

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CASE No. \_\_\_\_\_**

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<b>U.S. COMMODITY FUTURES TRADING COMMISSION,</b>	)
	)
<b>Plaintiff,</b>	)
	)
<b>v.</b>	)
	)
<b>CARL DAVID WRIGHT,</b>	)
	)
<b>Defendant.</b>	)
	)
	)
	)

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

**Summary**

1. From at least August 2008 and continuing through March 2013 (the “Relevant Period”), Defendant Carl David Wright (“Wright”) defrauded members of the public in connection with the operation of a commodity pool named “Commodity Investment Group” (the “Pool”).

2. During the Relevant Period, Wright fraudulently solicited and accepted funds from Pool participants by, among other things, promising to profitably trade commodity futures contracts. Wright provided participants with promissory notes with the stated rate of interest varying between 10 and 30 percent, depending on the participant, over a short, fixed period.

3. Wright succeeded in soliciting and pooling over \$1 million from at least 16 Pool participants. Wright did not trade most of the funds he received from Pool participants. Instead,

Wright misappropriated most of these funds to pay purported returns to participants and for personal uses.

4. In addition, Wright operated the Pool without being properly registered as a Commodity Pool Operator (“CPO”), failed to operate the Pool as a legal entity separate from that of the CPO, and commingled funds of participants with his own funds and the funds of other persons.

5. By virtue of this conduct and the conduct further described herein, Wright has engaged, is engaging, or is about to engage in acts and practices in violation of Section 4b(a)(1)(A) and (C) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6b(a)(1)(A), (C) (Supp. II 2009), and Sections 4m(1) and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6m and 6o(1)(A), (B) (2006), and Commission Regulation (“Regulation”) 4.20(a)-(c), 17 C.F.R. § 4.20(a)-(c) (2012).<sup>1</sup>

6. Accordingly, pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (Supp. IV 2011), the Commodity Futures Trading Commission (“CFTC” or “Commission”) brings this action to permanently enjoin Wright’s unlawful acts and practices and to compel his compliance with the Act and Regulations. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and other such relief as the Court may deem necessary and appropriate.

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<sup>1</sup> All Sections of the Act that have been amended, in relevant part, 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), are cited as follows: “Section x of the Act, 7 U.S.C. § x (Supp. IV 2011).” All Sections of the Act that have been amended, in relevant part, by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (the “CRA”)), §§ 13102-13204, 122 Stat. 1651 (enacted June 18, 2008), but not by the Dodd-Frank Act, are cited as follows: “Section x of the Act, 7 U.S.C. § x (Supp. II 2009).” All Sections of the Act that were neither amended by the CRA nor Dodd-Frank Act in relevant part are cited as follows: “Section x of the Act, 7 U.S.C. § x (2006).”

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

### **Jurisdiction and Venue**

8. Section 6c of the Act, as amended, 7 U.S.C. §13a-1(a) (Supp. IV 2011) 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 any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

9. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. §13a-1(e) (Supp. IV 2011), because Wright is found in, inhabits, or transacts business in this District, or the acts and practices in violation of the Act occurred, are occurring, or are about to occur within this District, among other places.

### **Parties**

10. The 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, as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission's Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

11. Carl David Wright resides in Iron Station, North Carolina. He operated and offered participation interests to members of the general public in a commodity pool he called the Commodity Investment Group. Wright has never been registered with the Commission in any capacity.

### **Statutory Background**

12. A “commodity pool” is defined in Section 1a(10) of the Act, 7 U.S.C. § 1a(10) (Supp. IV 2011), and Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1) (2012), as any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity interests.

13. Prior to July 16, 2011, a CPO was defined in Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), as any firm or individual engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and that, 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 any commodity for future delivery on or subject to the rules of any contract market. Upon the effective date of Title VII of Dodd Frank on July 16, 2011, the definition of a CPO was expanded and re-designated in Section 1a(11) of the Act, 7 U.S.C. § 1a(11) (Supp. IV 2011).

