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 DEPT. OF JUSTICE
 FEDERAL BUREAU OF INVESTIGATION

DEPUTY

6 Attorneys for Plaintiff
 7 Commodity Futures Trading Commission

9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

12 COMMODITY FUTURES TRADING)
 13 COMMISSION,)
 14)
 15 Plaintiff,)
 16 vs.)
 17 WHITE PINE TRUST CORPORATION, a)
 18 California corporation, and RICHARD)
 19 MATTHEWS, an individual,)
 20 Defendants.)

Case No.
 '04 CV 2093 J (NLS)
 COMPLAINT FOR INJUNCTIVE AND
 OTHER EQUITABLE RELIEF AND
 FOR CIVIL PENALTIES UNDER THE
 COMMODITY EXCHANGE ACT, AS
 AMENDED, 7 U.S.C. §§ 1-et seq

I.

SUMMARY

24 1. Since at least August 2000, defendants White Pine Trust Corporation ("White
 25 Pine") and Richard Matthews ("Matthews") (collectively "defendants") have been illegally
 26 operating a foreign currency trading firm out of San Diego, California. Through direct
 27 solicitations and a website, defendants have solicited retail customers to trade purported foreign
 28 currency contracts and foreign currency options contracts. Since at least February 2003,

1 defendants have solicited a minimum of \$650,000 in customer funds from at least three
2 customers, and upon information and belief, have solicited millions of additional dollars from
3 hundreds of retail customers for purposes of purportedly trading foreign currency and foreign
4 currency options contracts.

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6 2. To lure customers to trade with White Pine, defendants fraudulently
7 misrepresented how customers money would be handled and protected, claiming all customer
8 money would be held in a segregated account and not in White Pine's operating accounts, when
9 in fact defendants commingled customer money with other monies in at least two corporate
10 operating accounts. Defendants falsely touted the expertise and sophistication of White Pine in
11 trading foreign currency when defendants had little or no experience trading in the foreign
12 currency markets, and blatantly posted a false winning trading record for White Pine going back
13 to 1995 even though, by defendants' own admission, White Pine was created no earlier than
14 2000.

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16 3. Defendants have misappropriated customer funds. Defendants deposit customer
17 funds into White Pine operating accounts, which defendants then use for purported business
18 expenses and for personal purposes, including paying for purchases from Saks Fifth Avenue,
19 Royal Maui Jewelers, Justflowers.com, Hooters' restaurant, and The Men's Warehouse.
20 Moreover, checks for large sums of money drawn from these same accounts were made payable
21 to Matthews personally. In one two-month period in 2004, Matthews cashed checks payable to
22 himself totaling more than \$230,000 from a single operating account.

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24 4. White Pine has opened and conducted business through at least six separate bank
25 accounts during its existence. Four of these bank accounts show total deposits of over \$33
26 million from 2001 through 2004.

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28 5. In an attempt to hide this massive fraud and illegal operation, defendants lied to

1 the federal government. When questioned under oath by staff of the Division of Enforcement of
2 the plaintiff Commodity Futures Trading Commission about White Pine's activities, defendant
3 Matthews falsely testified that White Pine was not soliciting customers, had no customers and
4 held no customer funds. Defendant Matthews also claimed that White Pine's website
5 represented a business development proposal that had not been acted upon and was, in his own
6 words, "fictitious."
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8 6. Through the conduct described above, defendant Matthews has engaged in
9 misappropriation and the fraudulent solicitation of customer funds and, consequently, violated
10 Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulations 1.1, 32.9(a) and
11 (c), 17 C.F.R. §§ 1.1, 32.9(a) and (c) (2004).
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13 7. Because defendant Matthews was acting as an officer, agent or employee in
14 engaging the engaging conduct alleged above, White Pine is vicariously liable for violations of
15 Section 4c(b) of the Act, and Commission Regulation 1.1, 32.9(a) and (c) pursuant to Section
16 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002).
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18 8. Because the foreign currency options transactions White Pine purports to offer are
19 not conducted on or subject to the rules of a designated contract market or foreign board of trade,
20 White Pine, through its agents and representatives, is engaged in soliciting, or accepting any
21 order for, or otherwise dealing in, illegal off-exchange options contracts in violation of Section
22 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 32.11(a), 17 C.F.R. §
23 32.11(a) (2004).
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25 9. Accordingly, pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2002),
26 plaintiff, the Commodity Futures Trading Commission ("Commission") brings this action to
27 enjoin the unlawful acts and practices of defendants White Pine and Matthews, and to compel
28 their compliance with the provisions of the Act and Regulations thereunder. In addition, the

