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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

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

18 **Plaintiff,**

19 **v.**

20 **MICHAEL J. LEIGHTON**

21 **Defendant.**

Case No. 2:12-cv-04012-PSG-SS

[PROPOSED] DEFAULT
JUDGEMENT ORDER OF
PERMANENT INJUNCTION
AND OTHER ANCILLARY
RELIEF

22 This matter is before the Court on the Motion for a Default Judgment, Order
23 of Permanent Injunction and Other Ancillary (the "Motion for Default Judgment")
24 filed by plaintiff U.S. Commodity Futures Trading Commission ("CFTC" or
25 "Commission") against defendant Michael J. Leighton ("defendant" or
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1 “Leighton”). For the reasons set for the below, the Commission’s Motion for
2 Default Judgment is GRANTED.

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4 The Court enters this Default Judgment Order of Permanent Injunction and
5 Other Ancillary Relief against Michael J. Leighton having considered the
6 Commission’s well-pled complaint and the declaration and attachments
7
8 accompanying the Motion for Default Judgment pursuant to Fed. R. Civ. P. 55(b).

9 The Court finds that there is good cause for the entry of this Order and that
10 there is no just reason for delay. The Court therefore directs the entry of the
11 following Findings of Fact, Conclusions of Law, Permanent Injunction Relief,
12 Restitution, Civil Monetary Penalties and Other Ancillary Relief pursuant to
13
14 Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, as set forth herein.

16 I. PROCEDURAL HISTORY

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18 1. On May 8, 2012, plaintiff Commission filed a complaint against
19 defendant Leighton seeking injunctive and other equitable relief, as well as the
20 imposition of civil penalties, for violations of the anti-fraud and other provisions of
21
22 Commodity Exchange Act, as amended, 7 U.S.C. §§ 1 *et seq.* (2006 and Supp IV
23 2011) (“Act”),¹ and the Commission’s Regulations (“Regulations”) promulgated
24
25 thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

26
27
28 ¹ The Commodity Exchange 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)

1 2. More specifically, the complaint alleged that Leighton defrauded and
2 deceived participants in a commodity pool (the “Leighton pool”) that he operated
3
4 from at least July 2008 through March 2012 by, among other actions, willfully or
5 recklessly making misrepresentations of material fact to pool participants,
6 including, but not limited to, misrepresentations that: (1) the pool trading was
7
8 profitable, and (2) a regulatory audit prevented him from making any distributions
9 or payments to pool participants or from returning participant funds upon request,
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11 when in fact no such audit had occurred; and issuing false statements to pool
12 participants in violation of Section 4b(a)(1) of the Act, as amended, 7 U.S.C.
13 § 6b(a)(1)(B) (2006 and Supp IV).
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15 3. The complaint further alleged that, through the aforementioned
16 conduct, Leighton violated Section 4o(1)(A), (B) of the Act, 7 U.S.C. § 6o(1)(A),
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18 (B) (2006), Section 6(c)(1) of the Act, as amended, 7 U.S.C. § 9(1) (Supp IV), and
19 Regulation 180.1(a), 17 C.F.R. 180.1(a) (2012). Finally, the complaint alleged that
20
21 Leighton violated Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2012) by soliciting and
22 accepting pool participant funds in his own name and commingling pool funds
23 intended for commodity trading with his personal funds; and that Leighton violated
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25
26 and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,
27 Pub. L. No. 111-203 (“Dodd-Frank Act”), Title VII (the Wall Street Transparency
28 and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 16,
2010).

1 Section 4m(1) of the Act, as amended, 7 U.S.C. § 6m(1) (Supp IV) by acting as a
2 commodity pool operator (“CPO”) without the benefit of registration as a CPO.

3
4 4. The Commission properly served Leighton with the Complaint and
5 summons through his counsel, and Leighton filed an executed Notice and
6 Acknowledgment of Service Form.

7
8 5. Leighton did not file an answer or otherwise respond to the
9 Complaint. Accordingly, on November 15, 2012, an Order of Default was entered
10 against Leighton pursuant to Fed. R. Civ. P. 55(a).

