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RICHARD W. WIENING
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NORTHERN DISTRICT OF CALIFORNIA

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1 Lindsey Evans, Illinois No. 6286125
(levans@cftc.gov)
2 Dave Chu, California No. 242046
(dchu@cftc.gov)
3 Ava Gould, Illinois No. 6194202
(agould@cftc.gov)
4 Scott R. Williamson, Illinois No. 6191293
(swilliamson@cftc.gov)
5 Rosemary Hollinger, Illinois No. 3123647
(rhollinger@cftc.gov)
6

7 U.S. Commodity Futures Trading Commission
525 W. Monroe Street, Suite 1100
8 Chicago, IL 60661
Telephone: (312) 596-0500
9 Facsimile: (312) 596-0714
10 Attorneys for Plaintiff

11 THE UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 U.S. COMMODITY FUTURES
TRADING COMMISSION,

15 Plaintiff,

16 v.

17 JEFFREY GUSTAVESON,

18 Defendant.

Civil Action No:
CV 12 - 04519

HRL

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

21 I. SUMMARY

22 1. From at least January 2010 through approximately July 2010 ("relevant period"),
23 Defendant Jeffrey Gustaveson ("Gustaveson" or "Defendant"), accepted at least \$2,495,000 from
24 at least four individuals ("participants") for the purpose of operating a pool to trade commodity
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1 futures (the "Pool") on their behalf. Rather than trade the Pool funds as promised, Gustaveson
2 only used approximately \$400,000 of the Pool funds for trading commodity futures, which
3 resulted in a net loss, and Gustaveson stored the remaining funds in a checking account that he
4 used to pay his personal expenses. To conceal his fraud, Gustaveson distributed false trading
5 account statements to the Pool participants that misrepresented the value of the Pool; reported
6 false profits, and failed to disclose Gustaveson's misappropriation of Pool participants' funds.

7
8 2. By virtue of this conduct and the conduct further described herein, Gustaveson
9 has engaged, is engaging or is about to engage in conduct in violation of the Commodity
10 Exchange Act ("Act"), 7 U.S.C. §§ 1 *et seq.* (Supp. III. 2009) as amended by the Food,
11 Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC
12 Reauthorization Act of 2008 ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008),
13 to be codified at 7 U.S.C § 1 *et seq.* (Supp. III 2009).

14 3. In particular, Gustaveson has violated the anti-fraud provisions of the Act,
15 Sections 4b(a)(1)(A) and (C), 4b(a)(1)(B), as amended, 7 U.S.C. §§ 6b(a)(1)(A),(C), 6b(a)(1)(B)
16 (Supp. III 2009) and Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

17 4. Unless restrained and enjoined by this Court, Gustaveson is likely to continue to
18 engage in the acts and practices alleged in this Complaint and in similar acts and practices, as
19 more fully described below.

20 5. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), the
21 Commission brings this action to enjoin such acts and practices and compel compliance with the
22 provisions of the Act. In addition, the Commission seeks civil penalties, an accounting,
23 restitution, disgorgement, rescission and such other statutory and equitable relief as the Court
24 may deem necessary or appropriate under the circumstances.
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1 Fund LLC), a registered Commodity Trading Advisor named Quiksilver Capital LLC, and a
2 registered Introducing Broker named VTrader LLC. Gustaveson has not been registered with the
3 Commission in any capacity since 2009.

4 11. A California court entered a confession of judgment against Gustaveson on
5 May 23, 2011 in which Gustaveson admitted to misappropriating investor money and falsifying
6 financial statements in connection with the acts described in this complaint. *See Solomon v.*
7 *Gustaveson*, No. 111CV201457 (Cal. Super. Ct. filed on May 23, 2011).

8 12. Ashby ST Fund, LLC (“Ashby ST Fund”), a related entity, was a Nevada limited
9 liability company formed by Gustaveson in order to engage in the business of commodity futures
10 and options trading. Ashby ST Fund functioned as a commodity pool and commodity pool
11 operator, and its principal place of business was 17485 Monterey Rd. #204, Morgan Hill,
12 California 95037. Gustaveson previously operated the legal entity as GCM Ventures, LLC and
13 changed its name to Ashby ST Fund LLC on January 28, 2010. The state of Nevada revoked
14 Ashby ST Fund’s corporate registration on September 1, 2011.

