

3. Hampton has never been registered with the Commission, including as a CPO.

Hampton has never been exempt from the requirement to register as a CPO.

4. During the course of Hampton's operation of the HCM Pool, Hampton falsely represented to pool participants that the HCM Pool was generating significant trading profits, when in fact the HCM Pool was incurring significant trading losses. Hampton made these false representations of profit, and omitted disclosing the trading losses he was incurring, knowingly, willfully, or with reckless disregard for the truth.

5. To induce participation in the HCM Pool, Hampton represented or caused to be represented to actual and/or prospective pool participants that he had developed a successful arbitrage trading strategy that did and would generate consistent monthly profits. Hampton represented or caused to be represented to actual and/or prospective pool participants that his trading strategy would generate consistent returns for pool participants. In particular, Hampton offered or caused to be offered to actual and prospective pool participants two options: (1) 10% annualized returns (.83% paid monthly) on their initial deposit or (2) 50% of the HCM Pool's returns. Upon information and belief, most pool participants chose the 10% annualized return option. When Hampton began to incur significant trading losses during the operation of the HCM Pool, however, he falsely represented to pool participants that he was generating trading profits consistent with the rates of return he had claimed, and he omitted to disclose that he was incurring significant trading losses in connection with the trading he was conducting on behalf of the HCM Pool.

6. To conceal the trading losses that he was incurring in the HCM Pool, Hampton knowingly, willfully, or with reckless disregard for the truth thereof issued or caused to be issued false account statements to pool participants that represented consistent returns based on the

fund's purported profits. These statements were false and misleading in that the HCM Pool sustained significant net trading losses during the relevant period.

7. During the relevant period, Hampton traded approximately \$3.8 million dollars of pool participants' funds which resulted in net losses of approximately \$3.75 million.

8. By dint of this conduct and the conduct further described herein, Hampton has engaged, is engaging, or is about to engage in acts and practices in violation of provisions of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1 *et seq.* (2006 & Supp. V 2011), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. No. 111-203, §§ 701-774, 124 Stat. 1376, 1641 *et seq.* (effective July 16, 2011), and certain Commission's Regulations ("Regulations") promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

9. Accordingly, pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1 (Supp. V 2011), the Commission brings this action to enjoin Hampton's unlawful acts and practices and to compel compliance with the Act, as amended, and Commission Regulations.

10. 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 such other relief as the Court may deem necessary and appropriate.

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

II. JURISDICTION AND VENUE

12. This Court possesses jurisdiction over this action pursuant to Section 6c(a) of the Act, as amended, 7 U.S.C. § 13a-1(a) (2006 & Supp. V 2011), which authorizes the Commission to seek injunctive and other relief 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.

13. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Hampton resides and transacts business in this district.

III. THE PARTIES

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

15. Defendant **Thomas L. Hampton** resides in Scottsdale, Arizona. Hampton is the managing director and sole signatory for HCM. During the relevant period, Hampton was the only authorized trader on HCM Pool commodity interest accounts held at Interactive Brokers, LLC (“IBL”), a registered futures commission merchant (“FCM”). Hampton has never been registered with the Commission in any capacity.

IV. STATUTORY BACKGROUND

16. Prior to July 16, 2011, Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), defined a “commodity pool operator” as any firm or individual engaged in a business which 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 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 the Dodd-Frank Act on July 16, 2011, the definition of a CPO was clarified, expanded, and re-designated in Section 1a(11) of the Act, as amended, 7 U.S.C. § 1a(11) (Supp. V 2011).

V. FACTS

A. Hampton's Trading Activities And Fraudulent Activities

17. During the relevant period, Hampton controlled the operations of HCM. Hampton is the sole owner and sole employee of HCM. Hampton is the sole signatory on each of HCM's bank accounts held at Bank of America ("BOA"), including an account used to accept pool participant deposits ("HCM bank account"). In addition, Hampton was the only authorized trader on the HCM Pool's trading accounts, described immediately below.

18. In January 2010, Hampton opened an HCM Pool trading account at IBL in the name of "Private Client, LLC." The account opening documents for this account identifies Hampton as the only authorized trader. Hampton traded E-mini S&P 500 futures and E-mini Dow futures contracts in this account as well as securities products.

