

in two accounts denominated in U.S. dollars. To hide the losses and misappropriation, Ryan sent pool participants false account statements that reported non-existent profits.

2. While soliciting and accepting funds, Ryan misrepresented to prospective and actual participants that he would use their money solely to trade commodity futures and other products on their behalf, when in fact he misappropriated significant portions of participants' investments. Ryan also fraudulently represented that he had achieved gains of 100-200% in prior years, and promised annual returns of 200 to 300%, when in reality he had always lost money trading.

3. Furthermore, by soliciting and accepting money from at least 30 individuals to engage in trading of commodities futures, Ryan acted as a Commodity Pool Operator ("CPO") without being registered with the Commission as required by law.

4. Defendant David W. Magee ("David"), Ryan's father, and Defendant Dalyne Rae Magee ("Dalyne"), Ryan's wife, solicited funds for the pool and handled participant monies while associated with Ryan as his partner, employee, or agent (or while occupying a similar status or performing similar functions). David and Dalyne therefore acted as associated persons ("APs") of Ryan during the relevant time period without being registered with the Commission as required by law.

5. By engaging in this conduct and the conduct further described herein, Ryan has engaged, is engaging, or is about to engage in acts and practices that violate Sections 4b(a)(1)(A) and (C), 4b(a)(1)(B), 4o(1), 6(c)(1), 4m(1), and 4k(2) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 6b(a)(1)(A) and (C), 6(b)(1)(1)(B), 6o(1), 9(1), 6m(1), and 6(k)(2) (2012), and Commission Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2014), and David and

Dalyne have engaged, are engaging, or are about to engage in acts and practices that violate Section 4k(2) of the Act, 7 U.S.C. § 6(k)(2) (2012).

6. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, disgorgement, restitution, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

7. 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.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice that violates any provision of the Act or any rule, regulation, or order promulgated thereunder.

9. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. §13a-1(e) (2012), because Defendants transacted business in this District, and certain of the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places.

PARTIES AND RELEVANT NON-PARTIES

10. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the responsibility for enforcing the

provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2012), and the Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2014).

11. Defendant **Ryan S. Magee** is a resident of Calgary, Alberta, Canada. He has never been registered with the Commission.

12. Defendant **David W. Magee** is a resident of Calgary, Alberta, Canada. He has never been registered with the Commission. David is Ryan's father.

13. Defendant **Dalyne Rae Magee** is a resident of Calgary, Alberta, Canada. She has never been registered with the Commission. Dalyne is Ryan's wife.

14. Non-party **Master Daytraders Inc.** is an Alberta corporation with its registered office located at 304 8th Avenue SW, in Calgary, Alberta T2P 1C2. It was incorporated in Alberta, Canada on October 23, 2009, and David and Ryan are its sole directors and shareholders. At various times, Defendants used the name "Master Daytraders Inc." or "Master Daytraders" to refer to the pool in communications to participants.

15. Non-party **Magee International Incorporated** is a Texas corporation with its registered office located at 701 Brazos Street, Ste. 720, Austin, TX 78701. It was incorporated on January 20, 2012, and Dalyne is its sole director. At various times, Defendants used the name "Magee International Inc." or "Magee International" to refer to the pool in communications to participants. Some participants signed a document titled "Trading Fund Acknowledgment" which stated that the "Trading Fund run by Ryan Magee" was registered as "Magee International Inc."

