

IN THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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U.S. DISTRICT COURT
WESTERN DISTRICT MICH

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

AURIFEX COMMODITIES RESEARCH
COMPANY;
AURIFEX RESEARCH, L.L.C.;
TY KLOTZ, individually and d/b/a
AURIFEX INVESTMENTS; and
MONETTE KLOTZ, individually and d/b/a
AURIFEX INVESTMENTS,

Defendants.

CIVIL ACTION NO. BY _____

1:06 CV 0166
Robert Holmes Bell
Chief, U.S. District Judge

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

I. SUMMARY

1. From at least April 2004 and continuing through the present (“relevant time”), Ty Klotz (“Klotz”) and Monette Klotz (“M. Klotz”), individually and d/b/a “Aurifex Investments,” and each of them as agents of Aurifex Commodities Research Company (“Aurifex Co.”) and Aurifex Research L.L.C. (“Aurifex LLC”) (sometimes collectively referred to herein as “Aurifex” or “defendants”), accepted and pooled more than \$149,030 from members of the public (“participants”). Klotz, individually and as an agent for Aurifex Co. and Aurifex LLC, solicited those participants for the purported

purpose of trading commodity futures contracts and options on futures contracts in a commodity pool operated by the defendants.

2. During the relevant time, defendants Aurifex Co., Aurifex LLC, Klotz and M. Klotz acted as commodity pool operators (“CPOs”) without being registered as such with the Commission and, while acting as CPOs, Klotz, M. Klotz, Aurifex Co. and Aurifex LLC failed to provide participants with complete periodic account statements including annual reports required by Commission Regulation 4.22(c).

3. During the course of operating the Aurifex commodity pool (“Pool”), defendant Klotz and M. Klotz misappropriated participants’ funds, and Klotz failed to disclose material facts to Pool participants and prospective participants concerning where participant funds would be deposited, how those funds would be used and the past performance for the funds invested in the Pool. Further, during the solicitation and operation of the Pool, Klotz misrepresented to Pool participants and prospective participants, both orally and in writing: (i) the performance record of the Pool, (ii) the profits and losses for the Pool, (iii) the risks associated with their investment in the Pool; (iv) Aurifex’s actual compensation from the Pool; and (v) the availability of funds for customer withdrawals from Aurifex. Klotz also made oral and written misrepresentations to conceal trading losses from participants and to conceal the misappropriation of Pool participants’ funds by the defendants. Klotz also prepared and distributed false account statements to participants.

4. Klotz and M. Klotz have engaged, are engaging, or are about to engage in acts and practices which violate Sections 4b(a)(2)(i) and (iii), 4c(b), 4k(2), 4m(1), 4n(4) and 4o(1) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 6b(a)(2)(i) and (iii),

6c(b), 6k(2), 6m(1), 6n(4) and 6o(1) (2002), and Commission Regulations 4.20(c), 4.21, 4.22 and 33.10 thereunder, 17 C.F.R. §§ 4.20(c), 4.21, 4.22 and 33.10 (2005) and Klotz has engaged, is engaging, or is about to engage in acts and practices which violate Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii). The actions and omissions of defendants Klotz and M. Klotz described in above were done individually and as agents on behalf of Aurifex Co. and Aurifex LLC. Therefore, Aurifex Co. and Aurifex LLC are liable for Klotz's and M. Klotz's violations pursuant to Section 2a(l)(B) of the Act, 7 U.S.C. § 4 (2002).

5. Accordingly, the Commission brings this action pursuant to Section 6c(a) of the Act, 7 U.S. C. § 13a-1 (2002), to enjoin the defendants' unlawful acts and practices and to compel their compliance with the Act. In addition, the Commission seeks disgorgement of the defendants' ill-gotten gains, restitution to participants, civil monetary penalties and such other relief as this Court may deem necessary and appropriate.

6. Unless restrained and enjoined by this Court, the 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

7. The Act prohibits fraud in connection with the trading of commodity futures contracts and options on commodity futures contracts and establishes a comprehensive system for regulating the purchase and sale of such contracts. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2002), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or

is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

8. The Act further provides this Court with jurisdiction over entities operating as a CPO. A CPO is defined in Section 1a(5) of the Act, 7 U.S.C. § 1(a) (2002), as any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market.

9. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a(e) (2002), because the defendants are found in, inhabit, or transact business, among other places, in this District, or the acts and practices in violation of the Act have occurred, are occurring, or are about to occur, among other places, within this District. Specifically, defendants Klotz and M. Klotz both reside in this District and have transacted business for the Pool within this District. Further, defendants Aurifex Co. and Aurifex LLC have their mailing addresses within this District and defendants Klotz and M. Klotz have transacted business on their behalf within this District.

III. THE PARTIES

10. Plaintiff Commodity Futures Trading Commission (“CFTC”) is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2005).

11. Defendant Aurifex Commodities Research Company is a Michigan corporation incorporated on June 20, 2005, with a mailing address in Mason, Michigan. Aurifex's registered agent and its incorporator is Richard Robbins ("Robbins"). Robbins owns the real estate firm that shares office space with Aurifex and the building where the shared office is located. Aurifex Co. has never been registered with the Commission in any capacity.

12. Defendant Aurifex Research L.L.C. is an unincorporated membership organization formed under the Michigan Limited Liability Act on November 23, 2004. Aurifex LLC has a mailing address in Holt, Michigan, that also appears to have been a shared residence of Klotz and M. Klotz. Aurifex LLC has never been registered with the Commission in any capacity.

13. Defendant Ty Klotz is 44 years old and resides in Mason, Michigan. Klotz sometimes conducts business under the name "Aurifex Investments" which purportedly is located in Mason, Michigan. Klotz has never been registered with the Commission in any capacity.

14. Defendant Monette Klotz is 44 years old and resides in Mason, Michigan. M. Klotz sometimes conducts business under the name "Aurifex Investments." M. Klotz is the registered agent for Aurifex LLC. M. Klotz has never been registered with the Commission in any capacity.

IV. FACTS

15. During the relevant time, Klotz solicited approximately \$150,000, if not more, from approximately 300 participants to invest with Aurifex. Aurifex, by and through Klotz, combined participants' funds and traded commodity futures and options

with those funds. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, and the mails, in connection with the acts, practices and courses of business complained of herein.

16. Some of the Aurifex pool participant funds that had been solicited by Klotz were deposited into a trading account at ADM Investor Services, LLC (“ADM”), a futures commission merchant (“FCM”), in Chicago, Illinois under the account name “Monette Klotz” that had been opened by M. Klotz in April 2004. Prior to being traded in the M. Klotz ADM account, at least some of the participants’ funds were deposited in a National City Bank account, which was opened under the name “Aurifex Investments/Monette Klotz.” Aurifex, by and through Klotz, invested participants’ funds in only one type of account, to-wit: the ADM account opened under M. Klotz’s name. Klotz himself has no commodity futures or options account at any FCM. Klotz traded Aurifex participants’ funds in the M. Klotz ADM account. Klotz knew he was using participant funds while trading the ADM account. The M. Klotz ADM account sustained overall losses in at least the amount of \$60,622 since it was opened.

17. Klotz and M. Klotz have misappropriated pool participants’ funds. Klotz and M. Klotz misappropriated participants’ funds by using them to trade commodity futures and options without placing them in a FCM account for the benefit of the participants and, among other things, using participants’ funds for their personal use, and paying funds to other pool participants, in a manner akin to a Ponzi scheme.

18. During Klotz’s solicitations of prospective and actual participants for investment in the Aurifex pool, he never disclosed to participants and prospective participants the following material facts:

(a) that their funds would be used to trade futures and options through an account at a FCM which was opened under the name of M. Klotz, thereby implying that the funds were M. Klotz's exclusively rather than the pool's;

(b) that their funds would be commingled with M. Klotz's personal funds in a commodity futures trading account at ADM; and

(c) that the commodity trading account into which their funds would be deposited had sustained significant losses.

19. In his solicitations, Klotz also made the following statements to participants, both verbally and in writing:

- (a) The Aurifex pool had been averaging a return of 20% per month for participants over the past two years;
- (b) Klotz had made an average of 20% per month with his own investment in commodity futures through the Aurifex pool;
- (c) An investment in the Aurifex pool had no risk of loss of principal, as the participant's principal was insured with a Lloyd's of London ("Lloyd's") insurance policy;
- (d) Aurifex would not trade commodity futures with participant funds, which were to remain on deposit in a bank account at the National City Bank, and, thereby, instead, would only risk Klotz's personal funds; and
- (e) Aurifex pool participants could withdraw their principal and profits at any time.

