

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

2007 SEP 12 PM 2:45

Civil Action No. _____ -Civ- _____

CLARENCE L. TORRES
CLERK U.S. DIST. CT.
S.D. OF FL. - MIAMI

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

JOERG HEIERLE, an individual; and
INH-INTERHOLDING SA, a Swiss
corporation,

Defendants,

FUTURES TRADING ACADEMY,
INC., a Florida corporation,

Relief Defendant.

07-22396
CIV-LENARD
/TORRES

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF,
AND FOR CIVIL MONETARY PENALTIES**

The U.S. Commodity Futures Trading Commission ("Commission"), by its attorneys, alleges as follows:

**I.
SUMMARY**

1. From at least October 2001 and continuing to April 2007 ("the relevant period"), Defendants Joerg Heierle ("Heierle") and INH-Interholding SA ("INH") (hereinafter, collectively referred to as "Defendants"), acting through its employees, agents or officers, including but not limited to the apparent sole manager of INH, Heierle,

fraudulently solicited and accepted at least \$4.4 million from at least seventeen individuals to invest in commodity futures and options through INH commodity pools, which Defendants purportedly operated.

2. In soliciting prospective pool participants, Defendants misrepresented their past track record and the rates of return that they generated for pool participants. Defendants also failed to adequately disclose the risks involved in trading commodity futures and options to prospective pool participants. Heierle fraudulently solicited prospective pool participants by representing that the investments he managed were consistently profitable, with rarely a losing month. On the INH website, www.interholding.net, Defendants posted the INH commodity pools' historically profitable returns. Heierle confirmed the validity of these returns in oral and written solicitations with prospective pool participants.

3. Contrary to his claims of past success and profitable trading, Heierle sustained overall net trading losses of approximately \$1 million during the relevant period in all known commodity futures and options accounts that he controlled, managed or held in his name. There are no known trading accounts held in the name of INH or any of its purported commodity pools.

4. To conceal Heierle's trading losses, Defendants fabricated or caused to be fabricated and posted or caused to be posted false statements on the INH website pertaining to the purportedly profitable returns of the INH pools. According to the INH website, the INH pools outperformed the Dow Jones, S&P 500 and NASDAQ indices for the first quarter of 2007.

5. Defendants also fabricated or caused to be fabricated and posted or caused to be posted false statements to pool participants concerning the purported profitability of Defendants' trading. Defendants posted pool participants' returns on their individual INH website account summaries. With limited exceptions, those account summaries reflected Defendants' consistently profitable trading of pool participant funds. According to their INH website account summaries, most pool participants never experienced a losing month during the relevant period.

6. Some pool participants substantially increased their investments and/or encouraged others to invest with Defendants based on the profits posted in their INH website account summaries.

7. Heierle directed certain of Defendants' pool participants to forward funds for investment in the INH pools to Relief Defendant Futures Trading Academy, Inc. ("FTA"), a purported commodities futures trading educational company founded and controlled by Heierle. FTA provided no apparent legitimate services or had any interest or entitlement to the pool participants' funds.

8. Since April 2007, pool participants have not been able to contact Heierle or access their funds. The disposition and location of pool participant funds is unknown at this time.

9. Defendants have engaged, are engaging in, or are about to engage in practices that violate the provisions of the Commodity Exchange Act, as amended ("CEA"), 7 U.S.C. §1, et seq. (2002), and Commission Regulations ("Regulation") 17 C.F.R. § 1.1, et seq. (2007).

10. Specifically, Defendants' fraudulent solicitations of prospective and existing commodity pool participants violate Sections 4b(a)(2)(i) and (iii), 4c(b) and 4o(1) of the CEA, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6c(b) and 6o(1) (2002), and Regulations 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) (2007).

11. Defendants' fabrication and issuance, and/or causing the fabrication or issuance, of false statements to commodity pool participants reflecting profitable trading of commodity futures and options on behalf of the pool participants violates Sections 4b(a)(2)(ii) and 4c(b) of the CEA, 7 U.S.C. §§ 6b(a)(2)(ii) and 4c(b) (2002), and Regulation 33.10(b), 17 C.F.R. § 33.10(b) (2007).

