main & Prospect Capital's Pooled Investment Scheme**

20 25. In or around August 2014, Defendants began seeking investments in a
21 pooled investment vehicle operated by Main & Prospect Capital and marketed to
22 prospective investors as the Global Opportunity Fund.

23
24 26. From in or around August 2014 through at least December 2015,
25 Defendants received more than \$2.3 million from at least 19 investors for the
26 purpose of investing in the Fund. These funds were pooled in Main & Prospect
27

1 Capital's bank account, rather than being held in separate accounts.

2 27. Most, if not all, of the individuals who have invested during the
3 Relevant Period with Main & Prospect Capital had been tax preparation clients of
4 Daniel Hewko or individuals whom Daniel knew. Daniel Hewko referred these
5 individuals to Adam Hewko (both before and after Adam started Main & Prospect
6 Capital). Adam Hewko and Daniel Hewko have solicited funds for participation in
7 the Fund. For example:
8
9

10 (a) On or around June 8, 2015, a prospective investor emailed
11 Daniel Hewko stating that "I would like to set up a time to meet
12 with you to sign the paperwork to invest \$100k with Adam";
13 Daniel Hewko replied: "Let's do Thursday at 5:30 P.M. I will
14 have the paperwork ready for you to sign and time to go over
15 any questions you may have. . . ." Daniel Hewko met with the
16 prospective investor on Thursday, June 11, 2015 as planned
17 regarding her investment in the Fund.

18 (b) Adam Hewko has met with investors prior to their investing in
19 the Fund and described the Fund to them, including, as alleged
20 below, telling at least one investor that the Fund would trade on
21 world events and telling other investors that the Fund would
22 invest variously in the stock market, commodities, and foreign
23 currency.

24 (c) Daniel Hewko has accepted investment checks from investors
25 and deposited their funds into Main & Prospect Capital's bank
26 account, including two checks totaling \$52,000 from an
27 investor that Daniel Hewko acknowledged in writing as having
28 been received by Daniel in his capacity as agent for Main &
Prospect Capital.

28 28. Adam Hewko and Daniel Hewko have provided most individuals who
invested during the Relevant Period a Private Placement Memoranda ("PPM")

1 with respect to their participation in the Fund, which materials often included a
2 copy of Main & Prospect Capital’s Limited Liability Corporation Operating
3 Agreement (“MPC Operating Agreement”).
4

5 29. The Fund PPM states that investor proceeds will be used to purchase
6 “distressed real property assets on some of the world’s largest bank’s balance
7 sheets as well as private, distressed sellers and a macro opportunity by purchasing
8 a varying range of depressed assets.”
9

10 30. The MPC Operating Agreement states that the business purpose of
11 Main & Prospect Capital is “to maintain an open-ended investment fund for real
12 estate related investment opportunities and other global macro opportunities.”
13

14 31. By stating in the PPM and MPC Operating Agreement that Main &
15 Prospect Capital would be seeking investments in a “macro opportunity” or “global
16 macro opportunities,” and by calling the Fund the “Global Opportunity Fund,” and
17 later providing quarterly statements to investors stating that the Fund employed a
18 “global macro strategy,” Defendants have sought to give the impression that the
19 Fund would be employing (and that the Fund did employ) a global macro strategy,
20 i.e. a fund strategy centered on profiting from macroeconomic developments
21 worldwide.
22
23

24 32. Defendants have told other Main & Prospect Capital investors that
25 Fund assets were invested or could be invested in the stock market, commodities,
26
27

1 or foreign currency.

2 33. Main & Prospect Capital has accepted or received investor funds
3 during the Relevant Period, at least in part, for the purpose of trading futures
4 contracts.
5

6 34. Daniel Hewko testified under penalty of perjury that he understood
7 from Adam that investor funds were going to be deposited into a trading account
8 for the purpose of trading commodities.
9

10 35. In an email sent to Adam Hewko on or around December 30, 2015,
11 Daniel Hewko noted that “[t]he fund will have gains and losses with prudent
12 strategies. This is understood with the management of a fund and *investments in*
13 *the commodity complex.*” (Emphasis added.)
14

15 36. Moreover, from in or around September 2014 to in or around
16 November 2014, Defendants transferred more than \$1.1 million of investor funds
17 into a futures trading account with a registered futures commission merchant,
18 referred to herein as “FCM-1.”
19

20 37. On or around September 2, 2014, Adam Hewko, in his capacity as
21 Main & Prospect Capital’s Manager, confirmed his intention to trade futures
22 contracts with Fund assets, stating in account opening documents with FCM-1 that
23 the business of Main & Prospect Capital was “[i]nvesting all asset classes,”
24 specifically noting that this included the futures market.
25
26
27

1 38. In addition, Adam Hewko stated in the account application with
2 FCM-1 and accompanying documents, falsely, that he, Adam, was the sole source
3 of Main & Prospect Capital’s funds and that Main & Prospect Capital “has not and
4 will not solicit funds from any person or entity for the purpose of trading
5 commodities” and that the company “is not . . . required to be registered with the
6 CFTC, NFA, SEC or FINRA.”
7

8
9 39. Upon information and belief, Adam Hewko made the false statements
10 alleged above in paragraph 38 in order to avoid raising potential concern on the
11 part of FCM-1 concerning the fact that Main & Prospect Capital was not registered
12 with the Commission; Defendants never disclosed to investors and potential
13 investors that Adam Hewko made false statements to FCM-1 concerning Main &
14 Prospect Capital’s business.
15

16
17 40. On or around December 1, 2014, the funds in the futures trading
18 account with FCM-1 were transferred to a second registered futures commission
19 merchant, referred to herein as “FCM-2.” Investor funds held with FCM-2
20 remained in that trading account until in or around the summer of 2016 (at which
21 point, as alleged more fully below, Defendants withdrew the funds and
22 misappropriated Fund assets for the benefit of themselves, their family, and
23 unrelated companies).
24

25
26 41. Funds in the futures trading accounts with FCM-1 and FCM-2 have
27

1 been used to conduct a limited amount of trading of futures contracts including
2 crude oil and E-mini S&P 500 futures contracts, both of which were traded on
3 designated contract markets.

4
5 **B. Defendants Created and Distributed False and Misleading**
6 **Account Statements and Other Materials to Investors**

7 42. Prior to January 2016, Defendants did not routinely provide account
8 statements to Fund investors.