1 Commission seeks restitution, disgorgement, civil penalties, an accounting and such other
2 equitable relief as the Court may deem necessary or appropriate.

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4 II.

5 **JURISDICTION AND VENUE**

6 10. The Commodity Exchange Act, as amended, 7 U.S.C. § 1 et seq. (the "Act"),
7 prohibits fraud in connection with the trading of commodity futures contracts and options and
8 establishes a comprehensive system for regulating the purchase and sale of such futures contracts
9 and options. This Court has jurisdiction over this action pursuant to Section 6c of the Act,
10 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person
11 whenever it shall appear that such person has engaged, is engaging, or is about to engage in any
12 act or practice constituting a violation of any provision of the Act or any rule, regulation or order
13 thereunder. In addition, Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B), confers upon the
14 Commission jurisdiction over certain retail transactions in foreign currency for future delivery,
15 options on foreign currency futures contracts, and options on foreign currency, including the
16 transactions alleged in this complaint.

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18 11. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C.
19 § 13a-1(e) (2002), in that defendants are found in, inhabit, or transact business in this district, and
20 the acts and practices in violation of the Act have occurred, are occurring, or are about to occur
21 within this district, among other places.
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III.

THE PARTIES

A. Plaintiff

12. The Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 et seq. (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2003).

B. Defendants

13. White Pine Trust Corporation was incorporated in July 2000 in the state of California. White Pine's principal place of business is 343 4th Avenue, Suite 201, San Diego, California 92101. White Pine has never been registered with the Commission in any capacity.

14. Richard Matthews is self identified as the Founder and Managing Director of White Pine, and is a signatory on defendant White Pine's operating accounts. Matthews maintains an address in San Diego, California. From December 1994 through December 1997, Matthews was registered with the Commission as an Introducing Broker of Global Trading Group, a company founded by Matthews that purportedly solicited retail customers to invest in futures contracts. Matthews is not registered at this time with the Commission in any capacity.

IV.

STATUTORY BACKGROUND

15. Section 2(c)(2)(B)(i)-(ii) of the Act provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, or an option on such futures contract or an option on foreign currency, and is "offered to, or entered into with, a person that is *not* an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is"

1 a regulated entity, as defined therein. 7 U.S.C. § 2(c)(2)(B)(i)-(ii) (2002) (emphasis added).

2 Generally speaking, eligible counterparties include financial institutions, broker dealers and their
3 associated persons, futures commission merchants and their affiliated persons, insurance companies
4 and their regulated subsidiaries or affiliates, financial holding companies and investment bank
5 holding companies. 7 U.S.C. § 2(c)(2)(B)(ii)(I)-(VI). Section 2(c)(2)(B)(i)-(ii) of the Act was
6 enacted by Congress as part of the Commodity Futures Modernization Act of 2000 ("CFMA") in an
7 effort "to clarify the jurisdiction of the Commodity Futures Trading Commission over certain retail
8 foreign exchange transactions and bucket shops that may not be otherwise regulated." CFMA §
9 2(5), Pub. L. No. 106-554, 114 Stat. 2763 (2000).

11 16. Section 1a(12)(A)(xi) of the Act defines an "eligible contract participant" as,
12 *inter alia*, an individual who has total assets exceeding: (a) \$10 million; or (b) \$5,000,000 and
13 who enters into the agreement, contract, or transaction in order to manage the risk associated
14 with an asset owned or liability incurred, or reasonably likely to be owned or incurred by the
15 individual. 7 U.S.C. § 1a(12)(A)(xi) (2002).