15 16 V. STATUTORY BACKGROUND

17 13. A “commodity pool” is defined in Section 1a(10) of the Act, 7 U.S.C. § 1a(10),
18 and Commission Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1) (2012), as any investment trust,
19 syndicate or similar form of enterprise engaged in the business of investing its pooled funds in
20 trading commodity futures and/or commodity options.

21 14. A commodity pool operator (“CPO”) is defined in Section 1a(11) of the Act,
22 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
23 business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and
24 who in connection therewith, solicits, accepts, or receives from others, funds, securities, or
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1 property, either directly or through capital contributions, the sale of stock or other forms of
2 securities, or otherwise, for the purpose of trading in any commodity for future delivery on or
3 subject to the rules of any contract market or derivatives transaction execution facility.

4 15. A “participant” is defined in Commission Regulation 4.10(c), 17 C.F.R. § 4.10(c)
5 (2012), as any person who has any direct financial interest in a commodity pool.

6 **VI. FACTS**

7 16. From at least January 2010 through around July 2010, Gustaveson accepted at
8 least \$2,495,000 from at least four Pool participants for purposes of investing in a commodity
9 pool. Gustaveson obtained that money through a business partnership he had with an investor
10 (“Investor”).
11

12 **A. Gustaveson’s Partnership with Investor**

13 17. In late 2009, Investor was looking for someone with whom to partner in a trading
14 business. He was hoping to find someone who could trade his money in the commodity futures
15 market and trade additional funds that the Investor intended to raise.

16 18. Investor contacted Gustaveson via LinkedIn, and the two first met at Gustaveson’s
17 office located in Morgan Hill, California in January 2010. During that meeting, Gustaveson gave
18 Investor a PowerPoint presentation indicating that Gustaveson (through his business, Quiksilver
19 Capital, LLC) applied systematic short-term trading models to numerous global, liquid futures
20 markets. His presentation said that applying his models would “produce consistent upward
21 sloping equity curves when constructed in a diversified portfolio.” The presentation indicated
22 that he had \$6.5 million under management and an impressive ratio of returns.
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B. Formation of Ashby ST Fund

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2 19. After meeting, Gustaveson and Investor decided to form a company, Ashby ST
3 Fund, for the purpose of trading options and commodity futures. On January 29, 2010, Investor
4 gave \$245,000 to Gustaveson as an initial investment by wiring the money to a Wells Fargo
5 account titled in the name of GCM Ventures, LLC. Gustaveson changed the name on the Wells
6 Fargo account to Ashby ST Fund, LLC on February 2, 2010.

7
8 20. Gustaveson was the managing member of Ashby ST Fund, and had exclusive
9 control over Ashby ST Fund's bank accounts and trading accounts. At all relevant times,
10 Gustaveson controlled and made decisions on behalf of Ashby ST Fund.

11 21. In February 2010 Investor began talking to his friends about investing in the
12 Ashby ST Fund, and he showed them the PowerPoint presentation that Gustaveson had provided
13 to him. Based on that information, three of Investor's friends wired a total of \$2,250,000 in
14 March and April 2010 to the Ashby ST Fund account at Wells Fargo.

15 22. Gustaveson and Investor prepared and signed a Subscription Agreement that
16 described the Ashby ST Fund investment program and stated that "100% of each subscriber's
17 subscription amount will be used as trading capital." Each of the additional investors signed the
18 Subscription Agreement after they sent their initial deposits.
19

C. Gustaveson's Misappropriation of Customer Funds

20
21 23. Gustaveson transferred only approximately \$400,000 of the funds received from
22 the Pool participants into commodity futures trading accounts at two registered futures
23 commission merchants ("FCMs"), Crossland LLC and Penson GHCO. Gustaveson realized a net
24 loss of approximately \$34,657 in those trading accounts, which the FCMs carried in the name of
25 Ashby ST Fund. Gustaveson stored the remaining \$2,095,000 in the Ashby ST Fund bank
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1 account, from which he used at least \$400,000 of Pool funds to pay his personal expenses,
2 including hotels, restaurants, and online gambling, among other expenditures.