12. In soliciting and accepting funds from individuals for the purpose of pooling the funds and investing in commodity futures and options, INH was acting as a commodity pool operator ("CPO") and Heierle was acting as an associated person ("AP") of INH without being registered with the Commission as required. INH's failure to register with the Commission as a CPO violates Section 4m(1) of the CEA, 7 U.S.C. § 6m(1) (2002). Heierle's failure to register as an AP of INH violates Section 4k(2) of the CEA, 7 U.S.C. § 6k(2) (2002).

13. By receiving funds in bank accounts held in the name of Defendants and FTA and by other acts, INH, through the acts of its officers, employees, or agents, including Heierle, failed to operate the commodity pools as legal entities separate from themselves and failed to receive pool participant funds in the name of the pools in violation of Regulations 4.20(a)(1) and (b), 17 C.F.R. § 4.20(a)(1) and (b) (2007).

14. INH failed to provide pool participants with a Disclosure Document

containing required information, and did not receive acknowledgements from pool participants of receipt of a Disclosure Document in violation of Regulation 4.21, 17 C.F.R. § 4.21 (2007).

15. INH also failed to provide monthly Account Statements to each pool participant containing the information required by Regulation 4.22 in violation of Regulation 4.22, 17 C.F.R. § 4.22 (2007).

16. At all relevant times, Heierle was acting as the agent of INH. Therefore, INH is liable for Heierle's violations of Sections 4b(a)(2)(i), (ii) and (iii), 4c(b), 4k(2) and 4o(1) of the CEA, 7 U.S.C. §§ 6b(a)(2)(i), (ii) and (iii), 6c(b), 6k(2) and 6o(1) (2002), and Regulations 4.20(a)(1) and (b), 4.21, 4.22 and 33.10, 17 C.F.R. §§ 4.20(a)(1) and (b), 4.21, 4.22 and 33.10 (2007), pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2002), and Regulation 1.2, 17 C.F.R. § 1.2 (2007).

17. Heierle directly or indirectly controlled INH and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting INH's violations of Sections 4b(a)(2)(i), (ii) and (iii), 4c(b), 4m(1) and 4o(1) of the CEA, 7 U.S.C. §§ 6b(a)(2)(i), (ii) and (iii), 6c(b), 6m(1) and 6o(1) (2002), and Regulations 4.20(a)(1) and (b), 4.21, 4.22 and 33.10, 17 C.F.R. §§ 4.20(a)(1) and (b), 4.21, 4.22 and 33.10 (2007), and is therefore liable as a controlling person pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b) (2002) for INH's violations .

18. Accordingly, pursuant to Section 6c of the CEA, 7 U.S.C. § 13a-1 (2002), the Commission brings this action to enjoin Defendants' unlawful acts and practices, to obtain a freeze on assets held in the name of Defendants, or in the control or management

of Defendants, to compel Defendants' compliance with the CEA, and to obtain an order permitting expedited discovery. The Commission also seeks a permanent injunction, civil monetary penalties, restitution to customers for losses proximately caused by Defendants' fraud, disgorgement of Defendants' ill-gotten gains, and such other ancillary relief as this Court may deem necessary or appropriate.

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

II. JURISDICTION AND VENUE

20. This Court has jurisdiction over this action pursuant to Section 6c of the CEA, 7 U.S.C. § 13a-1 (2002), which 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 CEA or any rule, regulation, or order promulgated there under, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the CEA.

21. Venue properly lies with this Court pursuant to Section 6c(e) of the CEA, 7 U.S.C. § 13a-1(e) (2002), in that Defendants transact business in this District, and the acts and practices in violation of the CEA have occurred, are occurring, or are about to occur, within this District, among other places.

III. THE PARTIES

22. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with the administration and

enforcement of the CEA, 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated there under, 17 C.F.R. §§ 1.1 *et seq.* (2007).