16. Non-party **Alberta Securities Commission** ("ASC") is the Canadian regulatory agency responsible for administering the province of Alberta's securities laws. In August 2013, the ASC brought its own enforcement action against the Defendants, as well as Master

Daytraders Inc. and Magee International Incorporated, docketed as Action No. ENF-009554. In connection with that regulatory proceeding, Ryan, individually and on behalf of Master Daytraders Inc., David, and Dalyne, individually and on behalf of Magee International Incorporated, signed and submitted a “Statement of Admissions” dated March 2, 2015. The Statement of Admissions includes representations that Ryan made false statements to and otherwise defrauded pool participants and misappropriated at least CAD 893,837 of participants’ funds to pay Defendants’ personal expenses, directly or through other companies owned and controlled by Ryan and David. The Statement of Admissions also includes an acknowledgement that the admissions therein “may be used ... for securities regulatory proceedings in other jurisdictions.” After a hearing in March 2015, the ASC published its final Decision on August 26, 2015, which concludes that each of the Defendants illegally acted as dealers contrary to section 75(1)(a) of the Securities Act (Alberta), illegally distributed securities contrary to section 110(1) of the Securities Act (Alberta), and that Ryan made materially misleading or untrue statements contrary to section 92(4.1) and perpetrated a fraud contrary to section 93(b) of the Securities Act (Alberta).

STATUTORY BACKGROUND

17. Section 1a(10) of the Act defines a “commodity pool” as any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any commodity for future delivery, security futures product, swap, or commodity option. Section 1a(11)(A)(i) of the Act, 7 U.S.C. § 1a(11)(A), in relevant part, defines a Commodity Pool Operator (“CPO”) as any person engaged in a business that is of the nature of a commodity pool, 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 commodity interests, including commodities for future delivery, security futures products, and swaps.

18. A “participant” is defined in Commission Regulation 4.10(c), 17 C.F.R. § 4.10(c) (2014), as any person who has any direct financial interest in a commodity pool.

19. Section 4b(a)(1)(A), (B), and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (B) and (C) (2012), in relevant part, makes it unlawful for any person in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery that is made, or to be made, for, on behalf of, or with any other person, that is subject to the rules of a designated contract market: (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement, or willfully to enter or cause to be entered for the other person any false record; 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, on behalf of, or with the other person.

20. Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2012), makes it unlawful for a CPO to make use of the mails or any means or instrumentalities of interstate commerce, directly or indirectly to employ any device, scheme, or artifice to defraud any participant or prospective participant; or to engage in any transaction or course of business which operates as a fraud or deceit upon any participant or prospective participant.

21. Effective August 15, 2011, Section 753 of the Dodd Frank Act amended Section 6(c) of the Act, 7 U.S.C. § 9(1) (Supp. IV 2011), which broadened the CFTC’s anti-fraud jurisdiction as set out in Regulation 180.1, 17 C.F.R. § 1801.1 (2014).

22. Section 6(c)(1) of the Act, in relevant part, makes it unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of Regulation 180.1.

23. Effective August 15, 2011, Regulation 180.1, in relevant part, makes it 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; or (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.

24. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), makes it unlawful for any CPO to make use of the mails or any means of the instrumentalities of interstate commerce in connection with its business as a CPO, unless registered under the Act.

25. Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012) makes it unlawful for any person to be associated with a CPO as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool, or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person (“AP”) of such CPO.

THE FRAUD

26. Ryan began trading commodity futures for his own account in 2009 or earlier. Ryan traded in an individual brokerage account that he and David opened with a Canadian electronic brokerage firm on January 6, 2009 held in Ryan's and David's names (the "RD Account"). The following year, Ryan, David, and Dalyne began soliciting and accepting funds for commodity futures trading in the RD Account from family, friends, associates, and members of the public that Ryan met in online chat rooms on trading websites. Many of the Canadian participants were David's friends or business associates, or others known to David's friends and business associates. U.S. participants included family friends of Dalyne located in Texas and Wisconsin, and individuals that Ryan solicited in online chatrooms.

27. As is detailed below, Ryan told prospective and actual participants that he was an extremely successful commodity futures trader who had made returns of 100-200% in prior years. Ryan told participants that he consistently produced trading gains of 1-2% per day, and that he had lost money trading on only one day in the past two years. Ryan told participants that they could expect the same results if they invested with him.

28. Ryan solicited prospective pool participants by telling them that their funds would be used to trade commodity futures, including oil and index futures contracts, and that participants in the pool would be entitled to 80% of profits from that trading.

