



Capital pool and/or the TSC pool was profitable. In reality, Stroud lost more than \$1,058,501 between approximately August 2008 and April 2010 trading commodity futures and forex for the Stroud Capital pool. He also lost more than \$116,123 between approximately December 2009 and October 2011 trading commodity futures for the TSC pool and more than \$556 between approximately December 2009 and July 2011 trading forex for the TSC pool. Moreover, he misappropriated more than \$2,254,845 in pool participant funds between at least April 2008 and the present.

3. To conceal their fraud, Defendants issued false periodic account statements, tax records, and at least one bank account statement to pool participants reflecting substantial profits and failing to disclose Stroud's significant trading losses and his misappropriation of participant funds.

4. To further conceal Defendants' fraud, Stroud and TSCM willfully made false representations to and concealed information from the National Futures Association ("NFA") in connection with two audits of TSCM that the NFA conducted on or about April 4-6, 2011 ("April 2011 NFA audit") and October 17-27, 2011 ("October 2011 NFA audit") pursuant to the NFA's official duties under the Commodity Exchange Act ("Act"), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.*

5. After Defendants ran out of participant funds due to Stroud's trading losses and misappropriation, their fraudulent scheme collapsed in approximately September 2011. Shortly thereafter, Stroud admitted to at least one pool participant that the money was gone.

6. By engaging in this conduct and the conduct further described herein, Defendants have engaged, are engaging, or are about to engage in conduct in violation of the Act. Specifically, by cheating or defrauding pool participants, deceiving or attempting to deceive pool participants, and/or misappropriating pool participant funds, Stroud and Stroud Capital have violated Section 4b(a)(2)(i) and (iii), 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect to acts committed before June 18, 2008. By engaging in similar conduct and willfully issuing false statements to pool participants, Defendants have violated Section 4b(a)(1)(A)-(C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), with respect to acts committed on or after June 18, 2008, Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, 7 U.S.C. § 6b(a)(2)(A)-(C) (2006 and Supp. 2009), with respect to acts committed on or after June 18, 2008 and prior to July 16, 2011, and Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006). By willfully concealing material facts from and/or making false, fictitious, or fraudulent statements to the NFA, Stroud and TSCM have violated Section 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. § 13(a)(4).

7. Additionally, Stroud Capital and TSCP, while acting as commodity pool operators ("CPOs"), made use of the mails or other means or instrumentalities of interstate commerce in connection with their CPO businesses without the benefit of registration in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006). Stroud, while acting as an associated person ("AP") of Stroud Capital, TSCP, and TSCM, all CPOs, solicited funds for participation in a commodity pool without the benefit of registration, and Stroud Capital, TSCP, and TSCM allowed Stroud to

act as their AP without being registered, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

8. Unless restrained and enjoined by this Court, Defendants are likely to continue engaging in the acts and practices alleged in this complaint or in similar acts and practices.

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

## **II. JURISDICTION AND VENUE**

10. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(a), which authorizes the Commission to seek injunctive relief in the proper district court of the United States 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 promulgated thereunder.

11. The Commission has jurisdiction over the forex solicitations and transactions at issue in this case pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, and Section 2(c)(2)(C) of the Act, as amended, to be codified at 7 U.S.C. § 2(c)(2)(C).

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(e), because Stroud resides in this District, Defendants transacted business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District.

### III. THE PARTIES

13. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations promulgated thereunder (“Regulations”), 17 C.F.R. §§ 1.1 *et seq.* (2011).

14. Defendant **Stroud Capital Management, LLC** is a Delaware limited liability company established in June 2008 with a business address in New York, New York. Stroud is Stroud Capital’s sole owner, President, and sole principal. Between approximately February 2008 and March 2010, Stroud Capital acted as a CPO by soliciting, accepting, and pooling participant funds for the purpose of trading them in commodity futures, including in accounts held in the names of the Stroud Capital pool, Stroud Capital, and Stroud Development Group, LLC, without the benefit of registration with the Commission as a CPO. On or about August 15, 2008, Stroud Capital filed with the NFA a claim of exemption from CPO registration pursuant to Regulation 4.13(a)(4), 17 C.F.R. § 4.13(a)(4) (2011), in relation to its operation of the Stroud Capital pool. Stroud Capital has never been registered with the Commission in any capacity.

15. Defendant **TS Capital Partners, LLC** is a partnership with business addresses in Auburn, Alabama and New York, New York and is co-owned by Stroud and Thomas (“Tommy”) Tuberville (“Tuberville”), each of whom has a 50% ownership interest in TSCP. Since at least December 2009, TSCP has acted as a CPO by soliciting, accepting, and pooling participant funds for the purpose of trading them in commodity futures, including in accounts held in the names of the TSC pool, TSCP, and TSCM, without the benefit of registration with the Commission as a CPO. On or about September 24, 2009, TSCP filed with the NFA a claim of exemption from CPO registration pursuant to Regulation 4.13(a)(4), 17 C.F.R. § 4.13(a)(4)

(2011), in relation to its operation of the TSC pool. TSCP has never been registered with the Commission in any capacity.

16. Defendant **TS Capital Management, LLC** is a Delaware limited liability company established in June 2010 with business addresses in Auburn, Alabama and New York, New York. TSCM is co-owned by Stroud and Tuberville, each of whom has a 50% ownership interest in TSCM. TSCM has been registered with the Commission as a CPO since on or about August 12, 2010.

17. Defendant **John David Stroud** resides in Auburn, Alabama. Stroud was registered with the Commission as an AP of Lehman Brothers Inc. (“Lehman Brothers”) from approximately September 2007 until June 2008, when his registration was withdrawn. On or about April 12, 2011, Stroud was suspended from registration with the Financial Industry Regulatory Authority (“FINRA”), a self-regulatory organization responsible for registering securities industry participants, for failure to comply with an arbitration award or settlement agreement.