23. Defendant **Joerg Heierle** is an individual whose last known place of residence is Miami Beach, Florida. He is engaged in the business of soliciting individuals to participate in commodity pools and other managed accounts to trade commodity futures and options. Heierle has accepted funds from prospective pool participants to trade on their behalf in the commodity futures markets. He registered with the Commission as a commodity trading advisor (“CTA”) on October 4, 2005, but withdrew his registration on January 4, 2007. Pursuant to a May 16, 2007 National Futures Association (“NFA”) Member Responsibility Action, Heierle’s NFA membership has been suspended.

24. Defendant **INH-Interholding SA** was incorporated in Switzerland on December 1, 1982 and has two principal places of business located at 1210 Washington Avenue, Suite 212, Miami Beach, FL 33139 and 15 McMurrich Street, Suite 1103, Toronto, ON M5R 3M6. Heierle is the apparent sole manager of INH. INH maintains a presence on the Internet at www.interholding.net. INH has never been registered with the Commission in any capacity.

25. Relief Defendant **Futures Trading Academy, Inc.** (“FTA”) was incorporated in Florida on February 6, 2001 and has its principal place of business at 1174 102nd St, Bay Harbour, Fl 33154. FTA registered with the Commission as an introducing broker on June 19, 2002, but withdrew its registration on September 24, 2003. Heierle holds himself out as the co-founder, co-owner, and president of FTA. FTA

maintains a presence on the Internet at www.ftacademy.com. FTA has received funds of pool participants that were defrauded by Defendants and holds those funds in constructive trust for the benefit of pool participants.

IV. FACTS

A. Defendants Fraudulently Solicited At Least \$4.5 Million from At Least Seventeen Pool Participants

26. Since at least October 2001, Heierle has solicited and accepted funds from pool participants and purportedly traded commodity futures and options on their behalf through the INH commodity pools. Heierle is the apparent sole manager of INH.

27. Heierle solicited prospective pool participants in the name of INH using the INH website, personal solicitations and the efforts of existing pool participants who spread the news to friends and family of their profitable investments with Defendants.

28. Heierle directed prospective pool participants to the INH website and in particular to the returns he had posted on the website for three INH investment products: INH Strategic, INH Momentum, and INH Tertium (hereinafter collectively referred to as the "INH pools"). The INH website claimed that from 2003 to 2005, the INH pools were consistently profitable with annual returns between 9.8% and 30.2% and that for the first quarter of 2007, the INH pools outperformed the Dow Jones, S&P 500 and NASDAQ indices.

29. Heierle promoted himself as an experienced and successful trader of commodity futures and options. In his direct solicitations, Heierle represented to certain prospective pool participants that the INH pools earned between 3-4% per month.

30. The Commission is informed and believes and thereon alleges that Heierle encouraged hesitant prospective pool participants to initially invest a small amount of money, monitor that investment, and then invest more money if the initial investment posted profitable returns - which it almost always did. Further, by way of example, in July 2006, Heierle convinced a reluctant prospective pool participant to make a relatively small initial investment of \$35,000 in an INH pool and retain the bulk of his available funds pending the profitable performance of his initial investment. After Defendants posted six consecutive months of positive returns in the pool participant's INH website account summary, the pool participant invested another \$80,000 in the INH pools.

31. In his oral solicitations of prospective pool participants where he claimed great success in trading commodity futures and options, Heierle failed to disclose adequately the risks associated with trading commodity futures and options.

32. Heierle failed to provide prospective pool participants with a Disclosure Document containing the information required by Regulations 4.24 and 4.25, 17 C.F.R §§ 4.24 and 4.25 (2007). Further, Heierle never obtained signed and dated acknowledgements from pool participants stating that they had received a Disclosure Document.

33. As a result of his fraudulent solicitations, from at least October 2001 to April 2007, Heierle, either in his name or in the name of INH or FTA, received at least \$4.4 million from at least seventeen individuals, for the purpose of trading commodity futures and options in INH pools on their behalf. The majority of the known pool participants' investments and re-investments in the INH pools, totaling approximately

\$4,415,400, occurred between January 2005 and April 2007.

34. Defendants' pool participants are located throughout the world, including Australia, Israel, Italy, Switzerland, the United Kingdom, and the United States.