19. In May 2011, Hampton opened another HCM Pool trading account at IBL in the name of "HCM." The account opening documents identifies Hampton as the only authorized trader. Hampton traded E-mini S&P 500 futures in this account as well as securities products.

20. During the relevant period, Hampton controlled and operated a public website, www.hamptoncap.com (the "website"). Hampton, among other things, represented in the website that he was a former CBOT floor trader and index-arbitrage trader who had discovered a

successful derivative arbitrage trading strategy that would generate 10% annualized returns (.83% per month).

21. During the relevant period, upon information and belief, Hampton induced a pool participant residing in Texas, who was also employed as a financial advisor (“PP-1”), to solicit approximately 34 of his clients to deposit funds with the HCM Pool.

22. During the relevant period, upon information and belief, Hampton induced another pool participant residing in Arizona, who was also employed as a financial advisor (“PP-2”), to solicit approximately 36 of his clients to deposit funds with the HCM Pool.

23. Upon information and belief, Hampton caused PP-1 and PP-2 to represent to prospective pool participants that they (the prospective pool participants) could earn either 10% annualized returns on their deposits (.83% per month) or share in 50% of profits earned from returns of the HCM Pool.

24. During the relevant period, upon information and belief, Hampton distributed to prospective pool participants, a document entitled “**Low-latency Index Derivative Arbitrage Offering Memorandum**” which also represented that he was a former CBOT floor trader and index-arbitrage trader who had discovered a successful derivative arbitrage trading strategy that would generate 10% annualized returns (.83% per month).

25. During the relevant period, Hampton solicited or caused to be solicited approximately \$5.2 million dollars from more than 72 members of the general public for the purpose of trading, among other things, E-mini S&P 500 and E-mini Dow futures contracts through the HCM Pool. These funds were deposited into an account held at BOA, the HCM Bank Account.

26. During the relevant period, Hampton transferred a total of approximately \$4 million from HCM’s BOA account to the two HCM Pool trading accounts at IBL described in ¶¶ 18 &

19, supra. Hampton used \$3.8 million of the HCM Pool participants' funds to execute trades on behalf of the HCM Pool and sustained losses of approximately \$3.75 million.

27. During the relevant period, Hampton transferred approximately \$335,000 from the HCM bank account to his personal bank account and made \$100,000 in counter withdrawals from the HCM bank account.

28. During the relevant period, Hampton falsely represented to HCM Pool participants that their share of the HCM Pool had increased in value, when in fact Hampton was incurring significant trading losses. Such information is important to actual and prospective pool participants given that it affects their decision making of process of whether and when to withdraw funds from the pool or possibly invest additional funds.

29. During the relevant period, Hampton failed to disclose to actual and/or prospective pool participants that he was incurring trading losses in the HCM Pool accounts. During the relevant period, Hampton defrauded existing and prospective HCM Pool participants by distributing to pool participants false account statements via e-mail, U.S. mail, or online. These monthly account statements typically represented that the HCM Pool or fund was profitable and that the pool participant's account had earned either .83 % on the funds deposited or 50% of the HCM Pool's purported profits. In fact Hampton's actual trading in the HCM Pool accounts resulted in net losses virtually every month.

30. For example, from October 2010 through August 2011, one pool participant received account statements signed by Hampton, which represented that the pool participant had earned \$416.67 per month on his initial deposit of \$50,000. These statements were false since Hampton's trading in the HCM Pool accounts, during this same period, sustained consistent net losses and total losses of approximately \$3.2 million.

31. During the relevant period, Hampton also issued monthly account statements to at least two pool participants, which represented that the fund returned 4.17% and 16.245% in July 2011 and August 2011 respectively. These account statements were false since the fund lost \$339,239.06 in July 2011 and \$1,263,352.33 in August 2011.

32. Hampton knew these account statements were false because he had lost most of the pool participants' funds used to trade in the HCM Pool trading accounts as described above.

