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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 U. S. COMMODITY FUTURES
21 TRADING COMMISSION,

22 Plaintiff,

23 vs.

24 MICHAEL J. LEIGHTON,

25 Defendant

CV12-4012 PSG (SSK)

Civil Action No:

Judge:

COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE RELIEF
AND PENALTIES UNDER THE
COMMODITY EXCHANGE ACT,
AS AMENDED

1
2 The United States Commodity Futures Trading Commission (the
3 “Commission” or the “CFTC”), by and through its attorneys, alleges as follows:
4

5 **I. JURISDICTION AND VENUE**

6 1. This Court has jurisdiction over this action pursuant to the
7 Commodity Exchange Act, as amended (“Act”), to be codified at 7 U.S.C. §§ 1
8 *et seq.*¹ This Court also has jurisdiction over the subject matter of this action and
9 the defendant pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006),
10 which authorizes the Commission to seek injunctive relief against any person
11 whenever it shall appear that such person has engaged, is engaging, or is about to
12 engage in any act or practice constituting a violation of any provision of the Act or
13 any rule, regulation, or order thereunder.
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17 2. Venue properly lies with this Court pursuant to Section 6c(e) of the
18 Act, 7 U.S.C. § 13a-1(e) (2006), in that defendant is found in, inhabits and/or
19 transacts or has transacted business in this District, and defendant’s acts and
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24 ¹ The Commodity Exchange Act, as amended by the Food, Conservation, and
25 Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization
26 Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008)
27 and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,
28 Pub. L. No. 111-203 (“Dodd-Frank Act”), Title VII (the Wall Street Transparency
and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 16,
2010).

1 practices in violation of this Act have occurred, are occurring, and/or are about to
2 occur within this District, among other places.

3 4 **II. INTRODUCTION**

5 3. Defendant Michael J. Leighton (“Leighton”) has engaged, is
6 engaging, or is about to engage in acts and practices that have defrauded and
7 deceived or will defraud or deceive at least 42 participants who invested at least
8 \$1.6 million in a commodity pool (the “Leighton pool”) that he operated from at
9 least July 2008 and continuing through the present.
10

11
12 4. Leighton has solicited and accepted pool participant funds in his own
13 name and commingled pool funds intended for commodity trading with his
14 personal funds.
15

16 5. Further, Leighton willfully or recklessly has made misrepresentations
17 of material fact to pool participants, including, but not limited to,
18 misrepresentations that: (1) the pool trading was profitable, and (2) a regulatory
19 audit prevented him from making any distributions or payments to pool
20 participants or from returning participant funds upon request, when in fact no such
21 audit had occurred. Leighton also has issued false written statements to pool
22 participants regarding the profitability and value of their respective shares of the
23 Leighton pool.
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1 February 2011, Leighton had most, if not all, Leighton pool participants execute
2 the Agreement and Certificate of Limited Partnership of S&P Investment
3 Partnership, LP (the “S&P Partnership Agreement”). Leighton used the S&P
4 Partnership as a vehicle to solicit funds from pool participants and prospective
5 participants, and used S&P Partnership funds to operate the Leighton pool.
6

7
8 13. The National Futures Association (“NFA”) is a registered futures
9 association pursuant to Section 17 of the Act, 7 U.S.C. § 21 (2006), that performs
10 several regulatory functions on behalf of the Commission, including registration
11 processing pursuant to Regulation 3.2, 17 C.F.R. § 3.2 (2011).
12

13
14 14. The CME Group, Inc. (“CMEG”) is a designated contract market as
15 defined in Regulation 1.3(h), 17 C.F.R. § 1.3(h) (2011), whose functions include
16 conducting periodic audits of its clearing members.
17

18 V. STATUTORY BACKGROUND

19 15. A “commodity pool” is defined in Section 1a(10)(A) of the Act, as
20 amended, to be codified at 7 U.S.C. § 1a(10)(A), as “any investment trust,
21 syndicate or similar form of enterprise operated for the purpose of trading in
22 commodity interests.”
23

24
25 16. A “commodity pool operator” or “CPO” is defined in Section
26 1a(11)(A) of the Act, as amended, to be codified at 7 U.S.C. § 1a(11)(A), as any
27 person “engaged in a business that is of the nature of a commodity pool,
28

1 investment trust, syndicate, or similar form of enterprise, and who, in connection
2 therewith, solicits, accepts or receives from others, funds, securities, or property. . .
3 for the purpose of trading in commodity interests,” including any “commodity for
4 future delivery.”

