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**In The United States District Court
For The District Of New Jersey**

Commodity Futures Trading Commission,
Plaintiff,

vs.

William D. Perkins,
Defendant;
Tax Accounting Office, Inc.,
Relief Defendant.

Civil Action No:

Complaint For Injunctive And
Other Equitable Relief And
Civil Monetary Penalties Under
The Commodity Exchange Act

I. THE PARTIES

1. The parties to this action are listed below:

a. Plaintiff *Commodity Futures Trading Commission* (“Commission” or “CFTC”) is an independent federal government regulatory agency that is responsible for administering and enforcing the provisions of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ *et seq.* (2006). The agency’s principal office and headquarters is located at Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, although this matter is being prosecuted through its Chicago Regional Office located at 525 West Monroe, Suite 1100, Chicago, Illinois 60661.

b. Defendant *William D. Perkins* (“Perkins”) resides in St. George, Utah and is the manager and registered agent for *Universe Capital Appreciation, LLC* (“Universe”), a Utah limited liability company formed on January 14, 2002. Perkins was incarcerated in Federal Prison Camp Nellis in North Las Vegas, Nevada in May 2005 for a term of four months after pleading guilty to one count of a violation of Title 18, Section 371, conspiracy to defraud the United States, in the United States District Court for the Middle District of Pennsylvania in an unrelated matter. Perkins is the commodity pool operator (“CPO”) of the Universe commodity pool but is not registered with the Commission in any capacity.

c. Relief Defendant *Tax Accounting Office* (“TAO”) is a corporation that was formed in the State of Utah by Perkins effective on February 5, 2001. The location of the corporation’s registered office is 1732 West 540 North, #5, St. George, UT 84770. Perkins is the president of and registered agent for the corporation. On information and belief, TAO was also operated from 90 South 1250 West, St. George, Utah 84770. TAO is not registered with the

Commission in any capacity. TAO received funds that can be traced directly to Defendant's fraudulent activity, and does not have a legitimate claim to these funds.

II. RELATED ENTITY

d. *OAT Corporation* ("OAT") was a corporation that was formed in the State of Nevada by William S. Reed effective on December 31, 2002. OAT's registered agent was APG, Inc. Both OAT and APG shared the same address at 4601 W. Sahara Avenue, Las Vegas, Nevada 89102. Although Perkins was not listed on the articles of incorporation as a director or affiliate of OAT, he managed and controlled it. OAT received funds that can be traced directly to Defendant's fraudulent activity, which it transferred to Perkins and others. OAT's corporate charter was revoked in January 2006.

III. SUMMARY OF ACTION

2. The Commission seeks injunctive relief to enjoin the operations of Perkins, a commodity pool operator ("CPO") who, from at least January 2002 through April 1, 2004 ("the relevant time period") solicited funds for Universe to feed to Shasta Capital Associates, LLC ("Shasta"), which, in turn, operated as a feeder fund to a so-called "superfund" known as Tech Traders, Inc. ("Tech Traders"). Perkins solicited, accepted and pooled approximately \$3.4 million from over 40 commodity pool participants, approximately \$3 million of which he forwarded to Shasta, which itself collected almost \$14 million for the purpose of investing in Tech Traders. Tech Traders solicited approximately \$43 million in its "superfund" during the relevant time, only a portion of which was used to trade commodity futures contracts. It lost, misappropriated or dissipated approximately \$13.6 million.

3. In April and August 2004, the Commission filed a fraud action and an amendment to that action against Equity Financial Group, LLC ("Equity", the commodity pool operator for Shasta),

Tech Traders, Inc., Tech Traders Ltd. (both companies also known as “Tech Traders”), Magnum Investments, Ltd., Magnum Capital Investments, Ltd. (both companies also known as “Magnum”), Vincent J. Firth (“Firth”), Robert W. Shimer (“Shimer”), Coyt E. Murray (“Murray”) and J. Vernon Abernethy (“Abernethy”) in the United States District Court for the District of New Jersey, Camden Vicinage entitled *Commodity Futures Trading Commission v. Equity Financial Group, LLC, et al., Civil Action # 04-cv-1512 (D.N.J.)* (“the Equity Case”). That complaint alleged that Tech Traders and its president Murray falsely represented to participants that Tech Traders enjoyed extraordinary success trading in selected financial futures contracts using a confidential, proprietary “portfolio” trading system, and in addition engaged Abernethy as an allegedly independent CPA to provide a monthly and quarterly performance rate of return number based on “reviewed” and “verified” trading results. Although Tech Traders, Murray and Abernethy reported consistent, high monthly performance numbers to participants, those reports were false in that Tech Traders actually lost, misappropriated and dissipated millions of dollars.