11
12 **THIS COURT HEREBY FINDS:**

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14 **II. FINDINGS OF FACTS**

15 **A. Jurisdiction and Venue**

16 6. This Court has jurisdiction over this action pursuant to the
17 Commodity Exchange Act, as amended, 7 U.S.C. §§ 1 et seq. This Court also has
18 jurisdiction over the subject matter of this action and the defendant pursuant to
19 Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006), which authorizes the
20 Commission to seek injunctive relief against any person whenever it shall appear
21 that such person has engaged, is engaging, or is about to engage in any act or
22 practice constituting a violation of any provision of the Act or any rule, regulation,
23 or order thereunder.

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27 7. Venue properly lies with this Court pursuant to Section 6c(e) of the
28 Act, 7 U.S.C. § 13a-1(e) (2006), in that defendant is found in, inhabits and/or

1 transacts or has transacted business in this District, and defendant's acts and
2 practices in violation of the Act and Regulations have occurred, are occurring,
3 and/or are about to occur within this District, among other places.
4

5 **B. The Parties**

6 8. Plaintiff U.S. Commodity Futures Trading Commission is an
7 independent federal regulatory agency that is charged by Congress with the
8 responsibility for administering and enforcing the provisions of the Act, as
9 amended, 7 U.S.C. §§ 1 et seq., and the Regulations promulgated thereunder,
10 17 C.F.R. §§ 1 et seq. (2012).
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12

13 9. Defendant Michael J. Leighton is and was at all times the sole general
14 partner and investment manager of two limited partnerships, S&P Index
15 Investment LP ("S&PII") and S&P Investment Partnership LP ("S&P
16 Partnership"), which, in turn, he used as vehicles to fund and trade futures in a
17 commodity pool (the "Leighton pool") that he operated from at least July 2008
18 through March 2012. Upon information and belief, Leighton resides in Torrance,
19 California.
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23 **C. The Leighton Pool and Defendant's Fraudulent Activities**

24 10. From at least July 2008 to March 2012, Leighton solicited individuals
25 located in California, including individuals in this District, North Carolina and
26 Washington, among other places, through emails and individual solicitation
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1 meetings to participate in the Leighton pool. During those solicitations, Leighton
2 willfully or recklessly misrepresented to pool participants and prospective
3 participants the profitability of the Leighton pool. Leighton willfully or recklessly
4 misrepresented that he had a unique trading system that limited each pool
5 participant's risk to 50% of their total investment. The Leighton pool has grown to
6 include at least 48 participants and at least \$1.65 million in net participant
7 contributions, exclusive of any contribution by Leighton and/or his wife, Patricia
8 F. Leighton ("Patricia").
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12 11. In or before April 2008, Leighton opened a bank account in the name
13 of Michael and Patricia Leighton with First Federal Bank, now One West Bank,
14 FSB (the "Leighton bank account"). Leighton and Patricia have at all relevant
15 times maintained exclusive control over the Leighton bank account. Most
16 Leighton pool participants made their funds payable to Leighton, and he deposited
17 those funds into the Leighton bank account, where they were commingled with
18 funds belonging to Leighton and/or his wife. Leighton transferred participant
19 funds from the Leighton bank account to the futures trading accounts he opened,
20 managed and controlled as part of the Leighton pool enterprise.
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25 12. In or before July 2010, Leighton opened a bank account in the name
26 of S&P Partnership with City National Bank ("the "S&P bank account"). Leighton
27 has at all relevant times maintained exclusive control over the S&P bank account.
28

1 After July 2010, certain Leighton pool participants made their funds payable to
2 S&P Partnership, and Leighton deposited those funds into the S&P bank account.
3
4 Leighton transferred participant funds from the S&P bank account to the futures
5 trading accounts.

