

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

**UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,**

Plaintiff,

vs.

MITCHELL BRIAN HUFFMAN,

Defendant.

)
)
) Civil Action No.:
)
)
) Complaint For Injunctive and Other
) Equitable Relief and Civil Monetary
) Penalties Under The Commodity Exchange
) Act
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)
)

Plaintiff, the United States Commodity Futures Trading Commission (“Commission” or “CFTC”), by its attorneys, alleges as follows:

I. SUMMARY

1. Defendant Mitchell Brian Huffman (“Huffman” or “Defendant”), ran a commodity pool “Ponzi” scheme from at least August 2006 to March 11, 2011. Huffman told prospective and actual participants that he would invest their funds in commodity futures, and he misled prospective and actual participants about the likelihood of profits and the substantial risks involved in such investments. Huffman fraudulently solicited and accepted approximately \$3.2 million from at least 30 pool participants throughout the United States.

2. Defendant mainly solicited friends and family members by claiming that his proprietary trading program generated annual rates of return ranging between 100 to 150 percent trading in commodity futures contracts on exchange. In reality, Huffman never generated any profits trading commodity futures contracts, and Huffman only traded approximately one-half of

the money given to him by pool participants. Huffman misappropriated the remainder of participants' funds for his own personal benefit.

3. By virtue of this conduct and the conduct further described herein, Defendant cheated, defrauded and deceived prospective and actual pool participants in violation of Sections 4b(a)(2)(i)-(iii) of the Commodity Exchange Act ("CEA" or "the Act"), 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006) (with respect to conduct before June 18, 2008), Sections 4b(a)(1)(A)-(C), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010 ("WSTAA")), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C)(with respect to conduct occurring on or after June 18, 2008). Defendant also violated Sections 4m(1) and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6m(1) and 6o(1)(A) and (B) (2006).

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), the Commission brings this action to enjoin Defendant's unlawful acts and practices and to compel his compliance with the Act, as amended by the CRA, and to further enjoin Defendant from engaging in certain commodity related activity. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, restitution, disgorgement, rescission, trading and registration bans, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

II. JURISDICTION AND VENUE

5. Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006), authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

6. The Commission has jurisdiction over the transactions at issue in this case pursuant to Section 6c of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1 (2006).

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

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

III. PARTIES

9. The United States Commodity Futures Trading Commission is an independent federal regulatory agency charged by Congress with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, as amended, and the Regulations promulgated under it, 17 C.F.R. §§ 1 *et seq.* (2011). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

10. Mitchell Brian Huffman resides in Charlotte, North Carolina. In September, 2011, Huffman pled guilty to one count of commodities fraud, in violation of 18 U.S.C. § 1348,

in *U.S. v. Mitchell Brian Huffman*, Case No.: 3:11-cr-246-RJC, filed in the U.S. District Court for the Western District of North Carolina. Huffman has never been registered with the Commission in any capacity.

IV. FACTS

A. **Statutory and Regulatory Background**

11. Commission Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1) (2011), defines a pool as “any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.”

12. Commission Regulation 1.3(yy)(1), 17 C.F.R. § 1.3(yy)(1) (2011), defines the term “commodity interest” as any contract for the purchase or sale of a commodity for future delivery.

13. Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), defines a CPO in relevant part as “any person engaged in the business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility. . . .”

14. Section 4m of the Act, 7 U.S.C. § 6m (2006), prohibits anyone acting as a CPO from making use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO unless registered with the Commission in such capacity.

15. Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A) (2006), prohibits any CPO from employing any device, scheme, or artifice to defraud any client or participant or prospective

client or participant. Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) (2006), prohibits any CPO from engaging 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.

16. It is a violation of the Act for any person, in or in connection with any order to make, or the making of, any on-exchange futures contract, for or on behalf of any other person: (i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof; or (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act or agency performed with respect to such order or contract for such person. Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006) (with respect to conduct before June 18, 2008); and Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C) (with respect to conduct on or after June 18, 2008).

B. The Fraudulent Scheme

17. From at least August 2006 to March 11, 2011 (the “relevant period”), Defendant solicited prospective and actual pool participants, mainly family and friends, via in-person and direct telephone solicitations, to allow him to buy and sell exchange-traded commodity futures contracts on their behalf. During the relevant period, Huffman accepted at least \$3.2 million from participants.

18. Huffman entered into “sponsorship agreements” with pool participants wherein Huffman represented that he would use pool participants’ funds to trade commodity futures contracts on their behalf.

19. Huffman represented to participants via in-person solicitations that he utilized a “proprietary trading program” that generated annual “profits” of 100 to 150 percent per year. Huffman claimed to retain 20 percent of all purported profits from the “proprietary trading program” as a fee for his services.

