

issued false account statements to participants that misrepresented the profitability and value of participants' respective interests in the Blue Guru commodity pool ("the "Pool"). In fact, on information and belief, the Defendants did not use a significant portion of participants' monies for trading on behalf of the Pool as Carter and Slobodnik represented they would, and instead misappropriated participants' funds.

3. Blue Guru participants have been unable to withdraw funds from the Pool. Carter and Slobodnik have ignored participants' demands, engaged in delay tactics, and lied about conditions that purportedly prevented them from making disbursements.

4. By soliciting and accepting money from at least 18 individuals to engage in trading of commodity futures in a pooled account, Defendants acted as Commodity Pool Operators ("CPOs") or Associated Persons ("APs") of CPOs without being registered with the Commission as required by law.

5. By engaging in this conduct and the conduct further described herein, Defendants engaged, are engaging, or are about to engage in acts and practices that violate the anti-fraud and registration provisions of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1-26 (2012), and Commission Regulations ("Regulations") thereunder, 17 C.F.R. Pt. 1-190 (2017). Specifically, Defendants have violated the anti-fraud provisions contained in Sections 4b(a)(1)(A)-(C) and 4o(1)(A)-(B) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6o(1)(A)-(B) (2012), and the registration requirements set forth in Sections 4m(1) and 4k(2) of the Act, 7 U.S.C. §§ 6m(1), 6(k)(2) (2012).

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

7. Accordingly, the CFTC brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act. In addition, the CFTC seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, disgorgement, restitution, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2012) (federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012) authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice that violates any provision of the Act or any rule, regulation, or order promulgated thereunder.

9. Venue properly lies with this Court pursuant to Section 6c(e) of the Act because 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.

PARTIES

10. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the responsibility for enforcing the provisions of the Act, 7 U.S.C. §§ 1-26 (2012), and the Commission Regulations ("Regulation") promulgated thereunder, 17 C.F.R. Pt. 1-190 (2017).

11. Defendant **Richard D. Carter** ("Carter") is a resident of Mundelein, Illinois and is a senior trader and a principal of Blue Guru. He has never been registered with the

Commission in any capacity. However, Carter was a registered representative with the Securities Exchange Commission (“SEC”) from 1992 until 2005, when he was barred from acting as a broker or otherwise associating with any National Association of Securities Dealer (“NASD”) member for, among other things, circumventing a heightened supervision plan by hiding the fact that he was the representative effecting trades on certain customer accounts. Carter’s registration as a securities salesperson in Illinois also was revoked in 2006 based on this conduct. Carter was also the subject of an SEC fraud action in 2010 for his role in perpetrating a microcap fraud; Carter was ordered to pay a \$100,000 fine and was permanently barred from serving as an officer or director of any entity registered or required to file reports with the SEC and was further barred from participating in any offer of penny stock.

12. Defendant **Mark R. Slobodnik** (“Slobodnik”) is a resident of Libertyville, Illinois and is the president, head trader and a principal of Blue Guru. He was a Chicago Mercantile Exchange (“CME”) member for approximately fifteen years until 2011, when he sold his seat on the exchange. Slobodnik was registered with the CFTC as a floor broker From January 2001 to August 2013, when his floor broker registration was withdrawn. He was a principal from May 2008 to October 2010 and AP from May 2008 to August 2008 of MSLO Asset Management, LLC, a former registered commodity trading advisor (“CTA”) and a principal from September 2016 to October 2017 of MSLO Trading Group, another former registered CTA.

13. Defendant **Blue Guru Trading, LLC** (“Blue Guru”) is a limited liability company formed pursuant to the laws of Delaware on April 2, 2014. Blue Guru’s principal place of business is located in Lincolnshire, Illinois. The principals of Blue Guru are Carter and Slobodnik. Blue Guru has never been registered with the Commission in any capacity.

STATUTORY BACKGROUND

14. Section 1a(10) of the Act , 7 U.S.C. § 1a(10) (2012), defines a “commodity pool” as any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any commodity for future delivery, security futures product, swap, or commodity option.

15. Section 1a(11)(A)(i) of the Act, in relevant part, defines a Commodity Pool Operator (“CPO”) as any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including commodities for future delivery, security futures products, and swaps.

