

Rosemary Hollinger
Camille M. Arnold
Attorneys for: Commodity Futures Trading Commission
525 West Monroe Street
Suite 1100
Chicago, Illinois 60661
312-596-0524 (Arnold)
312-596-0538 (Hollinger)

Carlie Christensen
(Bar # 0633)
Civil Division Chief
Office of the United States Attorney
185 South State Street
Suite 400
Salt Lake City, Utah 84111
801-524-5682

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

COMMODITY FUTURES TRADING)
COMMISSION,)

Plaintiff,)

vs.)

GAHMA CORPORATION, STEPHEN)
W. BROCKBANK, JOHN GARRETT,)
ALLEN ANDERSEN, and ROBERT)
HENINGER)
_____)

NO: 1:02cv 00101 PGC

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

I.

SUMMARY

1. In July 2000, Gahma, Garrett, Andersen and Heninger (collectively referred to as the "Gahma Defendants") formed Gahma for the purpose of raising funds from investors to be

pooled and used to trade commodity futures contracts. Between August 2000 and March 2001, Garrett, Andersen and Heninger and their sales representatives solicited at least \$700,000 from eight pool participants by marketing promissory notes that provided for 32 percent annual interest. The Gahma defendants then pooled the money into one bank account and transferred those funds to Stephen Brockbank to trade commodity futures contracts. Although the Gahma defendants attempted to structure their investment as promissory notes, the Gahma defendants effectively created a commodity pool and operated Gahma as a commodity pool without registering with the Plaintiff as commodity pool operators (“CPO”), as required under the federal commodity laws. Any return paid to the participants depended entirely upon the success of the commodity futures trading. The participants were to share in the profits on a pro rata basis while bearing risk of loss if the trading was unprofitable. Any profits in excess of 32 percent were to be paid to the Gahma defendants.

2. The Gahma defendants also engaged in solicitation fraud by distributing promotional material that falsely represented and failed to disclose all material facts including, among other things, the identity of the pool’s commodity trading advisor (“CTA”), his past trading performance and the identity of the off-shore jurisdictions where the funds would be held. The Gahma defendants failed to provide the Gahma pool participants with a Disclosure Document that met the requirements of the federal regulations and would have contained the above material information.

3. Brockbank, who the Gahma defendants describe as Gahma’s “primary money manager,” misrepresented his trading performance to the Gahma defendants, issued false statements and failed to disclose his on-going litigation with the Plaintiff Commodity Futures

Trading Commission (“CFTC” or “Commission”). Brockbank also acted as a CTA without registering with Plaintiff.

4. By October 2000, the Gahma pool operators had become aware that the CFTC had instituted litigation against Brockbank and that a federal district court had entered a preliminary injunction against Brockbank enjoining him from cheating and defrauding commodity pool participants. However, the Gahma defendants did not disclose these facts to the Gahma pool participants. Instead, they switched money managers and used the funds they received from the Gahma pool participants to engage in trading in off-exchange foreign currency (“forex”) contracts. The Gahma Defendants did not inform the pool participants of the change in trading and investment strategy.

5. Based upon these facts, Brockbank, Gahma, Garrett, Andersen and Heninger have misrepresented and failed to disclose material facts to the Gahma pool participants, in violation of Sections 4b(a)(i), (iii), and 4q(1) of the Act, 7 U.S.C. §§ 6b(a)(i), (iii), and 6q(1), and have issued false statements to the Gahma pool participants, in violation Section 4b(a)(ii), 7 U.S.C. § 6b(a)(ii). Further, Gahma, Garrett, Andersen and Heninger are acting as unregistered CPOs in violation of Section 4m(1), 7 U.S.C. § 6m(1); and have failed to provide prospective and actual Gahma pool participants with a Disclosure Document that contained the CPO disclosures required by Commission Regulation 4.21, 17 C.F.R. § 4.21 (2002). Finally, Brockbank acted as an unregistered CTA in violation of Section 4m(1), 7 U.S.C. § 6m(1), and failed to provide the Gahma defendants with a Disclosure Document that contained the CTA disclosures required by the Commission Regulation 4.31, 17 C.F.R. § 4.31 (2002).