35. Heierle directed pool participants to wire funds directly to bank accounts held by him, INH or FTA. Heierle directed pool participants unable to wire funds to send him checks made payable to FTA.

36. FTA is a purported on-line educational program for investors interested in trading commodity futures and options. Heierle is a founder and president of FTA. FTA provided no legitimate services and does not have any legitimate interest or entitlement to the funds of the pool participants.

37. Regardless of the designated recipient of these funds, Heierle informed most of the pool participants that their funds would be invested in an INH pool.

38. Through the INH website and other means, Defendants informed pool participants that Defendants would earn management and operating expenses of 2%, and performance fees of 20% on any profits made from Defendants' trading of their pooled funds.

39. In deciding to invest with Defendants, pool participants relied upon Defendants' oral and written material misrepresentations and omissions concerning their past trading success, the returns of the INH pools and the risks associated with trading commodity futures and options. Defendants knowingly or recklessly made those material misrepresentations and omissions to induce individuals to invest with them.

B. Heierle's Unprofitable Trading of Commodity Futures and Options with Pooled Funds Resulted in Approximately \$1 Million in Overall Net Trading Losses

40. Since at least October 2001, Heierle opened and maintained numerous commodity futures and options pooled accounts in his name and jointly with another individual, a former principal and employee of FTA. Heierle also opened and maintained numerous commodity pool trading accounts in the name of other commodities related entities that he controlled or managed: FTA; Eiger Investment Group, Inc.; Prime Value Investments, S.A.; and Pinnacle Trading Limited. There are no known commodity futures and options trading accounts held in the name of INH or any of the INH pools.

41. Heierle had trading authority over all the known commodity futures and options trading accounts.

42. Throughout the relevant period, Heierle deposited a total of approximately \$12 million in the trading accounts held in his name or under his control or management. Heierle's trading in those accounts sustained overall net trading losses of approximately \$1 million. These accounts suffered overall net trading losses of approximately \$1.2 million between January 2005 and April 2007, the period in which most of the pool participants invested.

C. Defendants Posted False Profitable Returns to Conceal Their Trading Losses from Prospective and Existing Pool Participants

43. Throughout the relevant period, Defendants posted the INH pools' returns on the INH website. Defendants also posted pool participants' returns on individual INH website account summaries which pool participants could access on-line. Defendants

posted returns on the account summaries on a monthly basis.

44. The pool participants' account summaries provided the individual pool participant's profits, losses, deposits, withdrawals and balances, but they did not reference any fees or commissions charged by Defendants.

45. With minor exception, the returns Defendants posted for the commodity pools and the pool participants' account summaries falsely represented that Defendants were profitably trading on behalf of the pool participants and generating positive returns for every month of investment during the relevant period.

46. In reality, Heierle's trading of commodity futures and options in all the known trading accounts he controlled resulted in significant losses. Indeed, there was a vast disparity between the profits that Defendants posted on the INH website and the losses sustained by the commodity trading accounts Heierle held, controlled or managed. For example, the INH website claimed that the three INH pools generated returns of 12.1%, 17.3% and 30.2% in 2005. However, in each of the trading accounts, Heierle sustained net trading losses in 2005, losses which totaled \$80,000 for all of the trading accounts. As another example, despite Heierle having sustained approximately \$1.2 million in overall net trading losses for his pooled accounts between July 2006 and April 2007, Defendants' postings in pool participants' account summaries reflected returns up to 10% during that time period.

47. Defendants' posting of false profitable returns and account statements caused existing pool participants to invest additional funds with Defendants and to persuade others to invest with them. For example, after making an initial investment of

\$40,000 in December of 2005 and receiving account summaries showing consistent profitable returns, one pool participant invested an additional \$92,000 with Defendants.

48. Commencing in April 2007 and continuing to the present, pool participants have demanded the return of some or all of their funds invested with Defendants. Pool Participants have not received any funds in response to their demands and have not been able to contact Heierle since April 2007.

49. Defendants knowingly or recklessly issued or caused to be issued the false statements to pool participants concerning the profitability of defendants' trading on their behalf.

50. The disposition and location of the approximately \$4.4 million solicited by Defendants for investment is unknown at this time.

