

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

BURTON G. FRIEDLANDER and
FRIEDLANDER CAPITAL
MANAGEMENT CORPORATION,

Defendants.

03 CV 8319

COMPLAINT FOR PERMANENT
INJUNCTION, OTHER EQUITABLE
RELIEF AND CIVIL MONETARY
PENALTIES



I.

SUMMARY

1. From at least 1998 to at least 2001 (the “relevant time period”), defendants Friedlander Capital Management Corporation (“FCMC”) and Burton G. Friedlander (“Friedlander”), individually and as an agent for FCMC, (collectively “Defendants”) engaged in a fraudulent scheme in connection with a multimillion dollar pooled investment fund (the “FCMC Pool”).

2. Beginning as early as 1994, Defendants solicited at least six individuals and two entities (“pool participants”) to invest in FCMC by falsely representing that the FCMC Pool, a collective investment vehicle that traded both securities and commodity interests, was generating significant profits when, in fact, it was steadily losing value. During the relevant time period, Defendants did not invest all of the pool participants’ funds in the FCMC Pool; rather, Defendants commingled the funds with non-pool funds and misappropriated some of the pool participants’ funds to pay for personal goods and expenses.

3. During the relevant time period, in order to conceal their fraudulent activities, Defendants issued false reports to pool participants using forged letterhead from the accounting

firm of KPMG LLP (“KPMG”) that purported to show that Defendants were generating annual profits for the FCMC Pool, in order to encourage pool participants leave funds invested or to make additional investments in the pool. As a result of Defendants’ fraudulent reports, pool participants invested additional funds in the FCMC Pool.

4. At all times during the relevant time period, Defendant FCMC acted without benefit of registration as a commodity pool operator (“CPO”), and Defendant Friedlander was an unregistered Associated Person (“AP”) of a CPO and the sole principal.

5. During the relevant time period, Defendant FCMC did not provide pool participants with a pool Disclosure Document, and did not distribute timely, accurate account statements to pool participants.

6. Defendants engaged in acts and practices that violate the antifraud and CPO provisions of the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, (2001) (the “Act”), and the Commodity Futures Trading Commission (“CFTC”) Regulations promulgated thereunder (“Regulations”), 17 C.F.R. § 1.1 *et seq.* (2002), relating to commodity futures transactions. Specifically, Defendants violated:

- a. Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), by engaging in fraudulent activity in connection with trading commodity futures including making false representations, disseminating false trading reports and misappropriating customer funds;
- b. Section 4o(1) of the Act, 7 U.S.C. §§ 6o(1), and Section 4.20 of the Regulations, 17 C.F.R. § 4.20(c), by engaging in fraudulent activity while acting as a commodity pool operator, failing to operate a commodity pool as a separate legal entity, failing to receive funds from pool participants in the pool’s name, and commingling commodity pool funds;
- c. Section 4k(2) of the Act, 7 U.S.C. §6k(2), and Section 3.12(a) of the Regulations, by acting as an unregistered associated person (“AP”) of a CPO and permitting the association of an unregistered AP;
- d. Section 4m(1) of the Act, 7 U.S.C. § 4m(1), by acting as an unregistered CPO; and

- e. Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and Sections 4.21 and 4.22 of the Regulations, 17 C.F.R. §§ 4.21 and 4.22 by failing to comply with reporting and disclosure requirements.

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

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

II.

JURISDICTION AND VENUE

9. The Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the CFTC that any 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 promulgated thereunder, the CFTC may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

10. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because certain of the transactions, acts, practices and courses of business alleged occurred within the Southern District of New York, including the operation of the primary bank account for FCMC, into which investor funds were deposited and misappropriated.

III.

THE PARTIES

A. Plaintiff

11. The **U.S. Commodity Futures Trading Commission** is the independent federal regulatory agency charged with the administration and enforcement of the Act, 7 U.S.C. § 1 *et seq.*, and the Regulations, 17 C.F.R. § 1.1 *et seq.*

B. Defendants

12. **Burton G. Friedlander** resides at 109 Pecksland Road, Greenwich, Connecticut 06831. Friedlander is the sole principal and AP of FCMC. Friedlander was registered with the CFTC as a floor broker from March 24, 1982 to December 13, 1984. Since that time, Friedlander has not been registered with the CFTC in any capacity. At all times during the relevant time period, Friedlander acted individually and as an agent of FCMC.