17 17. Section 4c(b) of the Act provides that it shall be unlawful for any person to offer
18 to enter into, enter into, to execute, to confirm the execution of, or conduct an office or business
19 in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in
20 transactions in, or in connection with, a commodity option, contrary to any rule, regulation, or
21 order of the Commission prohibiting such transaction or allowing any such transaction under
22 such terms or conditions for different markets. 7 U.S.C. § 6c(b) (2002). Commission Regulation
23 32.11, promulgated pursuant to Section 4c(b) of the Act, prohibits any person from soliciting or
24 accepting orders for any commodity option unless the option transaction is conducted on or
25 subject to the rules of a contract market or foreign board of trade. 17 C.F.R. § 32.11 (2004).
26 Commission Regulation 1.1 prohibits fraud in or in connection with transactions in foreign
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1 currency that are subject to the Act. 17 C.F.R. § 1.1 (2004).

2 V.

3 **FACTS**

4 **A. Defendants Cheat And Defraud Retail Customers**

5 18. White Pine is a foreign currency trading firm operating in the San Diego area.
6 Defendant Matthews is the Founder and Managing Director of White Pine and he conceived of
7 and established White Pine in 2000 as a foreign currency trading firm. Matthews developed the
8 website, www.whitepinetrust.com, and the solicitation materials. Matthews also solicited
9 customers at trade shows nation-wide, is a signatory on White Pine's operating accounts, and is
10 responsible for the overall day-to-day operation of White Pine, including handling customer
11 requests for account withdrawals.
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13 19. White Pine's website, at least until recently, along with other advertising and
14 solicitation materials provided to potential customers, purport to offer customers the opportunity
15 to speculate in the value of purported foreign currency and foreign currency options. Defendants
16 offer to open and manage customer foreign currency accounts, and promise customers steady
17 returns on their investments while downplaying the risk of loss.
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19 20. Specifically, defendants solicit potential customers to invest in White Pine's
20 Pinnacle Capital Fund, both through attending trade shows nationwide and through its former
21 website. Defendants replicated the promotional materials given to customers on White Pine's
22 website. On both the White Pine website and in other solicitation materials, for the Pinnacle
23 Capital Fund, defendants boast an eight-year cumulative performance record of 591%, while
24 simultaneously guaranteeing that 75% of its customers' investments are protected from loss each
25 month.
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27 21. White Pine's promotional materials also tout the defendants' expertise in
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1 managing foreign currency accounts, promising that "your account manager [is] at least on the
2 same educational plateau as corporate treasures (sic) and international bankers."

3 22. However, in sworn testimony taken on January 29, 2004 before the Division of
4 Enforcement for the Commodity Futures Trading Commission, defendant Matthews
5 unequivocally admitted that White Pine's performance record was fictitious. Matthews also
6 admitted he had little expertise in trading foreign currency and explicitly denied the existence of
7 any customers. In fact, Matthews stated at least five times during this testimony that White Pine
8 was a fictitious company: "Q. So again, this is all fictitious - A. Yes. Absolutely."

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10 23. In the same testimony, Matthews testified at least twice that the same performance
11 record of Pinnacle Capital Fund referenced in paragraph 19 was fictitious: "Q. These are just
12 fictitious numbers? A. Yes. The chronology and everything." White Pine's performance
13 records in its promotional material extend back to 1995, but White Pine was not incorporated or
14 otherwise doing business until at least 2000.

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16 24. Matthews further testified that, contrary to defendants' highly proclaimed
17 expertise in trading foreign currency options, he knew "little about" foreign currency.

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19 25. Matthews also testified that White Pine did not have, and had never had, any
20 customers. In fact, White Pine had at least three customers prior to Matthews' testimony who
21 had invested over \$650,000 with defendants, and upon and information and belief, has as many
22 as 300 customers who may have invested up to \$33 million with White Pine.