16. A “participant” is defined in Regulation 4.10(c), 17 C.F.R. § 4.10(c) (2017), as any person who “has any direct financial interest in a pool (e.g., a limited partner).”

17. An “Associated Person” or “AP” is defined in Section 4k of the Act, 7 U.S.C. § 6k (2012), and Regulation 1.3(aa)(1) and (2), 17 C.F.R. § 1.3(aa)(1), (2) (2017), with certain qualifications, as a natural person associated with any CTA, CPO or FCM as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves: (i) the solicitation of funds, securities, or property for a participation in a commodity pool; or (ii) the supervision of any person or persons so engaged.

18. A “futures commission merchant” or “FCM” is defined in Section 1a(28) of the Act as an individual, association, partnership, corporation or trust that is engaged in soliciting or in accepting orders for the purchase or sale of a commodity for future delivery; a security futures product; a swap; any agreement, contract, or transaction; any commodity option; or any

leverage transaction; or acting as a counterparty in any agreement, contract, or transaction; and in or in connection with these activities accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or that is registered with the Commission as a futures commission merchant.

THE FRAUD

A. Solicitation of Pool Participants

19. Carter and Slobodnik established Blue Guru in April 2014 and began soliciting and accepting funds for participation interests in the Blue Guru commodity pool (described in terms of “investments in Blue Guru”) shortly thereafter.

20. Carter and Slobodnik gave or instructed others to provide prospective participants a “Confidential Private Placement Memorandum” (the “Blue Guru PPM”) that describes the investment and sets out the investment terms. The Blue Guru PPM describes Blue Guru as a limited liability company “in the business of trading futures contracts on the Dow Jones E-mini Contract (known as YM) and The S&P 500 E-mini (known as the ES).” The Blue Guru PPM also states that Carter and Slobodnik “intend to use the proceeds of the Offering for buying and selling futures contracts on the Chicago Mercantile Exchange.”

21. As described in the Blue Guru PPM, participation interests in the Pool are structured in the form of “Notes,” which “are due twelve months from the date of issuance” with “the principal amount will be paid at maturity, unless earlier redeemed, and interest will be accrued and paid annually, on Jan 20th, commencing the first year after issuance, until maturity at the rate of 8.0% (eight percent) per annum, with a payout of 50% (fifty-percent) of the gross net profit from trading profits.”

22. The “Risk Factors” section of the Blue Guru PPM states, “We currently collaborate with various trading firms and have developed a proprietary model for trading the

financial markets.” It also states “we are subject to Commodity Trading regulations” and that “we will be substantially dependent upon our officers, specifically, Mr. Mark Slobodnik and Mr. Richard Carter, who have significant experience in our business, to carry out our business plan.”

23. The “Business” section of the Blue Guru PPM states that “Trades will be made in an Omnibus account and profits and losses are placed into member accounts on a percentage basis.”

24. Exhibit B to the Blue Guru PPM is a “Subscription Agreement Private Placement of Notes” for Blue Guru. The Agreement echoes the statements in the PPM regarding the purpose of the LLC; however, it states that “interest will be accrued and paid *quarterly* after issuance, until maturity at a rate of 8.0% (eight percent) per annum.” (emphasis added).

25. The Blue Guru PPM does not contain any restrictions on participants’ ability to withdraw their principal investment plus interest at any time.

26. Carter and Slobodnik solicited relatives, friends, business associates, and others to invest in Blue Guru by various means, including in-person communication, word-of-mouth and chat rooms. Carter or Slobodnik did not inform some or all participants or prospective participants that Carter had been sanctioned by the SEC, the state of Illinois, and the NASD and barred from ever associating with an NASD member or serving as an officer or director of a securities firm.

27. Carter and Slobodnik told prospective and actual participants that their funds would be used for commodity futures trading and that their trading experience and technical expertise allowed them to gain a significant edge in trading financial markets. Additionally, they stated that “their proprietary software is finding areas where the market cannot go higher or lower creating zones of resistance and support. These zones are found with a combination of

various factors. We will isolate the trend.” Carter and Slobodnik represented that Blue Guru’s trading strategy would entail trading in futures, Dow Jones E-mini and in S&P 500 E-mini contracts on the CME and hedging positions with options contracts from time to time.