14. A “participant” is defined in Regulation 4.10(c), 17 C.F.R. § 4.10(c) (2012), as any person who has any direct financial interest in a commodity pool.

### **Facts**

15. In early 2008, Wright, who is a teacher and is also the owner of a painting business, opened a futures trading account in his own name with a futures commission merchant (“FCM”) registered with the Commission. In his account application, Wright stated that his investment objective was to speculate and that no other person would have an interest in the account.

16. Beginning in or about August 2008, Wright began to solicit funds from friends and acquaintances. He told some individuals that the funds were loans for his painting business

or that the funds would be used to purchase gas stations. He told other individuals that their funds would be used to trade commodities.

17. Wright provided at least some of these individuals with documents entitled “Special Renewable Note Agreement” (“Notes”). At least some of these documents stated that the funds provided would be invested in “crude oil futures,” “grain futures,” or “currency futures.” These agreements confirmed the amount received from the participant and also specified that the participant would receive a specific repayment, which included a profit at a stated rate of interest varying between 10 and 30 percent. Most of these Notes had terms of no more than 2-6 months.

18. Wright told at least some of the participants that he was the managing partner of a commodity pool and that he would send their funds to be traded by a firm called “Commodity Investment Group,” which he described as “the smart ones up north.” Some of the Notes Wright provided to participants appeared to be printed on “Commodity Investment Group” letterhead, but, upon information and belief, Wright designed and printed those documents on his home computer. Wright signed the Notes as the “Managing Partner” of the Commodity Investment Group.

19. Regardless of what Wright told these individuals, he instructed all participants to make their checks payable to him personally and then deposited those funds into his personal banking account.

20. Wright did not transfer any funds to a firm named “Commodity Investment Group” and Wright is not the managing partner of any such firm.

21. Instead, Wright wired approximately \$200,000 of participant funds into his futures trading account, although he did not, in fact, use most of those funds to trade commodity

futures. Instead, Wright transferred approximately \$147,000 back out of his futures trading account to his bank account, often after holding the funds in the account for only a short period of time. Wright lost approximately \$60,000 in trading activities.

22. Wright used at least \$700,000 of the funds he received to pay back Pool participants in a manner of a Ponzi scheme. Wright also used at least \$300,000 of the funds to pay personal expenses.

23. Wright's statements to Pool participants were false because he knew that he was not trading the vast majority of the funds that he received, he knew that there was no firm called "Commodity Investment Group" to which he was transferring funds, he knew that he could not meet the terms of the promissory notes through legitimate investments, and he knew that he was misappropriating the majority of the funds he received to pay supposed returns to participants and to support his lifestyle.

24. Upon information and belief, Wright used the United States Postal Service, or other private or commercial carrier, to receive and make at least some of the payments to Pool participants.

25. On March 22, 2013, Wright was served with a search warrant by the United States Postal Inspector and the North Carolina Bureau of Investigation. At that time, Wright gave a statement in which he admitted, among other things, that he had solicited funds from friends and acquaintances, telling at least some of them that their investments would be used to trade commodities futures contracts, but that he had not used most of the funds to trade commodities futures, instead using the funds to pay supposed returns to his investors. Wright also admitted that he created the promissory Notes that he provided to some investors on his home computer and he claimed that no one else knew that the investments were fraudulent.

## **VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS**

### **Count One**

#### **Violations of Section 4b(a)(1)(A) and (C) of the Act Fraud by Misappropriation, Misrepresentation and Omission**

26. Paragraphs 1 through 25 are re-alleged and incorporated herein.
27. Under the Act, it is unlawful for any person (A) to cheat or defraud or attempt to cheat or defraud another person; or (C) willfully to deceive or attempt to deceive another person by any means whatsoever, in connection with any Commodity futures transaction. See Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (Supp. II 2009).
28. As set forth above, during the Relevant Period, Wright violated Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (Supp. II 2009) by, among other things, (a) misappropriating funds invested by Pool participants; (b) providing participants with Notes that promised a fixed return of 10-30%; (c) making material misrepresentations including, but not limited to, telling Pool participants that their funds would be used for commodities futures trading, when he knew that most of their funds would in fact be misappropriated; and (d) omitting to disclose that he was not registered with the Commission.
29. Wright engaged in the acts and practices described above knowingly or with reckless disregard for the truth.
30. Each misrepresentation or omission of material fact and act of misappropriation, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (Supp. II 2009).

