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15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT CALIFORNIA  
17 WESTERN DIVISION

18 Commodity Futures Trading )  
19 Commission, )  
20 Plaintiff, )  
21 vs. )  
22 Barry Schotz, and Randolph Gale, dba )  
23 Bear Invest Fund, )  
24 Defendants )

Case No: 04-08889 SJO (SSx)  
COMPLAINT FOR INJUNCTIVE,  
OTHER EQUITABLE RELIEF AND  
FOR CIVIL PENALTIES UNDER  
THE COMMODITY EXCHANGE  
ACT, AS AMENDED,  
7 U.S.C. §§ 1 et seq

25 I. JURISDICTION AND VENUE

26 1. Plaintiff Commodity Futures Trading Commission ("CFTC" or

1 “Commission”) brings this action against Barry Schotz (“Schotz”) and Randolph  
2 Gale (“Gale”) (collectively “Defendants”) for engaging in acts and practices that  
3 violate provisions of the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, (2002)  
4 (the “Act”), and Commission Regulations promulgated thereunder  
5 (“Regulations”), 17 C.F.R. § 1.1 *et seq.* (2004).

7 2. This court has jurisdiction over this action pursuant to Section 6c(a) of  
8 the Act, 7 U.S.C. § 13a-1 (2002), which authorizes the CFTC to seek injunctive  
9 relief against any person whenever it shall appear to the CFTC that such person  
10 has engaged, is engaging, or is about to engage in any act or practice constituting  
11 a violation of the Act or any rule, regulation, or order thereunder.  
12

14 3. Venue properly lies with this Court pursuant to Section 6c(e) of the Act,  
15 7 U.S.C. § 13a-1(e) (2002), since Defendants are found in, inhabit, or transact  
16 business in this District.  
17

## 18 II. SUMMARY

19 4. From about August 2003 to the present (“relevant time period”), Schotz,  
20 without being registered with the CFTC as a commodity pool operator (“CPO”),  
21 operated a commodity pool called the Bear Invest Fund (“Bear”), and Gale  
22 became associated with him in the operation of the pool without being registered  
23 with the CFTC as an associated person (“AP”).  
24

25 5. From about August 2003 to the present, Defendants Schotz and Gale  
26

1 solicited and accepted approximately \$3 million in the name of Bear, from at least  
2 34 pool participants, most of whom resided in and around Los Angeles County,  
3 California. These funds were pooled to trade commodity futures through at least  
4 two accounts at two different futures commission merchants ("FCMs").

5  
6 6. Schotz's trading in the Bear pool trading accounts consistently lost  
7 money. Nevertheless, Schotz falsely reported to Gale and others that Schotz's  
8 futures trading in the Bear pool accounts was highly profitable and that the Bear  
9 pool was consistently making money. Gale then reported this false information  
10 both verbally and by e-mail to pool participants.

11  
12 7. Schotz also commingled customer funds with his personal funds and  
13 failed to provide pool disclosure documents to pool participants, all in violation of  
14 the Act and Regulations.

15  
16 8. Consequently, Defendant Schotz has engaged, is engaging, or is about to  
17 engage in acts or practices that violate the anti-fraud and other provisions of the  
18 Act and Regulations, and Defendant Gale has engaged, is engaging, or is about to  
19 engage in acts or practices that violate the registration provisions of the Act.

20  
21 Accordingly, the CFTC brings this action pursuant to Section 6c of the Act,  
22 7 U.S.C. § 13a-1, to enjoin Defendants' unlawful acts and practices and to compel  
23 their compliance with the Act. In addition, the CFTC seeks disgorgement of the  
24 Defendants' ill-gotten gains, restitution to customers, civil monetary penalties and  
25  
26

1 such other relief as this Court may deem necessary or appropriate.

2 9. Unless restrained and enjoined by this Court, the Defendants are likely to  
3 continue to engage in the acts and practices alleged in this Complaint and similar  
4 acts and practices, as more fully described below.  
5

### 6 **III. PARTIES**

7 10. Plaintiff CFTC is an independent federal regulatory agency of the United  
8 States charged with the responsibility for administering and enforcing provisions  
9 of the Act, 7 U.S.C. §§ 1 *et seq.* (2002), and the regulations promulgated  
10 thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2004).  
11

12 11. Barry Schotz resides in Kilauea, Hawaii. He lived in Santa Barbara,  
13 California until November 2003. Schotz has never been registered in any  
14 capacity with the Commission.  
15