4. During the relevant time period, Perkins represented to Universe’s participants that the trading company (*i.e.*, Tech Traders) in which Shasta invested 100% of its funds was enjoying extraordinary success trading in selected financial futures contracts. Defendant referred Universe participants to solicitation materials disseminated to Shasta participants, including the Shasta private placement memorandum (“PPM”) and website which claimed that the Shasta pool, of which Universe was a subset, made “astonishing” profits of approximately 100% per annum. In addition, in order to assure Universe participants that the reported profits were accurate and reliable, Defendant represented that those profits were “verified” by an allegedly independent CPA, whose name was not disclosed.

5. Through Universe, Perkins eventually solicited and committed more than \$3 million of participant funds to Shasta where the purported returns were too good to be true. Perkins did nothing to determine whether the touted trading results were accurate other than rely upon Shimer and Firth, who provided the information about Shasta. Moreover, Perkins failed to disclose, to existing and prospective participants, that immediately prior to forming Universe, Perkins and Shimer had been partners in at least three other failed high yield investment schemes in which the two had solicited and lost over \$2 million of participant funds in other apparent investment scams. Perkins also failed to accurately disclose either his background or the background of Shimer and Firth, and he misrepresented the compensation he expected to receive from operating Universe.

6. Defendant has engaged, is engaging or is about to engage in acts and/or practices which violate sections of the Act, 7 U.S.C. §§ 1 et seq. (2002), or Commission Regulations thereunder, 17 C.F. R. §§ 1 et seq. (2006). Specifically: Perkins has violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), by failing to disclose material information about his background or the background of Shimer and Firth, failing to disclose the past failed investment ventures in which Perkins and Shimer were partners, and misrepresenting the compensation that Perkins was to receive. Defendant's repetition of false, material information about Shasta's performance also operated as a fraud upon the existing and prospective participants. Perkins violated Section 4m(1), 7 U.S.C. § 6m(1), by failing to register with the Commission as a CPO. Perkins also violated Commission Regulation 4.20, 17 C.F.R. § 4.20, by commingling Universe's funds with a separate and unrelated company, Tax Accounting Office, Inc.; and Regulations 4.21, 4.24 and 4.25, 17 C.F.R. §§ 4.21, 4.24 and 4.25, by failing to provide disclosure documents to pool participants that contained required disclosures.

IV. Jurisdiction And Venue

7. The Act establishes a comprehensive system for regulating the purchase and sale of commodity futures and options on commodity futures contracts. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, 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.

8. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e), in that the Defendant 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.

V. Facts

A. Statutory Background

9. A “commodity pool” is defined in Commission Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1), as any investment trust, syndicate or similar form of enterprise engaged in the business of investing its pooled funds in trading commodity futures and/or commodity options.

10. A “commodity pool operator” (“CPO”) is defined in Section 1a(5) of the Act, 7 U.S.C. § 1(a)(5), 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 for future delivery on or subject to the rules of any contract market.

B. Perkins was Engaged in Suspect Business Ventures Prior To Universe.

11. In 1999, Perkins and Shimer, created an investment company called Kaivalya Holding Group, Inc. (“Kaivalya”). Over the ensuing three years (which immediately preceded the creation of Universe), Perkins and Shimer solicited over \$2 million from investors that Kaivalya pooled for investment in three allegedly high-yield investment schemes. In fact, all three of the investment ventures appear to have been frauds, and the Kaivalya investors lost their funds.

12. In the first investment venture, which occurred in February 1999, Perkins and Shimer solicited and pooled at least \$669,000 from approximately 25 participants, promising to pay them a 4% monthly return, while Kaivalya used the pooled funds to purportedly invest in high-yielding certificates of deposit. Approximately 14 months later, the offeror allegedly stopped making interest and principal payments, and Kaivalya investors lost their funds.

