

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

U.S. COMMODITY FUTURES)
TRADING COMMISSION)

Plaintiff,)

vs.)

DIMITRY VISHNEVETSKY,)
INDIVIDUALLY and)
d/b/a HODGES TRADING LLC, HODGES)
COURT TRADING)
and)
OXFORD CAPITAL, LLC,)

Defendants.)

Civil No. _____

Complaint for Injunctive and Other
Equitable Relief and Civil Monetary
Penalties under the Commodity
Exchange Act

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

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

I. SUMMARY

1. From at least the fall of 2006 through the present (“relevant period”), Dimitry Vishnevetsky (“Vishnevetsky”), individually and d/b/a Hodges Trading LLC (“Hodges”) and Hodges Court Trading (“Hodges Court”), and Oxford Capital, LLC (“OCL”) (collectively “Defendants”) fraudulently solicited and accepted at least \$1.74 million while engaging in three commodity trading schemes. In the first scheme, beginning in the fall of 2006 through the present, Vishnevetsky, individually and on behalf of OCL, a limited liability company, fraudulently solicited and accepted at least \$525,000 from at least seven individuals for purposes

of operating three commodity pools to trade commodity futures contracts on their behalf.

Vishnevetsky formed OCL to receive pool participants' monies and to act as the commodity pool operator ("CPO") for pools called Oxford Global Macro Fund, L.P. ("OGMF"), Oxford Global Arbitrage Fund, L.P. ("OGAF") and Oxford Quantum Fund, L.P. ("Quantum") (collectively, "pools"). OCL commingled the funds it received from the participants in those pools and did not operate the pools as legal entities separate from OCL. Defendants defrauded pool participants by: i) misrepresenting that OGMF had a profitable performance record, based on audited results, when, in fact, Defendants never conducted any trading for OGMF and, therefore, the pool had no performance record; ii) failing to open and fund commodity futures accounts for the commodity pools; iii) failing to inform participants that Vishnevetsky was involuntarily terminated from his positions at Lehman Brothers, Inc. ("Lehman") and Morgan Stanley DW ("Morgan Stanley"); iv) issuing false account statements to participants that misrepresented that Defendants were conducting commodity trading on behalf of the pools and misrepresented the value of the participant's respective interests in the pools; and v) misappropriating a portion of the pool participants' monies. Vishnevetsky controlled OCL and, therefore, is liable for its violations. OCL and Vishnevetsky engaged in the foregoing misconduct without benefit of registration with the Commission as either a CPO or an AP of a CPO.

2. In the second fraudulent scheme, beginning in September 2009 through the present, Vishnevetsky, individually and d/b/a Hodges and Hodges Court, acted as an unregistered CPO, and fraudulently solicited and accepted at least \$1,017,500 from at least two pool participants to invest in a commodity pool ("Hodges pool" or "Fund") that purported to issue Libor Adjusted Notes ("Libor Notes") in partnership with CIBC World Markets Inc. ("CIBC") and invested in commodity futures contracts and derivative instruments to enhance the

value of the purported Libor Notes. Vishnevetsky, individually and d/b/a Hodges and Hodges Court, defrauded at least two Hodges pool participants by: i) misrepresenting that CIBC was the prime broker and lead underwriter for the Fund; ii) misrepresenting that CIBC set up a collateral account and pledged assets to ensure that the Fund was able to repay the Libor Note holders their principal investments in the event of a default by Hodges; iii) failing to inform the participants that Vishnevetsky was involuntarily terminated from his positions at Lehman and Morgan Stanley; iv) issuing account statements that misrepresented the pool participants' respective interests in the Fund; and v) misappropriating a portion of the pool participants' monies. Vishnevetsky commingled the funds he received from the Hodges pool participants with his own monies and did not operate the Hodges pool as a separate legal entity.

3. In the third fraudulent scheme, beginning in December 2007 through December 2009, Vishnevetsky, individually and on behalf of OCL, solicited and accepted at least \$200,000 from at least two customers for purposes of placing commodity futures trades on their behalf. Defendants Vishnevetsky and OCL defrauded those customers by: i) failing to open and fund commodity trading accounts for them; ii) failing to place commodity trades for them; iii) issuing fictitious account statements to them that falsely represented that he funded trading accounts and placed commodity trades for their respective accounts; and iv) misappropriating a portion of customer monies.