16 12. Randolph Gale lives in Hidden Hills, California. Gale has never been  
17 registered in any capacity with the Commission.  
18

### 19 **IV. STATUTORY BACKGROUND**

20 13. A “commodity pool” is defined in Commission Regulation 4.10(d)(1),  
21 17 C.F.R. § 4.10(d)(1), as any investment trust, syndicate or similar form of  
22 enterprise engaged in the business of investing its pooled funds in trading  
23 commodity futures and/or commodity options.  
24

25 14. A “commodity pool operator” is defined in Section 1a(5) of the Act,  
26

1 7 U.S.C. § 1(a)(5), as any person engaged in a business that is of the nature of an  
2 investment trust, syndicate, or similar form of enterprise, and who, in connection  
3 therewith, solicits, accepts or receives from others, funds, securities, or property,  
4 either directly or through capital contributions, the sale of stock or other forms of  
5 securities or otherwise, for the purpose of trading in any commodity for future  
6 delivery on or subject to the rules of any contract market.  
7

8  
9 15. Section 4m(1) of the Act, 7 U.S.C. § 6m(1), makes it unlawful for any  
10 CPO to make use of the mails or any means or instrumentality of interstate  
11 commerce in connection with his business without being registered with the  
12 CFTC.  
13

14 16. Section 4k(2) of the Act, 7 U.S.C. § 6k(2), requires any person associated  
15 with a CPO as a partner, officer, employee, consultant, or agent, in any capacity  
16 that involves solicitation of funds for a commodity pool, to be registered with the  
17 CFTC as an associated person of such commodity pool operator.  
18

19 17. A “participant” is defined in Commission Regulation 4.10(c), 17 C.F.R. §  
20 4.10(c), as any person who has any direct financial interest in a commodity pool.  
21

## 22 V. FACTS

### 23 A. FORMATION OF THE POOL

24 18. In early 2003, Schotz developed a futures trading system with Gale, and  
25 Gale agreed to go into business with Schotz promoting and operating the Bear  
26

1 pool.

2 19. In the summer of 2003, Schotz, doing business under the name Bear,  
3 began accepting funds from pool participants and pooling such funds to trade  
4 futures contracts.  
5

6 20. Gale and Schotz agreed that Gale would solicit pool participants using  
7 account opening documents created by Schotz. Schotz also would report pool  
8 trading results to Gale, who was then to report them to pool participants. Schotz  
9 also continued to solicit pool participants independently from Gale.  
10

11 21. Gale sent pool participation agreements by e-mail or by facsimile to  
12 prospective pool participants along with instructions on how to wire funds into  
13 the Bear pool bank accounts established by Schotz.  
14

15 22. Pool participants joined the Bear pool by signing and returning pool  
16 participation agreements to either Gale or Schotz and wire transferring money to  
17 Bear bank accounts.  
18

19 **B. GALE DISSEMINATED SCHOTZ'S FALSE REPORTS TO POOL**  
20 **PARTICIPANTS IN PERSON AND BY E-MAIL**

21 23. From the summer of 2003 through at least May 2004, Schotz falsely  
22 reported to Gale and others, that:  
23

24 a. Trading in the Bear pool had been profitable since at least August  
25 2003;

26 b. Trading in the Bear pool would cease if participant's principal fell

1 by 25% and that no more than 2 ½% of customer money would be at  
2 risk;

3 c. The Bear pool had exceptionally high returns for August and  
4 September 2003;

5  
6 d. The Bear pool had an increase in its commodity futures trading  
7 account from about \$600,000 to about \$1,500,000 in six months of  
8 trading as a result of profitable trading;

9  
10 e. Schotz used a trading system, and winning trades outnumbered  
11 losing trades by a three to one margin;

12 f. Schotz was a successful futures trader;

13 g. Schotz was a “registered trader”;

14  
15 h. The Bear pool was low risk, high reward; and

16  
17 i. Because the Bear pool was “below a certain number of investors  
18 they did not have to register with the SEC.”

19 24. In the latter part of February 2004, Schotz showed a potential pool  
20 participant three or four computers that Schotz said he used to trade S&P futures  
21 and told the potential participant that he had a trading system where winning  
22 trades outnumbered losing trades by a three to one margin.  
23

24 25. The potential participant reported this meeting to friends and neighbors,  
25 who then sought out Gale and requested to participate in the Bear pool. From  
26

1 February through May 2004, new pool participants deposited money into the pool  
2 as a result of receiving reports that the Bear pool was highly profitable from  
3 friends who were already pool participants.