20. Defendant maintained a personal bank account at Bank of America, N.A., into which he directed participants to deposit funds via wire transfer or U.S. mail. Huffman then pooled participants’ funds in his personal bank account, from which participants’ funds were transferred into trading accounts he maintained in his own name at futures commission merchants (“FCM”) TradeStation Securities, Inc., R. J. O’Brian Associates, LLC, and Gain Capital Group, LLC (collectively, “personal trading accounts”). All transfers of participants’ funds from Huffman’s personal bank account into the personal trading accounts were effected by Huffman via interstate wire transfers.

21. Huffman effected transactions in commodity futures contracts, including financial index futures contracts, agricultural futures contracts, and precious metal futures, in his personal trading accounts using approximately one-half of the \$3.2 million given to him by participants.

22. Huffman utilized the Internet and U.S. mail to transmit monthly account statements to participants. He issued monthly “Sponsorship Trading Account” statements to customers via U.S. mail or electronic transfer in which he represented to participants that he consistently generated “profits” from his commodity futures trading activity and that each participant’s account was trading profitably.

23. All of Huffman’s representations of “profits” from trading commodity futures contracts were false. The claimed rates of return set forth in the monthly account statements Huffman sent to participants were completely fictitious. In fact, Huffman never generated the

“profits” represented in the monthly account statements, and all of the personal commodity accounts closed with significant losses.

24. Specifically, of the \$3.2 million Huffman fraudulently obtained from participants, Huffman used only approximately \$1.7 million to effect trades in his personal commodity accounts.

25. Huffman traded a variety of exchange-traded futures contracts in his personal trading accounts, including futures contracts on stock indexes, agricultural contracts, and precious metal contracts. Huffman suffered massive losses in these accounts using participants’ funds, and by the end of his fraudulent scheme, only \$57,000 of participant funds remained.

26. Huffman concealed these losses from participants by providing false monthly statements which reflected profits from purportedly successful trading activity, and paying participants purported “profits” totaling at least \$834,160. All of these payments to participants came from other participants’ funds.

27. Unknown to participants, Huffman misappropriated participants’ funds for a variety of personal uses, including but not limited to: (1) purchasing multiple motor vehicles for his personal use, including two Land Rovers and a Smart Car; (2) at least \$71,255 on purchases related to Huffman’s classic car collection; (3) approximately \$188,583 on personal travel and luxury vacations, including Disney cruises and first class airfare to Hawaii and Las Vegas, Nevada; and (4) approximately \$51,540 in charitable contributions in Huffman’s name.

28. The trip to Hawaii was a twenty-fifth wedding anniversary celebration for Huffman. Huffman brought along several pool participants on the trip to Hawaii, purportedly at his own expense. Huffman never disclosed to these participants that he was using their funds to pay for the luxury vacation.

29. When Huffman could no longer sustain his fraudulent scheme, he admitted to special agents of the Charlotte, North Carolina office of the Federal Bureau of Investigation the fraudulent scheme described above and his participation therein.

30. Huffman acted as a CPO because during the relevant period he engaged in a business that was of the nature of an investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received from participants, funds, securities, or property for the purpose of trading in commodities for future delivery on or subject to the rules of a contract market or derivatives transaction execution facility. At no time during the relevant period was Huffman registered as a CPO or exempt from the requirement to register as a CPO.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

VIOLATIONS OF SECTIONS 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), and SECTIONS 4b(a)(1)(A)-(C) OF THE ACT, AS AMENDED BY THE CRA, TO BE CODIFIED AT 7 U.S.C. §§ 6b(a)(1)(A)-(C): (Fraud in Connection with Exchange-Traded Futures Contracts)

31. The allegations set forth in paragraphs 1 through 30 are realleged and incorporated herein by reference.

32. Prior to being amended by the CRA, Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), made it unlawful for any person to (i) cheat or defraud or attempt to cheat or defraud; (ii) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof; or (iii) willfully deceive or attempt to deceive by any means whatsoever other persons in or in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts

for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof, in connection with acts occurring before June 18, 2008.

33. Similarly, Section 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), prohibits 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 person (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; or (C) willfully to deceive or attempt to deceive the other person by any means whatsoever 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, in connection with acts occurring on or after June 18, 2008.

34. During the relevant period, Defendant Huffman made material misrepresentations and/or omissions to participants and/or prospective participants, all in violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), with respect to acts occurring before June 18, 2008, and Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), with respect to acts occurring on or after June 18, 2008, including but not limited to:

- a. Misrepresenting the profitability of the pool;

- b. Misrepresenting that all customer funds were used to effect transactions in commodity futures contracts for the benefit of customers;
- c. Failing to disclose to participants that he was misappropriating participant funds for his personal use and enjoyment; and,
- d. Failing to advise actual and prospective pool participants that he was not registered as a CPO as required by the Act and was operating the pool without the required CPO registration.