6 17. A “commodity trading advisor” or “CTA” is defined in Section 1a(12)
7 of the Act, as amended, to be codified at 7 U.S.C. § 1a(12), as any person who,
8 “for compensation or profit, engages in the business of advising others . . . as to the
9 value or the advisability of” trading in any commodity futures and options contract.
10
11

12 18. A “participant” is defined in Regulation 4.10(c), 17 C.F.R. § 4.10(c)
13 (2011), as “any person that has any direct financial interest in a [commodity] pool
14 (e.g. a limited partner).”
15

16 19. A “futures commission merchant” or “FCM” is defined in Section
17 1a(28) of the Act, as amended, to be codified at 7 U.S.C. § 1a(28), as any
18 individual, association, partnership, corporation or trust that is engaged in
19 soliciting or accepting orders for the purchase or sale of any commodity for future
20 delivery and, in or in connection with such solicitation or acceptance of orders,
21 “accepts any money, securities or property (or extends credit in lieu thereof) to
22 margin, guarantee, or secure any trades or contracts that result or may result
23 therefrom.”
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1 deposited those funds into the Leighton bank account, where they were
2 commingled with funds belonging to Leighton and/or his wife. Leighton
3 transferred participant funds from the Leighton bank account to the futures trading
4 accounts discussed in paragraphs 24 through 37, below.

6 23. In or before July 2010, Leighton opened a bank account in the name
7 of S&P Investment Partnership LP with City National Bank (“the “S&P bank
8 account”). Leighton has at all relevant times maintained exclusive control over the
9 S&P bank account. After July 2010, certain Leighton pool participants made their
10 funds payable to S&P Partnership, and Leighton deposited those funds into the
11 S&P bank account. Leighton transferred participant funds from the S&P bank
12 account to the futures trading accounts discussed in paragraphs 24 through 37,
13 below.

17
18 **B. The Leighton Pool’s Commodity Futures Trading Accounts and**
19 **Trading Losses**

20 24. As part of the Leighton pool enterprise, Leighton has opened,
21 managed and controlled at least three commodity futures trading accounts at one
22 FCM, and two other accounts at a second FCM. Leighton opened four of the
23 accounts in his own name, and one account in the name of S&P Partnership.

25 25. Specifically, in April 2008, Leighton opened a futures trading account
26 in his own name, account number xxx x334A (the “334A Account”). In the
27 account opening documents, Leighton falsely represented that all funds deposited
28

1 in the x334A Account were and would be his personal funds, that funds would not
2 be solicited from any third party, and that no third party had or would have any
3 direct or indirect ownership or financial interest in those funds or in any contracts,
4 currencies, financial instruments or other property purchased with or through the
5 use of such funds.
6

7
8 26. In connection with the opening of the 334A Account, Leighton
9 executed an agreement for a license to use the FCM's proprietary software and
10 data for online trading (the "OTS System"). In that agreement, Leighton
11 represented that he was a non-professional subscriber entering into the agreement
12 in his "own individual capacity and not on the behalf of a firm, corporation,
13 partnership, trust or association."
14

15
16 27. Upon information and belief, Leighton began depositing participant
17 funds into the 334A Account in approximately July 2008. Leighton entered trade
18 orders for this account through the OTS System. Leighton last actively traded the
19 334A Account in June 2009.
20

21
22 28. Between April 24, 2008 and June 30, 2009, Leighton deposited
23 \$175,962.70 into the 334A Account. Upon information and belief, most if not all
24 of those deposits were funds contributed by Leighton pool participants. During
25 that same period, Leighton lost \$146,799.66, including commissions and fees,
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1 trading the 334A Account, and withdrew a total of \$29,163.04 from the account.

2 Leighton lost money in 10 of the 11 months that he actively traded the account.

3
4 29. In June 2009, Leighton opened a second futures trading account in his
5 own name, account number xxx x203A (the "203A Account"). In the account
6 opening documents, Leighton represented that the 203A Account was identical in
7
8 all respects to the 334A Account. Leighton also entered trade orders for this
9 account through the OTS System. Leighton last actively traded the account in June
10 2010.

11
12 30. Between June 9, 2009 and June 30, 2010, Leighton deposited
13 \$586,846.45 into the 203A Account. Upon information and belief, most if not all
14 of those deposits were funds contributed by Leighton pool participants. During
15 that same period, Leighton lost \$379,100.40, including commissions and fees,
16 trading the account, and withdrew a total of \$216,307.30 from the account.
17
18 Leighton lost money in 11 of the 12 months that he actively he traded the 203A
19 Account.
20

21
22 31. In January 2010, Leighton opened a futures trading account in the
23 name of S&P Partnership, account number xxx x6483 (the "6483 Account"). In
24 the account opening documents, Leighton represented that the S&P Partnership
25 was an investment club with net assets between \$500,000 and \$999,999. Leighton
26 identified himself as the general partner of the S&P Partnership and primary
27
28

1 authorized representative for the account, and identified his wife, Patricia, as a
2 trustee and partner of S&P Partnership and an associated person for the account.
3
4 Leighton also provided the FCM with a copy of the S&PII Agreement. Leighton
5 again entered trade orders for the account on behalf of the Leighton pool through
6 the OTS System.

