IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. ALVIN GUY WILKINSON; CHICAGO INDEX PARTNERS, L.P.; and WILKINSON FINANCIAL OPPORTUNITY FUND, L.P., Defendants.	)	**CIVIL ACTION NO:** **Hon._____**

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

The United States Commodity Futures Trading Commission ("Commission" or "CFTC"), by and through its attorneys, hereby alleges as follows:

SUMMARY

1. Between July 1999 and the present (the "Relevant Time"), Defendants Alvin Guy Wilkinson ("Wilkinson") and his entities Chicago Index Partners, L.P. ("CIP") and Wilkinson Financial Opportunity Fund, L.P. ("WFOF"), fraudulently solicited and accepted at least $6.9 million from at least 30 individuals for the purpose of trading in a portfolio of financial instruments, including securities, options on securities, and futures contracts, in the form of limited partnership interests in pooled investments.

2. As part of his scheme, Wilkinson willfully or recklessly made misrepresentations of material fact to participants of WFOF and CIP concerning the likelihood of profit and risk of

loss of participating in the WFOF and CIP commodity pools. Wilkinson also directed his accountant to issue false Schedule K-1 Forms (IRS Form 1065) that misrepresented the profitability and value of participants' respective interests in WFOF and CIP. However, instead of trading participants' monies as he represented he would, Wilkinson misappropriated at least $5.2 million, and he returned at least $1.7 million to participants of WFOF and CIP as return of capital and purported profits in the manner of a Ponzi scheme.

3. When participants requested to withdraw from WFOF and CIP, Wilkinson ignored their demands, engaged in delay tactics, and lied about conditions that purportedly prevented him from making disbursements. Wilkinson omitted to tell investors that their partnership interests had little or no value, and that he had misappropriated their investments.

4. By soliciting and accepting money from at least 30 individuals to engage in trading of commodity interests (including security futures products), Defendants acted as Commodity Pool Operators ("CPOs") or Associated Persons ("APs") of CPOs without being registered with the Commission as required by law.

5. Furthermore, in May 2016, a participant complained about Wilkinson to National Futures Association ("NFA"), the self-regulatory organization for the U.S. derivatives industry. NFA investigators commenced an investigation and exam of Wilkinson in May 2016. During the investigation, Wilkinson produced to NFA financial information for WFOF and CIP that reflected that nearly all of the funds' assets were ultimately tied to a "Note Receivable" purportedly worth more than $12 million, although no such note exists. Accordingly, by this conduct, Wilkinson provided false, fictitious, and fraudulent statements to NFA, a designated and registered futures association.

6. By engaging in this conduct and the conduct further described herein, Defendants engaged, are engaging, or are about to engage in acts and practices that violated Section 4b(a)(2)(i)-(iii) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006) for conduct before June 18, 2008, and Section 4b(a)(1)(A)-(C) of the Act, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008, §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008) and by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 21, 2010), codified at 7 U.S.C. § 6b(a)(1)(A)-(C) (2012), for conduct occurring on or after June 18, 2008, and that violate Sections 4*o*(1), 6(c)(1), 4m(1), 4k(2), and 9(a)(4) of the Act, 7 U.S.C. §§ 6*o*(1), 9(1), 6m(1), 6(k)(2), and 13(a)(4) (2012), and Commission Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2014).

7. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-l (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.

8. 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

9. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-l(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.

10. 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

11. 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).

12. Defendant **Alvin G. Wilkinson** ("Wilkinson") is a resident of San Juan, Puerto Rico. Wilkinson was registered with the CFTC as an AP of Apercu International PR LLC ("Apercu"), a Commodity Trading Adviser ("CTA") registered with the CFTC, from February 2015 until June 1, 2016, when both registrations were suspended in connection with an NFA regulatory disciplinary action.

