

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA**

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

JAMES A. SHEPHERD and JAMES A.
SHEPHERD INC.,

Defendants.

Civil Action No. 3:13-cv-370

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

JURY TRIAL DEMANDED

Plaintiff, the United States Commodity Futures Trading Commission (“Commission” or “CFTC”), by its attorneys, alleges as follows:

I. SUMMARY

1. From at least April 2006 to the present (“Relevant Period”), James A. Shepherd Inc. (“JAS Inc.”), a registered commodity pool operator (“CPO”), through its employee and principal, James A. Shepherd (“Shepherd”), and Shepherd individually, engaged in a commodity pool fraud in which Defendants fraudulently solicited approximately \$10 million from approximately 176 individual investors (“Pool Participants”). Defendants fraudulently solicited Pool Participants to invest in the Shepherd Major Play Option Fund LP (“the Pool”), which Defendants operated, for the purpose of trading on-exchange options on futures contracts by, among other things, providing prospective Pool Participants with solicitation materials that falsely stated how the Pool’s assets would be used.

2. Rather than trade the Pool Participants’ funds as represented, Defendants misappropriated a large portion of Pool funds which had been invested or deposited by Pool

Participants and commingled those funds with funds unrelated to the Pool. Defendants concealed their fraud by distributing to Pool Participants periodic statements and annual certified financial statements that falsely represented the net asset value (“NAV”) of the Pool.

3. Also during the Relevant Period, JAS Inc., through Shepherd, and Shepherd individually, forged documentation to conceal the fraud and falsely reported the Pool’s NAV to the National Futures Association (“NFA”) in an NFA audit in 2009, in NFA quarterly reports, and in annual certified financial statements filed with the NFA.

4. By this conduct and further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq.* (Supp. IV 2011) (the “Act”). Specifically, by cheating or defrauding, making or causing to be made false reports to, deceiving or attempting to deceive, and misappropriating the funds of, Pool Participants, and by commingling Pool funds with the property of other persons, Defendants have violated of Sections 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006 & Supp. V. 2011), and Sections 4.20(c) and 33.10 of the Commission’s Regulations (“Regulations”), 17 C.F.R. §§ 4.20(c), 33.10 (2012). Additionally, by willfully submitting false documents to the NFA, Defendants have engaged in conduct in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (Supp. IV 2011).

5. When Shepherd committed the acts, omissions, and failures described herein, Shepherd was acting within the scope of his agency, employment and office with JAS Inc. Therefore, such acts, omissions, and failures are deemed to be those of JAS Inc. pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

6. At the same time, Shepherd is liable pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), as a controlling person of JAS Inc. for its violations of the Act and Regulations, because Shepherd controlled JAS Inc. and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting JAS Inc.'s violations.

7. Accordingly, the CFTC brings this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1 (2006), to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act and the Regulations. In addition, the Commission seeks remedial ancillary relief, including without limitation, restitution, disgorgement, pre- and post-judgment interest, and such other equitable relief as this Court may deem necessary and appropriate, and civil monetary penalties.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the CFTC that any person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or Regulations, the CFTC may bring an action in the proper district court of the United States against such person to enjoin such practice, or to enforce compliance with the Act and the Regulations.

9. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because certain of the transactions, acts, practices, and courses of business alleged herein occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

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

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

11. **James A. Shepherd Inc.** is a corporation organized under the laws of the State of Delaware with a principal place of business in Southern Pines, North Carolina. JAS Inc. has been registered with the Commission as a CPO since 2005 and as a commodity trading advisor (“CTA”) since 1990 and has been a member of NFA since 2005.

12. **James A. Shepherd** resides in Vass, North Carolina. Shepherd has been registered with the CFTC as an associated person (“AP”) of JAS Inc. since 1990. Shepherd is the President, owner and sole principal of JAS Inc.

IV. OTHER RELEVANT ENTITIES

13. The **Shepherd Major Play Option Fund LP** is a North Carolina limited partnership organized in 2005 with its principal place of business located at the same address in Southern Pines, North Carolina as JAS Inc., its General Partner.

14. The **National Futures Association** is a not-for-profit membership corporation and a self-regulatory organization that is registered with the Commission as a futures association under Section 17 of the Act, 7 U.S.C. § 21 (2006).

V. FACTS

15. In or around April 2005, Shepherd registered JAS Inc. as a CPO with the Commission and registered himself as an AP of JAS Inc. Shepherd is the owner and President of JAS Inc.