4  
5 26. Gale disseminated false information about the Bear pool that he received  
6 from Schotz to participants. Such false information was communicated verbally  
7 or via e-mail and included the following:

8  
9 a. The Bear pool began trading in June 2003, and the pool trading had been  
10 profitable;

11 b. The Bear pool had exceptionally high returns for August and September  
12 2003 and that investment in the pool was "low risk and high reward";

13 c. Schotz would cease trading participant's funds if participant's principal  
14 fell by 25% and that no more than 2 1/2% of the participant's money would be at  
15 risk;  
16

17 d. Past trading results in S&P futures were extremely profitable and trading  
18 would stop if there were more than two losing trades in a day; and  
19

20 e. Only a percentage of the money invested was traded at any time and that  
21 if there was a trading loss, trading would stop until pool participants indicated  
22 that trading should continue.  
23

24 27. Schotz knew or should have known that the information alleged in  
25 paragraphs 23 through 26 was false and that Gale would disseminate this false  
26

1 information to others.

2 28. From the summer of 2003 to about February 2004, Gale also used e-  
3 mails to report to pool participants the false information communicated to him  
4 from Schotz about the large profits that were supposedly being made in the Bear  
5 pool trading accounts.  
6

7 **C. SCHOTZ KNOWINGLY MADE FALSE PROFIT REPORTS TO**  
8 **GALE WHICH HE KNEW GALE WOULD DISSEMINATE TO POOL**  
9 **PARTICIPANTS ON THE BEAR WEBSITE**

10 29. In approximately February 2004, Gale created a Bear pool web site.  
11 Schotz knowingly continued to send to Gale and others, on a regular basis, false  
12 information that Schotz's futures trading for the Bear pool was profitable. Gale  
13 then posted this false trading information daily on the Bear pool website. Schotz  
14 knew or should have known that Gale was disseminating this false information to  
15 Bear pool participants.  
16

17  
18 30. Bear pool participants were able to log on to the website with a password  
19 and view the trading activity reported by Schotz, and the supposed profits  
20 accruing in their accounts.  
21

22 **D. SCHOTZ SUSTAINED SUBSTANTIAL TRADING LOSSES AND**  
23 **COMMINGLED POOL FUNDS WITH HIS PERSONAL FUNDS**

24 31. On June 18, 2003, Schotz opened a futures trading account at EDF Man  
25 Financial, Inc. ("Man") in the name of Concise Concepts International d/b/a Bear  
26 Invest Fund/Barry Schotz. Schotz wire transferred an opening deposit of

1 \$140,000 into that account, mostly from pool participants' funds. From June 18,  
2 2003 through November 28, 2003, a total of \$590,000, belonging mostly to pool  
3 participants, was wired into the Man account. During that period the Man  
4 account suffered trading losses of approximately \$333,000.  
5

6 32. Subsequently on November 13, 2003, Michael S. M. Schotz ("M.  
7 Schotz"), the son of Schotz, opened a futures trading account at Refco, LLC  
8 ("Refco") with a wire transfer of \$100,000. These funds came from a Bank of  
9 America account in the name of M. Schotz into which pool participant's funds  
10 had been deposited. M. Schotz granted trading authority over the Refco account  
11 to Bear Invest Fund, Barry R. Schotz, Trustee.  
12

13  
14 33. From about November 15, 2003 through the end of May 2004, a total of  
15 \$1,729,000 belonging mostly to Bear pool participants was deposited into the  
16 Refco account and a total of \$957,508.17 was withdrawn purportedly by M.  
17 Schotz. During that period, trading losses in the Refco account were  
18 approximately \$548,000. Approximately \$200,000 now remains in the Refco  
19 account, which amount Refco is now holding.  
20

21  
22 34. In the Bear pool accounts at Bank of America, Schotz commingled his  
23 own funds with funds received from Bear pool participants and other third parties.  
24

25 **E. SCHOTZ FAILED TO PROVIDE DISCLOSURE DOCUMENTS TO**  
26 **POOL PARTICIPANTS**

35. Schotz did not deliver to or provide to pool participants with prior

1 to or at the time of delivery of the pool participation agreement, any statement of  
2 account or any other information showing the net asset value, additions,  
3 withdrawals or the actual results of trading for or on behalf of the Bear pool, prior  
4 to or at the time of delivery of the pool participation agreement. Schotz also  
5 failed to provide to pool participants an annual report or any report of the Bear  
6 pool's income or losses or any other type of information that would permit a pool  
7 participant to ascertain the actual financial condition of the Bear pool. Schotz  
8 sent no financial information about the Bear pool to pool participants except the  
9 false information which showed he was making profitable trades when he was in  
10 fact losing money.

