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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
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24 **UNITED STATES DISTRICT COURT**  
25 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

26 \_\_\_\_\_ )  
27 **U.S. COMMODITY FUTURES** )  
28 **TRADING COMMISSION** )  
29 )  
30 **Plaintiff,** )  
31 )  
32 **SAFEVEST LLC,** )  
33 **JON G. ERVIN, and** )  
34 **JOHN V. SLYE,** )  
35 **Defendants** )  
36 \_\_\_\_\_ )

**SACV08-00474 AHS (ANx)**  
**CIVIL ACTION NO. \_\_\_\_\_**

1  
2 **COMPLAINT FOR INJUNCTIVE RELIEF, OTHER EQUITABLE**  
3 **RELIEF, AND CIVIL MONETARY PENALTIES**

4 **I.**

5 **JURISDICTION AND VENUE**

6 1. The Commodity Exchange Act, as amended, 7 U.S.C § 1 *et seq.*  
7 (2002) (“Act”), establishes a comprehensive system for regulating trading in  
8 commodity futures contracts and options on commodity futures contracts and those  
9 who are or should be registrants pursuant to the Act. This Court has jurisdiction  
10 over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), which  
11 authorizes the U.S. Commodity Futures Trading Commission (“CFTC”) to seek  
12 injunctive relief against any person or entity whenever it shall appear to the CFTC  
13 that such person or entity has engaged, is engaging, or is about to engage in any act  
14 or practice constituting a violation of any provision of the Act or any CFTC rule,  
15 regulation or order.  
16  
17

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

**SUMMARY**

3. From at least May 2007 and continuing to the present (“relevant time”), Safevest LLC, acting through its agents (“Safevest”), including Jon G. Ervin (“Ervin”), has fraudulently solicited over 500 members of the public to transfer funds in excess of \$25.7 million to participate in a commodity futures trading pool (“Safevest Pool”). Contrary to their representations, defendants have not deposited customer funds into an account for trading commodity futures and have misappropriated virtually all customer funds. At all relevant times, Safevest acted as an unregistered commodity pool operator.

4. Safevest and Ervin have falsely represented to prospective pool participants that commodity futures trading in the Safevest Pool has consistently produced daily profits of at least 1% and provided pool participants with fictitious account statements showing large profits in the commodity pool. Safevest and Ervin have also falsely represented that Safevest utilized a profitable trading program that electronically cleared trades at the Chicago Mercantile Exchange and at the Chicago Board of Trade.

5. Safevest and Ervin have deposited or caused to be deposited client funds into bank accounts controlled by Safevest and have misappropriated those funds. In addition to using client funds to pay their personal expenses, Safevest

1 and Ervin have misappropriated funds by using funds from certain pool  
2 participants to pay off other pool participants in a manner characteristic of a  
3 “Ponzi” scheme. After obtaining funds from new customers, Safevest and Ervin  
4 have used some of those funds to make payments to earlier customers and have  
5 falsely represented that these payments were trading profits.  
6

7         6. In order to conceal their fraudulent activities, Safevest and Ervin have  
8 misrepresented to customers that they were receiving large profits as a result of  
9 profitable trading in the Safevest Pool. Contrary to claims by Safevest and Ervin  
10 that the funds of pool participants were liquid and could be returned on 72 hours  
11 notice, Safevest and Ervin have refused to comply with at least some client  
12 withdrawal requests.  
13

14         7. Defendants have engaged in, are engaged in, or are about to engage in  
15 acts and practices that violate anti-fraud and registration provisions of the Act,  
16 7 U.S.C. § 1 *et seq.* (2002), and the CFTC Regulations promulgated thereunder  
17 (Regulations), 17 C.F.R. § 1.1 *et seq.* (2007).  
18

19         8. Accordingly, the CFTC brings this action to enjoin defendants'  
20 unlawful acts and practices and to compel their compliance with the Act and the  
21 CFTC Regulations. In addition, the CFTC seeks civil monetary penalties,  
22 restitution to pool participants, disgorgement of defendants' ill-gotten gains, a  
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1 permanent trading ban, and such other relief as the Court may deem necessary or  
2 appropriate.

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

7  
8 **III.**

9 **PARTIES**

10 10. The **Commodity Futures Trading Commission** is an independent  
11 federal regulatory agency of the United States empowered to enforce the  
12 provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2002), and the CFTC Regulations,  
13 17 C.F.R. §§ 1.1. *et seq.*(2007). The CFTC maintains its principal office at Three  
14 Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581.