23 26. In soliciting these customers purportedly to trade foreign currency and foreign
24 currency options on their behalf, first through direct solicitation materials and subsequently by
25 referring the customers to its website, White Pine made the following misrepresentations of
26 material facts:
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- a. All funds are separated and maintained in a "client funds account" and are not commingled with White Pine's operating accounts;
- b. All customer accounts are held outside White Pine at regulated broker dealers;
- c. White Pine has been in the business for eight years with a cumulative performance record of 591%, covering the time period of 1995 to 2004; and
- d. White Pine account managers have specialized expertise in trading foreign currency options.

27. These representations create the impression that White Pine is a legitimate firm.

However, these statements are false, in that:

- a. Customer funds are neither separated nor maintained in the clients' name; rather, funds are deposited into operating accounts in White Pine's name or otherwise commingled with other funds, where some funds are misappropriated and used for business and personal expenses;
- b. White Pine was not in existence in 1995-1999, since it was incorporated in July 2000; and
- c. Matthews has little knowledge of trading foreign currency options.

28. In a two-month period in 2004, from the same account in which Matthews deposited customer funds, Matthews wrote personal checks to himself totaling over \$230,000. In another two-month period in 2003, Matthews wrote personal checks to himself totaling over \$150,000 from a different operating account. In this same time period and from this same account Matthews wrote other checks for personal expenditures, including a check to Royal Maui Jewelers for \$26,883.63 and a check to Neiman Marcus totaling \$3,568.72. Matthews also wrote two checks totaling more than \$23,000 allegedly to pay for two business trips to Las Vegas, Nevada, and New Orleans, Louisiana.

29. White Pine customers sent money directly to White Pine. Customers either wired money directly into White Pine's operating accounts, or wrote personal checks made out to

1 White Pine Trust Corporation, which Matthews then deposited into White Pine's operating
2 accounts. Defendants gave customers promotional materials that referred them to White Pine's
3 website so customers could track their account. Customers also received monthly account
4 statements on White Pine's Pinnacle Capital Fund letterhead. The customer account statements
5 did not indicate the specific trading executed, where the purported trading occurred, or where the
6 customer funds were deposited.
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8 **B. Some Of The Purported Foreign Currency Transactions Defendants**
9 **Offer Are Illegal Off-Exchange Foreign Currency Options**

10 30. Since at least February 2003, White Pine has engaged in an elaborate scheme to
11 defraud retail customers. White Pine's promotional materials and account opening documents
12 describe an investment opportunity to profit based upon the fluctuations in the relative values of
13 foreign currencies. During the relevant period, through written materials provided to customers
14 and prospective customers, White Pine stated that "We also trade in FX options." The same
15 promotional materials expand upon this statement and explain how White Pine uses options as a
16 hedging strategy purportedly to minimize the investment risk faced by prospective investors.
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18 31. The foreign currency options contracts offered by White Pine have not been
19 conducted or executed on or subject to the rules of a contract market, or a foreign board of trade.
20 White Pine is not an appropriate counterparty under the Act for the alleged transactions herein,
21 and certain customers solicited by White Pine were not eligible contract participants.
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VI.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND COMMISSION REGULATIONS****COUNT I****VIOLATIONS OF SECTION 4c(b) OF THE ACT
AND SECTIONS 1.1 AND 32.9(a) AND (c) OF THE REGULATIONS:
FRAUD BY MISAPPROPRIATION AND SOLICITATION**

32. Plaintiff re-alleges paragraphs 1 through 31 above and incorporates these allegations herein by reference.

33. In or in connection with an offer to enter into, the entry into, the confirmation of, the execution of, or the maintenance of commodity options transactions, the defendants have cheated, defrauded, or deceived or attempted to cheat, defraud, or deceive, other persons, by misappropriating customer funds, and by making false, deceptive, or misleading representations of material facts and by failing to disclose material facts necessary to make other facts they disclosed not misleading, including but not limited to those statements and omissions identified in paragraphs 18 through 31 above, all in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulations 1.1, 32.9(a) and (c), 17 C.F.R. §§ 1.1, 32.9(a) and (c).