7
8 32. Leighton did not deposit funds into, or begin trading, the 6483
9 Account until July 2, 2010, and last actively traded the account in January 2012.
10 During that period, Leighton deposited \$747,205 into the 6483 Account. Upon
11 information and belief, most if not all of those deposits were funds contributed by
12 Leighton pool participants. Leighton also lost \$661,727.72, including
13 commissions and fees, trading the 6483 Account, and withdrew a total of
14 \$85,477.28 from the account. Leighton lost money in 18 of the 19 months that he
15 actively traded the 6483 Account.
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19 33. In addition to the three trading accounts discussed above, Leighton
20 also opened, managed and controlled two additional trading accounts at a second
21 registered FCM. Specifically, in October 2008, Leighton opened a futures trading
22 account in his own name, account number xx2100 (the "2100 Account"). In the
23 account opening documents, Leighton falsely represented that the 2100 Account
24 was an individual account. Leighton entered trade orders for the 2100 Account
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1 through a proprietary software and data for online trading (the "RT System").
2 Leighton last actively traded the 2100 Account in August 2009.

3
4 34. Between October 27, 2008 and August 3, 2009, Leighton deposited
5 \$125,863 into the 2100 Account. Upon information and belief, most if not all of
6 those deposits were funds contributed by Leighton pool participants. During that
7 same period, Leighton lost \$110,788.40, including commissions and fees, trading
8 the 2100 Account, and withdrew a total of \$15,075.00 from the account. Leighton
9 lost money in 4 of the 5 months that he actively traded the 2100 Account.
10
11

12 35. In January 2012, Leighton opened a futures trading account in his own
13 name, account number xx7805 (the "7805 Account"). In the account opening
14 documents, Leighton falsely represented that the 7805 Account was an individual
15 account. Leighton entered trade orders for the 7805 Account through the RT
16 System. Leighton last actively traded the 7805 Account in February 2012.
17
18

19 36. Between January 12, 2012 and February 29, 2012, Leighton deposited
20 \$22,150.00 into the 7805 Account. Upon information and belief, most if not all of
21 those deposits were funds contributed by Leighton pool participants. During that
22 same period, Leighton lost \$21,028.58, including commissions and fees, trading
23 the 7805 Account, and withdrew a total of \$1,121.42 from the account. Leighton
24 lost money in both of months that he actively traded the account.
25
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1 37. Through the OTS System, Leighton had constant access to
2 information regarding the 334A, 203A and 6438 Accounts, including all open
3 positions and account balances. Similarly, through the RT System, Leighton had
4 constant access to information regarding the 2100 and 7805 Accounts, including
5 all open positions and account balances. Additionally, Leighton received or had
6 access to monthly statements from both FCMs which showed, among other things,
7 all open positions, the profits or losses resulting from trading, and the month-end
8 trade balances for those accounts.
9

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11
12 38. Overall, during the lifetimes of the five trading accounts described in
13 paragraphs 24 through 37, above, Leighton deposited at least \$1,658,027.50 into
14 the accounts and lost \$1,319,444.76, including commissions and fees, through
15 trading.
16

17
18 39. Despite these actual losses, Leighton either willfully or recklessly
19 issued false written statements to pool participants regarding the profitability and
20 value of their respective shares of the Leighton pool. Leighton made these false
21 statements through emails or other written statements issued by himself and/or
22 S&PII. Among the more egregious false statements Leighton issued to pool
23 participants are the following:
24
25

- 26 (a) that the Leighton pool had a 10.84% or 11.56% return, and a 10 to
27 2 winning trade ratio, for the month of November 2009, when in
28 fact Leighton had lost \$82,696.10 through trading the 203A
account, resulting in a negative return;

1 (b) that the Leighton pool had a 14.07% return, and a 12 to 3 winning
2 trade ratio, for the month of March 2010, when in fact Leighton
3 had lost \$54,622.20 through trading the 203A resulting in a
4 negative return; and

5 (c) that the Leighton pool had a 3.85% return, and a 8 to 3 winning
6 trade ratio, for the month of January 2011, when in fact Leighton
7 had lost \$28,822.26 through trading the 6483 account, resulting in
8 a negative return.

