

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COMMODITY FUTURES TRADING
COMMISSION

Plaintiff,

v.

LON OLEN FRIEDRICHSEN

Defendant.

Civil Action No. _____

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

ECF CASE

Plaintiff, Commodity Futures Trading Commission (“Commission”), by its attorneys,
alleges as follows:

I. SUMMARY

1. From at least December 16, 2014 through May 24, 2017 (the “Relevant Period”), Lon Olen Friedrichsen (“Friedrichsen”) engaged in acts and practices that violated Sections 4o(1), 4b(a)(1), and 4m(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6o(1), 6b(a)(1), 6m(1) (2012). Specifically, Friedrichsen: (1) used the instrumentalities of interstate commerce to defraud clients and prospective clients in violation of Sections 4o(1) and 4b(a)(1) of the Act, and (2) acted as an unregistered Commodity Trading Advisor (“CTA”) in violation of Section 4m(1) of the Act.

2. Friedrichsen fraudulently solicited clients by making false statements and omissions regarding, among other things, his track record, his status as a licensed professional, and guaranteed profits, in violation of Sections 4o(1) and 4b(a)(1) of the Act. Specifically, Friedrichsen fraudulently induced clients to provide access to their commodity futures accounts

and then traded commodity futures in their accounts. Friedrichsen demanded 50% of any profits he generated and swiftly abandoned his clients after he lost money trading their accounts.

Friedrichsen fraudulently solicited at least \$396,735 from at least twelve clients, lost at least \$160,382 of his clients' money, and retained at least \$45,369 in fees. Additionally, he violated Section 4m(1) of the Act by failing to register as a CTA while engaging in this fraudulent conduct.

3. Friedrichsen solicited clients for his fraudulent scheme via Craigslist ads, telephone, and e-mail. In his solicitations, Friedrichsen: (1) made numerous false and misleading material statements concerning his alleged trading successes; (2) omitted material facts; and (3) prepared false statements allegedly demonstrating his trading successes.

4. Accordingly, pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1 (2012), the Commission brings this action to enjoin such acts and practices and to compel compliance with the Act. In addition, the Commission seeks civil penalties and such other ancillary relief as the Court deems necessary or appropriate under the circumstances, including, but not limited to, disgorgement of unlawful profits, restitution, and damages.

5. Unless restrained and enjoined by this Court, Friedrichsen is likely to continue to engage in the acts and practices alleged in this Complaint as well as similar acts and practices as more fully described below.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2012) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). In addition, Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), provides that district courts have jurisdiction to hear actions brought

by the Commission for injunctive relief or to enforce compliance with the Act whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in, an act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

7. Venue properly lies with this Court pursuant to Section 6c(e) of the Act because Friedrichsen is found in, inhabits, or transacts business in this District and the acts and practices in violation of the Act have occurred or are occurring within this District. Friedrichsen solicited clients in New York and traded clients' futures trading accounts on a futures exchange known as a Designated Contract Market ("DCM").

III. PARTIES

8. **Plaintiff Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act and Commission Regulations. The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

9. **Lon Olen Friedrichsen** is an individual residing in Alton, Iowa. He uses several aliases, including Lon Kummer and Lon Richardson. He fraudulently solicited clients in New York, New York and throughout the United States. Friedrichsen has never registered with the Commission in any capacity.

IV. FACTS

A. Friedrichsen Fraudulently Solicited His Clients By Making Material Misrepresentations

10. During the Relevant Period, Friedrichsen held himself out to the public as a CTA and solicited the general public for clients via craigslist.com postings. These solicitations contained numerous deceptive, false, and misleading material statements concerning

Friedrichsen's alleged trading successes. Friedrichsen fraudulently solicited at least twelve clients in this manner, including clients residing in New York, New York.

11. On September 23, 2015, Friedrichsen posted an ad on Craigslist stating:

10% ROI [Return on Investment] daily!! I currently trade over \$5 mil and am looking to expand up to \$100mil. Do you want to make these kinds of returns?

12. At the time Friedrichsen made this claim, and at all times during the Relevant Period, Friedrichsen was not consistently earning a 10% Return on Investment ("ROI") daily.

13. For example, from approximately April 11, 2016 to May 9, 2016, Friedrichsen lost approximately **\$98,700 of \$100,000, or 98.7%**, of the funds he traded in futures contracts for Client A.

14. On May 16, 2016, Friedrichsen posted an ad on Craigslist stating:

I currently day trade over \$10 million in the crude oil market. I have been blessed with tremendous results and profit. Allow a professional to make money for you.

15. Friedrichsen's claims were false because at the time Friedrichsen made this claim, and all times during the Relevant Period, Friedrichsen's trading frequently lost significant amounts of client money.

16. On May 24, 2017, Friedrichsen posted an ad on Craigslist stating:

WTI Profit.....Looking for serious minded successful liquid individuals who have at least \$10,000 or more to invest !! I am generating 10% return on my investments on a daily basis.