## COUNT TWO

### **Violations of Section 4o(1) of the Act: Fraud by a CPO**

31. Paragraphs 1 through 25 are realleged and incorporated herein by reference.

32. Section 4o(1) of the Act, in relevant part, prohibits CPOs by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly to (A) employ any device, scheme or artifice to defraud any participant; or (B) engage in any transaction, practice or course of business that operates as a fraud or deceit upon any participant.

33. As set forth above, during the Relevant Period, Wright acted as CPO of the Pool by soliciting, accepting, or receiving funds from others while engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of, among other things, trading in futures.

34. Wright violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), in that he employed or is employing a device, scheme or artifice to defraud Pool participants and prospective Pool participants and/or engaged or is engaging in transactions, practices or a course of business which operated or operates as a fraud or deceit upon Pool participants or prospective Pool participants. These fraudulent acts include (a) making material misrepresentations including, but not limited to, telling Pool participants that their funds would be used for commodities futures trading, when he knew that most of their funds would in fact be misappropriated; (b) providing participants with Notes that promised a fixed return of 10-30% ; and (c) misappropriating funds invested by participants.

35. The use of the mails or other instrumentalities of interstate commerce included, but are not limited to (a) using the United States Postal Service or other private or commercial



interstate carrier to send payments to Pool participants, and (b) wiring funds to and from his commodity futures trading account, all in violation of Section 4o(1)(A) and (B) of the Act.

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

37. Each misrepresentation or omission of material fact and misappropriation of funds, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

### **COUNT THREE**

#### **Violation of Section 4m(1) of the Act: Acting as a CPO without Registration**

38. Paragraphs 1 through 25 are realleged and incorporated herein by reference.

39. Section 4m(1) of the Act, 7 U.S.C. § 6m(1), prohibits anyone acting as a CPO, unless registered, from making use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO.

40. As set forth above, during the Relevant Period, Wright used and continues to use the mail or instrumentalities of interstate commerce in or in connection with a commodity pool as a CPO while failing to register as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

41. Each use of the mails or any means or instrumentality of interstate commerce by Wright while acting as a CPO, 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) (2006).

## COUNT IV

### **Violation of Commission Regulation 4.20: Failure to Operate the Pool as a Separate Legal Entity, Accepting Funds in His Own Name, and Commingling of Pool Funds**

42. Paragraphs 1 through 25 are re-alleged and incorporated herein.

43. Regulation 4.20(a)-(b), 17 C.F.R. § 4.20(a)-(b) (2012), requires a CPO to operate its pool as a legal entity separate from that of the CPO and requires that all funds, securities or other properties received by a CPO from a pool participant for the purchase of an interest in the pool it operates be received in the pool's name. Regulation 4.20(c), 17 C.F.R. §4.20(c) prohibits a CPO from commingling the property of any pool it operates with the property of any other person.

44. Wright violated Regulation 4.20(a)-(b), 17 C.F.R. § 4.20(a)-(b) (2012), in that while acting as a CPO, he failed to operate the Pool as a legal entity separate from that of the CPO and accepted monies from Pool participants for the purchase of interests in the Pool in his own name.

45. Wright also violated Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2012), in that while acting as a CPO, he commingled funds he received from Pool participants by depositing such funds into his personal bank account containing his personal funds as well as funds of others received by him.

46. Each act of failing to operate the Pool as a legal entity separate from that of the CPO, accepting monies from Pool participants for the purchase of interests in the Pool in Wright's name, and commingling by Wright while as acting as a CPO during the relevant time period is alleged as a separate and distinct violation of Regulation 4.20.

## RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. §13a-1 (Supp. IV 2011), and pursuant to its own equitable powers, enter:

A. An order finding Wright violated: Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (Supp. II 2009); and Sections 4m and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6m and 6o(1)(A), (B) (2006), and Regulation 4.20, 17 C.F.R. § 4.20 (2012);

B. A statutory restraining order and an order for preliminary injunction pursuant to Section 6c(a) of the Act, as amended, 7 U.S.C. § 13a-1(a), restraining Defendant and all persons or entities insofar as they are acting in the capacity of Defendant's agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendant, who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Destroying, mutilating, concealing, altering, or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records, or other property of Defendant, wherever located, including all such records concerning Defendant's business operations;
2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records, or other property of Defendant, wherever located, including all such records concerning Defendant's business operations; and
3. Withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, assets, or other property, wherever situated, including, but not limited to, all funds, personal property, money, or securities held in safes or safety deposit boxes, and all funds on deposit in any financial institution, bank, or savings and loan account, whether domestic or foreign, held by, under the control of, or in the name of Defendant;

C. An order of preliminary and permanent injunction prohibiting Wright and any other persons or entities in active concert with him from engaging in conduct in violation of Sections 4b(a)(1)(A) and (C), 4m, and 4o(1)(A) and (B) of the Act, and Regulation 4.20;

D. An order of permanent injunction prohibiting Wright and any of his affiliates, agents, servants, employees, successors, assigns, attorneys and persons in active concert with him, including any successor thereof, who receive actual notice of such order by personal service or otherwise, from engaging, directly or indirectly, in:

1. trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (Supp. IV 2011);

2. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2012)) (“commodity options”), security futures products, foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (Supp. IV 2011)) (“forex contracts”) and/or swaps (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (Supp. IV 2011) for his own personal account or for any account in which he has a direct or indirect interest;

3. having any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps traded on his 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, security futures products, forex contracts, and/or swaps;

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, security futures products, forex contracts, and/or swaps;

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);

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 or entity 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);

E. An order directing that Wright make an accounting to the Court of all of (i) his assets and liabilities, together with all funds he received from his Pool participants in connection with commodity futures trading or purported commodity futures trading, including the names, mailing addresses, email addresses, and telephone numbers of any such persons from whom he received such funds from August 2008 to the date of such accounting, and (ii) all disbursements for any purpose whatsoever of funds received from his clients and other persons, including salaries, commissions, fees, loans, and other disbursements of money and property of any kind, from August 2008, to and including the date of such accounting;

F. Enter an order requiring Wright immediately to identify and provide an accounting of all assets and property that he currently maintain outside the United States, including, but not limited to, all funds on deposit in any financial institution, futures commission merchant, bank, or savings and loan accounts held by, under the control of, or in the name of

Wright or in which any such person or entity has a beneficial interest of any kind, whether jointly or otherwise, and requiring Wright to repatriate all funds held in such accounts by paying them to the Clerk of the Court, or as otherwise ordered by the Court, for further disposition in this case;

G. An order directing Wright to pay a civil monetary penalty for each violation of the Act and the Regulations 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 Wright for each violation of the Act and the Regulations, plus post-judgment interest;

H. An order directing Wright, as well as any successors to Wright, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices that constitute violations of the Act and Regulations, as described here, and prejudgment interest thereon from the date of such violations;

I. An order directing Wright to make restitution by making whole each and every participant in the Pool whose funds were received or used by him in violation of the provisions of the Act as described herein, including pre-judgment interest;

J. An order directing Wright, 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 him and any Pool participants whose funds were received by him as a result of the acts and practices that constituted violations of the Act, as amended, as described herein;

K. An order requiring Wright to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412 (2006); and

L. Such further relief as the Court deems proper.

Dated: June 24, 2013

Respectfully submitted,

/s/ Jennifer E. Smiley  
Jennifer E. Smiley  
(Illinois ARDC No. 6275940)

/s/ Ava Gould  
Ava Gould  
(Illinois ARDC No. 6194202)

/s/ Rosemary Hollinger  
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