13. The second investment venture involved promissory notes offering double-digit monthly interest returns. In April 1999, Perkins and Shimer solicited and accepted at least \$325,000 from investors in exchange for promissory notes from Kaivalya . The pooled Kaivalya investment proceeds also allegedly were lost, and Kaivalya failed to make interest or principal payments on the promissory notes.

14. In August 1999, Perkins and Shimer engaged in their third investment scheme. This time, they solicited \$750,000 from investors for “an extraordinarily high yield—low risk private placement opportunity.” Shimer and Perkins told investors that their investment in the private placement involved no risk to capital and that their funds would be placed for “safekeeping” in a bank account and would not be moved without their written authorization and approval. However, in October 1999, Perkins and Shimer wired the Kaivalya investor funds they had collected to an intermediary for trading commodity futures pursuant to a trading program

designed by Murray. Perkins and Shimer promised investors that their principal would be returned in 90 days and projected a 10 – 20% monthly return. Perkins and Shimer solicited an additional \$475,000 in November 1999, for a total investment by Kaivalya investors of \$1,225,000. These funds disappeared and the Kaivalya investors again lost their principal. Perkins and Shimer told the Kaivalya investors that the intermediary had absconded with all of Kaivalya funds.

15. In the fall of 2000, Shimer sought to directly place funds with Murray for trading commodity futures. In June 2001, Shimer and Firth created Shasta as a commodity pool that was run by Equity for the sole purpose of feeding investment funds to Tech Traders and Murray for trading in the Tech Traders “superfund.” The Shasta PPM detailed the profit-sharing and compensation arrangement that was to govern the investment. However, Shimer and Murray also agreed to a secret side deal, memorialized in a separate agreement drafted by Shimer, in which Tech Traders was to allocate a portion of its share of “profits” to Shadetree, which was a Nevis trust that Shimer controlled. Thus, between the fees and expenses disclosed in the PPM and the secret “profits” allocated pursuant to the Shadetree side-agreement, Shimer and Firth were entitled to 35% of the “profits” Shasta earned. The Shadetree agreement was not disclosed to Shasta participants.

C. Perkins Creates Universe.

16. Perkins created Universe to solicit funds to be fed into the larger Shasta commodity pool. Because Shasta required a minimum investment of \$100,000, Universe was set up to allow an investor with a smaller investment the opportunity to participate in Tech Traders through Shasta without incurring the larger financial commitment required by the Shasta pool. Many of the

participants Perkins solicited for Universe were tax and accounting clients Perkins had through his TAO business.

17. Universe was also a mechanism for Perkins to collect more fees from Universe participants, who paid layered management fees to both Universe and Shasta. In addition to the management fees that were disclosed to Universe participants, Perkins had a secret agreement with Shimer through which Shimer agreed to pay Perkins 10% of the “profits” Universe pool participants made each month. These secret payments were in addition to management fees disclosed in the Universe Operating Agreement and were not deposited into the Universe account. Instead, Shimer made these payments to OAT for Perkins’ benefit.

18. Perkins solicited over 40 participants and collected over \$ 3.4 million to invest in Shasta and forwarded approximately \$3 million to Shasta for trading commodity futures contracts in the Tech Traders “superfund” commodity pool.

19. Perkins did not identify to pool participants the trader of Shasta’s, and hence Universe’s, participant funds. Rather, he represented only that the trading company’s system, called the “Synergy Trading System,” allegedly used a “portfolio” system for trading of selected exchange-traded financial futures contracts, including the NASDAQ 100 and S&P 500. Perkins represented that the success of the portfolio system derived from the fact that it utilized many different, allegedly non-correlated, separate systems traded concurrently on different time frames using proprietary algorithms, which not only helped filter out market noise for the purpose of more correctly determining the real direction of market trends, but also would balance and smooth the performance of the system.

20. Perkins solicited pool participants for Universe by using materials prepared for Shasta participants. Thus, Perkins distributed Shasta’s PPM, drafted by Shimer, to some existing and

prospective Universe participants and referred Universe participants to the Shasta website, <http://www.shastacapitalassociates.com/>. Perkins also distributed a Universe operating agreement and a subscription agreement to Universe participants. These documents were also drafted by Shimer. Perkins did nothing to determine the accuracy of any of these solicitation materials drafted by Shimer. Just as the Shasta solicitation materials did not disclose the secret profit split arrangement Shimer had entered into with Murray, the Universe solicitation materials did not reveal the secret 10% commission Shimer had promised Perkins on Universe participants' "profits".