13. **Friedlander Capital Management Corporation** is a Connecticut corporation located at 104 Field Point Road, Greenwich, Connecticut 06830. FCMC has never been registered with the CFTC in any capacity despite acting as a CPO.

IV.

FACTS

A. FCMC was a Commodity Pool Operator

14. During the relevant time period, FCMC managed and operated the FCMC pool that consisted of at least six individuals and two entities. FCMC, through its sole principal and AP Friedlander, distributed an investment advisory services agreement (“Investment Agreement”) to prospective pool participants that described the operation of the pool.

15. The Investment Agreement states that investor funds “will be pooled with other amounts that may be delivered from time to time by the Client and by other clients of [FCMC] with such aggregate amounts to be deposited into one or more accounts maintained in the name of [FCMC].” According to the Investment Agreement, FCMC was authorized to trade on behalf of the FCMC Pool, including “purchasing, selling and trading stocks, bonds, warrants, and other securities of any and all natures and types, including commodities.” The Investment Agreement also set forth the compensation that FCMC and Friedlander would receive for operating the FCMC Pool.

16. Defendants did not provide a Disclosure Document to prospective pool participants, nor did they file a Disclosure Document with the CFTC.

17. The Investment Agreement required FCMC to provide pool participants with a written statement of the market value of the FCMC Pool for each calendar quarter and each calendar year. FCMC failed to provide pool participants with quarterly account statement and failed to provide pool participants with accurate annual statements of the account.

18. During the relevant time period, FCMC maintained an account in its own name at Refco, Inc. (“Refco”) a registered futures commission merchant in which Friedlander traded commodity futures contracts for the benefit of the FCMC Pool.

19. From at least July 1998 through at least December 1999, FCMC also maintained an account in its own name at PCH Asset Management (“PCH”), in which Friedlander traded securities for the benefit of the FCMC pool.

20. During the relevant time period, Defendants maintained a business checking account in the name of FCMC at Citibank NA, (“Citibank Account”) on which Friedlander was the sole signatory.

B. Misappropriation and Commingling of FCMC Pool Funds

21. Defendants never established a separate, cognizable legal entity to serve as the pool in which the pool participants' funds would be invested. Rather, funds intended by pool participants as investments in the FCMC Pool were deposited into the FCMC Citibank Account. Friedlander also deposited non-pool funds into this Account and commingled them with FCMC Pool funds.

22. During the relevant time period, Defendants represented to pool participants that he was using their money to trade commodity futures contracts and securities, in accordance with the Investment Agreement. He further represented to pool participants that their returns were positive and their principal secure.

23. During the relevant time period, Defendants failed to deposit new investments from FCMC pool participants into trading accounts for the FCMC Pool.

24. While Defendants sometimes transferred investor money from the Citibank Account to the Refco and PCH accounts, Friedlander misappropriated at least \$1.3 million of investor funds deposited in FCMC's Citibank Account to pay for his personal expenses including, but not limited to, boat payments, car payments, country club dues, legal expenses and movie rentals. Friedlander also used money from the account intended for new investments in the FCMC Pool to repay pool participants who requested redemption of their share of pool funds and to fund loans that were not repaid.

C. Dissemination of False Reports

25. During the relevant time period, Defendants knew that the FCMC Pool was suffering losses by virtue of Friedlander's misappropriation of investor funds and the performance of FCMC's Refco and PCH accounts. In order to conceal the losses from pool participants, FCMC,

through its sole principal and AP Friedlander, forwarded or caused to be forwarded to pool participants fraudulent annual “compilation reports” for 1998 through 2000, prepared on forged letterhead from the accounting firm KPMG and fraudulently signed “KPMG Peat Marwick LLP.” KPMG did not prepare or assist in preparing the compilation reports sent by FCMC, through its sole principal and AP Friedlander, to pool participants for the years 1998 through 2000. KPMG did not authorize the use of its letterhead, nor did it sign or approve any of these compilation reports. In fact, KPMG ceased using “Peat Marwick” in its name, including on its letterhead, in late 1998. The compilation reports were further false and misleading because they overstated the value of pool participants’ assets and returns, and were not based upon actual assets held in FCMC accounts.