6 13. As part of the Leighton pool enterprise, Leighton opened, managed
7
8 and controlled at least three commodity futures trading accounts at a registered
9 futures commission merchant ("FCM"), and two other accounts at a second FCM
10 (collectively the "Accounts"). Leighton opened four of the Accounts in his own
11 name, and one account in the name of S&P Partnership.
12

13 14. Through the FCMs' proprietary software and data for online trading
14
15 Leighton had constant access to information regarding the Accounts, including all
16 open positions and account balances. Additionally, Leighton received or had
17 access to monthly statements from both FCMs which showed, among other things,
18 all open positions, the profits or losses resulting from trading, and the month-end
19 trade balances for each of the Accounts.
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21

22 15. During the lifetimes of the Accounts, Leighton deposited at least
23 \$1,640,858 into the Accounts and lost at least \$1,319,444, including commissions
24 and fees, through trading. Despite these actual losses, Leighton either willfully or
25 recklessly issued false written statements to pool participants regarding the
26 profitability and value of their respective shares of the Leighton pool. Leighton
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1 made these false statements through emails or other written statements issued by
2 himself and/or S&PII.

3
4 16. Among the more egregious false statements Leighton issued to pool
5 participants are the following: (a) that the Leighton pool had a 10.84% or 11.56%
6 return, and a 10 to 2 winning trade ratio, for the month of November 2009, when in
7 fact Leighton had lost \$82,696.10 through trading that month, resulting in a
8 negative return; (b) that the Leighton pool had a 14.08% return, and a 12 to 3
9 winning trade ratio, for the month of March 2010, when in fact Leighton had lost
10 \$54,622.20 through trading that month, resulting in a negative return; and (c) that
11 the Leighton pool had a 3.85% return, and a 8 to 3 winning trade ratio, for the
12 month of January 2011, when in fact Leighton had lost \$28,822.26 through trading
13 that month, resulting in a negative return.
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18 17. Leighton distributed to certain pool participants written monthly
19 statements – purportedly issued by the FCM carrying three of the Accounts –
20 which were in fact total fabrications.
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22 18. For example, in February 2012 and during an in person meeting,
23 Leighton provided at least two participants with a monthly statement for the period
24 of December 2011 (the “Fake FCM Statement”), and falsely represented that the
25 FCM had prepared and issued the statement. The Fake FCM Statement reflected an
26 account ending balance of \$4,674,581.28 when the ending balance for the account
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1 as of December 30, 2011 was only \$3,902.54. Leighton prepared the false written
2 statements and the Fake FCM Statement with knowledge that the account balances
3 shown therein were fabrications.
4

5 19. Beginning on or before July 12, 2010 and continuing through at least
6 January 17, 2012, Leighton misrepresented to pool participants in emails, phone
7 calls, and in-person meetings, that the National Futures Association (“NFA”) was
8 conducting an audit of Leighton and the Leighton pool, when in fact the NFA did
9 not conduct any such audit. Leighton falsely asserted that the purported ongoing
10 audit prevented him from making any distributions or cash withdrawals to pool
11 participants.
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15 20. In February 2011, Leighton distributed to at least one participant a
16 document he created that purported to be an audit report issued by the NFA dated
17 February 16, 2011 (hereinafter the “Fake NFA Audit Report”), which was in fact a
18 fabrication. Leighton provided the Fake NFA Audit Report to at least one
19 additional participant in October 2011. The Fake NFA Audit Report contains
20 purported audit findings, issues a “summary judgment” against S&P Partnership
21 allegedly filed with the state of California on March 1, 2010, and imposes a fine of
22 \$50,000 against Leighton individually.
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26 21. Beginning in or before June 2011 and continuing through at least
27 January 25, 2012, Leighton also made a number of misrepresentations to pool
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1 participants about his alleged efforts to file for membership with the CME Group,
2 Inc. ("CMEG") on behalf of the Leighton pool and a related review of the Leighton
3 pool by CMEG staff. Leighton misrepresented to certain pool participants that he
4 could not trade the futures trading accounts during the months of September
5 through November 2011 due to the CMEG review. In fact, Leighton never filed a
6 membership application, and the CMEG did not conduct an audit of Leighton or
7 any commodity pool that he operated.
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10 III. CONCLUSIONS OF LAW