16. Shepherd formed the Pool in or around April 2005 as a pool for the purpose of trading commodity options, with JAS Inc. acting as the Pool’s CPO.

A. Defendants Misappropriated, Commingled and Fraudulently Solicited Pool Participants' Funds

17. Beginning in or about September 2005, Defendants solicited prospective Pool Participants to invest in the Pool, which would use Pool Participants' funds to trade, among other things, options on commodity futures contracts.

18. As part of this solicitation, Defendants provided prospective Pool Participants with a Confidential Private Offering Memorandum and Disclosure Document ("Offering Memo") via an internet website link which stated that the Pool will invest in, among other things, "commodities, commodity futures [and] options on commodities and commodity futures," and further that the Pool's funds would be segregated in that "[a]ssets of the Partnership will not be commingled with assets of any other entity."

19. Later versions of the Offering Memo falsely stated the purported then-current NAV of the Pool. For example, an Offering Memo dated October 15, 2007 stated that the Pool's NAV as of July 31, 2007 was \$3,255,957; however, as of that date, the Pool's true NAV was only approximately \$1,232,049.

20. Pool Participants deposited funds into a bank account in the Pool's name that was opened by Shepherd and for which Shepherd was the sole signatory.

21. Instead of maintaining the Pool's assets solely in the Pool's bank and trading accounts, Defendants misappropriated and commingled at least \$4.45 million of the Pool's funds, which Defendants operated, throughout the Relevant Period by, among other things, transferring Pool Participants' funds to:

- a. Shepherd's own bank account, for his own personal use and to repay other business obligations unrelated to the Pool;

- b. futures and options trading accounts maintained in Shepherd's own name, which suffered significant trading losses; and
- c. a bank account in the name of a separate hedge fund operated by Shepherd which Shepherd used to pay redemptions to those hedge fund investors.

22. Defendants knew that their representations about the NAV in the Offering Memoranda, misappropriations, and commingling were fraudulent when they were made.

B. The Pool's Trading Activity

23. During the Relevant Period, Defendants only used approximately \$1,029,960 of Pool Participants' funds to trade on-exchange options on futures contracts in three commodity options trading accounts in the name of the Pool over which Shepherd had sole trading authority.

24. Shepherd opened the Pool's first trading account at a Futures Commission Merchant ("FCM") in or about August 2005. This account traded on-exchange options on futures contracts such as options on E-mini S&P 500 futures contracts on and subject to the rules of the Chicago Mercantile Exchange, Inc., a designated contract market, and options on the ICE U.S. Dollar index futures contract on and subject to the rules of ICE Futures U.S., Inc., a designated contract market, between at least June 2006 and December 2011, and sustained trading losses over the life of the account in excess of \$750,000.

25. Shepherd opened a second trading account at another FCM in the name of the Pool in or about August 2005 and traded on-exchange options on E-mini S&P 500 futures contracts from September 2011 to the present. This account suffered trading losses in excess of \$50,000 over the life of the account.

26. Shepherd opened a third trading account at another FCM in or about December 2011, and, from December 2011 to the present, this account traded, among other things, options on E-mini S&P 500 futures contracts and suffered trading losses in excess of \$140,000.

27. As of March 31, 2013, only approximately \$51,300 remained in the Pool's trading accounts.

C. Defendants Concealed Their Fraud, Commingling and Misappropriation by Issuing False Monthly Statements to Pool Participants

28. For every month beginning in or around April 2006, Shepherd forged the Pool's monthly bank statements and provided these forged bank statements to an outside accountant who used them to generate monthly statements for each Pool Participant.

29. For example, in or around January 2011, Defendants provided to the accountant the Pool's bank statement for the month ending on December 31, 2010 which stated that the balance as of that date was \$4,559,876. However, as of that date, the Pool's bank account had a balance of only approximately \$59,876.

30. Defendants' outside accountant then generated each Pool Participant's monthly statement for December 2010 based, in part, on the Pool's falsely inflated bank balance. Defendants then mailed those statements to Pool Participants.

31. The monthly statements Defendants sent to Pool Participants were false in at least two ways: (a) they falsely represented the total NAV for the Pool and (b) they falsely represented each Pool Participant's NAV.

32. For example, in or about January 2013, Defendants mailed or caused to be mailed to each Pool Participant a statement titled "Statement of Operations For the Period Ended December 31, 2012" ("December 31, 2012 Monthly Statement") which stated that the NAV of the Pool as of December 31, 2012 was \$6,038,562.