9 43. In a January 2016 letter to investors, Adam Hewko stated that “I know
10 many of you have felt like you have been in the dark and I’m sorry and to show
11 that I am addressing the problem . . . [m]oving forward, we will issue quarterly
12 statements.”
13

14 44. From in or around January 2016 through in or around October 2018,
15 Individual-1 used information provided to him by Adam Hewko or Daniel Hewko
16 to prepare quarterly account statements. Daniel Hewko, in turn, emailed those
17 statements to Fund investors.
18

19 45. By sending these quarterly statements to investors, Defendants have
20 engaged in a scheme to mislead Fund investors regarding the performance of the
21 Fund, namely to convince or attempt to convince investors that the Fund has been
22 profitable when in fact it has not.
23

24 46. All of the purported investment returns contained in the quarterly
25 statements provided to investors for fourth quarter 2015 through third quarter 2018
26
27

1 were false. Defendants knew—or else acted with reckless disregard of the fact—
2 that the Fund had not earned these purported returns.

3 47. What little futures trading the Fund did, in September and October
4 2014 and January 2015 resulted in losses. Moreover, Fund proceeds were never
5 invested in any other manner during the Relevant Period that generated any returns
6 at all for Fund investors, much less the substantial returns claimed by Defendants
7 in the quarterly statements.
8
9

10 ***Fourth Quarter 2015 Statements Contained False***
11 ***Information about Fund Performance***

12 48. On or around January 1, 2016, Adam Hewko emailed Individual-1 a
13 spreadsheet showing initial investment amounts for each Fund investor and
14 purported returns for each investor ranging from 24% to 63%.

15 49. As alleged more fully below, the Fund had not earned any investment
16 return for investors at the time that Adam Hewko sent the January 1, 2016 email to
17 Individual-1, much less returns ranging from 24% to 63%.

18 50. Based on information provided to Individual-1 by Adam Hewko,
19 Individual-1 created quarterly statements to be sent to investors; the statements
20 contained purported performance information for the last quarter of 2015, for the
21 calendar year 2015, and since the Fund's inception. These statements are referred
22 to herein as the "Q4 2015 Statements."
23
24
25

26 51. On or around January 7, 2016, Individual-1 emailed Adam Hewko Q4
27

1 2015 Statements he had prepared for approximately 19 investors, for Adam’s
2 review and approval (each of which contained false information concerning
3 purported investment gains in the Fund).
4

5 52. Daniel Hewko emailed the Q4 2015 Statements to Fund investors in
6 or around January 2016.

7 53. The Q4 2015 Statements touted investment gains for investors for
8 calendar year 2015 well over 20% for those investors who had been invested in the
9 Fund the longest, with purported returns “since inception” for many investors
10 exceeding 20% and in at least one instance exceeding 30%.
11

12 54. All of the claimed investment returns in the Q4 2015 Statements were
13 false.
14

15 55. The funds initially held in the futures trading account with FCM-1
16 (and subsequently the futures trading account with FCM-2)—in all, more than \$1.1
17 million—had been used to trade a small amount of futures contracts in September
18 and October 2014 and January 2015, and incurred losses. Nor had Fund assets
19 been invested in any other manner that generated any investment return at all for
20 the Fund, much less the substantial profits touted to investors in the Q4 2015
21 Statements.
22

23 56. Notwithstanding Defendants’ claims to Fund investors that the Fund
24 had been profitable in 2015, Adam Hewko described a far different reality to
25
26
27

1 Daniel Hewko and Individual-1 in a January 5, 2016 email, namely that the Fund
2 had suffered losses in 2015.

3 57. On or about January 5, 2016, Adam Hewko emailed Daniel Hewko
4 and Individual-1, stating that the account statement from FCM-2 showed a trading
5 loss and “[f]or all intensive [sic] purposes that P&L is our 2015 P&L . . . That
6 number it represents our total loss on the year . . .” and “[s]o that leaves us with a
7 loss. A total loss from trading of (2026 . . . I don’t have the specific
8 number . . .)[.]”
9

10
11 58. Adam Hewko offered a number of potential “solutions” for the 2015
12 losses in his January 5, 2016 email, including “trad[ing] out of it,” “provid[ing]
13 what would have been INDECA [i.e., Indeca LLC] cash flow . . . to [Main &
14 Prospect Capital],” or “assign[ing] equity to [Main & Prospect Capital], to be paid
15 out back to [Main & Prospect Capital] . . . Schedule would probably be 12-
16 18[]months.” Indeca LLC was a company owned and operated by Adam Hewko,
17 formed in or around October 27, 2015.
18
19

20
21 59. Adam Hewko suggested in his January 5, 2016 email alternatively
22 that Defendants could “assign 50% loss to all and hope it works out. I for sure,
23 will be put thru the grinder legally.”
24

25 60. On or about January 7, 2016, Adam Hewko sent an email to
26 Individual-1 with a spreadsheet attached, listing Fund investors, noting total Fund
27

1 investments of over \$2.3 million, purported investment gains of approximately
2 \$550,000, and a supposed total Fund value of over \$2.8 million. The spreadsheet
3 noted that the difference between the total Fund value (which included the
4
5 supposed total investment gains of over \$550,000) and the Fund’s “current cash
6 balance” was more than \$1.5 million. The spreadsheet, referring to this \$1.5
7 million figure, stated “[t]his is our deficit. This is the amount we will put on the
8
9 balance sheet as [Private] Equity Holdings.”

10 61. These supposed “Private Equity Holdings” were a complete fiction.
11 As Defendants well knew, Main & Prospect Capital had not made any investments
12
13 in private equity.

14 62. Notwithstanding the reality that Main & Prospect Capital had in fact
15
16 incurred trading losses and its assets dissipated as of December 31, 2015, Adam
17
18 Hewko caused Q4 2015 Statements (with fictitious gains) to be prepared, and
19
20 Daniel Hewko sent the Q4 2015 Statements (with fictitious gains) to investors.

21 63. Defendants knew—or acted with reckless disregard of the fact—that
22
23 the Fund had actually accrued a loss in 2015 (and that Fund assets had been
24
25 dissipated), when they created and disseminated to investors the Q4 2015
26
27 Statements that claimed the Fund had investment gains in 2015—including for
28
some investors, double-digit gains.

