

futures since its inception in 1995; and (3) falsely representing, and grossly inflating, the total amount of funds under management and traded in the commodity pool.

3. Contrary to his representations, Forte traded only a small portion of pool participant funds in a commodity futures trading account for the pool, and over a ten year period, from 1998 to the present, he sustained trading losses of more than \$3 million in that account.

4. Instead of trading pool participant funds as promised, by his own admission, Forte used pool participant funds, estimated by Forte to be \$15 to \$20 million, to pay principal and purported profitable returns to existing pool participants in a manner typical of a Ponzi scheme and to pay business expenses. By his own admission, Forte misappropriated at least \$10 to \$12 million of pool participant funds for his personal use, claiming those funds as purported management and incentive fees based on false profitable returns achieved for the commodity pool. The total purported management and incentive fees throughout the relevant period, however, were more than \$28 million.

5. To conceal his trading losses, Ponzi scheme and misappropriation, Forte issued or caused to be issued false monthly statements and other reports which reflected profitable returns from trading commodity futures on behalf of the pool and that the pool was increasing in value and assets, eventually totaling more than \$154 million.

6. In late December 2008, Forte admitted to federal criminal and civil authorities that he had sustained trading losses, and used the pool participant funds for business expenses, to repay pool participants and pay himself management and incentive fees of more than \$10 million, though the total fees paid to himself may equal more than \$28 million based on the false inflated value and returns of the pool.

7. Through his ongoing conduct, Forte has engaged, is engaged, or is about to engage in acts and practices in violation of the anti-fraud provisions of Sections 4b(a)(2) and 4o(1) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 6(b)(a)(2) and 6o(1) (2006), and Section 4b(a)(1) of the Act as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act (“CRA”)), § 13102, 122 Stat. 1651 (effective June 18, 2008), to be codified at 7 U.S.C. § 6(b)(a)(1). Forte also acted as a CPO of the commodity pool without being registered as such in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

8. 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. In addition, the Commission seeks civil monetary penalties and other equitable relief, including restitution to pool participants, disgorgement of Defendant’s ill-gotten gains, a permanent trading ban, and such other relief as the Court may deem necessary or appropriate.

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

II. JURISDICTION AND VENUE

10. The Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), which 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 any provision of the Act or any rule, regulation, or order thereunder.

11. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), in that Defendant is found in, inhabits, or transacts business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places.

III. PARTIES

12. **Plaintiff Commodity Futures Trading Commission** is a federal independent regulatory agency charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), and the Regulations thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2008).

13. **Defendant Joseph S. Forte** is an individual who resides in Broomall, Pennsylvania. Forte is the general partner of Forte LP and controls the day to day operations of the pool. Forte has never been registered with the Commission as a CPO or in any other capacity.

IV. FACTS

Formation of the Pool (Forte LP)

14. Since February 1995, Forte has fraudulently operated a commodity pool, ran a Ponzi scheme, and misappropriated pool participant funds.

15. In February 1995, Forte and three other individuals decided to form Forte LP in order to pool funds for the purpose of trading commodity futures. Forte was and is the general partner, and three other individuals were the first limited partners - or the pool participants - of Forte LP. The other three individuals decided to form Forte LP and participate in the commodity pool after Forte represented that since 1988, he had been successfully trading commodity futures.

16. On February 28, 1995, Forte and the initial three limited partners created a limited partnership, Forte LP. The four partners pooled together approximately \$200,000 to fund

the limited partnership, thereby creating a commodity pool to trade commodity futures.

According to a Limited Partnership Agreement (“LP Agreement”) for the Forte LP, the Forte LP’s purpose is to “form a fund to invest in securities futures.” In setting forth the authority of Forte as the general partner, the LP Agreement authorizes him “[t]o manage the fund in order to leverage bond, currency, stock index and commodity futures markets with the aim of providing access to both the long and short portions of such markets.” An offering memorandum provided to at least one subsequent limited partner or pool participant identifies the following commodity futures contracts the pool might trade: S&P 500 stock index futures, foreign currency futures, U.S. 30-year Treasury bond futures, foreign bond futures and metal futures.

17. Pursuant to the partnership agreement, Forte is to be paid a management fee of 2% of the value of the fund and an “incentive fee,” which is a sliding scale percentage of all of the pool’s earnings above 3%.

18. Forte is the unregistered CPO of Forte LP. Forte receives, accepts and pools funds from individuals and entities to trade commodity futures contracts. According to the LP Agreement, as general partner, Forte has the sole and exclusive control of the Forte LP. Forte makes day to day decisions concerning the operation of the partnership, including the opening and maintenance of any trading accounts, the trading of pool participant funds and the handling and disposition of pool participant funds.

