

**AUGUST 8, 2007**

**MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

U.S. COMMODITY FUTURES	)	Civil Action No.: 07 C 3598
TRADING COMMISSION,	)	
	)	
Plaintiff	)	Honorable Judge Manning
vs.	)	Magistrate Judge Mason
	)	
LAKE SHORE ASSET MANAGEMENT	)	
LIMITED, LAKE SHORE GROUP OF	)	
COMPANIES, INC., LTD., and	)	
PHILIP J. BAKER;	)	
	)	
Defendants.	)	

**FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER  
EQUITABLE RELIEF AND FOR CIVIL MONETARY PENALTIES  
UNDER THE COMMODITY EXCHANGE ACT**

**I. SUMMARY**

1. This matter involves a fraudulent scheme by Defendant Lake Shore Group of Companies, Inc., Ltd. ("Lake Shore Group"), numerous other inextricably intertwined companies, including Defendant Lake Shore Asset Management Limited ("LSAM"), and Phillip J. Baker ("Baker") (collectively the "Defendants"), who owns, controls and manages the Lake Shore Group and who is the president and managing partner of LSAM, to defraud hundreds of commodity investors who invested at least \$250 million to trade commodity futures contracts on U.S. futures markets.

2. From at least June 2002 to the present ("relevant period"), Lake Shore Group and LSAM, through their employees and officers including Baker, fraudulently solicited and accepted or caused to be accepted at least \$250 million from at least 500

individuals and entities worldwide for the purpose of, among other things, trading commodity futures contracts in several commodity pools.

3. During the relevant period, the Defendants have made material misrepresentations and omissions regarding the pools. Specifically, Defendants have misrepresented the profits and losses incurred by the pools and provided pool participants and potential pool participants with false performance tables that misrepresent the pools' respective and collective track records. Defendants distributed or caused to be distributed false account statements to participants showing that they were earning substantial profits when, in fact, the trading accounts in the names of the pools collectively lost approximately \$29.4 million from February 2002 through June 2007. Additionally, Defendants have misrepresented the total amount of funds managed. Lastly, the Defendants have made material misrepresentations and omissions in promotional materials and offering memoranda that they provided to pool participants, potential pool participants and futures commission merchants ("FCMs").

4. LSAM is registered with the Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") in various capacities. When the CFTC attempted to inspect LSAM's records to verify the performance results and to verify the safety of customer funds, LSAM refused to make its books and records available for inspection and has been unable or unwilling to provide information about its customers and trading performance.

5. The Defendants have engaged, are engaging, or are about to engage in acts or practices which violate the anti-fraud and record keeping and inspection sections of the

Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 *et seq.* (2002), and Commission Regulations thereunder, 17 C.F.R. §§ 1 *et seq.* (2007).

6. Baker is a controlling person of LSAM and Lake Shore Group and knowingly induced or failed to act in good faith regarding LSAM and Lake Shore Group’s violations and, therefore, is liable for their violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

7. Accordingly, pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2002), the Commission brings this action to enjoin Defendants’ unlawful acts and practices and to compel their compliance with the Act and Commission Regulations. In addition, the Commission seeks civil penalties, restitution to defrauded investors, disgorgement of Defendants’ ill-gotten gains, a permanent trading ban, and such other relief as the Court may deem necessary or appropriate.

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

## **II. JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), which provides that whenever it shall appear to the CFTC that any 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, the CFTC may bring an action in the proper District Court of the United States against such person to enjoin such practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

10. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), because Defendants are found in, inhabit, or transact business in this district and the acts and practices in violation of the Act and Commission Regulations have occurred, are occurring, or are about to occur within this district, among other places.

### III. THE PARTIES AND OTHER RELEVANT ENTITIES

#### A. Plaintiff

11. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with administering and enforcing the Act, 7 U.S.C. §§ 1 et seq. (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2007).

#### B. Individual Defendant

12. **Philip J. Baker** is a Canadian citizen residing at 57 Capital Wharf, 50 Wapping High Street, London, United Kingdom. He is the co-founder and managing partner of the Lake Shore Group. He also is LSAM's president and managing partner and a member of its "advisory board." During part of the relevant period, Baker was the Executive Director of an entity that managed or performed administrative tasks for Lake Shore Asset Management, Inc. ("LSAM Inc."), a predecessor to LSAM.