18. During the course of conduct described herein, Stroud controlled Stroud Capital, TSCP, and TSCM. Stroud is Stroud Capital’s sole owner, President, and sole principal. He managed the daily operations of Stroud Capital, is a signatory on Stroud Capital’s bank accounts, solicited funds for the Stroud Capital pool, and is an authorized trader on the Stroud Capital pool’s commodity futures and forex trading accounts. Additionally, Stroud founded and has a 50% ownership interest in TSCP and TSCM, manages the daily operations of TSCP and TSCM, serves as TSCP’s Chief Executive Officer (“CEO”), is a signatory on TSCP’s and TSCM’s bank accounts, solicited funds for the TSC pool, and is an authorized trader on the TSC pool’s trading accounts.

#### IV. OTHER RELEVANT PARTIES

19. **Thomas (“Tommy”) Tuberville** owns a 50% interest in TSCP and TSCM and invested funds in the Stroud Capital pool and the TSC pool. Tuberville served as head football coach at Auburn University from 1999 until December 3, 2008, and commenced serving as head football coach for Texas Tech University in 2010. Tuberville currently resides in Lubbock, Texas. He has never been registered with the Commission in any capacity.

20. **Stroud Capital Fund, L.P.** is a Delaware limited partnership established in July 2008. Its business address is in New York, New York. The Stroud Capital pool acted as a commodity pool operated by Stroud Capital.

21. **TS Capital Fund, L.P.** is a Delaware limited partnership established in June 2010. Its business addresses are in Auburn, Alabama and New York, New York. The TSC pool acts as a commodity pool operated by TSCP and TSCM.

22. The **National Futures Association** is registered with the Commission as a futures association pursuant to Section 17 of the Act, as amended, to be codified at 7 U.S.C. § 21. It serves as an industry self-regulatory organization, and its membership is composed of futures commission merchants (“FCMs”), forex dealer members, commodity trading advisors, CPOs, introducing brokers, and other futures professionals registered with the Commission. Under Commission oversight, the NFA is responsible for certain aspects of the regulation of these entities and their APs. *See* Regulation 3.75, 17 C.F.R. § 3.75 (2011). The NFA focuses primarily on the qualifications and proficiency, financial condition, retail sales practices, and business conduct of its members.

## V. STATUTORY BACKGROUND

23. A “commodity pool” is defined in Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1) (2011), as any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity interests.

24. Prior to July 16, 2011, a CPO was defined in Section 1a(5) of the Act, 7 U.S.C. § 1(a)(5) (2006), as any firm or individual engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and that, 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. Upon the effective date of Title VII of the Dodd-Frank Act on July 16, 2011, the definition of a CPO was expanded and re-designated in Section 1a(11) of the Act, as amended, to be codified at 7 U.S.C. § 1a(11).

25. An AP of a CPO is defined in Regulation 1.3(aa)(3), 17 C.F.R. § 1.3(aa)(3) (2011), in relevant part, as any natural person associated with a CPO “as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged.”

26. A “participant” is defined in Regulation 4.10(c), 17 C.F.R. § 4.10(c) (2011), as any person who has any direct financial interest in a commodity pool.

27. Pursuant to Regulation 4.13(a)(4), 17 C.F.R. § 4.13(a)(4) (2011), a person may not be required to register as a CPO under the Act if: (i) interests in the commodity pool are

exempt from registration under the Securities Act of 1933 and offered and sold without marketing to the public in the United States; (ii) the person reasonably believes, at the time of investment, that (A) each natural person participant is a “qualified eligible person” (“QEP”), as that term is defined in Regulation 4.7(a)(2), 17 C.F.R. § 4.7(a)(2) (2011), and (B) each non-natural person participant is a QEP, as that term is defined in Regulation 4.7, 17 C.F.R. § 4.7 (2011), or an “accredited investor,” as that term is defined in Regulation 230.501(a)(1)-(3) and (7)-(8), 17 C.F.R. § 230.501(a)(1)-(3) and (7)-(8) (2011).

28. Regulation 4.13(a)(6)(i), 17 C.F.R. § 4.13(a)(6)(i) (2011), further provides that eligibility for an exemption from registration under Regulation 4.13(a)(4) is subject to the person furnishing, in a written communication that is delivered physically or electronically to each prospective participant: (A) a statement that the person is exempt from registration as a CPO and is therefore not required to deliver a Disclosure Document or a certified annual report to participants; and (B) a description of the criteria that qualifies the person for the exemption from registration.

## VI. FACTS

### A. Background and Structure of Defendants’ Fraudulent Scheme

29. Between approximately February 2008 and March 2010, Stroud, individually and on behalf of Stroud Capital, solicited and accepted at least \$3,303,258 from at least six participants for the purpose of trading commodity futures in the Stroud Capital pool. Many of these participants trusted Stroud because he was a personal friend or had previously served as their broker at one or more other financial institutions. During this time period, Stroud used the Stroud Capital and Stroud Capital pool names interchangeably with prospective and actual participants, and he sometimes used the name “SDG” with participants.

30. Between at least February 2008 and March 2010, Stroud Capital acted as the CPO of the Stroud Capital pool by soliciting, accepting, and pooling participant funds and using them to trade commodity futures and forex, including in trading accounts held in the name of the Stroud Capital pool at MF Global, Inc. (“MFG”) and Interactive Brokers, LLC (“Interactive”), both registered FCMs. Specifically, of the at least \$3,303,258 that Stroud Capital accepted from participants between approximately February 2008 and March 2010, Stroud Capital transferred approximately \$1,714,500 into the Stroud Capital pool’s trading accounts at MFG and Interactive between approximately February 2008 and March 2010. Participant funds were also pooled in a bank account at Troy Bank and Trust in Troy, Alabama (“Troy Bank”) ending in 5617 and bank accounts at Wachovia Bank, N.A. (“Wachovia”) ending in 5494, 5381, and 5446. MFG, Interactive, Troy Bank, and Wachovia provided Stroud with periodic statements for these accounts.