Forte’s Fraudulent Solicitation and Trading Losses

19. Pool participants execute the LP Agreement as a new limited partner in the Forte LP. Forte accepts and deposits funds from prospective and existing pool participants into bank accounts held in the name of the pool. According to Forte’s admissions, Forte directly and

indirectly successfully solicited approximately \$50 million from at least 76 individuals and entities to participate in the pool.

20. Forte solicits prospective participants directly and through others. As alleged below, Forte had made and makes numerous material misrepresentations and omissions concerning his trading, the operations of Forte LP, and his use of pool participants' funds.

21. In soliciting prospective and existing participants, Forte directly and through others represents that he will use pool participant funds to trade commodity futures on their behalf, specifically, S&P 500 futures contracts. The S&P 500 futures contract trades on the Chicago Mercantile Exchange, a designated commodity futures contract market regulated by the CFTC.

22. Forte falsely represents, directly and indirectly, that he is a successful trader, that the pool is consistently profitable, achieving positive returns of approximately 20% to more than 36% annually, and that, over time, the pool has increased in value to more than \$154 million.

23. For example, Forte approved a solicitation memorandum directed to a church in which the following eight-year annual return and dollar amount of capital in the fund was included:

1998:	34.84%	(\$1,850,669)
1999:	36.19%	(\$4,736,164)
2000:	35.72%	(\$8,909,548)
2001:	31.67%	(\$23,557,875)
2002:	28.75%	(\$52,130,025)
2003:	23.57%	(\$64,230,784)
2004:	19.99%	(\$81,217,565)
2005:	18.52%	(\$91,625,519)
2006:	20.11%	(\$107,066,941)

24. Contrary to his claims of successful trading, and as he admitted, Forte was not a successful trader either for himself or for the pool.

25. Prior to and subsequent to the formation of the pool, Forte sustained overall net losses of trading commodity futures in personal trading accounts.

26. Since at least 1995, Forte controlled a commodity futures trading account in the name of Forte LP at MF Global, formerly known as Man Financial. MF Global is a futures commission merchant (“FCM”) registered with the CFTC. This is the only known trading pool account under the control of Forte. Since at least September 2001, Forte also has held a personal commodity futures trading account at MF Global or its predecessors.

27. Throughout the relevant period, Forte transferred at least \$25.8 million of pool participant funds into the Forte LP pool trading account. In that account, Forte traded almost exclusively S&P 500 futures contracts but also other commodity futures contracts.

28. From inception, by his own admission, Forte sustained overall losses trading in the pool’s trading account. Based on available FCM records, over a ten-year period, from 1998 through present, Forte had net trading losses of more than \$3 million. In his personal trading account, Forte conducted minimal trading and sustained overall losses of \$68,000.

29. During certain periods throughout the relevant period, Forte engaged in no trading in the pool’s trading account. For example, from October 2004 through July 2007, Forte conducted minimal to no trading in the account. During that period, he deposited \$2.2 million and withdrew \$15.7 million. Throughout the relevant period, Forte withdrew at least \$23 million. The disposition of those withdrawn funds is unknown at this time.

30. For approximately five years, between October 2002 and February 2007, no funds were deposited into the commodity pool’s trading account.

Forte’s False Statements and Misappropriation

31. Throughout the relevant period, by his own admission, Forte used pool participant funds to pay principal or purported profits to existing pool participants, for business expenses, and for personal use. By his estimation, Forte used approximately \$15 to \$20 million of pool funds to pay existing pool participants.

32. From inception and throughout the relevant period, Forte issued or caused to be issued false quarterly account statements to the pool participants. Those false statements reflect that the value of the pool was steadily and consistently increasing in value by achieving profitable returns of approximately 20% to more than 36% annually from Forte's trading. Most recently, Forte represented that the value of the pool had grown to over \$154 million.

33. The false account statements Forte issued or caused to be issued also reflect that Forte purportedly never had a losing quarter trading commodity futures for the pool.

34. Forte also issued or caused to be issued federal tax forms to pool participants setting out each participant's purported taxable profits from the pool.

35. Prospective pool participants decided to participate in the commodity pool and existing pool participants decided to increase their participation based on the consistently profitable returns. For example, one existing participant received a statement reflecting that, as of September 2008, his interest in the pool was valued at over \$16 million. Based on that statement, between September and December 2008, the pool participant invested an additional \$570,000 in the pool.

36. Throughout the relevant period, despite sustaining trading losses, Forte, by his own admission, paid himself management and incentive fees based on the artificial values of the fund and returns Forte caused to be reported to pool participants. Forte estimates that he took \$10 to \$12 million of pool participant funds as his purported fees based on the fraudulently

inflated value of the pool and its earnings. Based on the false account statements, the management and incentive fees totaled more than \$28 million.

37. On December 22, 2008, Forte admitted in a written confession to a United States Postal Inspector that he had lost pool participants' funds trading commodity futures, that he used pool participant funds to pay other participants and for business expenses, and that he paid himself over \$10 million based on false earnings.