15  
16 11. **Safevest LLC** is a limited liability corporation registered with the  
17 Nevada Secretary of State on May 15, 2007. Defendants Jon G. Ervin and John V.  
18 Slye are listed as the sole corporate officers on Safevest's corporate documents.  
19 Safevest maintains an office in Mission Viejo, California. Safevest has never been  
20 registered with the CFTC in any capacity.  
21

22  
23 12. **Jon G. Ervin** is a founding officer of Safevest who is listed on firm  
24 records as a Director. He works in Safevest's California office and is listed as a  
25 principal contact person on Safevest account opening documents. Ervin resides in  
26

1 Laguna Hills, California. He has never been registered with the CFTC in any  
2 capacity.

3  
4 13. **John V. Slye** (“Slye”) is the purported founder of Safevest and  
5 represents that he is its President and Chief Executive Officer. Slye also represents  
6 that he is an ordained minister and the pastor of a church in Washington, D.C. In  
7 addition, he represents that he is a founder and has been on the board of directors  
8 of the National Foundation for Cancer Research. Slye resides in Herndon,  
9 Virginia. He has never been registered with the CFTC in any capacity.

11 **IV.**

12  
13 **STATUTORY AND REGULATORY REQUIREMENTS**

14 14. CFTC Regulation 4.10(d)(1), 17 C.F.R. § 4.10(1)-(2007), provides  
15 that a “commodity pool” is any investment trust, syndicate or similar form of  
16 enterprise operated for the purpose of trading commodity futures and/or options.  
17

18 15. Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2002), provides that a  
19 commodity pool operator is any firm or individual engaged in a business which is  
20 in the nature of an investment trust, syndicate, or similar form of enterprise, and  
21 that solicits, accepts, or receives funds or securities from others for the purpose of  
22 trading in any commodity futures or options contract subject to the rules of any  
23 commodity exchange.  
24  
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1           16. CFTC Regulation 4.10(c), 17 C.F.R. § 4.10(c) (2007), defines a  
2 commodity pool “participant” as any person who has any direct financial interest  
3 in a commodity pool.  
4

5           17. Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2002), provides that an  
6 associated person (“AP”) of a CPO is one who is:

7           associated with a commodity pool operator as a partner, officer,  
8 employee, consultant, or agent . . . in any capacity that involves (i) the  
9 solicitation of funds, securities, or property for a participation in a  
10 commodity pool or (ii) the supervision of any person or persons so  
11 engaged, unless such person is registered.).

12           18. With certain exceptions not applicable here, any CPO that solicits  
13 participant funds for the purpose of trading commodity futures or options contracts  
14 subject to the rules of a designated contract market must place those trades with a  
15 futures commission merchant (“FCM”) registered with the CFTC. *See* Section 4d  
16 of the Act, 7 U.S.C. § 6d (2002). Section 1a(20) of the Act, 7 U.S.C. § 1a(20),  
17 (2002), defines a FCM as an individual or organization which solicits or accepts  
18 orders to buy and sell futures contracts or commodity options and accepts funds  
19 from customers to support such orders.  
20  
21

22           19. Pursuant to Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2002), it is  
23 unlawful for any person, while acting as a CPO, to use the mails or any means or  
24 instrumentality of interstate commerce to directly or indirectly employ a device,  
25 scheme, or artifice to defraud pool participants or prospective pool participants, or  
26

1 engage in transactions, practices or courses of business which operate as a fraud or  
2 deceit upon pool participants or prospective pool participants.

3  
4 20. With certain specified exclusions and exemptions not applicable here,  
5 CPOs are required to be registered with the CFTC pursuant to Section 4m(1) of the  
6 Act, 7 U.S.C. § 6m(1) (2002).

7  
8 21. Pursuant to Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2002), any  
9 person associated with a CPO as a partner, officer, employee, consultant or agent  
10 in any capacity that involves the solicitation of funds or the supervision of any  
11 person so engaged must be registered with the CFTC as an associated person.

12  
13 **IV.**

14 **FACTS**

15 **DEFENDANTS COMMITTED FRAUD**

16 **A. Operation of the Safevest Pool**

17  
18 22. In May 2007, Ervin and Slye formed Safevest as a Nevada limited  
19 liability corporation and opened a Safevest office in Mission Viejo, California.

20 Ervin and Slye represented to others that they were the officers of Safevest.

21 During the relevant time, Safevest operated through agents or other persons acting  
22 within the scope of their employment or office with Safevest, including Ervin.