13. Defendant **Wilkinson Financial Opportunity Fund, L.P.** ("WFOF") is a limited partnership formed pursuant to the laws of Illinois in July 1999. WFOF's principal place of business is located in Sharon, Connecticut. The general partner of WFOF is Wilkinson Management, LLC, an Illinois limited liability, company whose sole member is CIT Management Group, Inc., which in turn is wholly owned by Wilkinson. WFOF has never been registered with the Commission in any capacity.

14. Defendant **Chicago Index Partners, L.P.** ("CIP") is a limited partnership formed pursuant to the laws of Illinois in January 2005. CIP's principal place of business is located in Sharon, Connecticut. The general partner of CIP is CIP Management, LLC, an Illinois limited liability company whose sole member is Wilkinson. CIP has never been registered with the Commission in any capacity.

OTHER RELEVANT ENTITY

15. The National Futures Association ("NFA") is a futures association registered with the CFTC pursuant to Section 17 of the Act, 7 U.S.C. § 21 (2012). NFA is a private corporation that serves as an industry self-regulatory organization. Its membership is composed of futures commission merchants, commodity pool operators, commodity trading advisors, introducing brokers and other futures professionals registered with the CFTC. NFA is responsible, under CFTC oversight, for certain aspects of the regulation of these futures entities and their associated persons. NFA focuses primarily on the qualifications and proficiency, financial condition, retail sales practices, and business conduct of its members.

STATUTORY BACKGROUND

16. 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.

17. 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 pool ("e.g., a limited partner)."

19. An "Associated Person" or "AP" is defined in Section 4k of the Act, 7 U.S.C. § 6k (2012) and Commission Regulation 1.3(aa)(1) and (2), 17 C.F.R. § 1.3(aa)(1) and (2), with certain qualifications, as a natural person associated with any CTA, CPO or FCM 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.

THE FRAUD

A. Solicitation of Pool Participants

20. Wilkinson is a former member of the Chicago Board Options Exchange ("CBOE"), who served in leadership capacities on CBOE committees and on the CBOE's board of directors. Wilkinson has more than 25 years of experience trading options, futures, and other financial products at the CBOE, the Chicago Mercantile Exchange ("CME"), and at other exchanges.

21. Wilkinson established WFOF in approximately July of 1999 and began soliciting and accepting funds for WFOF shortly thereafter.

22. Wilkinson gave prospective participants a "Confidential Private Placement Memorandum" (the "WFOF PPM") that described the investment and set out the investment terms. The WFOF PPM described WFOF as a limited partnership "established for the purpose of purchasing, selling (including 'short sales') and trading in a portfolio of securities." The

WFOF PPM stated that the partnership may trade "equity securities and options thereon, capital stock, government securities and options thereon, government agency securities, money market instruments, foreign exchange, Eurodollar deposits, certificates of deposit, foreign securities, warrants, rights, bonds, notes, financial instruments, mutual funds, futures and options thereon and other securities of any kind and options on national or international securities exchanges and in the 'over-the-counter market.'"

23. The "Business" section of the WFOF PPM stated that "[t]he Partnership will purchase, sell (including short sales) and trade in a portfolio of securities of such types and descriptions as the General Partner deems appropriate." According to the WFOF PPM, the objectives of the partnership included generating income from trading in these instruments.

24. Exhibit A to the WFOF PPM is an "Agreement of Limited Partnership" for WFOF. The Agreement (Article IV) echoed the statements in the PPM regarding the purpose of the partnership.

25. The WFOF PPM and the Agreement of Limited Partnership for WFOF provided that limited partners who invested in WFOF had the right to withdraw all or part of their limited partnership interests at of the close of business on the last trading day of each fiscal quarter by giving written notice to the general partner not less than 90 days prior to such date. Withdrawals were not permitted within two years of each limited partner's initial investment.

26. Wilkinson established CIP in approximately January 2005, and began soliciting and accepting funds for CIP shortly thereafter. Wilkinson solicited investments for CIP using a Private Placement Memorandum and Agreement of Limited Partnership that contained many terms materially similar to those used in WFOF documentation. However, the governing

documents for CIP permitted limited partners to withdraw their interests on the last trading day of any month, but required 180-days' notice.