28. During their solicitations of participants, Carter and Slobodnik willfully or recklessly made material misrepresentations about Blue Guru. Carter and Slobodnik falsely told participants that the funds they invested would be used to trade commodity futures contracts in a pooled account at a registered FCM located in Chicago (“FCM A”). Carter also told participants and prospective participants that Blue Guru’s strategy was to be flat at the end of each trading day meaning that there would be little or no risk carried overnight. He also represented that participants’ returns were allocated from the Blue Guru pool account at FCM A to separate participant sub-accounts also carried at FCM A at the end of each trading day.

29. However, FCM A did not carry any Blue Guru account identified as holding pooled interests or any sub-accounts for Blue Guru participants.

30. During the Relevant Time, Carter and Slobodnik solicited and received at least \$750,000 from at least eighteen participants located in this District to invest with and sign a subscription agreement with Blue Guru.

B. Failure to Trade and Misappropriation of Participant Funds

31. Contrary to the terms of the PPM and Subscription Agreements for Blue Guru, Carter and Slobodnik did not trade all of the funds that participants invested in Blue Guru. Instead, on information and belief, Carter and Slobodnik misappropriated a significant portion of the funds that participants invested for participation interests in Blue Guru.

32. Carter and Slobodnik represented to Blue Guru participants that their funds were being traded in a pooled account at FCM A and were earning consistent profits. They also told participants that the profits from trading in the pooled account were allocated each day to sub-

accounts in the participants' names at FCM A. However, while Blue Guru maintains four proprietary accounts at FCM A, Carter and Slobodnik have never maintained a pooled account there for Blue Guru or any sub-accounts for Blue Guru's participants. Additionally, Slobodnik represented to FCM A in the corporate account opening documents they completed that, "all monies to be deposited into an account in the name of Blue Guru Trading, LLC are solely funds of the entity and have not been solicited from any third parties. No individuals other than Mark Slobodnik (via MSLO Ltd.) and Richard Carter will have financial interest in the LLC and futures trading account."

33. While Carter represented to Blue Guru participants in December 2017 in a letter that the total balance in the Blue Guru fund for all investors was more than \$6.1 million, the net balance in Blue Guru's four proprietary accounts at FCM A combined at that time was only approximately \$11,000. The combined total deposited into the Blue Guru proprietary accounts at FCM A during the life of the accounts was \$1,128,485, at least \$750,000 of which was participants' funds, total withdrawn was \$585,065.20, total lost trading was \$500,669.92, and the average monthly loss for the four proprietary accounts was \$11,378.86.

34. Carter is still soliciting participants to invest with Blue Guru. Blue Guru's office is still open for business and Carter has mentioned to at least two participants that he is planning to start another business venture involving trading participants funds called "Elev8 Trading." Within the past two weeks, Carter solicited an existing Blue Guru participant to invest an additional \$800,000, and on information and belief, since the end of 2017 Carter has solicited a parent of a child on his son's hockey team to invest \$2 million with Blue Guru.

C. Issuance of False Statements

35. Carter and Slobodnik willfully or recklessly represented to pool participants that their funds had been invested in the strategy that they had described both verbally and in the

Blue Guru PPM and were retaining their value and generating profits. However, participants' funds were not deposited into an account designated as an account for Blue Guru pool participants at FCM A or allocated to participant sub-accounts at FMC A as represented, and, on information and belief, a significant portion were misappropriated.

36. During the Relevant Time, Carter willfully or recklessly issued or instructed others to issue at least 13 false statements to at least three participants in the Pool that falsely reported the value of participants' interests, and falsely reported that the Pool was increasing in value every quarter when in fact it was not.