9 40. Further, Leighton distributed to certain pool participants written
10 monthly statements purportedly issued by the FCM carrying the 334A, 203A and
11 6438 Accounts, which were in fact total fabrications. For example, in February
12 2012 and during an in person meeting, Leighton provided at least two participants
13 with a monthly statement for the 6483 Account for the period of December 2011
14 (the "Fake FCM Statement"), and falsely represented that the FCM had prepared
15 and issued the statement. The Fake FCM Statement reflected an account ending
16 balance of \$4,674,581.28, when, in fact, the ending balance for the 6483 Account
17 as of December 30, 2011 was only \$3,902.54. Upon information and belief,
18 Leighton prepared the Fake FCM Statement and other similar documents not
19 specifically identified herein with knowledge that the account balance was a total
20 fabrication.
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25 41. Upon information and belief, Leighton also utilized a component of
26 the OTS System commonly known as a "Simulator Account" to falsely represent
27 the value and performance of at least one Leighton pool trading account. A
28

1 Simulator Account is designed to allow customers to practice trading on the OTS
2 System, and therefore does not reflect actual trades or funds. In an email dated
3 January 5, 2012 and accompanying attachment that purported to be a screen shot of
4 the 6483 Account (and was in fact a screen shot of a Simulator Account), Leighton
5 falsely represented to at least one participant that the account had a real-time cash
6 balance and beginning day account equity of \$2,614,547.60. In fact, the 6483
7 Account had a balance of less than \$3,000 on January 5, 2012.
8
9

10 42. In sum, Leighton, either willfully or recklessly, has continuously
11 failed to disclose his actual trading losses to pool participants, and has
12 continuously made false statements to pool participants regarding the profitability
13 and value of their respective shares of the Leighton pool.
14
15

16 **C. The Fake NFA Audit, Fabricated CMEG Review and Formation of**
17 **the S&P Partnership**

18 43. Beginning on or before July 12, 2010 and continuing through at least
19 January 17, 2012, Leighton misrepresented to pool participants, in emails, phone
20 calls, and in-person meetings, that the NFA was conducting an audit of Leighton
21 and the Leighton pool, when in fact the NFA did not conduct any such audit of
22 Leighton or any commodity pool that he operated. Leighton further falsely
23 asserted that the ongoing audit prevented him from making any distributions or
24 cash withdrawals to pool participants, but generally did allow Leighton to continue
25 trading the futures accounts.
26
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1 44. Beginning in or before June 2011 and continuing through at least
2 January 25, 2012, Leighton also made a number of misrepresentations to pool
3 participants about purported efforts by Leighton to file for CMEG membership on
4 behalf of the Leighton pool and a related review of the Leighton pool by CMEG
5 staff. Leighton further misrepresented to certain pool participants that he could not
6 trade the futures trading accounts during the months of September through
7 November 2011 due to the CMEG review. In fact, Leighton never filed an
8 application for membership with the CMEG, and the CMEG did not conduct any
9 such audit of Leighton or any commodity pool that he operated.
10

11
12
13 45. Specific egregious written misrepresentations regarding the NFA and
14 CMEG include the following:
15

16 (a) In a series of emails dated May 9 and 11, 2011, Leighton falsely
17 represented to pool participants that his attorney had filed an
18 injunction against the “auditor” to compel the release of participant
19 funds and closing of the trading account until S&P is approved as a
20 CPO and Leighton as a CTA;

21 (b) In emails dated June 9 and 10, 2011, Leighton falsely represented
22 to pool participants that the “powers that be” are amicable to the
23 some release of funds if S&P Partnership became a member of the
24 CMEG and “back[ed] away from the filing of the arbitration for
25 financial damages.” In a subsequent email, dated June 28, 2011,
26 Leighton falsely represented to pool participants that the CMEG
27 “head of business” had confirmed that the CMEG would complete
28 S&P Partnership’s registration within two weeks, and allow
Leighton to access pool funds within two days of registration;

 (c) In an email dated July 28, 2011, Leighton falsely represented to
pool participants that “the NFA has not released the funds and is

1 requiring a hearing . . . to close the audit.” Leighton subsequently
2 and falsely represented that he attended a series of meetings with
3 the NFA and his attorney in Chicago; and

4 (d) In an email dated November 30, 2011, Leighton falsely
5 represented to pool participants that he was “going through” the
6 participants’ numbers with the CMEG. In an email dated
7 December 9, 2011, Leighton falsely represented to pool
8 participants that the CMEG required review of all customer funds
9 accounts in the futures industry, and that the CMEG “account
10 processor” hoped to be able to release participant funds by
11 Christmas. In an email dated January 25, 2012, Leighton falsely
12 represented to pool participants that the CMEG review continued.