27. Wilkinson solicited relatives, friends, business associates, and others to invest in WFOF and CIP by various means, including in-person communication, word-of-mouth, and e-mail.

28. Wilkinson told prospective and actual participants that WFOF and CIP were akin to hedge funds, and that capital contributions would be used to fund trading. Wilkinson represented that WFOF's and CIP's trading strategy would entail trading in both options and futures, mainly in S&P 500 Index Options (traded at the CBOE) and in futures contracts on the S&P 500 (traded at the CME). Wilkinson represented that the funds' strategy would be based on identifying the mispricing of options and futures based on analysis of volatility in the market. Wilkinson described the strategy as being "market neutral," meaning that Wilkinson claimed that he could generate profits from periods of market volatility, regardless of which way the market was moving.

29. Wilkinson told prospective participants that his trading strategy could generate significant profits. A version of the WFOF PPM distributed in 2003 included a chart that reported that WFOF generated a 104.9% return in 2002, which the PPM stated was the partnership's "first full year of trading."

30. During his solicitations of participants, Wilkinson knowingly or recklessly made material misrepresentations about WFOF and CIP. Wilkinson falsely told participants that the funds they invested would be used to trade options on securities and futures contracts, when in fact Wilkinson misappropriated all or a significant portion of the funds. Wilkinson told one participant that he would "guarantee" profits of at least 10% in the first year, and told other

participants to expect 20% to 30% annual returns from his trading, when in fact Wilkinson did not use participants' investments to trade and knew that WFOF and CIP would produce no actual returns. Wilkinson also falsely told at least one participant that investing in WFOF was risk free in that he would personally guarantee that she would not lose her investment.

31. During the Relevant Time, Wilkinson solicited and received at least $4,115,500 from at least 28 participants located in this District, Connecticut, Maryland North Carolina, and other places, for limited partnership interests in WFOF. Participants in WFOF included Wilkinson's family members, professional associates from the CBOE, the owner of a restaurant where Wilkinson often dined, family members, long-time friends of Wilkinson and his wife, and a teacher at Wilkinson's child's school.

32. Between January 2005 and at least 2014, Wilkinson solicited and received at least $2,875,000 from at least six participants located in this District, as well as Connecticut, New York, and other places, for limited partnership interests in CIP. Participants in CIP included Wilkinson's dentist and an insurance agent with whom Wilkinson had done business.

33. Wilkinson required participants to sign a subscription agreement and complete a suitability questionnaire when initiating their investments into either fund.

B. Failure to Trade and Misappropriation of Participant Funds

34. Contrary to the terms of the PPMs and Agreements of Limited Partnership for WFOF and CIP, Wilkinson did not trade the funds that participants invested in WFOF and CIP. Instead, Wilkinson misappropriated the funds that participants invested.

35. Further, during the Relevant Time, Wilkinson returned at least $1.7 million to participants of WFOF and CIP as return of capital and purported profits in the manner of a Ponzi scheme,

36. While Wilkinson's fraudulent solicitations occurred over the course of the Relevant Time, he fraudulently solicited and accepted at least $1,250,000 for WFOF and CIP within the last five years. Recently, within the past sixty days or less, Wilkinson has solicited funds for investment in Apercu.

C. Issuance of False Schedule K-1 Forms and Other False Statements

37. Despite the misappropriation of funds described above, Wilkinson knowingly or recklessly represented to pool participants that their funds had been invested in the volatility strategy that he had described and were retaining their value and generating profits.

38. During the Relevant Time, Wilkinson knowingly or recklessly directed his accountant to issue Schedule K-1 forms to the limited partners of WFOF and CIP that falsely reported the value of participants' respective shares in the funds, and falsely reported that the funds were increasing in value year over year when in fact they were not.

39. Participants received the Schedule K-1s directly from Wilkinson's accountant. Participants received these Schedule K-1s every year in which they were invested in the funds.