33. The December 31, 2012 Monthly Statement was false since the NAV of the Pool as of that date was only approximately \$138,179 consisting of:

- a. A cash balance of approximately \$81,584 at the Pool's bank account;
- b. An NAV of approximately \$2,826 at one of the three commodity options trading accounts in the name of the Pool;
- c. An NAV of approximately \$3,871 at the second commodity options trading account in the name of the Pool; and
- d. An NAV of approximately \$49,898 in the third commodity options trading account in the name of the Pool.

34. The December 31, 2012 Monthly Statement sent to each Pool Participant also falsely stated the NAV of that Pool Participant's share in the Pool. For example, one Pool Participant's December 31, 2012 Monthly Statement stated that the NAV of that Pool Participant's share was \$378,426. However as of December 31, 2012, the Pool's total NAV was only approximately \$138,179.

35. Defendants knew the forged bank statements they sent to the outside accountant and the monthly statements they sent to Pool Participants were false when they were made.

D. Defendants Concealed Their Fraud, Commingling and Misappropriation by Issuing False Year-End Statements to Pool Participants and the NFA

36. Defendants hired an auditor to conduct the Pool's annual audit. Beginning in 2006, Shepherd provided the auditor with false contact information at the Pool's bank, to wit, an address at P.O. Box 597, Southern Pines, NC.

37. Each year, the auditor sent a request to confirm the Pool's bank account balance to the P.O. Box provided by Shepherd, which in fact, belonged to Shepherd, not the bank. Upon receipt of the confirmation request, Shepherd forged a signature to confirm that the Pool's bank

held certain balances in the Pool's account, when in fact, such balances were false. Moreover, the person whose signature was forged did not work for the bank, but rather was invented by Shepherd to conceal Defendants' on-going fraud.

38. Shepherd continued to provide false bank confirmations to the auditor during the seven annual audits of the Pool, from the audit for the year ending December 31, 2006 up to and including the audit for the year ending December 31, 2012.

39. The auditor used these false bank confirmations to prepare the Pool's year-end certified financial statements.

40. Throughout the Relevant Period, Defendants electronically filed the Pool's year-end certified financial statements with the NFA, as required by NFA rules, and caused them to be mailed to Pool Participants. Each of these year-end certified financial statements contained an affirmation signed by Shepherd that stated, in part, "[t]o the best of the knowledge and belief of [Shepherd], the information contained in this Certified Financial Statement ... submitted pursuant to the requirements of the [CFTC] and [NFA], is accurate and complete in all material respects."

41. Each of the seven year-end certified financial statements electronically filed by Defendants with the NFA and mailed by Defendants to Pool Participants for the years ending December 31, 2006 through December 31, 2012 was false.

42. For example, on or about February 15, 2013, Defendants electronically filed with the NFA and mailed to Pool Participants the certified financial statements for the Pool, for the year ending December 31, 2012. Defendants falsely represented that the Pool's assets included "Cash at Bank" equaling \$6,041,085. This statement was false since the balance in the Pool's only bank account on December 31, 2012 was approximately \$81,584.

43. Defendants knew the year-end certified financial statements they filed with the NFA and mailed to Pool Participants were false when they were made.

E. Defendants Filed False Quarterly Reports with the NFA

44. Beginning in or about March 2010, Defendants electronically filed pool quarterly reports (“PQRs”) with the NFA. Each of the twelve PQRs filed by the Defendants with the NFA between March 2010 and February 2013 was false, and Defendants knew the reports were false when they were made.

45. For example, on or about October 21, 2010, Defendants filed a PQR for the quarter ending on September 30, 2010 which stated that the Pool’s NAV as of September 30, 2010 was \$4,946,462 and that the Pool’s cash balance at the bank was \$4,571,345. However, as of September 30, 2010, the Pool’s NAV was less than approximately \$315,000 and the balance in the Pool’s bank account was approximately \$71,845.

F. Defendants Mailed False Bank Confirmation to the NFA During the NFA’s 2009 Audit

46. In or about August 2009, the NFA conducted an examination of the financial statements of the Pool.

47. During the course of this audit, the NFA required that the Defendants provide the NFA with the Pool’s bank name, address and account number so that the NFA could independently verify the Pool’s cash balance in the Pool’s bank account as of June 30, 2009.

48. Shepherd informed the NFA that the bank at which the Pool maintained its account had an address of “PO Drawer 597, Southern Pines, NC 28388.” This PO drawer was, in fact, a PO Drawer leased by the U.S. Post Office to Shepherd.