D. Heierle Controlled INH and Was Its Agent

51. Heierle acted as the apparent sole manager of INH. He held himself out as the manager of INH at all relevant times including but not limited to when he solicited and accepted funds for investment in the INH commodity pools.

52. As the apparent sole manager of INH, Heierle exercised control over the day-to-day business operations of the corporate Defendant. He directed the wire transfer of customer money into its bank accounts, and he was responsible for the content on the INH website.

V.
**VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND
REGULATIONS**

COUNT ONE
**VIOLATION OF SECTION 4b(a)(2)(i) and (iii) OF THE CEA:
SOLICITATION FRAUD (Futures)**

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

54. By making false, deceptive, or misleading representations and omissions of material facts in their solicitations of pool participants, Defendants have: (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 CEA, 7 U.S.C. § 6b(a)(2), all in violation of Section 4b(a)(2)(i) and (iii) of the CEA, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2002).

55. During the relevant time period, Heierle was acting as the agent of INH. Therefore, INH is liable for Heierle's violations of Section 4b(a)(2)(i) and (iii) of the CEA, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2002), pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2002) and Regulation 1.2, 17 C.F.R. § 1.2 (2007). Under Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2002) and Regulation 1.2, 17 C.F.R. § 1.2 (2007), strict liability is imposed upon principals for the actions of their agents acting within the scope of their employment.

56. Heierle directly or indirectly controlled INH and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting INH's violations of Section 4b(a)(2)(i) and (iii) of the CEA, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2002). Heierle is therefore liable for these violations of INH pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b) (2002).

57. Each material misrepresentation or omission of information that Defendants made or caused to be 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)(2)(i) and (iii) of the CEA, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2002).

COUNT TWO
VIOLATIONS OF SECTION 4c(b) OF THE CEA
AND REGULATIONS 33.10(a) and (c):
SOLICITATION FRAUD (Options)

58. The allegations contained in paragraphs 1 through 52 above are re-alleged and incorporated by reference herein.

59. 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, Defendants 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 CEA, 7 U.S.C. § 6c(b) (2002), and Regulations 33.10(a) and (c), 17 C.F.R. §33.10(a) and (c) (2007).

60. During the relevant time period, Heierle was acting as the agent of INH.

Therefore, INH is liable for Heierle's violations of Section 4c(b) of the CEA, 7 U.S.C. § 6c(b) (2002), pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2002) and Regulation 1.2, 17 C.F.R. § 1.2 (2007). Under Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2002) and Regulation 1.2, 17 C.F.R. § 1.2 (2007), strict liability is imposed upon principals for the actions of their agents acting within the scope of their employment.

61. Heierle directly or indirectly controlled INH and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting its violations of Section 4c(b) of the CEA, 7 U.S.C. § 6c(b) (2002) and Regulations 33.10(a) and (c), 17 C.F.R. §33.10(a) and (c) (2007). Heierle is therefore liable for these violations of INH pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b) (2002).

62. Each material misrepresentation or omission of information that Defendants made or caused to be 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 CEA, 7 U.S.C. § 6c(b) (2002), and Regulations 32.10(a) and (c), 17 C.F.R. §33.10(a) and (c) (2007).

COUNT THREE
VIOLATION OF SECTION 4b(a)(2)(ii) OF THE CEA:
FRAUD BY FALSE STATEMENTS (Futures)

63. The allegations contained in paragraphs 1 through 52 above are re-alleged and incorporated by reference herein.

64. By willfully making, or causing to be made, false statements to investors in the form of internet postings, oral communications and electronic mail messages that

reported profitable commodity futures trading, when actual trading resulted in continual and substantial losses, Defendants violated Section 4b(a)(2)(ii) of the CEA, 7 U.S.C. § 6b(a)(2)(C)(ii) (2007).

65. During the relevant time period, Heierle was acting as the agent of INH. Therefore, INH is liable for Heierle's violations of Section 4b(a)(2)(ii) of the CEA, 7 U.S.C. § 6b(a)(2)(ii) (2007), pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2002) and Regulation 1.2, 17 C.F.R. § 1.2 (2007). Under Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2002) and Regulation 1.2, 17 C.F.R. § 1.2 (2007), strict liability is imposed upon principals for the actions of their agents acting within the scope of their employment.

