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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES COMMODITY FUTURES  
TRADING COMMISSION,

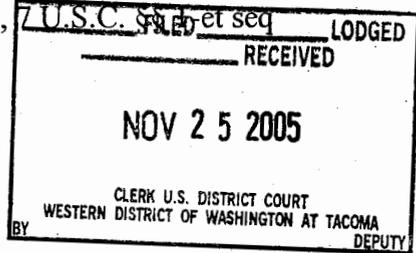
Case No. **C05 5766 RJB**

Plaintiff,

v.

JAMES A. MAGGIO,  
TRADE RISK MANAGEMENT, LLC,  
an Oregon Limited Liability Company, and  
TRADE RISK MANAGEMENT, LLC,  
a Washington Limited Liability Company

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.*



Defendants.

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**I.**

**JURISDICTION AND VENUE**

1. The Commodity Exchange Act, 7 U.S.C. § 1 *et seq.* (2002) ("Act") establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts and options. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), which authorizes the Commodity Futures Trading Commission ("Commission") to seek injunctive relief against any person whenever it shall appear 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.

Complaint; Case No. \_\_\_\_\_

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1 violations of Sections 4o(1) of the Act and Commission Regulation 4.41, Maggio is liable  
2 pursuant Section 13(a) of the Act, 7 U.S.C. § 13c(a).

3 4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, Plaintiff  
4 Commission brings this action to enjoin the unlawful acts and practices of Trade Risk and  
5 Maggio (collectively “Defendants”). In addition, Plaintiff seeks civil monetary penalties in the  
6 amount of not more than the higher of \$120,000 for each violation of the Act prior to October 24,  
7 2004, and \$130,000 for violations thereafter, or triple the monetary gain to Defendants for each  
8 violation of the Commodity Exchange Act, disgorgement of Defendants’ ill-gotten gains,  
9 restitution to customers, prejudgment interest and such other relief as this Court may deem  
10 necessary or appropriate.

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

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1 **III.**

2 **THE PARTIES**

3 **The Plaintiff**

4 6. **Commodity Futures Trading Commission** is an independent federal regulatory  
5 agency that is charged with responsibility for administering and enforcing the provisions of the  
6 Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq.* (2002).

7 **The Defendants**

8 7. **James Anthony Maggio**, who resides at 7803 Northeast 24<sup>th</sup> Court, Vancouver,  
9 Washington 98665, is the president of Trade Risk Management, LLC and the developer of Sigma  
10 Bands Charting. Prior to starting Trade Risk Management, Maggio offered the Sigma Band  
11 charting service through his firm Market Cycles. Maggio has never been registered with the  
12 Commission in any capacity.

13 8. **Trade Risk Management, LLC (OR)** (“Trade Risk (OR)”) was registered as a  
14 limited liability company on October 22, 2002 in Oregon with an address of 121 Morrison St.,  
15 Suite 800, Portland, Oregon 97204. As an Oregon entity, Trade Risk (OR) was jointly owned by  
16 Maggio and an Australian business partner, John Mort. Trade Risk (OR) filed articles of  
17 dissolution in Oregon on October 31, 2003. Trade Risk (OR) has never been registered with the  
18 Commission in any capacity.

19 9. **Trade Risk Management, LLC (WA)** (“Trade Risk (WA)”) was registered as a  
20 limited liability company on June 12, 2003 in Washington State with an address of 7803  
21 Northeast 24<sup>th</sup> Court, Vancouver, Washington 98665. Trade Risk maintains the website

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1 *www.traderiskmanagement.com*. Maggio is listed as the company's agent and is an owner of  
2 40% of the firm. Trade Risk (WA) has never been registered with the Commission in any  
3 capacity.

#### 4 **FACTUAL BACKGROUND**

5 10. In 1997 Maggio began offering his Sigma Band Charting service free to the  
6 public through his website *www.marketcycles.com*. Based upon a mathematical formula  
7 developed by Maggio, the Sigma Band charts display bands, representing market cycles, with  
8 indicators that purportedly show customers when they have the best chance of profiting from a  
9 trade. The charts do not make specific buy and sell recommendations but are supposed to be  
10 used by customers to make trading decisions.

