

Defendants. Between March 2010 and February 2011, more than \$2.4 million was deposited by third parties into FMC bank accounts.

2. In oral and written solicitations, FMC, through McClung and others, and McClung falsely claimed that pool participant funds invested with FMC were guaranteed from loss and kept segregated from FMC trading funds. FMC, through McClung and others, and McClung also lured prospective pool participants with the prospect of quickly making large profits with returns such as 50 percent in thirty days or 15 percent per month for six months. While luring prospective pool participants with claims of large profits, FMC, though McClung and others, and McClung minimized and failed to disclose fully the risks of trading leveraged foreign currency. Overall, FMC, though McClung, and McClung created the false impression of a sophisticated and experienced foreign currency firm.

3. FMC, through McClung, and McClung used little, if any, of the funds solicited from pool participants to trade foreign currency. No trading accounts in the name of or under the control of the Defendants have yet been located.

4. Instead, FMC, through McClung, and McClung misappropriated pool participant funds to make payments to other pool participants of their purported profits or principal, in the manner akin to a “Ponzi” scheme, to pay for personal expenses, including paying for furniture and automobiles, and to pay for purported business expenses that perpetuated Defendants’ fraudulent foreign currency business.

5. When certain pool participants requested their promised returns, as set forth in a payout schedule provided by Defendants, FMC, through McClung, and McClung gave various false excuses why participants’ funds could not be returned to them, including falsely representing that FMC could not repay its pool participants because an investor had sued FMC

and McClung causing a business disruption and that McClung was in the process of changing the banks holding FMC accounts due to the current bank's involvement in the Madoff Ponzi scheme. FMC, through McClung, and McClung also sent some pool participants letters notifying them that FMC was reorganizing: first in January 2011 and then again in March 2011. Defendants have not repaid the pool participants.

6. By virtue of this conduct and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts in violation 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 (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.*, specifically Section 4b(a)(2)(A) and (C) of the Act, to be codified at 7 U.S.C. § 6b(a)(2)(A) and (C).

7. Additionally, on October 18, 2010, the Commission adopted new regulations implementing certain provisions of the Dodd-Frank Act with respect to off-exchange forex transactions. Beginning on October 18, 2010, and continuing to the present, McClung has engaged in fraud in violation of Commission Regulation ("Regulation") 5.2(b)(1) and (3), 17 C.F.R. § 5.2(b)(1) and (3) (2011).

8. Also, beginning October 18, 2010, Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011), require that a person must be registered as a

commodity pool operator (“CPO”) if he wants to solicit or accept orders from non-Eligible Contract Participants (“ECP”) in connection with forex transactions for a pooled investment.

9. Beginning on or about October 2010 and continuing to the present, FMC, while acting as a CPO, solicited orders from non-ECPs in connection with forex transactions without registering with the CFTC, in violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011).

10. Beginning on or about October 2010 and continuing to the present, McClung acted as an associated person (“AP”) of FMC without being registered as such, solicited funds for participation in the pool from prospective and actual participants and/or supervised others in violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc), and Regulation 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii) (2011).

11. At all relevant times, McClung and other third parties were acting as agents, officers or employees of FMC. Therefore, pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011), FMC, as the principal, is liable for the violations of the Act and Regulations committed by McClung and others, its agents.

12. McClung, directly or indirectly, controlled FMC, and failed to act in good faith, or knowingly induced, directly or indirectly, the acts constituting the violations alleged herein. Therefore, McClung is liable for the violations of FMC, pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b).

13. Accordingly, pursuant to Section 6c of the Act, to be codified at 7 U.S.C. § 13a-1, and Section 2(c)(2)(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C.

§ 2(c)(2)(C), the Commission brings this action to enjoin McClung's and FMC's unlawful acts and practices, and to compel Defendants to comply with the Act. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

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

II. JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to Section 6c of the Act, to be codified at 7 U.S.C § 13a-1, and Section 2(c)(2)(C)(i)-(iii) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(i)-(iii), which provides that whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

16. Section 6c(a) authorizes the Commission to seek injunctive relief in district court 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. In addition, this section authorizes the Commission to bring a civil action in district court to enforce compliance with the Act and any rule, regulation or order thereunder.

17. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, to be codified at 7 U.S.C. § 13a-1(e), because the Defendants are found, inhabit, reside and/or transact business in the District of Colorado, and certain of the transactions, acts, practices, and courses of business alleged to have violated the Act occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

18. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

19. Defendant **Shawon McClung** is an individual residing in Denver, Colorado. McClung holds himself out as the CFO and co-owner of FMC. McClung has never been registered with the CFTC. McClung is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment banking holding company, and is not an AP of such entities.

20. Defendant **Flint-McClung Capital LLC** is an Indiana corporation with a principal place of business in Englewood, CO. FMC has never been registered with the CFTC. FMC is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment banking company, and is not an AP of such entities.

IV. FACTS

Defendants' Fraudulent Solicitation of Pool Participants to Trade Forex

21. Commencing in or around March 2010, Defendants have fraudulently solicited and accepted, directly and through at least two other persons, at least \$1,989,975 from at least 10 individuals for the purported purpose of trading forex on a margined or leveraged basis through a pooled investment fund operated and managed by FMC and McClung.

22. At least certain of FMC's and McClung's pool participants, if not the majority, were individuals who were non-ECPs, meaning each had total assets of less than \$5 million.

23. Defendant FMC has acted as an unregistered CPO since at least October 2010, in that FMC has solicited and accepted funds from at least 10 individuals for the purpose of trading in foreign currency through a pooled investment. By soliciting prospective pool participants on behalf of FMC, McClung has acted as an unregistered AP of FMC.

24. Defendants solicited prospective pool participants through a website www.flint-mcclung.com ("FMC website"), and through oral and written solicitations. FMC and McClung also used at least two other individuals to solicit prospective pool participants in the name of FMC and made payments to those individuals.

25. In oral and written solicitations, FMC, through McClung and others, and McClung represented to prospective pool participants that Defendants would trade foreign currency on their behalf using an automated trading system purportedly developed by an FMC partner.

26. In a communication with at least one pool participant, McClung described himself as the co-owner of FMC and otherwise acted as the primary FMC representative. The majority

of FMC pool participants spoke only with McClung, and never, or rarely with anyone else. On his Linked In profile, McClung represented himself as the owner and CFO of FMC.

27. Through the FMC website, investment documents, oral solicitations, and emails, FMC, through McClung and others, and McClung made false promises of huge returns, guaranteed pool participants that investments were protected from loss, boasted that the FMC trading program had an extraordinarily high percentage of winning trades, and minimized the significant risks of trading leveraged foreign currency.

28. In oral solicitations, McClung and FMC promoters falsely represented that FMC had approximately \$300 million in pool participant funds pooled, which were segregated and in reserve, and used approximately \$500 million in FMC proprietary funds to trade forex.

29. At least one pool participant was told by an FMC promoter that FMC had an NBA basketball player as a pool participant who had invested \$25 million.

30. In at least one investment document executed by McClung, Defendants falsely claimed that FMC had a cash reserve of almost one hundred million dollars (\$100,000,000).

31. Pool participants executed purported Joint Venture agreements with FMC. McClung executed many of the agreements as the stated manager or principal of FMC.

32. In at least one Joint Venture agreement executed by McClung, Defendants represented that all the pool participant funds would be “applied to a trading account.”

33. The FMC investment documents often contained payment schedules attached to them, which promised different payments depending on the structure of the investment. Several pool participants initially entered short term, 30 day, investments for which they were promised 50% returns. Other pool participants were encouraged to invest for periods of 6 months to a year for which they were promised 15% monthly returns.

34. FMC, through McClung, and McClung induced pool participants to enter into an initial short-term investment with FMC, often for a term of 30 days. On more than one occasion, Defendants would pay out the promised return and initial principal to the pool participants, but encourage the pool participant to invest a larger amount of money in a subsequent investment.

35. In reliance on the Defendants' purported profitable trading and the returns they experienced in their initial investment based on the purported profitable trading, at least several pool participants invested additional funds with FMC and McClung after receiving returns and principal from an initial investment.

36. The FMC Joint Venture agreements stated that if customer funds ceased to be traded, they would be returned to the pool participant within 5 days.

37. FMC, through McClung, and McClung told at least one pool participant that starting in January 2011, he would be able to log onto the FMC website online and see real time balances and trade activity (delayed 20 minutes or so) for pool participant accounts. However, this pool participant was unable to view the promised trading activity.

38. In soliciting prospective pool participants on behalf of FMC and McClung, third party marketers or agents of Defendants made the same or similar misrepresentations and omissions as alleged herein.

