

JUDGE STEIN

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
MANHATTAN DIVISION

U.S. COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

SK MADISON COMMODITIES, LLC,  
MICHAEL JAMES SEWARD and YAN  
KAZIYEV a.k.a. IAN KAZIYEV,

Defendants,

and

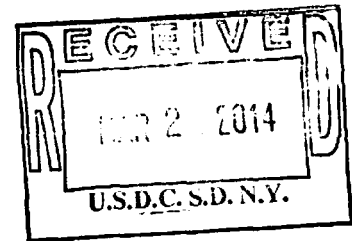
SK MADISON, LLC,

Relief Defendant.

14 CV 2025

Civil Action No. \_\_\_\_\_

COMPLAINT FOR INJUNCTIVE AND  
OTHER EQUITABLE RELIEF AND  
CIVIL MONETARY PENALTIES



Plaintiff U.S. Commodity Futures Trading Commission (“Commission”) alleges as follows:

**I. SUMMARY**

1. From as early as October 1, 2010 and continuing to the present (the “Relevant Period”), Defendants Michael James Seward (“Seward”), Yan Kaziyev a.k.a. Ian Kaziyev (“Kaziyev”), and their company SK Madison Commodities, LLC (“SKMC”) (collectively, “Defendants”) defrauded members of the public (“pool participants”) of more than \$1.3 million in connection with pooled investments in commodity futures contracts (“futures”).

2. Defendants portrayed SKMC to prospective pool participants as both a “futures investment manager” and as a commodity pool with a trading track record of significant and consistent annual profits. In doing so, Defendants made no distinction between the pool operator

(SKMC) and the pool it operated. Defendants also portrayed their trading strategy as conservative in that they would execute only a small number of trades per month.

3. Defendants' portrayal of their trading track record and trading strategy is a sham. In reality, Defendants used SKMC to defraud pool participants and enrich themselves at pool participants' expense. Defendants did not trade and earn the consistent annual profits that they claimed but instead used a majority of the pool participants' money for themselves. In addition, Defendants made far more than a handful of trades per month resulting in large commissions fraudulently charged to the pool participants.

4. To perpetuate their fraud, Defendants prepared and distributed to pool participants account statements and performance reports that falsely represented that pool participants were earning profits during months when the actual trading resulted in substantial losses and when Defendants were diverting large amounts of pool participants' funds for Defendants' own use.

5. By virtue of this conduct, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of the Commodity Exchange Act ("CEA") and Commission Regulations ("Regulations"), specifically CEA Sections 4b(a)(1)(A)-(C), 4k(2), 4m(1), and 4o(1), 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6k(2), 6m(1), and 6o(1) (2012), and Regulations 3.12, 4.20(a), and 4.41(a), 17 C.F.R. §§ 3.12, 4.20(a), and 4.41(a) (2013).

6. The acts and omissions of Seward and Kaziyev occurred within the scope of their agency, employment, and/or office with SKMC; therefore, SKMC is liable for these acts and omissions pursuant to 7 U.S.C. § 2(a)(1)(B) (2012) and 17 C.F.R. § 1.2 (2013).

7. During the Relevant Period, Seward and Kaziyev controlled SKMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, the acts of

SKMC described herein; therefore, Seward and Kaziyev are liable for the acts of SKMC described herein pursuant to CEA Section 13(b), 7 U.S.C. § 13c(b) (2012).

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

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

## **II. JURISDICTION AND VENUE**

10. CEA Section 6c(a), 7 U.S.C. § 13a-1(a) (2012), authorizes the Commission to seek injunctive relief in district court against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in conduct that constitutes a violation of the CEA or any rule, regulation, or order thereunder.

11. The Court has jurisdiction over the conduct and transactions at issue in this case pursuant to CEA Section 6c, 7 U.S.C. § 13a-1 (2012).

