

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**U. S. COMMODITY FUTURES  
TRADING COMMISSION,**

**Plaintiff,**

**v.**

**ERIC N. SCHMICKLE and  
Q WEALTH MANAGEMENT INC.,**

**Defendants.**

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**Civil Action No:**

**Judge**

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

The U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”), by and through its attorneys, hereby alleges as follows:

**I. SUMMARY**

1. From at least May 2009 through approximately April 2012 (“relevant period”), Eric N. Schmickle, individually and through two companies he controlled, Q Wealth Management Inc. and Aquinas SF LLC, operated a Ponzi scheme (Schmickle and Q Wealth Management are collectively “Defendants”). Schmickle fraudulently solicited and accepted at least \$5.3 million from at least ten individuals for the purposes of operating a commodity pool and managing individual accounts to trade commodity futures contracts on their behalf. Schmickle lied about his success as a trader, falsified account statements, invoices for commissions, and tax forms, and concealed the fact that he sustained trading losses of approximately \$3 million. He misappropriated approximately \$1.7 million of customers’ funds by charging and receiving investment fees to which he was not entitled, paying purported returns

to at least one customer with the funds of other customers, and using customer funds for his own business and personal purposes.

2. Q Wealth Management acted as an unregistered commodity trading advisor (“CTA”), and Schmickle managed commodity futures trading accounts in the name of one client. These trading accounts were carried by a registered futures commission merchant (“FCM”). Schmickle also formed Aquinas, which received funds from at least nine pool participants and acted both as an unregistered commodity pool operator (“CPO”) and as a commodity pool. Schmickle opened, maintained, and controlled a commodity futures trading account in Aquinas’ name at the same FCM. Schmickle traded commodity futures, such as U.S. Treasury Note futures and E-mini S&P futures, through both Q Wealth Management and Aquinas. Neither Defendant was ever registered with the Commission in any capacity.

3. During the relevant period, Schmickle sustained heavy trading losses. Schmickle also misappropriated customer funds to pay fictitious profits and for his own benefit. In order to hide those losses, and to hide his misappropriation of funds, Schmickle fabricated numerous documents, including account statements, invoices for his commissions, and Internal Revenue Service (“IRS”) Form 1065s and 1099s. Schmickle also made misrepresentations when soliciting for customer funds. On April 27, 2012, Schmickle confessed to his scheme to federal criminal authorities, and he resigned from Aquinas on May 25, 2012, leaving the pool participant victims as the only remaining members of Aquinas. On July 18, 2012, the United States Attorney’s Office for the Eastern District of Wisconsin charged Schmickle by information with one count of wire fraud. *United States v. Schmickle*, No. 12-cr-149 (E.D. Wis. filed Jul. 18, 2012). That same day, Schmickle entered into a plea agreement admitting to a scheme to defraud investors based upon substantially the same facts as alleged herein.

4. By virtue of this conduct and the conduct further described herein, Defendants have engaged, are engaging, or are about to engage in conduct in violation of antifraud provisions of the Commodity Exchange Act (“Act”), 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 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations promulgated thereunder. Specifically, Defendants engaged in fraud in violation of Section 4b(a)(1)(A)-(C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A)-(C); Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006); and, for the period on and after August 15, 2011, Section 6(c)(1) of the Act, as amended, 7 U.S.C. § 9(1); and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012).

5. In addition, during the relevant period, Schmickle acted as an associated person (“AP”) of both a CPO (Aquinas) and a CTA (Q Wealth Management), but he failed to register with the Commission as such, in violation of Section 4k(2) and (3) of the Act, 7 U.S.C. § 6k(2)-(3) (2006). Q Wealth Management permitted Schmickle to act as an AP without registration, in violation of Section 4k(3) of the Act, 7 U.S.C. § 6k(3) (2006).

6. Schmickle controlled Q Wealth Management and did not act in good faith or knowingly induced the acts constituting Q Wealth Management’s violations of the Act and Regulations. Schmickle is therefore liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), as a controlling person of Q Wealth Management for its violations of the Act and Regulations.

7. Schmickle committed the acts and omissions alleged herein within the course and scope of his employment, agency, or office with Q Wealth Management. Therefore, Q Wealth Management is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012), as principal for the actions and omissions of Schmickle in violation of the Act and Regulations.

