

**IN THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF MICHIGAN**

COMMODITY FUTURES TRADING COMMISSION,)	CIVIL ACTION NO.:1:00 CV 913
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)	
Plaintiff,)	
)	
)	
v.)	
)	
)	
JOHN O'HERRON and)	
)	
)	
O'HERRON ASSET MANAGEMENT, a Michigan corporation,)	
)	
)	
Defendants.)	
)	

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

I.

SUMMARY

1. Since at least January 1998 and continuing through the present (the “relevant time”), John O’Herron (“O’Herron”), individually and as an agent for O’Herron Asset Management (“OAM”) (collectively the “Defendants”), made false representations and material omissions while soliciting and pooling approximately \$2.7 million in funds from at least 27 participants (“investors”). They solicited and pooled these funds for the alleged purpose of trading commodity futures.

2. O’Herron, individually and as an agent for OAM, issued false statements to investors, concealing the facts that: only a small amount of investor funds, less than thirty

percent, was actually being traded; that such trading resulted primarily in losses, and that O'Herron was diverting investor funds for his personal use and benefit.

3. O'Herron also concealed his losses by using "loans" from investors to "buy out" earlier investors, in a manner akin to a Ponzi scheme, while promising repayment of such loans from trading profits and O'Herron's management fees.

4. At all relevant times, Defendants, without benefit of registration as commodity pool operators ("CPOs"), improperly commingled investor funds with O'Herron's personal assets and with monies invested with O'Herron for purposes other than trading commodity futures.

5. Thus, Defendants have engaged, are engaging, or are about to engage in acts and practices which violate Sections 4b(a)(i)-(iii), 4m(1) and 4o(1) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 6b(a)(i)-(iii), 6m(1) and 6o(1)(1994), and Regulations 4.20 and 4.21 thereunder, 17 C.F.R. §§ 4.20 and 4.21(2000).

6. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") brings this action to enjoin the unlawful acts and practices of Defendants O'Herron and OAM and to compel their compliance with the provisions of the Act and Regulations thereunder. In addition, the Commission seeks civil penalties, an accounting and such other equitable relief as the Court may deem necessary or appropriate.

II.

JURISDICTION AND VENUE

7. The Act prohibits fraud in connection with the trading of commodity futures contracts and establishes a comprehensive system for regulating the purchase and sale of such

contracts. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), which authorizes the 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.

8. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (1994), in that 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, among other places.

III.

THE PARTIES

9. Plaintiff 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.* (1994), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2000).

10. Defendant John O'Herron, age 45, currently resides and works at 8280 Zosel Street, Onekama, Michigan 49675. He was registered with the Commission as a commodity trading advisor (“CTA”) from April 14, 1989 until October 26, 2000, and as an associated person (“AP”) from September 18, 1991 until October 26, 2000. O’Herron formed, and at all relevant times was the day-to-day decision-maker for, defendant OAM. O’Herron committed the acts alleged in this complaint individually and as an agent of OAM. O’Herron has never been registered with the Commission as a commodity pool operator (“CPO”).

11. Defendant O'Herron Asset Management is a Michigan corporation incorporated on August 30, 1999, and located at O'Herron's home at 8280 Zosel Street, Onekama, Michigan 49675. O'Herron is the president, secretary and treasurer of OAM. OAM is also a business name used by O'Herron to refer to the commodity pool he purported to operate. OAM has never been registered with the Commission in any capacity.

IV.

FACTS

Investor solicitation

12. In or around January 1998, O'Herron individually and as an agent of OAM began to solicit investment funds from members of the public. O'Herron told potential investors that he would trade commodity futures for them through his personal trading accounts at Cargill Investor Services, Inc. ("Cargill"), a registered futures commission merchant ("FCM").