17. Friedrichsen's claims were false because at the time Friedrichsen made this claim, and all times during the Relevant Period, Friedrichsen was not generating a 10% return on his investments every single day.

18. Friedrichsen falsely represented to current and prospective clients that he had been a professional pit trader in Chicago and was licensed.

19. Similarly, Friedrichsen falsely claimed in his advertisements that he was a professional West Texas Intermediate (“WTI”) crude oil trader.

20. On or about May 2015, Friedrichsen falsely represented to Client B that he “averages over ten percent returns daily. . . .”

21. On or about May 2015, Friedrichsen e-mailed Client B false documents, including “several months of his trade summaries, showing millions of dollars in profits.”

22. In February 2016, Friedrichsen falsely represented to Client C that “he averages approximately ten percent returns daily,” and that he would not leave [Client C] in negative.”

23. In February 2016, Friedrichsen falsely represented to Client C that he was “a licensed trader.”

24. In February 2016, Friedrichsen falsely represented to Client C that he had offices in Sioux City, Iowa and Denver, Colorado, and that he had six people trading under his direction. Friedrichsen lived and worked out of a home owned by an elderly relative, most likely his mother, and did not have six people trading under his direction.

B. Friedrichsen Fraudulently Solicited His Clients By Omitting Material Facts

25. Friedrichsen omitted numerous material facts from his solicitations of clients and prospective clients. These material facts were omitted from the solicitation of at least twelve clients.

26. Friedrichsen solicited clients under the names Lon Kummer and Lon Richardson, but omitted that these were false names.

27. Friedrichsen omitted the fact that he had failed to register with the Commission, as required by Section 4m(1) of the Act.

28. Friedrichsen advertised guaranteed returns of “10% net profit per day” when guaranteed returns are a fiction in futures trading. Despite making these statements, Friedrichsen omitted the fact that he did not make 10% net profits per day and frequently lost client funds when trading in their accounts.

29. Friedrichsen directed clients to disclose their logins and passwords to their personal futures trading accounts, held at futures commission merchants (“FCMs”). Once he received the logins and passwords, he traded futures directly in those clients’ accounts. However, in order to conceal his scheme, Friedrichsen failed to inform his clients that a power of attorney (“POA”) was required to be filed with the FCM in order for Friedrichsen to make discretionary trades on their behalf.

C. Friedrichsen Acted as an Unregistered Commodity Trading Advisor

30. During the Relevant Period, Friedrichsen acted in a capacity requiring registration as a CTA by (a) publicly soliciting clients to allow him to trade futures contracts on the clients’ behalf; (b) trading futures contracts on behalf of clients; and (c) receiving financial compensation in return for trading futures contracts in client accounts.

31. Friedrichsen solicited the general public by placing numerous advertisements on craigslist.com, advertising his trading services both in this District and throughout the United States.

32. For example, on January 21, 2016, Friedrichsen posted an ad on Craigslist offering guaranteed returns:

What I do is trade futures (wti) for myself and a select few other individuals. You would open your own account, fund the account, I would trade the account and we would split the profits 50/50... Net result is over 10% net profit per day.

33. Per agreement with the client, on the occasions in which Friedrichsen made profitable trades, the clients returned 50% of those profits to Friedrichsen. He received at least \$45,369 in such payments while acting as an unregistered CTA.

34. Friedrichsen traded his clients' accounts until he began losing money and his clients began complaining. He promised clients, including Clients A, B, and C, that he would pay them back. However, contrary to his promises, he simply abandoned his former clients and moved on to the next client.

35. Friedrichsen traded at least twelve client accounts in this manner through four registered FCMs. He executed these trades on a registered DCM and subject to the DCM's rules.

36. To perpetuate his scheme, Friedrichsen advised clients to conceal his involvement in trading their accounts.

37. Records obtained from these FCMs show that the twelve client accounts referenced in Paragraph 35 were accessed, and traded, from the following Internet Protocol ("IP") addresses: XXXXXXXX7.234; XXXXXXXX7.223; XXXXXXXX7.196; XXXXXXXX7.93.46; and XXXXXXXX 44.37. These IP addresses were issued by the West Iowa Telephone Company, and registered to Friedrichsen's residential address (collectively, "Friedrichsen's IP Addresses").

38. The dozens of Craigslist advertisements that Friedrichsen posted for his trading services also emanated from Friedrichsen's IP Addresses.

39. Friedrichsen communicated with clients via the same e-mail addresses he used for his Craigslist solicitations. Both Friedrichsen's communications with, and solicitations to, customers emanated from Friedrichsen's IP Addresses.

40. Friedrichsen was not registered with the Commission in any capacity during the Relevant Period.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

**FRAUDULENT CONDUCT IN VIOLATION OF
SECTION 4o(1) OF THE ACT**

41. The allegations set forth in paragraphs 1 through 40 are re-alleged and incorporated herein by reference.

42. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), states that

It shall be unlawful for a commodity trading advisor . . . by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—(A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or (B) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

43. As set forth above, during the Relevant Period, through the use of the mails or other means of interstate commerce, Friedrichsen acted as a CTA. Friedrichsen did so by soliciting members of the general public via Craigslist and other means, trading their accounts via registered entities, and receiving compensation for his services.