8. Accordingly, the Commission brings this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act. In addition, the Commission seeks restitution, civil monetary penalties, and such other equitable relief as this Court may deem necessary or appropriate.

9. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint or in similar acts and practices, as more fully described below.

## **II. JURISDICTION AND VENUE**

10. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, as amended, 7 U.S.C. § 13a-1(a), 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 promulgated thereunder.

11. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Defendants are found in, inhabit, or transact business in this District and/or the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District and elsewhere.

### III. THE PARTIES

#### A. Plaintiff

12. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

#### B. Defendants

13. Defendant **Eric N. Schmickle** is thirty-seven years old and currently resides in Cedarburg, Wisconsin. Schmickle formerly resided in Bolivar, Missouri, where he still owns a home and maintains bank accounts. Schmickle has never been registered with the Commission.

14. Defendant **Q Wealth Management Inc.** is a Missouri close corporation formed in May 2005. During the relevant period, it operated out of offices located at 793 E. 419th Road, Bolivar, Missouri and 393 Douglas Lane, Cedarburg, Wisconsin. During the relevant period, Schmickle was the sole employee and controller of Q Wealth Management. Q Wealth Management has never been registered with the Commission.

#### C. Other Relevant Entity

15. **Aquinas SF LLC** is a Missouri limited liability company formed in May 2009. During the relevant period, it operated out of offices located at 793 E. 419th Road, Bolivar, Missouri and 393 Douglas Lane, Cedarburg, Wisconsin. Schmickle was Aquinas' organizer, registered agent, and manager with sole power and authority to act on behalf of the company until May 25, 2012, when he resigned from the entity; Aquinas is no longer in operation. The current members of Aquinas are the pool participants and victims of Schmickle's fraud. Aquinas has never been registered with the Commission.

#### IV. STATUTORY BACKGROUND

16. A commodity pool is defined in Section 1a(10) of the Act, as amended, 7 U.S.C. § 1a(10), and Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1) (2012), as any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity interests, such as a commodity for future delivery.

17. A CPO is defined in Section 1a(11) of the Act, as amended, 7 U.S.C. § 1a(11), and Regulation 1.3(cc), 17 C.F.R. § 1.3(cc) (2012), as any person engaged in a 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 interests, such as a commodity for future delivery.

18. An AP of a CPO is defined in Commission Regulation 1.3(aa)(3), 17 C.F.R. § 1.3(aa)(3) (2012), as any natural person associated with a CPO “as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged.”

19. A participant is defined in Commission Regulation 4.10(c), 17 C.F.R. § 4.10(c) (2012), as any person who has any direct financial interest in a commodity pool.

20. A CTA is defined by Section 1a(12) of the Act, as amended, 7 U.S.C. § 1a(12), and Regulation 1.3(bb)(1), 17 C.F.R. § 1.3(bb)(1), with certain exemptions and exclusions not applicable here, as any person who for compensation or profit, engages in the business of advising others as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery, security futures product, or swap, and certain other transactions.

21. An AP of a CTA is defined in Commission Regulation 1.3(aa)(4), 17 C.F.R. § 1.3(aa)(4) (2012), as any natural person associated with a CTA “as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves: (i) The solicitation of a client’s or prospective client’s discretionary account, or (ii) the supervision of any person or persons so engaged.”

## **V. DEFENDANTS’ FRAUDULENT SCHEME**

### **A. Formation of the Entities**

#### Q Wealth Management

22. Schmickle originally formed Q Wealth Management as an investment advisor firm in May 2005 with family members. At the time, Schmickle was licensed to sell securities.

23. By 2009, Schmickle was operating Q Wealth Management on his own and had close to no funds. His friend gave Schmickle an article about futures trading. Schmickle opened a “demonstration account” – i.e., a paper futures trading account with no actual funds. During a two week period, Schmickle was successful in his futures trading in the demonstration account. Schmickle showed his success to the same friend and convinced the friend to invest in futures, with Schmickle as the trading advisor and the friend as the managed client. Schmickle used Q Wealth Management as the entity to deal with the managed client.