23  
24 23. Since May 2007, Safevest fraudulently solicited over 500 persons to  
25 send Safevest over \$25.7 million to purchase interests in the Safevest Pool for the  
26



1 purpose of trading commodity futures contracts on or subject to the rules of a  
2 contract market. Safevest did not use these funds to trade commodity futures  
3 contracts and misappropriated these funds. Safevest falsely represented to  
4 prospective pool participants that the Safevest Pool was a commodities fund and  
5 that funds in the pool were used to trade commodity futures contracts on  
6 commodity exchanges located in Chicago, Illinois. To induce persons to send  
7 them funds, Safevest misrepresented to prospective pool participants that Safevest  
8 used computerized trading software that consistently produced daily profits  
9 between 1.6% and 1.9% since June 2007.

12 24. Safevest and Ervin provided or caused to be provided, to prospective  
13 pool participants "Safevest Client Participation Forms." These documents include  
14 the following:

16 Form A: Non-Solicitation Letter;

17 Form B: Non-Disclosure/Non-Circumvention Agreement;

18 Form C: Private Placement Joint Venture Finder's Fee Agreement;

19 Form D: Joint Venture Private Placement Agreement;

20 Form E: Overall Summary;

21 Form F: Reserve Authorization and Election of Participation Contract

22 Addendum ("Participation Agreement");

23 Form G: Client Transmittal;

1 Form H: Transmittal Deposit/Withdrawal Information

2 25. The Safevest Client Participation Forms that Safevest and Ervin  
3 distributed or caused to be distributed to prospective pool participants contained  
4 numerous material misrepresentations and omissions regarding the existence and  
5 profitability of the Safevest Pool as more fully alleged *infra* at paragraphs 34-56.  
6

7 26. Safevest and Ervin also provided or caused to be provided to  
8 prospective pool participants two documents entitled "Executive Summary" and  
9 "May Trading Track Record." The Executive Summary and the May Trading  
10 Track Record falsely represented that Safevest Pool participants have and will  
11 achieve almost certain profits through commodity futures trading.  
12

13 27. Safevest solicited participants primarily through a multi-level  
14 marketing scheme whereby prospective participants were solicited by other  
15 individuals or entities, some of whom were existing Safevest participants. Safevest  
16 referred to these solicitors as "Consultants." These Consultants at all times acted  
17 as agents or other persons acting for Safevest within the scope of their employment  
18 or office.  
19

20 28. Safevest distributed or caused to be distributed to Safevest  
21 Consultants forms to be executed as contracts between the respective Consultant  
22 and the Safevest client who was successfully solicited by the Consultant. The  
23 forms that Safevest provided to Consultants included one or more standardized  
24  
25  
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1           32. Between May 2007 and November 2007, Safevest also had a bank  
2 account at UBS Financial Services, Inc. ("UBS") that served as a means for  
3 Safevest pool participants to deposit funds with Safevest for the purpose of  
4 participating in the Safevest Fund.  
5

6           33. Between approximately January 2008 and the present, Safevest and  
7 Ervin distributed or caused to be distributed to pool participants an account  
8 opening form that directed pool participants to send funds to an account in  
9 Safevest's name at Wachovia Bank for the purpose of participating in the Safevest  
10 Pool.  
11

12 **B. Fraudulent Conduct by Safevest and Ervin**

13           34. Safevest and Ervin defrauded prospective and actual pool participants  
14 by (a) distributing or causing to be distributed to pool participants Client  
15 Participation Forms that falsely represented the existence of commodity futures  
16 trading by the Safevest Pool; (b) distributing or causing to be distributed to pool  
17 participants Client Participation Forms that misrepresented the profits and risk of  
18 loss inherent in commodity futures trading and the Safevest Pool; (c) issuing or  
19 causing to be issued false trading records; (d) distributing or causing to be  
20 distributed to pool participants false account statements; and (e) misappropriating  
21 pool participant funds.  
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1           35. Safevest and Ervin used mail and wire instrumentalities of interstate  
2 commerce to defraud pool participants and to engage in practices that have  
3 operated as a fraud on clients. Safevest and Ervin accepted bank wire transfers  
4 from pool participants and made bank wire transfers to pool participants to  
5 misappropriate funds, and used U.S. mail and interstate telephone services to send  
6 false trading statements to pool participants, to send fraudulent account opening  
7 documents to pool participants, and to make numerous misrepresentations to pool  
8 participants.  
9 participants.

11           **a. Safevest and Ervin Misrepresented the**  
12           **Existence of the Safevest Pool Trading Account**

13           36. Defendants did not establish any commodity pool trading account for  
14 the Safevest Pool. Contrary to the fact that no commodity pool trading account  
15 was established by defendants, Safevest and Ervin made numerous  
16 misrepresentations to pool participants by falsely stating that a Safevest Pool  
17 trading account existed.  
18 trading account existed.

