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 Commodity Futures Trading Commission

8
 9 UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

10 _____)
 11 Commodity Futures Trading)
 Commission,)
 12)
 Plaintiff,)
 13 v.)
 14 Emerald Worldwide Holding, Inc.,)
 City Trust and Investment Co.)
 15 Ltd., Hao Jan Lu, Jian Zhuang,)
 16)
 Defendants,)
 17 and)
 18)
 Lynnwood Jen, Esther Pranolo,)
 19 ACE Capital Advisory Group,)
 Inc., and ACE Emerald W.)
 20 Holding, Inc.,)
)
 21 Relief Defendants.)
)

Case No.: CV03-8339 AHM (EX)
 FIRST AMENDED COMPLAINT FOR
 INJUNCTIVE AND OTHER
 EQUITABLE RELIEF AND FOR
 PENALTIES UNDER THE
 COMMODITY EXCHANGE ACT, AS
 AMENDED, 7 U.S.C. § 1 et
 seq.
 Hearing Date: _____
 Hearing Time: _____

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 23
 24

1 I. JURISDICTION AND VENUE

2 1. The Commodity Exchange Act, as amended, 7 U.S.C. § 1
3 et. seq. (the "Act"), prohibits fraud in connection with the
4 trading of commodity futures contracts and options and
5 establishes a comprehensive system for regulating the purchase
6 and sale of such contracts and options. This Court has
7 jurisdiction over this action pursuant to Section 6c of the Act,
8 7 U.S.C. § 13a-1 (2001), which authorizes the Commodity Futures
9 Trading Commission ("Commission" or "CFTC") to seek injunctive
10 relief against any person whenever it shall appear that such
11 person has engaged, is engaging, or is about to engage in any
12 act or practice constituting a violation of any provision of the
13 Act or any rule, regulation or order thereunder.

14 2. In addition, Section 2(c)(2)(B) of the Act, 7 U.S.C.
15 § 2(c)(2)(B) (2001) confers upon the Commission jurisdiction
16 over certain retail transactions in foreign currency for future
17 delivery, including the transactions alleged in this complaint.

18 3. Venue properly lies with this Court pursuant to
19 Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2001), in that
20 defendants are found in, inhabit, or transact business in this
21 district, and the acts and practices in violation of the Act
22 have occurred, are occurring, or are about to occur within this
23 district, among other places.

1 designated contract facility that might indicate the existence
2 of trading. Therefore, customers who received funds from
3 Emerald's operating account were not being paid from returns on
4 their investments. Rather they were being paid with other
5 customers' funds, an operation that is tantamount to a Ponzi
6 Scheme.

7 8. Through the conduct described in paragraphs 3 through
8 7, Defendants Lu and Zhuang have engaged in the fraudulent
9 misappropriation of investor funds and, consequently, violated
10 Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §
11 6b(a)(2)(i) and (iii) (2001), and Commission Regulations
12 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2002).

13 9. Because Defendants Lu and Zhuang engaged in the
14 fraudulent misappropriation of investor funds while acting as
15 Emerald's agent, Emerald is vicariously liable for violations of
16 Sections 4b(a)(2)(i) and (iii) of the Act, and Commission
17 Regulations 1.1(b)(1) and (3), pursuant to Section 2(a)(1)(B) of
18 the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

19 10. Because Defendant Zhuang engaged in the fraudulent
20 misappropriation of investor funds while acting as CTI's agent,
21 CTI is vicariously liable for violations of Sections 4b(a)(2)(i)
22 and (iii) of the Act, and Commission Regulations 1.1(b)(1) and
23 (3), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. §
24 2(a)(1)(B) (2001).

1 11. In addition, Emerald and CTI, through their agents,
2 make fraudulent misrepresentations regarding Emerald's trading
3 of foreign currency futures contracts on behalf of customers.
4 Emerald's solicitation materials and Internet website use
5 information from and claim affiliations with unrelated
6 individuals and entities registered with the Commission in an
7 attempt to establish legitimacy. None of these individuals and
8 entities have any relationship with Emerald, and in fact, none
9 have ever dealt with Emerald.

10 12. Through the conduct described in paragraph 11, the
11 Defendants Emerald and CTI, through their agents, have engaged,
12 are engaging, or are about to engage in acts and practices which
13 violate the anti-fraud provisions of Sections 4b(a)(i) and (iii)
14 of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2001) and
15 Commission Regulations 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1)
16 and (3) (2002). In addition, through their conduct, Defendants
17 Emerald and CTI, through their agents, have violated Section 4h
18 of the Act, 7 U.S.C. § 6h (2001) by falsely representing that
19 Emerald is registered with the Commission.