3 24. To conceal his misappropriation, Gustaveson distributed false account statements
4 dated February 28, 2010, April 30, 2010 and May 31, 2010 to at least one Pool participant. The
5 statements purported to be issued by Dorman Trading LLC ("Dorman"), another FCM, that on
6 information and belief, Gustaveson sent electronically using an info@dormantradestmts.com
7 email address. The statements indicated that Gustaveson was trading more than \$3,000,000 in
8 the Pool trading accounts and that the Pool had a net profit for the period from January through
9 May. The statements were false because (i) Gustaveson had not opened any trading accounts in
10 the name of the Pool at Dorman, (ii) Gustaveson only traded approximately \$400,000 of the Pool
11 participants' funds, and (iii) he lost approximately \$34,657 of those funds trading. Moreover, the
12 statements did not disclose that Gustaveson was using customer funds for his personal expenses.
13

14 25. In July 2010 Investor contacted Dorman with a question about one of the account
15 statements and learned that Dorman had no record of the accounts listed on the statements.
16 Investor immediately contacted Gustaveson and demanded all of the Pool participant's money
17 back. Gustaveson repaid \$2,080,000 to Investor between July and August 2010, which Investor
18 then distributed to the Pool participants.
19

20 26. Despite repeated requests, Gustaveson has not returned \$415,000 of the money
21 that the Pool participants provided to him. Gustaveson confessed that he had spent the money on
22 personal expenses, past-due taxes, and repaying a previous "investor."
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1 **VII. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

2 **COUNT ONE**

3 **Violations of Sections 4b(a)(1)(A) and (C) of the Act:**
4 **Commodity Futures Fraud**

5 27. Paragraphs 1 through 26 are re-alleged and incorporated herein.

6 28. Sections 4b(a)(1)(A) and (C) of the Act, to be codified at 7 U.S.C.

7 §§ 6b(a)(1)(A),(C), make it unlawful for any person, in or in connection with any order to make,
8 or the making of, any contract of sale of any commodity in interstate commerce or for future
9 delivery that is made, or to be made, on or subject to the rules of a designated contract market,
10 for or on behalf of any other person: (A) to cheat or defraud or attempt to cheat or defraud such
11 other person; or (C) willfully to deceive or attempt to deceive such other person by any means
12 whatsoever in regard to any order or contract or the disposition or execution of any order or
13 contract, or in regard to any act of agency performed, with respect to any order or contract for the
14 other person, with respect to any order or contract for such other person.

15 29. During the relevant period, Gustaveson violated Sections 4(b)(a)(1)(A) and (C) of
16 the Act, to be codified at 7 U.S.C. §§ 6b(a)(1)(A),(C), in that he cheated or defrauded, or
17 attempted to cheat or defraud, and willfully deceived, or attempted to deceive, Pool participants
18 by misappropriating Pool participant funds for his personal benefit.

19 30. Each act of misappropriation made during the relevant time period, including, but
20 not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of
21 Sections 4b(a)(1)(A) and (C) of the Act, to be codified at 7 U.S.C. §§ 6b(a)(1)(A),(C).
22

23 **COUNT TWO**

24 **Violations of Sections 4b(a)(1)(B) of the Act:**
25 **False Statements**

26 31. Paragraphs 1 through 26 are re-alleged and incorporated herein.

1 A. Find Defendant liable for violating Sections 4b(a)(1)(A)-(C) of the Act, as
2 amended, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C) (Supp. III 2009) and Section 4o(1) of the
3 Act, 7 U.S.C. § 6o(1) (2006).

4 B. Enter an order of preliminary injunction pursuant to Section 6c(a) of the Act, as
5 amended, to be codified at 7 U.S.C. § 13a-1(a), restraining Defendant and all persons insofar as
6 they are acting in the capacity of Defendant's agents, servants, successors, employees, assigns,
7 and attorneys, and all persons insofar as they are acting in active concert or participation with
8 Defendant who receive actual notice of such order by personal service or otherwise, from
9 directly or indirectly:
10

11 1. destroying, mutilating, concealing, altering, or disposing of any books and
12 records, documents, correspondence, brochures, manuals, electronically stored data, tape
13 records, or other property of Defendant, wherever located, including all such records
concerning Defendant's business operations;

14 2. refusing to permit authorized representatives of the Commission to
15 inspect, when and as requested, any books and records, documents, correspondence,
16 brochures, manuals, electronically stored data, tape records, or other property of
Defendant, wherever located, including all such records concerning Defendant's business
operations; and