#### C. Corporate Defendants

13. **Lake Shore Asset Management Limited** operates an office located at 875 N. Michigan Ave., Suite 1562, Chicago, Illinois 60611-7449. LSAM was incorporated in Bermuda in September 2006. Baker is the president and managing director. Nicholas Eveleigh is Vice President of Operations and Laurence Rosenberg

(“Rosenberg”) is a director and Vice President. In various documents and on its website, LSAM purports to be domiciled in the British Virgin Islands. LSAM has been registered with the Commission as both a commodity pool operator (“CPO”) and commodity trading advisor (“CTA”) since January 2007 pursuant to Section 4m of the Act, 7 U.S.C. §6m (2002). LSAM is also a member of the National Futures Association (“NFA”). NFA records list Baker and Rosenberg as principals with greater than 10% ownership of LSAM.

14. Defendant **Lake Shore Group of Companies Inc., Ltd.** is registered in the Isle of Man while its main office is in London, England. It is an “umbrella” organization that, among other things, offers several investment products including several commodity pools. Baker is Lake Shore Group’s managing partner. LSAM is Lake Shore Group’s investment manager and investment advisor. The Lake Shore Group solicited \$1,000,000 from at least one U.S. pool participant whose funds were transferred to an account at Sentinel. That U.S. pool participant obtained his account statement by accessing the Lake Shore Group’s website. In addition the Lake Shore Group trades commodity futures on U.S. exchanges through at least three FCMs.

**D. The Lake Shore Common Enterprise**

15. The Lake Shore Common Enterprise consists of the Lake Shore Group, which, on information and belief, includes, but is not limited to, LSAM; Lake Shore Alternative Financial Asset Ltd.; Lake Shore Alternative Financial Asset Account I Ltd.; Lake Shore Alternative Financial Asset Account II, organized in the Turks and Caicos Islands; Lake Shore Alternative Financial Asset Fund IV Ltd.; Lake Shore Alternative Financial Asset Fund Ltd.; Lake Shore Alternative Financial Asset Fund I; Lake Shore

Alternative Financial Asset Fund II Ltd.; Lake Shore Alternative Financial Asset Fund III Ltd., Lake Shore Alternative Financial Asset Fund IV US, LLC; Lake Shore Alternative Financial Asset Fund IV Ltd.-Class E; Lake Shore Alternative Financial Asset Yen Fund Ltd.; Lake Shore Alternative Financial Asset Yen Fund Ltd Class II; Lake Shore Alternative Financial Asset Yen Fund Limited Class III; Lake Shore Alternative Financial Corporation Ltd., organized in the British Virgin Islands; Lake Shore Alternative Financial Asset Corporation 2006 Ltd.; Lake Shore Alternative Asset Account 1; Lake Shore Institutional and Dealer Relations; and Lake Shore Administration.

16. LSAM's predecessor was LSAM Inc. During part of the relevant period, LSAM Inc. advised pool participants regarding trading in the Lake Shore Group commodity pools. LSAM is a member of the Lake Shore Group and its investment manager and investment advisor. During the relevant period, all of the entities listed above in paragraph 15 together with LSAM and the Lake Shore Group operated as a common enterprise ("LS Common Enterprise"). The LS Common Enterprise manages, operates and advises, among other things, at least four commodity pools.

**E. Other Related Individuals and Corporations**

17. **Laurence Mehl Rosenberg**, resides in Chicago, Illinois. He has been registered with the Commission in various capacities since at least 1982. Rosenberg has been registered with the Commission as the sole associated person ("AP") of LSAM since January 2007. He is a director and principal with greater than 10% ownership of LSAM. Rosenberg is also an NFA member. He is a director of LS Funds I, II, III and IV.

18. **Lake Shore Alternative Financial Asset Fund IV U.S., LLC**, is an Illinois limited liability company organized on April 17, 2007. LSAM is its managing member. The incorporation documents represent that its principal place of business is Ontario, Canada.