31. On or about August 15, 2008, Stroud Capital filed with the NFA a claim of exemption from CPO registration in relation to its operation of the Stroud Capital pool, claiming that Stroud Capital was not required to be registered with the Commission pursuant to Regulation 4.13(a)(4).

32. In approximately December 2008, Stroud met Tuberville, who lived in Auburn, Alabama at the time. Stroud represented to Tuberville that he was employed as a trader at Lehman Brothers. In approximately early 2009, Stroud represented to Tuberville that he had left Lehman Brothers to run his own investment company, Stroud Capital, and that he was successfully trading commodity futures for his own account. He asked Tuberville to invest funds with him. Based on Stroud’s representation that he was successfully trading his own funds and Stroud’s apparent experience as a successful trader at Lehman Brothers, Tuberville invested

approximately \$250,000 with Stroud for the purpose of trading commodity futures in approximately June 2009, matching the \$250,000 in personal funds Stroud claimed he was trading at the time.

33. In approximately late 2009, Stroud began using the TSCP, TSCM, and TSC pool names, often interchangeably, with prospective participants instead of the Stroud Capital and Stroud Capital pool names, although he continued to use those names with at least some existing participants. He represented to prospective participants that he had gone into business with Tuberville and that the “T” and “S” stood for “Tuberville” and “Stroud,” respectively. While Stroud’s office in Auburn, Alabama displayed numerous items of football memorabilia from Auburn University, where Tuberville had coached football for several years, Stroud ran the daily operations of TSCP, and Tuberville had no commodity futures trading experience and was rarely in the office. Many of the prospective participants Stroud solicited during this time trusted Stroud because they were personal friends with him and/or Tuberville.

34. On or about September 24, 2009, TSCP filed with the NFA a claim of exemption from CPO registration in relation to its operation of the TSC pool, claiming that the TSC pool was not required to be registered with the Commission pursuant to Regulation 4.13(a)(4).

35. Between at least December 2009 and the present, Stroud, individually and on behalf of TSCP and TSCM, solicited and accepted at least \$1,585,184 from at least fourteen participants for the purpose of trading commodity futures in the TSC pool. During this time, Stroud used the TSCP, TSCM, and TSC pool names interchangeably with participants.

36. Also between at least December 2009 and the present, TSCP acted as the CPO of the TSC pool by soliciting, accepting, and pooling participant funds and using them to trade commodity futures and forex, including in trading accounts held in the name of the TSC pool at

MFG and Interactive. Participant funds were also pooled at Regions Bank in Birmingham, Alabama (“Regions Bank”) in a TSCP bank account ending in 6744 and a TSC pool bank account ending in 8961. MFG, Interactive, and Regions Bank provided Stroud with periodic statements for these accounts.

37. Stroud documented the investment of at least one participant, William Scott (“Scott”), with a “Subscription Agreement to Become a Limited Partner in TS Capital Fund, LP” (“TSC pool Subscription Agreement”) at the time of Scott’s initial investment in the TSC pool in approximately December 2009. Stroud made a handwritten note on Scott’s TSC pool Subscription Agreement that his compensation would be 10% of profits, further specifying “No profit – no fee.”

38. In approximately January 2010, Tuberville moved to Lubbock, Texas to coach football for Texas Tech University. Stroud continued to use the TSCP, TSCM, and TSC pool names with prospective and actual participants after Tuberville moved, and Tuberville left his funds in the TSC pool. Tuberville later invested an additional \$200,000 with Stroud in approximately mid-2010, for a total investment of \$450,000, based on Stroud’s representations that he had successfully traded the funds Tuberville had initially invested in commodity futures, particularly natural gas futures.

39. In approximately June 2010, Stroud formally established TSCM and the TSC pool in the state of Delaware, and on or about August 12, 2010, Stroud registered TSCM with the Commission as a CPO. Also during approximately mid-2010, Stroud ceased using the Stroud Capital and Stroud Capital pool names and began using the TSCP, TSCM, and TSC pool names exclusively.

40. Between at least November 2010 and the present, TSCM acted as the CPO of the TSC pool by soliciting, accepting, and pooling participant funds and using them to trade commodity futures and forex, including in trading accounts held in the name of the TSC pool at MFG and Interactive. Stroud and TSCM also pooled participants' funds in a TSCM bank account at Regions Bank ending in 8354. MFG, Interactive, and Regions Bank provided Stroud with periodic statements for these accounts.

41. Of the at least \$1,585,184 that TSCP and TSCM accepted from participants between at least December 2009 and the present, they transferred approximately \$546,550 into the TSC pool's trading accounts at MFG and Interactive during the same time period.

**B. Defendants' Fraudulent Scheme Collapses**

42. Stroud offered at least two of the prospective participants he solicited jobs at TSCP, and by approximately early 2011, Stroud had hired several full-time employees, including Baron Lowe ("Lowe"), the chief operating officer ("COO"); Glen Williams ("Williams"), a research analyst; Stuart Memory ("Memory"), the chief financial officer ("CFO"); and Rachel Broach ("Broach"), the office manager. Lowe and Williams invested funds totaling nearly \$670,000 in the TSC pool in 2010 and 2011. Memory also invested at least \$14,000 in the TSC pool in 2011.

43. For approximately the first several months of 2011, Stroud refused to share detailed documentation of his trading of TSC pool funds, including documentation showing profits and losses and the location of all participant funds, with TSCP employees, including Lowe. After numerous requests to Stroud for this documentation went unmet, Lowe began gathering information about TSCP from Broach and TSCP's accounting firm. In doing so, Lowe discovered that TSCP had unpaid bills totaling approximately \$85,000 and lacked sufficient funds in its checking account at Regions Bank to pay those bills. Lowe further discovered that

TSCP had failed to file its 2009 and 2010 tax returns, that Stroud had been suspended from registration with FINRA, and that Stroud had repeatedly failed to provide the NFA with records requested in connection with the April 2011 NFA audit of TSCM.