11  
12  
13  
14 **F. RECENT POOL FUND TRANSACTIONS**

15 36. On information and belief, between in or about May and August 2004,  
16 Gale's attorney returned approximately \$1,635,000 to certain pool participants  
17 solicited by Gale, a sum equaling the funds that those particular participants had  
18 deposited into the pool.  
19

20 //

21  
22 //

1                   **VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**  
2                   **AND COMMISSION REGULATIONS**

3                                   **COUNT I**  
4                                   **Violations Of Section 4b Of The Act**  
5                                   **Fraud By Misrepresentation**

6                   37. The allegations set forth in paragraphs 1 through 36 are re-alleged and  
7 incorporated herein.

8                   38. Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), makes it  
9 unlawful for any person, in or in connection with any order to make, or the  
10 making of, any contract of sale of any commodity for future delivery made, or to  
11 be made, for or on behalf of any other person if such contract for future delivery  
12 is or may be used for (A) hedging any transaction in interstate commerce in such  
13 commodity or the products or byproducts thereof, or (B) determining the price  
14 basis of any transaction in interstate commerce in such commodity, or (C)  
15 delivering any such commodity sold, shipped, or received in interstate commerce  
16 for the fulfillment thereof; (i) to cheat or defraud or attempt to cheat or defraud  
17 such other person; (ii) willfully to make or cause to be made to such other person  
18 any false report or statement thereof, or willfully to enter or cause to be entered  
19 for such person any false record thereof; (iii) willfully to deceive or attempt to  
20 deceive such other person by any means whatsoever in regard to any such order  
21 or contract or the disposition or execution of any such order or contract, or in  
22 regard to any act of agency performed with respect to such order or contract for  
23  
24  
25  
26

1 such person.

2 39. From at least August 2003 to the present, Schotz has cheated or  
3 defrauded or attempted to cheat or defraud and willfully deceived or attempted to  
4 deceive pool participants or prospective pool participants by misrepresenting the  
5 performance of the Bear pool and by making other misrepresentations and  
6 omissions of material facts described in paragraphs 18 to 36 above. Schotz knew  
7 or should have known that Gale was reporting Schotz's misrepresentations to  
8 pool participants.  
9  
10

11 40. Each material misrepresentation or omission made during the relevant  
12 time period, including but not limited to those specifically alleged herein, is  
13 alleged as a separate and distinct violation of Section 4b(a)(2)(i)-(iii) of the Act.  
14

15 **Count II**  
16 **Violations Of Sections 4o(1)(A) And 4o(1)(B) Of The Act:**  
17 **Commodity Pool Fraud**

18 41. The allegations set forth in paragraphs 1 through 36 are re-alleged and  
19 incorporated herein.

20 42. From at least August 2003 to the present, Schotz acted as a CPO by  
21 engaging in a business that is of the nature of an investment trust, syndicate, or  
22 similar form of enterprise and in connection therewith, solicited, accepted or  
23 received funds, securities or property from others for the purpose of trading in  
24 commodities for future delivery on or subject to the rules of contract markets or  
25  
26

1 derivatives transaction execution facilities.

2 43. From at least August 2003 through the present, Schotz violated Sections  
3 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B), as described in  
4 paragraphs 18 through 36 above, by directly or indirectly having employed or  
5 employing a device, scheme, or artifice to defraud commodity pool participants,  
6 or having engaged or engaging in transactions, practices or a course of business  
7 which operated as a fraud or deceit upon commodity pool participants.  
8  
9

10 44. In connection with such conduct, Schotz used or is using the mails and  
11 other means or instrumentalities of interstate commerce, directly or indirectly, to  
12 engage in business as a CPO.  
13

14 **COUNT III**  
15 **Violation Of Regulation 4.20(c):**  
16 **Commingling Pool Funds**

17 45. The allegations set forth in paragraphs 1 through 36 are re-alleged and  
18 incorporated herein.

19 46. Commission Regulation 4.20(c) provides that no commodity pool  
20 operator may commingle the property of any pool that it operates or that it intends  
21 to operate with the property of any other person.  
22

23 47. From at least August 2003, Schotz commingled the pool funds with his  
24 own property, in violation of Commission Regulation 4.20(c).  
25  
26

**Count IV**  
**Violation Of Section 4m(1) Of The Act:**  
**Failure To Register As A CPO**

48.Paragraphs 1 through 36 are re-alleged and incorporated herein.