4. By the aforementioned conduct, Defendants have engaged, are engaging, or are about to engage in acts or practices that violate the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1 *et seq.* (2006), 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"), Pub. L. No. 111-203, §§701-774, 124 Stat. 1376, 1641 et seq. (enacted July 21, 2010), to be codified at 7 U.S.C § 1 *et seq.* (Supp. III 2009), and Commission Regulations ("Regulations"), 17 C.F.R. §§ 1 *et seq.* (2011). In particular, Defendants violated the anti-fraud provisions of the Act, Sections 4b(a)(2)(i)-(iii), 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and Sections 4b(a)(1)(A)-(C) as amended by the CRA and Dodd-Frank, 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, and Section 4o(1) of the Act, 7 U.S.C. §§ 6o(1) (2006). By failing to register as a CPO, Vishnevetsky, individually and d/b/a Hodges and Hodges Court, and OCL violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), and by failing to register as an AP of a CPO, Vishnevetsky violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006). Additionally, OCL violated Section 4k(2) of the Act by allowing Vishnevetsky to act as its AP, when OCL knew or should have known that Vishnevetsky was not registered as such. By failing to operate the pools as legal entities separate from that of the CPO, by receiving funds in the CPO's name and by commingling pool participants' funds with the funds of other persons, Defendants violated Commission Regulation 4.20(a)-(c), 17 C.F.R. § 4.20(a)-(c) (2011).

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

6. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), the Commission brings this action to enjoin such acts and practices, prevent the dissipation of assets, and compel compliance with the provisions of the Act. In addition, the Commission seeks civil penalties, an accounting, restitution, disgorgement, rescission and such other statutory and equitable relief as the Court may deem necessary or appropriate under the circumstances.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive 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.

8. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e), in that the Defendants transacted business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District.

III. THE PARTIES

PLAINTIFF

9. **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the responsibility for administering and enforcing the provisions of the Act, as amended by the CRA and the Dodd-Frank Act, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

DEFENDANTS

10. **Dimitry Vishnevetsky** is 33 years old and resides in Chicago, Illinois. He was employed as an analyst by two financial services firms, Lehman and Morgan Stanley, from March 2001 through December 2002, and from October 2003 through June 2004, respectively. He was involuntarily terminated from both positions. He was registered with the Commission as an AP of Morgan Stanley from March 4, 2004 through June 4, 2004. He is not currently registered with the Commission in any capacity.

11. In December 2009, Vishnevetsky was sued by an investor in the OGMF and OGAF pools, who alleged that Vishnevetsky defrauded him, individually and as an agent for his four children. See, *Joseph A. Rocci v. Dimitry Vishnevetsky*, Case No. 09 CH 48041, Circuit Court of Cook County, County Department, Chancery Division, filed on December 3, 2009. The lawsuit was dismissed without prejudice on March 23, 2011, in accordance with the terms of a Settlement Agreement that required Vishnevetsky to pay \$300,000 to plaintiff in installments. Vishnevetsky paid only one installment and, therefore, pursuant to the Agreement, judgment was entered against him for \$435,000.

12. Vishnevetsky was also sued by an OCL customer who alleged that Vishnevetsky, OGMF and OCL fraudulently induced him to invest in commodity futures contracts and converted his funds. See, *Curtis L. Caughey v. Oxford Global Macro Fund, LP, et al.*, Case No. 08 L 010626, Circuit Court of Cook County, County Department, Law Division, filed September 24, 2008. OCL and Vishnevetsky settled the lawsuit on February 16, 2010, by authorizing the entry of judgment against them, jointly and severally, for \$170,491.

13. As OCL's principal and general partner, Vishnevetsky was signatory on OCL's bank account and controlled all aspects of OCL's operations. Vishnevetsky prepared the pools' solicitation materials, including performance charts, Offering Memoranda and Subscription Agreements, solicited and accepted customer monies, issued account statements to customers, and made all decisions concerning OCL's financial operations. As such, Vishnevetsky is OCL's controlling person and held himself out to the public as such. During the relevant period, Vishnevetsky also solicited commodity pool participants while doing business as Hodges Trading, LLC and Hodges Court Trading.