44. When Lowe confronted Stroud with his discoveries in approximately early September 2011, Stroud promised to transfer enough funds into TSCP's checking account to allow Broach to pay the bills, but he failed to do so.

45. Subsequently, on or about September 15, 2011, Stroud provided Lowe with a false Troy Bank statement, claiming that it was a bank statement for a TSC pool account ending in 2720. The statement reflected an account balance of \$6,791,484 as of June 27, 2011. In reality, the account ending in 2720 is Stroud's personal account, and it had a balance of only approximately \$193.55 as of June 27, 2011.

46. On or about September 28, 2011, Lowe called Tuberville to inform him of his discoveries, including the past-due bills, unfiled tax returns, and Troy Bank statement. Later that day, Stroud informed TSCP employees that TSCP was closing and that participant funds would be returned.

47. Since on or about September 28, 2011, Defendants have failed to return any TSC pool funds to participants, despite numerous written and verbal requests from participants.

48. Approximately one week after September 28, 2011, Stroud called Williams, who, in addition to being TSCP's former research analyst and a participant in the TSC pool, was a personal friend undergoing chemotherapy treatment for cancer. During this phone call, Stroud admitted to Williams that "I lied to you, I lied to everyone, and the only way I can make things up to you is to get you your money back."

49. On or about October 25, 2011, Stroud called Scott, also a participant in the TSC pool and a personal friend, and admitted, “I lied to you” and “it was all my fault.” During this phone call, Stroud further admitted to Scott that “there was no money” and “I don’t have a penny to my name.”

50. Throughout the time Defendants pooled funds and traded them in commodity futures and forex, they solicited and accepted funds from natural persons that they did not reasonably believe were QEPs. Furthermore, participants in the Stroud Capital pool and the TSC pool were never provided with the written communication required by Regulation 4.13(a)(6)(i).

**C. Defendants’ Misrepresentations of Past Trading Profitability and Success to Prospective and Actual Participants**

51. On multiple occasions when soliciting and accepting funds, Stroud, individually and on behalf of Stroud Capital, TSCP, and TSCM, falsely represented to prospective and actual participants that his trading was profitable, that he had sold Stroud Capital for several million dollars, and that he was using funds from the sale of Stroud Capital to pay for TSCP’s operating expenses. Stroud knew that these representations were false or recklessly disregarded the truth while making them.

52. In reality, Stroud never sold Stroud Capital but simply started using the TSCP, TSCM, and TSC pool names. Furthermore, Stroud lost approximately \$1,058,501 trading commodity futures and forex in the Stroud Capital pool’s trading accounts at MFG and Interactive between at least August 2008 and April 2010. He also lost approximately \$116,123 trading commodity futures in the TSC pool’s trading accounts at MFG and Interactive between at least December 2009 and October 2011 and an additional more than \$556 trading forex in the TSC pool’s trading account at Interactive between at least December 2009 and July 2011.

53. For example, in approximately late 2009, Stroud solicited funds for the TSC pool from Scott, including by representing that he and Tuberville had doubled their funds trading commodity futures and that he had sold Stroud Capital for approximately \$6 or \$7 million to an investment company. Based on these representations, Scott invested approximately \$250,000 in the TSC pool between December 2009 and January 2010. Stroud later admitted to Scott on or about October 25, 2011 that he had never received any money for a sale of Stroud Capital and that he just “changed the name” of the company. He further admitted to Scott that he had lied about selling Stroud Capital to help convince Scott to invest funds with him.

54. Similarly, in approximately August 2010, Stroud solicited funds for the TSC pool from Williams, including by representing that he had sold Stroud Capital for \$9 million and had earned a return of approximately 12% for the previous twelve months trading commodity futures and forex. Based on these representations, Williams invested more than \$66,000 in the TSC pool in approximately August 2010, and after joining TSCP as a research analyst in approximately January 2011, Williams made an additional investment of more than \$71,000 in the TSC pool. In reality, Stroud’s trading of commodity futures and forex in the Stroud Capital pool and the TSC pool trading accounts for the twelve months preceding August 2010 resulted in losses of approximately \$352,701.

**D. Defendants’ Misappropriation of Pool Participants’ Funds**

55. Stroud never disclosed to participants that their funds would be used for any purposes other than trading. Nevertheless, of the approximately \$3,303,258 accepted from participants between at least February 2008 and March 2010, Stroud only transferred approximately \$1,714,500 into the Stroud Capital pool’s commodity futures and forex trading accounts. Similarly, of the approximately \$1,585,184 accepted from participants between at

least December 2009 and the present, Stroud only transferred approximately \$546,550 into the TSC pool's commodity futures and forex trading accounts.

56. Defendants misappropriated at least \$2,254,845 of participant funds between at least April 2008 and the present. Stroud used the misappropriated funds for various personal expenses and purchases, including, but not limited to, his car payments, travel expenses, entertainment, and retail purchases. Stroud never disclosed to participants that their funds would be, or had been, used for these purposes.

**E. Defendants' False Statements to Pool Participants**

57. Between at least March 2009 and the present, Defendants prepared and delivered, either via email, hand delivery, or the TSCP website, a number of periodic account statements to participants falsely representing that the trading of their funds had been profitable. Defendants issued these periodic account statements knowing they were false.

58. For example, Stroud provided Williams' father-in law, John Abrams ("Abrams"), with Stroud Capital pool statements for Abrams' and his wife's accounts in approximately March 2010. Abrams and his wife had invested their entire savings for retirement, totaling approximately \$805,000, in the Stroud Capital pool in 2008 and 2009. The statements reflected positive annual returns of more than 6% for 2009 and positive returns of more than 2% for January through February 2010. In reality, Stroud's trading of commodity futures and forex in the Stroud Capital pool and the TSC pool trading accounts resulted in losses of at least \$184,983 in 2009 and at least \$127,626 between January and February 2010.