49.From at least August 2003 to the present, Schotz acted as a CPO by engaging in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith has solicited, accepted or received funds, securities or property from others for the purpose of trading in commodities for future delivery on or subject to the rules of contract markets or derivatives transaction execution facilities.

50.Schotz engaged and continues to engage in these activities without the benefit of registration, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002).

51.Each use of the mails or any means or instrumentality of interstate commerce in connection with Schotz's business as a CPO without proper registration during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act.

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**Count V**  
**Violation Of Sections 4k(2) Of The Act:**  
**Failure To Register As An AP Of A CPO**

52.Paragraphs 1 through 36 are re-alleged and incorporated herein.

53.From at least August 2003 to the present, Gale acted as an AP of a CPO by associating with a commodity pool operator as a partner, officer, employee, consultant, or agent (or as a person occupying a similar status or performing similar functions), in a capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, without being registered with the CFTC as an associated person of such commodity pool operator.

54.Gale engaged and continues to engage in these activities without the benefit of registration, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2003).

55.Each use of the mails or any means or instrumentality of interstate commerce in connection with Gale's business as an AP of a CPO without proper registration during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4k(2) of the Act.

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**COUNT VI**

**Violations Of Sections 4n(4) Of The Act And Regulations 4.21 And  
4.22: Failure To Provide Pool Disclosure Documents**

1  
2  
3 56. The allegations set forth in paragraphs 1 through 36 are re-alleged and  
4 incorporated herein.

5  
6 57. Section 4n(4) of the Act provides that every commodity pool operator  
7 shall regularly furnish statements of account to each participant in his operations  
8 which shall include complete information as to the current status of all trading  
9 accounts in which such participant has an interest.

10  
11 58. Regulation 4.21 requires that prior to soliciting, accepting or receiving  
12 funds, all CPOs, registered or required to be registered, must furnish prospective  
13 pool participants a written Disclosure Document containing specific language set  
14 forth by Commission Regulations. In addition, prior to accepting or receiving  
15 funds, a CPO is required to receive from pool participants an acknowledgment  
16 signed and dated by the participants that they received and understood the  
17 Disclosure Document.

18  
19  
20 59. Regulation 4.22 requires that each CPO, registered or required to be  
21 registered, must periodically distribute to each participant in each pool it operates  
22 an Account Statement containing specific information set forth by Commission  
23 Regulations.

24  
25  
26 60. From at least August 2003, Schotz as a CPO, failed to furnish pool

1 participants with the written Disclosure Document, failed to receive signed and  
2 dated acknowledgments from pool participants stating that they received and  
3 understood the Disclosure Document and failed to furnish pool participants with  
4 Account Statements, in violation of Section 4n(4) of the Act and Regulations 4.21  
5 and 4.22.  
6

## 7 **VII. RELIEF REQUESTED**

8 **WHEREFORE**, the Commission respectfully requests that this Court, as  
9 authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own  
10 equitable powers:  
11

12 A. Find Schotz liable for violating Sections 4b(a)(2), 4m(1), 4o(1)(A),  
13 4o(1)(B) and 4n(4), 7 U.S.C. §§ 6b(a)(2), 6m, 6o(1)(A) & (B) and 6n(4) and  
14 Commission Regulations 4.20(c), 4.21 and 4.22, 17 C.F.R. §§ 4.20(c), 4.21 and  
15 4.22, and Gale liable for violating Section 4k(2) of the Act, 7 U.S.C. § 6k(2);  
16

17 B. Enter an order pursuant to Section 6c(a) of the Act restraining  
18 Defendants and all persons insofar as they are acting in the capacity of  
19 Defendants' agents, servants, successors, employees, assigns, and attorneys, and  
20 all persons insofar as they are acting in active concert or participation with them  
21 who receive actual notice of such order by personal service or otherwise, from  
22 directly or indirectly:  
23

24 1. Destroying, mutilating, concealing, altering or disposing of any books  
25  
26

1 and records, documents, correspondence, brochures, manuals, electronically  
2 stored data, tape records or other property of Defendants, wherever located,  
3 including all such records concerning Defendants' business operations;

4  
5 2. Refusing to permit authorized representatives of the Commission to  
6 inspect, when and as requested, any books and records, documents,  
7 correspondence, brochures, manuals, electronically stored data, tape records or  
8 other property of Defendants, wherever located, including all such records  
9 concerning Defendants' business operations; and