14. **Oxford Capital LLC** was a Wisconsin limited liability company that was formed on August 20, 2004 and was dissolved on September 20, 2010. During its operation, its principal office was located in Chicago, Illinois and Vishnevetsky was its sole principal and registered agent.

IV. FACTS

A. Statutory Background

15. A “commodity pool” is defined in Commission Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1) (2011), as any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.

16. A “commodity pool operator” is defined in Section 1a(11) of the Act, as amended by Dodd-Frank, 7 U.S.C. § 1a(11), 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 commodity interests.

17. An “associated person of a commodity pool operator” is defined in Commission Regulation 1.3(aa)(3), 17 C.F.R. § 1.3(aa)(3) (2011), in relevant part, as any natural person who is associated with a CPO as: a partner, officer, employee, consultant or agent to a CPO (or any natural person occupying a similar status or performing similar functions), in any capacity that involves the solicitation of funds, securities or property for a participation in a commodity pool.

18. A “participant” is defined in Commission Regulation 4.10(c), 17 C.F.R. § 4.10(c) (2011), as any person who has any direct financial interest in a commodity pool.

B. Commodity Pool Fraud

Defendants Misrepresented that OGMF Had a Successful Performance Record

19. From the time Defendants began soliciting for their commodity pools in the fall of 2006 through the present, they attracted at least six participants in OGMF, at least one participant in OGAF, and at least one participant in Quantum. OCL commingled the funds it received from the participants in OGMF with the funds it received from the participant in OGAF and the participant in Quantum, received pool participants' monies in the name of OCL, and did not operate the pools as legal entities separate from OCL. The one OGAF participant was also a participant in OGMF, and invested in OGAF only after receiving account statements from Defendants showing purportedly profitable returns from his investment in OGMF. Similarly, the participant in Quantum invested after he received a chart from Defendants showing purportedly profitable annual returns for OGMF from 2005 through 2008.

20. When soliciting for the pools, Vishnevetsky represented to prospective participants that OGMF, OGAF and Quantum traded Standard and Poors ("S&P") 500 index futures contracts, foreign currencies and bond futures, such as the 10-year US Treasury Note futures contracts. Vishnevetsky solicited prospective participants for the various pools he operated by presenting them with false information about OGMF. In particular, he falsely represented that OGMF had a low-risk trading strategy because no trading positions were held overnight, and if the pool lost 30% overall, it would be shut down. Vishnevetsky provided prospective pool participants with false performance charts for OGMF, which reported positive annual returns ranging from 17.86% to 36.15% between 2005 and 2008. The performance charts misrepresented that the performance numbers were "generated from audited results and are net of management and incentive fees."

21. Vishnevetsky also misrepresented to prospective pool participants and pool participants that OGMF had approximately \$4 million under management, and that his compensation as OGMF's manager would be a 2% up-front management fee and an incentive fee of 20% of profits, using a high water mark.

22. Promotional material for the pools, authored by Vishnevetsky, touted his experience as a bond trader and financial advisor at Lehman and Morgan Stanley. For example, OGMF's Investment Offering represented that during Vishnevetsky's tenure at Lehman, he "acted as an integral member of the deal execution team involved in idea generation, research, analysis, modeling, due diligence and negotiations." As described in Paragraph 10 above, Vishnevetsky was involuntarily terminated from his positions at both firms, but he failed to tell pool participants and prospective pool participants about his terminations.

23. Based on Defendants' misrepresentations and omissions described in Paragraphs 20 through 22 above, at least seven participants collectively invested at least \$525,000 in OGMF, OGAF and Quantum.

Defendants Failed to Trade on Behalf of OGMF, OGAF and Quantum

24. During the relevant period, Defendants failed to open any commodity trading accounts in the names of OGMF, OGAF and Quantum. While Vishnevetsky opened and funded a total of 11 commodity trading accounts at 7 registered FCMs during the relevant period, these accounts were carried in the names of Vishnevetsky, OCL, Hodges Court Trading, and Troika LLC ("Troika"). During that time, Defendants deposited a total of approximately \$1,260,665 into the 11 accounts described above and withdrew a total of approximately \$448,941 from these accounts. At least a portion of the monies deposited into the foregoing trading accounts were pool participants' monies. Over the life of these accounts, Defendants lost approximately \$971,333 trading commodity futures. Vishnevetsky overtraded four of these accounts which

resulted in large debit balances and a loss of funds exceeding the aggregate deposits into the trading accounts.