20 13. Because the transactions Emerald purports to offer are
21 not conducted on or subject to the rules of a designated
22 contract market or derivatives transaction execution facility,
23 Emerald is engaged in soliciting, or accepting any order for, or
24

1 otherwise dealing in, illegal off-exchange futures contracts in
2 violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001).

3 14. Accordingly, pursuant to Section 6c(a) of the Act,
4 7 U.S.C. § 13a-1 (2001), Plaintiff CFTC brings this action to
5 enjoin the unlawful acts and practices of Defendants Emerald,
6 CTI, Lu, and Zhuang, and to compel their compliance with the
7 provisions of the Act and Regulations thereunder. In addition,
8 the Commission seeks civil penalties, an accounting and such
9 other equitable relief as the Court may deem necessary or
10 appropriate.

11 15. Lynnwood Jen, Esther Pranolo, ACE Capital Advisory
12 Group, Inc. and ACE Emerald W. Holding, Inc. are liable as
13 relief defendants because they received ill-gotten gains to
14 which they have no legitimate claim.

15 III. THE PARTIES

16 A. Plaintiff

17 16. Plaintiff Commodity Futures Trading Commission is an
18 independent federal regulatory agency that is charged with
19 responsibility for administering and enforcing the provisions of
20 the Act, 7 U.S.C. §§ 1 et seq. (2001), and the Regulations
21 promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2002).

22 B. Defendants

23 17. Emerald Worldwide Holding Inc. ("Emerald") was
24 incorporated on March 12, 2001 in the state of California, with

1 its principal place of business at 17870 Castleton Street, Suite
2 335, City of Industry, California. Emerald operated a website
3 at www.emeraldforex.com, wherein it described itself as "the
4 leading player in currency trading." Emerald has never been
5 registered with the Commission in any capacity.

6 18. City Trust and Investment Co. Ltd. ("CTI") is a
7 Japanese corporation with its primary place of business located
8 at 4F Kyobashi Daikyu Nagaoka Bldg., Chuo-ku Hachobori 2-21- 2,
9 Tokyo, Japan. CTI has five to ten offices throughout Japan and
10 China. CTI has never been registered with the Commission in any
11 capacity.

12 19. Hao Jan Lu ("Lu"), whose English name is Thomas Lu,
13 resides at 18913 Bently Place, Rowland Heights, California
14 91714. Lu opened Emerald's primary operating account at
15 Citibank, Account #200113892, on January 18, 2002 ("Lu Account")
16 and served as the sole signatory on the account until
17 approximately August 2002. From at least March through August
18 2002, Lu represented that he was at any given time either the
19 CEO and/or Secretary of Emerald. Lu has never been registered
20 with the Commission in any capacity.

21 20. Jian Zhuang ("Zhuang"), also known as "Ken So" or "Ken
22 Sho," resides at 17870 Castleton Street, Suite 335, City of
23 Industry, California 91748. Since August 2002, Zhuang has been
24 the sole shareholder in Emerald. Zhuang opened a secondary

1 account for Emerald at Citibank, Account #200304830, on March
2 10, 2003 and serves as the sole signatory on the account
3 ("Zhuang Account"). Zhuang also serves as the sole signatory on
4 an account held in Emerald's name at the Bank of America,
5 Account #2068, and was one of the signatories on additional
6 accounts at Wells Fargo, Account #9566. Zhuang represents that
7 he is at any given time either the CEO, CFO and/or Secretary of
8 Emerald. Defendant Zhuang is and has been at all relevant times
9 a shareholder and director or officer of CTI. Zhuang has never
10 been registered with the Commission in any capacity.

11 **C. Relief Defendants**

12 21. Lynnwood Jen ("Jen") resides at 771 S. Foxdale Lane,
13 Anaheim, CA 92807. Jen has never been registered with the
14 Commission in any capacity.

15 22. Esther Pranolo ("Pranolo") resides at 2115 Sherwood
16 Rd., San Marino, CA 91108. Pranolo is registered agent of ACE
17 Capital Advisory Group, Inc. Pranolo has never been registered
18 with the Commission in any capacity.

19 23. ACE Capital Advisory Group, Inc. is a California
20 corporation whose registered business address is 8855 Valley
21 Blvd. #205, Rosemead, California 91770. ACE Capital Advisory
22 Group, Inc. has never been registered with the Commission in any
23 capacity.