38. All pool participants' funds have not been accounted for or located.

V. VIOLATIONS OF THE ACT

COUNT ONE

Fraud in Connection with Futures Contracts

(Violations of Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2006), and Section 4b(a)(1) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 4b(a)(1))

39. Paragraphs 1 through 38 are realleged and incorporated herein.

40. Commencing in at least February 1995, Forte has been knowingly, willfully or recklessly (1) cheating or defrauding or attempting to cheat or defraud other persons; (2) making or causing or causing to be made false reports or statements to such other persons; and/or (3) deceiving or attempting to deceive such other persons, in or in connection with orders to make, or the making of, any commodity for future delivery, for or on behalf of such persons, in 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 in violation of Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, the effective date of the CRA.

41. As alleged above, during the relevant period, Forte knowingly, willfully or with reckless disregard for the truth, violated Section 4b(a)(2) of the Act and Section 4b(a)(1) of the

Act as amended by the CRA by, among other things, (1) falsely claiming to be a successful commodity futures trader; (2) falsely representing that he was profitably trading on behalf of the pool and pool participants; (3) issuing or causing to be issued false account statements and reports reflecting positive returns for the pool and increases in the value of individual pool participants' interests; (4) using pool participant funds to pay principal and purported returns to other pool participants; and (5) misappropriating pool participant funds to pay business expenses and for personal use.

42. Each misrepresentation or omission of material fact, issuance of a false statement or report, and misappropriation, 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

Fraud By Commodity Pool Operator

(Violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006))

43. Paragraphs 1 through 42 are realleged and incorporated herein.

44. Commencing in at least February 1995 and continuing through the present, Forte acted as a CPO for the pool by soliciting, accepting or receiving funds from others and engaging in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in commodities for future delivery on or subject to the rules of a contract market.

45. As alleged above, during the relevant period, Forte employed a device, scheme or artifice to defraud prospective and existing pool participants, or engaged in a transaction, practice or course of business that operated as a fraud or deceit upon prospective and existing pool participants in violation of Section 4q(1) of the Act, 7 U.S.C. § 6q(1) (2006), by (1) falsely claiming to be a successful commodity futures trader; (2) falsely representing that he was profitably trading on behalf of the pool and pool participants; (3) issuing or causing to be issued false account statements and reports reflecting positive returns for the pool and increases in the value of individual pool participants' interests; (4) using pool participant funds to pay principal and purported returns to other pool participants; and (5) misappropriating pool participant funds to pay business expenses and for personal use.

46. Each misrepresentation or omission of material fact, issuance of a false statement or report, and misappropriation, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4q(1) of the Act, 7 U.S.C. § 6q(1) (2006).

COUNT THREE

Failure to Register As a Commodity Pool Operator

(Violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1))

47. Paragraphs 1 through 46 are realleged and incorporated herein.

48. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), provides that it is unlawful for any CPO, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as a CPO.

49. As alleged, during the relevant period, Forte acted as a CPO within the meaning of Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), and has used the mails or instrumentalities

of interstate commerce in or in connection with a commodity pool as a CPO while failing to register as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

VI. RELIEF

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

(a) an order finding that Defendant violated: Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006); 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); and Sections 4o(1) and 4m(1) of the Act, 7 U.S.C. §§ 6o(1) and 6m(1) (2006);

(b) an order of permanent injunction prohibiting Defendant, and any other person or entity associated with him, including any successor thereof, from engaging in conduct violative of the sections of the Act that he has been alleged to have violated;

(c) an order of permanent injunction prohibiting Defendant from engaging, directly or indirectly, in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (“commodity interest”), including but not limited to, the following:

1. trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);
2. engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;
3. soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest;

4. entering into any commodity interest transactions for his own personal account, for any account in which he has a direct or indirect interest and/or having any commodity interests traded on his behalf; and

5. engaging in any business activities related to commodity interest trading.

(d) an order of permanent injunction from applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2008), or acting as a principal, agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2008);

(e) an order directing Defendant, as well as any other person or entity associated with him, including any successor thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act, as described herein, and interest thereof from the date of such violations;

(f) an order directing Defendant, as well as any other person or entity associated with him, including any successor thereof, to make full restitution, pursuant to such procedure as the Court may order, to every pool participant whose funds were received by them as a result of acts and practices which constitute violations of the Act, as described herein, and interest thereon from the date of such violations;


(g) an order imposing upon Defendant a civil penalty pursuant to § 6c(d)(1), 7 U.S.C. 13a-1 (2006), and Regulation 143.8, 17 C.F.R. § 143.8 (2008); and

(h) an order for such other and further remedial ancillary relief as the Court may deem appropriate.

January 7, 2009

Respectfully submitted,

PLAINTIFF UNITED STATES COMMODITY
FUTURES TRADING COMMISSION

A handwritten signature in black ink, appearing to read 'Luke Marsh', is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long, sweeping tail.

By: s/ Luke Marsh

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