

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
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U.S. COMMODITY FUTURES )  
TRADING COMMISSION )  
)  
)  
Plaintiff, )  
)  
v. )  
)  
GARY F. SCHOLZE, )  
an individual, )  
)  
Defendant. )  
\_\_\_\_\_ )

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

2:06-cv-114

I.

SUMMARY

1. Commencing in approximately August 2001 and continuing to May 2006, Gary Scholze ("Scholze" or "defendant") fraudulently solicited and accepted approximately \$1.2 million from at least fourteen members of the general public to invest in commodity futures and options accounts to be traded and managed by Scholze. Certain investors understood that they would have individual managed accounts and others understood that their funds would be pooled with other investors' funds for purposes of trading commodity futures and options.

2. In reality, Scholze pooled all the investor funds together and commingled those funds with his personal funds in his personal bank accounts. Scholze thereafter misappropriated investor funds to pay for personal expenses and moved investor funds into his personal trading account where he lost the funds through his unprofitable trading

of futures and options.

3. To cover his misappropriation and trading losses, Scholze fabricated and issued false statements to the investors reflecting purported profitable trading results. Since at least March 2005, investors have demanded that Scholze liquidate their accounts and return their funds; Scholze has not responded.

4. In advising and managing the trading of commodity futures and options for compensation or profit, Scholze was acting as a Commodity Trading Advisor (“CTA”) without being registered with the Commission as required. While acting as a CTA, Scholze solicited, accepted and received funds from existing and prospective clients in his own name and failed to provide required Disclosure Documents to prospective investors.

5. In soliciting and accepting funds from certain individuals for purposes of pooling the funds and investing in commodity futures and options, Scholze was also acting as a Commodity Pool Operator (“CPO”) without being registered as required. While acting as a CPO, Scholze failed to operate the pool as a legal entity separate from himself, received pool funds in his own name, commingled pool participant funds with his personal funds in accounts held in his name only, and failed to provide pool participants with required Disclosure Documents.

6. Defendant’s misappropriation of pool participants’ funds, fraudulent solicitations, and issuance of false statements to participants violates Sections 4b(a)(2)(i) -(iii), 4c(b), and 4o(1) of the Commodity Exchange Act (“Act” or “CEA”), 7 U.S.C. §§ 6b(a)(2)(i) -(iii), 6c(b) and 6o(1) (2002) and Commission

Regulation 33.10(b), 17 C.F.R. §33.10(b)(2004).

7. Defendant's failure to register as a CTA and CPO violates Section 4m(1) of the Act, 7 U.S.C. §6m(1) (2002). Defendant's solicitation, acceptance and receipt of funds from prospective CTA clients in his own name to purchase commodity futures and options on behalf of those clients and his failure to provide his CTA clients with a required Disclosure Document violate Commission Regulations 4.30 and 4.31, 17 C.F.R. §§ 4.30 and 4.31 (2004). Defendant's failure to operate the pool as a legal entity separate from himself, his receipt of pool funds in his own name, his commingling of pool participant funds with his personal funds, and his failure to provide pool participants with required Disclosure Documents violate Commission Regulations 4.20 and 4.21, 17 C.F.R. §§ 4.20 and 4.21 (2004).

8. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), the Commodity Futures Trading Commission ("Commission" or "CFTC") brings this action to enjoin the unlawful acts and practices of the defendant. In addition, the Commission seeks civil monetary penalties for each violation of the Act, disgorgement of defendant's ill-gotten gains, restitution to customers, prejudgment interest and such other relief as this Court may deem necessary or appropriate.

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

## II.

### JURISDICTION AND VENUE

10. The CEA establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts and options. This Court has jurisdiction over this action pursuant to Sections 6c of the Act, 7 U.S.C. § 13a-1 (2002).

11. Section 6c of the Act provides that whenever it shall appear to the Commission 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 Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), in that defendant transacts 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, among other places.

## III.

### THE PARTIES

13. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 et seq., and the Regulations promulgated thereunder.

14. Defendant **Gary Scholze** is an individual whose last known place of residence is Lower Burrell, Pennsylvania. Defendant is engaged in the business of soliciting prospective clients and pool participants to open either individual accounts or

participate in a commodity pool to trade commodity futures and options, and has accepted funds from them to trade on their behalf in the commodity futures and options markets. Defendant has never been registered with the Commission in any capacity.