12. Venue properly lies with this Court pursuant to CEA Section 6c(e), 7 U.S.C. § 13a-1(e) (2012), because at least some of the acts and practices in violation of the CEA and the Regulations occurred within this District.

## **III. PARTIES**

trading accounts, including approximately \$52,000 in the account owned by SKM, and the remaining approximately \$829,000 was misappropriated by Defendants.

32. In order to conceal and perpetuate their fraud, Defendants distributed false monthly account statements and other false performance reports to existing and prospective pool participants through the mails and/or other means or instrumentalities of interstate commerce.

33. For example, Defendants issued to one pool participant monthly account statements for February and March 2013 reflecting profits when, in fact, Defendants' actual trading during those months resulted in losses.

34. Similarly, Defendants sent existing and prospective pool participants an April 2013 performance report that showed an annual rate of return of 38.7 percent for 2012 despite the fact that the SKMC pool incurred cumulative net trading losses of more than \$76,000 in 2012. This same report further claimed that SKMC's cumulative performance from inception to date was 111.57 percent. This information was false. The total cumulative net trading profit during this period was less than \$13,000, far less than the huge profits Defendants claimed in the report. Further, this and similar reports distributed to existing and prospective pool participants showed SKMC routinely outperforming the S&P 500 over the same time periods.

35. In May 2013, the National Futures Association ("NFA") initiated an on-site examination at Defendants' New York offices to determine, among other things, whether Seward and his other company SKM (which had recently received SKMC pool participant funds) were properly registered or exempt from certain registration and reporting requirements.

36. During the examination, Seward was unable to produce basic documents and other information associated with the operation of the business, and SKM's bank records revealed a high number of questionable transactions.

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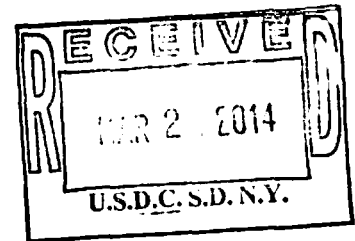
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5. By virtue of this conduct, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of the Commodity Exchange Act ("CEA") and Commission Regulations ("Regulations"), specifically CEA Sections 4b(a)(1)(A)-(C), 4k(2), 4m(1), and 4o(1), 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6k(2), 6m(1), and 6o(1) (2012), and Regulations 3.12, 4.20(a), and 4.41(a), 17 C.F.R. §§ 3.12, 4.20(a), and 4.41(a) (2013).

6. The acts and omissions of Seward and Kaziyev occurred within the scope of their agency, employment, and/or office with SKMC; therefore, SKMC is liable for these acts and omissions pursuant to 7 U.S.C. § 2(a)(1)(B) (2012) and 17 C.F.R. § 1.2 (2013).

7. During the Relevant Period, Seward and Kaziyev controlled SKMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, the acts of

SKMC described herein; therefore, Seward and Kaziyev are liable for the acts of SKMC described herein pursuant to CEA Section 13(b), 7 U.S.C. § 13c(b) (2012).

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

## **II. JURISDICTION AND VENUE**

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11. The Court has jurisdiction over the conduct and transactions at issue in this case pursuant to CEA Section 6c, 7 U.S.C. § 13a-1 (2012).

12. Venue properly lies with this Court pursuant to CEA Section 6c(e), 7 U.S.C. § 13a-1(e) (2012), because at least some of the acts and practices in violation of the CEA and the Regulations occurred within this District.

## **III. PARTIES**

13. **Plaintiff U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the CEA and the Regulations promulgated thereunder. The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

14. **Defendant Michael James Seward** is an individual residing in Redington Shores, Florida. Seward is an incorporator, officer, trader, and principal of SKMC and is responsible for its acts. Seward has never been registered as an associated person of SKMC.

15. **Defendant Ian Kaziyev (a.k.a. Yan Kaziyev)** is an individual residing in Briarwood, New York. Kaziyev is an incorporator, officer, manager, and principal of SKMC and is responsible for its acts. Kaziyev has never been registered as an associated person of SKMC.