24

1 to manage the risk associated with an asset owned or liability
2 incurred, or reasonably likely to be owned or incurred by the
3 individual. 7 U.S.C. § 1a(12)(A)(xi) (2001). Section 2(c)(2)(B)
4 of the Act identifies certain counterparties to foreign currency
5 transactions which would divest the Commission of jurisdiction
6 over foreign currency transactions ("proper counterparties").
7 Neither Emerald or CTI are proper counterparties and therefore
8 the Commission retains jurisdiction over the foreign currency
9 transactions involved in this case. See 7 U.S.C. § 2(c)(2)(B)
10 (2001).

11 27. Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001)
12 provides that unless exempted by the Commission, it shall be
13 unlawful for any person to offer to enter into, execute, confirm
14 the execution of, or conduct an office or business in the United
15 States for the purpose of soliciting, accepting any order for,
16 or otherwise dealing in transactions in, or in connection with,
17 a contract for the purchase or sale of a commodity for future
18 delivery when: (a) such transactions have not been conducted on
19 or subject to the rules of a board of trade which has been
20 designated or registered by the Commission as a contract market
21 or derivatives transaction execution facility for such
22 commodity; and (b) such contracts have not been executed or
23 consummated by or through such contract market.

1 V. FACTS

2 A. The Common Enterprise

3 28. Since at least March 2002, Defendants Emerald and CTI,
4 operating as a common enterprise, have engaged in a scheme to
5 defraud retail customers.

6 29. From January until August 2002, Defendant Lu was
7 majority shareholder in defendant Emerald. From March through
8 August 2002, Defendant Zhuang participated, along with Lu, in
9 the business operations of Emerald. In August 2002, Zhuang
10 purchased all shares of Emerald. From August 2002 to present,
11 Zhuang has controlled the business operations of Emerald. From
12 at least August 2002 through the present, Defendant Zhuang has
13 also been a shareholder and director or officer of defendant CTI
14 and has exercised control over business operations of CTI.

15 30. From approximately March 2002 through present, CTI,
16 holding itself out as Emerald's agent, has solicited customers
17 to deposit funds with Emerald in the United States to
18 purportedly trade foreign currency futures contracts through
19 Emerald in the United States.

20 31. CTI hires "financial consultants" (FCs) to solicit new
21 customers in Japan and China and manage customer accounts. CTI,
22 through its agents, trains its FCs how to solicit customers to
23 invest through Emerald and provides FCs with promotional
24 materials and account opening documents to disseminate to

1 prospective customers. CTI, through its agents, has solicited
2 approximately 300 investors in Japan and China to deposit
3 investment funds with Emerald in the United States. From at
4 least March 2002 through November 2003, CTI did not solicit
5 investors to trade through any firm other than Emerald.

6 32. When soliciting investors to deposit investment funds,
7 CTI's FCs represent to prospective customers that Emerald
8 granted CTI exclusive authorization to solicit customers in
9 Japan and China to trade through Emerald. FCs tell prospective
10 customers that Emerald is a branch of "ACE Financial Group" and
11 that ACE Financial Group is one of the biggest forex trading
12 companies in the United States. FCs tell potential customers
13 that their investments will be protected because Emerald is
14 regulated in the U.S. by the Commodity Futures Trading
15 Commission (CFTC), National Futures Association (NFA), National
16 Association of Securities Dealers (NASD), and Securities
17 Investor Protection Corporation (SIPC) and that, as a result of
18 regulation by these entities, customers' investment funds are
19 protected even if Emerald ceases operating. CTI, through its
20 agents, also disseminates to potential customers Emerald's
21 promotional materials.

22 33. Prior to December 1, 2003, CTI FCs gave customers the
23 option of depositing their investment funds directly into one of
24 two Citibank accounts in the United States in the name of

1 Emerald, depositing their funds into a CTI account in Japan for
2 forwarding to Emerald, or making a cash deposit at a CTI branch
3 office for forwarding to Emerald. Prior to November 17, 2003,
4 most Emerald customers wired their investment funds directly to
5 one of two Citibank accounts in the United States in the name of
6 Emerald.

7 34. Since on or about December 1, 2003, Emerald and/or
8 CTI, through their agents, have directed Emerald customers to
9 wire investment deposits to bank accounts in California in the
10 names of "ACE Capital Advisory Group, Inc." and "ACE Emerald W.
11 Holding Inc."

12 35. CTI, through its agents, advises customers that
13 foreign currency trades placed by FCs or customers at a CTI
14 dealing room are made through Emerald in California. Emerald's
15 website stated that customers could place trade orders directly
16 by calling Emerald in California and that customers had access
17 "24-hours a day from Sunday evening 5:00PM WST (California Time)
18 to Friday afternoon at 12:00pm WST" to the "dealing desk" via
19 Emerald's main telephone number. From approximately March 2002
20 through November 2003, Emerald employed several part-time
21 operators to answer calls nearly 24 hours a day in Emerald's
22 California office.