59. Defendants also prepared and delivered false tax records to participants misrepresenting that the trading of their funds had been profitable. Defendants issued these tax records knowing they were false.

60. For example, in approximately April 2011, Defendants provided Schedule K-1s for tax year 2010 to Abrams and his wife, whose funds remained with Stroud after he started using the TSCP, TSCM, and TSC pool names. The tax records showed that at the end of 2010, the Abrams' TSC pool account balances totaled more than \$830,000. This figure indicated that, as of December 31, 2010, the Abrams' funds in the TSC pool still totaled approximately \$25,000 more than the amount they had initially invested, despite withdrawals of more than \$60,000 in 2009 and more than \$50,000 in 2010. In reality, the TSC pool accounts at MFG, Interactive, and Regions Bank held a combined balance of less than \$255,550 as of December 31, 2010.

**F. Defendants' Misrepresentations to and Omissions from the NFA**

61. On or about April 4-6, 2011, the NFA conducted the April 2011 NFA audit of TSCM, a registered CPO, pursuant to the NFA's official duties under the Act. During that audit, Stroud, individually and on behalf of TSCM, falsely represented to NFA staff that TSCM solely traded proprietary funds and was not otherwise doing business. He further falsely represented to NFA staff that the TSC pool was a proprietary pool in which only Stroud and three TSCP employees had invested and that it had a total net asset value of \$500,000 as of March 31, 2011. In reality, TSCM solicited and accepted non-proprietary funds from outside participants and used them to trade commodity futures and forex in the TSC pool trading accounts. Further, as of March 31, 2011, the TSC pool had accepted at least \$1,436,698 from at least thirteen participants, at least nine of whom were outside participants. In making these false representations, Stroud, individually and on behalf of TSCM, willfully concealed from the NFA that the TSC pool contained non-proprietary funds from outside participants.

62. The NFA subsequently requested additional information from Stroud and TSCM, including additional information about certain cash transactions it examined in connection with

the April 2011 NFA audit. In response, Stroud, individually and on behalf of TSCM, provided the NFA with additional false information.

63. For example, on or about April 7, 2011, the NFA requested Stroud to explain the sources of a \$165,000 deposit made on October 1, 2010 and a \$249,261.61 deposit made on January 26, 2011 into a TSCP bank account at Regions Bank ending in 6744. Shortly thereafter, Stroud asked Williams if he could tell the NFA the \$165,000 deposit was made with Williams's funds "to make this go away," to which Williams responded that he could not. Nevertheless, on or about May 13, 2011, Stroud emailed NFA staff a document stating, "Glen Williams, an employee, \$165,000 and Baron Lowe, employee of the firm, \$249,261.61 purchased ownership interests in TS Capital Partners, our main management entity, to become members therein."

64. In approximately August or September 2011, Williams discovered this misrepresentation to the NFA and confronted Stroud about it. In response, Stroud admitted to Williams that the actual source of the funds, participant Debra Clark, was not a qualified investor and that he "had to lie to keep NFA from shutting down the company." Further, on approximately October 24, 2011, Stroud's attorney notified the NFA that, in response to the NFA's inquiry about the \$165,000 deposit on October 1, 2010, "I believe that Mr. Stroud may have incorrectly advised you that these funds came from Glen Williams. Mr. Stroud advises that he was mistaken, and that these funds did not come from Glen Williams."

65. Additionally, on or about April 7, 2011, the NFA requested an explanation for a \$50,000 wire transfer made on November 22, 2010 into a TSCM bank account at Regions Bank ending in 8354, noting in its request that the wire transfer was from "John C or Cynt." On or about May 13, 2011, Stroud emailed NFA staff a document stating, "This payment was to effect

an investment in the TS Capital Fund by Tommy Tuberville, a partner. The reference to a ‘John C or Cynt’ appears to be an error.”

66. Subsequently, on or about October 14, 2011, Stroud, through his attorney, sent NFA staff a copy of an email purportedly sent by Tuberville to Stroud stating, “Per your request I am sending an email confirming a wire transfer in the amount of \$50,000 on November 22, 2010 to [*sic*] from me to TS Capital Partners.” In fact, this deposit was made with funds from a participant, John Owens (“Owens”).

67. On or about October 24, 2011, a different attorney representing Stroud notified the NFA that Owens was the source of this \$50,000 deposit, stating “I believe that Mr. Stroud initially told you that this wire came from Tommy Tuberville, and [Stroud’s original attorney] advised [NFA staff] of the same by email. Mr. Stroud was incorrect, both in his representation to NFA and in his explanation regarding this matter to [his original attorney]. . . . Mr. Stroud believes that the name of Mr. Owen’s wife is ‘Cynthia,’ hence the ‘Cynt’ reference in the wire notation on the account statement.”

68. On or about October 17-27, 2011, the NFA conducted the October 2011 NFA audit pursuant to the NFA’s official duties under the Act. In connection with this audit, Stroud and TSCM falsely represented to NFA staff that the TSC pool contained less than \$2 million from six participants. In reality, the TSC pool contained funds from at least thirteen participants at the time of this audit totaling only approximately \$3,109. Also in connection with the October 2011 NFA audit, NFA staff requested statements from the financial institution holding TSC pool funds, but Stroud and TSCM refused to produce any such documentation. In doing so, Stroud and TSCM willfully concealed from the NFA the actual source, amount, and location of TSC pool funds.

**G. The Nature of Defendants' Transactions**

69. Defendants are not financial institutions, registered brokers or dealers, insurance companies, financial holding companies, or investment bank holding companies, nor are they associated persons of financial institutions, registered brokers or dealers, insurance companies, financial holding companies, or investment bank holding companies.