19           37. As part of the Safevest Client Participation Forms, Safevest and Ervin  
20 distributed or caused to be distributed to pool participants the "Overall Summary,  
21 Form E." The "Overall Summary" falsely states that Safevest's trades "are  
22 electronically cleared trades at the Chicago Mercantile Exchange for E-mini S&P  
23 and, potentially, at the Chicago Board of Trade for electronic 30-year bond and 10  
24 year note futures." The "Overall Summary" contains additional misrepresentations  
25  
26

1 that the Safevest Pool has a record of successful commodity futures trading. Such  
2 misrepresentations include, but are not limited to, the following:

- 3
- 4 a. “virtually 90%-95% of all transactions are performed by  
5 computerization ... Strict rules are in place that assume “no  
6 gambling” with transaction amounts...”;
- 7 b. trading that is performed has a “loss” tolerance of two and one –half  
8 percent of principal per trading day”;
- 9 c. “Safevest minimal transaction is \$500k. If a lower amount is taken,  
10 that amount will be combined with funds from another source (IF  
11 AVAILABLE) in order to minimize risk and accentuate  
12 profitability”;
- 13 d. “[A]mounts in \$1 [million dollar] increments are excellent in that it  
14 allows a greater number of transactions to occur to minimize any risk  
15 and/or to accentuate profitability... please note that any transactions  
16 involving amounts of \$10 [million dollars] or more will, most likely  
17 *(based on experience)* average over 10,000 contract trades per year”  
18 *(emphasis in original)* and  
19
- 20 e. “[S]imulated trading, as well as real-time testing of past actual trades,  
21 confirmed the benefit of” described futures trading strategies.  
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1           38. Safevest and Ervin also made oral misrepresentations to pool  
2 participants about the existence of a Safevest Pool trading account. Safevest and  
3 Ervin falsely represented to some pool participants that Safevest had opened  
4 commodity futures accounts at one or more brokerage firms.  
5

6           39. Safevest and Ervin represented to prospective pool participants that  
7 participant funds were pooled into an account at Wells Fargo Bank in the name of  
8 Safevest. Safevest and Ervin distributed or caused to be distributed to pool  
9 participants the Overall Summary which falsely represented that funds in the  
10 Safevest Wells Fargo Bank account were transferred to a Safevest commodity  
11 futures trading account. The Overall Summary further falsely represented to pool  
12 participants that 90-95% of Safevest commodity futures trades are conducted using  
13 computerized trading software. In fact, Safevest had no commodity futures trading  
14 account at UBS Bank or elsewhere.  
15  
16

17                   **b. Safevest and Ervin Misrepresented**  
18                   **Profits and Minimized Risk of Loss**

19           40. Safevest and Ervin falsely represented to pool participants that profits  
20 are virtually guaranteed and that risk of loss is minimal in connection with the  
21 Safevest Pool trading account. Not only were these representations fraudulent  
22 because no Safevest Pool trading account existed, they were also fraudulent  
23 because profits cannot be guaranteed and risk of loss cannot be minimized in  
24 commodity futures trading.  
25  
26

1           41. Safevest and Ervin fraudulently guaranteed profits by distributing or  
2 causing to be distributed to pool participants the "Participation Agreement," Form  
3 F, as part of the Safevest Client Participation Forms. The "Participation  
4 Agreement" falsely states that Safevest offers a "\$50 Million Blocked Account  
5 Trading Program" at UBS Bank that "guaranteed 200% annual yield to  
6 participant," a "100K+ Blocked Account Trading Platform" that "guaranteed 51%  
7 annual yield to participant," and a "Daily Commodities Trading Platform" that was  
8 described as "historically most aggressive of all platforms."  
9  
10

11           42. Safevest and Ervin disseminated, or caused to be disseminated to pool  
12 participants, the Executive Summary which falsely represents that Safevest  
13 engages in three trading programs that guarantee profits for pool participants. The  
14 Executive Summary states that the first program is called the "\$50 Million Blocked  
15 Account Trading Program" and "offers a guaranteed 200% return per year." The  
16 second program is designated the "\$100K Blocked Trading Account Program."  
17 The Executive Summary states that this program offers "a guaranteed 51% return  
18 per year." The third program is called the "Commodities Daily Trading Program."  
19 The Executive Summary represents that this program requires a minimum of  
20 \$5,000 for participation and promises a daily yield on the investment of between  
21 .8% and 1%.  
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1           43. In addition to profit misrepresentations, Safevest and Ervin  
2 fraudulently represented to Safevest Pool participants that there was minimal risk  
3 of loss associated with trading commodity futures contracts. Notwithstanding the  
4 fact that the Safevest Pool conducted no futures trading, Safevest and Ervin orally  
5 represented to pool participants that such trading was low risk because only 8-13%  
6 of pool participant funds were used for trading and that trading would stop if losses  
7 on any particular day reached 2.5% of funds being traded.  
8