23 36. Emerald customers receive account statements, printed
24 on Emerald letterhead and bearing an Emerald seal, that show

1 trading activity in the customer's account. CTI distributes the
2 Emerald account statements to Emerald customers in Japan and
3 China.

4 37. Defendants Emerald and CTI, through their agents,
5 solicited funds and accepted orders for the purpose of and in
6 connection with, contracts for the purchase or sale of foreign
7 currency futures contracts. These transactions were not
8 conducted on or subject to the rules of a board of trade that
9 has been designated or registered by the Commission as a
10 contract market or derivatives transaction execution facility
11 for such commodity, and such contracts have not been executed or
12 consummated by or through such contract market.

13 **B. Defendants Fraudulently Misappropriated Customer Funds**

14 38. From March 2002 through November 2003, Defendants
15 solicited at least \$5 million dollars from at least 300
16 investors for the purported trading of foreign currency futures.

17 39. Little or none of the \$5 million dollars was used for
18 trading. Emerald's brochure represents that all "investors'
19 margin deposits are separately secured in [major American Banks
20 such as Bank of America, Citibank and Chase Manhattan Bank] and
21 are protected by FDIC." However, rather than being secured in
22 separate accounts, prior to November 17, 2003, customer funds
23 were deposited into one of two operating accounts held in
24

1 Emerald's name at the San Francisco branch of Citibank
2 ("operating accounts").

3 40. The only deposits into the operating accounts were
4 from customers, directly or through Otomo FX International or
5 CTI, with the exception of two wire transfers in the amounts of
6 \$10,000 and \$110,000, respectively, from the Lu Account to the
7 Zhuang Account at or near the time it was opened. Of the \$5
8 million customer funds deposited, approximately \$2.1 million was
9 wired to offshore bank accounts in the name of Defendant CTI,
10 \$82,000 to potential investment entities, \$37,000 to Defendant
11 Zhuang, and \$507,000 to other Emerald bank accounts at either
12 Wells Fargo, Bank of America, or Citibank.

13 41. Approximately \$1.9 million in customer funds were
14 transferred back to customers for the purported liquidation of
15 some or all of their trading accounts. However, no funds were
16 transferred into either the Lu Account or Zhuang Account from
17 any bank, clearinghouse, or other designated contract facility
18 that might indicate the existence of trading. Therefore,
19 customers who received funds from Emerald's operating account
20 were not being paid from returns on their investments. Rather,
21 they were being paid with other customers' funds, an operation
22 that is tantamount to a Ponzi Scheme.

23 42. The operating accounts at Citibank receive no
24 distributions from a designated contract facility or any other

1 entity that would be consistent with trading. In fact, except
2 for two wire transfers totaling \$110,000 from another Emerald
3 account, four wire transfers totaling \$201,935 from Otomo FX
4 International, and two wire transfers for \$99,957 from CTI, the
5 only deposits into the operating accounts are the approximately
6 \$5 million in funds from individual customers.

7 43. To uphold the appearance of trading, Emerald and/or
8 CTI manufacture customer account statements, printed with
9 Emerald letterhead and bearing an Emerald seal, detailing
10 purported trading results for any given day. These statements
11 identify the account balance, margin requirements, commissions,
12 and profits/losses, as well as specific contracts purportedly
13 bought or sold. They are sent to customers regularly and serve
14 to maintain the appearance of trading and enable the fraud to
15 continue for an extended period of time. Defendant CTI
16 distributes the false account statements to customers in Japan
17 and China.

18 44. Defendants Lu and Zhuang, sole signatories on separate
19 operating accounts into which investor funds were deposited,
20 knowingly misappropriated and failed to trade investor funds.

21 **C. Defendants Emerald and CTI Deceive Emerald Investors About**
22 **the Nature of Emerald.**

23 45. In Emerald's promotional material and Internet
24 website, Emerald represents that it is affiliated with entities

1 and individuals that are registered with the Commission in an
2 attempt to establish it as a legitimate operation. These
3 materials identify Emerald as a registered broker or dealer in
4 Forex and in futures and commodities trading and "one of the
5 largest and most experienced Futures Commission Merchants
6 ["FCM"] that focuses solely on the currency market." However,
7 Emerald is not and never has been registered with the Commission
8 in any capacity.