13 46. In an email dated February 11, 2011, Leighton further misrepresented
14 to pool participants that the NFA had fined the Leighton pool \$50,000 for acting
15 outside the guidelines for an exempt CPO. Leighton proposed that this fine be
16 “split evenly amongst the 21 partners (\$2,380/each).” Leighton used the audit as a
17 vehicle to delay the release of pool participant funds, and, upon information and
18 belief, may have used the audit to misappropriate participant funds.

19 47. In February 2011, Leighton distributed to at least one participant a
20 purported audit report issued by the NFA dated February 16, 2011 (hereinafter the
21 “Fake NFA Audit Report”), which was in fact a total fabrication. Leighton
22 provided the Fake NFA Audit Report to at least one additional participant in
23 October 2011. The Fake NFA Audit Report contains purported audit findings,
24 issues a “summary judgment” against S&P Partnership allegedly filed with the
25
26
27
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1 state of California on March 1, 2010, and imposes a fine of \$50,000 against
2 Leighton individually.

3
4 48. In or around February 2011, Leighton had most, if not all, Leighton
5 pool participants execute the Agreement and Certificate of Limited Partnership of
6 S&P Investment Partnership, LP (the "S&P Partnership Agreement"), and become
7
8 limited partners in the S&P Partnership. As discussed in paragraph 12, above,
9 Leighton had formed the S&P Partnership approximately 13 months earlier, on or
10 around January 1, 2010. The S&P Partnership Agreement identifies Leighton as
11 the sole general partner authorized to arrange all financing, enter contracts, and
12 complete all other arrangements needed to affect the purpose of the partnership. It
13 incorporates by reference, but does not identify, the limited partners.
14
15

16
17 **VII. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND**
18 **COMMISSION REGULATIONS**

19 **Count I**

20 **Violations of Section 4b(a)(1)(A), (C) of the Act, as amended:**
21 **Fraud by Misrepresentations**

22 49. Paragraphs 1 through 48 are realleged and incorporated herein by
23 reference.

24
25 50. Section 4b(a)(1)(A), (C) of the Act, as amended, to be codified at
26 7 U.S.C. § 6b(a)(1)(A), (C), makes it unlawful for any person, in or in connection
27 with any order to make, or the making of, any contract of sale of any commodity in
28

1 interstate commerce or for future delivery that is made, or to be made, on or
2 subject to the rules of a designated contract market, for or on behalf of any other
3 person: (A) to cheat or defraud or attempt to cheat or defraud such other person; or
4 (C) willfully to deceive or attempt to deceive such other person by any means
5 whatsoever in regard to any order or contract or the disposition or execution of any
6 order or contract, or in regard to any act of agency performed, with respect to any
7 order or contract for such other person.
8
9

10
11 51. As set forth above, from at least July 2008, Leighton cheated,
12 defrauded or deceived, and/or attempted to cheat, defraud or deceive Leighton pool
13 participants by, among other things, willfully or recklessly making false
14 representations of material fact to pool participants and prospective participants,
15 including:
16

17
18 (a) various oral representations touting the profitability of the Leighton pool
19 to prospective pool participants;

20 (b) various representations about the existence of and the results of the Fake
21 NFA Audit, including but not limited to the representations that it
22 occurred, that Leighton pool participant funds could not be released due
23 to it, and that Leighton was fined as a result of it; and

24 (c) various representations about the existence and the results of a purported
25 application for CMEG membership and review of the Leighton pool by
26 CMEG staff.

27 52. By this conduct, defendant violated Section 4b(a)(1)(A), (C) of the
28 Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C).

1 results of the pool trading accounts, including the Fake FCM Statement and
2 Simulator Account screen shot.

3
4 58. By this conduct, defendant violated Section 4b(a)(1)(B) of the Act, as
5 amended, to be codified at 7 U.S.C. § 6b(a)(1)(B).

6
7 59. Leighton engaged in the acts and practices described above knowingly
8 or with reckless disregard for the truth.

9
10 60. Each false statement or report, including without limitation those
11 specifically alleged herein, is alleged as a separate and distinct violation of Section
12 4b(a)(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(B).

13
14 **Count III**

15 **Violations of Section 6(c)(1) of the Act, as Amended, and Regulation 180.1(a):**
16 **Fraud by Manipulative or Deceptive Devices or Contrivances**

17 61. Paragraphs 1 through 48 are realleged and incorporated herein by
18 reference.