II.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

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

III.

THE PARTIES

8. Plaintiff Commission is an independent federal regulatory agency that is charged with the responsibility for administering and enforcing the provisions of the Act and Commission Regulations.

9. Defendant Gahma Corporation is a Utah Corporation. Gahma has never been registered with the Commission in any capacity.

10. Defendant Stephen W. Brockbank, who resides in Salt Lake City, Utah, has never been registered with the Commission in any capacity. Brockbank was sued by the Plaintiff in CFTC v. Stephen Brockbank et al., No: 2:00CV00622ST (D. Utah filed Aug. 8, 2000), for, among other violations of Act, issuing false statements to pool investors and reporting non-existent trading profits, in connection with a commodity pool he operated, BIRMA, Ltd.

(“BIRMA”). The CFTC’s still pending suit resulted in a restraining order freezing all funds under Brockbank’s control, including assets acquired after issuance of the restraining order, and a preliminary injunction enjoining Brockbank from, among other things, issuing false statements and otherwise defrauding commodity investors, and from directly or indirectly soliciting, accepting or receiving any funds for commodity trading.

11. Defendant John Garrett, who resides in North Salt Lake City, Utah, is the president and chairman of the board of directors of Gahma. Garrett has never been registered with the Commission in any capacity.

12. Defendant Allen Andersen, who resides in Riverton, Utah, is a vice president and director of Gahma. Andersen has never been registered with the Commission in any capacity.

13. Defendant Robert Heninger, who resides in Draper, Utah, is a vice president and director of Gahma. Heninger has never been registered with the Commission in any capacity.

IV.

FACTS

A. Statutory Background

14. A “commodity pool” is defined in Commission Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1), as any investment trust, syndicate or similar form of enterprise engaged in the business of investing its pooled funds in trading commodity futures and/or commodity options.

15. A “commodity pool operator” is defined in Section 1a(5) of the Act, 7 U.S.C. § 1(a)(5), as any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of

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

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

17. A “commodity trading advisor” is defined in Section 1a(6) of the Act, 7 U.S.C. § 1(a)(6), in pertinent part, as any person who for compensation or profit, engages in the business of advising others as to the value of or the advisability of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility or any commodity option.

B. Gahma’s Formation

18. Garrett, Andersen and Heninger formed Gahma in July 2000 for the purpose of raising funds from investors which would be pooled and traded in commodity futures contracts. Between August 2000 and March 2001, the Gahma defendants and their sales representatives solicited and received at least \$700,000 from at least eight participants.

19. Garrett, Andersen and Heninger attempted to structure the Gahma investment as a corporate note paying the investor 32% interest per year and maturing in 2010. However, the 32% yearly interest payments were to be generated from the commodity trading of the pooled funds. The Gahma defendants told their investors that their money would be used to trade commodity interests. The Gahma defendants placed their investors’ funds in a pooled account in which all of the investors shared the profits and losses on a pro rata basis. As a result, the Gahma investment was a commodity pool and investors were pool participants.

20. The Gahma defendants provided their prospective and actual pool participants with a Private Offering Memorandum (“POM”) that described the notes as set forth above in

paragraph 19. The POM also described its primary money manager as having held portfolio management positions with GTE Investment Management Company in Stamford, Connecticut and Aetna Life and Casualty in Hartford, Connecticut, holding an MA in Economics and Business from North Carolina State University, and serving as an adjunct professor of Corporate Finance and Investments at the University of Utah. This information describes Brockbank's background, but it does not disclose Brockbank's name as the primary money manager. As alleged below, the POM did not include the material disclosures required of CPO's. Further, when the Gahma defendants changed money managers, they continued to provide this description which was now false.

