

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA**

Civil Action No. \_\_\_\_\_

U.S. COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

JOSE S. RUBIO and RUBIO WEALTH  
MANAGEMENT, LLC,

Defendants.

**COMPLAINT FOR PERMANENT INJUNCTION,  
CIVIL MONETARY PENALTIES, AND OTHER EQUITABLE RELIEF**

**JURY TRIAL DEMANDED**

Plaintiff, U.S. Commodity Futures Trading Commission (the “Commission” or “CFTC”),  
alleges as follows:

**I.  
SUMMARY**

1. From at least January 2008 to the present (the “Relevant Period”), Defendant Jose S. Rubio (“Rubio”), and his company, Defendant Rubio Wealth Management, LLC (“RWM”) (together, “Defendants”), solicited and received over \$1.8 million from at least 21 clients (“clients” or “pool participants”) for trading, among other things, commodity futures and foreign currency exchange contracts.

2. The client funds were deposited into bank accounts under the name of the pool RWM operated, Rubio Trading Group, LP (“RTG” or “the Pool”), or else wrongfully into accounts of RWM itself or other accounts for which Rubio had signatory authority. A portion of

these funds was transferred to futures trading accounts for which Defendants had sole trading authority.

3. Rubio misappropriated the clients' funds by using the funds to pay his personal debts and expenses, by transferring funds to another company that he controlled, and by paying purported returns to clients using the client's own funds or the funds of other clients. As such, Defendants operated what is commonly described as a Ponzi scheme.

4. In total, Rubio misappropriated at least \$820,000 of clients' funds in these ways.

5. Rubio also lost in excess of \$900,000 of clients' funds in trading on-exchange commodity futures contracts and foreign currency exchange contracts.

6. In soliciting funds for the Pool from prospective clients, Defendants used a Private Placement Memorandum dated March 1, 2008 ("PPM"). In the PPM, Defendants knowingly or recklessly made false statements regarding (i) the eligibility of investors to participate in a pool that would be exempt from registration with the Commission and (ii) the existence of an auditor, which in fact had not been retained.

7. To conceal trading losses and the misappropriation of client funds, Rubio failed to send the annual financial statements required by the PPM and associated subscription agreements to the clients. He also knowingly or recklessly sent a false account statement to at least one client showing bogus trading profits.

8. In advising and managing the trading of commodity futures for compensation and profit, RWM acted as a Commodity Trading Advisor ("CTA") without being registered with the Commission as required by the Commodity Exchange Act (the "Act") and Commission Regulations ("Regulations").

9. While acting as a CTA, RWM solicited, received and accepted funds from clients in its own name and failed to provide required disclosure documents to prospective investors.

10. In soliciting and accepting funds from certain individuals for purposes of pooling the funds in the Pool, that is, a vehicle through which investors can aggregate their funds, allowing a commodity pool operator to invest them for a fee and investing in commodity futures and options, RWM was also acting as a Commodity Pool Operator (“CPO”) without being registered as required by the Act and Regulations.

11. While acting as a CPO, RWM received clients’ funds in its own name and commingled pool participant funds with its own funds in accounts held in its own name, in violation of Regulations 4.20(b) and (c), 17 C.F.R. § 4.20(b) and (c) (2012).

12. By virtue of the misappropriation, fraudulent solicitations, and issuance of false statements, and further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006) for conduct occurring prior to June 18, 2008, Section 4b(a) of the Commodity Exchange Act (the “Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (subtitled “CFTC Reauthorization Act of 2008” (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 6b(a); and Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

13. RWM’s failure to register as a CPO and CTA violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

14. RWM filed notices of exemption with the National Futures Association (“NFA”) claiming that it was exempt from registering as a CTA pursuant to Regulation 4.14(a)(8) or as a CPO pursuant to Regulation 4.13(a)(4).

15. In fact, the investors in the Pool were not qualified eligible persons as defined by Regulation 4.7(a)(2).

16. In 2010, the Commission made multiple requests for documents encompassing the books and records relating to RWM's business as a CTA and CPO from 2008 to 2010. RWM was required by Regulation to maintain these books and records. Defendants made a production of only about one month's worth of daily trading records (for September 3 to October 15, 2009) for one trading account, and did not otherwise make available account opening documents, pool participation documents, wire transfer instructions, trade confirmations, tax documents, or other documents demanded by the Commission.