16. **Defendant SK Madison Commodities, LLC** is a New York limited liability company and unregistered commodity pool operator created on October 1, 2010 by Seward and Kaziyev. SKMC's principal place of business is in New York City. SKMC operated a commodity pool under the same name as SKMC itself (the "SKMC pool"). At all times during the Relevant Period, Seward and Kaziyev operated and controlled SKMC.

17. **Relief Defendant SK Madison, LLC ("SKM")** is a Florida limited liability company created on March 26, 2013 by Seward, who is SKM's lone manager. SKM has its principal place of business at the same address in New York City as SKMC. At all times during the Relevant Period, Seward controlled SKM.

#### IV. FACTS

18. During the Relevant Period, SKMC, by and through Seward, Kaziyev, and persons acting under their direction and control, solicited existing and prospective pool



participants, by use of the mails and/or other means or instrumentalities of interstate commerce, to send money to SKMC to trade futures in the commodity pool operated by SKMC.

19. In addition to Seward and Kaziyev themselves, Defendants employed as many as eight individuals to solicit pool participants.

20. As part of their solicitation, Defendants and/or Defendants' employees made numerous misrepresentations about the profitability, track record, and trading strategy of the SKMC pool. Although the futures trading in the SKMC pool was not entirely unsuccessful, the profits were far smaller than the profits touted by Defendants in their promotional material.

21. For example, Defendants' promotional material distributed to existing and prospective pool participants claimed that SKMC had engaged in profitable trading in months in which SKMC had actually suffered significant trading losses. These materials also failed to disclose SKMC's first three months of trading (May-July 2011) – which resulted in cumulative net losses – but instead claimed that SKMC did not begin operations until August 2011, which happened to be the first month SKMC achieved cumulative net profits from trading. In an early October 2012 email, an SKMC sales representative told a prospective pool participant that SKMC's profits through September were "about 70% net," however in reality the SKMC pool had sustained cumulative net losses of approximately \$31,000 through September 2012.

22. Defendants also claimed that Seward's and SKMC's futures trading strategy was "conservative" and that they made very few trades each month. This was false. In the 25 months of trading conducted by Defendants during the Relevant Period, the SKMC pool averaged more than 285 trades per month, and in some months the trading in the SKMC pool exceeded 1,000 trades.

23. Defendants knowingly and willfully made, or caused others to make, multiple material misrepresentations and omissions in their solicitation of existing and prospective pool participants, including as described above.

24. In making their investment decisions, existing and prospective pool participants in the SKMC pool relied on Defendants' and Defendants' employees' material misrepresentations and omissions, including statements regarding Seward and SKMC's trading track record and the manner in which pool participants' funds would be used. As a result of and in reliance on Defendants' solicitations, as described above, pool participants sent Defendants more than \$1.327 million for trading.

25. The money provided by pool participants was deposited into multiple bank accounts in the name of SKMC, and a portion of these funds was transferred to multiple trading accounts in the name of SKMC and used to trade futures. All of these accounts were titled in the name of "SK Madison Commodities LLC" with no distinction as to which accounts belonged to SKMC and which belonged to the SKMC pool. Seward and Kaziyev are the only signatories on these bank and trading accounts.

26. The trading of futures in the trading accounts during the Relevant Period resulted in total cumulative net profits of approximately \$84,000. Despite the small amount of profits, subsequent to most deposits into one or more of the bank and trading accounts, Defendants made significant and proximate withdrawals from those accounts throughout the Relevant Period. For example, during the month of October 2011, Defendants received a total of \$80,000 of new pool participant funds. On the day these funds were deposited, SKMC's bank account had a balance of only \$406.98. Only \$72,500 of the \$80,000 was ever deposited into SKMC's trading accounts. Furthermore, during the month, Defendants transferred \$66,600 from those trading

accounts back to SKMC's bank account even though Defendants' trading resulted in cumulative net losses that month of more than \$26,000. As another example, on January 14, 2013, SKMC's bank account balance stood at \$313.45. The next day, a pool participant wired \$21,772.94 into the account, and Defendants transferred into the account an additional \$1,200 from one of SKMC's trading accounts. Over the next two weeks, Defendants spent virtually all of this pool participant's funds on ATM, check card, and other withdrawals totaling \$20,664.43, including \$5,000 directly to Seward.