64. In a letter from Adam Hewko that accompanied the Q4 2015

1 Statements sent to investors, Adam Hewko made numerous false and misleading
2 statements, further giving the false impression—or attempting to give the false
3 impression—that the Fund had been successful in 2015.
4

5 65. That letter—referring to the preceding year, 2015—stated that:

6 Looking back, this year has been good to us. Why? **Well we have**
7 **come out on top!** Many hedge funds and money managers are
8 closing up shop. Bad returns and the unknown are causing big
9 problems for many people. **Are we lucky? No. We've played it**
10 **smart and tactical. We have grown our money and we will**
11 **continue to do so.**

12 (Emphasis added).

13 66. The letter also stated that:

14 **We have come to a position where income can be made available.**
15 **If you wish to receive income, we will have a detailed discussion**
16 **regarding what's possible. This is exciting I know extra income is**
17 **always welcome.** So please do not hesitate to ask!

18 (Emphasis added).

19 67. Adam Hewko knew that the statements described in paragraphs 65
20 and 66 above, were false because Defendants had neither grown investors' funds
21 nor generated income for investors in 2015, or at the very least, he was reckless
22 when he made the false statements contained in paragraphs 65 and 66 above.
23

24 68. The fictitious investment gains contained in the Q4 2015 Statements
25 were also reflected in the purported account balances of all subsequent quarterly
26 statements.
27

28 ***2016 Statements Contained False
Information about Fund Performance***

69. Main & Prospect Capital quarterly statements for 2016 (referred to

1 herein as the “2016 Statements”) claimed, falsely, that the Fund had earned a total
2 investment return of 15.83% for investors in 2016.

3 70. As Defendants well knew, the Fund had not enjoyed investment gains
4 at all in 2016, much less the double-digit percentage returns claimed by Defendants
5 in the 2016 Statements.
6

7 71. Moreover, as alleged above, the 2016 Statements contained fictitious
8 account balances that were inflated by the false returns previously touted in the Q4
9 2015 Statements.
10

11 72. Far from earning a double-digit return in 2016 as claimed by
12 Defendants, the more than \$1.1 million in investor funds held with FCM-2 were
13 not used to trade futures contracts at all in 2016 and earned no return whatsoever.
14 Those funds were transferred back to Main & Prospect Capital’s bank account in
15 or around the summer of 2016.
16
17

18 ***2017 Statements Contained False***
19 ***Information about Fund Performance***

20 73. Quarterly statements for 2017 (referred to herein as the “2017
21 Statements”) claimed, falsely, that the Fund had earned a total investment return of
22 12.53% for investors in 2017.
23

24 74. Moreover, as alleged above, the 2017 Statements contained fictitious
25 account balances inflated by the false returns previously touted in the Q4 2015
26 Statements and 2016 Statements.
27

1 75. As Defendants well knew, the Fund had not enjoyed investment gains
2 at all in 2017, much less the double-digit percentage returns claimed by
3 Defendants.

4 ***2018 Statements Contained False***
5 ***Information about Fund Performance***

6 76. Quarterly statements in 2018 similarly claimed that the Fund had
7 enjoyed substantial investment gains. For example, second quarter 2018
8 statements claimed, falsely, that the Fund had earned an investment return ranging
9 from 38.28% to 76.42% for investors over the life of their respective investments
10 in the Fund.
11

12 77. As Defendants well knew, the Fund had not enjoyed investment gains
13 at all, much less the significant, double-digit returns over the life of their
14 investments, as claimed by Defendants.
15

16 **C. Defendants Misappropriated Pool Funds for the Benefit**
17 **of Themselves, Their Family, and Unrelated Companies**

18 78. During the Relevant Period, Defendants have not used investor funds
19 in the manner stated to investors, but rather have misappropriated a majority of the
20 more than \$2.3 million that had been solicited and accepted from Fund investors.
21 Defendants have misappropriated funds for the benefit of Defendants, their family,
22 and unrelated companies owned and controlled by Adam Hewko.
23
24

25 79. Defendants have misappropriated Fund assets in the following ways
26
27

1 (among others): (1) Daniel Hewko made payments to Adam and Individual-1 with
2 Fund assets to which they were not entitled to under the terms of the PPM; (2)
3 Adam Hewko authorized Daniel to pay Main & Prospect Capital's business
4 expenses with Fund assets; and (3) Adam Hewko requested that Daniel pay
5 expenses for, purchase equipment for, make purported loans to, and provide
6 working capital for, other unrelated entities owned or controlled by Adam Hewko
7
8 with Fund assets.
9

10 80. Defendants have misappropriated investor funds for various purposes
11 during the Relevant Period, including more than \$679,000 in payments to Adam
12 Hewko and Individual-1 and more than \$1.2 million in payments to or for the
13 benefit of unrelated entities owned or controlled by Adam Hewko.
14

15 81. None of the transactions engaged in for the benefit of Defendants and
16 their unrelated companies to date has resulted in the transfer of any value or
17 potential value to Main & Prospect Capital or its investors, i.e. in the form of any
18 ownership or equity stake, debt interest, or otherwise. Because these transactions
19 have conferred no value or potential value to Main & Prospect Capital or its
20 investors, those funds simply have been misappropriated by Defendants.
21
22

23 82. The Fund PPM permits the payment to Adam Hewko of a
24 "Management Fee" of "between 2% and 3% upon investment" and a "Performance
25 Fee," to be calculated as a percentage of "net profit," defined as Main & Prospect
26
27

1 Capital’s “monthly gross income less [Main & Prospect Capital’s] monthly
2 operating expenses”

3 83. Despite the fact that Main & Prospect Capital has never earned any
4 “net profit” in connection with its investment of Fund proceeds, Defendants
5 nevertheless have used investor funds to pay Adam Hewko more than \$525,000
6 during the Relevant Period.
7

8 84. Defendants have not disclosed to Fund investors that their funds have
9 been used to fund and pay the expenses of companies owned or operated by Adam
10 Hewko.
11

12
13 **D. Daniel Hewko Lied to Investors When**
14 **They Sought to Withdraw Their Funds**

15 85. From at least April 2017 through the present, Daniel Hewko
16 repeatedly has told Fund investors, falsely, that Main & Prospect Capital cannot
17 satisfy withdrawal requests because Fund assets are, in his words, “in a trade.”
18