66. Heierle directly or indirectly controlled INH and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting its violations of Section 4b(a)(2)(ii) of the CEA, 7 U.S.C. § 6b(a)(2)(ii) (2007). Heierle is therefore liable for these violations of INH pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b) (2002).

67. Each false statement issued or caused to be issued 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)(2)(ii) of the CEA, 7 U.S.C. § 6b(a)(ii) (2002).

COUNT FOUR
VIOLATIONS OF SECTION 4c(b) OF THE CEA
AND REGULATION 33.10(b):
FRAUD BY FALSE STATEMENTS (Options)

68. The allegations contained in paragraphs 1 through 52 above are re-alleged and incorporated by reference herein.

69. 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, Defendants made or caused to be made to pool participants false reports or statements relating to the profitability of commodity options trading in violation of Section 4c(b) of the CEA, 7 U.S.C. § 6c(b) (2002), and Regulation 33.10(b), 17 C.F.R. §33.10(b) (2002).

70. During the relevant time period, Heierle was acting as the agent of INH. Therefore, INH is liable for Heierle's violations of Section 4c(b) of the CEA, 7 U.S.C. § 6c(b) (2002), and Regulation 33.10(b), 17 C.F.R. §33.10(b) (2007), pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2002) and Regulation 1.2, 17 C.F.R. § 1.2 (2007). Under Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2002) and Regulation 1.2, 17 C.F.R. § 1.2 (2007), strict liability is imposed upon principals for the actions of their agents acting within the scope of their employment.

71. Heierle directly or indirectly controlled INH and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting its violations of Section 4c(b) of the CEA, 7 U.S.C. § 6c(b) (2002), and Regulation 33.10(b), 17 C.F.R. §33.10(b) (2007). Heierle is therefore liable for these violations of INH pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b) (2002).

72. Each false statement issued or caused to be issued 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 CEA, 7 U.S.C. § 6c(b) (2002), and Regulation 33.10 (b), 17 C.F.R. §33.10(b) (2007).

COUNT FIVE
VIOLATION OF SECTION 4o(1) OF THE CEA:
FRAUD AS A COMMODITY POOL OPERATOR

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

74. By making, or causing to be made, material misrepresentations, omissions and false returns and account statements to pool participants, Defendants directly or indirectly employed or is employing a device, scheme, or artifice to defraud clients or participants or prospective clients or participants, or has engaged or is engaged in transactions, practices or a course of business which operated or operates as a fraud or deceit upon clients or participants or prospective clients or participants by using the mails or other means or instrumentalities of interstate commerce in violation of Section 4o(1)(A) and (B) of the CEA, 7 U.S.C. § 6o(1)(A) and (B) (2002).

75. During the relevant time period, Heierle was acting as the agent of INH. Therefore, INH is liable for Heierle's violations of Section 4o(1)(A) and (B) of the CEA, 7 U.S.C. § 6o(1)(A) and (B) (2002), pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2002) and Regulation 1.2, 17 C.F.R. § 1.2 (2007). Under Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2002), and Regulation 1.2, 17 C.F.R. § 1.2 (2007), strict liability is imposed upon principals for the actions of their agents acting within the

scope of their employment.

76. Heierle directly or indirectly controlled INH and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting its violations of Section 4o(1)(A) and (B) of the CEA, 7 U.S.C. § 6o(1)(A) and (B) (2002). Heierle is therefore liable for these violations of INH pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b) (2002).

77. Each occasion upon which Defendants made or caused to be made misrepresentations, omissions or false statements or reports to investors is alleged herein as a separate and distinct violation of Section 4o(1)(A) and (B) of the CEA, 7 U.S.C. § 6o(1)(A) and (B) (2002).

COUNT SIX
VIOLATION OF SECTION 4m(1) OF THE CEA:
FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR

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

79. Beginning in at least October 2001, INH and Heierle, acting on behalf of INH, solicited investments for the purpose of pooling the invested capital and trading it in the commodity futures and options markets. By doing so, INH acted as a CPO and Heierle acted as an AP of INH.