19. **Lake Shore Asset Management Inc.** is a defunct Illinois corporation that maintained an office located at 875 N. Michigan Ave., Suite 1562, Chicago, Illinois. LSAM Inc. was registered with the Commission as a CPO and as a CTA from January 4, 1997 and March 30, 1999, respectively, until February 2007 pursuant to Section 4m of the Act, 7 U.S.C. 6m (2002). LSAM Inc. was also a member of the NFA.

#### **IV. FACTS RELEVANT TO ALL COUNTS**

##### **A. Statutory and Regulatory Background**

20. 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 operated for the purpose of trading commodity futures and/or commodity options.

21. Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2002), defines a CPO 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 or derivatives transaction execution facility.

22. Section 1a(6) of the Act, 7 U.S.C. § 1a(6) (2002), defines a CTA as any person who for compensation or profit, engages in the business of advising others, either

directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in (I) any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility; (II) any commodity option authorized under section 4c; or (III) any leverage transaction authorized under section 19; or for compensation or profit, and as part of a regular business, issues or promulgates analysis or reports concerning any of the activities referred to above.

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

24. Section 4(n) of the Act, 7 U.S.C. § 6n (2002), requires CTAs and CPOs to maintain certain books and records in such form and manner as may be prescribed by the Commission, and, upon request by the Commission, shall make available for inspection such books and records.

25. Regulation 1.31, 17 C.F.R. § 1.31(a)(1) (2007), provides, in relevant part, that all books and records required to be kept by the Act and Commission Regulations shall be readily accessible and open to inspection by any representative of the Commission or the United States Department of Justice.

26. Regulation 4.23, 17 C.F.R. § 4.23 (2007), provides, in relevant part, that all registered CPOs must make, keep and produce upon Commission request certain books and records including, but not limited to, literature distributed to existing or prospective participants and itemized records of commodity interest transactions.

27. Regulation 4.33, 17 C.F.R. § 4.33 (2007), provides, in relevant part, that all registered CTAs must make, keep and produce upon Commission request certain



books and records including, but not limited to, the name and address of each client and subscriber, literature distributed to existing or prospective clients, and itemized records of each commodity interest transaction of the CTA.

28. The NFA is a not-for-profit membership corporation and is a self-regulatory organization that is registered with the Commission as a futures association under Section 17 of the Act. The NFA conducts audits and investigations of NFA member firms, including registered CTAs and CPOs, to monitor for compliance with NFA rules, some of which incorporate by reference Commission Regulations.

**B. The Pools and Their Operation**

29. The LS Common Enterprise operates at least four commodity pools (collectively the “Pools”). Three of the Pools – Lake Shore Alternative Financial Asset Fund Limited (“LS I”), Lake Shore Alternative Financial Asset Fund II Limited (“LS II”), and Lake Shore Alternative Financial Asset Fund III Limited (“LS III”) – are organized in the Turks and Caicos Islands. The fourth Pool, Lake Shore Alternative Financial Asset Fund IV Limited (“LS IV”), is organized in the British Virgin Islands. Baker is a majority shareholder and Director of LS IV. LSAM is the CTA for all of the Pools, and, in addition, is LS IV’s managing member, CPO and CTA.

30. During the relevant period, Baker and the LS Common Enterprise fraudulently solicited and accepted customer funds to invest in the Pools trading in, among other things, exchange traded futures contracts on equity indicies, US Treasury Notes and currencies traded on U.S. exchanges.

31. The Defendants solicited customers to invest in the pools in various ways including, but not limited to at least one website, [www.lakeshorefunds.com](http://www.lakeshorefunds.com). Defendants

provided to at least two potential pool participants, among other things, a Qualitative Firm Evaluation and Due Diligence piece, confidential explanatory memoranda (“explanatory memoranda”) and a subscription agreement for the various pools. The explanatory memoranda for several pools were also available on the Defendants’ website.

32. Each pool’s explanatory memoranda represents that LSAM is the investment manager and investment advisor of the funds and touts LSAM’s registration as a CTA and CPO, and as a member of the NFA.

33. The Pools have trading accounts with Man Financial Limited, London, England (“Man”), Lehman Brothers International Europe in London, England (“Lehman”), Fimat International Banque SA UK Branch, London, England (“Fimat”), all of which are exempt foreign firms. The pools also have accounts with Sentinel Management Group, Inc., Northbrook, Illinois (“Sentinel”), a registered FCM and NFA member.