27. During the Relevant Period, Defendants withdrew a total of approximately \$829,000 from the SKMC bank and trading accounts; less than \$35,000 was ever returned to pool participants.

28. The investment agreements provided to pool participants stated that participants would be charged a fee of \$55 per trade plus a quarterly performance fee equal to 20 percent of any net profits earned by the SKMC pool. The \$55 per trade fee was predicated on the representation that only a handful of trades would be made by SKMC each month. *See* ¶ 22, *supra*.

29. In April and May 2013, SKMC transferred a total of \$59,950 of pool participant funds from its bank account to a bank account in the name of SKM. During this same period, SKM transferred most of these funds to a trading account in its own name. Of the \$59,950, a total of approximately \$52,000 remains in the SKM trading account.

30. A total of approximately \$496,000 remains in two of SKMC's trading accounts.

31. In sum, of the approximately \$1.327 million received by Defendants from pool participants and the approximately \$84,000 in cumulative net profits, only approximately \$34,000 was returned to pool participants, approximately \$548,000 remains on deposit in three

trading accounts, including approximately \$52,000 in the account owned by SKM, and the remaining approximately \$829,000 was misappropriated by Defendants.

32. In order to conceal and perpetuate their fraud, Defendants distributed false monthly account statements and other false performance reports to existing and prospective pool participants through the mails and/or other means or instrumentalities of interstate commerce.

33. For example, Defendants issued to one pool participant monthly account statements for February and March 2013 reflecting profits when, in fact, Defendants' actual trading during those months resulted in losses.

34. Similarly, Defendants sent existing and prospective pool participants an April 2013 performance report that showed an annual rate of return of 38.7 percent for 2012 despite the fact that the SKMC pool incurred cumulative net trading losses of more than \$76,000 in 2012. This same report further claimed that SKMC's cumulative performance from inception to date was 111.57 percent. This information was false. The total cumulative net trading profit during this period was less than \$13,000, far less than the huge profits Defendants claimed in the report. Further, this and similar reports distributed to existing and prospective pool participants showed SKMC routinely outperforming the S&P 500 over the same time periods.

35. In May 2013, the National Futures Association ("NFA") initiated an on-site examination at Defendants' New York offices to determine, among other things, whether Seward and his other company SKM (which had recently received SKMC pool participant funds) were properly registered or exempt from certain registration and reporting requirements.

36. During the examination, Seward was unable to produce basic documents and other information associated with the operation of the business, and SKM's bank records revealed a high number of questionable transactions.

37. As a result, on June 7, 2013, the NFA instituted a Member Responsibility Action (“MRA”) against SKM and an Associate Responsibility Action (“ARA”) against Seward. The MRA/ARA, *inter alia*, bars Seward and SKM “from soliciting or accepting any funds from customers or investors” and “from disbursing or transferring any funds over which they or any person acting on their behalf exercises control . . . without prior approval from NFA.”

38. Subsequently, on November 7, 2013, NFA’s Business Conduct Committee filed a complaint against Seward and SKM alleging, *inter alia*, that Seward, SKM, and Kaziyev “converted approximately \$900,000 of pool participant funds, and that [SKM] and Seward also deliberately misled NFA throughout its investigation and examination of [SKM].” Based on Seward’s and SKM’s failure to respond to this complaint, on February 4, 2014, the NFA Business Conduct Committee issued its decision in which all allegations in the complaint were deemed admitted by Seward and SKM and, as a result, both of them were permanently barred from NFA membership.