40. For example, a participant in Chicago who had invested $250,000 in WFOF in November 2004 received Schedule K-1s for years 2009-2014 that reflected the following information:

Year	YE Ending Capital Acct.	Income
2009	$293,749	$2,777
2010	$297,125	$3,376
2011	$300,773	$3,648
2012	$311,661	$10,888
2013	$325,901	$14,240
2014	$331,422	$5,644

41. Participants who reviewed their Schedule K-1s were intended to believe, and did believe, that their capital contributions to WFOF and CIP had not only held their value, but grew at a rate of 1 to 5 percent per year.

42. These Schedule K-1 forms were false because WFOF and CIP had no trading positions, cash, or other assets sufficient to support the values disclosed in the forms.

43. For example, WFOF reported in its 2014 IRS Form 1065, U.S. Return of Partnership Income, that it held total assets of $13,198,536 on December 31, 2014. Of those total assets, $12,968,249 was reportedly an "Investment in Wilkinson Mgmt."

44. In turn, Wilkinson Management LLC's only significant asset was a purported promissory note issued by Australian financial firm Pengana Capital. A balance sheet for Wilkinson Management LLC dated December 31, 2014 lists the following assets:

Cash – Checking:	$198.00
Pengana Note Receivable:	$12,745,981.56
Interest Receivable – Pengana:	$223,054.68
Investment – Wilkinson Opp Fd	$164,742.73
Total Assets:	**$13,133,976.97**

45. However, as set forth more fully below, no note from Pengana to any of Wilkinson's entities (including Wilkinson Management LLC, WFOF, CIP, or CIP Management, LLC) ever existed. Accordingly, as of December 31, 2014, WFOF actually had assets worth close to nothing. A bank account statement for WFOF's account at BMO Harris Bank (xxxxxx6506) reflected a balance of $995.00 on December 31, 2014.

46. Similarly, Schedule K-1s issues to participants in CIP reported millions of dollars of value when in fact CIP had no assets of any significant value.

47. CIP reported in its 2014 IRS Form 1065, U.S. Return of Partnership Income, that it held total assets of $2,881,834 on December 31, 2014. Of those total assets, $ 2,881,771 was

listed as "Investment in Wilkinson Financial Opportunity Fd." As set forth above, WFOF actually had little or no value, due to the fact that its principal asset – an investment in Wilkinson Management LLC – was worthless.

48. In addition to the false Schedule K-1s, Wilkinson either knowingly or recklessly issued other false written statements to participants. For example, on October 22, 2014, Wilkinson wrote and mailed a letter to a New York investor who had invested a total of $350,000 in CIP in 2011 and 2014. Wilkinson indicated that he was responding to "some questions you had regarding this investment." Wilkinson wrote: "Your current investment as of today is between $400,000.00 and $425,000.00. [T]his number reflects your end year 2013 K-1 balance ($317,198) plus a $75,000.00 contribution you made during the 1st Quarter of 2014 and the 'projected' earnings to date." As explained above, these statements were false, as CIP held no or *de minimis* assets as of the time Wilkinson made that representation.

D. Misrepresentations Concerning Status of WFOF and CIP

49. Beginning by approximately 2009 or 2010, Wilkinson disclosed to certain participants that he was no longer using WFOF and CIP funds to trade. Wilkinson said that he had started a new business relationship with an Australian financial firm called Pengana Capital, that he was using his volatility trading strategy to trade Pengana's clients' money, and that his arrangement with Pengana prevented him from trading for U.S. clients, such as the limited partners of WFOF and CIP.

50. Despite acknowledging to one group of investors that he was no longer trading for U.S. clients, and that his funds were generating no returns, Wilkinson continued to solicit funds for CIP and WFOF. For example, one participant located in this District invested $775,000 in CIP in November 2011 after Wilkinson told him he was running a profitable hedge fund that would produce 20-30% returns through trading.

51. Similarly, the participant located in New York invested $275,000 in February 2011 after Wilkinson guaranteed him returns of at least 10%, with returns up to 30% per year possible. In 2014, years after Wilkinson admitted to certain participants that he was not trading participants funds, Wilkinson told the New York participant that if he invested an additional $75,000 in CIP, his rate of return would increase. The New York participant contributed an additional $75,000 in February 2014.