9  
10           44. Safevest and Ervin further misrepresented risk of loss in writing by  
11 providing or causing to be provided to pool participants the Overall Summary.  
12 The Overall Summary represents that the Safevest Pool utilizes a computerized  
13 trading program that has a loss tolerance of 2.5% of principal per trading day and  
14 that no more than 8% to 13% of principal is exposed at any given time.  
15

16                   **c. Safevest and Ervin Provided a False**  
17                   **Trading Record to Pool Participants**

18           45. Safevest and Ervin distributed or caused to be distributed to pool  
19 participants a document captioned "May Trading Track Record." This document  
20 falsely represents that "these are the actual percentages for the month of May 2007  
21 of best efforts, past financial performance is not an indication of future results  
22 (sic)." The daily percentages listed in this document include positive "gross"  
23 percentage figures for each and every "trading day" in May 2007, varying from  
24 8/10ths of 1 percent (.008) to 2.8% (.028) returns, and that the average gross daily  
25  
26

1 return for the Safevest Pool during the month of May 2007 was 1.62%. The  
2 document further falsely claimed that "client has grossed for the month \$191,100  
3 (est.) in dividends."  
4

5 46. Safevest and Ervin provided or caused to be provided to pool  
6 participants false trading statements, and represented that the statements were  
7 summaries of the trading activity in the accounts of individual Safevest pool  
8 participants. The statements show deposits in the accounts and daily trading  
9 profits of between 1.25% and 3.27% during the period June 4, 2007 to July 7,  
10 2007.  
11

12 47. In fact, the representations in paragraphs 45-46 regarding profitable  
13 trading in May, June and July 2007 were false and materially misleading because  
14 defendants had no track record of any commodity futures trading in May 2007 or  
15 in any month thereafter.  
16

17 **d. Safevest and Ervin Provided False**  
18 **Account Statements to Pool Participants**

19 48. Safevest and Ervin provided or caused to be provided to pool  
20 participants account statements that purported to show the current value of that  
21 individual participant's account with the Safevest Pool.  
22

23 49. The periodic account statements that Safevest and Ervin provided or  
24 caused to be provided to pool participants routinely included a daily positive value  
25 percentage figure that purported to represent the actual "daily return," "market  
26

1 gain,” “client (\$)” and “[b]alance” for each trading day. The “daily return”  
2 percentage figures set forth in these account statements were always positive  
3 percentage numbers, typically with a value between 1% and 2% daily.  
4

5 50. The periodic statements that Safevest and Ervin provided or caused to  
6 be provided to pool participants were false and materially misleading because  
7 defendants did not trade participants’ funds in a commodity futures pool as  
8 promised and all claims of profitable futures trading, or futures trading of any sort,  
9 were fictitious.  
10

11 **e. Safevest and Ervin Misappropriated**  
12 **Pool Participant Funds**

13 51. Contrary to their representations that the funds of Safevest pool  
14 participants were being used to trade commodity futures contracts, Safevest and  
15 Ervin misappropriated virtually all of those funds. Safevest and Ervin have not  
16 deposited any pool participant funds in a commodity pool futures trading account  
17 pursuant to the requirements of the Act. Safevest and Ervin also have not  
18 established a commodity futures trading account for the benefit of participants in  
19 the Safevest Pool with a FCM registered with the CFTC.  
20  
21

22 52. Safevest and Ervin misappropriated the funds of Safevest Pool  
23 participants by making payments to pool participants from the funds of other pool  
24 participants, by using pool funds to pay personal and other expenses unrelated to  
25 commodity futures trading, and by paying sales agents.  
26

1           53. Safevest and Ervin falsely represented to pool participants that their  
2 funds would be pooled and used to trade commodity futures contracts. Safevest  
3 and Ervin further represented that monthly returns paid to pool participants were  
4 the result of profits derived from commodity futures trading. Contrary to these  
5 representations, the funds that were sent by Safevest to pool participants were not  
6 derived from commodity futures trading profits, but instead were merely other pool  
7 participants' funds. In fact, defendants have made payments of at least \$18.5  
8 million to existing pool participants from funds collected from pool participants.  
9  
10