29. Ryan described his trading strategy to participants only in general terms, telling them that he actively traded currency futures, oil futures, index futures, and other products by "use[ing] entries based on the momentum of the price going up or down" and that "[w]e are just here to ride the wave up or down." Ryan said that each day, after he produces a 1% profit, he liquidates his gains and exits the market.

30. Ryan traded most participant funds in the RD Account. Ryan traded a smaller portion of pool participant funds in two other accounts: (i) an individual brokerage account opened in August 2013 in Ryan's name at a U.S.-based brokerage firm ("R Account"); and (ii) an individual brokerage account at opened in October 2013 in Dalyne's name at a different U.S.-based brokerage firm ("D Account").

31. Participants who invested either delivered checks made out to Ryan or David, or sent wire transfers the RD Account or to bank accounts held in the name of Ryan and/or David. On a limited number of occasions, participants sent wire transfers to an account at a bank in the U.S. held in Dalyne's name. Ryan then misappropriated the funds to pay Defendants' personal expenses, used them to pay returns to participants who had invested previously, or transferred the funds to the brokerage accounts to trade.

32. Ryan required some participants to sign a document titled Trading Fund Acknowledgement (the "Acknowledgment"). The Acknowledgment stated that participants' money would be provided to Ryan and to Magee International Inc. to invest on their behalf to trade stocks, bonds, currencies, and commodities on a daily basis. The Acknowledgment also stated that Magee International Inc. was "entitled to 20% of the daily profits generated by the fund." One version of the Acknowledgment purported to permit Ryan to make all investment decisions without prior consultation with the participant, and also purported to release Ryan and David from all claims by participants. The same Acknowledgment required each participant to "confirm[] that he has not been solicited in any manner by Ryan."

A. Fraudulent Solicitation

33. In order to induce potential participants to invest, or to induce existing participants to keep their money invested in the pool, Ryan made numerous untrue or misleading statements, including without limitation the following examples:

a. On August 8, 2011, Ryan e-mailed a prospective participant: “During the day I have a goal of 1-2% of the portfolio. We generally hit this every day.” In that same communication, Ryan said that his trading was able to produce returns “on average \$20,000.00 - \$40,000.00” a month on a \$100,000.00 investment (before the 20% commission). This would equate to an annual trading performance of between 240% and 480%. In reality, an analysis of Ryan’s trading shows that he was not able to produce gains of 1-2% per day, and in actuality lost more than \$1 million between 2009 and 2013.

b. On July 3, 2012, Ryan told a prospective participant via e-mail that his trading strategy produced gains of “1% a day, 200 times a year” which was “better than anyone else was doing.” Ryan further stated that he “trade[s] with people with more than \$10,000,000.00 [invested with him] and people all the way down to some with \$25,000.00 now with me” and that he was “at a point now of managing nearly \$50,000,000.00.” In reality, Ryan produced no profits through trading. Further, while Ryan fraudulently solicited and accepted at least \$2 million from participants, the largest participant contributed only CAD 650,000, not CAD 10,000,000 as Ryan claimed. Finally, Ryan’s claim that he managed “nearly [CAD] 50,000,000.00” was false; the most Defendants’ brokerage accounts were ever worth (on a month-end net asset value basis) was CAD 733,683 on June 30, 2010.

c. On September 13, 2012, Ryan told a prospective participant via e-mail that between 2009 and 2012, he experienced “tremendous success” trading and that “[t]he last time we lost money or ‘had a red day’ was in December of 2010.” Ryan further represented that his investments achieved 203% growth in 2010, 234% in 2011, and that he was “on pace to make 220%” for 2012. He further stated that “[w]e are a registered

investment company in the USA and Canada.” In reality, Defendants’ trading accounts lost money every year. The annual rate of return for the RD Account (where the lions’ share of Ryan’s trading took place) was negative 51% in 2009, negative 99% in 2010, and negative 100% in 2011 and 2012. Finally, contrary to Ryan’s claim, neither he, Master Daytraders Inc., nor Magee International Inc. was registered with the ASC, CFTC, or any other appropriate authorities either in the U.S. or Canada.