24. In May 2009, Schmickle and the managed client set up trading accounts at an FCM in the managed client’s name. Ordinarily, account statements go to the person named on the account, not to the account’s advisor; however, Schmickle created a false email address in the managed client’s name and provided this false email address to the FCM. Schmickle controlled this false email address and received all of the account statements from the FCM.

25. During the relevant period, the managed client invested approximately \$2.6 million in trading accounts to be traded by Schmickle. The managed client's funds were transferred from the managed client's bank accounts to the trading accounts at the FCM.

Aquinas

26. Schmickle formed Aquinas in May 2009 as a limited liability corporation with five original members, including Schmickle. Aquinas eventually had a total of ten members. In July 2009, Schmickle opened a trading account in the name of Aquinas at the same FCM, with Schmickle as the account controller. The Aquinas' members pooled their money in a bank account in Aquinas' name, which Schmickle controlled. Schmickle transferred funds from the bank account to the trading account at the FCM. Schmickle set up the trading account at the FCM so that he received the account statements; none of the other members received the account statements from the FCM.

27. During the relevant period, the Aquinas pool participants invested approximately \$2.7 million in the pool. On information and belief, Schmickle did not invest any of his own funds in the pool.

**B. Defendants Sent Numerous False Account Statements, Invoices, and Tax Forms to Hide Losses and Misappropriation and Give the Appearance of Success**

28. During the relevant period, Schmickle sustained heavy trading losses every year for both the Q Wealth Management client and Aquinas' pool participants. Schmickle also misappropriated funds, as discussed below. In order to hide the trading losses and misappropriation, Schmickle fabricated a myriad of documents.

29. In connection with Q Wealth Management, Schmickle sent numerous false account statements to the managed client. Because Schmickle had provided the FCM with a fake email address in the name of the client, Schmickle received the actual account statements from



the FCM. Schmickle then fabricated or caused to be fabricated false account statements using the FCM's letterhead and sent these false account statements to the managed client via email. For example, Schmickle fabricated and sent the client a false statement for August 2011 that showed a balance of over \$4.7 million for one account. In reality, that account contained less than \$300.

30. In connection with Q Wealth Management, Schmickle fabricated IRS Form 1099s that he sent to the managed client. On information and belief, Schmickle intercepted the real Forms and replaced them with Forms that he fabricated to show investment profits. For example, Schmickle sent the client a false IRS Form 1099 for 2011 that showed profit in one of the client's accounts of over \$4.3 million. The true Form 1099 showed a loss in that account of approximately \$196,294.

31. Schmickle and the managed client agreed that Schmickle would be entitled to 25% of any gains in the client's accounts. In connection with Q Wealth Management, Schmickle created and emailed fabricated invoices that showed false gains and requested payment representing Schmickle's compensation based upon those gains. He sent these false invoices every quarter. For example, on October 18, 2011, Schmickle emailed to the client an invoice for the preceding quarter. The invoice stated that the client's gain for the quarter was approximately \$1,515,924, so that Schmickle was entitled to approximately \$378,981 in fees. In reality, the client's accounts began the quarter with approximately \$2,500 in them, and Schmickle lost approximately \$2,000 during the quarter.

32. In connection with Aquinas, Schmickle sent numerous false account statements to the pool participants. As the manager of the pool and the controller of the trading account, Schmickle received the true account statements from the FCM. He fabricated or caused to be

fabricated false account statements and emailed these to the pool participants. For example, on March 7, 2012, Schmickle sent to the pool participants a false account statement for February 2012. The statement showed an account balance of approximately \$3.8 million and the month's gain as \$387,783. In reality, the account balance was approximately \$231,000 and the month's loss was approximately \$37,688.

33. In connection with Aquinas, Schmickle emailed false IRS Form 1065s (i.e., Schedule K-1s) to pool participants to show partnership income, when in reality Aquinas lost money. For example, on March 30, 2012, Schmickle sent to a pool participant a Form 1065 that showed that pool participant had a 3.94% partnership interest and \$72,659 in allocated partnership income for 2011. In reality, Aquinas had losses of \$706,221 for 2011.

34. Schmickle intentionally or recklessly fabricated and sent such false documents.

**C. Defendants Made Misrepresentations to Bring in Additional Funds**

35. As Schmickle's trading losses mounted, Schmickle needed to bring in additional funds for his scheme. As a result, Schmickle made fraudulent misrepresentations to potential and current customers to induce investment. These misrepresentations were in addition to the false documents described above, which also had the effect of inducing investment.