19
20 62. Section 6(c)(1) of the Act, as amended, to be codified at 7 U.S.C. §
21 9(1), provides, in relevant part:

22
23 It shall be unlawful for any person, directly or indirectly,
24 to use or employ or attempt to use or employ, in
25 connection with any swap, or a contract of sale of any
26 commodity in interstate commerce, or for future delivery
27 on or subject to the rules of any registered entity, any
28 manipulative or deceptive device or contrivance, in
contravention of such rules and regulations as the
Commission shall promulgate

1 63. Regulation 180.1(a) provides, in relevant part:

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

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

9 (2) Make, or attempt to make, any untrue or
10 misleading statement of a material fact or to omit to state
11 a material fact necessary in order to make the statements
12 made not untrue or misleading;

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

16 64. Since August 15, 2011² and continuing through the present, Leighton
17 has used or employed manipulative or deceptive devices or contrivances in
18 connection with the Leighton pool including, but not limited to, making untrue or
19 misleading statements of material facts to pool participants and/or prospective
20 participants such as the following:

21 (a) written statements touting the profitability and value of participants'
22 shares of the Leighton pool

23 (b) written statements regarding the balance and results of the pool trading
24 accounts, including the Fake FCM Statement and Simulator Account
25 screen shot

26 (c) various oral representations touting the profitability of the Leighton pool;

27

28 ² The amendment to Section 6(c)(1) and Regulation 180.1 both became effective on August 15,
29 2011, and therefore Count III only applies to conduct on or after that date. *See* 76 F.R. 41,398,
30 July 14, 2011 (¶31,990).

1 (d) various representations about the existence of and the results of the Fake
2 NFA Audit, including but not limited to the representations that it
3 occurred, that Leighton pool participant funds could not be released due
4 to it, and that Leighton was fined as a result of it; and

5 (e) various representations about the existence and the results of a purported
6 application for CMEG membership and review of the Leighton pool by
7 CMEG staff.

8 65. By this conduct, defendant violated Section 6(c)(1) of the Act, as
9 amended, to be codified at 7 U.S.C. § 9, and Regulation 180.1(a),
10 17 C.F.R. § 180.1(a) (2011).

11 66. Leighton engaged in the acts and practices described above knowingly
12 or with reckless disregard for the truth.

13 67. Each manipulative or deceptive device or contrivance used or
14 employed on or after August 15, 2011, including but not limited to those
15 specifically alleged herein, is alleged as a separate and distinct violation of Section
16 6(c)(1) of the Act, as amended, to be codified at 7 U.S.C. § 9, and Regulation
17 180.1(a), 17 C.F.R. §180.1(a) (2011).

18
19
20
21 **Count IV**

22 **Violations of Section 4o(1)(A), (B) of the Act:**
23 **Fraud by a CPO**

24 68. Paragraphs 1 through 48 are realleged and incorporated herein by
25 reference.
26
27
28

1 69. Section 4o(1)(A), (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2006), in
2 relevant part, makes it unlawful for any commodity trading advisor, commodity
3 pool operator, or associated person directly or indirectly “to employ any device,
4 scheme, or artifice to defraud any client or participant or prospective client or
5 participant” or “to engage in any transaction, practice, or course of business which
6 operates as a fraud or deceit upon any client or participant or prospective client or
7 participant.”
8
9

10 70. During all relevant times, Leighton acted as a CPO by engaging in a
11 business that is the nature of an investment trust, syndicate or similar form of
12 enterprise and by soliciting, accepting and receiving from others funds, securities
13 and/or property for the purpose of trading commodities.
14
15

16 71. As set forth above, Leighton violated Section 4o(1) (A), (B) of the
17 Act, 7 U.S.C. § 6o(1) (A), (B) (2006), by defrauding and deceiving pool
18 participants by, among other things, making:
19

- 20 (a) written statements touting the profitability and value of participants’
21 shares of the Leighton pool;
- 22 (b) written statements regarding the balance and results of the pool trading
23 accounts, including the Fake FCM Statement and Simulator Account
24 screen shot;
- 25 (c) various oral representations touting the profitability of the Leighton pool;
- 26 (d) various representations about the existence of and the results of the Fake
27 NFA Audit, including but not limited to the representations that it
28 occurred, that Leighton pool participant funds could not be released due
 to it, and that Leighton was fined as a result of it; and

1 (e) various representations about the existence and the results of a purported
2 application for CMEG membership and review of the Leighton pool by
3 CMEG staff.

4 72. Leighton engaged in the acts and practices described above knowingly
5 or with reckless disregard for the truth.