17. By failing to produce books and records upon demand by the Commission after having filed a notice of exemption from registration, RWM violated Regulations 4.13(c)(1) and 4.14(a)(8)(iv), 17 C.F.R. §§ 4.13(c)(1) and 4.14(a)(8)(iv).

18. Rubio committed the acts alleged herein within the course and scope of his employment, office or agency at RWM. Therefore, RWM is liable pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation ("Regulation") 1.2, 17 C.F.R. § 1.2, as principal for Rubio's acts, omissions and failures in violation of the Act.

19. Rubio is liable pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), as a controlling person of RWM for its violations of the Act, because he controlled RWM and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting RWM's violations of the Act.

20. Accordingly, pursuant to Section 2(c)(2)(C)(i)-(iii) and Section 6c of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(C)(i)-(iii) and 7 U.S.C. §§ 13a-1, the Commission brings this action to enjoin such acts and practices, and compel compliance with the

Act. In addition, the Commission seeks civil monetary penalties and such other equitable and ancillary relief as the Court deems necessary or appropriate under the circumstances.

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

## **II. JURISDICTION AND VENUE**

22. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), 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 the Act or any rule, regulation, or order thereunder.

23. The Commission has jurisdiction over this matter as alleged herein pursuant to Section 6c of the Act, 7 U.S.C. §13a-1 (2006).

24. Venue of this action lies properly with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), in that Defendants reside in and transacted business within this District, and acts and practices in violation of the Act occurred within this District.

## **III. THE PARTIES AND OTHER ENTITIES**

25. **Plaintiff U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2010). The Commission maintains its principal office at Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581.

26. **Defendant Jose S. Rubio** is an individual whose last known residence was in Surfside, Florida. Rubio is the sole officer, manager and employee of RWM and RTG. Rubio was once registered with the Commission from 1996 to 1997, but was not registered at times relevant to this Complaint. Jose Rubio is not an “eligible contract participant” as defined in the Act and is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company, and is not an associated person of such entities.

27. **Defendant Rubio Wealth Management, LLC** was formed as a limited liability company under the laws of the State of Florida which was located at 815 Ponce de Leon Boulevard, Suite 304, Coral Gables, Florida 33134. At all relevant times, Rubio was the managing member of RWM. RWM is not an “eligible contract participant” as that term is defined in the Act and the investors in the Pool are not “eligible contract participants,” as that term is defined in the Act.

28. **Rubio Trading Group, LP**, is a limited partnership formed under the laws of the State of Delaware that during the relevant time period was located at 815 Ponce de Leon Boulevard, Suite 304, Coral Gables, Florida 33134. RWM was the general partner of and investment manager for RTG.

#### **IV. FACTS**

##### **Background**

29. Beginning in early 2008, Rubio commenced soliciting clients to invest in a commodity pool that he was in the process of forming.

30. A commodity pool is an “investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests,” Commission Reg. 4.10(d)(1), 17

C.F.R. § 4.10(d), in which the funds of various investors are solicited and combined into a single account for the purpose of investing in commodity futures contracts; and where the common funds are used to execute transactions on behalf of the account, the participants share pro rata in accrued profits or losses from the commodity futures trading; and the transactions are traded by the commodity pool operator in the name of the pool.

31. In early 2008, Rubio was a FINRA-registered representative with a registered broker-dealer.

32. Rubio solicited several of his existing clients at the broker-dealer to participate in the Pool and convinced them to transfer money from their broker-dealer accounts to the Pool.

33. By March 2008, Rubio caused the Pool to be formed for the purpose of being the commodity pool that would trade client funds. Rubio prepared a private placement memorandum dated March 1, 2008, (previously defined as the “PPM”) and subscription agreement that he delivered to potential investors in the Pool.

34. The PPM claimed that RWM was the investment adviser to the Pool. The PPM provided that RWM could earn a 1.5% monthly management fee based on the Pool’s net asset value, and that RWM could earn a quarterly performance allocation of 20% of the Pool’s net income.

35. RTG never generated any quarterly positive net income.

36. The PPM stated that the Pool’s success or failure depended upon the management of RWM and the skill and acumen of Jose Rubio.