70. Defendants and most, if not all, of the participants in the Stroud Capital pool and the TSC pool were and are not "eligible contract participants," as that term is defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a.

71. The forex transactions conducted by Defendants were entered into on a leveraged or margined basis, and they neither resulted in delivery of actual currency 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 purportedly remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency or facing an obligation to do so.

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

**COUNT I**

**Violations of Section 4b(a)(2)(i) and (iii) of the Act:  
Fraud by Misrepresentations and Misappropriation  
in Connection with Commodity Futures Before June 18, 2008**

72. Paragraphs 1 through 71 are realleged and incorporated herein by reference.

73. 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.

74. Stroud and Stroud Capital violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect to acts occurring before June 18, 2008, in that they cheated or defrauded, or attempted to cheat or defraud, and willfully deceived, or attempted to deceive, pool participants by, *inter alia*, misrepresenting Stroud's past success trading commodity futures and misappropriating pool participant funds for personal benefit.

75. Stroud controlled Stroud Capital and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Stroud Capital's violations alleged in this count. Stroud is therefore liable for Stroud Capital's violations of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect to acts occurring before June 18, 2008, as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

76. The foregoing acts, omissions, and failures of Stroud occurred within the scope of his employment, office, or agency with Stroud Capital. Therefore, Stroud Capital is liable for Stroud's acts, omissions, and failures constituting violations of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect to acts occurring before June 18, 2008, pursuant to Section 2(a)(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

77. Each act of misrepresenting Stroud's past trading success and/or misappropriating pool participant funds for personal benefit, 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), (iii) (2006), with respect to acts occurring before June 18, 2008.

## COUNT II

### **Violations of Section 4b(a)(1)(A)-(C) of the Act: Fraud by Misrepresentations, Misappropriation, and False Statements in Connection with Commodity Futures On or After June 18, 2008**

78. Paragraphs 1 through 71 are realleged and incorporated herein by reference.

79. Section 4b(a)(1)(A)-(C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), makes it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person: (A) to cheat or defraud or attempt to cheat or defraud such other person; (B) willfully to make or cause to be made to such other person any false report or statement, or willfully to enter or cause to be entered for such other person any false record; or (C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for such other person, in connection with acts occurring on or after June 18, 2008.

80. Defendants violated Section 4b(a)(1)(A)-(C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, in that they cheated or defrauded, or attempted to cheat or defraud, and willfully deceived, or attempted to deceive, pool participants by, *inter alia*, misrepresenting the Stroud Capital pool's and the TSC pool's profitability, misrepresenting Stroud's past success trading commodity

futures, misappropriating pool participant funds for personal benefit, and issuing false statements to pool participants that misrepresented the Stroud Capital pool's and the TSC pool's profitability and/or the value of participants' respective interests in the pools.

81. Stroud controlled Stroud Capital, TSCP, and TSCM and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Stroud Capital's, TSCP's, and TSCM's violations alleged in this count. Stroud is therefore liable for Stroud Capital's, TSCP's, and TSCM's violations of Section 4b(a)(1)(A)-(C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

82. The foregoing acts, omissions, and failures of Stroud occurred within the scope of his employment, office, or agency with Stroud Capital, TSCP, and TSCM. Therefore, Stroud Capital, TSCP, and TSCM are liable for Stroud's acts, omissions, and failures constituting violations of Section 4b(a)(1)(A)-(C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, pursuant to Section 2(a)(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

83. Each act of misrepresenting the Stroud Capital pool's or the TSC pool's profitability, misrepresenting Stroud's past trading success, misappropriating pool participant funds for personal benefit, or issuing false statements to pool participants that misrepresented the Stroud Capital pool's or the TSC pool's profitability and/or the value of participants' respective interests in the pools, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(1)(A)-(C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008.

COUNT III

**Violation of Section 4b(a)(2)(A)-(C) of the Act:  
Fraud by Misrepresentations, Misappropriation, and False Statements  
in Connection With Forex Transactions  
On or After June 18, 2008 and Before July 16, 2011**

84. Paragraphs 1 through 71 are realleged and incorporated herein by reference.

85. Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, 7 U.S.C.

§ 6b(a)(2)(A)-(C) (2006 and Supp. 2009), makes it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery 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 such other person; (B) willfully to make or cause to be made to such other person any false report or statement, or willfully to enter or cause to be entered for such other person any false record; or (C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for, on behalf of, or with such other person, in connection with acts occurring on or after June 18, 2008 and prior to July 16, 2011.

86. Pursuant to Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iv) (2006 and Supp. 2009), Section 4b of the Act applies to Defendants' forex transactions "as if" they were a contract of sale of a commodity for future delivery.

87. Defendants violated Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, 7 U.S.C. § 6b(a)(2)(A)-(C) (2006 and Supp. 2009), with respect to acts occurring on or after June 18, 2008 and prior to July 16, 2011, in or in connection with forex contracts made for, on behalf of, or with other persons by, *inter alia*, misrepresenting the Stroud Capital pool's and the TSC

pool's profitability, misrepresenting Stroud's past success trading commodity futures, misappropriating pool participant funds for personal benefit, and issuing false statements to pool participants that misrepresented the Stroud Capital pool's and the TSC pool's profitability and/or the value of participants' respective interests in the pools.