20. Each of the aforementioned statements in paragraph 19 was false and Klotz knew them to be false:

- (a) Klotz knew that the Aurifex pool's commodity trading did not result in monthly profits of 20% because, during the relevant time, the Aurifex pool did not have a commodity trading account of its own, and if he was instead referring to the only account in which Aurifex participants' funds actually were traded, i.e., the M. Klotz ADM account, that account had sustained net losses totaling \$60,622 and not a 20% return;

- (b) Klotz knew that he had not made an average of 20% per month trading commodity futures through the Aurifex pool because, in fact, Klotz never had his own commodity futures account and even, assuming that his funds had traded through M. Klotz ADM account, her account sustained net losses totaling \$60,622;
- (c) Klotz knew that Aurifex pool participants had risked losing their entire principal and that each participant's principal was not insured by Lloyd's of London because Aurifex never purchased a Lloyd's policy to protect the Aurifex pool participants from risk of loss and, in fact, Klotz forged correspondence from Lloyd's in order to facilitate this subterfuge;
- (d) Klotz knew that participant funds would not remain on deposit in an account at the National City Bank and trade only using his own funds, because Klotz did not trade any futures or options contracts using his own money, rather he traded funds which he knew belonged to others through the M. Klotz ADM account;
- (e) Klotz knew that Aurifex pool participants could not withdraw their principal and profits at any time because the defendants themselves imposed a waiting period of 60 days to precede the withdrawal of a participant's full investment, and, most recently, Aurifex pool participants have been unable to contact Klotz in order to withdraw funds from their Aurifex investment.

21. Klotz has represented to actual and prospective participants that he already has two pools with 99 participants in each and is filling a third pool with a maximum of 99 participants.

22. Klotz sent monthly Aurifex pool statements to participants reflecting the amount of their deposit into the Aurifex pool and falsely reported earnings averaging more than 20% per month to each participant. The statements did not reveal that the futures account was opened under the name of "M. Klotz," rather than under the pool's name. The statements never disclosed to participants that the Pool had suffered trading losses or that any portion of their investments had been lost and did not report to the Pool participants their percentage share of the Pool's funds. In addition, the statements did not

report unrealized net gains or losses, the total of all management, advisory, brokerage or other fees during the reporting period, the net asset value of the Pool and the total additions to and withdrawals from the Pool.

24. Defendants did not send any pool participants an Annual Report setting forth, among other things, the following information: the net asset value at the end of the Pools' two preceding fiscal years; the total value of the participants' interest in the Pool; a statement of financial condition and a statement of income (loss), including an itemization of commissions, fees, total realized net gain or loss and change in unrealized net gain or loss, changes in financial position and changes in ownership equity.

25. Defendants did not deliver a Disclosure Document to prospective Aurifex pool participants. Aurifex did distribute a brochure to prospective Aurifex pool participants entitled "Who We Are," but it lacked cautionary language and any type of risk disclosure statement and lacked information identifying each principal of the pool operator, the pool's trading manager and commodity trading advisor and the business background of each, and failed to describe the trading investment programs and policies of the pool, all fees, commissions and expenses that would be incurred by the pool and a disclosure of the pool's past performance.

26. During at least the last quarter of 2005, Klotz prepared and sent additional correspondence to participants in the form of newsletters. The newsletters stated that Klotz invests in commodity futures and options on exchanges in Chicago and New York, that he frequently travels to other purported Aurifex offices in the Midwest, that he makes physical inspections of various farm crops before trading the agricultural

commodities and that “Aurifex” has approximately 45 employees in its commodity trading firm, including staff in offices in Illinois, Iowa and Missouri.

27. During the relevant time, based upon their misrepresentations, defendants collected at least \$149,030 from participants in the United States, primarily in the Lansing, Michigan area.