52. When customers attempted to withdraw their initial capital or reported profits from WFOF or CIP, Wilkinson told them not to withdraw their money, because the funds were performing well and participants would earn greater returns by reinvesting their profits. For example, in 2012, Wilkinson told one participant located in this District not to withdraw the profits reported in the participant's K-1s from CIP, as leaving them in the fund would generate even more profits. These statements were false because when Wilkinson made these representations about the profitability of the funds, he was not trading and the funds were producing no returns.

53. During the relevant time period, Wilkinson also refused to permit participants to withdraw their limited partnership interests and return their capital, in direct contravention of the terms of the governing documents of WFOF and CIP. When participants demanded their capital, Wilkinson lied, telling participants that their money was safe but that he was restricted from returning their capital until certain conditions were met, such as his launching a new fund, a participant executing a release or other legal agreement, or similar event.

54. For example, in 2012, a participant located in this District requested to withdraw some of his investment, but did not receive it. Over the next two years, the participant demanded to withdraw his entire investment numerous times, but Wilkinson refused to return it.

Subsequently, Wilkinson told the participant that he could not release his investment until the participant negotiated a purchase and security agreement with Wilkinson. Eventually, the participant completed the agreement with Wilkinson, who agreed to pay him $1,050,000 by January 2016. Wilkinson still refused to return the participant's investment, prompting him to notify authorities.

55. Starting in approximately 2011 or 2012, Wilkinson told certain participants that the equity of the funds (approximately $12 million) had been converted to a "promissory note" held by Pengana (the "Pengana Note"). Wilkinson said that the Pengana Note guaranteed partners of WFOF and CIP interest payments of 1-2 percent per year on the value of their equity. Wilkinson said that the terms of the note prevented him from making any disbursements or returning capital to investors in WFOF or CIP until certain conditions were met.

56. Despite numerous demands by a group of participants, Wilkinson refused to give participants a copy of the Pengana Note or to disclose its material terms. Wilkinson told a Chicago-based participant and a North Carolina-based participant that the original signed Pengana Note was locked in a safe deposit box in Australia, along with a copy of a life insurance policy in the exact amount of the note, to cover the risk of his death.

57. All of Wilkinson's statements concerning the purported Pengana Note were false, as no such note ever existed.

58. In May of 2016, the two participants each e-mailed Pengana to ask about the existence of the Pengana Note. Later that month, they each received a response from the General Counsel of Pengana, who wrote: "Pengana has no knowledge of any such note and therefore we are not able to assist you in this matter."

59. On June 14, 2016, the general counsel of Pengana and the Director & Chief Operating Officer of Pengana, confirmed to CFTC Senior Futures Trading Investigator Heather Dasso that Pengana has not issued any note, in any amount, to Wilkinson or any of his entities, including Wilkinson Management LLC, WFOF, CIP, or CIP Management, LLC.

E. Misrepresentations to NFA

60. In May 2016, NFA commenced an examination and investigation of Wilkinson and Apercu after receiving a phone call from a participant, who represented that he invested $775,000 in an investment vehicle that Wilkinson operated, but had been unable to obtain the return of his funds.

61. As part of the exam and investigation, NFA requested certain documents and information from Apercu and Wilkinson. NFA also met with Wilkinson on May 25, 2016, and spoke to him via telephone on June 1, 2016.

62. On June 1, 2016, NFA issued a Member Responsibility Action ("MRA") against Apercu and an Associate Responsibility Action ("ARA") against Wilkinson (the "MRA/ARA"). NFA issued the MRA/ARA because of Apercu and Wilkinson's failure to cooperate with NFA during the exam and investigation by not producing documents and information that NFA requested. The MRA/ARA also reflected that NFA was also concerned of the possibility that Wilkinson had been operating CIP as an illegal commodity pool without being registered with the CFTC as a commodity pool operator or qualifying for an exemption from registration as required, and that Wilkinson may have misappropriated customer funds.