88. Stroud controlled Stroud Capital, TSCP, and TSCM and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Stroud Capital's, TSCP's, and TSCM's violations alleged in this count. Stroud is therefore liable for Stroud Capital's, TSCP's, and TSCM's violations of Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, 7 U.S.C. § 6b(a)(2)(A)-(C) (2006 and Supp. 2009), with respect to acts occurring on or after June 18, 2008 and prior to July 16, 2011, as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

89. The foregoing acts, omissions, and failures of Stroud occurred within the scope of his employment, office, or agency with Stroud Capital, TSCP, and TSCM. Therefore, Stroud Capital, TSCP, and TSCM are liable for Stroud's acts, omissions, and failures constituting violations of Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, 7 U.S.C. § 6b(a)(2)(A)-(C) (2006 and Supp. 2009), with respect to acts occurring on or after June 18, 2008 and prior to July 16, 2011, pursuant to Section 2(a)(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

90. Each act of misrepresenting the Stroud Capital pool's or the TSC pool's profitability, misrepresenting Stroud's past success trading forex, misappropriating pool participant funds for personal benefit, or issuing false statements to pool participants that misrepresented the Stroud Capital pool's or the TSC pool's profitability and/or the value of participants' respective interests in the pools, including, but not limited to, those specifically

alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, 7 U.S.C. § 6b(a)(2)(A)-(C) (2006 and Supp. 2009), with respect to acts occurring on or after June 18, 2008 and prior to July 16, 2011.

COUNT IV

**Violations of Section 4o(1)(A) and (B) of the Act:  
Fraud by a CPO and AP of a CPO**

91. Paragraphs 1 through 71 are realleged and incorporated herein by reference.

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

93. Stroud Capital, TSCP, and TSCM acted as CPOs in that each of them engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received funds, securities, or property from others for the purpose of trading in commodities for future delivery on or subject to the rules of any contract market.

94. Stroud acted as an AP of a CPO in that, as an agent of Stroud Capital, TSCP, and TSCM, he solicited and accepted funds, securities, or property for Stroud Capital, TSCP, and TSCM.

95. Defendants violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2006), in that, while acting as CPOs and an AP of CPOs, they directly or indirectly employed a device, scheme, or artifice to defraud pool participants and engaged in transactions, practices, or a course of business which operated as a fraud or deceit upon pool participants by,

*inter alia*, misrepresenting the Stroud Capital pool's and the TSC pool's profitability, misrepresenting Stroud's past trading success, misappropriating pool participant funds for personal benefit, and making or causing to be made false periodic statements to pool participants misrepresenting the profitability of the Stroud Capital pool and the TSC pool and/or the value of participants' respective interests in the pools.

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

97. Stroud controlled Stroud Capital, TSCP, and TSCM and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Stroud Capital's, TSCP's, and TSCM's violations alleged in this count. Stroud is therefore liable for Stroud Capital's, TSCP's, and TSCM's violations of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2006), as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

98. The foregoing acts, omissions, and failures of Stroud occurred within the scope of his employment, office, or agency with Stroud Capital, TSCP, and TSCM. Therefore, Stroud Capital, TSCP, and TSCM are liable for Stroud's acts, omissions, and failures constituting violations of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2006), pursuant to Section 2(a)(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

99. Each act of misrepresenting the Stroud Capital pool's or the TSC pool's profitability, misrepresenting Stroud's past trading success, misappropriating pool participant funds for personal benefit, and/or making or causing to be made false statements to pool participants while acting as CPOs and an AP of CPOs, including, but not limited to, those

specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2006).

COUNT V

**Violations of Section 9(a)(4) of the Act:  
Misrepresentations to and Omissions from the NFA**

100. Paragraphs 1 through 71 are realleged and incorporated herein by reference.

101. Section 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. § 13(a)(4), makes it unlawful for any person to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, or to make any false, fictitious, or fraudulent statements or representations, or to make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, swap data repository, or futures association designated or registered under the Act and acting in furtherance of its official duties under the Act.

102. Stroud and TSCM violated Section 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. § 13(a)(4), by willfully concealing material facts and/or making false, fictitious, or fraudulent statements or representations to the NFA, a futures association registered under the Act, in connection with two audits the NFA conducted of TSCM in furtherance of the NFA's official duties under the Act.

103. Specifically, in connection with the April 2011 NFA audit, Stroud and TSCM misrepresented to NFA staff that TSCM solely traded proprietary funds and was not otherwise doing business; that the TSC pool was a proprietary pool in which only Stroud and three TSCP employees had invested; that Williams, a TSCP employee, was the source of a \$165,000 deposit into a TSCP bank account on October 1, 2010; and that Tuberville, TSCM's co-owner, was the source of a \$50,000 deposit into a TSCM bank account on November 22, 2010. In reality,

TSCM solicited and accepted non-proprietary funds from outside participants, two of whom were the sources of the \$165,000 and \$50,000 deposits, and traded those non-proprietary funds in TSC pool accounts.

104. Furthermore, in connection with the October 2011 NFA audit, Stroud and TSCM misrepresented to NFA staff that the TSC pool contained funds from six participants, when in reality, the TSC pool contained funds from at least fourteen participants, and willfully concealed information from the NFA about the true source, amount, and location of TSC pool funds.

105. Stroud controlled TSCM and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting TSCM's violations alleged in this count. Stroud is therefore liable for TSCM's violations of Section 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. § 13(a)(4), as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

106. The foregoing acts, omissions, and failures of Stroud occurred within the scope of his employment, office, or agency with TSCM. Therefore, TSCM is liable for Stroud's acts, omissions, and failures constituting violations of Section 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. § 13(a)(4), pursuant to Section 2(a)(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

107. Each act of willful concealment and/or false, fictitious, or fraudulent statement made to the NFA, a futures association registered under the Act, in connection with the two audits of TSCM conducted in furtherance of the NFA's official duties under the Act, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. § 13(a)(4).

COUNT VI

**Violations of Section 4m(1) of the Act:  
Failure to Register as a CPO**

108. Paragraphs 1 through 71 and 93 are realleged and incorporated herein by reference.

109. It is unlawful for any CPO to make use of the mails or other means or instrumentalities of interstate commerce in connection with its CPO business unless registered with the Commission pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

110. Stroud Capital and TSCP violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), in that they acted as CPOs without the benefit of registration with the Commission as CPOs, and in connection with their CPO businesses, made use of the mails or other means or instrumentalities of interstate commerce.