#### IV.

#### FACTS

15. Commencing in approximately August 2001 and continuing until the present, Scholze fraudulently solicited and accepted funds from individuals for the purpose of trading commodity futures and options on their behalf. Scholze offered either the opportunity for him to trade on their behalf through individual managed accounts or to participate in a commodity pool. Following these solicitations, at least fourteen members of the general public gave Scholze funds to invest in commodity futures and options totaling over \$1.2 million.

16. Scholze, a retired chiropractor, placed print advertisements in a professional publication for chiropractors offering to teach individuals how to “trade world markets as a second (or first) career. Retired Chiro will teach you how. Courses customized and guaranteed.” Scholze also solicited investors at commodities trading seminars, where he taught the students, among other things, about trading commodity futures and options, for a fee.

17. In his solicitations, Scholze offered several different services, generally holding himself out as a trader in commodity futures and option markets. Specifically, Scholze offered to trade commodity futures and options on behalf of the investors. Depending upon the amount of money invested by the individual, Scholze represented

that he would either trade the investor's funds on specific days of the month, or if the amount invested exceeded \$100,000.00, he would pool those funds with the funds of other investors and "day-trade" the pooled account.

18. Scholze also offered to teach the prospective investor to trade commodity futures and options. This practice involved the investor sending the defendant a set sum of money, from which the defendant deducted a fee for his teaching services. Scholze would then trade the remainder of the investor's funds in his personal trading account and showed the student his trading decisions and results, usually after he had completed the trading.

19. As part of his solicitations, Scholze made material misrepresentations and omissions concerning the trading of commodity futures and the handling of investor funds, including but not limited to, promising some investors they would make a profit, reassuring other investors that they would not lose their principal due to his specialized trading strategy, and misrepresenting that investors with individual managed accounts would have their funds segregated from other investor funds, and failing to disclose adequately the risks associated with trading commodity futures and options.

20. Contrary to his representations, Scholze deposited all the investors' funds, including the funds of those investors who understood they were to have individual managed accounts, into personal bank accounts held in his name or in the names of family members and transferred some, but not all of those funds, into commodity futures and options accounts he held in his own name.

21. Throughout the relevant time period, Scholze traded commodity futures

and options using approximately \$562,372.00 in at least six trading accounts he held in his own name at various Futures Commission Merchants (“FCMs”). Scholze overall was unprofitable in his trading of commodity futures and options. From April 2001 through 2005, he sustained trading losses of \$208,712.00.

22. Scholze also misappropriated investor funds directly from his personal or family bank accounts to pay for personal expenses, such as tuition payments for his son and payments to his wife.

23. Throughout the relevant time period, however, Scholze sent account statements or otherwise falsely reported to his investors that their investments were growing in value due to his profitable trading.

24. For example, Scholze told one investor that her funds would be kept separate from other investors, guaranteed that he would double her initial investment within twelve months and reassured her that her capital investment would be protected because defendant’s trading strategy would only utilize a certain percentage of the principal. Scholze failed to disclose the risks involved in trading commodity futures and options. Based upon these representations, this investor gave Scholze an initial deposit of \$80,000 in October 2002 to commence trading.

25. In November, 2002, Scholze sent the investor an email falsely representing that her account had increased in value by over \$6,000 in one month of trading. Scholze thereafter sent this investor monthly emails that falsely reported similar gains.

26. Upon the basis of these false statements, the investor sent additional funds to Scholze. Altogether, this investor gave him \$190,000 to invest. Throughout the

relevant time period Scholze continued to falsely represent that her account was earning money. Indeed, in February 2005, Scholze sent the investor an email which falsely indicated that her account had grown to approximately \$350,000.00.

27. Although at various times the investor was able to withdraw funds from her account that totaled \$65,000, the investor has made repeated demands since March 2005 to liquidate her account and have her remaining funds returned. Scholze has not returned the investor's remaining funds or otherwise responded.

28. Scholze obtained funds from at least 13 other people, totaling over \$1.2 million. Most, if not all, of the investors received written or oral account statements or reports from Scholze falsely reflecting significant profits purportedly earned by Scholze's trading of those accounts. For example, one investor who made an investment of \$300,000, believed based on false statements from Scholze that his investment was worth over \$1 million by early 2005.

29. Commencing in 2004 and continuing to the present, investors have made demands for some or all of their funds invested with Scholze. Although some investors received partial returns of their investments, since March 2005, investors have not received any funds from Scholze, despite their repeated demands.