63. After issuing the MRA/ARA, NFA received some documents from Wilkinson on June 3 and 6, 2016. Some of the documents consisted of past financial records for CIP and WFOF.

64. Although Wilkinson had previously told the exam team that Wilkinson Management, LLC had ceased operations in 2007, Wilkinson's production included a Balance Sheet as of December 31, 2013 for Wilkinson Management, LLC. The Balance Sheet contains an entry, "Pengana Note Receivable", under the heading, "Other Assets", with a corresponding amount of $12,745,981.56.

65. The tax returns and balance sheets that Wilkinson produced to NFA on June 3 and 6, 2016 were false, fictitious, and fraudulent statements, as the values reported in each of them were premised on the existence of the Pengana Note, which did not exist.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS

COUNT I

FRAUD BY MISAPROPRIATION AND MISREPRESENTATIONS VIOLATIONS OF SECTIONS 4b(a)(1)(A) and (C) OF THE ACT Against All Defendants

66. The allegations set forth in paragraphs 1 through 65 are re-alleged and incorporated herein by reference.

67. Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006) for conduct before June 18, 2008, and Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C) (2012) for conduct on or after June 18, 2008, 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 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 contract for such other person. [1]

[1] Section 4b of Act was amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008, §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008). The

68. As set forth above, since at least July 1999, Defendants willfully cheated, defrauded or deceived, and/or attempted to cheat, defraud or deceive participants in CIP and WFOF by, among other things:

a. misappropriating participants' funds; and

b. making material misrepresentations and omitting material facts to prospective and actual participants, including that:

i. participant funds would be used to trade a portfolio of financial instruments, including securities, options, and futures contracts;

ii. investing in WFOF was a "no risk" investment;

iii. pool participants were guaranteed to earn profits of at least 10%, or to expect 20% to 30% annual returns, when Defendants did not use participants' investments to trade and had no basis for making these statements;

iv. participants could withdraw their funds at any time after providing either 90 or 180-days' notice; and

v. participants retained their equity in WFOF and CIP, which was invested in a promissory note held by Pengana.

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

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objective of the revision was to "clarify that the CEA gives the Commission the authority to bring fraud actions in off-exchange 'principal-to-principal' futures transactions." H.R. REP. NO. 110-627, at 981 (2008) (Conf. Rep.). While the 2008 amendment did not change the Act's prohibition on misconduct such as that at issue here, it reorganized Section 4b so that similar misconduct occurring on or after June 18, 2008 would be in violation of Sections 4b(a)(2)(A), (B) and (C) of the Act, as amended. Section 4b was also amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 21, 2010), but the amendments did not change the Act's prohibition on misconduct such as that at issue here.

70. Wilkinson's acts, omissions and failures, as described in this Count, were committed within the scope of his employment or office with CIP and WFOF. Therefore, CIP and WFOF are liable for his acts, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2013).

71. During the Relevant Time, Wilkinson directly or indirectly controlled CIP and WFOF, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting WFOF's and CIP's violations described in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Wilkinson is therefore liable for CIP's and WFOF's violations described in this Count to the same extent as CIP and WFOF.

72. Each misappropriation and material misrepresentation or omission, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A) and (C) (2012) and Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006) for conduct before June 18, 2008.

COUNT II

FRAUD BY FALSE STATEMENTS
VIOLATIONS OF SECTIONS 4b(a)(1)(B) OF THE ACT
Against All Defendants

73. The allegations set forth in paragraphs 1 through 65 are re-alleged and incorporated herein by reference.

74. Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006) for conduct before June 18, 2008, and Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b(a)(1)(B) (2012) for conduct on or after June 18, 2008, 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.[2]

75. From at least July 1999, Defendants violated Section 4b(a)(1)(B) of the Act by causing false Schedule K-1s to be issued to participants in CIP and WFOF that reflected non-existent equity and income.