Defendants Made Material Misstatements and Failed to Disclose Material Facts to OGMF, OGAF and Quantum Participants and Misappropriated a Portion of Their Monies

25. Because Vishnevetsky, as an AP and controlling person of OCL, never engaged in any commodity trading on behalf of OGMF, he knew that the commodity pool had no performance record and no audited results. Defendants, therefore, knowingly and intentionally misstated material facts and failed to disclose material facts to prospective OGMF, OGAF and Quantum pool participants and pool participants by representing that OGMF had positive returns based on audited results, when in fact, Defendants never traded for the pool. Similarly, Defendants omitted material facts from prospective pool participants and pool participants by failing to inform them that Vishnevetsky was involuntarily terminated from his positions at Lehman and Morgan Stanley.

26. Defendants misappropriated a portion of the pool participants' monies for their own benefit, in that Defendants never conducted any commodity trading on behalf of pool participants and instead used the pool participants' monies for their own purposes, including trading commodity futures for themselves and paying personal expenses. Defendants also misappropriated pool participants' monies by paying themselves incentive fees when, in fact, they never traded for OGMF, OGAF and Quantum.

Defendants Issued False Account Statements to OGMF, OGAF, and Quantum Participants

27. During the relevant period, Defendants mailed or emailed monthly account statements to pool participants that misrepresented the value of their respective interests in OGMF, OGAF and Quantum and concealed Defendants' misappropriation of their monies. In particular, the monthly account statements Defendants issued to pool participants reported false

monthly and annual returns for the pools since their purported inception, misrepresented the value of the pool participants' respective accounts, charged unmerited incentive fees based upon false reported profits, falsely represented that the performance returns were based on audited results, and concealed Defendants' misappropriation of pool participants' monies.

Vishnevetsky, Individually and d/b/a Hodges and Hodges Court, Made Material Misrepresentations to at Least Two Pool Participants and Misappropriated a Portion of Their Monies

28. Beginning in September 2009, Vishnevetsky, individually and d/b/a Hodges and Hodges Court, solicited at least two pool participants to invest in another commodity pool he operated. Specifically, Vishnevetsky represented to those pool participants that Hodges operated a Fund which issued Libor Notes in partnership with CIBC, its underwriter and broker, and traded commodity futures and derivatives to enhance the value of the Libor Notes. Vishnevetsky sent prospective pool participants a Private Placement Memorandum ("PPM"), which stated the Fund's objective as maximizing its annual return by "the buying and selling of any asset class," including "equities, bonds, currencies, commodities and derivatives." The PPM also represented that CIBC was the lead underwriter and prime broker for the Fund and that the Libor Notes "will be backed by a collateral account that CIBC World Markets has set forth" and that "[t]he 'Loss Recovery' account, backed by the full faith and credit of CIBC World Markets, will ensure that the initial principal payment will be made to the LIBOR Adjusted Note holders"

29. When one of the pool participants described in Paragraph 28 above asked for further information about the role of CIBC, Vishnevetsky sent him an email on October 28, 2009, with an attached chart. In his email, Vishnevetsky represented that a "loss recovery account" was set up at CIBC and was backed by a series of derivative instruments, called a special purpose vehicle ("SPV"), to ensure that the Libor Note holders received their initial

investment in case Hodges was unable to honor the initial principal repayment. The chart Vishnevetsky sent the pool participant represented that a "SPV 'Collateral Account' Swap" was created "for insurance against default."

30. When Vishnevetsky solicited the pool participants described above, he knew that CIBC was neither the prime broker for, nor had underwritten any investment that he, Hodges or Hodges Court offered and that CIBC never maintained any loss recovery account backed by derivative instruments to repay Libor Note holders their principal investments. Vishnevetsky, therefore, knowingly made material misrepresentations when soliciting pool participants to invest in his commodity pool. Similarly, when soliciting pool participants, Vishnevetsky failed to disclose that he was involuntarily terminated from his positions at Lehman and Morgan Stanley.