35. During the relevant period, Defendant Huffman issued false statements to participants and/or prospective participants, all in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. §§ 6b(a)(2)(ii)(2006), with respect to acts occurring before June 18, 2008, and Section 4b(a)(1)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(B), with respect to acts occurring on or after June 18, 2008.

36. Defendant Huffman engaged in the acts and practices described above willfully, knowingly or with reckless disregard for the truth.

37. Each misrepresentation and/or omission of material fact and each false account statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008.

COUNT TWO

VIOLATIONS of SECTIONS 4o(1)(A) and (B) OF THE ACT, 7 U.S.C. §§ 6o(1)(A) and (B) (2006): (Fraud by a Commodity Pool Operator)

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

39. Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 4o(1)(A) and (B) (2006) in relevant part, prohibit CPOs and their APs, 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 participant or prospective participant; or (B) to engage in any transaction, practice or course of business that operates as a fraud or deceit upon any participant or prospective participant.

40. During the relevant period, Huffman, while acting as a CPO, violated Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (2006), in that he employed devices, schemes or artifices by use of the mails or other means or instrumentalities of interstate commerce to defraud pool participants or prospective pool participants, or engaged in transactions, practices or a course of business which operated as a fraud or deceit upon pool participants or prospective pool participants. In particular, Huffman, made or caused to be made to participants and prospective participants misrepresentations and/or omissions of material fact, and false reports or statements, all in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (2006), including but not limited to:

- a. Misrepresenting the profitability of the pool;
- b. Misrepresenting that all customer funds were used to effect transaction in commodity futures contracts for the benefit of customer;
- c. Failing to disclose to participants that he was misappropriating participant funds for his personal use and enjoyment;
- d. Issuing false account statements to participants; and,

e. Failing to disclose to actual and prospective pool participants that he was not registered as a CPO as required by the Act and was operating the pool without the required CPO registration.

41. Defendant Huffman engaged in the acts and practices described above willfully, knowingly or with reckless disregard for the truth.

42. Each misrepresentation and/or omission of material fact and each false account statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (2006).

COUNT THREE

VIOLATIONS of SECTION 4m(1) of the ACT, 7 U.S.C. § 6m(1) (2006): (Acting as a Commodity Pool Operator without Registration)

43. The allegations of paragraphs 1 through 42 are realleged and incorporated herein by reference.

44. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), prohibits anyone acting as a CPO from making use of the mails or any means or instrumentality of interstate commerce in connection with his business as such commodity pool operator unless registered with the Commission as a CPO.

45. As set forth above, during the relevant period, in or in connection with his business as a CPO, Defendant Huffman made use of the mails or a means or instrumentality of interstate commerce but was not registered as a CPO under the Act or entitled to a valid exemption from the requirement to register as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

46. Each use of the mails or a means or instrumentality of interstate commerce without registering 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) (2006).

VI. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers, enter:

1. An order finding that Huffman violated: Sections 4b(a)(2)(i)-(iii) of the Act, with respect to acts occurring before June 18, 2008, Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, with respect to acts occurring on or after June 18, 2008; Sections 4m(1), 4o(1)(A) and 4o(1)(B) of the Act;

2. An order of permanent injunction prohibiting Huffman and any of his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with him, including any successor thereof, from engaging, directly or indirectly in any conduct that violates Sections 4b(a)(1)(A)-(C), as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), and Sections 4m(1), 4o(1)(A), and 4o(1)(B) of the Act, 7 U.S.C. § 6m(1), 6o(1)(A) and 6o(1)(B) (2006);

3. An order of permanent injunction prohibiting Huffman and any of his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendant, including any successor thereof, from engaging, directly or indirectly, in:

- a. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a);
- b. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2011) (“commodity options”), security futures products, and/or forex contracts for his own personal account or for any account in which he has a direct or indirect interest;

- c. having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on his behalf;
- d. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
- e. soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
- f. 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and
- g. acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

4. An order rescinding the participant agreements and directing Defendant to make full restitution to every person or entity whose funds Defendant received or caused another person or entity to receive as a result of acts and practices that constituted the violations of the Act, as described herein, and pre-judgment interest thereon from the date of such violations and post-judgment interest;

5. An order requiring Defendant to disgorge to any officer appointed or directed by the Court all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre- and post-judgment interest;

6. An order directing Defendant to pay a civil monetary penalty in the amount of the higher of \$130,000 for each violation of the Act committed or triple the monetary gain to Defendant for each violation of the Act described herein occurring before October 23, 2008, and a civil monetary penalty in the amount of the higher of \$140,000 for each violation of the Act

committed or triple the monetary gain to Defendant for each violation of the Act described herein occurring on or after October 23, 2008, plus post-judgment interest;

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

8. Such other and further relief as the Court deems proper.

Date: February 6, 2012

Respectfully submitted by,

S/ Timothy J. Mulreany

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