49. The NFA mailed the bank confirmation to that address; Shepherd filled out the bank confirmation himself indicating that the Pool’s bank account had a balance of \$3,941,516

as of June 30, 2009. Shepherd forged the bank confirmation in the name of a non-existent Customer Service Manager for the Bank and mailed the bank confirmation back to the NFA.

50. The bank confirmation that Shepherd sent to the NFA was false because:
- a. the bank's address was a PO drawer controlled by Shepherd and not a true address for the Pool's bank;
 - b. The person whose name Shepherd signed is not an employee of the Pool's bank; and
 - c. The Pool's bank account balance as of June 30, 2009 was approximately \$641,516, not \$3,941,516 as represented by Shepherd.

51. Defendants knew the bank confirmation they sent to the NFA was false when it was created.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

Count I

Violations of Section 4c(b) of the Act and Regulation 33.10: Options Fraud

52. Paragraphs 1 through 51 are re-alleged and incorporated herein by reference.

53. Section 4c(b) of the Act, 7 U.S.C. § 6c(b), makes it unlawful to offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under the Act which is of the character of, or is commonly known to the trade, as an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty," or "decline guaranty," contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing such transaction under such terms and conditions as the Commission shall prescribe.

54. Regulation 33.10, 17 C.F.R. § 33.10, makes it unlawful for any person directly or indirectly, (a) to cheat or defraud or attempt to cheat or defraud any other person; (b) to make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; and (c) to deceive or attempt to deceive any other person by any means whatsoever in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction.

55. During the Relevant Period, Defendants, in connection with offers to enter into, the entry into, the confirmation of the execution of, and the maintenance of, commodity option transactions cheated or defrauded or attempted to cheat or defraud Pool Participants, made or caused to be made to Pool Participants false reports or statements thereof or caused to be entered for Pool Participants false records, and deceived or attempted to deceive Pool Participants by providing Pool Participants with Offering Memos which falsely stated that the Pool's funds would not be commingled and falsely stated the Pool's NAV, by distributing to Pool Participants monthly statements and year-end certified financial statements which falsely stated the Pool's assets and NAV, and by misappropriating Pool Participants' funds, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10, 17 C.F.R. § 33.10.

56. Shepherd controlled JAS Inc. and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting JAS Inc.'s violations alleged in this count. Shepherd is therefore liable for JAS Inc.'s violations of Section 4c(b) of the Act, as amended, 7 U.S.C. § 6c(b), and Regulation 33.10, 17 C.F.R. § 33.10, as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

57. The fraudulent misrepresentations and misappropriation by Shepherd occurred within the scope of his employment with JAS Inc.; therefore JAS Inc. is liable for these acts

pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

58. Each material misrepresentation and each misappropriation by Defendants, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation by Defendants of 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10, 17 C.F.R. § 33.10.

Count II

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

59. Paragraphs 1 through 51 are re-alleged and incorporated herein by reference.

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

61. As defined in Regulation 1.3(cc), 17 C.F.R. § 1.3(cc), a CPO is any person engaged in a business which 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 indirectly 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 or commodity option on or subject to the rules of any contract market.

62. Since April 2006, JAS Inc., by and through Shepherd, and Shepherd individually, were each a CPO, as each of them engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and, in connection therewith, solicited, accepted, or

received funds, securities, or property from others for the purpose of trading in commodity options on or subject to the rules of a contract market.

63. Since April 2006, JAS Inc., by and through Shepherd, and Shepherd individually, violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B), in that, while acting as a CPO, they falsely stated that the Pool's funds would not be commingled and falsely stated the Pool's NAV, distributed to Pool Participants false monthly statements and year-end certified financial statements which falsely stated the Pool's assets and NAV, and misappropriated Pool Participants' funds.

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

65. The fraudulent misrepresentations and misappropriation by Shepherd occurred within the scope of his employment with JAS Inc.; therefore JAS Inc. is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

66. Each material misrepresentation and each misappropriation by Defendants, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation by Defendants of Section 4o(1) of the Act, 7 U.S.C. § 6o(1).

COUNT III

Violations of Section 9(a)(4) of the Act: False Statements to a Futures Association

67. The allegations set forth in Paragraphs 1 through 51 are re-alleged and incorporated herein by reference.

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

69. During the Relevant Period, NFA, in furtherance of its official duties under the Act, required JAS, Inc. to file quarterly and annual financial reports with the NFA to determine whether JAS Inc. was operating within the scope of its registration.