26. In the compilation reports forwarded to pool participants in 1999, for the year ending December 31, 1998, Defendants represented total pooled fund assets of in excess of \$3.29 million; however, actual FCMC Pool assets as of that date were less than \$1.86 million.

27. In the compilation reports forwarded to pool participants in 2000, for the year ending December 31, 1999, Defendants represented total pooled fund assets of in excess of \$4.7 million, when actual FCMC Pool assets as of that date were less than \$245,000.

28. In the compilation reports forwarded to pool participants in 2001, for the year ending December 31, 2000, Defendants represented total pooled fund assets of in excess of \$5.7 million; however, actual FCMC Pool assets as of that date were less than \$227,000.

V.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

**VIOLATIONS OF SECTION 4b(a)(2)(i)-(iii) OF THE ACT, 7 U.S.C. § 6b(a)(2)(i)-(iii):
FRAUD IN CONNECTION WITH COMMODITY FUTURES CONTRACTS AND
MISAPPROPRIATION OF CUSTOMER FUNDS**

29. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

30. During the relevant time period, Defendants violated Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), in that they cheated or defrauded or attempted to cheat or defraud other persons by, among other things: (a) misrepresenting the trading performance of the FCMC Pool; (b) misappropriating investor funds; and (c) disseminating false letters and reports regarding the trading performance of the FCMC Pool, as described in paragraphs 14 through 28, above.

31. The acts and omissions alleged in this Count were made in or in connection with orders to make, or the making of contracts for future delivery, made, or to be made for or on behalf of 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; (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.

32. Defendant Friedlander controls or controlled FCMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, FCMC's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Friedlander is liable for Defendant FCMC's violations of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), as described in this Count.

33. Each false, deceptive, or misleading representation of material facts, each failure to disclose material facts, each false report, and each misappropriation of customer funds including, but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii).

COUNT II

VIOLATIONS OF SECTION 4o(1) OF THE ACT, 7 U.S.C. § 6o(1): FRAUD BY COMMODITY POOL OPERATOR

34. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

35. During the relevant time period, Defendants violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that, directly and indirectly, they have been or are employing a device, scheme, or artifice to defraud pool participants or prospective pool participants, or have engaged or are engaging in transactions, practices or courses of business which have operated or are operating as a fraud or deceit upon pool participants or prospective pool participants. These fraudulent transactions, practices, or courses of business include, among other things: (a) misrepresenting the trading performance of the FCMC Pool; (b) misappropriating investor funds; and (c) disseminating false reports regarding the trading performance of the FCMC Pool, as described in paragraphs 14 through 28, above.

36. Defendant Friedlander controls or controlled FCMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, FCMC's conduct alleged in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Defendant Friedlander is liable for FCMC's violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1), as described in this Count.

37. Each false, deceptive, or misleading representation of material facts, each failure to disclose material facts, each false report, and each misappropriation of customer funds including,

but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1).

COUNT III

**VIOLATION OF SECTION 4.20 OF THE REGULATIONS, 17 C.F.R. § 4.20:
FAILURE TO OPERATE COMMODITY POOL AS A SEPARATE LEGAL ENTITY,
FAILURE TO RECEIVE FUNDS IN THE COMMODITY POOL'S NAME
AND COMMINGLING OF COMMODITY POOL FUNDS**

38. Paragraphs 1 through 37 are realleged and incorporated herein by reference.

39. During the relevant time period, Defendant FCMC violated Section 4.20 of the Regulations, 17 C.F.R. § 4.20, in that it failed to operate the FCMC Pool as a cognizable legal entity separate from that of FCMC, failed to receive funds, securities or other property from pool participants in the name of the FCMC Pool, and commingled the property of a commodity pool that it operated or intended to operate with non-pool funds as described in paragraphs 21 through 24 above.