11 A. Defendant Violated Section 4b(a)(1)(A), (C) of the Act

12 22. Section 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C.
13 § 6b(a)(1)(A), (C), makes it unlawful for any person, in or in connection with any
14 order to make, or the making of, any contract of sale of any commodity in
15 interstate commerce or for future delivery that is made, or to be made, on or
16 subject to the rules of a designated contract market, for or on behalf of any other
17 person: (A) to cheat or defraud or attempt to cheat or defraud such other person; or
18 (C) willfully to deceive or attempt to deceive such other person by any means
19 whatsoever in regard to any order or contract or the disposition or execution of any
20 order or contract, or in regard to any act of agency performed, with respect to any
21 order or contract for such other person.
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1 23. From at least July 2008 through March 2012, Leighton cheated,
2 defrauded or deceived, and/or attempted to cheat, defraud or deceive Leighton pool
3 participants by, among other things, willfully or recklessly making false
4 representations of material fact to pool participants and prospective participants,
5 including:
6

7
8 (a) oral representations touting the profitability of the Leighton pool to
9 prospective pool participants;

10 (b) representations about the existence of and the results of the Fake NFA
11 Audit, including but not limited to the representations that it occurred,
12 that Leighton pool participant funds could not be released due to it, and
13 that Leighton was fined as a result of it; and

14 (c) representations about the existence and the results of a purported
15 application for CMEG membership and review of the Leighton pool by
16 CMEG staff.

17 24. By this conduct, defendant violated Section 4b(a)(1)(A), (C) of the
18 Act, as amended, 7 U.S.C. § 6b(a)(1)(A), (C). Further, Leighton engaged in the
19 acts and practices described above knowingly or with reckless disregard for the
20 truth.

21 **B. Defendant Violated Section 4b(a)(1)(B) of the Act, as amended**

22 25. Section 4b(a)(1)(B) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(B)
23 (2006 and Supp IV), makes it unlawful for any person, in or in connection with any
24 contract of sale of any commodity for future delivery or other agreement, contract
25 or transaction “willfully to make or cause to be made to the other person any false
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1 report or statement or willfully to enter or cause to be entered for the other person
2 any false record.”

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4 26. From at least July 2008 through March 2012, Leighton willfully
5 caused false written statements to be made to Leighton pool participants touting
6 the profitability and value of participants’ shares of the Leighton pool. Leighton
7 also willfully caused false written statements to be made regarding the balance and
8 results of the pool trading accounts, including the Fake FCM Statement.
9

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11 27. By this conduct, defendant violated Section 4b(a)(1)(B) of the Act, as
12 amended, 7 U.S.C. § 6b(a)(1)(B). Further, Leighton engaged in the acts and
13 practices described above knowingly or with reckless disregard for the truth.
14

15 **C. Defendant Violated Section 6(c)(1) of the Act, as Amended, and**
16 **Regulation 180.1(a)**

17 28. Section 6(c)(1) of the Act, as amended, 7 U.S.C. § 9(1) (Supp IV),
18 provides, in relevant part:
19

20 It shall be unlawful for any person, directly or indirectly,
21 to use or employ or attempt to use or employ, in
22 connection with any swap, or a contract of sale of any
23 commodity in interstate commerce, or for future delivery
24 on or subject to the rules of any registered entity, any
25 manipulative or deceptive device or contrivance, in
26 contravention of such rules and regulations as the
27 Commission shall promulgate

28 29. Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012), provides, in
relevant part:

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It shall be unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly:

(1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud;

(2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading;

(3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person

30. Since August 15, 2011 (the effective date of these provisions) and continuing through at least March 2012, Leighton has willfully or recklessly used or employed manipulative or deceptive devices or contrivances in connection with the Leighton pool including, but not limited to, making untrue or misleading statements of material facts to pool participants and/or prospective participants such as the following:

(d) written statements touting the profitability and value of participants' shares of the Leighton pool;

(e) written statements regarding the balance and results of the pool trading accounts, including the Fake FCM Statement;

(f) oral representations touting the profitability of the Leighton pool;

(g) representations about the existence of and the results of the Fake NFA Audit, including but not limited to the representations that it occurred, that Leighton pool participant funds could not be released due to it, and that Leighton was fined as a result of it; and

1 (h) representations about the existence and the results of a purported
2 application for CMEG membership and review of the Leighton pool by
3 CMEG staff.