37. The PPM stated that each participant would receive annual financial statements.

38. Defendants never provided any annual financial statements to pool participants.

39. The PPM claimed that RWM had filed a claim of exemption with the NFA from registering as a CTA because the Pool was an exempt pool by virtue of limiting participation only to qualified eligible persons as defined by Regulation 4.7(a)(2). Commission Regulation 4.7(a)(2) defines a qualified eligible person as a person who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool, is: a futures commission merchant registered pursuant to Section 4d of the Commodity Exchange Act, a registered broker or dealer registered pursuant to Section 15 of the Securities and Exchange Act of 1934, or a principal thereof, a commodity pool operator or commodity trading advisor registered pursuant to section 4m of the Commodity Exchange Act, subject to provisos not applicable here, an investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940 or the laws of any state, subject to provisos not applicable here, a “qualified purchaser” as defined in section 2(a)(51)(A) of the Investment Company Act of 1940, a “knowledgeable employee” as defined in Section 270.3c-5 of Commission Regulations, or certain categories of principals, employees, agents of the CPO or CTA, and family members of those persons; a trust; a non-United States person; or other entities such as exempt pools or other entities in which all the unit owners are qualified eligible persons. The PPM attached a letter dated March 5, 2008, to substantiate this notice of claim of exemptions.

40. On March 27, 2008, NFA received Rubio’s notice of claim that the Pool was an exempt pool operated by RWM pursuant to Regulation 4.13(a)(4), and on April 14, 2009, Rubio filed a notice of claim that RWM was exempt from registering as a CTA pursuant to Regulation 4.14(a)(8).

41. With the exception of one pension plan (whose trustee was not a qualified eligible person as that term is defined by Regulation 4.7(a)(2)); the investors solicited by Rubio were



individuals who were not qualified eligible persons as that term is defined by Regulation 4.7(a)(2).

42. The PPM stated that RTG had an auditor.

43. The company that Defendants identified as the auditor was never retained to serve as an auditor for RTG, and is not a certified public accounting firm.

**Rubio Solicited and Misappropriated Funds in Connection with Purported Trading by RTG**

44. Prior to forming the Pool, Rubio solicited and received from one investor (“Investor 1”) \$40,000 in January 2008, which was paid to and deposited into an account of Senior Prosperity Advisors, another company owned and controlled by Rubio. After receiving this money, Rubio caused approximately \$7,000 to be paid to a third party for apparent assistance in forming a hedge fund, which on information and belief was to be RTG. The remainder of this money was spent primarily on personal items such as food, home mortgage payments, and child support payments for Rubio’s benefit.

45. From April to June 2008, Rubio solicited for the Pool \$1,080,638.12 from seven investors (“Investors 1 to 7”) pursuant to the PPM. These investors also had their accounts managed by Rubio at the broker-dealer where he worked.

46. Between May and September 2008, all but approximately \$20,000 of this money was placed in trading accounts held in the Pool’s name at registered futures commission merchants (FCMs). Defendants caused the Pool’s accounts to trade primarily in on-exchange commodity futures contracts and foreign currency exchange contracts.

47. The forex transactions conducted by Defendants were all done on a margined or leveraged basis.

48. The forex transactions conducted by Defendants neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these forex contracts were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

49. During this same time period, \$26,154 (including \$5,000 withdrawn from one FCM account) was transferred from the Pool's bank accounts to an RWM bank account. Additionally, another \$625 was transferred from a Pool bank account to the account of Senior Prosperity Advisors. Defendants caused this money to be taken from the Pool's accounts and used to pay for various personal items, including over \$5,600 in ATM withdrawals, groceries, car payments and home mortgage payments for Rubio's benefit.

50. In October 2008, the Pool withdrew another \$47,000 from its accounts at separate FCMs, and transferred a total of \$60,000 to an RWM bank account. RWM then transferred \$56,000 of that money into an account in the name of RWM at another registered FCM, and then spent over \$3,000 for various personal items, including ATM withdrawals, groceries, and other retail expenses.

51. From November 2008 through November 2009, Rubio solicited another \$91,100 from Investor 6 and Investors 8 to 11 for less clearly described investment opportunities. This money was deposited into RWM's bank account. Of this \$91,100, only \$7,500 was ever transferred into a trading account – namely, a new account in the name of RWM at a registered FCM.