13. In soliciting investors, O'Herron falsely represented that he had a successful track record trading U.S. Treasury Bond futures ("T-bonds") for a purported pool of commodity investors. O'Herron showed potential investors materials that portrayed the purported commodity pool's growth from approximately \$200,000 to \$2,000,000 in 24 months. In fact, O'Herron's actual trading track record is not even remotely similar to what he has represented to investors and potential investors, losing money in almost every month he traded.

14. In soliciting some investors, O'Herron downplayed the risks of futures trading by stating that he could limit losses to 15 percent of the amount invested.

15. O'Herron also downplayed the risks of futures trading by stating to some investors that he could limit market risk through the use of a computerized futures trading program called "Trademate" which was owned by Op-Stock Trading Corporation, another company owned by O'Herron.

16. O'Herron further solicited some investors by representing that their funds would be put into futures accounts which he claimed would be traded for the investors by OAM.

17. O'Herron also solicited approximately \$1.1 million in what he referred to as "loans" from investors, stating that he needed the money to pay withdrawing investors. O'Herron falsely represented to investors that he did not want to pay withdrawing investors from the commodity futures trading account because the accounts were earning profits or that the funds were otherwise not available. These investors' funds were purportedly to take the place of earlier investors' funds.

18. Based on the representations above, investors invested a total of approximately \$2.7 million with O'Herron. All of O'Herron's investors, including those whose funds were designated by O'Herron as "loans," understood that O'Herron would trade the money for them in the commodity futures markets and that the return of principal and the amount of additional return that they would receive would be based on the success of O'Herron's commodity futures trading.

19. In soliciting potential investors, O'Herron failed to distribute a risk disclosure document as required by Regulation 4.21. He did not provide accurate information about trading risks or his personal trading experience and performance record, required for such risk disclosures by Commission Regulations 4.24 and 4.25.

Use of Investor Funds

20. From approximately January 1998 to June 2000, O'Herron individually and as an agent of OAM collected approximately \$2.7 million from at least 27 investors for the purported purpose of investing in commodity futures.

21. Instead of putting investor funds into distinct accounts in the pool's name, O'Herron caused the money to be deposited in O'Herron's personal bank and trading accounts, thereby commingling pool funds with money belonging to himself and others.

22. O'Herron used only a small proportion of the investor funds the defendants accepted to actually trade in commodity futures. Between January 1998 and June 2000, O'Herron deposited only approximately \$898,000 of the approximately \$2.7 million he received from investors, into four Cargill trading accounts. Between January 1998 and June 2000, the Cargill trading accounts suffered approximately \$275,000 in trading losses. O'Herron withdrew the remaining funds, approximately \$623,000, and used some those funds for other non-pool related purposes.

23. O'Herron improperly diverted substantial investor funds to his personal use and benefit. For example, in June 1999, O'Herron deposited \$461,500 of investor funds into his personal bank account. Without any other apparent source of income providing funds for this account, O'Herron then wrote a check totaling over \$75,638 for cash, a new car and other personal non-pool related expenses.

Maintenance of the Pool

24. O'Herron, individually and as an agent of OAM induced investors to maintain and add to their investments with him by concealing trading loses and exaggerating the true extent of his trading activities.

25. Such false representations were contained in weekly statements that O'Herron created and sent by facsimile to certain investors.

26. For example, O'Herron represented to investors that in each day he traded in August 1998 he traded 100 futures contracts. He claimed that this grew progressively to

quantities exceeding 650 contracts per trading day during April and May 2000. In reality, the average trading by O'Herron in this period was approximately 20 contracts per day of trading.

27. O'Herron also represented to certain investors that the aggregate balance in the trading accounts was \$2,839,000 as of April 26, 2000, when, in fact, the aggregate balance in the trading accounts was only \$8,559.66 on that date.

28. Also, the fictitious account statements represented that investors' funds were growing, and that the pool rarely suffered any losses from April 1998 through June 2000. For example, in a false statement issued to certain investors on June 14, 2000, O'Herron represented that there was a balance of \$3.77 million in the Cargill accounts. The real trading records for the Cargill accounts revealed, however, that the combined value of all of O'Herron's accounts was only \$300.08 as of June 14, 2000.