11           54. Contrary to the claim that the pool participants' funds were devoted to  
12 the trading of commodity futures contracts, Safevest and Ervin used the pool  
13 participants' funds to pay personal expenses and to transfer amounts to persons and  
14 entities unrelated to commodity futures trading. Pool participants deposited in  
15 Safevest bank accounts under the control of Ervin and Slye were used to pay  
16 \$282,500 to Mission Loans, Inc., a corporate entity partially owned by Ervin and  
17 of which he is president, \$120,452 to Ervin and his family members, \$259,500 to  
18 Slye and his wife, and approximately \$170,000 for check card and ATM debits.  
19  
20

21           55. Safevest and Ervin represented that Safevest's Consultants received  
22 commissions from trading profits. Contrary to these representations, commissions  
23 of Consultants were, in fact, paid directly out of funds supplied by pool  
24 participants. Commissions were not, as claimed, funded from the profits of  
25  
26

1 commodity futures trading, since defendants did not conduct any commodity  
2 futures trading.

3  
4 **f. Safevest and Ervin Failed to Disclose Material Information**

5 56. While Safevest and Ervin made the false and misleading claims  
6 alleged *supra* in paragraphs 21-55, they also failed to disclose, or failed to cause to  
7 be disclosed, material information to pool participants and to prospective pool  
8 participants including but not limited to the following: (a) that Safevest in fact had  
9 no commodity futures trading account; (b) that Safevest was an unregistered  
10 commodity pool operator; (c) that Safevest had no profitable commodity futures  
11 trading track record, and that the track records provided to pool participants were  
12 fictitious, and d) that Safevest misappropriated clients' funds.

13  
14  
15 **DEFENDANTS ILLEGALLY OPERATED A COMMODITY POOL**

16 57. During the relevant time, Safevest was not registered with the CFTC  
17 as a CPO as required under the Act. During this time, Safevest operated the  
18 Safevest Pool as an "investment trust, syndicate or similar form of enterprise" *see*  
19 7 U.S.C. § 1a(5) (2002), and, in connection therewith, has solicited, accepted, and  
20 received funds from others for the purpose of trading commodity futures contracts  
21 on designated contract markets. During the relevant time, Safevest permitted Ervin  
22 to be associated with Safevest in the capacity of a person engaged in the  
23  
24  
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1 solicitation of funds for participation in the commodity pool, or the supervision of  
2 any person or persons so engaged.

3  
4 58. Safevest and Ervin have used mail and wire instrumentalities of  
5 interstate commerce in connection with their business as a CPO and an associated  
6 person of a CPO. Safevest and Ervin have accepted bank wire transfers from pool  
7 participants and have made bank wire transfers to pool participants to  
8 misappropriate funds, used mail and telephone wires to send false trading  
9 statements to pool participants, used mail and telephone wires to send fraudulent  
10 account opening documents to pool participants, and used telephone wires to make  
11 numerous misrepresentations to pool participants.  
12

13  
14 59. Safevest and Ervin represented that Safevest participant funds would  
15 be pooled and transferred to a commodity pool trading account for the benefit of  
16 Safevest Pool participants. Safevest and Ervin further represented that pool  
17 participant funds would be used to trade commodity futures contracts on the  
18 Chicago Mercantile Exchange and the Chicago Board of Trade.  
19

20 **ERVIN AND SLYE CONTROL THE OPERATIONS OF SAFEVEST**

21 **A. Ervin Controls Safevest Operations**

22  
23 60. Ervin is one of the two officers of Safevest and represents that he is  
24 the Director of Safevest. Ervin controls the day-to-day operations of Safevest. He  
25  
26

1 has signatory authority over Safevest bank accounts and is listed as the principal  
2 contact on Safevest account opening documents.

3  
4 61. Ervin authorizes and controls the content and dissemination of  
5 Safevest account opening documents and promotional materials. He controls  
6 access to information on Safevest pool participants and the design and content of  
7 account statements of pool participants.

8  
9 62. Ervin actively managed and supervised Safevest's Consultant system  
10 of soliciting prospective pool participants. He provided or caused to be provided  
11 to Consultants written and oral descriptions of the Safevest Pool, as well as its  
12 claimed track return of steady profits. Ervin also provided Consultants with the  
13 Safevest Client Participation Forms designated Form C: Private Placement Joint  
14 Venture Finder's Fee Agreement and Form D: Joint Venture Private Placement  
15 Agreement, agreements providing that pool participants will pay Consultants 10%  
16 of the gross trading profits earned by pool participants.  
17

18  
19 63. As a principal of Safevest, Ervin has the power to make all major  
20 decisions concerning how Safevest is operated, to monitor the written content of  
21 the Safevest account opening documents and promotional materials, and to  
22 prevent the fraudulent activities at Safevest.  
23  
24  
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26