4 31. By this conduct, defendant violated Section 6(c)(1) of the Act, as
5 amended, 7 U.S.C. § 9 (Supp IV), and Regulation 180.1(a), 17 C.F.R. § 180.1(a)
6 (2012). Leighton engaged in the acts and practices described above knowingly or
7 with reckless disregard for the truth.
8

9 **D. Defendant Violated of Section 4o(1)(A), (B) of the Act**

10 32. Section 4o(1)(A), (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2006), in
11 relevant part, makes it unlawful for any commodity trading advisor, commodity
12 pool operator, or associated person directly or indirectly “to employ any device,
13 scheme, or artifice to defraud any client or participant or prospective client or
14 participant” or “to engage in any transaction, practice, or course of business which
15 operates as a fraud or deceit upon any client or participant or prospective client or
16 participant.”
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20 33. During all relevant times, Leighton acted as a CPO by engaging in a
21 business that is the nature of an investment trust, syndicate or similar form of
22 enterprise and by soliciting, accepting and receiving from others funds, securities
23 and/or property for the purpose of trading commodities.
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1 34. As set forth above, Leighton violated Section 4o(1) (A), (B) of the
2 Act, 7 U.S.C. § 6o(1) (A), (B) (2006), by defrauding and deceiving pool
3 participants by, among other things, making:
4

5 (a) written statements touting the profitability and value of participants'
6 shares of the Leighton pool;

7 (b) written statements regarding the balance and results of the pool trading
8 accounts, including the Fake FCM Statement;

9 (c) oral representations touting the profitability of the Leighton pool;

10 (d) representations about the existence of and the results of the Fake NFA
11 Audit, including but not limited to the representations that it occurred,
12 that Leighton pool participant funds could not be released due to it, and
13 that Leighton was fined as a result of it; and

14 (e) representations about the existence and the results of a purported
15 application for CMEG membership and review of the Leighton pool by
16 CMEG staff.

17 35. Leighton engaged in the acts and practices described above knowingly
18 or with reckless disregard for the truth.

19 36. The aforementioned uses of mails or other instrumentalities of
20 interstate commerce include, but are not limited to: (1) making wire transfers
21 between bank accounts; and (2) using e-mail to send investment solicitation and
22 account statements to participants in California, North Carolina and Washington,
23 among other places.
24

25 37. By the conduct set forth in this count, Leighton violated Section
26 4o(1)(A), (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2006).
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1 **E. Defendant Violated Section 4m(1) of the Act, as Amended**

2 38. With certain exemptions and exclusions not applicable here, all CPOs
3 operating a commodity pool are required to be registered with the Commission
4 pursuant to Section 4m(1) of the Act, as amended, 7 U.S.C. § 6m(1) (Supp IV).
5

6 39. Leighton has engaged in activities as a CPO without the benefit of
7 registration as a CPO, and in connection therewith used the mails or other means or
8 instrumentalities of interstate commerce, in violation of Section 4m(1) of the Act,
9 as amended, 7 U.S.C. § 6m(1).
10

11 40. By this conduct, defendant violated Section 4m(1) of the Act, as
12 amended, 7 U.S.C. § 6m(1).
13

14 **F. Defendant Violated Regulation 4.20**

15 41. Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2012), requires that a
16 “commodity pool operator must operate its pool as an entity cognizable as a legal
17 entity separate from that of the pool operator.”
18

19 42. Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2012), requires in part that
20 all funds, securities or other property received by a CPO from an existing or
21 prospective pool participant for the purchase or an interest in a pool that it operates
22 or that it intends to operate must be received in the pool’s name.
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1 43. Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2012), prohibits any CPO
2 from commingling the property of any pool that it operates or that it intends to
3 operate with the property of any other person.
4