11 11. By 2000 Maggio d/b/a Market Cycles began charging fees for the Sigma Band  
12 charts he generated on a daily basis and e-mailed to customers. In 2002, Maggio formed a  
13 limited liability company ("LLC") with one of his customers, an Australian resident, in order to  
14 upgrade the marketing of the Sigma Band charting service. The following year the LLC  
15 expanded to include two minor partners from Australia who provided support for the marketing  
16 and for the website.

17 12. Trade Risk offers a commodity futures charting service to customers on a monthly  
18 subscription basis. Subscribers to the service are given a two week introductory trial for \$2.95.  
19 Subscribers thereafter, unless they act affirmatively to discontinue their subscription, pay on a  
20 monthly basis fees ranging from \$19.95 to \$129, depending on the date they began their  
21 subscription. In November of 2004, Trade Risk had approximately 412 subscribers.

1           13.     Trade Risk offers the Sigma Band charts through its website  
2 *www.traderiskmanagement.com*. The website prominently features Maggio, the “Founder” of  
3 Trade Risk Management, who claims he studied with the originator of the sigma band concept in  
4 order to develop the algorithm that produces the Sigma Band charts. According to the website,  
5 Maggio updates the Sigma Band charts on a daily basis for over 300 commodities, indexes and  
6 stocks.

7           14.     From at least June 12, 2003, to the present, Defendants Maggio and Trade Risk  
8 have conducted business from Maggio’s Vancouver, Washington home office for the purpose of  
9 marketing and selling commodity futures and options charting services to the retail public.

10          15.     From at least January 2003 and continuing to the present, Maggio and Trade Risk  
11 have been offering commodity trading advice for compensation to members of the public  
12 through the sale of the Sigma Band charting service.

13          16.     From at least January 2003 to the present, Maggio, through Trade Risk, and Trade  
14 Risk have solicited prospective and actual customers to purchase Sigma Band charts through the  
15 operation of the Internet website *www.traderiskmanagement.com*.

16          17.     From at least January 2003 to November 2004 (“the relevant period”), Maggio  
17 and Trade Risk misled actual and prospective customers by falsely claiming that Sigma Band  
18 charts would enable customers to achieve an extraordinary rate of trading success. At the same  
19 time, Maggio and Trade Risk downplayed the risk of loss associated with the use of Sigma Band  
20 charts in connection with futures trading by touting the purported low rate of risk derived from  
21 using the charts.



1           23. Section 1a(6)(A) of the Act, 7 U.S.C. § 1a(6)(A), defines a commodity trading  
2 advisor (“CTA”) as any person who, for compensation or profit, engages in the business of  
3 advising others as to the value or the advisability of trading in: (i) any contract of sale of a  
4 commodity for future delivery made or to be made on or subject to the rules of a contract market;  
5 (ii) any commodity option authorized under Section 4c of the Act, 7 U.S.C. § 6c; or (iii) any  
6 leverage transaction authorized under Section 19 of the Act, 7 U.S.C. § 23; or a person who for  
7 compensation or profit, and as part of a regular business, issues or promulgates analyses or  
8 reports concerning any of the activities referred to above.

9           24. From at least January 2003 and continuing to the present, Maggio and Trade Risk  
10 have been acting as CTAs by offering commodity trading advice for compensation to members  
11 of the public through the sale of the Sigma Band charting service.