## V. VIOLATIONS OF THE ACT AND REGULATIONS

### COUNT ONE

#### FRAUD IN CONNECTION WITH FUTURES CONTRACTS

#### Violations of CEA Sections 4b(a)(1)(A)-(C), 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012)

39. The allegations set forth in paragraphs 1 through 38 are re-alleged and incorporated herein by reference.

40. CEA Sections 4b(a)(1)(A)-(C), 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012), provide, in relevant part, that it is unlawful for any person, in or in connection with any order to make or the making of a futures contract for or on behalf of any other person, (A) to cheat or defraud or attempt to cheat or defraud another 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 such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract.

41. As described above, during the Relevant Period, Defendants violated CEA Sections 4b(a)(1)(A)-(C), 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012), in or in connection with an order to make or the making of futures contracts for or on behalf of other persons, by misappropriating pool participants' funds, by misrepresenting to existing and prospective pool participants SKMC's profitability, track record and trading strategy, and by providing existing and prospective pool participants with false monthly account statements and/or performance reports.

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

43. In engaging in the foregoing acts and practices, Seward, Kaziyev, and other employees or agents of SKMC acted within the scope of their agency, employment, and/or office with SKMC; therefore, SKMC is liable for all of these acts and practices pursuant to CEA Section 2(a)(1)(B), 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2013).

44. At all times relevant to this Complaint, Seward and Kaziyev controlled SKMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, SKMC's conduct alleged in this count. Therefore, Seward and Kaziyev are liable for SKMC's violations of CEA Sections 4b(a)(1)(A)-(C), 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012), pursuant to CEA Section 13(b), 7 U.S.C. § 13c(b) (2012).

45. Each act of misappropriation, misrepresentation or omission of material fact, and issuance of a false report, including but not limited to those specifically alleged herein, is alleged

as a separate and distinct violation of CEA Sections 4b(a)(1)(A)-(C), 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012).

## COUNT TWO

### **FRAUD BY COMMODITY POOL OPERATOR Violations of CEA Section 40(1), 7 U.S.C. § 60(1) (2012), and Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2013)**

46. The allegations set forth in paragraphs 1 through 45 are re-alleged and incorporated herein by reference.

47. CEA Section 40(1), 7 U.S.C. § 60(1) (2012), makes it unlawful

for a ... commodity pool operator, or associated person of a commodity pool operator 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 client or participant or prospective client or participant; or
- (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

48. Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2013), makes it unlawful for any commodity pool operator or any principal thereof to publish, distribute, or broadcast, whether by electronic media or otherwise, any report, letter, writing, or other literature which:

- (1) Employs any device, scheme or artifice to defraud any participant or client or prospective participant or client; [or]
- (2) Involves any transaction, practice or course of business which operates as a fraud or deceit upon any participant or client or any prospective participant or client.

49. CEA Section 1a(11)(i), 7 U.S.C. § 1a(11)(i) (2012), defines a “commodity pool operator,” in relevant part, as a 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 any—

I. commodity for future delivery, ...

50. During the Relevant Period, SKMC operated as a commodity pool operator in that it 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 agreements, contracts, or transactions in commodities for future delivery.

51. During the Relevant Period, Seward and Kaziyev were principals of SKMC and acted as associated persons of SKMC in that, as agents of SKMC, they solicited and accepted funds, securities, or property for SKMC.

52. During the Relevant Period, SKMC (acting as a commodity pool operator by and through Seward and Kaziyev, among others) and Seward and Kaziyev (acting as principals and associated persons of SKMC), through the use of the mails or other means or instrumentalities of interstate commerce (including through the use of telephone calls and electronic mail with pool participants and prospective pool participants), violated CEA Section 4o(1), 7 U.S.C. § 6o (2012), and Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2013), by misappropriating pool participants' funds, by misrepresenting to existing and prospective pool participants, through writings and otherwise, SKMC's profitability, track record, and trading strategy, and/or by distributing to existing and prospective pool participants false written monthly account statements and/or performance reports.