52. Rubio caused the remainder of the \$91,100 raised during November 2008 through November 2009 to be used to pay off certain investors (as Investors 8 and 10 received certain

payments from Defendants during this time) and to pay for personal expenses such as ATM withdrawals, groceries, car payments and home mortgage payments for Rubio's benefit.

53. From November 2008 to November 2009, the Pool also made net withdrawals from its trading accounts of almost \$50,000. Of this amount, the Pool transferred \$25,000 to an RWM bank account out of which \$20,000 was used to open a trading account in RWM's name at a registered FCM.

54. The Pool spent a portion of the remainder of the money on various items for Rubio's personal benefit, such as ATM withdrawals, drugstore purchases, and money directed toward another Rubio venture.

55. In December 2009, Rubio solicited another \$58,700 from Investor 11 for the claimed purpose of a fixed return investment. Investor 11 was directed to transfer the funds to Senior Prosperity Advisors. Rubio caused \$44,000 of this money to be used to pay Investor 6 and Investor 9 and the remainder was used for to pay for personal expenses directly or through RWM which received a transfer of client money and then transferred \$9,600 directly to Rubio's personal checking account.

56. In February 2010, Investor 9 transferred \$50,000 to Rubio's Senior Prosperity Advisors bank account. These funds were used in part for Rubio's personal expenses.

**Rubio Suffers Significant Trading Losses and Provides False Statements to Pool Participants**

57. From April 2008 through March 2010, Rubio caused trading accounts at futures commission merchants to be carried in the name of the Pool.

58. Between May 2008 and March 2010, Rubio's trading caused the Pool's trading accounts to suffer losses in excess of \$900,000.

59. Rubio's trading of commodity futures contracts and foreign currency exchange contracts in the Pool's accounts ceased in March 2010.

**Rubio Continues to Solicit Funds for the Commodity Pool's New Investment Strategy**

60. Even as the Pool's trading wound down through March 2010, Defendants continued to solicit funds from new and existing clients.

61. From late 2009 through July 2010, Rubio began soliciting additional money from existing investors and from new investors for a purported investment described to some of those solicited as a "high yield" "private trade program" with the potential to earn sixteen times the principal in 30 days. An addendum to the PPM was distributed to some prospective investors that stated that investments placed with the Pool after April 1, 2010 would only participate in the new trade program.

62. During this time period, Rubio solicited \$543,808 from Investors 1, 9 and 11 through 21, many of whom had previously had accounts managed by Rubio at the broker-dealer where he worked in 2008, in the following amounts:

Investor 1	\$72,000.00
Investor 9	\$25,000.00
Investor 11	\$150,000.00
Investor 12	\$15,000.00
Investor 13	\$38,201.90
Investor 14	\$23,606.91
Investor 15	\$10,000.00
Investor 16	\$10,000.00
Investor 17	\$50,000.00
Investor 18	\$50,000.00
Investor 19	\$50,000.00
Investor 20	\$20,000.00
Investor 21	\$30,000.00

63. In July 2010, the Pool transferred \$544,000 to a RWM account.

64. In August 2010, RWM transferred \$500,000 to another company that was formed by Rubio.

65. Later that month, Defendant Rubio transferred \$500,000 from his other company to an account held by Frando Capital Partners I, LP, a limited partnership based in California. This same amount was later transferred to a Swiss bank account in the name of Frando Trust Services by Frando Capital Partners I.

66. In the spring 2011, RWM's bank accounts were closed.

67. In April and June 2011, Rubio's other company received two transfers from Frando Trust Services, totaling \$174,975. Of this money received from Frando Trust Services, at least \$130,000 as of August 31, 2011 had not been returned to clients, and thousands of dollars had been withdrawn for the personal use of Rubio.

68. In summary, Rubio caused at least \$820,000 of pool participant funds to be misappropriated by using the funds to pay other RTG pool participants, to pay personal or RWM expenses, to trade for RWM's own account, to distribute to other persons who were not investors, and by transferring the funds to Rubio's other company.

#### **Rubio Provides False Statements to Pool Participants**

69. To conceal his trading losses and misappropriations, Rubio did not regularly send statements to clients.

70. On September 14, 2009, after repeated demands from one client, Rubio finally did send a statement for the first half of 2009 to one pool participant (the June 30, 2009 statement). The June 30, 2009 statement contained the client's purported semi-annual balance and the amount of profit supposedly earned, but did not show any buy or sell transactions.