21. Between August and December 2000, the Gahma defendants used Brockbank as their primary money manager and transferred \$573,801 of pool funds to Brockbank to trade commodity futures contracts. As alleged below, Brockbank failed to make numerous material disclosures, moved the money off-shore, never traded it and tried to cover his actions by issuing false statements.

C. Brockbank Defrauded Gahma Pool Participants and Failed to Provide the Gahma Pool Operators with a Disclosure Document

22. Brockbank defrauded the Gahma pool participants by: failing to disclose his litigation with the Commission and the resulting orders freezing all assets under his control; issuing false statements to Gahma; and making false statements regarding his trading performance to the Gahma pool operators.

23. In August 9, 2000, just after Gahma was formed, Brockbank was served with both a complaint in which the CFTC charged him with defrauding commodity pool participants, and an August 8, 2000 restraining order freezing all of the assets under his control. CFTC v. Brockbank, et al., No: 2:00CV00622ST. In September 2000, the United States District Court

for the District of Utah preliminarily enjoined Brockbank from acting as an unregistered commodity pool operator, in violation of Section 4m(1) of the Act; issuing false statements, in violation of Section 4b(a); committing commodity pool fraud, in violation of Section 4o(1); and failing to operate a commodity pool as a separate entity and commingling pool funds with his personal funds, in violation of Commission Regulation 4.20 (a) and (c). The Preliminary Injunction also prohibited Brockbank from soliciting, accepting or receiving any funds from any person for the trading of any commodity interest.

24. Between August 9, 2000 and on or about October 2, 2000, Brockbank failed to disclose the information contained in paragraph 23 to the Gahma pool operators. In turn, the Gahma defendants could not timely disclose this information to the Gahma pool participants. By this material omission, Brockbank defrauded or attempted to defraud the Gahma pool participants.

25. Brockbank also failed to provide the Gahma pool operators with a Disclosure Document required by Commission Regulation 4.31, 17 C.F.R. § 4.31 (2002), that would have required him to disclose these material facts.

26. After the preliminary injunction referenced in paragraph 23 was issued against him, Brockbank issued monthly account statements to the Gahma pool operators showing profitable trading even though he was no longer trading. Brockbank knew or should have known that the Gahma pool operators relied upon his monthly account statements in preparing the account statements that Gahma issued to Gahma pool participants. By issuing false account statements to the Gahma pool operators, Brockbank also defrauded or attempted to defraud the Gahma pool participants.

27. In offering his services to the Gahma defendants, Brockbank falsely represented to the Gahma pool operators that he had made past profits of 48% per year. Brockbank knew or should have known that this representation of past performance was false. Brockbank knew or should have known that the Gahma pool operators relied upon his representation of past performance in soliciting Gahma pool participants. By this misrepresentation of past performance, Brockbank defrauded or attempted to defraud the Gahma pool participants.

D. Gahma, Garrett, Heninger and Andersen Defrauded Gahma Pool Participants

28. Gahma, Garrett, Andersen and Heninger defrauded or attempted to defraud Gahma pool participants and prospective pool participants by: recklessly repeating Brockbank's claims of the profitability of his trading; distributing promotional material to the pool participants containing false and misleading statements; failing to inform pool participants about the CFTC's litigation against Brockbank and Gahma's change in investment strategy once it learned about the litigation; issuing false reports to the pool participants; and failing to inform the Gahma pool participants about Gahma's trading losses in connection with the pool's forex trading.

29. Gahma, Garrett, Heninger and Andersen recklessly represented to their investors they would earn 32% interest per year on their investment. The Gahma defendants based this representation upon Brockbank's representations that he would make 48% per year in profits, without requiring Brockbank to verify his claims or independently making any attempt to verify Brockbank's claims.

30. Gahma's promotional material distributed to pool participants and prospective pool participants falsely stated that:

Gahma in its investment strategy works only with money managers that have extensive portfolio management experience. In addition they are

required to show consistent success in providing the returns that are required to service the corporate notes offered by Gahma.