80. Beginning in at least October 2001, INH and Heierle used the mails or instrumentalities of interstate commerce in or in connection with INH's business as a CPO and AP while failing to register with the Commission as a CPO, in violation of Section 4m(1) of the CEA, 7 U.S.C. § 6m(1) (2002).

81. Heierle directly or indirectly controlled INH and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting its violations of Section 4m(1) of the CEA, 7 U.S.C. § 6m(1) (2002), pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b) (2002).

COUNT SEVEN
VIOLATION OF SECTION 4k(2) OF THE CEA:
FAILURE TO REGISTER AS AN ASSOCIATED PERSON

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

83. In soliciting and accepting funds from individuals for the purpose of pooling the funds and investing in commodity futures and options, Heierle was acting as an AP of INH without being registered with the Commission as required. Heierle's failure to register as an AP of INH violates Section 4k(2) of the CEA, 7 U.S.C. § 6k(2) (2002).

84. During the relevant time period, Heierle was acting as the agent of INH. Therefore, INH is liable for Heierle's violations of Section 4k(2) of the CEA, 7 U.S.C. § 6k(2) (2002), pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2002) and Regulation 1.2, 17 C.F.R. § 1.2 (2007). Under Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2002), and Regulation 1.2, 17 C.F.R. § 1.2 (2007), strict liability is imposed upon principals for the actions of their agents acting within the scope of their employment.

COUNT EIGHT
VIOLATION OF REGULATION 4.20(a)(1) AND (b):
FAILURE BY A CPO TO TREAT THE COMMODITY POOL
AS A SEPARATE ENTITY AND ACCEPTING POOL FUNDS
OTHER THAN IN THE NAME OF THE POOL

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

86. INH, through its officer, employees, or agents, including Heierle, directed pool participants to deposit pool funds into accounts held by him or INH. By doing so, INH failed to operate the pool as a legal entity separate from INH as the pool operator, in violation of Regulation 4.20(a)(1), 17 C.F.R. § 4.20(a)(1) (2007).

87. INH, through its officer, employees, or agents, including Heierle, accepted pool funds into accounts in the name of himself, INH and FTA and not in the name of the “INH pool.” By doing so, INH violated Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2007).

88. Heierle directly or indirectly controlled INH and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting its violations of Regulations 4.20(a)(1) and (b), 17 C.F.R. § 4.20(a)(1) and (b) (2007). Heierle is therefore liable for these violations of INH pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b) (2002).

89. Each occasion upon which Defendants failed to operate the INH pools as entities separate from themselves or accepted funds other than in the name of the pools in is alleged herein as a separate and distinct violation of Regulations 4.20(a)(1) and (b), 17 C.F.R. § 4.20(a)(1) and (b) (2007).

COUNT NINE
VIOLATION OF REGULATION 4.21:
FAILURE TO PROVIDE THE INFORMATION REQUIRED TO BE IN A
COMMODITY POOL DISCLOSURE DOCUMENT AND FAILURE TO RECEIVE
SIGNED ACKNOWLEDGMENTS FROM POOL PARTICIPANTS

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

91. Regulation 4.21, 17 C.F.R. § 4.21 (2007), 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 Regulations, including Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25 (2007). 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 the Disclosure Document.

92. INH, through its officer, employees, or agents, including Heierle, failed to furnish pool participants with a written Disclosure Document that provided the information required by Regulations, including Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25 (2007), and failed to receive signed and dated acknowledgments from the pool participants stating that they received a Disclosure Document. By doing so, Heierle, acting on behalf of himself and INH, violated Regulation 4.21, 17 C.F.R. § 4.21 (2007).

93. Heierle directly or indirectly controlled INH and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting its violations of Regulations 4.21, 17 C.F.R. § 4.21 (2007). Heierle is therefore liable for these violations of INH pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b) (2002).

94. Each occasion upon which Defendants failed to provide the information required to be in a commodity pool disclosure document or failed to receive signed acknowledgements from pool participants is alleged herein as a separate and distinct violation of Regulation 4.21, 17 C.F.R. § 4.21 (2007).