71. The June 30, 2009 statement was false, in that it showed a profit of 25.86% for the six month period.

72. In fact, during the six month time period shown in the June 30, 2009 statement, the Pool sustained substantial losses.

**Pool Assets are Commingled with RWM's funds**

73. On multiple occasions between May 2008 and September 2009, Rubio caused Pool funds to be transferred to a RWM bank account and commingled therein with funds of RWM.

74. On multiple occasions during the relevant period, RWM directly accepted funds into its own bank account from pool participants.

**Defendants Do Not Provide Documents as Required by Commission Regulations**

75. On April 14 and May 20, 2010, the Commission subpoenaed documents from Rubio and RWM, as well as the Pool itself. The documents sought included books and records that RWM, as the claimant of its exemption from registration as a CTA and as the claimant of the Pool's exemption, was required to maintain and produce upon request.

76. The only documents Rubio produced were certain daily statements from September and October 2009 for only one of the Pool trading accounts.

77. RWM has other documents responsive to the request; including very detailed records about meetings with clients.

78. During the time period covered by the request, the Pool maintained other accounts at numerous FCMs and banks, none of which were ever produced to the Commission.

79. RWM failed to fully respond to the Commission's request for books and records as it was required to maintain and produce upon request.

**At All Relevant Times, Rubio Controlled RWM**

80. Rubio formed RWM and is the sole member of RWM and has been the managing member throughout the relevant period of time. RWM's business included the operation of RTG

as a purportedly exempt commodity pool. Rubio personally engaged in solicitation of investor funds for RTG, speaking with prospective investors and Pool Participants by phone and meeting with them in person. The Pool's PPM stated that the Pool's success or failure depended upon the management of RWM and the skill and acumen of Jose Rubio.

81. Rubio was responsible for trading RTG's accounts. Throughout the relevant period, Rubio was a signatory on all bank accounts and commodity trading accounts for RWM and RTG.

82. From 2008 onward, Rubio had control over the trading accounts managed by RWM, including RTG's trading accounts.

**V.  
VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

**COUNT I**

**Violations of Sections 4b(a)(2)(1) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii)  
(Solicitation Fraud and Fraud By Misappropriation)**

83. Paragraphs 1 through 82 are re-alleged and incorporated herein by reference.

84. Prior to being amended by the CRA, Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), made it unlawful for any person: (i) to cheat or defraud or attempt to cheat or defraud; or (iii) willfully to deceive or attempt to deceive by any means whatsoever other persons, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery made, or to be made, for or on behalf of such other persons if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity, or the products 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, in connection with acts occurring before June 18, 2008.

85. As set forth above, in 2008, Rubio, in or in connection with commodity futures contracts, made, or caused to be made, for or on behalf of or with other persons, cheated, defrauded or deceived clients and willfully made or caused to be made false reports or statements to clients by, among other things, knowingly: (i) claiming that RWM was exempt from registering as a commodity pool operator or as a commodity trading advisor; and (ii) claiming that the Pool had an auditor, all in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2006).

86. As set forth above, from May 2008 until June 18, 2008, Rubio, in or in connection with commodity futures contracts, made, or caused to be made, for or on behalf of or with other persons, cheated, defrauded or deceived clients and willfully made or caused to be made false reports or statements to clients by, among other things, knowingly misappropriating client funds by using client funds to pay Rubio's personal debts and expenses, in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2006).

87. The foregoing fraudulent acts, omissions and failures of Rubio occurred within the scope of his office or employment with RWM; therefore, RWM is liable for those fraudulent acts, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B)(2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

88. Each instance of a fraudulent act or omission, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2006).



**COUNT II**

**Violations of Sections 4b(a) of the Act,  
as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)  
(Solicitation Fraud, Fraud By Misappropriation and  
Issuance of False Reports to Clients for Acts on or after June 18, 2008)**

89. Paragraphs 1 through 88 are re-alleged and incorporated herein by reference.

90. Sections 4b(a) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a), make it unlawful:

(1) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person ; or (2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [and] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for ... the other person...

91. Pursuant to Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iv), Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA apply to Defendants' forex transactions, agreements or contracts.