This statement was false or misleading in that it intended to create the impression to investors that: (i) the Gahma pool operators had verified the past performance of the money managers they selected, when, in fact, they had not; and (ii) the Gahma pool operators were continuously monitoring the money managers' trading results, when, in fact, they were not.

31. Gahma learned about the CFTC's litigation against Brockbank in October 2000. Garrett, Andersen and Heninger failed to disclose this litigation to the Gahma pool participants and they failed to inform the pool participants that their funds had been frozen pursuant to the restraining order and preliminary injunction referenced in paragraph 23.

32. After they learned about the litigation in October 2000, Gahma, Garrett, Andersen and Heninger changed money managers and began using pool funds to trade forex at Midland Euro and Analytic Trading FX, but they failed to inform the pool participants that the Gahma pool had changed its primary money manager and investment strategy. Specifically, they failed to inform investors that the pool was no longer trading on U.S. exchanges but instead was trading forex through offshore entities.

33. The Gahma defendants distributed promotional material to pool participants and prospective pool participants that falsely stated, "investments will be placed with bonded brokerage houses and public U.S. exchanges." This statement was false or misleading in that: (i) Gahma, Garrett, Andersen and Heninger transferred approximately \$573,801 to BIRMA Enterprises, LLC, an off-shore entity controlled by Brockbank, which was not a "bonded brokerage house"; and (ii) Gahma, Garrett, Andersen and Heninger transferred approximately \$143,000 to Mountainview Capital (Grenada), another unbonded offshore company, which invested approximately \$140,000 for forex trading at Midland Euro and Analytic Trading FX.

Forex trading by Gahma through Midland Euro and Analytic Trading FX was not conducted through a public U.S. exchange.

34. Gahma's promotional material stated that Gahma's money managers use investment strategies involving "the Dow Jones Industrial Index, the New York Stock Exchange and NASDAQ indexes, as well as energy, currency, metals, and agricultural commodity and futures markets." Trading off-exchange forex contracts was not disclosed to or authorized by the Gahma pool participants.

E. Gahma, Garrett, Andersen and Heninger Issued False Statements to Gahma Pool Participants

35. Gahma, Garrett, Andersen and Heninger gave Gahma pool participants the option of receiving either monthly interest payments on their invested funds or a final lump sum payment of the initial investment plus accrued interest. Gahma pool participants who chose to receive the final lump sum payment received quarterly statements purporting to reflect the value of the participant's Gahma investment.

36. By October 2000, the Gahma pool operators had become aware of the CFTC's litigation against Brockbank and the resulting asset freeze and preliminary injunction referenced in paragraph 23. However, after they learned these material facts, the Gahma pool operators issued quarterly statements to at least one Gahma pool participant from September 2000 to September 2001, which falsely indicated that Gahma was making profits sufficient to meet the 32% annual interest payment. The Gahma pool operators only informed their pool participants of the CFTC's litigation against Brockbank and the resulting asset freeze and preliminary injunction in November 2001.

F. Garrett, Andersen and Heninger's Failure to Provide Disclosure Documents

37. Gahma, Garrett, Andersen and Heninger failed to provide Gahma pool participants and prospective pool participants with a Disclosure Document that, as required by Commission Regulation 4.21, 17 C.F.R. § 4.21 (2002), contained the disclosures required by Commission Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25 (2002). Specifically, Garrett, Andersen and Heninger failed to provide a Disclosure Document which disclosed: the names of the pool's money managers, as required by Commission Regulation 4.24(e), 17 C.F.R. § 4.24(e); the off-shore jurisdiction where the Gahma pooled funds would be deposited, as required by Commission Regulation 4.24(h), 17 C.F.R. § 4.24 (h); the Commission's litigation against Brockbank, as required by Commission Regulation 4.24(1), 17 C.F.R § 4.24 (l); and the trading managers' performance, as required by Commission Regulations 4.24 (n) and 4.25(c), 17 C.F.R §§ 4.24 (n) and 4.25 (c). In addition, after October 2000, Garrett, Andersen and Heninger failed to disclose that the types of commodity interests or other interests, namely forex, that pool would be trading, as required by Commission Regulation 4.24(h), 17 C.F.R. § 4.24(h).