5 44. Leighton accepted and traded pool participant funds in his own name
6 and, at least prior to February 2011, failed to operate the pool as a separate legal
7 entity. Leighton had most, if not all, pool participants make their funds payable to
8 Leighton, and Leighton deposited most, if not all, of those funds into the Leighton
9 bank account, where they were commingled with funds belonging to Leighton
10 and/or his wife.
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13 45. By this conduct, defendant violated Regulation 4.20, 17 C.F.R. § 4.20
14 (2012).
15

16 **G. Injunctive Relief is Appropriate**

17 46. Under Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), injunctive relief
18 is appropriate where there is a reasonable likelihood of future violations. Unless
19 restrained and enjoined by this Court, defendant is likely to continue to engage in
20 the acts and practices alleged in this Complaint, or in similar acts and practices.
21

22 47. Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1), permits this Court
23 to assess a civil monetary penalty of not more than the higher of (a) \$140,000 for
24 each violation occurring after October 18, 2010, or (b) triple the monetary gain to
25 Leighton for each violation of the Act and Regulations. 17 C.F.R. § 143.8 (2012).
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1 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND**
2 **DECREED** that defendant Michael J. Leighton has violated Sections 4b(a)(1)(A)-
3 (C), 4m(1) and 6(c)(1) of the Act, as amended, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6(m)
4 and 9 (Supp IV); Section 4o(1) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2006); and
5 Regulations 4.20 and 180.1(a), 17 C.F.R. §§ 4.20 and 180.1(a) (2012). Therefore,
6 judgment shall be and hereby is entered in favor of plaintiff U.S. Commodity
7 Futures Trading Commission and against defendant as follows:

10 **IV. PERMANENT INJUNCTIVE RELIEF GRANTED**

11 **IT IS HEREBY ORDERED THAT:**

12 48. Based upon and in connection with the foregoing conduct, pursuant to
13 Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, defendant is permanently
14 restrained, enjoined and prohibited from directly or indirectly engaging in conduct
15 in violation of Sections 4b(a)(1)(A)-(C), 4m(1) and 6(c)(1) of the Act, as amended,
16 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6(m) and 9 (Supp IV); Section 4o(1) of the Act,
17 7 U.S.C. § 6o(1)(A), (B) (2006); and Regulations 4.20 and 180.1(a), 17 C.F.R.
18 §§ 4.20 and 180.1(a) (2012).

19 49. Defendant is further permanently enjoined and prohibited from:

20 A. Trading on or subject to the rules of any registered entity (as that term is
21 defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a);
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1 B. Entering into any transactions involving commodity futures, options on
2 commodity futures, commodity options (as that term is defined in
3 Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2012)) (“commodity options”),
4 security futures products, swaps (as that term is defined in Section 1a(47)
5 of the Act, as amended, and as further defined by Commission
6 Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx)), and/or foreign currency (as
7 described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended,
8 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for his own
9 personal account or for any account in which Leighton has a direct or
10 indirect interest;
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15 C. Having any commodity futures, options on commodity futures,
16 commodity options, security futures products, swaps, and/or forex
17 contracts traded on his behalf;
18

19 D. Controlling or directing the trading for or on behalf of any other person
20 or entity, whether by power of attorney or otherwise, in any account
21 involving commodity futures, options on commodity futures, commodity
22 options, security futures products, swaps and/or forex contracts;
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25 E. Soliciting, receiving, or accepting any funds from any person for the
26 purpose of purchasing or selling any commodity futures, options on
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1 commodity futures, commodity options, security futures products, swaps
2 and/or forex contracts;

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4 F. Applying for registration or claiming exemption from registration with
5 the Commission in any capacity, and engaging in any activity requiring
6 such registration or exemption from registration with the Commission,
7 except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R.
8 § 4.14(a)(9) (2012); and/or
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10
11 G. Acting as a principal (as that term is defined in Regulation 3.1(a),
12 17 C.F.R. § 3.1(a) (2012)), agent or any other officer or employee of any
13 person (as that term is defined in Section 1a of the Act, as amended,
14 7 U.S.C. § 1a) registered, exempted from registration or required to be
15 registered with the Commission except as provided for in Regulation
16 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012);
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19 **V. RESTITUTION, CIVIL MONETARY PENALTIES AND OTHER**
20 **ANCILLARY RELIEF**