19 86. For example, he stated in:

20 (a) an email on or around April 12, 2017 to investor T.B. that
21 T.B.’s “funds with MPC will be paid once A [sic] trade is
22 closed”;

23 (b) an email on or around October 30, 2017 to investor P.P. that
24 “[f]rom my understanding, if a trade is closed before it [sic]
25 maturity date the whole trade losses [sic] money”;

26 (c) an email on or around February 1, 2018 to investor P.P. that
27 “[w]hen a trade is closed then the money comes in and is
28 available”;

- 1 (d) an email on or around March 4, 2018 to investor T.B. that “the
2 fund in [sic] not liquid when trades are not closed,” that “[t]he
3 fund and the trader are both fine as well as the trades,” and that
4 there was “[n]othing is unusual for this type of a fund”;
- 5 (e) an email on or around July 12, 2018 to investor D.S. that he,
6 Daniel, was “aware of trade [sic] that is in place that will start
7 paying”;
- 8 (f) an email on or around July 27, 2018 to investor R.J. that “I
9 have heard about a trade that is starting to produce”; and
- 10 (g) an email on or around January 5, 2019 to investor J.S. that
11 “[Adam Hewko] is in a trade and if he closes the trade the [sic]
12 everyone loses money and this is not what he want[s] to do.”

13 87. As Daniel Hewko well knew (because he was the one who controlled
14 Main & Prospect Capital’s bank account and kept Main & Prospect Capital’s
15 books and records), when he made these statements to investors described above in
16 paragraph 86, Fund assets were not actually “in a trade,” but rather had been
17 dissipated or misappropriated for the benefit of Defendants, their family, and
18 entities, owned, controlled, or operated by Adam Hewko. At a minimum, Daniel
19 Hewko made these statements with reckless disregard as to whether the statements
20 were true or not.

21
22 88. Daniel Hewko has told Fund investors, falsely, that Fund assets are
23 “in a trade” to lull Fund investors and to cover up: (a) Defendants’ lies to investors
24 about the Fund’s purported investment gains, (b) the fact that the Fund has
25 incurred trading losses, and (c) Defendants’ misappropriation of Fund assets for
26
27

1 the benefit of themselves, their family, and entities owned or controlled by
2 Defendant Adam Hewko.

3 89. Daniel Hewko also has lied to investors about the performance of
4 their investment, and told at least one investor that the investor's funds were not
5 lost or gone, in response to investor requests to withdraw funds.
6

7 90. For example, on or around March 5, 2018, Daniel Hewko emailed
8 T.B., stating that "[i]n review of your account and the trades with MPC," T.B.'s
9 "account balance" had grown from \$185,105 as of January 2015 to approximately
10 \$231,765 as of December 31, 2015, approximately \$270,447 as of December 31,
11 2016, and approximately \$304,344 as of December 31, 2017, stating that "[t]he
12 fund is in very good position to have strong exit and closure of the fund in 2019
13 with its current trades," and suggesting that T.B. could "[r]emain in the fund until
14 the fund closes a trade to have the funds to pay you in whole and you would
15 continue to share in potential futures gains/losses."
16
17
18

19 91. Daniel Hewko knew that his statements about T.B.'s historic account
20 balances could not possibly be true, or at the very least, he made the statements to
21 T.B. with reckless disregard of whether the statements were in fact true or not.
22

23 92. In an email on or around October 31, 2018, Daniel Hewko
24 (responding to investor J.R.'s concerns regarding the account statement for the
25 third quarter of 2018) stated to J.R. that "[y]es, the 3rd Quarter had a loss but your
26
27
28

1 [sic] still up 37+%.”

2 93. Daniel Hewko knew that this statement to J.R. (i.e., that J.R. was “still
3 up 37+%”) was false or else Daniel Hewko made the statement with reckless
4 disregard as to whether it was in fact true or false.
5

6 94. On or around December 26, 2018, Daniel Hewko emailed a Fund
7 investor, J.S.:

8
9 **[I]f [Defendant Adam Hewko] sells he will lose money and he does**
10 **not want to do that and that’s why you haven’t received you**
11 **Quarterly Distribution.** I will have a meeting with him on Friday to
12 try to get an exact time when money will be available to you. **Your**
13 **money is not lost or gone** and I know you need your distributions for
14 living. Give until the weekend to get back in touch with you for a
15 more divinity [sic] answer as to when you can expect money to come
16 your way.

17 (Emphasis added).

18 95. Daniel Hewko’s statement that J.S.’s “money is not lost or gone” was
19 false and misleading because, as Daniel well knew (as the signer on Main &
20 Prospect Capital’s bank account and keeper of Main & Prospect Capital’s books),
21 by that time, Fund assets had been dissipated almost entirely.

22 96. Indeed, Daniel Hewko stated under penalty of perjury that he does not
23 believe there are sufficient Fund assets to pay investors all the investment returns
24 that had been promised in quarterly statements to investors. Nevertheless, Daniel
25 Hewko did not disclose that fact to investors, and in fact continued to mislead
26 investors that their funds were “not lost or gone” or had enjoyed sizeable returns
27 (including in the emails alleged above to T.B., J.R., and J.S. in March 2018,

1 October 2018, and December 2018, respectively).

2 97. Far from being honest to investors, Defendants (including Daniel
3 Hewko) either have refused to communicate with investors about their investments
4 or continued to make false and misleading statements about why the Fund is not
5 able to satisfy its obligations to investors.
6

7 98. For example, on March 1, 2019, in response to an investor's questions
8 about the status of her investment (including a request for quarterly statements and
9 request to withdraw funds), Daniel Hewko blamed the Commission's investigation
10 for his inability to respond and failed to disclose to her the truth about her
11 investment, i.e., that her funds, as well as the funds of other investors, had been
12 entirely dissipated. Daniel Hewko emailed the investor: "Adam is under
13 investigation of the CFTC and I have not received anything to send to you and I'm
14 not sure anything will be coming until the investigation is over."
15
16
17

18 **E. Defendants Failed to Register with the CFTC**

19 99. Throughout the Relevant Period, Main & Prospect Capital has
20 operated a pooled or collective investment vehicle, and in connection therewith has
21 solicited, accepted, or received funds, either directly or indirectly, for the purpose
22 of trading futures contracts.
23
24

25 100. During the Relevant Period, Main & Prospect Capital has received
26 more than \$2.3 million in investor funds into its corporate bank account; investor
27

1 funds have been pooled and not segregated into individual accounts.