44. During the Relevant Period, Friedrichsen used the mails or other means or instrumentalities of interstate commerce (including internet, telephone, and e-mail, among others) to employ devices, schemes, or artifices to defraud clients and participants as well as prospective clients and participants. Further, he engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon his clients and participants as well as his prospective clients and participants.

45. Each act, representation, omission, or failure of Friedrichsen, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act.

COUNT II

**FRAUDULENT CONDUCT IN VIOLATION OF
SECTION 4b(a)(1) OF THE ACT**

46. The allegations set forth in paragraphs 1 through 45 are re-alleged and incorporated herein by reference.

47. Section 4b(a)(1) of the Act, 7 U.S.C. § 6b(a)(1) (2012), states that

It shall be unlawful—(1) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person . . . (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract

48. By the conduct alleged herein, Friedrichsen cheated or defrauded, or attempted to cheat or defraud, people in connection with orders to make, or the making of, contracts of sale of a commodity in interstate commerce or for future delivery made on or subject to the rules of a DCM, for or on behalf of those people. He willfully deceived or attempted to deceive people, by, among other things, making false statements and omissions regarding his trading successes, guaranteeing trading profits, and providing false reports or statements to at least one prospective client.

49. Each act, representation, omission, or failure of Friedrichsen, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(1) of the Act.

COUNT III

**ACTING AS AN UNREGISTERED COMMODITY TRADING ADVISOR
IN VIOLATION OF SECTION 4m(1) OF THE ACT**

50. The allegations set forth in paragraphs 1 through 49 are re-alleged and incorporated herein by reference.

51. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), states that

It shall be unlawful for any commodity trading advisor or commodity pool operator, unless registered under this Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as such commodity trading advisor or commodity pool operator

52. Section 1a(12)(A)(i) of the Act, 7 U.S.C. § 1a(12)(A)(i) (2012) defines a CTA, in relevant part, as any person who

for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic, media, as the value of or the advisability of trading in—(I) any contract of sale of a commodity for future delivery, security futures product or swap

53. As set forth above, during the Relevant Period, through the use of the mails or other means of interstate commerce, Friedrichsen acted as a CTA without being registered. Friedrichsen held himself out as a CTA by soliciting members of the general public via Craigslist and other means, trading their accounts via registered entities, and receiving compensation for his services, all in violation of Section 4m(1) of the Act.

54. Friedrichsen does not satisfy the exceptions to Section 4m(1) of the Act because he held himself out generally to the public as a CTA.

55. Each act, representation, omission, or failure of Friedrichsen, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act.

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and pursuant to its own equitable powers enter an order

A. finding Friedrichsen liable for violating Sections 4o(1), 4b(a)(1), and 4m(1) of the Act, 7 U.S.C. §§ 6o(1), 6b(a)(1), 6m(1) (2012);

B. permanently enjoining Friedrichsen and all persons insofar as they are acting as his agents, servants, employees, successors, assigns, and attorneys, and all persons, insofar as they are acting in active concert or participation with Friedrichsen, who receive actual notice of such order by personal service or otherwise, from directly or indirectly

1. engaging in conduct in violation of Sections 4o(1), 4b(a)(1), and 4m(1) of the Act;
2. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (2012));
3. entering into any transactions involving “commodity interests” (as that term is defined in Commission Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2017)), for Friedrichsen’s own accounts or for any account in which he has a direct or indirect interest;
4. having any commodity interests traded on Friedrichsen’s behalf;
5. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
6. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;

7. 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 with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2017); and/or
8. acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2017)), agent, or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)) registered, exempted from registration, or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9);

C. requiring Friedrichsen to disgorge to any officer appointed or directed by the Court, or directly to clients, 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 and post-judgment interest;

D. requiring Friedrichsen, as well as any of his successors, to make full restitution, pursuant to such procedure as the Court may order, to every person or entity whose funds were received or utilized by them in violation of the provisions of the Act and/or Regulations, as described herein, plus pre-judgment interest thereon from the date of such violations, plus post-judgment interest;

E. directing Friedrichsen and any successors thereof to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between Friedrichsen and any of the clients whose funds were received by

Friedrichsen as a result of the acts and practices which constituted violations of the Act as described herein and restore to each client the full amount of his or her original investment;

F. directing Friedrichsen to pay a civil monetary penalty, to be assessed by the Court, in an amount not to exceed the penalty prescribed by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1) (2012), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, 129 Stat. 584 (2015), title VII, Section 701, *see* Regulation 143.8, 17 C.F.R. § 143.8 (2017), for each violation of the Act and Regulations, as described herein;

G. requiring Friedrichsen to pay costs and fees as permitted by 28 U.S.C. §§ 1920, 2412(a)(2) (2012); and

H. providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: March 1, 2018

/s/ Michael R. Berlowitz
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