10  
11 3. Withdrawing, transferring, removing, dissipating, concealing or  
12 disposing of, in any manner, any funds, assets, or other property belonging to the  
13 pool, wherever situated, including but not limited to, all funds, personal property,  
14 money or securities held in safes, safety deposit boxes and all funds on deposit in  
15 any financial institution, bank or savings and loan account belonging to the pool  
16 and held by, under the control, or in the name of Schotz;

17  
18  
19 C. Enter orders of preliminary and permanent injunction enjoining  
20 Defendants and all persons insofar as they are acting in the capacity of their  
21 agents, servants, employees, successors, assigns, and attorneys, and all persons  
22 insofar as they are acting in active concert or participation with Defendants who  
23 receive actual notice of such order by personal service or otherwise, from directly  
24 or indirectly:  
25  
26

1           1. As to Schotz, engaging in conduct in violation of Sections 4b(a)(2),  
2 4m(1), 4o(1)(A) & (B), and 4n(4) of the Act, 7 U.S.C. §§ 6b, 6m, 6o(1)(A) & (B)  
3 and 6n(4), and Commission Regulations 4.20(c), 4.21 and 4.22, 17 C.F.R. §§  
4 4.20(c), 4.21 and 4.22; and as to Gale, engaging in conduct in violation of Section  
5 4k(2) of the Act, 7 U.S.C. § 6k(2);

7           2. Directly or indirectly soliciting or accepting any funds from any  
8 person in connection with the purchase or sale of any commodity futures or  
9 options contract;

11           3. As to Schotz, engaging in, controlling, or directing the trading of any  
12 commodity futures or options accounts, on his own behalf or for or on behalf of  
13 any other person or entity, whether by power of attorney or otherwise and as to  
14 Gale, engaging in, controlling, or directing the trading of any commodity futures  
15 or options accounts, for or on behalf of any other person or entity, whether by  
16 power of attorney or otherwise;

19           4. Introducing customers to any other person engaged in the business of  
20 commodity futures and options trading;

22           5. Issuing statements or reports to others concerning commodity futures  
23 or options trading;

24           6. Otherwise engaging in any business activities related to commodity  
25 futures or options trading.  
26

1           D. Enter an order directing that Defendants provide the Plaintiff  
2 immediate and continuing access to their books and records, make an accounting  
3 to the Court of all of Defendants' assets and liabilities, together with all funds  
4 they received from and paid to pool participants and other persons in connection  
5 with commodity futures transactions or purported commodity futures  
6 transactions, including the names, addresses and telephone numbers of any such  
7 persons from whom they received such funds from January 2003 to the date of  
8 such accounting, and all disbursements for any purpose whatsoever of funds  
9 received from commodity pool participants, including salaries, commissions,  
10 fees, loans and other disbursements of money and property of any kind, from  
11 January 2003 to and including the date of such accounting;

12           E. Enter an order requiring Defendants to disgorge to any officer  
13 appointed or directed by the Court or directly to the pool participants all benefits  
14 received including, but not limited to, salaries, commissions, loans, fees, revenues  
15 and trading profits derived, directly or indirectly, from acts or practices which  
16 constitute violations of the Act as described herein, including pre-judgment  
17 interest;

18           F. Enter an order requiring Defendants to make restitution by making  
19 whole each and every pool participant whose funds were received or utilized by  
20 them in violation of the provisions of the Act as described herein, including pre-  
21  
22  
23  
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26

1 judgment interest;

2 G. Enter an order requiring Defendants to pay civil penalties under the  
3 Act, to be assessed by the Court, in amounts of not more than the higher of  
4 \$120,000 or triple the monetary gain to each Defendant for each violation of the  
5 Act and Regulations;  
6

7 H. Enter an order requiring Defendants to pay costs and fees as permitted  
8 by 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and  
9

10 //  
11 //

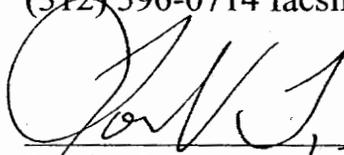
1 I. Enter an Order providing such other and further relief, as this Court  
2 may deem necessary and appropriate under the circumstances.

3  
4 Dated: October 25, 2004

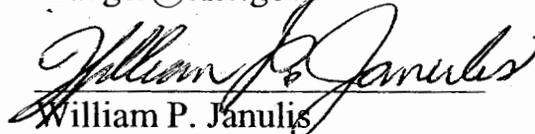
Respectfully submitted,

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