37. Participants received the statements either directly from Carter or a third party via email at Carter's direction.

38. For example, a participant in Kenilworth, Illinois who invested a total of \$450,000 with Blue Guru in the name of two of his business on July 13, 2016 and September 22, 2016, respectively, received a spreadsheet from Blue Guru reflecting the Pool's track record of monthly returns ranging from a low of 3% to more than 8% with no losses. He also received quarterly account statements for his two investments showing that his investments had earned the following monthly returns with no losses:

Month	Gain/Loss Investment #1	Total	Gain/Loss Investment #2 (GSP)	Total
January 2017	\$12,853	\$286,340	\$10,828	\$230,494
February 2017	\$16,762	\$303,102	\$14,146	\$241,322
March 2017	\$546	\$303,648	\$460	\$255,928
April 2017	\$12,267	\$315,915	\$10,339	\$266,267
May 2017	\$18,993	\$334,908	\$16,008	\$282,275
June 2017	\$16,779	\$351,687	\$14,142	\$296,417
July 2017	\$5,346	\$357,033	\$4,506	\$300,923
August 2017	\$19,922	\$376,955	\$16,791	\$3,17,714
September 2017	\$11,346	\$388,301	\$9,563	\$327,277

39. Participants who reviewed their quarterly account statements were intentionally led to believe, and did believe, that their investments with Blue Guru had not only held their value, but grew at a rate of at least eight percent per year plus 50% of gross net trading profits.

40. These statements were false because, on information and belief, Blue Guru did not have trading positions, cash, or other assets sufficient to support the values disclosed in the statements.

41. At the beginning of this year when one Blue Guru participant called FCM A to ask about the status of his investment after several unsuccessful attempts to withdraw his funds from Blue Guru, he was advised that no account for him or any customer account for Blue Guru exists or had ever existed at FCM A. When he provided account statements to FCM A that he had received from Blue Guru and that appeared to be on FCM A letterhead, he was advised that the statements were not issued by FCM A and appeared to be false.

42. In addition to the false quarterly statements, Carter either willfully or recklessly issued other false written statements to participants. For example, in December 2017, Carter wrote and sent a letter via email to three participants or prospective participants with an “investor breakdown” statement attached showing the value of each participant’s respective interest in the pool and showing that the pool had a total value of \$6,124,898.79. Carter also included the FCM A logo on the investor breakdown sheet accompanying the letter to deceive participants into believing that their funds were maintained in a pool account in the name of Blue Guru at FCM A when they were not.

43. According to one participant, Carter provided this letter and investor breakdown statement in an attempt to convince the participant that he should buy some or all of the smaller participants out with an additional \$800,000 investment to streamline and simplify the Pool.

However, the participants' account values reflected in the investor breakdown sheet that Carter represented amounted to \$6,124,898.79 actually only add up to \$2,861,619.24. This error made the participant uneasy and he declined to make the additional investment.

44. Additionally, Carter wrote: "The amount owed to investors at year end is roughly \$879,213. This is derived from current value of \$1,046,803 minus our performance fee of \$167,590." As explained above, all of these statements are false. Blue Guru has no accounts in the name of the Pool and no sub-accounts for participants at FCM A, did not trade a significant portion of participants funds, but instead, on information and belief, misappropriated participants' funds.

D. Participants Are Not Able To Withdraw Their Funds

45. When participants attempted to withdraw their initial capital or reported profits from Blue Guru, Carter and Slobodnik made excuses as to why they could not return their funds.

46. For example, Carter blamed Slobodnik for the failure to return the funds, writing in a text message to one participant that Slobodnik is the one who handles withdrawals from the bank account where he claimed the funds had been deposited, "it is not [FCM A]. They send money to bank account. Mark handles this."

47. Carter also attempted to convince at least one participant not to withdraw his funds so that Carter could continue to build the business indicating that it would ultimately be more profitable for the participant if he did not withdraw his funds, but maintain them with Blue Guru for even greater returns in the future. Carter also assured one participant that his investments "were up 10% for the quarter" when the participant had expressed concern that Carter was not returning his funds upon his request. These statements were false because when

Carter made them neither he nor Slobodnik were trading participants' funds, which were producing no returns.