53. Defendants engaged in the acts and practices described in this count knowingly, willfully, or with reckless disregard for the truth.



54. In engaging in the foregoing acts and practices, Seward, Kaziyev, and other employees or agents of SKMC were acting within the scope of their agency, employment, and/or office with SKMC; therefore, SKMC is liable for all of these acts and practices pursuant to CEA Section 2(a)(1)(B), 7 U.S.C. § 2(a)(1)(B) (2012), Regulation 1.2, 17 C.F.R. § 1.2 (2013).

55. At all times relevant to this Complaint, Seward and Kaziyev controlled SKMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, SKMC's conduct alleged in this count. Therefore, Seward and Kaziyev are liable for SKMC's violations of CEA Section 4o(1), 7 U.S.C. § 6o (2012), and Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2013), pursuant to CEA Section 13(b), 7 U.S.C. § 13c(b) (2012).

56. Each act of misappropriation, misrepresentation or omission of material fact, and issuance of a false report, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of CEA Section 4o(1), 7 U.S.C. § 6o (2012), Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2013).

### **COUNT THREE**

#### **FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR Violation of CEA Section 4m(1), 7 U.S.C. § 6m(1) (2012)**

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

58. CEA Section 4m(1), 7 U.S.C § 6m(1) (2012), provides that it is unlawful for any commodity pool operator, unless registered, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a commodity pool operator.

59. As set forth above, during the Relevant Period, SKMC, by and through its employees, agents, and control persons, including Seward and Kaziyev, used the mails or

instrumentalities of interstate commerce in or in connection with a commodity pool as a commodity pool operator while failing to register as a commodity pool operator, in violation of CEA Section 4m(1), 7 U.S.C. § 6m(1) (2012).

60. At all times relevant to this Complaint, Seward and Kaziyev controlled SKMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, SKMC's conduct alleged in this count. Therefore, Seward and Kaziyev are liable for SKMC's violations of CEA Section 4m(1), 7 U.S.C. § 6m(1) (2012), pursuant to CEA Section 13(b), 7 U.S.C. § 13c(b) (2012).

61. Each use of the mails or any means or instrumentality of interstate commerce by SKMC, by and through its employees, agents and control persons, while acting as a commodity pool operator, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of CEA Section 4m(1), 7 U.S.C. § 6m(1) (2012).

#### **COUNT FOUR**

##### **FAILURE TO REGISTER AS AN ASSOCIATED PERSON Violation of CEA Section 4k(2), 7 U.S.C. § 6k(2) (2012), and Regulation 3.12, 17 C.F.R. § 3.12 (2013)**

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

63. CEA Section 4k(2), 7 U.S.C. § 6k(2) (2012), prohibits persons from being associated with a commodity pool operator 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 participation in a commodity pool, or (ii) the supervision of any person or persons so engaged, unless such person is registered. This section further prohibits commodity pool operators from permitting such

persons to become or remain associated with the commodity pool operator if the commodity pool operator knew or should have known that such persons were not so registered.

64. Regulation 3.12, 17 C.F.R. § 3.12 (2013), prohibits a person from being associated with a commodity pool operator unless the person is registered as an associated person of the sponsoring commodity pool operator.

65. As set forth above, Seward and Kaziyev solicited funds for participation in a commodity pool operated by SKMC and/or supervised others so engaged. Because Seward and Kaziyev were not registered as associated persons of SKMC, Seward and Kaziyev violated CEA Section 4k(2), 7 U.S.C. § 6k(2) (2012), and Regulation 3.12, 17 C.F.R. § 3.12 (2013).

66. As set forth above, SKMC, by and through its employees, agents, and control persons, permitted Seward and Kaziyev to become or remain associated with SKMC knowing that they were not registered as associated persons, in violation of CEA Section 4k(2), 7 U.S.C. § 6k(2) (2012).