V.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

**COUNT ONE**

**VIOLATIONS OF SECTIONS 4b(a)(2) OF THE ACT :  
SOLICITATION FRAUD, FRAUD BY MISAPPROPRIATION  
AND FALSE STATEMENTS (Futures)**

30. The allegations set forth in paragraphs 1 through 29 are re-alleged and incorporated herein by reference.

31. By making false, deceptive, or misleading representations and omissions of material facts in his solicitations of investors, defendant has: (1) cheated or defrauded or attempted to cheat or defraud other persons; and/or (2) willfully deceived or attempted to deceive 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 any other persons, where such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2), all in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii)(2002).

32. By using funds solicited to trade commodity futures for investors for his own personal expenses, as set forth above, defendant has knowingly misappropriated funds in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii)(2002).

33. Furthermore, as set forth above, defendant has willfully made or caused to be made to other persons false reports and statements which falsely represented the profits and the value of the investors' accounts, in violation of Section 4b(a)(2)(ii) of the

Act, 7 U.S.C. § 6b(a)(2)(ii)(2002).

34. Each act of solicitation fraud, fraud by misappropriation and false statement defendant made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(i)-(iii) (2002).

## **COUNT TWO**

### **VIOLATION OF SECTION 4c(b) OF THE ACT and REGULATION 33.10: SOLICITATION FRAUD, FRAUD BY MISAPPROPRIATION AND FALSE STATEMENTS (Options)**

35. Paragraphs 1-34 are re-alleged and incorporated herein.

36. In or in connection with an offer to enter into, the entry into, the confirmation of, the execution of, or the maintenance of commodity options transactions, the defendant cheated, defrauded, or deceived or attempted to cheat, defraud, or deceive, other persons, by making false, deceptive, or misleading representations and omissions of material facts in his solicitations of investors, all in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Regulation 33.10 (a) and(c), 17 C.F.R. §33.10 (a) and (c) (2004).

37. By using funds solicited to trade commodity options for investors for his own personal expenses, as set forth above, defendant has knowingly misappropriated funds in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b)(2002), and Regulation 33.10 (a) and (c), 17 C.F.R. §33.10 (a)-(c) (2004).

38. As set forth above, defendant willfully made or caused to be made to other

persons false reports and statements which falsely represented the profits and the value of the investors' accounts, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Regulation 33.10(a) and (c), 17 C.F.R. §33.10(a) and (c)(2004).

39. Each act of solicitation fraud, fraud by misappropriation and false statement made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. §§ 6c(b) (2002) and Regulation 33.10(a) and (c), 17 C.F.R. §33.10(a) and (c)(2004).

### **COUNT THREE**

#### **VIOLATION OF SECTION 4o(1) OF THE ACT: FRAUD AS A CPO AND AS A CTA**

40. Paragraphs 1 through 39 are re-alleged and incorporated herein.

41. Beginning in at least August 2001 and continuing through the present, defendant, while acting as a CPO and CTA, violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1)(2002), in that defendant directly or indirectly employed or is employing a device, scheme, or artifice to defraud customers or prospective customers, or has engaged or is engaged in transactions, practices or a course of business which operated or operates as a fraud or deceit upon customers or prospective customers by using the mails or other means or instrumentalities of interstate commerce. Defendant's fraudulent acts consisted of, among other things, solicitation fraud, misappropriation of customer funds and issuance of false statements as set forth above.

42. Each act of solicitation fraud, fraud by misappropriation and each false statement made 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) (2002).

#### **COUNT FOUR**

##### **VIOLATIONS OF SECTION 4m(1) OF THE ACT: FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR**

43. The allegations set forth in paragraphs 1 through 42 are re-alleged and incorporated herein by reference.

44. Defendant has used the mails or instrumentalities of interstate commerce in or in connection with his business as a CPO while failing to register with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1)(2002).

#### **COUNT FIVE**

##### **VIOLATIONS OF SECTION 4m(1) OF THE ACT: FAILURE TO REGISTER AS A COMMODITY TRADING ADVISOR**

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

46. Defendant has used the mails or instrumentalities of interstate commerce in or in connection with his business as a CTA while failing to register with the Commission as a CTA, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1)(2002).

## **COUNT SIX**

### **VIOLATIONS OF REGULATION 4.20: CPO'S ACCEPTING POOL FUNDS OTHER THAN IN THE NAME OF THE POOL, COMMINGLING OF POOL FUNDS WITH HIS OWN FUNDS, AND FAILURE TO TREAT THE POOL AS A SEPARATE ENTITY**

47. The allegations set forth in paragraphs 1 through 46 are re-alleged and incorporated herein by reference.

48. As alleged above, by depositing pool funds into his personal accounts and not into accounts in the name of the pool, defendant failed to operate the pool as a legal entity separate from himself as the pool operator, in violation of Commission Regulation 4.20(a), 17 C.F.R. § 4.20(a)(2004).