31. Based on Vishnevetsky's misrepresentations described in Paragraphs 28 through 30 above, at least two pool participants transferred a total of \$1,017,500 to OCL for investments in the Hodges commodity pool between November 2009 and October 2010. Vishnevetsky used a portion of the pool participants' monies to open and fund a commodity futures trading account in the name of Hodges Court at a registered FCM. During the period March 2010 to September 2010, Vishnevetsky lost approximately \$287,000, trading commodity futures in that account and withdrew approximately \$194,500 from the account.

32. Vishnevetsky misappropriated a portion of the pool participants' monies by, among other things, using a portion of those monies to pay for personal expenses.

Vishnevetsky Issued False Statements to a Hodges Pool Participant

33. During the period March 2010 to the present, Vishnevetsky, individually and d/b/a Hodges and Hodges Court, issued false account statements to at least one participant who

invested in his Hodges commodity pool. In particular, the account statements, on purported CIBC letterhead, misrepresented the value of the pool participant's respective interest in the pool, concealed Vishnevetsky's misappropriation of his monies, and falsely represented that CIBC was underwriting the Fund's investments, in connection with Hodges. One of the account statements purportedly bore the signature of a CIBC Managing Director, who, in fact, had no involvement in Vishnevetsky's pool and never signed the account statement.

34. Additionally, when the two Hodges pool participants asked to redeem their investments in the Hodges pool, Vishnevetsky falsely represented to them that he could not honor their redemption requests because their funds were purportedly frozen due to the MF Global bankruptcy action.

C. Other Commodity Futures Fraud

35. During period December 2007 through December 2009, at least two customers transferred \$100,000 each to OCL, in order for OCL and Vishnevetsky to place commodity trades on their behalf. In particular, Defendants entered into agreements with the two customers, which required Vishnevetsky to open and fund commodity trading accounts for the benefit of the customers, place commodity futures trades as instructed by the customers for their respective accounts, and issue account statements to the customers confirming that the trades had been placed and confirming the corresponding profits or losses to the account. Both customers understood Vishnevetsky to be an experienced commodities and securities professional. Vishnevetsky, however, failed to disclose to the foregoing customers that he was involuntarily terminated from his positions at Lehman and Morgan Stanley.

36. Defendants issued account statements to the two customers described in Paragraph 35 above, confirming that commodity futures accounts were opened for their benefit,

that their monies were deposited into the accounts and that commodity trades were placed for their respective accounts, thereby generating profits or losses for their accounts. In fact, Defendants opened no commodity trading accounts for these two customers. Because the two customers' monies were not used to open commodity accounts in their names, Defendants misappropriated these customers' monies.

37. Vishnevetsky emailed one of the customers described in Paragraphs 35 and 36 approximately 70 fictitious account statements dated May 1, 2009 through November 30, 2009. These statements falsely represented that an account was opened in OCL's name at a registered introducing broker ("IB"), that the customer's monies were deposited into that trading account, and that the trades the customer instructed be placed were, in fact, placed for the account, thereby generating profits and losses for the account. When the customer contacted the IB that purportedly carried the account, the customer learned that an account was never opened at the firm and that all of the account statements Defendants issued to him were false.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

**Violations of Section 4b(a)(2) of the Act and Section 4b(a)(1) the Act
as Amended by the CRA: Futures Fraud**

38. The allegations set forth in paragraphs 1 through 37 are re-alleged and incorporated herein.

39. Prior to being amended by the CRA, Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), made it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully make or cause to be made to other persons false reports or statements, or willfully enter or cause to be entered for other persons false records; or willfully deceive or attempt to deceive by any means whatsoever other persons in or in connection with

orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof, in connection with acts committed before June 18, 2008.

40. Similarly, Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA and Dodd-Frank, 7 U.S.C. §§ 6b (a)(1)(A)-(C), make it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person – (A) to cheat or defraud or attempt to cheat or defraud the 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; or (C) willfully to deceive or attempt to deceive the 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 the other person, in connection with acts committed on or after June 18, 2008.