29. At no time did the Cargill accounts have a combined balance of more than \$266,615.40.

30. O'Herron knew his weekly trading statements were false and intended that investors would rely on those false statements in determining whether to maintain or add to their investments.

31. O'Herron also knew and intended that the direct recipients of the fictitious account statements would share the information with other investors and potential investors, who would rely on the false information in making their own investment decisions.

32. The false account statements purported to show the alleged number of futures contracts traded, profits, losses, account balances, and O'Herron's commissions and fees, which were based on the amount of alleged profits.

33. In actuality, O'Herron did not trade the number of futures contracts or achieve the degree of profits shown on the statements. The relatively small amount of commodity futures trading actually done by O'Herron mostly resulted in losses.

34. Investors were told that they could receive a return of their funds with ten days notice, although many were urged to keep their funds invested for at least one year. Many investors who invested more than a year ago have asked for a return of their money but, despite repeated demands over several months, have not been repaid.

IV.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS

COUNT I

VIOLATIONS OF SECTION 4b(a)(i) AND (iii) OF THE ACT: FRAUD BY MISAPPROPRIATION AND MISREPRESENTATION

35. Paragraphs 1 through 34 are re-alleged and incorporated herein.

36. During the relevant time, O'Herron violated Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii) (1994), in that he cheated or defrauded or attempted to cheat or defraud investors or prospective investors in the pools and willfully deceived or attempted to deceive investors or prospective investors by, among other things: misappropriating funds received from investors and using them for personal expenses; using funds received from investors to pay earlier investors, in a manner akin to a Ponzi scheme; misrepresenting to investors that their funds were being used to trade commodity futures when they were not; misrepresenting O'Herron's prior trading success to prospective investors; downplaying the risks of futures trading by stating that he could limit losses; and misrepresenting to investors the profits and value of the pool.

37. Defendants 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.

38. To the extent that O'Herron engaged in such conduct as an agent of OAM, that entity as O'Herron's principal is also liable for his violations of Section 4b(a)(i) and (iii) of the Act, pursuant to Section 2(a)(1)(iii) of the Act, 7 U.S.C. § 4 (1994).

39. Each material misrepresentation or omission, each false report or statement, and each willful deception 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)(i) and (iii) of the Act.

COUNT II

VIOLATIONS OF SECTION 4b(a)(ii) OF THE ACT: PROVIDING FALSE STATEMENTS TO INVESTORS

40. Paragraphs 1 through 39 are re-alleged and incorporated herein.

41. Since at least April 1998 through June 2000, O'Herron violated Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii), in that he, or persons working under his direction, willfully made or caused to be made false reports or statements thereof by preparing and issuing false trading account statements to investors.

42. O'Herron, or persons working under his direction, 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.

43. To the extent that O'Herron engaged in such conduct as an agent of OAM, that entity as O'Herron's principal is also liable for his violations of Section 4b(a)(ii) of the Act, pursuant to Section 2(a)(1)(iii) of the Act, 7 U.S.C. § 4 (1994).

44. 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) (1994).

COUNT III

VIOLATIONS OF SECTION 4m(1) OF THE ACT: FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR

45. Paragraphs 1 through 44 are re-alleged and incorporated herein.

46. As defined by Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (1994), a CPO is any firm or individual engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and that, in connection therewith, solicits, accepts, or receives from others funds, securities, or property, either directly 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.

47. With certain specified exceptions and exemptions, not applicable here, all CPOs are required to be registered with the Commission, pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (1994).

48. Specifically, since 1998, O'Herron individually and as an agent for OAM, has solicited and accepted in excess of \$2.7 million in the aggregate from at least 27 members of the public to invest in the commodity pool he operated.

49. In connection with such conduct, O'Herron used or is using the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CPO.