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

77. Wilkinson's acts, omissions and failures, as described in this Count, were committed within the scope of his employment or office with CIP and WFOF. Therefore, CIP and WFOF are liable for his acts, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2013).

78. During the Relevant Time, Wilkinson directly or indirectly controlled CIP and WFOF, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting WFOF's and CIP's violations described in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Wilkinson is therefore liable for CIP's and WFOF's violations described in this Count to the same extent as CIP and WFOF.

79. 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, 7 U.S.C. § 6b(a)(1)(B) (2012) and Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006) for conduct before June 18, 2008.

[2] *See supra* footnote 1.

COUNT III

FRAUD BY DECEPTIVE DEVICE OR CONTRIVANCE VIOLATIONS OF SECTION 6(c)(1) OF THE ACT AND REGULATION 180.1(a) Against All Defendants

80. Paragraphs 1 through 65 are realleged and incorporated herein by reference.

81. 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."

82. 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."

83. From August 15, 2011 (the effective date of the above provision of the Act and Regulation 180.1(a)), Defendants 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;

b. making material misrepresentations and omitting material facts to prospective and actual participants, as described in Paragraph 68 above; and

c. causing false Schedule K-1s to be issued to participants in CIP and WFOF that reflected non-existent equity and income.

84. Defendants 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.

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

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

87. Wilkinson's acts, omissions and failures, as described in this Count, were committed within the scope of his employment or office with CIP and WFOF. Therefore, CIP and WFOF are liable for his acts, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2013).

88. During the Relevant Time, Wilkinson directly or indirectly controlled CIP and WFOF, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting WFOF's and CIP's violations described in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Wilkinson is therefore liable for CIP's and WFOF's violations described in this Count to the same extent as CIP and WFOF.

89. 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 IV

FRAUD BY A CPO
VIOLATIONS OF SECTION 4*o*(1)(A), (B) OF THE ACT
Against All Defendants

90. The allegations set forth in paragraphs 1 through 65 are re-alleged and incorporated herein by reference.

91. Section 4o(1) of the Act, 7 U.S.C. § 6*o*(1) (2012), prohibits any CPO or AP of a 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.

92. During the Relevant Time, WFOF and CIP each acted as a CPO in that they 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.

93. During the Relevant Time, Wilkinson acted as an AP of WFOF and CIP by soliciting funds for the pool and handling participant monies while being associated with WFOF and CIP as a partner, officer, employee, consultant, or agent (or person occupying a similar status or performing similar functions).

94. As set forth above, Wilkinson, while acting as an AP of a CPO, and WFOF and CIP, while acting as CPOs, defrauded and deceived participants of WFOF and CIP using the mails or any other means of interstate commerce in violation of Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) (2012), by among other things:

a. misappropriating participants' funds;

b. making material misrepresentations and omitting material facts to prospective and actual participants, as described in Paragraph 68 above; and

c. causing false Schedule K-1s to be issued to participants in CIP and WFOF that reflected non-existent equity and income.

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

96. Wilkinson's acts, omissions and failures, as described in this Count, were committed within the scope of his employment or office with CIP and WFOF. Therefore, CIP and WFOF are liable for his acts, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2013).

97. During the Relevant Time, Wilkinson directly or indirectly controlled CIP and WFOF, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting WFOF's and CIP's violations described in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Wilkinson is therefore liable for CIP's and WFOF's violations described in this Count to the same extent as CIP and WFOF.

98. Each fraudulent or deceptive act, including without limitation those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1)(A), (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2012).

COUNT V

FAILURE TO REGISTER AS A CPO.
VIOLATIONS OF SECTION 4m(1) OF THE ACT
Against WFOF and CIP

99. Paragraphs 1 through 65 are realleged and incorporated herein by reference.

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

101. During the Relevant Time, WFOF, and CIP engaged in activities as CPOs without the benefit of registration as a CPO, and in connection therewith used the mails or other means or instrumentalities of interstate commerce, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

102. Each use of the mails or any means or instrumentality of interstate commerce in connection with Defendants' business as CPOs 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, 7 U.S.C. § 6m(1).