34. Lake Shore Group’s promotional materials and website represent that all client funds managed by Lake Shore are held in trustee accounts at Sentinel.

### **C. The NFA Audit**

35. On June 11, 2007, the NFA conducted a review of LSAM’s website at [www.lakeshorefunds.com](http://www.lakeshorefunds.com). The website, among other things: promotes its commodity pools called Lake Shore Funds I, II, III, and IV and others; touts a highly profitable 13-year performance record; represents that LSAM is regulated by the CFTC and NFA; and includes a link to NFA’s website. For example, a press release included on the website touted a 13 year performance history of 28.27% compounded return for “Lake Shore’s flagship program.”

36. NFA also reviewed registration records for LSAM and noted that it listed its headquarters as being in Hamilton, Bermuda and listed Rosenberg as a Director and as the firm's sole principal with greater than 10% ownership in the firm.

37. NFA decided to conduct an audit of LSAM in order to examine its operations, test the various LSAM funds' performance claims, and discuss its website with Rosenberg.

38. On June 14, 2007, NFA spoke to Rosenberg, who informed the NFA that the Lake Shore Group was not registered in any capacity and is composed only of LSAM. He further indicated that LSAM currently operated five pools, all of which were organized offshore. He stated that LSAM had recently formed a U.S. Fund intended for U.S. investors, but that none of the Funds presently had participants who are U.S. citizens. He later corrected that representation and informed the NFA that LS IV "US" had one U.S. investor from New York who invested \$1 million.

39. At the same meeting, Rosenberg stated that all LSAM accounts and funds are traded at Man, Lehman and Fimat in London. Rosenberg estimated that, in addition to the pools, LSAM managed approximately 250 trading accounts. He estimated that the total assets of the pools and managed accounts were \$1 billion.

40. At the June 14, 2007 meeting, NFA auditors provided Rosenberg with a letter requiring him and LSAM to produce specific information and documents to the NFA by noon on June 19, 2007 to facilitate NFA's review.

41. Rosenberg indicated that he would forward the letter to LSAM's outside counsel and would produce the requisite documents by June 19, 2007.

42. When the NFA asked Rosenberg why LSAM's NFA registration records indicate that LSAM's main office is in Bermuda. Rosenberg told them that no business is conducted in Bermuda; while there is an office in Bermuda with an attorney acting as an agent, all calls to Bermuda are forwarded to LSAM's office in Toronto, Canada. Rosenberg also said that the Toronto office is where all trading is done and all books and records are maintained.

43. NFA audit staff learned in the June 14, 2007 meeting that LSAM's website had a password protected area to which the NFA could not gain access. Rosenberg related that the master password would provide access to information including participant lists, managed accounts, and individual account information. NFA requested and Rosenberg provided NFA audit staff with access to the password protected area of the website.

44. On June 15, 2007, NFA audit staff received the username and master password from Rosenberg and reviewed the protected web pages. According to the information displayed on the protected area of the website, the value for all pools and managed accounts totaled approximately \$466 million. NFA noted that at least ten customers appeared to be U.S. customers, based on either account numbers or address information.

45. On June 19, 2007, NFA's access to LSAM's protected website was revoked and the NFA was told that upon the advice of counsel, located in Geneva, Switzerland, LSAM would not provide any additional information because of concerns related to unspecified "bank secrecy" laws. NFA reminded Rosenberg that LSAM had agreed to make its books and records available to NFA within 72 hours and had certified

in its registration application that it was not subject to any blocking, privacy or secrecy laws that created an obstacle to full record production. Later that same day, Rosenberg denied having any ownership interest in LSAM and claimed he could not authorize the release of any information.

46. In part because LSAM refused to provide the documents to NFA, on June 21, 2007, the Commission issued a document request to LSAM, to the attention of Baker, pursuant to Section 4n of the Act. The Commission requested, among other things, that LSAM produce books and records including records that would reflect the actual performance of the commodity pools, and produce a list of pool participants, and samples or copies of all reports, memoranda, publications or other literature or advice distributed to clients.