2 101. During the Relevant Period, Defendants have transferred more than
3 \$1.1 million—all, or most of which, was investor funds—to FCM-1, and those
4 funds were held in a futures trading account in the name of Main & Prospect
5 Capital.
6

7 102. Main & Prospect Capital used investor funds held with FCM-1, and
8 later FCM-2, to trade futures contracts in September and October 2014 and January
9 2015, including crude oil futures contracts and E-mini S&P futures contracts, both
10 of which are traded on or subject to the rules of a designated contract market.
11

12 103. Daniel Hewko and Adam Hewko, in their capacity as a partner,
13 officer, employee, consultant, agent (or similar status performing similar
14 functions), have solicited funds, securities, or property for participation in a
15 commodity pool or supervised such solicitation.
16

17 104. Main & Prospect Capital has never registered with the Commission as
18 a CPO and never qualified for any registration exemption.
19

20 105. Daniel and Adam Hewko have never registered with the Commission
21 as APs of a CPO and never qualified for any registration exemption.
22

23 **F. Adam Hewko Controlled Main & Prospect Capital**

24 106. Adam Hewko testified under penalty of perjury that he had decision-
25 making authority for Main & Prospect Capital, that Main & Prospect Capital was
26

1 his company and that he ran the company.

2 107. Adam Hewko has held himself out to investors as the Manager of
3 Main & Prospect Capital and signed Main & Prospect Capital's subscription
4 agreements on behalf of Main & Prospect Capital.
5

6 108. According to the Fund PPM, return of investor capital is at the
7 discretion of Adam Hewko.
8

9 109. Adam Hewko, as Main & Prospect Capital's sole Manager, opened a
10 futures trading account with FCM-1 in the name of Main & Prospect Capital, and
11 Adam Hewko had sole authority to place trades in that account on behalf of Main
12 & Prospect Capital.
13

14 110. Adam Hewko, in connection with his opening of the Main & Prospect
15 Capital trading account with FCM-1, represented himself to FCM-1 as the
16 President and majority owner of Main & Prospect Capital.
17

18 111. Adam Hewko testified under penalty of perjury that he had decision-
19 making authority for the entities to which—and for whose benefit—Defendants
20 transferred investor funds.
21

22 **V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**
23 **AND COMMISSION REGULATIONS**

24 **COUNT ONE:**

25 **Fraud by Deceptive Device or Contrivance**
26 **(Violations of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012)**
27 **and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2019))**

1 112. Paragraphs 1 through 111 are re-alleged and incorporated herein by
2 reference.

3 113. 7 U.S.C. § 9(1), makes it unlawful, in relevant part, for any person,
4
5 directly or indirectly, to:

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

11 114. 17 C.F.R. § 180.1(a), provides, in relevant part:

12
13 It shall be unlawful for any person, directly or indirectly, in
14 connection with any swap, or 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:

15 (1) Use or employ, or attempt to use or employ, any manipulative
16 device, scheme, or artifice to defraud;

17 (2) Make, or attempt to make, any untrue or misleading statement of a
18 material fact or to omit to state a material fact necessary in order to
19 make the statements made not untrue or misleading;

20 (3) Engage, or attempt to engage, in any act, practice, or course of
21 business, which operates or would operate as a fraud or deceit upon
any person

22 115. During the Relevant Period, as described above, Defendants have
23
24 violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a), in that they have used or
25 employed (or attempted to use or employ) a device, scheme, or artifice to defraud
26 investors; made (or attempted to make) untrue or misleading statements of material
27

1 fact or omitted to state a material fact necessary in order to make the statements
2 made not untrue or misleading; and engaged (or attempted to engage) in
3 transactions, practices, or courses of business that operated as a fraud or deceit on
4 investors by, among other things:
5

- 6 (a) Defendants intentionally or recklessly have told investors, falsely, that
7 their investments have performed profitably, including by creating
8 and/or delivering to Fund investors quarterly statements containing
9 false statements concerning investment gains, when in fact the Fund
10 had not earned gains;
- 11 (b) Defendants intentionally or recklessly have misappropriated Fund
12 assets for the benefit of Defendants, for the benefit of their family, and
13 for the benefit of entities owned or controlled by Adam Hewko, and
14 have failed to disclose that misappropriation to Fund investors;
- 15 (c) Defendants falsely have told investors (either orally or in Fund
16 documents) that the Fund would (or did) pursue certain investment
17 strategies, including a global macro investment strategy, the trading of
18 financial products (including stocks, commodities, and foreign
19 currency), and real estate, when in fact Main & Prospect Capital
20 and/or the Fund have not traded any financial instruments except for a
21 limited amount of futures contracts on or subject to the rules of a
22 designated contract market and instead simply dissipated Fund assets;
23 and
- 24 (d) Defendant Daniel Hewko intentionally or recklessly has told Fund
25 investors, falsely, that the Fund has not been able to satisfy investors'
26 withdrawal requests because the Fund was, in his words, "in a trade"
27 that needed to be "closed," or because of the Commission's
28 investigation, when in fact the real reason has been that Fund assets
have been dissipated for the benefit of Defendants, their family, and
entities owned or controlled by Adam Hewko.

116. Each and every misrepresentation or omission by Defendants,
including but not limited to those specifically alleged herein, has been made with

1 the knowledge that it was false or misleading, or else made with reckless disregard
2 of the fact that it was false and misleading.

3 117. Each instance of: (1) using or employing, or attempting to use or
4 employ, a device, scheme, or artifice to defraud; (2) making, or attempting to
5 make, untrue or misleading statements of material fact, or omitting to state material
6 facts necessary to make the statements not untrue or misleading; or (3) engaging,
7 or attempting to engage, in any act, practice, or course of business, which operated
8 or would operate as a fraud or deceit upon any person, including but not limited to
9 those specifically alleged herein, is alleged as a separate and distinct violation of
10 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a).

14 118. The foregoing acts, omissions, and failures of Main & Prospect
15 Capital's employees and agents, including Adam Hewko and Daniel Hewko, have
16 occurred within the scope of their employment, agency, or office with Main &
17 Prospect Capital. Therefore, Main & Prospect Capital is liable, pursuant to Section
18 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R.
19 § 1.2 (2019), as principal for the violative actions and omissions of Main &
20 Prospect Capital's employees and agents, including Adam Hewko and Daniel
21 Hewko.