50. O'Herron engaged and continues to engage in these activities without the benefit of registration as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (1994).

51. To the extent that O'Herron engaged in such conduct as an agent of OAM, that entity as O'Herron's principal is also liable for his violations of Section 4m(1) of the Act, pursuant to Section 2(a)(1)(iii) of the Act, 7 U.S.C. § 4 (1994).

52. Each use of the mails or any means or instrumentality of interstate commerce in connection with his 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, 7 U.S.C. § 6m(1) (1994).

COUNT IV

VIOLATIONS OF SECTION 4o(1) OF THE ACT: FRAUD BY A CPO AND CTA

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

54. O'Herron has acted as a CPO in that he has engaged 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 any commodity for future delivery on or subject to the rules of any contract market.

55. As defined by Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (1994), a CTA is any person who for compensation or profit engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or advisability of trading in any contract of sale of a commodity future for future delivery made or to be made on or subject to the rules of any contract market; any commodity option or any leverage transaction for compensation or profit, and as part of a regular business, issues or promulgates analysis or reports concerning any of the activities referred to above.

56. At all relevant times, O'Herron was registered with the Commission as and acted as a CTA.

57. During the relevant time, O'Herron violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (1994), in that he, as a CPO and CTA, directly or indirectly employed one or more devices, schemes, or artifices to defraud pool participants or prospective pool participants, or engaged in transactions, practices or courses of business which operated as a fraud or deceit upon pool participants or prospective pool participants by: misappropriating funds received from investors; falsely representing his trading record; fraudulently promising profits from trading with limited risks; misrepresenting to investors that all of their funds were going to be used to trade commodity futures when they were not; and issuing statements to investors which falsely represented the profits, losses and balances.

58. To the extent that O'Herron engaged in such conduct as an agent of OAM, that entity as O'Herron's principal is also liable for his violations of Section 4o(1) of the Act, pursuant to Section 2(a)(1)(iii) of the Act, 7 U.S.C. § 4 (1994).

59. Such acts were effected by use of the mails or other means or instrumentalities of interstate commerce. In particular, Defendants often communicated with investors and prospective pool participants by facsimile.

60. Each material misrepresentation or omission, each act of misappropriation and conversion, and 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 Sections 4o(1) of the Act, 7 U.S.C. § 6o(1) (1994).

COUNT V

VIOLATION OF REGULATION 4.20: COMMINGLING OF POOL FUNDS

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

62. Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2000), prohibits CPOs from commingling the property of any pool that they operate or that they intend to operate with the property of any other person.

63. In violation of this provision, Defendants commingled funds received from investors by depositing such monies into bank and trading accounts containing O'Herron's personal assets as well as funds of others received by O'Herron for other purported investment vehicles.

64. To the extent that O'Herron engaged in such conduct as an agent of OAM, that entity as O'Herron's principal is also liable for his violations of Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2000), pursuant to Section 2(a)(1)(iii) of the Act, 7 U.S.C. § 4 (1994).

COUNT VI

VIOLATION OF REGULATION 4.21: **FAILURE TO PROVIDE DISCLOSURE DOCUMENTS TO PROSPECTIVE** **PARTICIPANTS**

65. Paragraphs 1 through 64 are re-alleged and incorporated herein.

66. Defendants were required to register as CPOs with the Commission before soliciting investors to contribute to Defendants' commodity pool.

67. Regulation 4.21(a), 17 C.F.R. § 4.21(a) (2000), prohibits anyone who is registered or should be registered as a CPO from soliciting a prospective participant or entering into an agreement with a prospective participant without first delivering or causing to be delivered to the prospective participant a disclosure document containing the information set forth in Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25 (2000).

68. O'Herron violated Regulation 4.21, 17 C.F.R. § 4.21 (2000), in that he, directly or indirectly, solicited potential pool participants without first delivering to each an appropriate disclosure document containing the information set forth in Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25 (2000).