41. During the relevant period, Vishnevetsky and OCL violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), with respect to acts occurring before June 18, 2008, and violated Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA and Dodd-Frank, 7 U.S.C. §§ 6b(a)(1)(A) and (C), with respect to acts occurring on or after June 18, 2008, in that they cheated or defrauded or attempted to cheat or defraud and willfully

deceived or attempted to deceive OGMF, OGAF and Quantum pool participants and OCL's commodity customers by: i) misrepresenting that OGMF had a profitable performance record, based on audited results, when in fact, the Defendants did not trade for OGMF and, therefore, the pool had no performance record and was never audited; ii) failing to open commodity futures accounts for the pool participants; iii) failing to inform participants and OCL's customers that Vishnevetsky was involuntarily terminated from his positions at Lehman and Morgan Stanley; iv) misrepresenting that commodity trading accounts were opened and funded for OCL's customers and that commodity trades were placed for their accounts, when in fact, no accounts were opened and no trades were ever placed; and v) misappropriating a portion of OGMF, OGAF and Quantum pool participants' monies and a portion of OCL's commodity customers' monies.

42. Vishnevetsky, individually and d/b/a Hodges and Hodges Court, also violated Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA and Dodd-Frank, 7 U.S.C. §§ 6b(a)(1)(A) and (C), with respect to acts occurring on or after June 18, 2008, in that he cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive at least two Hodges pool participants by: i) misrepresenting that CIBC was the prime broker and lead underwriter for the Hodges pool; ii) misrepresenting that CIBC set up a collateral account and pledged assets to ensure that the Hodges pool was able to repay the Libor Note holders their principal investments in the event of a default by Hodges; iii) failing to inform the Hodges participants that he was involuntarily terminated from his positions at Lehman and Morgan Stanley; and iv) misappropriating a portion of the Hodges pool participants' monies.

43. Vishnevetsky and OCL also violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. §§ 6b(a)(2)(ii) (2006), with respect to acts occurring before June 18, 2008, and violated Section

4b(a)(1)(B) of the Act as amended by the CRA, 7 U.S.C. §§ 6b(a)(1)(B), with respect to acts occurring on or after June 18, 2008, in that Vishnevetsky and OCL willfully made or caused to be made false reports or statements to the OGMF, OGAF and Quantum pool participants and OCL customers who invested money with Defendants to trade commodity futures contracts. Similarly, Vishnevetsky, individually and d/b/a Hodges and Hodges Court, violated Section 4b(a)(1)(B) of the Act as amended by the CRA, 7 U.S.C. §§ 6b(a)(1)(B), with respect to acts occurring on or after June 18, 2008, in that he made false reports and statements to at least one Hodges pool participant.

44. Defendants engaged in this violative conduct in or in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.

45. Vishnevetsky controlled OCL, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting OCL's violations alleged in this count. Vishnevetsky is thereby liable for OCL's violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and for OCL's violations of Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, as a controlling person, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

46. Vishnevetsky was acting as an agent of OCL when he violated the Act with regard to OGMF, OGAF and Quantum pool participants and OCL's commodity customers and, therefore, OCL, as Vishnevetsky's principal, is liable for Vishnevetsky's acts constituting violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and for Vishnevetsky's violations of Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2011).

47. Each material misrepresentation or omission, each false report or statement, and each misappropriation made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and a violation of Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008.

COUNT II

Violations of Section 4a(1) of the Act: Fraud by a CPO and by an AP of a CPO

48. The allegations set forth in paragraphs 1 through 37 are re-alleged and incorporated herein.

49. During the relevant time period, OCL acted as a CPO with regard to OGMF, OGAF and Quantum, in that it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, solicited, accepted or received funds, securities or property from others for the purpose of trading in any commodity

for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

50. Similarly, with regard to the Hodges pool, Vishnevetsky, individually and d/b/a Hodges and Hodges Court, acted as a CPO in that he engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, solicited, accepted or received funds, securities or property from others for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

51. With regard to OGMF, OGAF and Quantum pools, Vishnevetsky acted as an AP of a CPO in that he solicited funds for OCL.

52. During the relevant period, OCL and Vishnevetsky violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), in that as a CPO and an AP of a CPO, they directly or indirectly employed or are employing a device, scheme, or artifice to defraud OGMF, OGAF and Quantum commodity pool participants, or have engaged or are engaging in transactions, practices or a course of business which operated as a fraud or deceit upon commodity pool participants by:

- i) misrepresenting that OGMF had a profitable performance record, based on audited results, when in fact, the Defendants never traded any account for OGMF and, therefore, the pool had no performance record;
- ii) failing to open and fund commodity trading accounts for the commodity pools;
- iii) failing to inform OGMF, OGAF and Quantum pool participants that Vishnevetsky was involuntarily terminated from his positions at Lehman and Morgan Stanley;
- iv) misappropriating a portion of OGMF, OGAF and Quantum participants' monies; and
- v) issuing false account statements to OGMF, OGAF and Quantum participants that misrepresented the value of their respective interests in the pools, and concealed Defendants' misappropriation of their monies.