47. On June 21, 2007, Rosenberg told Commission staff that there were no books and records in the Chicago office and that all books and records were located in Toronto, Canada and were not available for inspection.

48. The address for the Toronto office provided by LSAM in registration materials is a "mail drop." On information and belief, the individual whose name appeared on registration materials as LSAM's compliance officer claimed to be an "IT" consultant under contract with LSAM.

49. Between June 26, 2007 and July 10, 2007, Commission staff communicated several times with Baker and/or his legal representatives. During those conversations, Baker represented to staff that as LSAM's Managing Partner and President, he is responsible for all of LSAM's operations. He also stated that he started developing the Lake Shore Group in 1994 originally for institutional accounts. Baker

represented that Lake Shore Group had about \$1 billion in assets under management. He also stated that the \$466 million amount that the NFA observed on the password protected portion of the website included certain assets that were double counted since some Lake Shore Group funds also invested in other Lake Shore Group funds. Baker represented that about \$230 million was invested in the funds. That suggests that the Lake Shore Group's direct managed accounts had total assets of about \$770 million.

50. Baker represented that none of the Lake Shore Group's 250 direct managed accounts were at Man, Lehman, Fimat or Sentinel. He did not disclose what brokerage houses carried the accounts.

51. To date, only one LSAM funded managed account has been identified. It is an account held by Lehman with a value of about \$2 million and is the name of the Bank of Montreal – Ireland. Neither LSAM nor Baker has identified any other managed accounts.

#### **D. Defendants' Made Misrepresentations and Omissions**

52. The Defendants misrepresented the profits and losses incurred by the pools and provided pool participants and potential pool participants with false performance tables that misrepresent the pools' track record.

53. Performance tables for LS I, which was provided to pool participants through the Defendants' website, represents the following as the total annual returns:

for 2003	22.48%
for 2004	29.81%
for 2005	18.95%
for 2006	5.73%
for 2007	2.82%. (January 2007 to March 2007)

These performance results are false. The only trading accounts open at Man during 2003 and 2004, shows that trading in the accounts was unprofitable in those calendar years. Instead of being profitable during the time the overall, between January 2003 through May 2007, the Lake Shore Alternative Financial Asset Fund Ltd. account at Man lost approximately \$22 million.

54. The LS Common Enterprise performance tables dated December 31, 2006 for LS IV shows returns as follows:

for 2002	55.50%
for 2003	37.02%
for 2004	33.80%
for 2005	40.30%
for 2006	21.40%.

This performance table consists of an average of the returns of Funds I through IV. In computing the average of returns, LS Common Enterprise used hypothetical results for Fund I showing a 55.50% profit, when the actual trading for 2002 resulted in a loss of \$1.4 million.

55. Although the LS Common Enterprise admits in its due diligence publications that its largest drawdown was in July 2002 when it experienced a “– 48.56% drawdown.” In preparing its performance table included in printed materials and its website, however, as described above, it used simulated performance results for 2002 to show profits instead of the actual unprofitable performance. In fact, in the performance table for the month of July 2002, the LS Common Enterprise represents the monthly return to be +7.62% and omits the material fact that it had actual losses of – 47% during one month.

56. During 2006 and 2007 the LS Common Enterprise reported to its pool participants that LS IV had profited by 21.40% and 8.58%, respectively. These purported performance results are false because the trading accounts at Lehman for accounts entitled LS IV from October 2006 through June 2007 had trading losses totaling about \$4.4 million. Also, the trading accounts at Fimat for accounts entitled LS IV, that was first funded in May 2007, lost approximately \$260,000 during May 2007. There were no trading accounts for LS IV at Man.

57. The performance tables that Lake Shore Group published on its websites for its prospective and actual pool participants are false because they show profits when, in fact, the LS Common Enterprise commodity futures trading accounts at Man, Lehman and Fimat indicate that the accounts had experienced significant losses trading commodity futures. From February 2002 through June 2007, the LS Common Enterprise accounts at Man, Lehman and Fimat, in the aggregate, lost more than \$29.4 million

58. Each week, on its password protected portion of its website, Lake Shore Group posted the account value for each of its pool participants. Pool participants could access this information to determine how their investment was performing. The reported account values were consistent with the false statements made in Lake Shore Group's performance tables. Consequently, the LS Common Enterprise distributed or caused to be distributed false account statements to pool participants because the statements showed that they were earning substantial profits when the trading accounts in the names of the pools lost approximately \$29.4 million overall.