25 119. Adam Hewko has controlled Main & Prospect Capital, directly or
26 indirectly, and has not acted in good faith or has knowingly induced acts

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

6 124. As alleged herein, during the Relevant Period, Main & Prospect
7 Capital has acted as a CPO by engaging in a business that is of the nature of a
8 commodity pool, investment trust, syndicate, or similar form of enterprise, and in
9 connection therewith, soliciting, accepting, or receiving from others, funds,
10 securities, or property, either directly or through capital contributions, the sale of
11 stock or other forms of securities, or otherwise, for the purpose of trading in
12 commodity futures contracts.
13

14 125. During the Relevant Period, Adam Hewko has been an officer and
15 employee of Main & Prospect Capital and has solicited funds, securities, or
16 property for participation in the commodity pool or supervised such solicitation.
17 As such, he has been an AP of Main & Prospect Capital.
18

19 126. During the Relevant Period, Daniel Hewko has held himself out as
20 agent of Main & Prospect Capital and/or performed similar functions as an
21 employee or agent of Main & Prospect Capital and has solicited funds, securities,
22 or property for participation in the commodity pool or supervised such solicitation.
23 As such, he has been an AP of Main & Prospect Capital.
24

25 127. As described above, Main & Prospect Capital, while acting as a CPO,
26
27

1 and Daniel Hewko and Adam Hewko, while acting as APs of a CPO, by use of the
2 mails or any means or instrumentality of interstate commerce (including but not
3 limited to emails, internet, and wire transfers) have violated 7 U.S.C. § 6o(1)(A)
4 and (B) by the following conduct:
5

- 6 (a) Defendants intentionally or recklessly have told investors, falsely, that
7 their investments had performed profitably including by creating
8 and/or delivering to Fund investors quarterly statements containing
9 false statements concerning investment gains, when in fact the Fund
10 had not earned gains;
- 11 (b) Defendants intentionally or recklessly have misappropriated Fund
12 assets for the benefit of Defendants, for the benefit of their family, and
13 for the benefit of entities owned or controlled by Adam Hewko, and
14 failed to disclose that misappropriation to Fund investors;
- 15 (c) Defendants falsely have told investors (either orally or in Fund
16 documents) that the Fund would (and did) pursue certain investment
17 strategies, including a global macro investment strategy, the trading of
18 financial products (including stocks, commodities, and foreign
19 currency), and real estate, when in fact Main & Prospect Capital
20 and/or the Fund have not traded any financial instruments except for a
21 limited amount of futures contracts on or subject to the rules of a
22 designated contract market and instead simply dissipated Fund assets;
23 and
- 24 (d) Defendant Daniel Hewko intentionally or recklessly has told Fund
25 investors, falsely, that the Fund has not been able to satisfy investors'
26 withdrawal requests because the Fund was, in his words, "in a trade"
27 that needed to be "closed," or because of the Commission's
28 investigation, when in fact the real reason has been that Fund assets
have been dissipated for the benefit of Defendants, their family, and
entities owned or controlled by Adam Hewko.

128. Each and every misrepresentation or omission by Defendants,
including but not limited to those specifically alleged herein, has been made with

1 the knowledge that it was false or misleading, or else made with reckless disregard
2 of the fact that it was false and misleading.

3 129. Each misrepresentation or omission; each employment of a device,
4 scheme, or artifice to defraud a client or participant or prospective client or
5 participant; and each instance of a transaction, practice, or course of business
6 which has operated as a fraud or deceit upon any client or participant or
7 prospective client or participant by Defendants, including but not limited to those
8 specifically alleged herein, constitutes a separate and distinct violation of 7 U.S.C.
9 § 6o(1)(A) and (B).
10

11
12 130. The foregoing acts, omissions, and failures of Main & Prospect
13 Capital's employees and agents, including Adam Hewko and Daniel Hewko, have
14 occurred within the scope of their employment, agency, or office with Main &
15 Prospect Capital. Therefore, Main & Prospect Capital is liable, pursuant to
16 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2, as principal for the violative actions and
17 omissions of Main & Prospect Capital's employees and agents, including Adam
18 Hewko and Daniel Hewko.
19
20
21

22 131. Adam Hewko has controlled Main & Prospect Capital, directly or
23 indirectly, and has not acted in good faith or has knowingly induced acts
24 constituting Main & Prospect Capital's violations, and is therefore liable, pursuant
25 to 7 U.S.C. § 13c(b), for Main & Prospect Capital's violations of 7 U.S.C.
26
27

1 § 6o(1)(A) and (B).

2 **COUNT THREE:**
3 **Failure to Register as a CPO**
4 **(Violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012))**

5 132. Paragraphs 1 through 131 are re-alleged and incorporated herein by
6 reference.

7 133. 7 U.S.C. § 6m(1) provides that it shall be unlawful for any CPO,
8 unless registered with the Commission, to make use of the mails or any means or
9 instrumentality of interstate commerce in connection with its business as a CPO.
10

11 134. During the Relevant Period, Main & Prospect Capital has used the
12 mails and/or other means or instrumentality of interstate commerce in connection
13 with its business as a CPO (including emails, text messages, internet, and wire
14 transfers), but has not been registered with the Commission as a CPO. Moreover,
15 it has not claimed any exemption from the registration requirement, nor was it
16 eligible for such.
17

18 135. By failing to register as a CPO, Main & Prospect Capital has violated
19 7 U.S.C. § 6m(1).
20

21 136. Adam Hewko has controlled Main & Prospect Capital, directly or
22 indirectly, and has not acted in good faith or has knowingly induced acts
23 constituting Main & Prospect Capital's violations, and is therefore liable, pursuant
24 to 7 U.S.C. § 13c(b), for Main & Prospect Capital's violations of 7 U.S.C. § 6m(1).
25
26

COUNT FOUR:

**Failure to Register as an AP of a CPO and Associating with Unregistered APs
(Violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012), and Regulation
3.12, 17 C.F.R. § 3.12 (2019))**

137. Paragraphs 1 through 136 are re-alleged and incorporated herein by reference.

138. 7 U.S.C. § 6k(2), in relevant part, provides that “[i]t shall be unlawful for any person to be associated with a [CPO] as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves . . . the solicitation of funds, securities, or property for a participation in a commodity pool or . . . the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an [AP] of such [CPO]”

139. 17 C.F.R. § 3.12, in relevant part, similarly provides that “[i]t shall be unlawful for any person to be associated with a . . . [CPO] . . . as an [AP] unless that person shall have registered under the Act as an [AP] of that sponsoring . . . [CPO]”

140. 7 U.S.C. § 6k(2) also makes it unlawful for any CPO to permit any person not registered with the Commission to become or remain associated with the CPO as an AP when the CPO knew or should have known that such person was not registered with the Commission or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked.