39. FMC pool participants understood, based upon conversations with promoters, McClung, and FMC documents, that the promised returns were purportedly based on Defendants using the pool participant funds to profitably trade forex on their behalf.

40. In their solicitations and throughout the scheme, directly and through others, Defendants FMC and McClung failed to disclose that they were operating a Ponzi scheme, misappropriating funds and not engaging in trading on behalf of pool participants.

41. FMC, through McClung and others, and McClung knew of the falsity or acted with reckless disregard for the truth of the material misrepresentations and omissions in the solicitations and acceptance of funds.

Defendants Engaged In Little, if Any, Trading On Behalf of Pool Participants

42. Since at least March 2009 through the present, there were at least four bank accounts in the name of FMC for which McClung was the sole signatory.

43. At all relevant times, McClung was, and continues to be, the sole signatory on the FMC bank account into which customer funds were deposited.

44. Defendant McClung, himself and through others, instructed FMC pool participants to wire their investment funds directly to the FMC bank accounts, and pool participants did so.

45. At least 10 pool participants deposited funds totaling at least \$1,989,975 into bank accounts in the name of FMC. In total, more than \$2.4 million from third parties has been deposited into FMC bank accounts.

46. At no time did the FMC bank accounts hold \$25 million, \$100 million, \$300 million or \$500 million as McClung or other FMC agents claimed.

47. From the FMC bank accounts, it does not appear that any funds were used for purposes of trading forex or for any investment purpose.

48. Defendants never opened a trading account in the name of FMC, McClung or pool participants at any domestic futures commission merchant.

McClung Misappropriated Pool Participant Funds

49. Since at least December 2010, Defendants, through McClung, misappropriated funds by using at least \$596,750 of pool participant funds to make payments of purported profits

or to return principal to FMC pool participants. In other words, Defendants have been operating a Ponzi scheme.

50. Defendant McClung also misappropriated funds for his personal use. He appears to have treated the FMC bank account as his personal checking account. McClung made personal withdrawals and paid personal expenses for the apparent benefit of him and his family.

51. From the FMC bank accounts that accepted pool participant funds, McClung made approximately \$286,000 in ATM withdrawals and debit card purchases. McClung used approximately \$70,000 for the purchase of automobiles, and separately made approximately, \$23,000 in withdrawals from these accounts.

52. As of March 31, 2011, the FMC bank accounts had combined balances of only \$2,664.06.

FMC and McClung Concealed Fraud with False Claims

53. Defendants, through McClung, concealed the Ponzi scheme, his misappropriation and ongoing fraud through written and oral communications that falsely represented that FMC has actually and profitably traded foreign currency on behalf of pool participants.

54. Starting in at least January 2011, certain FMC pool participants requested that the Defendants return their funds, but their demands for funds to be returned have not been met. McClung personally communicated with at least one FMC pool participant to reassure him that his funds would be returned within a number of days after the deadline passed for the pool participant's promised payout. Despite his promises of imminent payment, this pool participant was not paid either his remaining return or his guaranteed initial principal investment. After this initial communication in February 2011, McClung did not respond to any further inquiries regarding the return of this pool participant's principal and return.

55. FMC, through McClung, and McClung employed a variety of false excuses for not returning pool participant funds. McClung falsely claimed in an email to one customer that he was moving bank accounts from FMC's current bank due to that bank's involvement with the Madoff Ponzi scheme. On separate occasions, FMC, through McClung, and McClung sent letters to at least two pool participants claiming that FMC was reorganizing and that all pool participant funds would be paid out at the end of those months in which the letters were sent, January and March, respectively. FMC, through McClung, and McClung also claimed that a civil lawsuit brought by one of the investors was delaying repayment of pool participant funds.

56. Repeatedly, FMC, through McClung, and McClung represented to various pool participants that their funds would be repaid at certain set dates from February 2011 through the present. As recently as last month, FMC, through McClung, and McClung represented to various pool participants that they would be repaid in full on May 16, 2011, but the promised payments did not materialize.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT and COMMISSION REGULATIONS

**COUNT ONE: Violations of the Commodity Exchange Act
Violations of Section 4b(a)(2)(A) and (C) of the Act**

(Fraudulent Solicitation and Misappropriation)

57. The allegations set forth in paragraphs 1 through 56 are realleged and incorporated herein by reference.

58. Section 4b(a)(2)(A) and (C) of the Act, to be codified at 7 U.S.C. § 6b(a)(2)(A) and (C), make 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, 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; [or] (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 contact for or, in the case of paragraph (2), with the other person.