59. The LS Common Enterprise claims that its track record included "42 up [months] and 8 down [months]" are also false. In reality, the LS Ltd account at Man –



and the only account that has traded since January 2003, shows the fund was “up” 17 months and “down” 33 months.

60. The LS Common Enterprise’s claim that it manages over \$1 billion in assets is also false. Defendants represented on their website as recently as June 11, 2007, that the pools contained \$293.5 million in pool participants’ funds and that the Lake Shore Group had \$1.05 Billion in assets under management. In fact, the total pool funds at Man, Lehman, Fimat and Sentinel is approximately \$238,000. To date, the Defendants have only identified one separately managed account with an initial deposit of \$2 million. Therefore, upon information and belief, this representation is false.

**E. Failure To Produce Books And Records**

61. Despite the Commission’s repeated requests to Baker and LSAM that LSAM produce its books and records and allow Commission representatives to inspect and copy them, both Baker and LSAM have failed to produce the requested records and have refused to allow Commission representatives the right to inspect and copy them, in violation of the Act and Commission Regulations. In so doing, Baker has knowingly induced, directly or indirectly, LSAM’s violation of the Act and Commission Regulations or has failed to act in good faith.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION’S REGULATIONS**

**COUNT I**

**VIOLATIONS OF SECTION 4b OF THE ACT:  
FRAUD BY MISREPRESENTATION BY ALL DEFENDANTS**

62. The allegations set forth in paragraphs 1 through 61 are re-alleged and incorporated herein.

63. Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), make it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully make or cause to be made to other persons false reports or statements, or willfully enter or cause to be entered for other persons false records; or willfully deceive or attempt to deceive by any means whatsoever other persons; or willfully deceive or attempt to deceive by any means whatsoever other persons in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any transactions in interstate commerce in such commodity, or the produce or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.

64. From at least 2002 to the present, the Lake Shore Group and LSAM, by and through their employees and officers including Baker, cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive pool participants by misrepresenting the profits and losses of the commodity pools it operated and failing to disclose trading losses in violation of Sections 4b(a)(2)(i) and (iii) of the Act.

65. The Lake Shore Group and LSAM, by and through their employees and officers including Baker, also cheated or defrauded or attempted to cheat or defraud pool participants by willfully making or causing to be made false reports to the pool

participants who invested money with Defendants to trade commodity futures contracts in violation of Section 4b(a)(2)(ii) of the Act.

66. Baker, directly or indirectly, controlled Lake Shore Group and LSAM and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the Lake Shore Group and LSAM violations alleged in this count. Baker is thereby liable for the Lake Shore Group's and LSAM's violations of Section 4b(a)(2)(i)-(iii) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

67. The actions and omissions of Baker, as described in this Count I, were done within the scope of his employment with Lake Shore Group and LSAM and, therefore, Lake Shore Group and LSAM are liable for his violations of Sections 4b(a)(2)(i)-(iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2.

68. Lake Shore Group and LSAM are also jointly and severally liable for the acts and practices of each other in violation of Section 4b(a)(2)(i)-(iii) of the Act in that these acts and practices were in furtherance of the Lake Shore Common Enterprise.

69. Each material misrepresentation or omission, and each false report or statement made during the relevant period period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i)-(iii) of the Act.

## COUNT II

### **VIOLATIONS OF SECTION 4(a)(1) OF THE ACT: COMMODITY POOL FRAUD BY LAKE SHORE GROUP AND BAKER**

70. The allegations set forth in paragraphs 1 through 61 are re-alleged and incorporated herein.

71. Since at least 2002, the Lake Shore Group, by and through its employees and officers including Baker, acted as a CPO in that it engaged in a business that is of 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.

72. During the relevant period, the Lake Shore Group, by and through its employees and officers including Baker, while acting in its capacity as a CPO, has violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C § 6o(1)(A) and (B), in that it directly or indirectly employed or is employing a device, scheme, or artifice to defraud pool participants or prospective pool participants, or has engaged or is engaging in transactions, practices or a course of business which operated as fraud or deceit upon pool participants or prospective pool participants by means of the acts and practices described in the above paragraphs.