1 141. During the Relevant Period, Daniel Hewko and Adam Hewko have
2 acted as APs of a CPO and have not been registered in any capacity with the
3 Commission.

4
5 142. By soliciting funds for participation in a commodity pool, but failing
6 to register with the Commission as APs of a CPO, Daniel Hewko and Adam
7 Hewko have violated 7 U.S.C. § 6k(2) and 17 C.F.R. § 3.12.

8
9 143. By permitting Daniel Hewko and Adam Hewko to be associated with
10 it as unregistered APs, when it knew or should have known that they were not
11 registered, Main & Prospect Capital violated 7 U.S.C. § 6k(2).

12
13 **COUNT FIVE:**
14 **Failure to Operate Pool as Separate Entity; Failure to Receive**
15 **Pool Participant Funds in Pool's Name; Commingling Pool Funds**
16 **(Violations of Regulation 4.20(a)-(c), 17 C.F.R. § 4.20(a)-(c) (2019))**

17 144. Paragraphs 1 through 143 are re-alleged and incorporated herein by
18 reference.

19 145. 17 C.F.R. § 4.20(a), requires a CPO, whether registered or not, to
20 operate its commodity pool as an entity cognizable as a legal entity separate from
21 the CPO.

22 146. 17 C.F.R. § 4.20(b) prohibits CPOs, whether registered or not, from
23 receiving pool participants' funds in any name other than that of the pool.

24
25 147. 17 C.F.R. § 4.20(c) prohibits a CPO, whether registered or not, from
26 commingling the property of any pool it operates with the property of any other
27

1 person.

2 148. During the Relevant Period, Main & Prospect Capital, while acting as
3 a CPO, has violated 17 C.F.R. § 4.20(a)-(c) by: (1) failing to operate its
4 commodity pool as legal entity separate from Main & Prospect Capital; (2) failing
5 to receive pool participants' funds in the name of a pool that was a legal entity
6 separate from itself; and (3) commingling the property of the pool with property of
7
8 Main & Prospect Capital or others.
9

10 149. Adam Hewko has controlled Main & Prospect Capital, directly or
11 indirectly, and has not acted in good faith or has knowingly induced acts
12
13 constituting Main & Prospect Capital's violations, and is therefore liable, pursuant
14 to 7 U.S.C. § 13c(b), for Main & Prospect Capital's violations of 17 C.F.R.
15 § 4.20(a)-(c).
16

17 **COUNT SIX:**
18 **Failure to Provide Required Disclosures**
(Violation of Regulation 4.21, 17 C.F.R. § 4.21 (2019))

19 150. Paragraphs 1 through 149 are re-alleged and incorporated herein by
20 reference.

21 151. 17 C.F.R. § 4.21, in relevant part, provides that:

22
23 each [CPO] registered or required to be registered under the Act must
24 deliver or cause to be delivered to a prospective participant in a pool
25 that it operates or intends to operate a Disclosure Document for the
26 pool prepared in accordance with [Regulations 4.24 and 4.25] by no
27 later than the time it delivers to the prospective participant a
28 subscription agreement for the pool

1 152. Main & Prospect Capital has violated 17 C.F.R. § 4.21 by either
2 failing to provide a Fund disclosure document to some investors or by providing a
3 Fund disclosure that did not contain certain information required by Regulations
4 4.24 and 4.25, 17 C.F.R. §§ 4.24, 4.25 (2019), including the risks associated with
5 trading futures contracts; the business backgrounds of the CPO, its trading
6 manager, and principals; the types of commodity interests and other interests that
7 the pool will trade; and actual or potential conflicts of interest.
8
9

10 153. Adam Hewko has controlled Main & Prospect Capital, directly or
11 indirectly, and has not acted in good faith or knowingly induced acts constituting
12 Main & Prospect Capital's violations, and is therefore liable, pursuant to 7 U.S.C.
13 § 13c(b), for Main & Prospect Capital's violations of 17 C.F.R. § 4.21.
14

15 **COUNT SEVEN:**
16 **Failure to Provide Monthly Statements**
17 **(Violation of Regulation 4.22, 17 C.F.R. § 4.22 (2019))**

18 154. Paragraphs 1 through 153 are re-alleged and incorporated herein by
19 reference.

20 155. 17 C.F.R. § 4.22 requires, in relevant part, that CPOs (registered or
21 required to be registered) provide periodic account statements to investors—
22 presented and computed in accordance with generally accepted accounting
23 principles—itemizing, among other things, the total amount of realized net gain or
24 loss on commodity interest positions liquidated during the reporting period; the
25 total amount of unrealized net gain or loss on commodity interest positions during
26
27
28

1 the reporting period, and the total amount of net gain or loss from all other
2 transactions in which the pool engaged during the reporting period.

3 156. Because Main & Prospect Capital has maintained net assets of more
4 than \$500,000 during the Relevant Period, it has been required, pursuant to
5 17 C.F.R. § 4.22(b), to distribute account statements at least monthly.
6

7 157. 17 C.F.R. § 4.22(a)(3) also requires that the monthly account
8 statement disclose any material business dealings between the pool, the pool's
9 operator, or the principals thereof that were not disclosed in the initial disclosure
10 document.
11

12 158. 17 C.F.R. § 4.22(c) also requires that CPOs (registered or required to
13 be registered) provide annual reports to investors.
14

15 159. Main & Prospect Capital has violated Commission 17 C.F.R. §
16 4.22(a)-(c) in that it failed to provide any account statements at all to investors
17 from in or around August 2014 through January 2016.
18

19 160. Main & Prospect Capital also has violated 17 C.F.R. § 4.22(b) in that
20 it has provided quarterly statements to investors after January 2016, but failed to
21 provide statements on a monthly basis as required.
22

23 161. Main & Prospect Capital also has violated 17 C.F.R. § 4.22(a)(3) by
24 failing to disclose in statements sent to investors that funds had been used in
25 material business dealings involving Adam Hewko, a principal of the CPO, namely
26
27

1 that certain investor funds had been used for the benefit of other unrelated entities
2 owned or controlled by Adam Hewko.