28. In spite of previous promises that participants could withdraw their principal and profits at any time, Klotz discouraged withdrawals with the threat of terminating an individual’s participation in the Pool if such a request was made saying that he does not want participants to treat their Aurifex investment like a bank account. Further, Aurifex representatives told some participants about Aurifex’ implementation of a new policy requiring participants to wait 30 days to withdraw half of their investment and 60 days to withdraw their full investment amount. Most recently, Klotz appears to have left the Aurifex office in Mason, Michigan, taking Aurifex’s computers and records with him and making it impossible for participants to contact him in order to withdraw funds from their investment.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND COMMISSION REGULATIONS**

COUNT ONE

**VIOLATIONS OF SECTIONS 4b(a)(2)(i) and (iii) OF THE ACT:
FRAUD BY MISAPPROPRIATION AND MISREPRESENTATIONS**

29. The allegations set forth in paragraphs 1 through 28 are re-alleged and incorporated herein.

30. During the relevant time, Klotz, M. Klotz, violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2001), in that they cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive Pool participants or prospective Pool participants by misappropriating participants' funds and by using funds solicited for investment purposes for their own personal uses, trading commodity futures through an account that was opened under the name of M. Klotz, thereby implying that the funds were M. Klotz's exclusively rather than the pool's, and using participant funds to repay other participants.

31. During the relevant time, Klotz violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2001), in that he cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive Pool participants or prospective Pool participants by soliciting participants for the Pool by, among other things, willfully failing to disclose the following material facts to Aurifex pool participants and prospective participants during his solicitations of them:

(a) that their funds would be used to trade futures and options through an account which was opened under the name of M. Klotz, thereby implying that the funds were M. Klotz's exclusively rather than the pool's;

(b) that their funds would be commingled with M. Klotz's personal funds in a commodity futures trading account at ADM; and

(c) that the commodity trading account into which their funds would be deposited had sustained significant losses.

32. During the relevant time, Klotz violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2001), in that he cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive Pool participants or prospective Pool participants by soliciting participants for the Pool by, among other things, making a variety of fraudulent statements to participants, verbally or in writing, including that:

- (a) The Aurifex pool had been averaging a return of 20% per month for participants over the past two years;
- (b) Klotz had made an average of 20% per month with his own investment in commodity futures through the Aurifex pool;
- (c) An investment in the Aurifex pool had no risk of loss of principal, as the participant's principal was insured with a Lloyd's insurance policy;
- (d) Aurifex would not trade commodity futures with participant funds, which were to remain on deposit in a bank account at the National City Bank, and, thereby, instead, would only risk Klotz's personal funds; and
- (e) Aurifex pool participants could withdraw their principal and profits at any time.

33. Klotz and M. Klotz engaged in the conduct described in this Count in or in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any 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.

34. The actions and omissions of defendants Klotz and M. Klotz described in this Count were done individually and as agents on behalf of Aurifex Co. and Aurifex LLC. Therefore, Aurifex Co. and Aurifex LLC are also liable for Klotz and M. Klotz's violations of Section 4b(a)(2)(i) and (iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 4 (2002).

35. Each act of misappropriation, each material misrepresentation or omission, and each false statement made during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2002).

COUNT TWO

VIOLATIONS OF SECTION 4b(a)(2)(ii) OF THE ACT: PROVIDING FALSE ACCOUNT STATEMENTS TO PARTICIPANTS

36. The allegations set forth in paragraphs 1 through 28 are re-alleged and incorporated herein.

37. During the relevant time, Klotz violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2002), in that they willfully made or caused to be made false reports or statements thereof by preparing and issuing false account statements to participants. These statements misrepresented profits for the just completed investment period and omitted losses.

38. Klotz engaged in this conduct, in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made,

for or on behalf of other persons where such contracts for future delivery were or may have been 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.

39. The actions and omissions of defendant Klotz described in this Count were done individually and as agents on behalf of Aurifex Co. and Aurifex LLC. Therefore, Aurifex Co. and Aurifex LLC are also liable for Klotz's violations of Section 4b(a)(2)(ii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 4 (2002).