73. In connection with such conduct, the Lake Shore Group, by and through its employees and officers including Baker, used or is using the mails or other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CPO.

74. Baker, directly or indirectly, controlled the Lake Shore Group and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the Lake Shore Group's violations alleged in this count. Baker is thereby liable for the Lake Shore Group's violations of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C § 6o(1)(1) and

(B), of the Act, 7 U.S.C § 6o(1)(A) and (B), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

75. Each material misrepresentation or omission, and each false report or statement made during the relevant period period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C § 6o(1)(A) and (B).

### COUNT III

#### **VIOLATIONS OF SECTION 4o(1) OF THE ACT: COMMODITY POOL AND TRADING ADVISOR FRAUD BY LSAM AND BAKER**

76. The allegations set forth in paragraphs 1 through 61 are re-alleged and incorporated herein.

77. Beginning in January 2007, and continuing to the present, LSAM, while acting as a CPO and as a CTA, has violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B), in that it directly or indirectly employed or is employing a device, scheme or artifice to defraud pool participants or prospective pool participants, clients or prospective clients or has engaged or is engaging in transactions, practices or a course of business which operated as a fraud or deceit upon pool participants or prospective pool participants, clients or prospective clients, by using the mails or other means or instrumentalities of interstate commerce. LSAM's fraudulent acts included, but are not limited to: (i) distributing or causing to be distributed false documents to prospective and actual pool participants and clients; (ii) misrepresenting and omitting to state material facts to prospective and actual pool participants and clients; (iii) misrepresenting the profits and losses and balances of funds received from pool participants; and

(iv) distributing or causing to be distributed documents containing false information on its website.

78. Baker, directly or indirectly, controlled LSAM and did not act in good faith or knowingly induced directly or indirectly, the acts constituting LSAM's violations alleged in this Count. Baker is thereby liable for LSAM's violation of Section 4o(1) of the Act, 7 U.S.C. 6o(1), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

79. Each material misrepresentation or omission, and each false report or statement made during the relevant period 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, 7 U.S.C. § 6o(1).

#### COUNT IV

**VIOLATIONS OF SECTION 4n OF THE ACT AND  
REGULATIONS 1.31, 4.23 AND 4.33:  
FAILURE TO PRODUCE RECORDS FOR INSPECTION**

80. The allegations set forth in paragraphs 1 through 61 are re-alleged and incorporated by reference.

79. Section 4n of the Act and Regulation 1.31 require that every CPO and CTA maintain books and records in such form and manner as may be prescribed by the Commission. All such books and records shall be kept for a period of five years and shall be readily accessible during the first two years. All such books and records shall be open to inspection by any representative of the Commission or the Department of Justice.

81. Regulation 4.23 provides, in relevant part, that all registered CPOs must make, keep and produce upon Commission request certain books and records including, but not limited to, literature distributed to existing or prospective participants and

itemized records of commodity interest transactions. Regulation 4.33 provides, in relevant part, that all registered CTAs must make, keep and produce upon Commission request certain books and records including, but not limited to, the name and address of each client and subscriber, literature distributed to existing or prospective clients, and itemized records of each commodity interest transaction of the CTA.

82. Beginning on June 21, 2007 and continuing through the present, LSAM violated Section 4n of the Act, 7 U.S.C. §§ 6n (2002), and Commission Regulations 1.31, 4.23, and 4.33, 17 C.F.R. §§ 1.31, 4.23, and 4.33 (2007) by: refusing to, upon request of the Commission, make available for inspection its books and records, including records that would show the actual performance of the commodity pools, and by refusing to furnish the name and address of each client, subscriber, or participant, and submit samples or copies of all reports, letters, circulars, memorandums, publications, writings, or other literature or advice distributed to clients, subscribers, or participants, or prospective clients, subscribers or participants to the Commission upon its request.