D. Perkins is a Commodity Pool Operator.

21. Universe pool participants sent their investments directly to Universe, where they were pooled in Universe's corporate account. Perkins commingled pool participant funds with pool operator funds and also with funds in the account of TAO, Perkins' separate and unrelated business. After fees and expenses were deducted, the remaining funds were sent to an attorney escrow account controlled by Shimer, who deducted more fees and expenses and forwarded the remaining funds to Tech Traders for investment in the commodity futures markets.

E. The Disclosure Documents Did Not Contain Required Disclosures.

22. Perkins disseminated an Operating Agreement and a Subscription Agreement to its participants and Shasta's PPM to at least some participants. The Subscription Agreement recited that participants had read the Shasta PPM and that the participants had received sufficient information and disclosures in the PPM and the Shasta website to develop an informed decision to invest in Universe. However, none of these documents contained disclosures required of CPOs.

23. In violation of 17 C.F.R. § 4.24 (f), neither the Universe Operating Agreement nor the Subscription Agreement gave any information about the business background of Universe's principal, Perkins. They did not disclose that, as he knew, Perkins was under investigation for participating in the filing of false tax returns, conduct for which he was later charged, convicted and sentenced to four months imprisonment in a federal penitentiary. They also did not disclose that Perkins had no experience managing commodity pools or accounting for pool performance.

24. Also in violation of 17 C.F.R. § 4.24 (f), the Shasta PPM failed to disclose the name and business background of one of the principals of Shasta, Shimer. The Shasta PPM also failed to disclose anything about Shimer's shared role with Perkins in losing millions of dollars of investor money in the failed Kaivalya investments. The Shasta PPM also did not fully disclose the business background of Vincent Firth, the president of Shasta's CPO, Equity. The PPM did not disclose that Firth had been involved in a past failed business deal for which he had been sued or that he had filed for bankruptcy under Chapter 13 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* Further, the Shasta PPM failed to disclose the name of the "superfund" in which Universe was invested, Tech Traders, or its principal, Coyt Murray, or disclose the business backgrounds of either.

25. In violation of 17 C.F.R. § 4.24(i), the Universe Operating Agreement, the Universe Subscription Agreement and the Shasta PPM also did not disclose the secret profit sharing agreement Shimer had entered into with Murray, or that Shimer had agreed to pay Perkins 10% of the Universe participants "profits" pursuant to this secret agreement. Moreover, the Universe Operating Agreements Perkins disseminated to each Universe participant provided that Perkins would receive either 5 or 10% of Universe "profits" or income as full compensation for his services as manager of Universe. However, most Universe participants were usually charged 5%

more than their Operating Agreements allowed. These overcharges were in addition to the secret 10% Shimer agreed to pay Perkins from his side Shadetree agreement with Murray and in addition to the 5% management fee that Shasta charged Universe. Perkins received at least \$62,000 in overcharges and \$82,500 from Shimer pursuant to their secret side deal.

F. Perkins Distributed False Account Statements.

26. Perkins distributed account statements to Universe participants that falsely showed profits each month and falsely indicated that the profits were verified by a CPA each month.

G. Tax Accounting Office, Inc. Received Funds to Which It was not Entitled.

27. Perkins controlled TAO. TAO is Perkins' private bookkeeping service, which is unrelated to Universe. TAO performed no services for Universe, but received funds from Universe to which it was not entitled.

**VI. Violations of the Commodity Exchange Act
& Commission Regulations**

Count I

Violations of Section 4o(1) of the Act
Commodity Pool Fraud

28. Paragraphs 1 through 27 are re-alleged and incorporated herein.

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

30. During the relevant time period, Perkins has acted as the CPO in that he engaged in a business that is the nature of an investment trust, syndicate, or similar form of enterprise and in

connection therewith, has solicited, accepted or received funds, securities or property from others for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

31. Perkins has violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that he directly or indirectly employed or are employing a device, scheme, or artifice to defraud commodity pool participants, or has engaged or are engaging in transactions, practices or a course of business which operated as a fraud or deceit upon commodity pool participants by means of the acts and practices described in paragraphs 1 through 27.

32. Each material misrepresentation or omission made during the relevant time period, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act.