49. As alleged above, defendant, while operating as a CPO, accepted pool funds in his own name, in violation of Commission Regulation 4.20(b), 17 C.F.R. § 4.20(b)(2004).

50. As alleged above, defendant commingled the pool funds with his own property, in violation of Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c)(2004).

## **COUNT SEVEN**

### **VIOLATIONS OF REGULATION 4.30: CTA'S ACCEPTING INVESTOR FUNDS TO TRADE IN OWN NAME**

51. The allegations set forth in paragraphs 1 through 50 are re-alleged and incorporated herein by reference.

52. As alleged above, by accepting investor funds in his own name and depositing these funds into his personal banking and trading accounts and not into banking and trading accounts in the name of the investors, defendant violated

Commission Regulation 4.30, 17 C.F.R. § 4.30(2004).

### **COUNT EIGHT**

#### **VIOLATIONS OF REGULATION 4.21: FAILURE TO PROVIDE POOL DISCLOSURE DOCUMENTS**

53. The allegations set forth in paragraphs 1 through 52 are re-alleged and incorporated herein by reference.

54. Commission Regulation 4.21, 17 C.F.R. § 4.21(2004), requires that, prior to soliciting, accepting or receiving funds, a CPO must furnish the pool participant with a written Disclosure Document containing specific language set forth by regulation. In addition, prior to accepting or receiving funds, a CPO is required to receive from pool participants an acknowledgment signed and dated by the participants that they received and understood the Disclosure Document.

55. As alleged above, defendant failed to furnish pool participants with a written Disclosure Document and failed to receive signed and dated acknowledgments from the pool participants stating that they received and understood the Disclosure Document in violation of Regulation 4.21, 17 C.F.R. § 4.21 (2004).

### **COUNT NINE**

#### **VIOLATIONS OF REGULATION 4.31: FAILURE TO PROVIDE CTA REQUIRED DISCLOSURE DOCUMENTS**

56. The allegations set forth in paragraphs 1 through 55 are re-alleged and incorporated herein by reference.

57. Commission Regulation 4.31, 17 C.F.R. § 4.31(2004), requires that, prior to soliciting, accepting or receiving funds, a CTA must furnish a prospective client with a

written Disclosure Document containing specific language set forth by regulation, which includes, but is not limited to, disclosure of a CTA's past performance record. In addition, prior to entering into an agreement to direct or guide an investor's commodity interest trading account, a CTA is required to receive from the prospective client an acknowledgment signed and dated by the participants that they received and understood the Disclosure Document.

58. As alleged above, defendant failed to furnish his investors with written Disclosure Documents and failed to receive signed and dated acknowledgments from his investors stating that they received and understood the Disclosure Documents in violation of Regulation 4.31, 17 C.F.R. § 4.31 (2004).

#### **RELIEF REQUESTED**

WHEREFORE, the Plaintiffs respectfully request that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), and pursuant to its own equitable powers enter:

- a) a permanent injunction prohibiting the defendant from engaging in conduct violative of Sections 4b(a)(i)-(iii), 4c(b), 4m(1) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(i)-(iii), 6c(b), 6m(1) and 6o(1) (2002), and Commission Regulations 4.20, 4.21, 4.30, 4.31 and 33.10, 17 C.F.R. §§ 4.20, 4.21, 4.30, 4.31 and 33.10 (2004);
- b) an order directing the defendant to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or Commission Regulations, as

described herein, and interest thereon from the date of such violations;

c) an order directing the defendant to make full restitution to every client whose funds he received as a result of acts and practices which constituted violations of the Act and Commission Regulations, described herein, and interest thereon from the date of such violations;

d) an order directing the defendant to pay a civil monetary penalty in the amount of not more than the higher of \$120,000 or triple the monetary gain to the defendant for each violation of the Act or Commission Regulations committed from August 2001 to October 23, 2004 and a civil monetary penalty in the amount of not more than \$130,000 or triple the monetary gain to defendant for each violation of the Act or Commission Regulations committed from October 24, 2004 to the present; and

e) such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: June 8, 2006

ATTORNEYS FOR THE PLAINTIFF  
U.S. COMMODITY FUTURES TRADING  
COMMISSION



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