40. Each false report or statement thereof during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(ii) of the Act.

COUNT THREE

VIOLATIONS OF SECTION 4c(b) OF THE ACT AND REGULATION 33.10: OPTIONS FRAUD

41. The allegations set forth in paragraphs 1 through 41 are re-alleged and incorporated herein.

42. During the relevant time, Klotz: (i) cheated or defrauded or attempted to cheat or defraud other persons; (ii) willfully made or caused to be made to other persons false reports or statements, or willfully entered or caused to be entered for other persons false records; and/or (iii) willfully deceived or attempted to deceive other persons, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, commodity option transactions, by failing to disclose the

following material facts to Aurifex participants and prospective participants during his solicitations of them:

(a) that their funds would be used to trade futures and options through an account which was opened under the name of M. Klotz, thereby implying that the funds were M. Klotz's exclusively rather than the pool's;

(b) that their funds would be commingled with M. Klotz's personal funds in a commodity futures trading account at ADM; and

(c) that the commodity trading account into which their funds would be deposited had sustained significant losses; all in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 33.10, 17 C.F.R. § 33.10 (2005).

43. During the relevant time, Klotz: (i) cheated or defrauded or attempted to cheat or defraud other persons; (ii) willfully made or caused to be made to other persons false reports or statements, or willfully entered or caused to be entered for other persons false records; and/or (iii) willfully deceived or attempted to deceive other persons, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, commodity option transactions, by making a variety of fraudulent statements to participants, verbally or in writing, including that:

- (a) The Aurifex pool had been averaging a return of 20% per month for participants over the past two years;
- (b) Klotz had made an average of 20% per month with his own investment in commodity futures through the Aurifex pool;
- (c) An investment in the Aurifex pool had no risk of loss of principal, as the participant's principal was insured with a Lloyd's insurance policy;
- (d) Aurifex would not trade commodity futures with participant funds, which were to remain on deposit in a bank account at the National City Bank, and, thereby, instead, would only risk Klotz's personal funds;

(e) Aurifex participants could withdraw their principal and profits at any time; all in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 33.10, 17 C.F.R. § 33.10 (2005).

44. During the relevant time, Klotz and M. Klotz: (i) cheated or defrauded or attempted to cheat or defraud other persons; (ii) willfully made or caused to be made to other persons false reports or statements thereof, or willfully entered or caused to be entered for other persons false records; and (iii) willfully deceived or attempted to deceive other persons, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, commodity option transactions, by: misappropriating participants' funds; using funds solicited for investment purposes for their own personal uses; and preparing and issuing false account statements to participants, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 33.10, 17 C.F.R. § 33.10 (2005).

45. The actions and omissions of defendants Klotz and M. Klotz described in this Count were done individually and as agents on behalf of Aurifex Co. and Aurifex LLC. Therefore, Aurifex Co. and Aurifex LLC are liable for Klotz's and M. Klotz's violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2001), and Commission Regulation 33.10, 17 C.F.R. § 33.10 (2005), pursuant to Section 2a(1)(B) of the Act, 7 U.S.C. § 4 (2002).

46. Each act of misappropriation, each material misrepresentation or omission, and each false report or statement thereof made during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct

violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 33.10, 17 C.F.R. § 33.10.

COUNT FOUR

**VIOLATION OF SECTION 4m(1) OF THE ACT:
ACTING AS CPOs WITHOUT BENEFIT OF REGISTRATION**

47. The allegations set forth in paragraphs 1 through 28 are re-alleged and incorporated herein.

48. With certain specified exceptions and exemptions, not applicable here, all CPOs are required to be registered with the Commission, pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002).

49. During the relevant time, Aurifex Co., Aurifex LLC, Klotz and M. Klotz acted as CPOs, in that, for compensation, they engaged in a business that was of the nature of an investment trust, syndicate, or similar form of enterprise by soliciting, accepting and receiving more than \$149,030 from 15 or more participants and pooling and utilizing a portion of those monies for the trading of commodity futures and options on futures.

50. In connection with the conduct described above in this Count, Aurifex Co., Aurifex LLC, Klotz and M. Klotz used the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as, and hold themselves out to the public as, CPOs.

51. Defendants Aurifex Co., Aurifex LLC, Klotz and M. Klotz engaged in these activities without the benefit of registration as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002).

52. Each use of the mails or any means or instrumentality of interstate commerce in connection with defendants Aurifex LLC's, Klotz's and M. Klotz's business as a CPO without proper registration during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act.