Count II
Violation of Section 4m(1) of the Act:
Failure to Register as a CPO

33. Paragraphs 1 through 32 are re-alleged and incorporated herein.

34. Because, among other things, Perkins had attracted more than fifteen participants at any one time and had accepted total gross contributions in excess of \$400,000, Perkins should have been registered as a CPO. Perkins acted as a CPO and used the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CPO without the benefit of registration, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002).

35. Each use of the mails or any means or instrumentality of interstate commerce in connection with Perkins' business as a CPO without proper registration or exemption from registration during the relevant time period, including, but not limited to those specifically

alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002).

Count III
Violations of CPO Regulations
17 C.F.R. §§ 4.20, 4.21, 4.24 and 4.25

36. Paragraphs 1 through 35 are re-alleged and incorporated herein.
37. Pursuant to Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c), no CPO may commingle the property of any pool that it operates or that it intends to operate with the property of any other person or entity.
38. Perkins commingled property belonging to Universe with CPO funds and with Perkins' personal business accounts for Tax Accounting Office, Inc. in violation of Regulation 4.20(c).
39. Each act of Perkins' that commingled property of Universe with Perkins' personal business accounts for Tax Accounting Office, Inc. is alleged as a separate violation of Regulation 4.20(c).
40. Commission Regulation 4.21, 17 C.F.R. § 4.21, provides that, subject to certain exceptions not applicable here, each CPO registered or required to be registered under the Act must deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool prepared in accordance with Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25, by no later than the time it delivers to the prospective pool participant a subscription agreement for the pool.
41. During the relevant time period, Perkins failed to deliver to prospective participants in Universe a Disclosure Document prepared in accordance with Commission Regulations 4.24 and 4.25. Therefore, Perkins violated Commission Regulation 4.21.

42. Each failure to deliver a Disclosure Document complying with the provisions of Regulations 4.24 and 4.25 is alleged as a separate violation of Commission Regulation 4.21.

Count IV
Disgorgement of Assets from the Relief Defendant

43. Paragraphs 1 through 42 are re-alleged and incorporated herein.

44. During the relevant time period, Tax Accounting Office, Inc., the Relief Defendant herein, received funds which are directly traceable to the funds obtained from participants through Defendant Perkins' fraudulent operation of Universe.

45. The Relief Defendant had no legitimate interest in the funds or the value of the benefits it may have received as a result of Defendant Perkins' fraudulent operation of Universe.

46. The Relief Defendant will be unjustly enriched if it is not required to disgorge the funds or the value of the benefits it may have received as a result of Defendant Perkins' fraudulent schemes.

47. The Relief Defendant should be required to disgorge the funds or the value of the benefits it may have received which are traceable to Defendant Perkins' fraudulent operation of Universe.

Relief Requested

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

A. Find Defendant liable for violating Section 4o(1) of the Act, 7 U.S.C. § 6o(1), Section 4m(1) of the Act, 7 U.S.C. § 6m, and Commission Regulations 4.20, 4.21, 4.24, and 4.25, 17 C.F.R. §§ 4.20, 4.21, 4.24, and 4.25;

B. Enter an order of permanent injunction enjoining Defendant 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

Defendant who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Engaging in conduct in violation of Sections 4m(1), and 4o(1) of the Act, 7 U.S.C. §§ 6m(1) and 6o(1) (2002) and Commission Regulations 4.20, 4.21, 4.24, and 4.25, 17 C.F.R. §§ 4.20, 4.21, 4.24, and 4.25 (2006);
2. Directly or indirectly soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity futures and/or options contract;
3. Engaging in, controlling, or directing the trading of any commodity futures and/or options accounts, on his own behalf or for or on behalf of any other person or entity, whether by power of attorney or otherwise;
4. Introducing customers to any other person engaged in the business of commodity futures and/or options trading;
5. Issuing statements or reports to others concerning commodity futures and/or options trading;
6. Otherwise engaging in any business activities related to commodity futures and/or options trading.

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

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

E. Enter an order requiring Defendant to pay civil penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of: (1) triple the monetary gain to

Defendant for each violation of the Act and Regulations, or (2) \$120,000 for each violation of the Act and Regulations;

F. Enter an order requiring Defendant to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and

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

Date: 09/28/2006

Respectfully submitted,
Attorneys for Plaintiff
Commodity Futures Trading Commission

s/ Elizabeth M. Streit

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