6 73. The aforementioned uses of mails or other instrumentalities of
7 interstate commerce include, but are not limited to: (1) making wire transfers
8 between bank accounts; and (2) using e-mail to send investment solicitation and
9 account statements to participants in California, North Carolina and Washington,
10 among other places.
11

12 74. By the conduct set forth in this count, Leighton violated Section
13 4o(1)(A), (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2006).
14

15 75. Each fraudulent or deceptive act, including without limitation those
16 specifically alleged herein, is alleged as a separate and distinct violation of Section
17 4o(1) (A), (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2006).
18

19
20 **Count V**

21
22 **Violations of Section 4m(1) of the Act, as Amended:**
23 **Failure to Register as a CPO**

24 76. Paragraphs 1 through 48 are realleged and incorporated herein by
25 reference.
26

27 77. With certain exemptions and exclusions not applicable here, all CPOs
28 operating a commodity pool are required to be registered with the Commission

1 pursuant to Section 4m(1) of the Act, as amended, to be codified at 7 U.S.C. §
2 6m(1).

3
4 78. Leighton has engaged in activities as a CPO without the benefit of
5 registration as a CPO, and in connection therewith used the mails or other means or
6 instrumentalities of interstate commerce, in violation of Section 4m(1) of the Act,
7
8 as amended, to be codified at 7 U.S.C. § 6m(1).

9
10 79. By this conduct, defendant violated Section 4m(1) of the Act, as
11 amended, to be codified at 7 U.S.C. § 6m(1).

12
13 80. Each use of the mails or any means or instrumentality of interstate
14 commerce in connection with its business as a CPO without proper registration
15 during the relevant time period, including but not limited to those specifically
16 alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of
17
18 the Act, as amended, to be codified at 7 U.S.C. § 6m(1).

19
20 **Count VI**

21 **Violations of Regulation 4.20: Commingling of Pool Funds**

22
23 81. Paragraphs 1 through 48 are realleged and incorporated herein by
24 reference.

25
26 82. Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2011), requires that a
27
28 “commodity pool operator must operate its pool as an entity cognizable as a legal
entity separate from that of the pool operator.”

1 83. Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2011), requires in part that
2 all funds, securities or other property received by a CPO from an existing or
3 prospective pool participant for the purchase or an interest in a pool that it operates
4 or that it intends to operate must be received in the pool's name.
5

6 84. Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011), prohibits any CPO
7 from commingling the property of any pool that it operates or that it intends to
8 operate with the property of any other person.
9

10 85. As set forth above, Leighton accepted and traded pool participant
11 funds in his own name and, at least prior to February 2011, failed to operate the
12 pool as a separate legal entity. Leighton had most, if not all, pool participants
13 make their funds payable to Leighton, and Leighton deposited most, if not all, of
14 those funds into the Leighton bank account, where they were commingled with
15 funds belonging to Leighton and/or his wife.
16
17
18

19 86. By this conduct, defendant violated Regulation 4.20, 17 C.F.R. § 4.20
20 (2011).
21

22 87. Each occasion that Leighton accepted funds, securities or other
23 property in his own name and deposited those funds into his personal bank account
24 where they were commingled with funds belonging to Leighton and/or his wife,
25 traded pool participant funds in his own name, or failed to operate the pool as a
26
27
28

1 separate legal entity is alleged as a separate and distinct violation of Regulation
2 4.20, 17 C.F.R. § 4.20 (2011).

3
4 **VIII. RELIEF REQUESTED**

5 WHEREFORE, for the reasons stated above, the Commission respectfully
6 requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1
7 (2006), and pursuant to its own equitable powers:
8

9 A. Find defendant Leighton liable for violating Sections 4b(a)(1)(A)-(C),
10 4m(1) and 6(c)(1) of the Act, as amended, to be codified at 7 U.S.C. §§
11 6b(a)(1)(A)-(C), 6(m) and 9; Section 4o(1) of the Act, 7 U.S.C. §
12 4o(1)(A), (B) (2006); and Regulations 4.20 and 180.1(a), 17 C.F.R. §§
13 4.20 and 180.1(a)(2011).
14
15

16 B. Enter a statutory restraining order with notice and/or order of preliminary
17 injunction pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a)
18 (2006), restraining defendant Leighton, and all persons insofar as they are
19 acting in the capacity of defendant's agents, servants, successors,
20 employees, assigns and attorneys, and all persons insofar as they are
21 acting in active concert or participation with defendant, who receive
22 actual notice of such order by personal service or otherwise, from directly
23 or indirectly:
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1. withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets or other property, wherever situated, including, but not limited to, all funds, personal property, money or securities held in safes or safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the actual or constructive control of, or in the name of Leighton, the Leighton pool, S&P Partnership, and/or S&P II;
2. destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Leighton, wherever located, including all such records concerning defendant's business operations; and
3. refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendant Leighton, wherever located, including all such records concerning defendant's business operations;