d. On September 30, 2012, Ryan told participants in an e-mail that in the third quarter of 2012, he profited CAD 19,848,645.11 through trading and paid out CAD 4,187,212 to fund participants. In reality, in the third quarter of 2012, Ryan lost CAD 20,487 through trading in the RD Account and withdrew only CAD 25,849 from the RD Account.

e. In January of 2011, David and Ryan communicated to a group of participants that Ryan had collapsed in front of his computer while positions were open, causing the pool to lose nearly all of its value. In reality, losses in the pool in December 2010 and January 2011 were primarily due to Ryan’s withdrawals from the account.

34. David and Dalayne also solicited prospective pool participants. David and Dalayne each told participants that Ryan was a profitable trader who consistently produced returns of roughly 1% profit per day.

35. As a result of Defendants’ solicitations and Ryan’s false representations that his trading was profitable, at least 30 individuals in the U.S. and Canada invested at least \$2 million in the pool.

B. Misappropriation of Participants’ Funds

36. Rather than using participants’ funds solely to trade commodity futures as Ryan represented he would, of the at least \$2 million received during the relevant period, Ryan

misappropriated at least CAD 893,837 to pay the personal expenses of Defendants, directly or through companies controlled or owned by Ryan and David, including Global Non-Slip Solutions Inc. (a construction company), Leathermaster (1994) Inc. (a leather cleaning and dry cleaning business), and Master Reglazing Inc. (a bathtub refinishing and repair business). During the relevant period, David was a director and shareholder of all three companies, and Ryan was a shareholder of Master Reglazing Inc., and a director and shareholder of Global Non-Slip Solutions Inc.

37. Ryan also used at least CAD 100,000 of participants' funds to pay returns to participants who had invested in the pool earlier.

38. Participants did not authorize Ryan to use their funds to pay Defendants' expenses or to pay returns to prior participants.

C. False Account Statements

39. In order to perpetuate the fraud, Ryan knowingly provided false account statements to pool participants that misrepresented the value of their investments. Ryan and Dalayne distributed the false account statements often on a weekly or monthly basis, usually by e-mail.

40. These account statements showed consistent and significant growth in participants' accounts, when in fact participants' funds were being depleted by trading losses and misappropriation. The figures reflected on the account statements were entirely fictitious and divorced from Ryan's actual trading performance.

41. Examples of false account statements sent to participants include the following:

a. In late 2010, Ryan sent an account statement to a Canadian participant that covered the period October to November 2010. The account statement reflected that the participant's account had a value of CAD 429,929.82 on October 1, 2010. The statement

purported to show daily and weekly gains achieved through Ryan's trading. The account statement reflected trading profits of \$61,230.00 between October 1 and November 19, 2010, a profit of 14% over the 7-week period. In reality, the RD Account (the only brokerage account open at that time) lost over CAD 21,000, or 33% of its total value during the time period October to November 2010. Furthermore, trading records show that the pool never had more than CAD 94,000 total under management in October and November 2010.

b. Ryan sent account statements to a participant located in Reedsburg, Wisconsin that covered the time period November 2011 to February 2014. The account statements purported to show that the participant's account grew to a value of \$700,194.05 by January 1, 2014. Of the total account balance, \$120,000 represented the participant's capital contributions, with the remaining \$580,194.05 reflected as profits from Ryan's trading. In reality, from November 2011 through February 2014, Ryan achieved no trading profits, and losses in the pool's trading accounts totaled over \$188,000.

c. On August 14, 2013, Ryan e-mailed an account statement to a participant located in Sheboygan, Wisconsin that covered the time period January 1, 2013 to August 16, 2013. The account statement purported to show that the participant's account balance was \$43,597.47 on January 1, 2013. The statement purported to show \$63,913.98 in profits from Ryan's trading over the next seven months, reflecting an account balance of \$107,511.45 on August 9, 2013. In reality, the pool trading account had less than \$100 under management as of January 1, 2013. Furthermore, from

January 1, 2013 through August 31, 2013, the pool incurred nearly \$29,000 in trading losses in its trading accounts.