COUNT FIVE

**VIOLATIONS OF SECTION 4o(l) (A) and (B) OF THE ACT:
FRAUD BY A CPO**

53. The allegations set forth in paragraphs 1 through 54 are re-alleged and incorporated herein.

54. During the relevant time, defendants Aurifex Co., Aurifex LLC and Klotz, while acting as CPOs, have violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2002), in that they directly or indirectly employed or are employing a device, scheme or artifice to defraud pool participants or prospective pool participants, and have engaged or are engaging in transactions, practices or a course of business which operated as a fraud or deceit upon pool participants or prospective pool participants by using the mails or other means or instrumentalities of interstate commerce. Their fraudulent acts included, but were not limited to, failing to disclose the following material facts to Aurifex participants and prospective participants during Klotz's solicitations of them:

(a) that their funds would be used to trade futures and options through an account which was opened under the name of M. Klotz, thereby implying that the funds were M. Klotz's exclusively rather than the pool's;

(b) that their funds would be commingled with M. Klotz's personal funds in a commodity futures trading account at ADM; and

(c) that the commodity trading account into which their funds would be deposited had sustained significant losses.

55. During the relevant time, defendants Aurifex Co., Aurifex LLC and Klotz, while acting as CPOs, have violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2002), in that they directly or indirectly employed or are employing a device, scheme or artifice to defraud pool participants or prospective pool participants, and have engaged or are engaging in transactions, practices or a course of business which operated as a fraud or deceit upon pool participants or prospective pool participants by using the mails or other means or instrumentalities of interstate commerce. Their fraudulent acts included, but were not limited to, making a variety of fraudulent statements to participants, verbally or in writing, including that:

- (a) The Aurifex pool had been averaging a return of 20% per month for participants over the past two years;
- (b) Klotz had made an average of 20% per month with his own investment in commodity futures through the Aurifex pool;
- (c) An investment with Aurifex had no risk of loss of principal, as the participant's principal was insured with a Lloyd's insurance policy;
- (d) Aurifex would not trade commodity futures with participant funds, which were to remain on deposit in a bank account at the National City Bank, and, thereby, instead, would only risk Klotz's personal funds;
- (e) Aurifex pool participants could withdraw their principal and profits at any time;

56. During the relevant time, defendants Aurifex Co., Aurifex LLC, Klotz and M. Klotz, while acting as CPOs, have violated Section 4o(1)(A) and (B) of the Act, 7

U.S.C. § 6o(1)(A) and (B) (2002), in that they directly or indirectly employed or are employing a device, scheme or artifice to defraud pool participants or prospective pool participants, and have engaged or are engaging in transactions, practices or a course of business which operated as a fraud or deceit upon pool participants or prospective pool participants by using the mails or other means or instrumentalities of interstate commerce to misappropriate participants' funds by using funds solicited for investment purposes for defendants' own personal uses and by issuing false statements to participants.

57. Each act of misappropriation, each material misrepresentation or omission, and each false report or statement made during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2002).

COUNT SIX

VIOLATIONS OF SECTION 4n(4) OF THE ACT AND REGULATION 4.22: FAILURE TO PROVIDE APPROPRIATE PERIODIC ACCOUNT STATEMENTS AND CERTIFIED ANNUAL REPORTS

58. The allegations set forth in paragraphs 1 through 28 are re-alleged and incorporated herein.

59. During the relevant time, Aurifex Co., Aurifex LLC, Klotz and M. Klotz, acting as CPOs required to be registered under the Act, were required to furnish an Annual Report and periodic monthly account statements to participants. The defendants provided participants with no annual statements and monthly account statements that did not include information required by Section 4n(4) of the Act, 7 U.S.C. § 6n(4) (2002), and Commission Regulation 4.22, 17 C.F.R. § 4.22 (2005). Therefore, Aurifex LLC, Klotz and M. Klotz failed to provide the required account statements and Annual Reports

to participants, in violation of Section 4n(4) of the Act, 7 U.S.C. § 6n(4) (2002), and Regulation 4.22, 17 C.F.R. § 4.22 (2005).

60. Each failure to deliver an appropriate account statement and Annual Report to participants during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4n(4) of the Act, 7 U.S.C. § 6n(4) (2002), and Regulation 4.22, 17 C.F.R. § 4.22 (2005).