48. Slobodnik told at least one participant that his money would be returned after repeated withdrawal requests, but Slobodnik said that the participant "needs to go through our process" and then referenced his divorce as a reason for the delay. Slobodnik failed to inform participants that no pool account or sub-accounts were ever opened up at FCM A in the name of Blue Guru or the participants for trading participants' funds, a significant portion of their funds were not traded and instead, on information and belief, had been misappropriated by Slobodnik and Carter.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS

COUNT I

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

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

50. Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C) (2012), make it unlawful for any person, in or in connection with any order to make or the making of any futures contract to cheat, defraud or willfully deceive, or attempt to cheat, defraud, or willfully deceive any other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for such other person.

51. As set forth above, since at least April 2014, Defendants willfully cheated, defrauded or deceived, and/or attempted to cheat, defraud or deceive participants in Blue Guru by, among other things:

- a. on information and belief misappropriating participants' funds; and
- b. making material misrepresentations and omitting material facts to prospective and actual participants, including that:
 - i. participant funds would be used to trade commodity futures contracts in a pooled account(s) at FCM A;
 - ii. participants were earning consistent profits on their investments;
 - iii. pool participants were guaranteed to earn profits of at least 8%, annual returns and receive 50% of gross net trading profits, when Defendants did not use some or all of participants' investments to trade and had no basis for making these statements; and
 - iv. refusing to allow participants to withdraw their funds.

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

53. Carter's and Slobodnik's acts, omissions and failures, as described in this Count, were committed within the scope of their employment or office with Blue Guru. Therefore, Blue Guru are liable for their acts, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2017).

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

55. Each misappropriation and material misrepresentation or omission, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of Section 4b(a)(1)(A) and (C) of the Act.

COUNT II

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

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

57. Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b(a)(1)(B) (2012), makes it unlawful for any person, in or in connection with any order to make or the making of any futures contract, to willfully make or cause to be made to another person a false report or statement.

58. From at least April 2014, Carter violated Section 4b(a)(1)(B) of the Act by causing false statements to be issued to participants in Blue Guru that reflected false equity and income.

59. Carter engaged in the acts and practices described in this Count willfully, or with reckless disregard for the truth.

60. Carter's acts, omissions and failures, as described in this Count, were committed within the scope of his employment or office with Blue Guru. Therefore, Blue Guru is liable for his acts, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2.

61. During the Relevant Time, Carter and Slobodnik directly or indirectly controlled Blue Guru, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Blue Guru's violations described in this Count. Pursuant to Section 13(b) of the Act, Carter and Slobodnik are therefore liable for Blue Guru's violations described in this Count to the same extent as Blue Guru.

62. Each false report or statement, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of Section 4b(a)(1)(B) of the Act.

COUNT III

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

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

64. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), prohibits any CPO or AP of a CPO from using the mails or any other means of interstate commerce to:

(A) employ any device, scheme or artifice to defraud any client or participant or prospective client or participant; or

(B) engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or participant or prospective participant.

65. During the Relevant Time, Blue Guru acted as a CPO in that it engaged in a business that is of the nature of an investment trust, syndicate or similar form of enterprise operated for the purpose of trading in commodity interests or commodity futures, and in connection therewith, solicited, accepted and received funds from others for the purpose of trading in commodity interests and commodity futures.

66. During the Relevant Time, Carter and Slobodnik acted as APs of Blue Guru by soliciting funds for the pool and handling participant monies while being associated with Blue Guru as a partner, officer, employee, consultant, or agent (or person occupying a similar status or performing similar functions).

67. As set forth above, Carter and Slobodnik, while acting as APs of a CPO, and Blue Guru, while acting as a CPO, defrauded and deceived participants of Blue Guru by using the

mails or any other means of interstate commerce in violation of Section 4o(1) of the Act by among other things:

- a. on information and belief misappropriating participants' funds; and
- b. making material misrepresentations and omitting material facts to prospective and actual participants, as described in Paragraph 51 above.

68. As set forth above, Carter, while acting as an AP of a CPO, and Blue Guru, while acting as a CPO, defrauded and deceived participants of Blue Guru by using the mails or any other means of interstate commerce in violation of Section 4o(1) of the Act, by among other things, causing false account statements to be issued to participants in Blue Guru that reflected non-existent equity and income.

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

70. Carter's and Slobodnik's acts, omissions and failures, as described in this Count, were committed within the scope of their employment or office with Blue Guru. Therefore, Blue Guru is liable for their acts, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2.