36. For example, in connection with Q Wealth Management, Schmickle convinced the managed client to invest an additional \$100,000 in December 2010. Schmickle claimed that with this additional investment, the client would be able to withdraw \$40,000-60,000 a month beginning in February 2011 and projected a total value of \$8 million in twelve to eighteen months. Schmickle's representations were false. In reality, Schmickle had lost approximately \$1.4 million of the managed client's money by that point, and the account balances totaled approximately \$200,000.

37. In another example, in connection with Aquinas, Schmickle told a potential pool participant that Schmickle made 10% gains per month, and he showed the potential participant account statements and graphs as evidence of those returns. As a result of these representations, the person invested \$250,000 with Aquinas in January 2012. Schmickle's representations were false, as he did not make 10% gains per month with Aquinas. In fact, in 2011, of the approximately \$1.1 million deposited in the Aquinas trading account, Schmickle lost approximately \$706,000.

38. In another example, in connection with Aquinas, Schmickle convinced a pool participant to invest an additional \$300,000 in December 2011. Schmickle claimed that he would use this money, along with his own \$300,000, to purchase a seat on an exchange, so that Aquinas would have lower trading fees. Schmickle's representations were false, as he did not intend to or actually use the funds to purchase an exchange seat.

39. Schmickle intentionally or recklessly made such misrepresentations.

#### **D. Defendants Misappropriated Customer Funds**

40. On information and belief, Schmickle misappropriated approximately \$1.7 million from his customers during the relevant period. The manner of misappropriation differed between the managed client and the pool participants.

41. In connection with Q Wealth Management, Schmickle misappropriated approximately \$339,000 from the managed client. Schmickle emailed the client false invoices, where he charged a 25% management fee on false gains. The client paid Schmickle approximately \$339,000 due to the false invoices.

42. On information and belief, Schmickle also misappropriated approximately \$1.3 million of Aquinas pool participant funds. Schmickle admitted to law enforcement that he

misappropriated funds from the pool participants by transferring a portion of their funds to pay purported profits to the managed client and by using pool participant and investor funds for his own business and personal purposes.

**VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**  
**COUNT ONE**

**Fraud by Misappropriation and Misrepresentations:  
Violations of Section 4b(a)(1)(A) and (C) of the Act**

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

44. Section 4b(a)(1)(A) and (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A) and (C), provides, in relevant part, that it is unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person: (A) to cheat or defraud or attempt to cheat or defraud such other person; or (C) willfully to deceive or attempt to deceive such 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 such other person.

45. During the relevant period, Defendants violated Section 4b(a)(1)(A) and (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A) and (C), by, among other things, misappropriating pool participant and managed client funds and making misrepresentations to potential and actual pool participants and the managed client to induce investment.

46. Defendants committed such acts intentionally or recklessly.

47. The actions and omissions of Schmickle, as alleged in this Count, were committed in the scope of his employment with Q Wealth Management. Q Wealth Management is therefore

liable for Schmickle's actions and omissions that are violations as alleged in this Count, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

48. Schmickle directly and indirectly controlled Q Wealth Management, and he did not act in good faith or he knowingly induced the acts or omissions constituting Q Wealth Management's violations alleged in this Count. Schmickle is therefore liable for Q Wealth Management's violations as alleged in this Count, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

49. Each act of misappropriation and misrepresentation, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(1)(A) and (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A) and (C).

## COUNT TWO

### **Fraud by False Reports or Statements: Violations of Section 4b(a)(1)(B) of the Act**

50. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

51. Section 4b(a)(1)(B) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(B), makes it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person "willfully to make or cause to be made to such other person any false report or statement or willfully to enter or cause to be entered for such other person any false record."

52. During the relevant period, Defendants violated Section 4b(a)(1)(B) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(B), in that they willfully made, or caused to be made, false account statements, invoices, and tax forms to customers that hid actual trading losses and misappropriation and showed false trading gains.