21 **A. Restitution**

22 50. Leighton shall pay restitution in the amount of one million, six
23 hundred and fifty thousand, two hundred and thirty dollars (\$1,650,230)
24 (“Restitution Obligation”), which represents net losses to pool participants, within
25 ten (10) days of the date of the entry of this Order. If the Restitution Obligation is
26
27 not paid in full within ten (10) day so the entry of this Order, then post-judgment
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1 interest shall accrue on the Restitution Obligation beginning on the date of entry of
2 this Order and shall be determined by using the Treasury Bill rate prevailing on the
3 date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.
4

5 51. Any payment of the criminal restitution in the related criminal case,
6 *USA v. Michael J. Leighton*, Case No. 2:12-cr-00439-DDP-1 (C.D. Cal.), shall
7 reduce the restitution obligation on a dollar for dollar basis.
8

9 52. To the extent the Restitution Obligation is not satisfied in fully by
10 payments of criminal restitution in the related criminal case, and to otherwise
11 effect payment of the Restitution Obligation and the distribution of any restitution
12 payments to Leighton pool participants, the Court appoints the National Futures
13 Association (“NFA”) as Monitor (“Monitor”). The Monitor shall collect restitution
14 payments from defendant and make distributions as set forth below. Because the
15 Monitor is acting as an officer of this Court in performing these services, the NFA
16 shall not be liable for any action or inaction arising from NFA’s appointment as
17 Monitor, other than actions involving fraud.
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22 53. Defendant shall make Restitution Obligation payments under this
23 Consent Order to the Monitor in the name “Leighton Restitution Fund” and shall
24 send such Restitution Obligation payments by electronic funds transfer, or by U.S.
25 postal money order, certified check, bank cashier’s, or bank money order, to the
26 Office of Administration, National Futures Association, 300 South Riverside
27
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1 Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies the
2 paying defendant and the name and docket number of this proceeding. Leighton
3 shall simultaneously transmit copies of the cover letter and the form of payment to
4 the Chief Financial Officer, Commodity Futures Trading Commission, Three
5 Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.
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7

8 54. The Monitor shall oversee the Restitution Obligation and shall have
9 the discretion to determine the manner of distribution of such funds in an equitable
10 fashion to Leighton pool participants identified by the Commission or may defer
11 distribution until such time as the Monitor deems appropriate. In the event that the
12 amount of Restitution Obligation payments to the Monitor are of a *de minimis*
13 nature such that the Monitor determines that the administrative cost of making a
14 distribution to eligible pool participants is impractical, the Monitor may, in its
15 discretion, treat such restitution payments as civil monetary penalty payments,
16 which the Monitor shall forward to the Commission following the instructions for
17 civil monetary penalty payments set forth in Part V, B below.
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22 55. Defendant shall cooperate with the Monitor as appropriate to provide
23 such information as the Monitor deems necessary and appropriate to identify
24 Leighton pool participants to whom the Monitor, in its sole discretion, may
25 determine to include in any plan for distribution of any Restitution Obligation
26 payments. Defendants shall execute any documents necessary to release funds that
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1 they in any repository, bank, investment or other financial institution, wherever
2 located, in order to make partial or total payment toward the Restitution
3 Obligation.
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5 56. The Monitor shall provide the Commission at the beginning of each
6 calendar year with a report detailing the disbursement of funds to Leighton pool
7 participants during the previous year. The Monitor shall transmit this report under
8 a cover letter that identifies the name and docket number of this proceeding to the
9 Chief Financial Officer, Commodity Futures Trading Commission, Three
10 Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.
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13 **B. Civil Monetary Penalty**
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15 57. Defendant pay a civil monetary penalty in the amount of seven-
16 hundred-thousand-dollars (\$700,000) ("CMP Obligation"), plus post-judgment
17 interest, within ten (10) days of the date of the entry of this Consent Order. Post-
18 judgment interest shall accrue on the CMP Obligation beginning on the date of
19 entry of this Consent Order and shall be determined by using the Treasury Bill rate
20 prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961
21 (2006).
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24 58. Defendant shall pay his CMP Obligation by electronic funds transfer,
25 U.S. postal money order, certified check, bank cashier's check, or bank money
26 order. If payment is to be made other than by electronic funds transfer, then the
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1 payment shall be made payable to the Commodity Futures Trading Commission
2 and sent to the address below:

3 Commodity Futures Trading Commission
4 Division of Enforcement
5 ATTN: Accounts Receivables – AMZ 340
6 E-mail Box: 9-AMC-AMZ-AR-CFTC
7 DOT/FAA/MMAC
8 6500 S. MacArthur Blvd.
9 Oklahoma City, OK 73169
Telephone: (405) 954-5644

10 59. If payment by electronic funds transfer is chosen, defendant shall
11 contact Linda Zurhorst or her successor at the address above to receive payment
12 instructions and shall fully comply with those instructions. Defendant shall
13 accompany payment of the CMP Obligation with a cover letter that identifies
14 defendant and the name and docket number of this proceeding. Defendant shall
15 simultaneously transmit copies of the cover letter and the form of payment to the
16 Chief Financial Officer, Commodity Futures Trading Commission, Three
17 Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

21 **C. Provisions Related to Monetary Sanctions**

22 60. Partial Satisfaction: Any acceptance by the Commission of partial
23 payment of Defendant's Restitution Obligation or CMP Obligation shall not be
24 deemed a waiver of his obligation to make further payments pursuant to this
25 Consent Order, or a waiver of the Commission's right to seek to compel payment
26 of any remaining balance.
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1 **VI. MISCELLANENUS PROVISIONS**

2 **IT IS FURTHER ORDERED THAT:**

3 61. Notice: All notices required to be given to the Commission by any
4 provision in this Consent Order shall be sent certified mail, return receipt
5 requested, as follows:
6

7 Regional Counsel, Division of Enforcement
8 U.S. Commodity Futures Trading Commission
9 525 West Monroe Street, Suite 1100
10 Chicago, Illinois 60661

11 All such notices to the Commission shall reference the name and docket number of
12 this action.
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14 62. Change of Address/Phone: Until such time as Leighton satisfies in full
15 his CMP Obligation as set forth in this Consent Order, Leighton shall provide
16 written notice to the Commission by certified mail of any change to its telephone
17 number and mailing address within ten (10) calendar days of the change.
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19 63. Entire Agreement and Amendments: This Consent Order incorporates
20 all of the terms and conditions of the settlement among the parties hereto to date.
21 Nothing shall serve to amend or modify this Consent Order in any respect
22 whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and
23 (c) approved by order of this Court.
24
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26 64. Invalidation: If any provision of this Consent Order or if the
27 application of any provision or circumstance is held invalid, then the remainder of
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1 this Consent Order and the application of the provision to any other person or
2 circumstance shall not be affected by the holding.

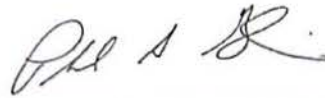
3
4 65. Continuing Jurisdiction of this Court: This Court shall retain
5 jurisdiction of this action to ensure compliance with this Consent Order and for all
6 other purposes related to this action, including any motion by defendant to modify
7 or for relief from the terms of this Consent Order.
8

9 66. Injunctive and Equitable Relief Provisions: The injunctive and
10 equitable relief provisions of this Consent Order shall be binding upon Leighton,
11 upon any person under his authority or control, and upon any person who receives
12 actual notice of this Consent Order, by personal service, e-mail, facsimile or
13 otherwise insofar as he or she is acting in active concert or participation with
14 defendant.
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18 67. Copies of this Order may be served by any means, including facsimile
19 transmission, e-mail, United Parcel Service and Federal Express, upon defendant,
20 and any other entity or person that may be subject to any provision of this Order.
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1 **IT IS FURTHER ORDERED**, that there being no just cause for
2 delay, the Clerk of the Court shall enter final judgment against Defendant
3 Michael J. Leighton forthwith.
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6 **IT IS SO ORDERED** on this 8th day of July 2013.

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Hon. Philip S. Gutierrez