12           25. Beginning in at least January 2003, and continuing through approximately  
13 November 2004, Maggio and Trade Risk, while acting as CTAs, violated Section 4o(1)(A) and  
14 (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) and Commission Regulations 4.41 (a)(1) and (2), 17  
15 C.F.R. § 4.41(a)(1) and (2) (2002), in that they directly or indirectly employed a device, scheme,  
16 or artifice to defraud customers or prospective customers, or have engaged in transactions,  
17 practices or a course of business which operated or operates as a fraud or deceit upon customers  
18 or prospective customers by using the mails or other means or instrumentalities of interstate  
19 commerce. Maggio’s and Trade Risk’s fraudulent acts consisted of making the  
20 misrepresentations of material facts regarding profit and risk in the solicitation of customers  
21 through the Internet as set forth in paragraphs 10 through 21, above.

1           26.     Defendant Maggio and other agents of Trade Risk made these fraudulent  
2 misrepresentations while acting as Trade Risk’s agents. Trade Risk is thereby liable for the  
3 violations of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) and Commission  
4 Regulations 4.41 (a)(1) and (2), 17 C.F.R. § 4.41(a)(1) and (2) (2004) pursuant to Section  
5 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

6           27.     Defendant Maggio directly or indirectly controlled Trade Risk and did not act in  
7 good faith or knowingly induced, directly or indirectly, the acts constituting Trade Risk’s  
8 violations alleged in this Complaint. Maggio is therefore liable for each of Trade Risk’s  
9 violations of the Act and Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. §13c(b).

10          28.     Defendant Maggio willfully aided, abetted, counseled, commanded, induced,  
11 procured, caused, or acted in combination or concert with Trade Risk in the foregoing violations  
12 of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) and Commission  
13 Regulations 4.41 (a)(1) and (2), 17 C.F.R. § 4.41(a)(1) and (2). Maggio is therefore responsible  
14 for Trade Risk’s violations of the Act and Commission Regulations pursuant to Section 13(a) of  
15 the Act, 7 U.S.C. §13c(a).

16          29.     Each fraudulent misrepresentation is alleged as a separate and distinct violation of  
17 Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) and Commission Regulations  
18 4.41(a)(1) and (2), 17 C.F.R. § 4.41(a)(1) and (2).

19     ///  
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1 **VI. RELIEF REQUESTED**

2 WHEREFORE, Plaintiff Commodity Futures Trading Commission respectfully requests  
3 that this Court, as authorized by Section 6c of the Act, and pursuant to the Court’s equitable  
4 powers, enter:

5 1. An order of permanent injunction prohibiting Defendants Maggio and Trade Risk and  
6 any other person or entity associated with them, including any successor thereof, from engaging  
7 in conduct that violates Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2002)  
8 and Commission Regulations 4.41(a)(1) and (2), 17 C.F.R. § 4.41(a)(1) and (2) (2004).

9 2. An order directing the Defendants and any successors thereof to disgorge, pursuant to  
10 such procedure as the Court may order, all benefits received from the acts or practices which  
11 constituted violations of the Act and Regulations, as described herein, and interest thereon from  
12 the date of such violations;

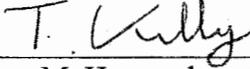
13 3. An order directing the Defendants to make restitution to every customer whose funds  
14 were received by them as a result of acts and practices which constituted violations of the Act  
15 and Regulations, as described herein, and interest thereon from the date of such violations;

16 4. An order directing the Defendants to pay a civil penalty in the amount of not more than  
17 the higher of \$120,000.00 for each violation of the Act prior to October 24, 2004, and \$130,000  
18 for violations thereafter or triple the monetary gain to Defendants for each violation of the Act  
19 and Regulations;

20 5. An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920  
21 and 2412(a)(2); and

1 6. Such other and further relief as the Court deems proper.  
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4 DATED this 23 day of November, 2005.

5  
6 Respectfully Submitted,  
7   
8  
9 Peter M. Haas <phaas@cftc.gov>  
10 Todd Kelly <tkelly@cftc.gov>  
11 Attorneys for United States  
12 Commodity Futures Trading Commission  
13 1155 21<sup>st</sup> Street, N.W.  
14 Washington, D.C. 20581  
15 202-418-5331 (telephone) (Kelly)  
16 202-418-5523 (facsimile)  
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