53. Defendants committed such acts intentionally or recklessly.

54. The actions and omissions of Schmickle, as alleged in this Count, were committed in the scope of his employment with Q Wealth Management. Q Wealth Management is therefore liable for Schmickle's actions and omissions that are violations as alleged in this Count, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

55. Schmickle directly and indirectly controlled Q Wealth Management, and he did not act in good faith or he knowingly induced the acts or omissions constituting Q Wealth Management's violations alleged in this Count. Schmickle is therefore liable for Q Wealth Management's violations as alleged in this Count, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

56. Each act of making or causing to be made a false account statement, invoice, and tax form to customers, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(1)(B) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(B).

### **COUNT THREE**

#### **Fraud by a CTA, CPO, and AP: Violations of Section 4o of the Act**

57. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

58. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), makes it unlawful for any CTA, CPO, or AP of a CTA or CPO, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly: (A) to employ any device, scheme, or artifice to defraud any client or participant; or (B) to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or participant.

59. Q Wealth Management acted as a CTA by engaging for compensation in the business of advising others as to the value of or the advisability of trading commodities for future delivery.

60. Schmickle acted as an AP of Q Wealth Management, in that, as an agent of Q Wealth Management, he solicited for a client's or prospective client's discretionary trading account.

61. Aquinas acted as a CPO by engaging 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 funds, securities, or property from others for the purpose of trading in commodities for future delivery on or subject to the rules of a contract market.

62. Schmickle acted as an AP of Aquinas, in that, as an agent of Aquinas, he solicited funds, securities, or property for participation in Aquinas.

63. During the relevant period, Defendants violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2006), in that, as a CTA and an AP of a CTA and CPO, they directly or indirectly employed a device, scheme, or artifice to defraud customers and engaged in transactions, practices, or a course of business which operated as a fraud or deceit upon customers by misappropriating customer funds; making or causing to be made false account statements, invoices, and tax forms that hid actual trading losses and misappropriation and showed false trading gains; and making misrepresentations to induce investment.

64. Defendants committed such acts intentionally or recklessly.

65. Defendants engaged in such acts by use of the mails or other means or instrumentalities of interstate commerce.

66. The actions and omissions of Schmickle, as alleged in this Count, were committed in the scope of his employment with Q Wealth Management. Q Wealth Management is therefore liable for Schmickle's actions and omissions that are violations as alleged in this Count, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

67. Schmickle directly and indirectly controlled Q Wealth Management, and he did not act in good faith or he knowingly induced the acts or omissions constituting Q Wealth Management's violations alleged in this Count. Schmickle is therefore liable for Q Wealth Management's violations as alleged in this Count, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

68. Each act of misappropriation, making or causing to be made a false account statement, invoice, and tax form to customers, and misrepresentation, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2006).

#### **COUNT FOUR**

**Fraud by Manipulative or Deceptive Devices or Contrivances:  
Violations of Section 6(c)(1) of the Act and Regulation 180.1(a)  
(Acts Occurring on or After August 15, 2011)**

69. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

70. Section 6(c)(1) of the Act, as amended, 7 U.S.C. § 9(1), makes it unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance in contravention of any Commission rule or regulation.



71. Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012), makes it unlawful, *inter alia*, for any person, directly or indirectly, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; or engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit on any person.

72. The amendment to Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012), became effective on August 15, 2011.

73. Since August 15, 2011, and continuing through approximately April 2012, Defendants violated Section 6(c)(1) of the Act, as amended, 7 U.S.C. § 9(1), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012), by employing manipulative or deceptive devices or contrivances in connection with commodities for future delivery on or subject to the rules of a registered entity, including: misappropriating customer funds; making or causing to be made false account statements, invoices, and tax forms to customers that hid actual trading losses and misappropriation and showed false trading gains; and making misrepresentations to induce investment.

74. Defendants committed such acts intentionally or recklessly.

75. The actions and omissions of Schmickle, as alleged in this Count, were committed in the scope of his employment with Q Wealth Management. Q Wealth Management is therefore liable for Schmickle's actions and omissions that are violations as alleged in this Count, pursuant

to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

76. Schmickle directly and indirectly controlled Q Wealth Management, and he did not act in good faith or he knowingly induced the acts or omissions constituting Q Wealth Management's violations alleged in this Count. Schmickle is therefore liable for Q Wealth Management's violations as alleged in this Count, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

77. Each act of employing a manipulative or deceptive device or contrivance, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 6(c)(1) of the Act, as amended, 7 U.S.C. § 9(1), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012).