3 162. Main & Prospect Capital also has violated 17 C.F.R. § 4.22 failing to
4 provide investors with annual reports.
5

6 163. Adam Hewko has controlled Main & Prospect Capital, directly or
7 indirectly, and has not acted in good faith or has knowingly induced acts
8 constituting Main & Prospect Capital's violations, and is therefore liable, pursuant
9 to 7 U.S.C. § 13c(b), for Main & Prospect Capital's violations of 17 C.F.R. § 4.22.
10

11 VI. RELIEF REQUESTED

12 WHEREFORE, the Commission respectfully requests that this Court, as
13 authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and pursuant to its
14 own equitable powers:
15

16 A. Find that Defendants have violated Sections 4o(1)(A)-(B), 4k(2) and
17 6(c)(1) of the Act, 7 U.S.C. §§ 6o(1)(A)-(B), 6k(2), 9(1) (2012), and Regulation
18 180.1(a), 17 C.F.R. § 180.1(a) (2019).
19

20 B. Find that Main & Prospect Capital and Adam Hewko also have
21 violated Sections 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), and Regulations
22 4.20(a)-(c), 4.21, and 4.22, 17 C.F.R. §§ 4.20(a)-(c), 4.21, 4.22 (2019).
23

24 C. Find that Adam Hewko and Daniel Hewko also have violated
25 Regulation 3.12, 17 C.F.R. § 3.12 (2019).
26

1 D. Enter an order of permanent injunction enjoining Defendants, and
2 their affiliates, agents, servants, employees, successors, assigns, attorneys, and all
3 persons in active concert with them, who receive actual notice of such order by
4 personal service or otherwise, from directly or indirectly violating 7 U.S.C.
5 §§ 6o(1)(A)-(B), 6k(2), 9(1), and 17 C.F.R. § 180.1(a); Defendants Main &
6 Prospect Capital and Adam Hewko from also directly or indirectly violating
7 7 U.S.C. § 6m(1) and 17 C.F.R. §§ 4.20(a)-(c), 4.21, and 4.22; and Defendants
8 Adam Hewko and Daniel Hewko from also directly or indirectly violating
9 17 C.F.R. § 3.12.
10
11

12 E. Enter an order of permanent injunction restraining and enjoining
13 Defendants, and their affiliates, agents, servants, employees, successors, assigns,
14 attorneys, and all persons in active concert with them, from directly or indirectly:
15
16

- 17 (1) Trading on or subject to the rules of any registered entity (as that term
18 is defined by Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012));
- 19 (2) Entering into any transactions involving “commodity interests” (as
20 that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019)), for
21 accounts held in the name of any Defendant or for accounts in which
22 any Defendant has a direct or indirect interest;
- 23 (3) Having any commodity interests traded on any Defendant’s behalf;
- 24 (4) Controlling or directing the trading for or on behalf of any other
25
26
27

1 person or entity, whether by power of attorney or otherwise, in any
2 account involving commodity interests;

3 (5) Soliciting, receiving, or accepting any funds from any person for the
4 purpose of purchasing or selling of any commodity interests;

5
6 (6) Applying for registration or claiming exemption from registration
7 with the CFTC in any capacity, and engaging in any activity requiring
8 such registration or exemption from registration with the CFTC
9 except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)
10 (2019); and
11

12
13 (7) Acting as a principal (as that term is defined in Regulation 3.1(a),
14 17 C.F.R. § 3.1(a) (2019)), agent, or any other officer or employee of
15 any person registered, exempted from registration, or required to be
16 registered with the CFTC except as provided for in
17 17 C.F.R. § 4.14(a)(9).
18

19 F. Enter an order directing Defendants, as well as any third-party
20 transferee and/or successors thereof, to disgorge, pursuant to such procedure as the
21 Court may order, all benefits received including, but not limited to, salaries,
22 commissions, loans, fees, revenues, and trading profits derived, directly or
23 indirectly, from acts or practices which constitute violations of the Act and
24 Regulations as described herein, including pre-judgment and post-judgment
25
26
27

1 interest;

2 G. Enter an order requiring Defendants, as well as any successors
3 thereof, to make full restitution to every person who has sustained losses
4 proximately caused by the violations described herein, including pre-judgment and
5 post-judgment interest;
6

7 H. Enter an order directing Defendants and any of their successors, to
8 rescind, pursuant to such procedures as the Court may order, all contracts and
9 agreements, whether implied or express, entered into between them and any of the
10 customers whose funds were received by them as a result of the acts and practices
11 which constituted violations of the Act, as amended, as described herein;
12

13 I. Enter an order directing Defendants to pay a civil monetary penalty
14 assessed by the Court, in an amount not to exceed the penalty prescribed by
15 Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1) (2012), as adjusted for inflation
16 pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act
17 of 2015, Pub. L. 114-74, tit. VII, § 701, 129 Stat. 584, 599–600, *see* Regulation
18 143.8, 17 C.F.R. § 143.8 (2019), for each violation of the Act and Regulations, as
19 described herein;
20

21 J. Enter an order requiring Defendants to pay costs and fees as permitted
22 by 28 U.S.C. §§ 1920 and 2413(a)(2) (2012); and
23

24 K. Enter an order providing such other and further relief as this Court
25
26
27

1 may deem necessary and appropriate under the circumstances.
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VII. DEMAND FOR JURY TRIAL

The Commission hereby requests a jury trial on all issues raised in this complaint.

Date: 13 Nov 2019

Respectfully submitted,

U.S. COMMODITY FUTURES
TRADING COMMISSION

By: 

JAMES H. HOLL, III., CA Bar No. 177885
KARIN N. ROTH, *pro hac vice pending*
R. STEPHEN PAINTER, Jr., *pro hac vice pending*
Attorneys for Plaintiff

COMMODITY FUTURES
TRADING COMMISSION