1 **B. Slye Controls Safevest Operations**

2 64. In addition to Ervin, Slye is the only other officer of Safevest. Slye  
3 represents that he is the founder of Safevest. He also represents that he is  
4 Safevest's President and Chief Executive Officer. Slye is identified in bank and  
5 corporate records as an officer of Safevest.  
6

7 65. As a principal of Safevest, Slye has the power to make all major  
8 decisions concerning how Safevest is operated, to monitor the written content of  
9 the Safevest account opening documents and promotional materials, to monitor  
10 the banking activity of Safevest and to prevent the fraudulent activities at Safevest.  
11

12 66. Slye also had the authority to transfer money from the Safevest  
13 primary account at Wells Fargo Bank into which pool participant funds was  
14 deposited. Slye misappropriated participant funds by converting a portion of those  
15 funds to his own use, and by not transferring participant funds to a commodity  
16 futures trading account. During the relevant time, Slye directly converted  
17 approximately \$250,000 to his own use by removing those funds from Safevest  
18 bank accounts, including Safevest's account at Wells Fargo Bank over which he  
19 had signatory authority.  
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V.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

**COUNT ONE**

**FRAUD BY COMMODITY POOL OPERATOR**  
**Violations of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B)**  
**(Against Safevest, Ervin and Slye)**

67. The allegations set forth in paragraphs 1 through 66 are realleged and incorporated herein by reference.

68. As defined in Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2002), a CPO is

any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives 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 or derivatives transaction execution facility.

69. Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) (2002), prohibits CPOs from using the mails or any other means of interstate commerce to:

(B) 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.

70. Since at least May 2007, Safevest, while acting as an unregistered CPO, solicited, accepted or received funds from others and engaged in a business

1 that is of the nature of an investment trust, syndicate, or similar form of enterprise,  
2 for the purpose of trading in futures.

3  
4 71. Safevest, through its agents, engaged in a transaction, practice or  
5 course of business which operated as a fraud or deceit upon Safevest Pool  
6 participants and prospective Safevest Pool participants by (1) making or causing to  
7 be made fraudulent representations that Safevest operated a successful commodity  
8 pool that profitably traded exchange-traded commodity futures, when in fact no  
9 such commodity pool existed and no such trading occurred; (2) misrepresenting the  
10 profits and risk of loss inherent in commodity futures trading; (3) issuing false  
11 trading records to pool participants; (4) providing false account statements to pool  
12 participants; and (5) misappropriating participant funds, all in violation of Section  
13 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) (2002).

16 72. Slye controls Safevest, directly or indirectly, and did not act in good  
17 faith or knowingly induced, directly or indirectly, Safevest's conduct alleged in  
18 this Court. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C.  
19 § 13c(b) (2002), Slye is liable for Safevest's violations of Section 4o(1)(B) of the  
20 Act, 7 U.S.C. § 6o(1)(B) (2002).

22 73. Ervin controls Safevest, directly or indirectly, and did not act in good  
23 faith or knowingly induced, directly or indirectly, Safevest's conduct alleged in  
24 this Court. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C.  
25

1 § 13c(b) (2002), Ervin is liable for Safevest's violations of Section 4o(1)(B) of the  
2 Act, 7 U.S.C. § 6o(1)(B) (2002).

3  
4 74. Each misrepresentation and omission of material fact, issuance of a  
5 false report, and misappropriation of customer funds, including but not limited to  
6 those specifically alleged herein, is alleged as a separate and distinct violation of  
7 Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1) (B) (2002).

8  
9 **COUNT TWO**

10 **FRAUD BY AN ASSOCIATED PERSON OF**  
11 **A COMMODITY POOL OPERATOR**  
12 **Violations of Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A)**  
13 **(Against Safevest and Ervin)**

14 75. The allegations set forth in paragraphs 1 through 74 are realleged and  
15 incorporated herein by reference.

16 76. As defined by Section 4k(2) of the Act, an associated person of a  
17 CPO is one who is:

18 associated with a commodity pool operator as a partner, officer,  
19 employee, consultant, or agent . . . in any capacity that involves (i) the  
20 solicitation of funds, securities, or property for a participation in a  
21 commodity pool or (ii) the supervision of any person or persons so  
engaged, unless such person is registered.

22 7 U.S.C. § 6k(2) (2002).

1  
2 77. Ervin acted as an AP of a CPO, yet was not registered as such.  
3 Accordingly, Ervin violated Section 4k(2) of the Act.