42. In the account statements, Ryan misrepresented and omitted material facts regarding the performance of his trading in order to induce participants to maintain their funds with him, to invest additional funds, and to persuade others to become participants. The false account statements gave participants the false impression that they had access to the funds in these trading accounts and could withdraw the funds at their discretion.

43. Defendants engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS

COUNT I

FRAUD BY MISAPPROPRIATION AND FRAUDULENT SOLICITATION VIOLATIONS OF SECTIONS 4b(a)(1)(A) and (C) OF THE ACT Against Ryan S. Magee

44. The allegations set forth in paragraphs 1 through 43 are re-alleged and incorporated herein by reference.

45. Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C) (2012), make it unlawful for any person, in or in connection with any order to make or the making of any futures contract to cheat, defraud or willfully deceive, or attempt to cheat, defraud, or willfully deceive any other person by any means whatsoever.

46. From at least March 2010 through at least August 2013, Ryan cheated or defrauded, or attempted to cheat or defraud, and willfully deceived or attempted to deceive participants and prospective participants of the pool in violation of Sections 4b(a)(1)(A) and (C) of the Act by, among other acts and practices,

a. misappropriating participants' funds for Defendants' personal use, or for the use of companies owned or controlled by Ryan and David; and

b. making material misrepresentations and omitting material facts to prospective and actual participants, including but not limited to representations that the pool had made and was making profits, when in fact it was not, failing to disclose significant trading losses, and failing to disclose that participants' investments were being misappropriated for Defendants' personal use.

47. Each misappropriation and material misrepresentation or omission, including but not limited to those specifically alleged herein, is constitutes a separate and distinct violation of Section 4b(a)(1)(A) and (C) of the Act.

COUNT II

FRAUD BY FALSE ACCOUNT STATEMENTS VIOLATIONS OF SECTIONS 4b(a)(1)(B) OF THE ACT Against Ryan S. Magee

48. The allegations set forth in paragraphs 1 through 43 are re-alleged and incorporated herein by reference.

49. Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b(a)(1)(B) (2012), makes it unlawful for any person, in or in connection with any order to make or the making of any futures contract, to willfully make or cause to be made to another person a false report or statement.

50. From at least March 2010 through at least August 2013, Ryan violated Section 4b(a)(1)(B) of the Act by willfully creating and sending participants false account statements that contained non-existent futures trading profits.

51. Each false report or statement, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of Section 4b(a)(1)(B) of the Act.

COUNT III

FRAUD BY A CPO VIOLATIONS OF SECTION 4o(1)(A), (B) OF THE ACT Against Ryan S. Magee

52. The allegations set forth in paragraphs 1 through 43 are re-alleged and incorporated herein by reference.

53. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), prohibits any CPO from using the mails or any other means of interstate commerce to:

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

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

54. During the relevant period, Ryan acted as a CPO in that he engaged in a business that is of the nature of an investment trust, syndicate or similar form of enterprise operated for the purpose of trading in commodity interests or commodity futures, and in connection therewith, solicited, accepted and received funds from others for the purpose of trading in commodity interests and commodity futures.

55. During the relevant period, Ryan violated Section 4o(1) of the Act, in that as CPOs, he directly or indirectly employed or is employing a device, scheme or artifice to defraud pool participants, or has engaged or is engaging in transactions, practices or a course of business which operated as a fraud or deceit upon participants by:

a. misappropriating participants' funds for Defendants' personal use, or for the use of companies owned or controlled by Ryan and David;

b. making material misrepresentations and omitting material facts to prospective and actual participants and, including but not limited to representations that

the pool had made and was making profits when in fact it was not, failing to disclose significant trading losses, and failing to disclose that participants' investments were being misappropriated for Defendants' personal use, or for the use of companies owned or controlled by Ryan and David; and

c. issuing false account performance documentation to pool participants that misrepresented the value of their respective interests in the pool and concealed Ryan's misappropriation of participants' monies.