59. Section 4b(a)(2)(A) and (C) of the Act apply to the foreign currency transactions, agreements or contracts offered by Defendants. *See* 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).

60. As set forth above, during the relevant period, in or in connection with foreign currency contracts, made, or to be made, for or on behalf of, or with, other persons, by, among other things, making material misrepresentations and/or failing to disclose material facts to them, and misappropriating their funds, FMC and McClung, cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool participants and willfully deceived or attempted to deceive pool participants or prospective pool participants as alleged above all in violation of Section 4b(a)(2)(A) and (C) of the Act, to be codified at 7 U.S.C. § 6b(a)(2)(A) and (C).

61. FMC through its agent McClung, and McClung, engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

62. McClung controlled FMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, FMC's conduct alleged in this Complaint. Therefore, pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), McClung is liable for FMC's violations of Section 4b(a)(2)(A) and (C) of the Act, to be codified at 7 U.S.C. § 6b(a)(2)(A) and (C).

63. The foregoing acts, misrepresentations, omissions, and failures of McClung and others occurred within the scope of their employment, office or agency with FMC. Therefore, FMC is liable for these acts, misrepresentations, omissions, and failures pursuant to Section

2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

64. Each act of misrepresentation or omission of material facts and misappropriation, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(A) and (C) of the Act, to be codified at 7 U.S.C. § 6b(a)(2)(A) and (C).

COUNT TWO:

**Violations of Commission Regulation 5.2(b)(1) and (3):
Fraud By Misrepresentation, Omission, and Misappropriation**

65. The allegations set forth in paragraphs 1 through 64 are realleged and incorporated herein by reference.

66. Since October 18, 2010, Defendants, through use of the mails or other means or instrumentalities of interstate commerce, have violated Regulation 5.2(b)(1) and (3), 17 C.F.R. § 5.2(b)(1) and (3) (2011), by cheating, defrauding, or deceiving, or attempting to cheat, defraud, or deceive, pool participants and prospective participants by, among other things, making material misrepresentations and/or failing to disclose material facts to them, and misappropriating their funds.

67. FMC, through its agent McClung, and McClung, engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

68. Defendants therefore have violated Regulation 5.2(b)(1), and (3), 17 C.F.R. § 5.2(b)(1), and (3) (2011), with respect to conduct occurring on or after October 18, 2010.

69. McClung controlled FMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, FMC's conduct alleged in this Complaint. Therefore,

pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), McClung is liable for FMC's violations of Regulation 5.2(b)(1) and (3), 17 C.F.R. § 5.2(b)(1) and (3) (2011).

70. The foregoing acts, misrepresentations, omissions, and failures of McClung and others occurred within the scope of their employment, office or agency with FMC. Therefore, FMC is liable for these acts, misrepresentations, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

71. Each act of omission of a fact, misrepresentation and misappropriation of funds occurring on or after October 18, 2010, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 5.2(b)(1), and (3), 17 C.F.R. § 5.2(b)(1), and (3) (2011).

COUNT THREE:

Violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act and Regulation 5.3(a)(2)(i): Failure to Register as a Commodity Pool Operator

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

73. Beginning on October 18, 2010 and continuing to the present, Defendant FMC, solicited or accepted orders from non-ECPs in connection with leveraged forex transactions, and acted as a CPO, as defined in Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2011). Defendant FMC engaged in this conduct without being registered as a CPO, as required by Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011), all in violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011).

74. McClung controlled FMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, FMC's conduct alleged in this Complaint. Therefore,

pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), McClung is liable for FMC's violations of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, to be codified at 7 U.S.C.

§ 2(c)(2)(C)(iii)(I)(cc), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011).

75. Each day that Defendant FMC failed to register as a CPO since October 18, 2010 is alleged as a separate and distinct violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011).

COUNT FOUR:

Violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act and Regulation 5.3(a)(2)(ii): Failure to Register as an Associated Person

76. Paragraphs 1 through 75 are realleged and incorporated herein.

77. Beginning on October 18, 2010 and continuing to the present, Defendant McClung solicited or accepted orders from non-ECPs in connection with forex transactions, and acted as an associated person (“AP”) of FMC, as defined in Regulation 5.1(d)(1)(2), 17 C.F.R. § 5.1(d)(1)(2) (2011). Defendant McClung engaged in this conduct without being registered as an AP, as required by Regulation 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii) (2011), all in violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc), and Regulation 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii) (2011).