71. During the Relevant Time, Carter and Slobodnik directly or indirectly controlled Blue Guru, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Blue Guru's violations described in this Count. Pursuant to Section 13(b) of the Act, Carter and Slobodnik are therefore liable for Blue Guru's violations described in this Count to the same extent as Blue Guru.

72. Each fraudulent or deceptive act, including without limitation those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1)(A) and (B) of the Act.

COUNT IV

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

73. Paragraphs 1 through 48 are realleged and incorporated herein by reference.

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

75. During the Relevant Time, Blue Guru engaged in activities as a CPO without the benefit of registration as a CPO, and in connection therewith used the mails or other means or instrumentalities of interstate commerce, in violation of Section 4m(1) of the Act.

76. Each use of the mails or any means or instrumentality of interstate commerce in connection with Defendant's business as 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.

77. During the Relevant Time, Carter and Slobodnik directly or indirectly controlled Blue Guru, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Blue Guru's violations described in this Count. Pursuant to Section 13(b) of the Act Carter and Slobodnik are therefore liable for Blue Guru's violations described in this Count to the same extent as Blue Guru.

COUNT V

**FAILURE TO REGISTER AS APs AND
ALLOWING UNREGISTERED APs TO REMAIN ASSOCIATED WITH A CPO
VIOLATIONS OF SECTION 4k(2) OF THE ACT**

78. Paragraphs 1 through 48 are realleged and incorporated herein by reference.

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

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

81. Carter and Slobodnik violated Section 4k(2) of the Act in that they acted as APs of Blue Guru without the benefit of registration as APs of a CPO.

82. Blue Guru violated Section 4k(2) of the Act in that, acting as a CPO, it allowed Carter and Slobodnik to act as its APs when it knew or should have known that Carter and Slobodnik were not registered as APs.

83. Each act by Carter and Slobodnik of soliciting funds, securities, or property for participation in a commodity pool while being associated with Blue Guru as a partner, officer, employee, consultant, or agent without being registered as an AP of a CPO, and each act by Blue Guru of allowing Carter and Slobodnik to be associated with it in such a capacity when Blue

Guru knew or should have known Carter and Slobodnik were not registered as APs, is alleged as a separate and distinct violation of Section 4k(2) of the Act.

RELIEF REQUESTED

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

a) An order finding that Defendants violated Sections 4b(a)(1)(A) and (C), 4b(a)(1)(B), 4o(1), 4m(1), and 4k(2) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C), 6(b)(1)(1)(B), 6o(1), 6m(1), 6(k)(2) (2012);

b) An order of permanent injunction prohibiting Defendants and any of their affiliates, agents, servants, employees, successors, assigns, attorneys, and persons in active concert or participation with Defendants, from directly or indirectly:

- (i) engaging in conduct in violation of Sections 4b(a)(1)(A) and (C), 4b(a)(1)(B), 4o(1), 4m(1), and 4k(2) of the Act;
- (ii) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (2012));
- (iii) entering into any transactions involving "commodity interests" (as that term is defined in Commission Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2017)), for Defendants' own accounts or for any account in which they have a direct or indirect interest;
- (iv) having any commodity interests traded on Defendants' behalf;
- (v) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;

- (vi) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
 - (vii) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2017);
 - (viii) acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2017)), 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);
- c) An order requiring Defendants and any third party transferee and/or successors thereof, to disgorge to any officer appointed or directed by the Court all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment and post-judgment interest;
- d) An order directing Defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the pool participants whose funds were received by them as a result of the acts and practices that constituted violations of the Act, as described herein;
- e) An order requiring Defendants to make restitution by making whole each and every pool participant whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre-judgment interest;

c) An order directing Defendants to pay civil monetary penalties, to be assessed by the Court, in an amount not more than the penalty prescribed by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1) (2012), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, 129 Stat. 584 (2015), title VII, Section 701, *see* Commission Regulation 143.8, 17 C.F.R. § 143.8 (2017) for each violation of the Act, as described herein;

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

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

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Respectfully submitted,

/s/ Susan Gradman

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