56. Ryan engaged in such acts, directly or indirectly, by the use of the mails and other means or instrumentalities of interstate commerce.

57. Each act of misappropriating funds, making false statements and material omissions, and disseminating false account statements that occurred during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act.

COUNT IV

FRAUD BY DECEPTIVE DEVICE OR CONTRIVANCE VIOLATIONS OF SECTION 6(c)(1) OF THE ACT AND REGULATION 180.1(a) Against Ryan S. Magee

58. The allegations set forth in paragraphs 1 through 43 are re-alleged and incorporated herein by reference.

59. Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012) provides, in relevant part, that “[i]t shall be unlawful for any person, directly or indirectly, to use or employ or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate.”

60. Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2014) provides in relevant part, that “[i]t 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: Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; 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; 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.”

61. From August 15, 2011 (the effective date of the above provision of the Act and Regulation 180.1(a)) to at least August 2013, Ryan used or employed deceptive devices or contrivances, in connection with a contract of sale of a commodity in interstate commerce, including, but not limited to:

a. misappropriating participants’ funds for Defendants’ personal use, or for the use of companies owned or controlled by Ryan and David;

b. making material misrepresentations and omitting material facts to prospective and actual participants and, including but not limited to representations that the pool had made and was making profits when in fact it was not, failing to disclose significant trading losses, and failing to disclose that participants’ investments were being misappropriated for Defendants’ personal use, or for the use of companies owned or controlled by Ryan and David; and

c. issuing false account performance documentation to pool participants that misrepresented the value of their respective interests in the pool and concealed Ryan’s misappropriation of participants’ monies.

62. Ryan used the mails or other instrumentalities of interstate commerce by, among other things, transmitting false account statements, communications to participants, and orders for retail commodity transactions over wires in interstate commerce.

63. By this conduct, Ryan violated Section 6(c)(1) of the Act and Regulation 180.1(a).

64. Ryan directly engaged in these acts knowingly or with reckless disregard for the truth.

65. Each deceptive device or contrivance used or employed including, but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 6(c)(1) of the Act and Regulation 180.1(a).

COUNT V

FAILURE TO REGISTER AS A CPO. VIOLATIONS OF SECTION 4m(1) OF THE ACT Against Ryan S. Magee

66. The allegations set forth in paragraphs 1 through 43 are re-alleged and incorporated herein by reference.

67. With certain exemptions and exclusions not applicable here, Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012) requires all CPOs to be registered with the Commission.

68. During the relevant period, Ryan acted as a CPO in that he engaged in a business that is of the nature of an investment trust, syndicate or similar form of enterprise operated for the purpose of trading in commodity interests or commodity futures, and in connection therewith, solicited, accepted and received funds from others for the purpose of trading in commodity interests and commodity futures.

69. In connection with such conduct, Ryan used the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CPO.

70. Ryan engaged in the activities described in the preceding paragraph without registering as a CPO in violation of Section 4m(1) of the Act.

71. Each use of the mails or any means or instrumentality of interstate commerce in connection with his business as a CPO without proper registration during the relevant time period, 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 VI

FAILURE TO REGISTER AS APs AND ALLOWING UNREGISTERED APs TO REMAIN ASSOCIATED WITH A CPO VIOLATIONS OF SECTION 4k(2) OF THE ACT Against All Defendants

72. The allegations set forth in paragraphs 1 through 43 and 66 through 71 are re-alleged and incorporated herein by reference.

73. Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012), requires that APs of CPOs be registered with the Commission. Further, a CPO violates Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012), when it allows an unregistered AP to become or remain associated with the CPO when the CPO knew or should have known that the AP was not registered as such with the Commission.