V.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

VIOLATIONS OF SECTION 4b(a)(i) and (iii) OF THE ACT BY BROCKBANK, GAHMA, GARRETT, ANDERSEN AND HENINGER: FRAUD BY MISREPRESENTATION AND OMISSION OF MATERIAL FACTS

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

39. Since at least July 2000 to the present, Defendant Brockbank has violated Sections 4b(a)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(i) and (iii), in that he has cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive the pool participants by, among other things, misrepresenting or omitting material facts to Gahma,

Garrett, Andersen and Heninger. Brockbank knew or should have known that these acts would defraud the Gahma pool participants.

40. Since at least July 2000 to the present, Defendants Gahma, Garrett, Andersen and Heninger have violated Sections 4b(a)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(i) and (iii), in that they have cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive other persons by, among other things, misrepresenting or omitting material facts to Gahma pool participants.

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

42. Each act in which Brockbank, Gahma, Garrett, Andersen and Heninger cheated, defrauded or willfully deceived or attempted to deceive other persons by misrepresentations, or material omissions trading during the relevant time period, including but not limited to the specific acts and practices alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(i) and (iii).

COUNT II

VIOLATIONS OF SECTION 4b(a)(ii) OF THE ACT BY BROCKBANK, GAHMA, GARRETT, ANDERSEN, AND HENINGER: PROVIDING FALSE STATEMENTS

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

44. Since at least July 2000 to present, Defendant Brockbank has violated Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii), in that, from January 2000 to December 2000, he issued false statements to the Gahma pool operators representing that his trading and investment of Gahma funds had resulted in profits when, in fact, there were no trading profits.

45. Since at least July 2000 to September 2001, Defendants Gahma, Garrett, Andersen and Heninger have violated Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii), in that they issued false statements to at least one Gahma pool participant regarding the value of the pool participant's invested funds.

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

47. Each false report or 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 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii).

COUNT III

VIOLATIONS OF SECTION 4m(1) OF THE ACT: BY BROCKBANK FOR
ACTING AS AN UNREGISTERED COMMODITY TRADING ADVISOR
AND BY GAHMA, GARRETT, ANDERSEN AND HENINGER FOR
ACTING AS UNREGISTERED COMMODITY POOL OPERATORS

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

49. Since at least July 2000 to the present, Defendant Brockbank has acted as a commodity trading advisor in that he, for compensation or profit, has engaged in the business of advising the Gahma pool as to the value of or the advisability of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility or any commodity option by agreeing to serve as the Gahma money manager, accepting Gahma funds, and issuing account statements to Gahma.

50. In connection with such conduct, Defendant Brockbank used the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as CTA.

51. Since at least July 2000 to the present, Defendants Gahma, Garrett, Andersen and Heninger have acted as CPOs in that they have engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, and have solicited, accepted or received funds, securities or property from others for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market.

52. In connection with such conduct, Defendants Gahma, Garrett, Andersen and Heninger have used or are using the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as CPOs.

53. Each use of the mails or any means or instrumentality of interstate commerce by defendant Brockbank in connection with his business as a CTA, and by defendants Gahma,

Garrett, Andersen and Heninger in connection with their business as CPOs without proper registration during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

COUNT IV

**VIOLATIONS OF SECTION 4o(1) OF THE ACT: BY BROCKBANK
FOR MISREPRESENTATIONS AND OMISSIONS BY A
COMMODITY TRADING ADVISOR AND BY GAHMA, GARRETT,
ANDERSEN AND HENINGER FOR MISREPRESENTATIONS,
OMISSIONS AND BY COMMODITY POOL OPERATORS**

54. Paragraphs 1 through 37 are realleged and incorporated herein.

55. Since at least July 2000 through the present, Defendant Brockbank has violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that, while acting as a CTA, he has directly or indirectly employed or is employing a device, scheme, or artifice to defraud Gahma and its pool participants or prospective participants, or has engaged or is engaging in transactions, practices or a course of business which operated as a fraud or deceit upon Gahma and its pool participants or prospective pool participants by means of the acts and practices described in paragraphs 1 through 37 above.