## **COUNT FIVE**

### **Failure to Register as an AP of a CTA and CPO: Violations of Section 4k(2) and (3) of the Act**

78. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

79. Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), makes it unlawful, *inter alia*, for a person to be associated with a CPO as a partner, officer, employee, consultant, or agent in any capacity that involves the solicitation of funds, securities, or property for participation in a pool, unless such person is registered with the Commission. That same section also makes it unlawful for a CPO to allow such a person to become or remain associated with the CPO if the CPO knew or should have known that such person was not registered.

80. Section 4k(3) of the Act, 7 U.S.C. § 6k(3) (2006), makes it unlawful, *inter alia*, for a person to be associated with a CTA as a partner, officer, employee, consultant, or agent in any capacity that involves the solicitation of a client's or prospective client's discretionary

account, unless such person is registered with the Commission. That same section also makes it unlawful for a CTA to allow such a person to become or remain associated with the CTA if the CTA knew or should have known that such person was not registered.

81. Schmickle violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), by being associated with Aquinas as an officer, i.e., the pool's manager, soliciting funds for participation in the pool, and failing to register with the Commission as an associated person.

82. Schmickle violated Section 4k(3) of the Act, 7 U.S.C. § 6k(3) (2006), by being associated with Q Wealth Management as its agent, soliciting funds for a client's discretionary account, and failing to register with the Commission as an associated person.

83. Q Wealth Management violated Section 4k(3) of the Act, 7 U.S.C. § 6k(3) (2006), by allowing Schmickle to be associated with Q Wealth Management when Q Wealth Management knew or should have known that Schmickle was not registered.

84. The actions and omissions of Schmickle, as alleged in this Count, were committed in the scope of his employment with Q Wealth Management. Q Wealth Management is therefore liable for Schmickle's actions and omissions that are violations as alleged in this Count, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

85. Schmickle directly and indirectly controlled Q Wealth Management, and he did not act in good faith or he knowingly induced the acts or omissions constituting Q Wealth Management's violations alleged in this Count. Schmickle is therefore liable for Q Wealth Management's violations as alleged in this Count, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

## VII. RELIEF REQUESTED

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

A. Find Defendants liable for violating: Section 4b(a)(1)(A)-(C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A)-(C); Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006); Section 6(c)(1) of the Act, as amended, 7 U.S.C. § 9(1); Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012); and Section 4k(2) and (3) of the Act, 7 U.S.C. § 6k(2) and (3) (2006);

B. Enter orders of preliminary and permanent injunction prohibiting Defendants, and any other person or entity associated with them from, directly or indirectly, engaging in conduct in violation of Section 4b(a)(1)(A)-(C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A)-(C); Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006); Section 6(c)(1) of the Act, as amended, 7 U.S.C. § 9(1); Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012); and Section 4k(2) and (3) of the Act, 7 U.S.C. § 6k(2) and (3) (2006);

C. Enter orders of preliminary and permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a);

2. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Commission Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2012)) (“commodity options”), security futures products, and/or foreign currency (as described in Section 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. § 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”), for any personal or proprietary account or for any account in which they have a direct or indirect interest;

3. having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on their behalf;

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

5. 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;

6. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and

7. acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent, or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) 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) (2012);

D. Enter an order requiring Defendants to disgorge, pursuant to such procedure as the Court may order, all benefits received, including, but not limited to, salaries, commissions, loans, fees, revenues, and trading profits derived, directly or indirectly, from acts or practices that constitute violations of the Act as described herein, including pre-judgment and post-judgment interest;

E. Enter an order directing Defendants and any successors thereof to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between Defendants and any customers whose funds were received by Defendants as a result of the acts and practices that constitute violations of the Act as described herein, including, but not limited to, the customary notes used by Defendants;

F. Enter an order requiring Defendants to make restitution by making whole each and every customer whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre-judgment interest;

G. Enter an order directing Defendants to pay a civil monetary penalty in the amount of not more than the greater of (1) triple the monetary gain to each Defendant for each violation of the Act, or (2) \$140,000 for each violation of the Act;

H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

I. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Respectfully submitted,

Date: September 24, 2012

/s/ David Chu

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