53. During the relevant period, Vishnevetsky, individually and d/b/a Hodges and Hodges Court, violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), in that as a CPO, he directly or indirectly employed or is employing a device, scheme, or artifice to defraud at least two Hodges commodity pool participants, or has engaged or is engaging in transactions, practices or a course of business which operated as a fraud or deceit upon Hodges commodity pool participants by: i) misrepresenting that CIBC was the prime broker and lead underwriter for the pool; ii) misrepresenting that CIBC set up a collateral account and pledged assets to ensure that the pool was able to repay the Libor Note holders their principal investments in the event of a default by Hodges; iii) failing to inform participants that he was involuntarily terminated from his positions at Lehman and Morgan Stanley; iv) issuing account statements that misrepresented the Hodges pool participant's respective interest in the pool; and v) misappropriating a portion of the Hodges pool participants' monies.

54. Defendants engaged in such acts, directly or indirectly, by use of the mails and other means or instrumentalities of interstate commerce.

55. Vishnevetsky controlled OCL and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting OCL's violations alleged in this count. Vishnevetsky is thereby liable for OCL's violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

56. Vishnevetsky was acting as an agent of OCL when he violated the Act with regard to OGMF, OGAF and Quantum pool participants and, therefore, OCL as Vishnevetsky's principal, is liable for Vishnevetsky's acts constituting violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2011).

57. Each act of making false reports, false statements, and material omissions, and each misappropriation that occurred during the relevant time period, 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 III

Violations of Sections 4m(1) and 4k(2) of the Act: Failure to Register as a CPO and as an AP of the CPO

58. Paragraphs 1 through 37 are re-alleged and incorporated herein.

59. With certain specified exceptions and exemptions, not applicable here, all CPOs are required to be registered with the Commission, pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006). Similarly, with certain specified exceptions and exemptions, not applicable here, all APs of CPOs are required to be registered with the Commission, pursuant to Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

60. OCL acted as a CPO during the relevant period in that it accepted and received funds from OGMF, OGAF and Quantum pool participants for the purpose of trading commodity futures contracts, and Vishnevetsky acted as an AP of a CPO during the relevant period in that he solicited funds for OCL. Similarly, Vishnevetsky, individually and d/b/a Hodges and Hodges Court, acted as a CPO during the relevant period in that he accepted and received funds from at least two Hodges pool participants for the purpose of trading commodity futures contracts. In connection with such conduct, OCL and Vishnevetsky, individually and d/b/a Hodges and Hodges Court, used the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in their businesses as CPOs and an AP of a CPO.

61. OCL and Vishnevetsky, individually and d/b/a Hodges and Hodges Court, engaged in the activities described in Paragraph 60, without the benefit of registration as CPOs in

violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), and Vishnevetsky engaged in his solicitation activities for OCL without the benefit of registration as an AP of a CPO in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

62. Vishnevetsky, directly or indirectly controlled OCL and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting OCL's violations alleged in this count. Vishnevetsky is thereby liable for OCL's violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

63. OCL violated Section 4k(2) of the Act by allowing Vishnevetsky to act as its AP.

64. Each use of the mails or any means or instrumentality of interstate commerce in connection with their businesses a CPO or an AP of a CPO 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) (2006), and 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

COUNT IV

Violation of Regulation 4.20(a)-(c): Failure to Operate the Pools as Separate Legal Entities, Accepting Funds in the Name of the CPO and Commingling of Pool Funds

65. Paragraphs 1 through 37 are re-alleged and incorporated herein.

66. Regulation 4.20(a)-(b), 17 C.F.R. § 4.20(a)-(b) (2011), requires a CPO to operate its pools as legal entities 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 pools it operates must be received in the pool's name.

67. Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011), prohibits CPOs from commingling the property of any pool they operate or intend to operate with the property of any other person.