56. Each act in which Brockbank engaged in a transaction, practice or a course of business which operated as a fraud or deceit upon Gahma and its pool participants or prospective pool participants during the relevant time period, including but not limited to the acts and practices specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1).

57. Since at least July 2000 through the present, Defendants Gahma, Garrett, Andersen and Heninger have violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that, while

acting as CPOs, they have directly or indirectly employed or are employing a device, scheme, or artifice to defraud commodity pool participants or prospective commodity pool participants, or have engaged or are engaging in transactions, practices or a course of business which operated as a fraud or deceit upon commodity pool participants or prospective commodity pool participants by means of the acts and practices described in paragraphs 1 through 37 above.

58. In connection with such conduct, Gahma, Garrett, Andersen and Heninger used or are using the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as CPOs.

59. Each act in which Gahma, Garrett, Andersen and Heninger engaged in a transaction, practice or a course of business which operated as a fraud or deceit upon commodity pool participants or prospective commodity pool participants during the relevant time period, including but not limited to the acts and practices specifically alleged herein, is alleged as a separate and distinct violation of Section 40(1) of the Act, 7 U.S.C. § 60(1).

COUNT V

VIOLATIONS OF COMMISSION REGULATION 4.31 BY BROCKBANK: FAILING TO PROVIDE GAHMA, GARRETT, ANDERSEN AND HENINGER WITH A DISCLOSURE DOCUMENT

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

61. Pursuant to Commission Regulation 4.31, 17 C.F.R. § 4.31, no CTA registered or required to be registered under the Act, may solicit a prospective client or enter into an agreement with a prospective client to direct the client's commodity interest account unless the CTA, at or before the time it engages in the solicitation or enters into the agreement delivers or causes to be delivered to the prospective client a Disclosure Document.

62. Defendant Brockbank violated Commission Regulation 4.31, 17 C.F.R. § 4.31, by entering into an agreement with the Gahma pool operators to direct the Gahma pool's trading or to select money managers to direct the Gahma pool's trading, without providing them with any type of Disclosure Document.

COUNT VI

VIOLATIONS OF REGULATION 4.21 BY GAHMA, GARRETT, ANDERSEN AND HENINGER: FAILING TO PROVIDE GAHMA POOL PARTICIPANTS WITH A DISCLOSURE DOCUMENT THAT MEETS THE REQUIREMENTS OF COMMISSION REGULATIONS

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

64. Pursuant to Commission Regulation 4.21, 17 C.F.R. § 4.21, no CPO registered or required to be registered under the Act, may solicit, accept or receive funds securities or other property from a prospective participant in a pool that it operates or intends to operate unless on or before the date it engages in the activity the CPO delivers or causes to be delivered to the prospective participant a Disclosure Document containing the information set forth in Section 4.24 of the Commission's Regulations.

65. Defendants Gahma, Garrett, Andersen and Heninger violated Regulation 4.21, 17 C.F.R. § 4.21, by failing to provide Gahma pool participants with a Disclosure Document containing the disclosures required by Commission Regulation 4.24, as set forth in paragraph 38 above.

66. Each act by Gahma, Garrett, Andersen and Heninger of failing to provide a Gahma pool participant or prospective participant with a Disclosure Document containing the disclosures required by the Commission's Regulations is alleged as a separate and distinct violation of Regulation 4.21, 17 C.F.R. § 4.21.

VI.