34. In the course of their solicitation of investors, the defendants have knowingly made material misrepresentations and omitted material facts necessary to make other representations not misleading, including, but not limited to the misrepresentations and omissions set forth at paragraphs 18 through 31 above, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulations 1.1, 32.9(a) and (c), 17 C.F.R. §§ 1.1, 32.9(a) and (c).

35. Mathews, directly or indirectly, controlled White Pine and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting White Pine's violations of Section 4c(b) of the Act and Regulations 1.1, 32.9(a) and (c), 17 C.F.R. §§ 1.1, 32.9(a) and (c). Mathews is therefore liable for these violations pursuant to Section 13(b) of the Act, 17 U.S.C. §

1 13c(b).

2 36. The foregoing acts, misappropriation of customer funds, misrepresentations,
3 omissions and failures of Matthews occurred within the scope of Matthews' employment or
4 office with White Pine. White Pine is therefore liable for these acts pursuant to Section
5 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).
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7 37. Each act of misappropriation and fraudulent misrepresentation and omission,
8 including but not limited to those specifically alleged herein at paragraphs 18 through 31 above,
9 is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and
10 Regulations 1.1, 32.9(a) and (c), 17 C.F.R. §§ 1.1, 32.9(a) and (c).
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12 COUNT II

13 VIOLATIONS OF SECTION 4c(b) OF THE ACT, 7 U.S.C. § 6c(b) AND REGULATION 14 32.11(a), 17 C.F.R. § 32.11(a): OFFER AND SALE OF ILLEGAL OFF-EXCHANGE 15 OPTIONS CONTRACTS

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

17 39. During the relevant time period, defendants have solicited and/or accepted orders
18 for, and/or accepted money, securities or property in connection with, the purchase and sale of
19 commodity options when: (i) such transactions have not been conducted or executed on or
20 subject to the rules of a contract market, or a foreign board of trade in violation of Section 4c(b)
21 of the Act, 7 U.S.C. § 6c(b), and Regulation 32.11(a), 17 C.F.R. § 32.11(a), and (ii) defendants
22 were not appropriate counterparties in transactions with customers who are not eligible contract
23 participants pursuant to Section 2(c)(2)(B)(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(ii).

24 40. Each foreign exchange commodity option transaction solicited and/or executed
25 during the relevant time period, including but not limited to those specifically alleged herein, is
26 alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and
27 Regulation 32.11(a), 17 C.F.R. § 32.11(a).
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VII.

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 that defendants violated Sections 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Regulations 1.1, 32.9 and 32.11, 17 C.F.R. §§ 1.1, 32.9 and 32.11 (2004);
- B. Enter orders of permanent injunction prohibiting the defendants and any other person or entity associated with them, including any successor thereof, from:
 1. engaging in conduct, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b)(2002), and Regulations 1.1, 32.9 and 32.11, 17 C.F.R. §§ 1.1, 32.9 and 32.11 (2004);
 2. soliciting funds for, engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- C. Enter orders of permanent injunction restraining and enjoining defendants 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, wherever located, including all such records concerning defendants' business operations;
 2. Refusing to permit authorized representatives of the Commission to

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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 defendants.

D. Enter an order directing defendants and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, 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 thereon from the date of such violations;

E. Enter an order directing defendants to make full restitution to every customer whose funds were received by him as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;

F. Enter an order assessing a civil monetary penalty against each defendant in the amount of not more than the higher of \$120,000 or triple the monetary gain to the defendant for each violation by defendant of the Act or Regulations;

G. Enter an order directing that defendants make an accounting to the court of all

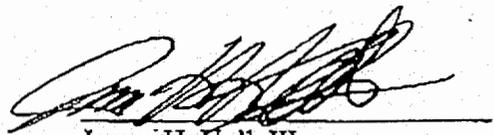
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their assets and liabilities, together with all funds they received from and paid to clients and other persons in connection with commodity futures transactions or purported commodity futures transactions, and all disbursements for any purpose whatsoever of funds received from commodity transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind;

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

I. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: October 20, 2004



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Commodity Futures Trading Commission