33. Hampton was required to disclose the HCM Pool's trading losses because he is a CPO and therefore a fiduciary to his pool participant. Hampton was separately required to disclose such material information because he falsely represented and/or caused to be represented to actual and prospective HCM Pool participants that his trading strategy was enormously successful in the past and the HCM Pool would be generating, and was generating, consistent profits. Hampton was required to disclose the truth about his actual trading performance every day that pool participants maintained a subscription with HCM.

34. Upon information and belief, pool participants maintained and/or deposited additional funds with the HCM Pool as a result of these false account statements that represented false "profit" returns. At no time during the relevant period was Hampton registered with the Commission in any capacity or exempt from such requirement.

35. In or about October 2011, upon information and belief, pool participants learned that Hampton had lost all of their funds.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE

**FRAUD IN CONNECTION WITH COMMODITY FUTURES CONTRACTS
Violations of Sections 4b(a)(1)(B) of the Act**

36. The allegations set forth in paragraphs 1 through 35 are re-alleged and incorporated herein by reference.

37. Section 4b(a)(1)(B) of the Act, 7 U.S.C. §§ 6b(a)(1)(B) (2006), provides, 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.... (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..

38. As set forth above, from at least September 2010 through September 2011, Hampton violated Section 4b(a)(1)(B) of the Act, 7 U.S.C. §§ 6b(a)(1)(B) (2006), by, among other things, distributing false account statements to pool participants.

39. Each issuance of a false report, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(1)(B) of the Act, 7 U.S.C. §§ 6b(a)(1)(B) (2006).

COUNT TWO

**FRAUD BY A COMMODITY POOL OPERATOR
Violations of Section 4o(1)(A) and (B) of the Act**

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

41. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), prohibits CPOs from using the mails or any other means or instrumentality 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.

42. As set forth above, from at least September 2010 through at least September 2011, Hampton acted as a CPO 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.

43. Hampton violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2006), in that he employed or is employing a device, scheme or artifice to defraud actual and prospective pool participants or engaged or is engaging in transactions, practices, or a course of business which operated or operates as a fraud or deceit upon the pool participants or prospective pool participants. The fraudulent acts include distributing false account statements to pool participants.

44. Each issuance of a false report, 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

FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR Violation of Section 4m(1) of the Act

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

46. Section 4m(1) of the Act, 7 U.S.C § 6m(1) (2006), provides that it is unlawful for any CPO, unless registered, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO.

47. As set forth above, during the relevant period, Hampton used the telephone, email, U.S. mail, and/or the Internet in or in connection with his business 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). Each use of the mails or any means or instrumentality of interstate commerce by Hampton, 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).

VI. 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. V 2011), and pursuant to its own equitable powers, enter:

- a) An order finding that Hampton violated Sections 4b(a)(1)(B) and 4o(1)(A) & (B), 7 U.S.C. §§ 6b(a)(1)(B) (2006) and 6o(1)(A) & (B) (2006), and 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006);
- b) An order of permanent injunction prohibiting Hampton and any of his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Hampton, including any of his successors, from, directly or indirectly:
 - (i) engaging in conduct in violation of Sections 4b(a)(1)(B), 4o(1)(A) & (B) and 4m(1) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(1)(B), 6o(1)(A) & (B) and 6m(1);
 - (ii) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1a);
 - (iii) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2012) (“commodity options”), security futures products, swaps (as that term

is defined in Section 1a(47) of the Act, as amended and as will be further defined by Commission Regulation 1.3(xxx), 17 C.F.R. §1.3(xxx)), and/or foreign currency (as described in 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) (Supp. V 2011)) (“forex contracts”), for his own personal accounts or for any account in which he has a direct or indirect interest;

(iv) having any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts traded on his 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 futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts;

(vi) 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, swaps, and/or forex contracts;

(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) (2012);

(viii) 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 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);

c) An order directing Hampton, as well as any of his successors, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act and the Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

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

e) An order directing Hampton 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 committed on or after October 23, 2008; or 2) triple the monetary gain to Hampton for each violation of the Act and the Regulations, plus post-judgment interest;

f) An order directing Hampton and any of his successors 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 and pool participants whose funds were received by them as a result of the acts and practices which constituted violations of the Act and the Regulations, as described herein;

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

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

Respectfully submitted,

PLAINTIFF UNITED STATES COMMODITY

FUTURES TRADING COMMISSION

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