92. As set forth above, during the Relevant Period, Rubio, in or in connection with commodity futures contracts, made, or caused to be made, for or on behalf of or with other persons, cheated, defrauded or deceived clients and willfully made or caused to be made false reports or statements to clients by, among other things, knowingly: (i) misappropriating client

funds by using client funds to pay Rubio's personal debts and expenses, by paying clients using other clients' funds, in the manner of a Ponzi scheme; and (ii) issuing a false statement to a client to conceal the theft, all in violation of Sections 4b(a) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a).

93. The foregoing fraudulent acts, omissions and failures of Rubio occurred within the scope of his office or employment with RWM; therefore, RWM is liable for those fraudulent acts, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B)(2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

94. Each instance of a fraudulent act or omission, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a).

### **COUNT III**

#### **Violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006) (Fraud by a Commodity Pool Operator)**

95. Paragraphs 1 through 94 are re-alleged and incorporated herein by reference.

96. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), makes it unlawful:

for a ... commodity pool operator, or associated person of a commodity pool operator by use of mails or any means of instrumentality of interstate commerce, directly or indirectly—

to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

97. Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), defines a CPO as:

any person engaged in a business which 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 or commodity option on or subject to the rules of any contract market.

98. RWM acted as a CPO by soliciting, accepting and receiving client funds that were pooled for the purpose of trading on-exchange commodity futures contracts.

99. By the misconduct set forth above, RWM, acting as a CPO, employed a device, scheme or artifice to defraud clients, participants or prospective participants, and engaged in transactions, practices, or courses of business that operated as a fraud or deceit upon clients or participants or prospective clients or participants, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

100. Rubio controlled RWM directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, RWM's acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Rubio is liable for RWM's violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

#### **COUNT IV**

##### **Violation of Commission Regulation 4.20, 17 C.F.R. § 4.20 (2011) (Commingling of Client Funds with Assets of the Pool Operator )**

101. Paragraphs 1 through 100 are re-alleged and incorporated herein by reference.

102. Regulation 4.20 (b) requires that “[a]ll funds, securities or other property received by a commodity pool operator from an existing or prospective pool participant . . . must be received in the pool's name.” Regulation 4.20(c) prohibits a CPO from commingling the property of any pool that it operates, or that it intends to operate, with the property of any other person.

103. Beginning in at least September 2008, RWM violated Regulation 4.20(b) and (c), 17 C.F.R. § 4.20(b) and (c) (2012), by depositing pool participant funds in RWM's bank account, rather than in an account held in the name of the pool, using funds from the RWM to make payments on behalf of the Pool, and commingling those funds with monies that Rubio and/or RWM received from other sources.

104. Rubio controlled RWM directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, RWM's acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Rubio is liable for RWM's violations of Section 4.20(b) and (c) of the Regulations, 17 C.F.R. § 4.20(b) and (c) (2012).

105. Each instance of RWM receiving funds, securities or other property from an existing or prospective Pool Participant for the purchase of an interest or as an assessment on an interest in a pool that it operated or intended to operate not received in the name of the pool is alleged as a separate and distinct violation of Regulation 4.20(b), 17 C.F.R. § 4.20 (b) (2009). Each instance of commingling of funds of any pool that it operates or intends to operate with the property of any other person is alleged as a separate and distinct violation of Regulation 4.20 (c), 17 C.F.R. § 4.20 (c) (2012).

#### **COUNT V**

##### **Violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006) (Failure by RWM to Register as a CPO and a CTA)**

106. Paragraphs 1 through 105 are re-alleged and incorporated herein by reference.

107. During the relevant period, RWM engaged in a business that was of the nature of an investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received from others, funds, securities, or property, either directly or

indirectly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading a commodity for future delivery on or subject to the rules of a contract market or derivatives transaction execution facility, thus making it a commodity pool operator as defined by Section 1a(11) of the Act, 7 U.S.C. § 1a(11).

108. During the relevant period, RWM was not exempt from registering as a CPO.

109. During the relevant period, RWM, engaged 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 any contract of sale of a commodity for future delivery, security futures product, or swap for compensation or profit, thus making it a commodity trading advisor as defined by Section 1a(12) of the Act, 7 U.S.C. § 1a(12).