4  
5 78. Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A) (2002), prohibits  
6 CPOs from using the mails or any other means of interstate commerce:

7 (A) to employ any device, scheme or artifice to defraud  
8 any client or participant or prospective client or participant.

9 79. Since at least May 2007, Ervin, while acting as an unregistered AP of  
10 a CPO, solicited, accepted or received funds from others and engaged in a business  
11 that is of the nature of an investment trust, syndicate, or similar form of enterprise,  
12 for the purpose of trading in futures.

13  
14 80. Ervin employed a device, scheme or artifice to defraud participants  
15 and prospective participants of Safevest: (1) making or causing to be made  
16 fraudulent representations that Safevest operated a successful commodity pool that  
17 profitably traded exchange-traded commodity futures, when in fact no such  
18 commodity pool existed and no such trading occurred; (2) misrepresenting or  
19 causing to be misrepresented to pool participants the profits and risk of loss  
20 inherent in commodity futures trading; (3) issuing or causing to be issued to pool  
21 participants false trading records; (4) providing or causing to be provided to pool  
22 participants false account statements; and (5) misappropriating participant funds,  
23 all in violation of Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A) (2002).  
24  
25  
26





1 (a) an order finding that Safevest violated Sections 4o(1)(B), 4k(2) and  
2 4m(1) of the Act, 7 U.S.C. §§ 6o(1)(B), 6k(2) and 6m(1) (2002); that Ervin violated  
3 Sections 4o(1)(A) and 4k(2) of the Act; 7 U.S.C. §§ 6o(1)(A) & (B), 6k(2) and  
4 6m(1) (2002); that Ervin and Slye are each liable for Safevest's violations of the  
5 Act, as alleged herein, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b)  
6 (2002); and that Safevest is liable for Ervin's violations of the Act, as alleged  
7 herein, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and  
8 CFTC Regulation 1.2, 17 C.F.R. § 1.2 (2007);  
9

10 (b) an order of permanent injunction prohibiting defendants, and any other  
11 person or entity associated with them, including any successor thereof, from  
12 engaging in conduct violative of the sections of the Act and Regulations that they  
13 have been alleged to violate;  
14

15 (c) an order of permanent injunction prohibiting defendants from  
16 engaging, directly or indirectly, in any activity related to trading in any  
17 commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4)  
18 (2002) including but not limited to, the following:  
19

20 1. trading on or subject to the rules of any registered entity, as  
21 that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2002);  
22  
23  
24  
25  
26

1           2.       engaging in, controlling or directing the trading for any  
2 commodity interest account for or on behalf of any other person or entity, whether  
3 by power of attorney or otherwise;  
4

5           3.       soliciting or accepting any funds from any person in  
6 connection with the purchase or sale of any commodity interest;  
7

8           4.       entering into any commodity interest transactions for his own  
9 personal account, for any account in which he has a direct or indirect interest  
10 and/or having any commodity interests traded on his behalf; and

11           5.       engaging in any business activities related to commodity  
12 interest trading.  
13

14           (d)     an order of permanent injunction from applying for registration or  
15 claiming exemption from registration with the CFTC in any capacity, and engaging  
16 in any activity requiring such registration or exemption from registration with the  
17 CFTC, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R.

18 § 4.14(a)(9) (2007), or acting as a principal, agent or any other officer or employee  
19 of any person registered, exempted from registration or required to be registered  
20 with the Commission, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R.  
21 § 4.14(a)(9) (2007);  
22

23           (e)     an order directing defendants, as well as any other person or entity  
24 associated with them, including any successor thereof, to disgorge, pursuant to such  
25  
26



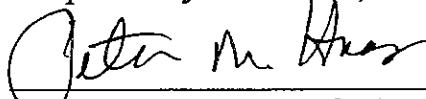
1 procedure as the Court may order, all benefits received from the acts or practices  
2 which constitute violations of the Act or Regulations, as described herein, and  
3 interest thereof from the date of such violations;  
4

5 (f) an order directing defendants, as well as any other person or entity  
6 associated with them, including any successor thereof, to make full restitution,  
7 pursuant to such procedure as the Court may order, to every pool participant whose  
8 funds were received by them as a result of acts and practices which constitute  
9 violations of the Act and Regulations, as described herein, and interest thereon  
10 from the date of such violations;  
11

12 (g) an order directing each defendant to pay a civil monetary penalty in  
13 the amount of not more \$130,000 for each violation of the Act and Regulations  
14 described herein or triple the monetary gain; and  
15

16 (h) an order for such other and further remedial ancillary relief as the  
17 Court may deem appropriate.  
18

19  
20 Respectfully submitted,

21 

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