17 3. withdrawing, transferring, removing, dissipating, concealing, or disposing
18 of, in any manner, any funds, assets, or other property, wherever situated, including, but
19 not limited to, all funds, personal property, money, or securities held in safes or safety
20 deposit boxes and all funds on deposit in any financial institution, bank, or savings and
loan account held by, under the actual or constructive control of, or in the name of
Defendant, whether jointly or otherwise;

21 C. Enter orders of preliminary and permanent injunction restraining Defendant and
22 all persons insofar as they are acting in the capacity of Defendant's agents, servants, employees,
23 successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or
24 participation with Defendant who receive actual notice of such order by personal service or
25 otherwise, from directly or indirectly:
26

1 a. engaging in conduct in violation of Sections 4b(a)(1)(A)-(C), to be
codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), and Section 4o(1), 7 U.S.C. § 6o(1);

2 b. trading on or subject to the rules of any registered entity, as that term is
3 defined in Section 1a of the Act, to be codified at 7 U.S.C. § 1a;

4 c. entering into any transactions involving commodity futures, options on
5 commodity futures, commodity options (as that term is defined in Regulation 1.3(hh),
6 17 C.F.R. § 1.3(hh) (2012)) (“commodity options”), security futures products, and/or
7 foreign currency (as described in Section 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as
amended, to be codified at 7 U.S.C. §§ 2(c)(2)(B), 2(c)(2)(C)(i)) (“forex contracts”) for
his own personal account or for any account in which he has a direct or indirect interest;

8 d. having any commodity futures, options on commodity futures, commodity
9 options, security futures products, and/or forex contracts traded on his behalf;

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

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

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

18 h. acting as a principal (as that term is defined in Regulation 3.1(a),
19 17 C.F.R. § 3.1(a) (2012)), agent, or any other officer or employee of any person (as that
20 term is defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a)
registered, exempted from registration, or required to be registered with the Commission,
except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012);

21 D. Enter an order directing that Defendant make an accounting to the Court of all of
22 Defendant’s assets and liabilities, together with all funds Defendant received from and paid to
23 Pool participants and other persons in connection with commodity futures, or purported
24 commodity futures, including the names, mailing addresses, email addresses, and telephone
25 numbers of any such persons from whom he received such funds from January 1, 2010 to the
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1 date of such accounting, and all disbursements for any purpose whatsoever of funds received
2 from Pool participants, including salaries, commissions, fees, loans, and other disbursements of
3 money and property of any kind, from January 1, 2010 to and including the date of such
4 accounting;

5 E. Enter an order requiring Defendant to immediately identify and provide an
6 accounting for all assets and property that he currently maintains outside the United States,
7 including, but not limited to, all funds on deposit in any financial institution, FCM, bank, or
8 savings and loan account held by, under the actual or constructive control of, or in the name of
9 Defendant, whether jointly or otherwise, and requiring him to repatriate all funds held in such
10 accounts by paying them to the Registry of the Court, or as otherwise ordered by the Court, for
11 further disposition in this case;

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

19 G. Enter an order directing Defendant to rescind, pursuant to such procedures as the
20 Court may order, all contracts and agreements, whether implied or express, entered into between
21 Defendant and any of the Pool Participants whose funds were received by Defendant as a result
22 of the acts and practices which constitute violations of the Act as described herein;

23 H. An order requiring Defendant to make restitution by making whole each and
24 every pool participant whose funds were received or utilized by them in violation of the
25 provisions of the Act as described herein, including pre-judgment interest.
26

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

4 J. Enter an order requiring Defendant to pay costs and fees as permitted by
5 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

6 K. Enter an order providing such other and further relief as this Court may deem
7 necessary and appropriate under the circumstances.
8

9
10 **Respectfully submitted,**

11
12 Date: August 29, 2012



13 _____
Lindsey Evans, Esq.
David Chu, Esq.
Ava Gould, Esq.
Scott R. Williamson, Esq.
Rosemary Hollinger, Esq.

16 **U.S. COMMODITY FUTURES TRADING
17 COMMISSION**

18 Division of Enforcement
19 525 West Monroe Street, Suite 1100
Chicago, Illinois 60661
20 (312) 596-0500
(312) 596-0714 (facsimile)