COUNT SEVEN

**VIOLATIONS OF REGULATION 4.21:
FAILURE TO PROVIDE DISCLOSURE DOCUMENTS**

61. The allegations set forth in paragraphs 1 through 28 are re-alleged and incorporated herein.

62. During the relevant time, while operating as a CPO, required to be registered under the Act, Aurifex Co., Aurifex LLC, Klotz and M. Klotz solicited, accepted and received funds, securities or other property from participants without first delivering to prospective Pool participants a Disclosure Document containing the information required by Regulation 4.24, 17 C.F.R. § 4.24 (2005), including a risk disclosure statement, in violation of Regulation 4.21, 17 C.F.R. § 4.21 (2005).

63. Each failure to deliver a Disclosure Document containing the information set forth in Regulation 4.24 during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.21, 17 C.F.R. §§ 4.21 (2005).

COUNT EIGHT

**VIOLATIONS OF REGULATION 4.20(c):
ENGAGING IN CPO PROHIBITED ACTIVITIES**

64. Paragraphs 1 through 28 are realleged and incorporated herein.
65. Pursuant to Regulation 4.20(c), 17 C.F.R. § 4.20(c), it is unlawful for any CPO to commingle the property of any pool that it operates or that it intends to operate with the property of any other person.
66. During the relevant time, Aurifex Co., Aurifex LLC, Klotz and M. Klotz violated Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2005), by commingling the property they received from participants for investment in their commodity pool with the funds of others.

VI. RELIEF REQUESTED

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

- A. Find that defendants Aurifex Co., Aurifex LLC, Klotz and M. Klotz violated Sections 4b(a)(2)(i) and (iii), 4c(b), 4m(1), 4n(4) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6c(b), 6m(1), 6n(4) and 6o(1) (2002), and Commission Regulations 4.20(c), 4.21, 4.22 and 33.10 thereunder, 17 C.F.R. §§ 4.20(c), 4.21, 4.22 and 33.10 (2005);
- B. Find that defendants Aurifex Co., Aurifex LLC and Klotz violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2002);
- C. Enter a statutory restraining order and an order of preliminary injunction restraining and enjoining defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:
1. 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 defendant's 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, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control of, or in the name of, defendants Aurifex Co., Aurifex LLC, Klotz and M. Klotz.
- D. Enter orders of preliminary and permanent injunction prohibiting the defendants and any other person or entity associated with them, including any successor thereof, from:
1. engaging in conduct, in violation of Sections 4b(a)(2)(i) and (iii), 4b(a)(2)(ii), 4c(b), 4m(1), 4n(4) and 4o(1) of Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6b(a)(2)(ii), 6c(b), 6m(1), 6n(4) and 6o(1) (2002), and Commission Regulations 4.20(c), 4.21, 4.22 and 33.10 thereunder, 17 C.F.R. §§ 4.20(c), 4.21, 4.22 and 33.10 (2005);
 2. engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
 3. 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 an Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2005), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2005). This includes, but is not limited to, soliciting, accepting, or receiving any funds, revenue or other property from any other person, giving commodity trading advice for compensation, except as provided in Regulation 4.14(a)(9),

17 C.F.R. § 4.14(a)(9) (2005), or soliciting prospective customers related to the purchase or sale of commodity futures or options.

- E. Enter an order directing the defendants and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or Regulations, as described herein, and interest thereon from the date of such violations;
- F. Enter an order directing the defendants to make full restitution to every customer whose funds were received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;
- G. Enter an order assessing a civil monetary penalty against each defendant in the amount of not more than the higher of \$120,000 (\$130,000 for violations occurring after October 23, 2004) or triple the monetary gain to the Defendant for each violation by the Defendant of the Act or Regulation;
- H. Enter an order directing that the Defendants make an accounting to the court of all their assets and liabilities, together with all funds they received from and paid to participants and other persons in connection with commodity futures and options on commodity futures transactions or purported commodity futures or options on commodity futures transactions, and all disbursements for any purpose whatsoever of funds received from commodity participants, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from, but not limited to, January 2004 to and including the date of such accounting;
- I. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- J. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: March 7, 2006

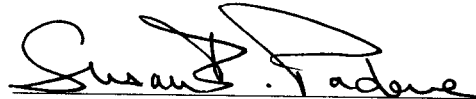
Respectfully submitted,

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