## **COUNT FIVE**

### **PROHIBITED ACTIVITIES BY A COMMODITY POOL OPERATOR Violation of Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2013)**

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

68. Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2013), provides that “a commodity pool operator must operate its pool as an entity cognizable as a legal entity separate from that of the pool operator.”

69. During the Relevant Period, SKMC, acting by and through Seward and Kaziyev, among others, violated Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2013), by failing to operate the SKMC pool as an entity separate from SKMC, the pool operator. Instead, Defendants referred to

the pool operator and the pool by the same name and made no distinction as to which of Defendants' bank and trading accounts belonged to SKMC and which belonged to the SKMC pool.

70. At all times relevant to this Complaint, Seward and Kaziyev controlled SKMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, SKMC's conduct alleged in this count. Therefore, Seward and Kaziyev are liable for SKMC's violations of Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2013), pursuant to CEA Section 13(b), 7 U.S.C. § 13c(b) (2012).

71. Each instance of SKMC failing to operate the SKMC pool as an entity separate and apart from SKMC, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2013).

## **VI. RELIEF REQUESTED**

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

A. An order finding Defendants liable for violating CEA Sections 4b(a)(1)(A)-(C), 4k(2), 4m(1), and 4o(1), 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6k(2), 6m(1), and 6o(1) (2012), and Regulations 3.12, 4.20(a), and 4.41(a), 17 C.F.R. §§ 3.12, 4.20(a), and 4.41(a) (2013);

B. An order of permanent injunction prohibiting Defendants, and any other person or entity associated with Defendants, from engaging in conduct that violates CEA Sections 4b(a)(1)(A)-(C), 4k(2), 4m(1), and 4o(1), 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6k(2), 6m(1), and 6o(1) (2012), and Regulations 3.12, 4.20(a), and 4.41(a), 17 C.F.R. §§ 3.12, 4.20(a), and 4.41(a) (2013);

C. An order of permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation, including any successor thereof, from, directly or indirectly,

1. trading on or subject to the rules of any registered entity (as that term is defined in CEA Section 1a, 7 U.S.C. § 1a (2012));
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) (2013) (commodity options), swaps (as that term is defined in CEA Section 1a(47), 7 U.S.C. § 1a(47) (2012), and as further defined by Regulation 1.3, 17 C.F.R. § 1.3 (2012)), security futures products, and/or foreign currency (as described in CEA Sections 2(c)(2)(B) and 2(c)(2)(C)(i), 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (2012) (forex contracts)) 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 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) (2013);
7. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2013)), agent or 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) (2013); and
8. engaging in any business activities related to commodity futures, options on commodity futures, commodity options, swaps, security futures products, and/or forex contracts;

D. An order directing Defendants and Relief Defendant, as well as any successors to any Defendant or Relief Defendant, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the CEA and/or the Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

E. An order directing Defendants, as well as any successors to any Defendant, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between, with, or among Defendants and any of the pool participants whose funds were received by Defendants as a result of the acts and practices which constituted violations of the CEA and/or the Regulations, as described herein;

F. An order requiring Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive, from the acts or practices that constitute violations of the CEA and/or the Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

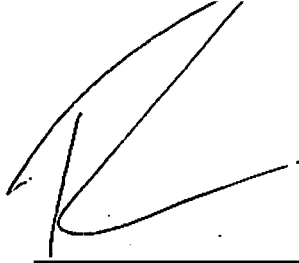
G. An order requiring Defendants to pay civil monetary penalties, to be assessed by the Court, in amounts of not more than the higher of: (1) triple the monetary gain to each Defendant for each violation committed, or (2) \$140,000 for each violation committed;

H. An order requiring Defendants to pay costs and fees, as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2012); and

I. An order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: March 24, 2014

Respectfully submitted,



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