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

103. Paragraphs 1 through 65 are realleged and incorporated herein by reference.

104. With certain exemptions and exclusions not applicable here, it is unlawful for a person to be associated with a CPO as a partner, officer, employee, consultant, or agent, or a person occupying a similar status or performing similar functions, in any capacity that involves the solicitation of funds, securities, or property for participation in a commodity pool unless registered with the Commission as an AP of the CPO pursuant to Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012).

105. 68. Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012), also makes it unlawful for a CPO to permit such a person to become or remain associated with the CPO in any such capacity if the CPO knew or should have known that the person was not registered as an AP.

106. Wilkinson violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2)(2006), in that he acted as an AP of WFOF and CIP without the benefit of registration as an AP of a CPO.

107. WFOF and CIP violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), in that, acting as a CPO, they allowed Wilkinson to act as its AP when they knew or should have known that Wilkinson was not registered as an AP.

108. Each act by Wilkinson of soliciting funds, securities, or property for participation in a commodity pool while being associated with WFOF and CIP as a partner, officer, employee, consultant, or agent without being registered as an AP of a CPO, and each act by WFOF and CIP of allowing Wilkinson to be associated with them in such a capacity when they knew or should have known Wilkinson was not registered as an AP, is alleged as a separate and distinct violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2)(2006).

COUNT VII

MISREPRESENTATIONS TO AND OMISSIONS FROM NFA
VIOLATIONS OF SECTION 9(a)(4) OF THE ACT
Against Alvin G. Wilkinson

109. Paragraphs 1 through 65 are realleged and incorporated herein by reference.

110. 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, or to make any false, fictitious, or fraudulent statements or representations, or to 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 and acting in furtherance of its official duties under the Act.

111. Wilkinson violated Section 9(a)(4) of the Act by willfully concealing material facts and/or making false, fictitious, or fraudulent statements or representations to NFA, a futures association registered under the Act, in connection with an investigation and exam that NFA conducted of Wilkinson and Apercu in May and June 2016 in furtherance of NFA's official duties under the Act.

112. Specifically, during the investigation, Wilkinson produced to NFA financial documentation for WFOF, CIP, and Wilkinson Management, LLC that reported and/or were premised on the existence of the Pengana Note, which did not exist.

113. Each act of willful concealment and/or false, fictitious, or fraudulent statement made to NFA, a futures association registered under the Act, in connection with NFA's May and June 2016 investigation and exam of Wilkinson and Apercu conducted in furtherance of NFA's official duties under the Act, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4).

RELIEF REQUESTED

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

a) An order finding that Defendants violated Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006) for conduct before June 18, 2008, Sections 4b(a)(1)(A) and (C), 4b(a)(1)(B), 4*o*(1), 6(c)(1), 4m(1), 4k(2), and 9(a)(4) of the Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C), 6(b)(1)(1)(B), 6*o*(1), 9(1), 6m(1), 6(k)(2), and 13(a)(4) (2012), and Commission Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2014).

b) 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) engaging in conduct in violation of Sections 4b(a)(1)(A) and (C), 4b(a)(1)(B), 4*o*(1), 6(c)(1), 4m(1), 4k(2), and 9(a)(4) of the Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C), 6(b)(1)(1)(B), 6*o*(1), 9(1), 6m(1), 6(k)(2), and 13(a)(4) (2012), and Commission Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2014);

(ii) trading on or subject to the rules of any registered entity (as that term is defined in Section la of the Act, 7 U.S.C. § la (2012));

(iii) 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 Defendants' own accounts or for any account in which they have a direct or indirect interest;

(iv) having any commodity interests traded on Defendants' behalf;

(v) 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;

(vi) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;

(vii) 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);

(viii) 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);

c) An order requiring Defendants and any third party transferee and/or successors thereof, 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 profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment and post-judgment interest;

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 make 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-judgment interest;

c) 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, plus post-judgment interest;

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

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

Dated: June 28, 2016

Respectfully submitted,

/s/ Susan Gradman

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