RELIEF REQUESTED

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

A. Find Defendants Brockbank, Gahma, Garrett, Andersen and Heninger liable for violating Sections 4b(a)(i) and (iii), 4b(a)(ii), 4o(1) and 4m(1) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii), 6b(a)(ii), 6o(1), and 6m(1) (2001); find Defendant Brockbank liable for violating Regulation 4.31, 17 C.F.R. § 4.31 (2002); and find Defendants Gahma, Garrett, Andersen and Heninger liable for violating Regulation 4.21, 17 C.F.R. § 4.21 (2002).

B. Enter orders of permanent injunction enjoining Defendants Brockbank, Gahma Garrett, Andersen and Heninger and all persons insofar as they are acting in the capacity of Defendants' agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Cheating or defrauding or attempting to cheat or defraud other persons 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)(i) of the Act, 7 U.S.C. § 6b(a)(i);
2. Willfully making or causing to be made to other persons any false report or statement thereof, or willfully to enter or cause to be entered for such persons any false record 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)(ii) of the Act, 7 U.S.C. § 6b(a)(ii);

3. Willfully deceiving or attempting to deceive other persons by any means whatsoever 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)(iii) of the Act, 7 U.S.C. § 6b(a)(iii); and
4. Employing any device, scheme, or artifice to defraud any participant or prospective participant, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any 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);

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

1. Operating as a CTA engaged in the business of advising others as to the value of or the advisability of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).
2. Soliciting prospective clients or entering into any agreement with prospective clients to direct commodity interest accounts without delivering or causing to be delivered to the prospective client a Disclosure Document at or before the time he engages in the solicitation or enters into the agreement, in violation of Commission Regulation 4.31, 17 C.F.R. § 4.31.

D. Enter orders of permanent injunction enjoining Defendants Gahma, Garrett, Andersen and Heninger and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Operating as CPOs engaged in the business of soliciting, accepting, or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market without being registered with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).
2. Soliciting, accepting or receiving funds securities or other property from a prospective participant in a pool that they operate or intend to operate unless on or before the date they engage in the activity they deliver or cause to be delivered to the prospective participant a Disclosure Document containing the information set forth in Section 4.24 of the Commission's Regulations.

E. Enter orders pursuant to Section 6c(a) of the Act restraining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendants, wherever located, including all such records concerning defendants' business operations;
2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations; and
3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated,

including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of the defendants;

F. Enter an order directing that Defendants provide the Plaintiff immediate and continuing access to Defendants' books and records, make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds they received from and paid to investors and other persons in connection with commodity futures transactions or purported commodity futures transactions, including the names, addresses and telephone numbers of any such persons from whom they received such funds from July 2000 up to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from commodity investors, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from July 2000 up to and including the date of such accounting;

G. Enter an order prohibiting Defendants, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of the 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:

1. Directly or indirectly soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity futures or options contract;
2. Engaging in, controlling, or directing the trading of any commodity futures and options accounts, on their own behalf or for or on behalf of any other person or entity, whether by power of attorney or otherwise;
3. Introducing customers to any other person engaged in the business of trading in commodity futures and options; and
4. Issuing statements or reports to others concerning the trading of commodity futures and options.

H. Enter an order requiring Defendants to disgorge to any officer appointed or 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 interest;

I. Enter an order requiring Defendants to make restitution by making whole each and every pool participant whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre-judgment interest;

J. Enter an order requiring Defendants to pay civil penalties under the Act, to be assessed by the Court, in amounts of a civil monetary penalty of not more than the higher of \$110,000 for violations of the Act committed between November 27, 1996 and October 22, 2000, and \$120,000 for violations committed on or after October 23, 2000 or triple the monetary gain to Defendants for each violation of the Act and Regulations;

K. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and

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

Date: August 13, 2002

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF
COMMODITY FUTURES TRADING
COMMISSION
525 West Monroe Street
Suite 1100
Chicago, IL 60661
(312) 596-0524 (Arnold)
(312) 596-0538 (Hollinger)
(312) 596-0714 facsimile

Camille M. Arnold
Senior Trial Attorney
New York Bar No. 7868

Rosemary Hollinger
Senior Trial Attorney
Illinois ARDC No. 03123647