COUNT TEN
VIOLATION OF REGULATION 4.22:
FAILURE TO PROVIDE THE INFORMATION REQUIRED
TO BE IN A MONTHLY ACCOUNT STATEMENT

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

96. Regulation 4.22, 17 C.F.R. § 4.22 (2007), requires that a CPO must furnish pool participants with monthly Account Statements containing specific information, including but not limited to the total amount of fees and commissions during the reporting period.

97. INH, through its officer, employees, or agents, including Heierle, failed to furnish pool participants with a monthly Account Statement that provided the information required by Regulation 4.22, 17 C.F.R. § 4.22 (2007), and in doing so, violated Regulation 4.22, 17 C.F.R. § 4.22 (2007).

98. Heierle directly or indirectly controlled INH and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting its violations of Regulations 4.22, 17 C.F.R. § 4.22 (2007). Heierle is therefore liable for these violations of INH pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b) (2002).

99. Each occasion upon which Defendants failed to provide the information

required to be in a monthly Account Statement is alleged herein as a separate and distinct violation of Regulation 4.22, 17 C.F.R. § 4.22 (2007).

COUNT ELEVEN
DISGORGEMENT OF FUNDS FROM THE RELIEF DEFENDANT

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

101. Defendants have engaged in a fraudulent investment scheme that defrauded INH pool participants.

102. FTA has received funds that were obtained as a result of the Defendants' fraudulent conduct.

103. FTA has no legitimate entitlement to or interest in the funds received from the Defendants' fraudulent conduct.

104. FTA should be required to disgorge the funds it received from the Defendants' fraudulent conduct, or the value of those funds that FTA may have subsequently transferred to third parties.

105. By reason of the foregoing, FTA holds funds in constructive trust for the benefit of INH pool participants who were victimized by Defendants' fraudulent scheme.

VI.
RELIEF REQUESTED

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

- (a) a statutory restraining order enjoining Defendants and the Relief Defendant and all persons insofar as they are acting in the capacity of their

agents, servants, successors, 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 and the Relief Defendant, wherever located, including all such records concerning Defendants' and the Relief Defendant's 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 and the Relief Defendant, wherever located, including all such records concerning Defendants' and the Relief Defendant's 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 of, or in the name of Defendants and the Relief Defendant;

(b) orders of preliminary and permanent injunction prohibiting Defendants from engaging in conduct violative of Sections 4b(a)(2)(i)-(iii), 4c(b), 4k(2), 4m(1) and 4o(1) of the CEA, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), 6c(b), 6k(2), 6m(1) and 6o(1) (2002), and Regulations 4.20(a)(1) and (b), 4.21 and 33.10, 17 C.F.R. §§ 4.20(a)(1) and (b), 4.21, 4.22 and 33.10 (2007), and from engaging in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act;

(c) an order directing Defendants and the Relief 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 CEA or Regulations, and interest thereon from the date of such violations;

(d) an order directing Defendants to make full restitution, pursuant to such procedure as the Court may order, to every investor whose funds

were received by them as a result of acts and practices which constituted violations of the CEA or Regulations, and interest thereon from the date of such violations;

(e) an order directing Defendants to pay civil monetary penalties in the amount of not more than the higher of \$120,000 for each violation committed prior to October 24, 2004, and \$130,000 for each violation committed thereafter, or triple his monetary gain for each violation of the CEA or Regulations; and

(f) such orders and further remedial ancillary relief as the Court may deem appropriate.

Dated: 9/11/07

Respectfully submitted,

**U.S. COMMODITY FUTURES
TRADING COMMISSION**

By: 

Kevin S. Webb, DC Bar No. 484866

kwebb@cftc.gov

James H. Holl, III, DC Bar No. 453473

jholl@cftc.gov

Gretchen L. Lowe, DC Bar No. 407295

glowe@cftc.gov

Division of Enforcement

U.S. Commodity Futures Trading
Commission

1155 21st Street, N.W.

Washington, DC 20581

Phone – (202) 418-5000

Facsimile – (202) 418-5538

Attorneys for Plaintiff