110. During the relevant period, RWM was not exempt from registering as a CTA. During the relevant period, RWM made use of the mails or any means of interstate commerce in connection with its business as a CPO and CTA, while failing to register, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

111. Rubio controlled RWM directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, RWM's acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Rubio is liable for RWM's violations of Section 4.20(b) and (c) of the Regulations, 17 C.F.R. § 4.20(b) and (c) (2012).

## **COUNT VI**

### **Violations of Regulation 4.13(c)(1) and 4.14(a)(8)(iv) (Failure to Produce Books and Records)**

112. Paragraphs 1 through 111 are re-alleged and incorporated herein by reference.

113. Regulation 4.13(c)(1) requires that every person who has filed a notice of exemption from registration under §4.13 must make and keep all books and records prepared in connection with its activities as a pool operator for a period of five years from the date of preparation, and make all such books and records available for inspection upon request of the Commission.

114. Regulation 4.14(a)(8)(iv) requires that every person who has filed a notice of registration exemption under §4.14(a)(8) must make and keep all books and records prepared in connection with its activities as a trading advisor, including all books and records demonstrating eligibility for and compliance with the applicable criteria for exemption under that section, for a period of five years from the date of preparation, and make all such books and records available for inspection upon request of the Commission.

115. During the relevant period, RWM filed a notice of registration exemption under Sections 4.13(a)(4) and 4.14(a)(8).

116. RWM failed to fully respond to the Commission request for books and records as it was required to maintain and produce upon request.

117. Each instance or act of failing to make its books and records available for inspection, including but not limited to the acts alleged herein, is alleged as separate and distinct violation by RWM of Regulation 4.14(a)(8)(iv), 17 C.F.R. § 4.14(a)(8)(iv).

118. Rubio controlled RWM directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, RWM's acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Rubio is liable for RWM's violations of Section 4.20(b) and (c) of the Regulations, 17 C.F.R. § 4.20(b) and (c) (2012).

**VI.**  
**RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully request that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2006) and pursuant to its own equitable powers, enter:

a) An order finding that Defendants violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006) for acts occurring prior to June 18, 2008; Section 4b(a) as amended by the CRA, to be codified at 7 U.S.C. §§6b(a); Section 4m(1) of the Act, 7 U.S.C. § 6n(1); Section 4o(1) of the Act, 7 U.S.C. § 6o(1)(2006); Commission Regulation 4.13(c)(1), 17 C.F.R. § 4.13(c)(1); Commission Regulation § 4.14(a)(8)(iv), 17 C.F.R. § 4.14(a)(8)(iv); and Commission Regulation 4.20, 17 C.F.R. § 4.20;

b) An order of preliminary and permanent injunction prohibiting Defendants, and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, from engaging, directly or indirectly:

i. in conduct in violation of Sections 4b(a) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§6b(a); Section 4m(1) of the Act, 7 U.S.C. § 4m(1) (2006); Section 4o(1) of the Act; Commission Regulation 4.13(c)(1), 17 C.F.R. § 4.13(c)(1); Commission Regulation § 4.14(a)(8)(iv), 17 C.F.R. § 4.14(a)(8)(iv); or Commission Regulation 4.20, 17 C.F.R. § 4.20.

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

iii. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17

C.F.R. § 1.3(hh) (2011) (“commodity options”), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”), for their own personal accounts or for any account in which they have a direct or indirect interest;

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

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

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

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

viii. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)(2012)), agent or any other officer or employee of any person (as that term is defined in Section 1a(28) of the Act, 7 U.S.C. § 1a(28) (2006)) 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);



c) An order directing Defendants, as well as any successors, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices that constitute violations of the Act, as amended by the CRA, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

d) An order directing Defendants to make full restitution to every person or entity whose funds they received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act, as amended by the CRA, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) An order directing Defendants, and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the clients whose funds were received by them as a result of the acts and practices which constituted violations of the Act, as amended by the CRA, as described herein;

f) An order directing Defendants to pay a civil monetary penalty of not more than the higher of (1) triple the monetary gain to each Defendant for each violation the of the Act, as amended by the CRA, described herein or (2) \$140,000 for each violation of the Act committed on or after October 23, 2008 and \$130,000 for each violation committed before October 23, 2008, plus post-judgment interest;

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

h) Such other and further relief as the Court deems proper.

**VII.**

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial.

Dated: June 7, 2012

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF  
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