78. The foregoing acts, omissions, and failures of McClung and others occurred within the scope of his employment, office or agency with FMC. Therefore, FMC is liable for these acts, omissions, and failures pursuant to Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc), and Regulation 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii) (2011).

79. Each day that Defendant McClung failed to register as an AP since October 18, 2010 is alleged as a separate and distinct violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc), and Regulation 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii) (2011).

VI. RELIEF REQUESTED

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

- A. An order finding that Defendants violated Sections 2(c)(2)(C)(iii)(I)(cc) and 4b(a)(2)(A) and (C) of the Act and Regulations 5.2(b)(1) and (3) and 5.3(a)(2)(i) and (ii);
- B. An *ex parte* statutory restraining order and an order for preliminary injunction pursuant to Section 6c(a) of the Act, to be codified at 7 U.S.C. § 13a-1(a), restraining Defendants and all persons or entities 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) 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, whether domestic or foreign, held by, under the control of, or in the name of Defendants;

C. Enter orders of preliminary and permanent injunction enjoining 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 2(c)(2)(C)(iii)(I)(cc) and 4b(a)(2)(A), and (C) of the Act, and Regulations 5.2(b)(1) and (3) and 5.3(a)(2)(i) and (ii);
- 2) Trading on or subject to the rules of any registered entity, as that term is defined in Section 1a of the Act, to be codified at 7 U.S.C. § 1a;
- 3) Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2011)) ("commodity options"), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the 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 or proprietary 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, 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, 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, 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);

- D. Enter an order directing that Defendants make an accounting to the Court of all of
- (i) Defendants' assets and liabilities, together with all funds Defendants received from and paid to FMC pool participants or any other persons in connection with forex transactions or purported forex transactions, including the names, mailing addresses, email addresses, and telephone numbers of any such persons from whom Defendants received such funds from January 1, 2010 to the date of such accounting, and (ii) all disbursements for any purpose whatsoever of funds received from FMC pool participants and other persons, including salaries, commissions, fees, loans, and other disbursements of money and property of any kind, from January 1, 2010 to and including the date of such accounting;
- E. Enter an order requiring Defendants immediately to identify and provide an accounting of all assets and property that they currently maintain outside the United States, including, but not limited to, all funds on deposit in any financial institution, futures commission merchant, bank, or savings and loan accounts held by, under the control of, or in the name of Shawon McClung or FMC, or in which any such person or entity has a beneficial interest of any kind, whether jointly or otherwise, and requiring Defendants to repatriate all funds held in such accounts by paying them to the Clerk of the Court, or as otherwise ordered by the Court, for further disposition in this case;
- F. Enter an order appointing a receiver, if necessary, to secure assets held by, under the control of, or in the name of Defendants;
- G. Enter an order requiring Defendants to disgorge pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries,

commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices that constitute violations of the Act and/or Commission Regulations as described herein, including pre- and post-judgment interest;

- H. Enter an order directing the Defendants and any of their successors 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 participants whose funds were received by Defendants as a result of the acts and practices that constitute violations of the Act and/or Commission Regulations as described herein;
- I. Enter an order requiring Defendants to make restitution by making whole each and every pool participant or other person or entity whose funds were received or utilized by them in violation of the provisions of the Act and/or Commission Regulations as described herein, including pre- and post-judgment interest;
- J. Enter an order requiring Defendants to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of \$140,000 for each violation of the Act and Regulations occurring on or after October 22, 2008, or triple the monetary gain to Defendant for each violation of the Act and Regulations described herein, plus post-judgment interest;
- K. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and
- L. Enter an Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Respectfully submitted,

Attorneys for Plaintiff:

ATTORNEYS FOR THE PLAINTIFF
U.S. COMMODITY FUTURES TRADING
COMMISSION

/s/ Alison B. Wilson

Alison B. Wilson, DC Bar No.475992

Chief Trial Attorney

Boaz Green, DC Bar No. 977520

Trial Attorney

Gretchen L. Lowe, DC Bar No. 421995

Associate Director

U.S. Commodity Futures

Trading Commission

Division of Enforcement

1155 21st Street, N.W.

Washington, DC 20581

(202) 418-5568 (Wilson)

(202) 418-5523 (fax)