111. Stroud Capital and TSCP solicited and accepted funds from natural persons that they did not reasonably believe were QEPs, and they failed to provide participants with a written communication stating that they were exempt from registering as CPOs and thus not required to deliver a Disclosure Document or certified annual report to participants and describing the criteria qualifying them for an exemption from registration. Accordingly, Stroud Capital and TSCP were not eligible for an exemption to CPO registration pursuant to Regulation 4.13(a)(4), 17 C.F.R. § 4.13(a)(4) (2011), and their claims for exemption to CPO registration pursuant to that provision were therefore invalid. Furthermore, Stroud Capital and TSCP were not eligible for certain other exemptions to CPO registration not applicable here.

112. Stroud controlled Stroud Capital and TSCP and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Stroud Capital's and TSCP's violations alleged in this count. Stroud is therefore liable for Stroud Capital's and TSCP's

violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

113. Each use of the mails or other means or instrumentalities of interstate commerce in connection with Stroud Capital's or TSCP's operation as a CPO without proper registration, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

#### COUNT VII

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

114. Paragraphs 1-71, 93, and 94 are realleged and incorporated herein by reference.

115. With certain exemptions and exclusions not applicable here, it is unlawful for a person to be associated with a CPO as a partner, officer, employee, consultant, or agent, or a person occupying a similar status or performing similar functions, in any capacity that involves the solicitation of funds, securities, or property for participation in a commodity pool unless registered with the Commission as an AP of the CPO pursuant to Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

116. Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), also makes it unlawful for a CPO to permit such a person to become or remain associated with the CPO in any such capacity if the CPO knew or should have known that the person was not registered as an AP.

117. Stroud violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), in that he acted as an AP of Stroud Capital, TSCP, and TSCM, all CPOs, without the benefit of registration as an AP of a CPO.

118. Stroud Capital, TSCP, and TSCM violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), in that, acting as CPOs, they allowed Stroud to act as their AP when they knew or should have known that Stroud was not registered as an AP.

119. Each act by Stroud of soliciting funds, securities, or property for participation in a commodity pool while being associated with Stroud Capital, TSCP, or TSCM as a partner, officer, employee, consultant, or agent without being registered as an AP of a CPO, and each act by Stroud Capital, TSCP, or TSCM of allowing Stroud to be associated with them in such a capacity when they knew or should have known Stroud was not registered as an AP, is alleged as a separate and distinct violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

### **VIII. RELIEF REQUESTED**

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

A. Find Stroud and Stroud Capital liable for violating Section 4b(a)(2)(i) and (iii), 7 U.S.C. § 6b(a)(2)(i), (iii) (2006), with respect to acts committed before June 18, 2008; find Defendants liable for violating Section 4b(a)(1)(A)-(C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), with respect to acts committed on or after June 18, 2008, Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, 7 U.S.C. § 6b(a)(2)(A)-(C) (2006 and Supp. 2009), with respect to acts committed on or after June 18, 2008 and prior to July 16, 2011, and Sections 4o(1)(A) and (B) and 4k(2) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) and 6k(2) (2006); find Stroud and TSCM liable for violating Section 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. § 13(a)(4); and find Stroud, Stroud Capital, and TSCP liable for violating Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006);

B. Enter a statutory restraining order and an order of preliminary injunction pursuant to Section 6c(a) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(a), restraining Defendants and all persons insofar as they are acting in the capacity of Defendants' 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:

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, including all such records concerning Defendants' business operations;

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 Defendants, wherever located, including all such records concerning Defendants' business operations; and

3. withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, assets, or other property, wherever situated, including, but not limited to, all funds, personal property, money, or securities held in safes or safety 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 Stroud, Stroud Capital, the Stroud Capital pool, TSCP, TSCM, and/or the TSC pool, whether jointly or otherwise;

C. Enter 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 or forex transactions, or purported commodity futures or forex transactions, including the names, mailing addresses, email addresses, and telephone numbers of any such persons from whom they received such funds from January 1, 2008 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 January 1, 2008 to and including the date of such accounting;

D. Enter 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, FCM, bank, or savings and loan account held by, under the actual or constructive control of, or in the name of Stroud, Stroud Capital, the Stroud Capital pool, TSCP, TSCM, and/or the TSC pool, whether jointly or otherwise, and requiring them to repatriate all funds held in such accounts by paying them to the Registry of the Court, or as otherwise ordered by the Court, for further disposition in this case;

E. Enter orders of preliminary and permanent injunction restraining Defendants and all persons insofar as they are acting in the capacity of Defendants' 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. engaging in conduct in violation of Sections 4b(a)(1)(A)-(C), 4b(a)(2)(A)-(C), and 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6b(a)(2)(A)-(C), and 13(a)(4), and Sections 4o(1)(A) and (B), 4m(1), and 4k(2) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B), 6m(1), and 6k(2) (2006);

2. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a), including, but not limited to, trading for themselves or others;

3. 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, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;

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

5. 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;

6. 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;

7. 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) (2011); and

8. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, or any other officer or employee of any person (as that 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) (2011);

F. Enter 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 which constitute violations of the Act as described herein, including pre-judgment and post-judgment interest;

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

H. Enter an order requiring Defendants to restore to each pool participant the full amount of his or her original investment;

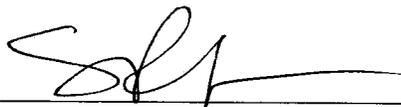
I. Enter an order directing each Defendant to pay a civil monetary penalty in the amount of not more than the greater of: (1) triple the monetary gain to Defendants for each violation of the Act; or (2) \$130,000 for each violation of the Act occurring from October 23, 2004 through October 22, 2008 and/or \$140,000 for each violation of the Act occurring on or after October 23, 2008;

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

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

Date: 3/5/12

Respectfully submitted,



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