1 C. Enter orders of preliminary and permanent injunction prohibiting
2 defendant Leighton, along with any of his affiliates, agents, servants,
3 employees, successors, assigns, attorneys and persons in active concert
4 with him who receive actual notice of such order by personal service or
5 otherwise, from:
6

- 7
8 1. engaging in conduct in violation of Sections 4b(a)(1)(A)-(C),
9 4m(1) and 6(c)(1) of the Act, as amended, to be codified at 7
10 U.S.C. §§ 6b(a)(1)(A)-(C), 6(m) and 9; Section 4o(1) of the Act, 7
11 U.S.C. § 4o(1)(A), (B) (2006); and Regulations 4.20 and 180.1(a),
12 17 C.F.R. §§ 4.20 and 180.1(a)(2011).
13
- 14
15 2. trading on or subject to the rules of any registered entity, as that
16 term is defined in Section 1a of the Act, as amended, to be codified
17 at 7 U.S.C. § 1a;
18
- 19
20 3. entering into any transactions involving commodity futures,
21 options on commodity futures, commodity options (as that term is
22 defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2011))
23 (“commodity options”), security futures products, and/or foreign
24 currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of
25 the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i))
26
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28

1 (“forex contracts”) for his own personal account or for any account
2 in which he has a direct or indirect interest;

3
4 4. having any commodity futures, options on commodity futures,
5 commodity options, security futures products, and/or forex
6 contracts traded on his behalf;

7
8 5. controlling or directing the trading for or on behalf of any other
9 person or entity, whether by power of attorney or otherwise, in any
10 account involving commodity futures, options on commodity
11 futures, commodity options, security futures products, and/or forex
12 contracts;

13
14
15 6. soliciting, receiving, or accepting any funds from any person for
16 the purpose of purchasing or selling any commodity futures,
17 options on commodity futures, commodity options, security futures
18 products, and/or forex contracts;

19
20
21 7. applying for registration or claiming exemption from registration
22 with the Commission in any capacity, and engaging in any activity
23 requiring such registration or exemption from registration with the
24 Commission, except as provided for in Commission Regulation
25 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and
26
27
28

1 8. acting as a principal (as that term is defined in Commission
2 Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other
3 officer or employee of any person or entity registered, exempted
4 from registration or required to be registered with the Commission,
5 except as provided for in Commission Regulation 4.14(a)(9), 17
6 C.F.R. § 4.14(a)(9) (2011);
7
8

9 D. Enter an order directing that defendant make an accounting to the Court
10 within thirty (30) days of the date of the Court's order of all of
11 defendant's assets and liabilities, together with all funds defendant
12 received from and paid to Leighton pool participants, customers,
13 investors and/or other persons in connection with commodity futures and
14 options transactions or purported commodity futures and options
15 transactions, including the names, mailing addresses, email addresses and
16 telephone numbers of any such persons from whom they received such
17 funds from at least January 2008 to the date of such accounting, and all
18 disbursements for any purpose whatsoever of funds received from
19 Leighton pool participants, S&P customers, investors and/or other
20 persons including salaries, commissions, fees, loans and other
21 disbursements of money and property of any kind, from at least January
22 2008 to and including the date of such accounting;
23
24
25
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- 1 E. Enter an order directing defendant Leighton to make restitution by
2 making whole each and every Leighton pool participant whose funds
3 were received or used by him in violation of the provisions of the Act as
4 described herein, including pre- and post-judgment interest;
- 5
6 F. Enter an order directing defendant, as well as any of his successors
7 and/or agents, to disgorge, pursuant to such procedure as the Court may
8 order, all benefits received from the acts or practices that constitute
9 violations of the Act, as described herein, and pre- and post-judgment
10 interest thereon from the date of such violations;
- 11
12 G. Enter an order directing defendant to pay civil monetary penalties in
13 amounts not more than the greater of: (1) \$130,000 for each violation
14 occurring from October 23, 2004 through October 22, 2008 and \$140,000
15 for each violation occurring after October 22, 2008 or (2) triple the
16 monetary gain to defendant for each violation of the Act;
- 17
18 H. Enter an order directing defendant and any successors thereof, to rescind,
19 pursuant to such procedures as the Court may order, all contracts and
20 agreements, whether implied or express, entered into between him and
21 any of the participants or customers whose funds were received by him as
22 a result of the acts and practices which constituted violations of the Act,
23 as amended, as described herein;
- 24
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- 1 I. Enter an order requiring defendant to pay costs and fees as permitted by
2 28 U.S.C. §§ 1920 and 2412 (2006); and
3
4 J. Enter an order providing such further relief as this Court may deem
5 necessary and appropriate under the circumstances.
6
7

8 Date: May 8, 2012

Respectfully submitted,

9 U.S. Commodity Futures Trading
10 Commission

11 

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