68. OCL violated Regulation 4.20(a)-(b), 17 C.F.R. § 4.20(a)-(b) (2011), in that as a CPO, it failed to operate its pools as legal entities separate from that of the CPO and accepted monies from pool participants for the purchase of interests in the pools in names other than the names of the commodity pools it operated. Similarly, Vishnevetsky, individually and d/b/a as Hodges and Hodges Court, failed to operate his pool as a separate legal entity and accepted monies from pool participants for the purchase of interests in the pool in a name other than the name of the commodity pool, thus violating Regulation 4.20(a) and (b).

69. OCL and Vishnevetsky, individually and d/b/a Hodges and Hodges Court, violated Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2011), in that as CPOs they commingled funds received from pool participants by depositing such monies into bank and trading accounts containing Defendants' personal assets as well as funds of others received by Defendants for other purported investment vehicles.

70. Vishnevetsky, directly or indirectly controlled OCL and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting OCL's violations alleged in this count. Vishnevetsky is thereby liable for OCL's violations of Regulation 4.20(a)-(c), 17 C.F.R. § 4.20(a)-(c) (2011), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

VI. RELIEF REQUESTED

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

A. An order finding Vishnevetsky, individually and d/b/a Hodges and Hodges Court, and OCL liable for violating: Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008; Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA and Dodd-Frank, 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts

occurring on or after June 18, 2008; Sections 4k(2), 4m(1) and 4o(1) of the Act, 7 U.S.C. §§ 6k(2), 6m(1) and 6o(1) (2006), and Regulation 4.20(a)-(c), 17 C.F.R. § 4.20(a)-(c) (2011);

B. A statutory restraining order pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), restraining Defendants and all persons insofar as they are acting in the capacity of Defendants' agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them 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 Defendants, wherever located, including all such records concerning Defendants' 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 Defendants, wherever located, including all such records concerning Defendants' 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, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of the Defendants;

C. Orders of preliminary and permanent injunction prohibiting Defendants, and any other person or entity associated with them, from, directly or indirectly, engaging in conduct in violation of Sections 4b(a)(1)(A)-(C), 4k(2), 4m(1) and 4o(1) of the Act, as amended by the CRA and Dodd-Frank, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6k(2), 6m(1) and 6o(1), and Regulation 4.20(a)-(c), 17 C.F.R. § 4.20(a)-(c) (2011);

D. Orders of preliminary and permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation

with Defendants who receive actual notice of such order by personal service or otherwise, from 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 of the Act, to be codified at 7 U.S.C. § 1a;

2. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Commission Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2011)) ("commodity options"), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and/or 2(c)(2)(C)(i) of the Act, as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) ("forex contracts"), for their own personal account or for any account in which they have a direct or indirect interest;

3. Having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on their behalf;

4. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;

5. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;

6. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011);

7. Acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2009)), 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011);

E. An order directing that Defendants make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds they received from and paid to investors and other persons in connection with commodity futures transactions or purported commodity futures transactions, including the names, addresses and telephone numbers of any

such persons from whom they received such funds to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from commodity investors, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from September 1, 2006 to and including the date of such accounting. At a minimum, the accounting should include a chronological schedule of all cash receipts and cash disbursements. In addition, each transaction shall be classified as business or personal. All business transactions shall disclose the business purpose of the transaction. The accounting shall be provided in an electronic format such as Quicken, Excel, or other accounting or electronic format spreadsheet. In addition, the Defendants shall supply true and accurate copies of any balance sheets, income statements, statement of cash flow, or statement of ownership equity previously prepared for the Defendants' business(es);

F. An order requiring Defendants immediately to identify and provide an accounting in the same manner as described above, for all assets and property that they 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 names of Dimitry Vishnevetsky, Oxford Capital LLC, Hodges Trading LLC, Hodges Court Trading and/or their nominees, whether held jointly or otherwise, and requiring them 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 requiring the 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;

H. An order directing the 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;

I. 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;

J. An order requiring Defendants to pay civil penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain to Defendant for each violation of the Act or (2) \$130,000 for each violation of the Act before October 22, 2008, and \$140,000 for each violation of the Act on or after October 23, 2008;

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

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

Date: May 1, 2012

Respectfully submitted,

/s/Diane M. Romaniuk

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