70. In the Pool's quarterly and annual financial reports, Defendants willfully concealed material facts and made false statements or misrepresentations to the NFA, including but not limited to, falsely stating the Pool's NAV and the Pool's bank account balances in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4).

71. During an NFA audit of JAS, Inc., Defendants fraudulently concealed the Pool's true assets by sending the NFA a forged bank confirmation also in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4).

72. The acts, omissions and misrepresentations by Shepherd were willful and material.

73. The foregoing acts, omissions and misrepresentations and willful concealment to NFA by Shepherd occurred within the scope of his employment with JAS Inc. Therefore, JAS Inc. is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

74. Shepherd controls JAS Inc., directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, JAS Inc.'s conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Shepherd is liable for JAS Inc.'s violations of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4).

75. Each false, fictitious, or fraudulent statement, representation or omission made to the NFA during the audit of JAS Inc., and each act of concealment, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation by Defendants of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4).

COUNT IV

Violation of Section 4.20(c) of the Regulations: Commingling of Pool Participants' Funds

76. The allegations set forth in Paragraphs 1 through 51 are re-alleged and incorporated herein by reference.

77. Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c), provides that no commodity pool operator may commingle the property of any pool that it operates or that intends to operate with the property of any other person.

78. During the Relevant Period, JAS Inc. violated Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c), by commingling funds of the Pool, which Defendants operated, with Shepherd's own funds by, among other things, transferring the Pool's funds from the Pool's bank account to Shepherd's own bank account containing Shepherd's own funds and transferring Pool Participants' funds to a bank account in the name of a separate hedge fund operated by Shepherd.

79. Shepherd controls JAS Inc., directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, JAS Inc.'s conduct alleged in this Count. Therefore,

pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Shepherd is liable for JAS Inc.'s violations of Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c).

80. Each instance of commingling of the Pool's funds with the property of any other person, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation by Defendants of Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c).

VII. RELIEF REQUESTED

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

A. An order finding that Defendants violated Sections 4c(b), 7 U.S.C. § 6c(b), 4o(1), 7 U.S.C. § 6o(1), and 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) and Regs. 4.20(c) and 33.10, 17 C.F.R. §§ 4.20(c), 33.10.

B. Enter orders of preliminary and permanent injunction enjoining Defendants, and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants, who receive actual notice of such order by personal service or otherwise, from directly or indirectly engaging in conduct in violation of Sections 4c(b), 4o(1) and 9(a)(4) of the Act, 7 U.S.C. §§ 6c(b), 6o(1), and 13(a)(4), and Regs. 4.20(c) and 33.10, 17 C.F.R. §§ 4.20(c), 33.10;

C. Enter orders of preliminary and permanent injunction prohibiting Defendants, and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants, who receive actual notice of such order by personal service or otherwise, from engaging, directly or indirectly:

- 1) 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 (Supp. IV 2011));
- 2) Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2012)) (“commodity options”), swaps (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47), and as further defined by Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx) (2012), security futures products and/or foreign currency (“forex contracts”) (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (Supp. IV 2011)), for their own personal or proprietary account or for any account in which they have a direct or indirect interest;
- 3) Having any commodity futures, options on commodity futures, commodity options, swaps, security futures products and/or forex contracts traded on any of their behalf;
- 4) Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, swaps, security futures products and/or forex contracts;
- 5) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, swaps, security futures products and/or forex contracts;
- 6) 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) (2012); and

7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a) registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

D. An order directing Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act as described herein, and pre- and post-judgment interest thereon from the date of such violations;

E. Enter an order directing Defendants, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and profits derived, directly or indirectly, from acts or practices which constitute violations of the Act and Regulations as described herein, including pre-judgment interest thereon from the date of such violations

F. Enter an order directing Defendants, and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the Pool Participants whose funds were received by them as a result of the acts and practices which constituted violations of the Act, as described herein;

G. An order directing each Defendant to pay a civil monetary penalty in the amount of the higher of (i) triple the monetary gain to Defendant for each violation of the Act or (2)

\$130,000 for each violation of the Act from October 23, 2004 through October 22, 2008, and \$140,000 for each violation of the Act on or after October 23, 2008, plus post-judgment interest;

H. An order requiring Defendants, and any successors thereof, to pay costs and fees as permitted by 28 U.S.C. § 1920 and 2412(a)(2); and

I. An order providing for such other and further relief as the Court may deem necessary or appropriate.

VIII. JURY TRIAL DEMAND

Plaintiff CFTC hereby demands a trial by jury.

Respectfully submitted,

Date: June 17, 2013

s/ Elizabeth C. Brennan
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