83. Baker directly or indirectly controlled LSAM and did not act in good faith or knowingly induced, directly or indirectly, LSAM's violations of Section 4n of the Act, 7 U.S.C. §§ 6n (2002), and Commission Regulations 1.31, 4.23 and 4.33, 17 C.F.R. §§ 1.31, 4.23 and 4.33 (2007). Baker, therefore, is a controlling person and is liable for LSAM's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

84. Each day LSAM and Baker failed to comply with the Commission's request to make LSAM's books and records available for inspection is alleged as a separate and distinct violation of Section 4n of the Act, 7 U.S.C. § 6n (2002), and Commission Regulations 1.31, 4.23, and 4.33, 17 C.F.R. §§ 1.31, 4.23, and 4.33 (2007).

**VI. RELIEF REQUESTED**

WHEREFORE, the CFTC respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2000), and pursuant to its own equitable powers, enter:

A. An order finding that Defendants violated Sections 4b(a)(2)(i), (ii), and (iii), 4n and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (ii) and (iii), 6n and 6o(1)(A)A and (B) (2000); and Commission Regulations 1.31, 4.23, and 4.33, 17 C.F.R. §§ 1.31, 4.23, and 4.33 (2007).

B. A restraining order and an order of preliminary injunction pursuant to Section 6c(a) of the Act restraining Defendants and all persons or entities 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. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants wherever located;
2. 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 the Defendants wherever located, including all such records concerning Defendant's business operations;

C. A restraining order and an order of preliminary injunction pursuant to Section 6c(a) of the Act restraining Defendants, and all persons insofar as they are acting in the capacity of their agents, servants, successors, employees, 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, withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, or other property, wherever situated, including, but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes, and all funds on deposit in any financial institution, bank, or savings and loan account held by, under the control of, or in the name of Defendants.

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

1. Engaging in conduct in violation of Sections 4b(a)(2)(i), (ii) and (iii), 4n and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (ii) and (iii), 6n, and 6o(1) (2000); and Commission Regulations 1.31, 4.23, and 4.33, 17 C.F.R. §§ 1.31, 4.23 and 4.33 (2007);
2. Engaging in, controlling, or directing the trading of any commodity interest accounts, on Defendants' own behalf or for or on behalf of any other person or entity, whether by power of attorney or otherwise.

E. An order directing that Defendants make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds Defendants received from and paid to pool participants and other persons in connection with commodity futures and options transactions or purported commodity futures and options transactions, including the names, mailing addresses, email addresses and telephone numbers of any such persons from whom they received such funds from June 2002 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from pool participants, including salaries, commissions, fees, loans and other disbursements of

money and property of any kind, from June 2002 to and including the date of such accounting;

F. An order requiring Defendants immediately to identify and provide an accounting for all assets and property that they currently maintain outside the United States, including, but not limited to, all funds on deposit in any financial institution, futures commission merchant, bank, or savings and loan accounts held by, under the control of, or in the name of Philip J. Baker, Lake Shore Asset Management Limited, and all of the names of the entities that comprise the LS Common Enterprise whether jointly or otherwise, and requiring them to repatriate all funds held in such accounts by paying them to the Clerk of the Court, or as otherwise ordered by the Court, for further disposition in this case.

G. An order requiring Defendants to disgorge to any officer appointed or directed by the Court or directly to 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 that constitute violations of the Act as described herein, including pre-judgment interest;

H. An order requiring Defendants to make restitution by making whole each and every pool participant or other person whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre-judgment interest;

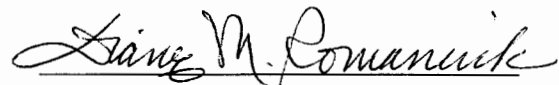
I. An order requiring Defendants to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of: (1) triple the monetary gain to Defendants for each violation of the Act, Commission Regulations, and

Order, or (2) a penalty of \$120,000 for each violation committed prior to October 23, 2004 or \$130,000 for each violation committed on or after October 23, 2004;

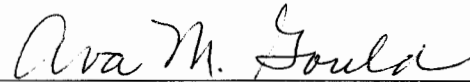
J. An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and

K. An Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Date: Respectfully submitted,

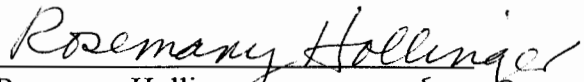


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