69. To the extent that O'Herron engaged in such conduct as an agent of OAM, that entity as O'Herron's principal is also liable for his violations of Regulation 4.21, 17 C.F.R. § 4.21 (2000), pursuant to Section 2(a)(1)(iii) of the Act, 7 U.S.C. § 4 (1994).

V.

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 liable for violating Sections 4b(a)(i)-(iii), 4m(1), and 4o of the Act, 7 U.S.C. §§ 6b(a)(i)-(iii), 6m(1), and 6o (1994) and Regulations 4.20 and 4.21, 17 C.F.R. §§ 4.20 and 4.21 (2000);

B. Enter orders of preliminary and 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 him who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Cheating, defrauding or willfully deceiving or attempting to cheat, defraud or willfully deceive 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) and (iii) of the Act, 7 U.S.C. § 6b(a)(i) and (iii);
2. Willfully to make or cause 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. Operating as a CPO 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 commodity pool operator, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1);

4. While acting as a CPO and CTA, 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);
5. As a CPO, failing to maintain pool funds in separate accounts in the pool's name and commingling such funds with funds and assets belonging to other persons in violation of Regulation 4.20(c), 17 C.F.R. § 4.20(c);
6. While acting a CPO, directly or indirectly, soliciting, accepting or receiving funds, securities or other property from prospective pool participants without delivering or causing to be delivered to the prospective participant a Disclosure Document containing the information set forth in 17 C.F.R. § 4.24 and 4.25, and failing to receive an acknowledgement of receipt of Disclosure Document from the prospective pool participant, in violation of Regulation 4.21, 17 C.F.R. § 4.21;
7. Trading on or subject to the rules of any contract market; engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any person or entity, whether by power of attorney or otherwise; and
8. Applying for registration or claiming exemption from registration with the Commission in any capacity and engaging in any activity requiring such registration or exemption from registration, or acting as a principal, agent, or any other officer or agent of any person registered, required to be registered, or exempted from registration with the Commission. This includes, but is not limited to, soliciting, accepting or receiving any funds, revenue, or other property from any person, giving advice for compensation, or soliciting prospective customers, related to the purchase or sale of any commodity future or options on commodity futures contracts.

C. Enter orders of preliminary 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 him 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 defendant's business operations; and
 3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of O'Herron or O'Herron Asset Management.

D. Enter an order requiring Defendants to pay civil penalties under the Act in amounts of not more than the higher of \$110,000 for each violation of the Act and Regulations committed prior to October 23, 2000 or \$120,000 for each violation of the Act and Regulations on or after that date, or triple the monetary gain to Defendants, for each violation of the Act and Regulations described herein;

E. Enter an order directing Defendants to provide Plaintiff immediate and continuing access to their books and records, make an accounting to the Court of all of their 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 January 1998 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 January 1998 to and including the date of such accounting;

F. Enter an order requiring Defendants to disgorge 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;

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

H. Enter an order rescinding all contracts entered into by Defendants with any investor;

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

J. Order such other and further remedial ancillary relief as this Court may deem necessary and appropriate under the circumstances.

Date: December 21, 2000

ATTORNEYS FOR PLAINTIFF

COMMODITY FUTURES TRADING
COMMISSION
300 South Riverside Plaza, Suite 1600N
Chicago, IL 60606-6615
(312) 886-3090 (Williamson)
(312) 353-1969 (Greenwald)
(312) 886-3223 (Bretscher)
(312) 886-3175 (Gradman)
(312) 353-4502 (facsimile)

Mark Bretscher
Senior Trial Attorney

Susan Gradman
Trial Attorney

Local Counsel:
Joan Meyer
Michigan Attorney #P52624
Assistant United States Attorney
330 Ionia Ave. N.W.
5th Floor
Grand Rapids, MI 49503
(616) 456-2404
(616) 456-2408 (facsimile)

Robert J. Greenwald
Senior Trial Attorney

Scott R. Williamson
Deputy Regional Counsel