74. David and Dalyne acted as APs when each solicited funds for the pool and handled participant monies while associated with Ryan as his partner, employee, or agent (or while occupying a similar status or performing similar functions). David and Dalyne were never registered with the Commission.

75. Because they engaged in their AP activities without registering as APs of a CPO, David and Dalyne violated Section 4k(2) of the Act.

76. Ryan violated Section 4k(2) of the Act, by allowing David and Dalyne to act as unregistered APs when he knew or should have known that they were not registered with the Commission.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and pursuant to the Court's own equitable powers, enter:

a) An order finding that Ryan violated Sections 4b(a)(1)(A) and (C), 4b(a)(1)(B), 4o(1), 6(c)(1), 4m(1), and 4k(2) of the Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C), 6b(a)(1)(B); 6o(1), 9(1), 6m(1), and 6(k)(2) (2012), and Commission Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2014), and that David and Dalyne violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012);

b) An order of permanent injunction prohibiting Defendant Ryan and any of his affiliates, agents, servants, employees, successors, assigns, attorneys, and persons in active concert or participation with Defendant Ryan, from directly or indirectly engaging in conduct in violation of Sections 4b(a)(1)(A) and (C), 4b(a)(1)(B), 4o(1), 6(c)(1), 4m(1), and 4k(2) of the Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C), 6b(a)(1)(B), 6o(1), 9(1), 6m(1), and 6(k)(2) (2012), and Commission Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2014);

c) An order of permanent injunction prohibiting Defendants David and Dalyne Ryan and any of their affiliates, agents, servants, employees, successors, assigns, attorneys, and persons in active concert or participation with Defendants, from directly or indirectly engaging in conduct in violation of Section 4k(2) of the Act, 7 U.S.C. § 6(k)(2) (2012);

d) An order of permanent injunction prohibiting Defendants and any of their affiliates, agents, servants, employees, successors, assigns, attorneys, and persons in active concert or participation with Defendants, from directly or indirectly:

- (i) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (2012));
 - (ii) entering into any transactions involving “commodity interests” (as that term is defined in Commission Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2014)), for Defendant’s own accounts or for any account in which they have a direct or indirect interest;
 - (iii) having any commodity interests traded on Defendants’ behalf;
 - (iv) 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 interests;
 - (v) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
 - (vi) 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) (2014); and
 - (vii) acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2014)), agent or any other officer or employee of any person 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) (2014);
- d) An order directing Defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or

express, entered into between them and any of the pool participants whose funds were received by them as a result of the acts and practices that constituted violations of the Act, as described herein;

e) An order requiring Defendants to pay, jointly and severally, restitution by making whole each and every pool participant whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre- and post-judgment interest;

f) An order requiring Defendants, as well as any of their successors, to disgorge to any officer appointed or directed by the Court all benefits received, including, but not limited to, salaries, commissions, loans, fees, revenues and trading provides derived, directly or indirectly, from acts or practices that constituted violations of the Act and the Regulations, including pre- and post-judgment interest;

g) An order directing Defendants to pay a civil monetary penalty for each violation of the Act described herein, plus post-judgment interest, in the amount of the higher of: (1) \$140,000 for each violation of the Act and Regulations; or (2) triple the monetary gain to the Defendants for each violation of the Act and the Regulations;

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

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

Dated: February 18, 2016

Respectfully submitted,

/s/ Michael D. Frisch

Michael D. Frisch

Trial Attorney

Illinois ARDC No. 6296533

Jon J. Kramer
Senior Trial Attorney
Illinois ARDC No. 06272560

David Terrell
Chief Trial Attorney
Illinois ARDC No. 6196293

Scott R. Williamson
Deputy Regional Counsel
Illinois ARDC No. 06191293

Rosemary Hollinger
Regional Counsel
Illinois ARDC No. 03123647

Commodity Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, Illinois 60661
(312) 596-0563
(312) 596-0714 (fax)
mfrisch@cftc.gov

*Attorneys for Plaintiff
Commodity Futures Trading Commission*