40. Defendant Friedlander controls or controlled FCMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, FCMC's conduct alleged in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Defendant Friedlander is liable for FCMC's violations of Section 4.20 of the Regulations, 17 C.F.R. § 4.20, as described in this Count.

COUNT IV

**VIOLATION OF SECTION 4m(1) OF THE ACT, 7 U.S.C. § 4m(1):
ACTING AS AN UNREGISTERED COMMODITY POOL OPERATOR**

41. Paragraphs 1 through 40 are realleged and incorporated herein by reference.

42. A "commodity pool" is any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests. 17 C.F.R. § 4.10(d).

43. A “commodity pool operator” is any firm or individual engaged in a business which is in 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. Section 1a(4) of the Act, 7 U.S.C. § 1a(4). With certain specified exceptions and exemptions not applicable here, CPOs are required to be registered with the CFTC pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

44. The FCMC Pool is a commodity pool.

45. Defendant FCMC is a CPO and acted as such in operating the FCMC Pool.

46. Defendant FCMC violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1), in that it solicited, accepted and received funds from the public for the purpose of trading in commodity interests, and made use of the mails or other means or instrumentalities of interstate commerce in connection with its business as a CPO.

47. Defendant Friedlander controls FCMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, FCMC’s conduct alleged in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Friedlander is liable for FCMC’s violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1), as described in this Count.

COUNT V

**VIOLATIONS OF SECTION 4k(2) OF THE ACT, 7 U.S.C. § 6k(2),
AND SECTION 3.12(a) OF THE REGULATIONS:
ACTING AS AN UNREGISTERED ASSOCIATED PERSON OF A COMMODITY
POOL OPERATOR AND PERMITTING AN UNREGISTERED ASSOCIATED PERSON
TO BE ASSOCIATED WITH A COMMODITY POOL OPERATOR**

48. Paragraphs 1 through 47 are realleged and incorporated herein by reference.

49. It is unlawful for any person to be associated with a CPO as a partner, officer, employee, consultant or agent (or any 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 that person is registered as an AP of a CPO. Section 4k(2) of the Act, 7 U.S.C. § 6k(2), and Section 3.12(a) of the Regulations, 17 C.F.R. § 3.12(a). Further, it is unlawful for a CPO to permit such an unregistered AP to become or remain associated with the CPO in any such capacity. Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

50. During the relevant time period, Defendant Friedlander, without being registered as an AP of a CPO as required, violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2), and Section 3.12(a) of the Regulations, 17 C.F.R. § 3.12(a), by sending compilation reports to pool participants to solicit investments or additional investments.

51. During the relevant time period, Defendant FCMC violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2), in that, as a CPO, it permitted Friedlander to solicit funds for participation in the FCMC Pool without being registered as an AP of a CPO.

52. Defendant Friedlander controls or controlled FCMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, FCMC's conduct alleged in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Friedlander is liable for FCMC's violations of Section 4k(2) of the Act, 7 U.S.C. § 6k(2), as described in this Count.

COUNT VI

VIOLATIONS OF SECTION 4n(4) OF THE ACT, 7 U.S.C. § 6n(4), AND SECTIONS 4.21 AND 4.22 OF THE REGULATIONS, 17 C.F.R. §§ 4.21 AND 4.22: FAILURE TO COMPLY WITH REPORTING AND DISCLOSURE REQUIREMENTS

53. Paragraphs 1 through 52 are realleged and incorporated herein by reference.

54. Section 4n(4) of the Act, 7 U.S.C. § 6n(4), provides that every CPO shall regularly furnish statements of account to each participant in his operations in the form and manner

prescribed by the CFTC and shall include in such statements complete information as to the current status of all trading accounts in which a pool participant has an interest.

55. Section 4.21 of the Regulations, 17 C.F.R. § 4.21, provides that no CPO registered or required to be registered under the Act may directly or indirectly solicit, accept or receive funds, securities or other property from a prospective participant for any pool that it operates or that it intends to operate unless, on or before the date it engages in that activity, the CPO delivers or causes to be delivered to the prospective participant a Disclosure Document for the pool containing the information required by the Regulations.

56. Section 4.22 of the Regulations, 17 C.F.R. § 4.22, requires a CPO who is registered or required to be registered under the Act to distribute to pool participants a monthly account statement and an annual report containing specified information.

57. During the relevant time period, Defendant FCMC violated Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21 and 4.22 by failing to provide a pool Disclosure Document in the form specified by the Regulations to prospective pool participants, and failing to distribute to pool participants timely account statements.

58. Defendant Friedlander controls Defendant FCMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Defendant FCMC's conduct alleged in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Defendant Friedlander is liable for Defendant FCMC's violations of Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21 and 4.22.

59. Each failure to furnish required statements of account to participants, each failure to deliver required disclosure documents to prospective pool participants, each failure to distribute timely account statements to pool participants, including, but not limited to those specifically

alleged herein, is alleged as a separate and distinct violation of Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21 and 4.22.

VI.

RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Enter an order of permanent injunction enjoining Defendants, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Defendants, and all persons insofar as they are acting in active concert or participation with Defendants, who receive actual notice of the order, by personal service or otherwise, from directly or indirectly:

1. Cheating or defrauding or attempting to cheat or defraud other persons and willfully making or causing to be made to other persons any false report or statement thereof, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be 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 violation of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii);
2. Employing any device, scheme, or artifice to defraud any commodity pool participant or prospective participant, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any commodity pool participant or prospective participant, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1);
3. Acting as a CPO, directly or indirectly, without being registered under the Act and using the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1);
4. Acting as an associated person of a CPO, directly or indirectly, without being registered under the Act or permitting persons to act as associated persons without

being registered under the Act, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2), and Section 3.12(a) of the Regulations, 17 C.F.R. § 3.12(a);

5. Failing to operate a commodity pool as a separate legal entity, and commingling commodity pool funds, in violation of Section 4.20 of the Regulations, 17 C.F.R. § 4.20; and
6. Failing to provide a Disclosure Document in the form specified by the Regulations to prospective pool participants, failing to distribute to pool participants timely account statements and an annual report, and failing to file a Disclosure Document with the CFTC, in violation of Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21 and 4.22.

B. An order directing Defendants to make an accounting to the Court of all their assets and liabilities, together with all funds they received from and paid to pool participants and other persons in connection with commodity interest transactions, and all disbursements for any purpose whatsoever of funds received from pool participants in the Fund and other commodity interest investors, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from January 1, 1998, to and including the date of such accounting.

C. An order prohibiting Defendants, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Defendants, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of the Order by personal service or otherwise, from directly or indirectly:

(1) soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest contract; (2) placing orders or giving advice or price quotations, or other information in connection with the purchase or sale of commodity interest contracts for themselves and others; (3) introducing pool participants to any other person engaged in the business of commodity interest trading; (4) issuing statements or reports to others concerning commodity interest trading; and (5) otherwise engaging in any business activities related to commodity interest trading.

D. An order requiring Defendants to disgorge to any officer appointed and directed by the Court or directly to their pool participants 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.

E. An order requiring Defendants to make restitution for harm caused by their violations of the provisions of the Act and the Regulations as described herein, including pre-judgment and post-judgment interest.

F. An order requiring Defendants to pay civil penalties under Section 6c of the Act, 7 U.S.C. § 9a, to be assessed by the Court separately against each of them, in an amount of not more than the higher of \$110,000 for violations committed between November 27, 1996 and October 22, 2000, or \$120,000 for violations on or after October 23, 2000, or triple the monetary gain to the Defendants for each violation of the Act and Regulations.

G. Such other equitable relief as the Court may deem necessary or appropriate under the circumstances.

Respectfully submitted,



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