9 46. In Emerald's promotional material and Internet
10 website, Emerald represents that it is a subsidiary of ACE
11 Financial Group ("ACE"), a registered FCM. Emerald's brochure
12 goes on to say that ACE is "a member of the U.S.A. Commodity
13 Futures Trading Commission [CFTC], the U.S.A. Futures Commission
14 Merchant [FCM], the U.S.A. National Futures Association [NFA],
15 the U.S.A. National Association Securities Association [NASD],
16 and the U.S.A. Securities Investor Protection Corporation
17 [SIPC]," and proud to have been "one of the first registered FCM
18 following the passage of the Commodity Modernization Act of
19 August 1998." Although ACE is registered as a notice broker or
20 dealer and introducing broker with the Commission, and is a
21 member of the National Futures Association,¹ ACE is not now, nor
22

23 ¹ NFA is a not-for-profit membership corporation formed in 1976
24 to become a futures industry's self-regulatory organization
under Section 17 of the Commodity Exchange Act. Section 17 was
added to the Commodity Exchange Act by Title III of the

1 has it ever been, registered as a FCM, and it does not engage in
2 foreign currency trading on behalf of clients. Furthermore, ACE
3 has no affiliation or dealings with Emerald or CTI.

4 47. ACE Financial Group is the name under which another
5 entity, Anthony John Columbo Inc. ("Columbo Inc."), conducts
6 business. Emerald also claims that it is affiliated with
7 Columbo Inc., and that Columbo Inc. is a subsidiary of ACE.
8 Emerald's brochure and website state that Anthony John,
9 presumably affiliated with Anthony John Columbo ("Columbo"),
10 President of Columbo Inc., is the Vice President & Chief of Spot
11 Trading at Emerald. Although Columbo is registered with the
12 Commission, he does not have any relationship with Emerald or
13 CTI.

14 48. In Emerald's promotional material and Internet
15 website, Emerald identifies William Ahdout ("Ahdout") as the
16 Head of Option Trading and provides a biography of Ahdout on its
17 website. Ahdout has never maintained any business affiliation,
18 commercial or otherwise, with Emerald or ACE and has never
19 engaged in foreign currency trading through his present
20 employer, Forex Capital, a registered FCM with the Commission.
21 According to Ahdout, his biography and other statements on
22

23 Commodity Futures Trading Commission ("CFTC") Act of 1974 and
24 provides for the registration and CFTC oversight of self-
regulatory associations of futures professionals.

1 Emerald's website were taken directly from Forex Capital's
2 website.

3 48. In Emerald's promotional material and Internet
4 website, Emerald identifies David Sakhai as the Chief Operating
5 Officer of Emerald on its website. David Sakhai is the
6 Principal of Forex Capital, and presumably the individual with
7 which Emerald claims affiliation. Sakhai has never maintained
8 any business affiliation, commercial or otherwise, individually
9 or through Forex Capital, with Emerald or ACE. Sakhai states
10 that all representations regarding Forex Capital and himself
11 made by Emerald on its website and in written solicitations were
12 done so without his knowledge and against his will.

13 49. In a further attempt to establish legitimacy, Emerald
14 touts its relationships with more than nine of the world's
15 largest banks, including Bank of America, Citibank, and Chase
16 Manhattan, and promises investors that their money will be
17 maintained under separate accounts at one of these banks and
18 used to trade foreign currency. However, the funds are not
19 separately maintained, and instead are deposited into one of two
20 operating accounts at Citibank that have no indicia of trading
21 activity. Emerald's promotional material supports these
22 misrepresentations, as well.

23 50. As Emerald's exclusive agent, CTI distributes
24 Emerald's promotional material to prospective customers. In

1 addition, CTI incorporated many of these misrepresentations into
2 its own company brochures that are also distributed to
3 prospective customers. CTI's brochures and employee business
4 cards stated that Emerald was part of ACE Financial Group, and
5 that ACE Financial Group was a registered FCM and member of the
6 CFTC, NFA, NASD, and SIPC.

7 51. Defendant Zhuang and other CTI managers use these
8 brochures to train financial consultants about the relationships
9 and affiliations described herein. The financial consultants
10 use this information to solicit customers and lure them into
11 depositing funds with Emerald, which the customers believe to be
12 a legitimate company registered and regulated in the U.S.

13 **D. The Defendants' Purported Foreign Currency Transactions Are**
14 **Illegal Off-Exchange Futures Contracts**

15 52. Since approximately March 2002, Defendants Emerald and
16 CTI have offered to retail customers illegal off-exchange
17 foreign currency futures contracts. Emerald's promotional
18 materials present an investment opportunity to profit based upon
19 the fluctuations in the relative values of foreign currencies -
20 a purported opportunity that is being made available to
21 individual investors by an entity that purportedly has
22 established itself in the financial community and purportedly is
23 regulated by the United States Government. The account
24 statements indicate that foreign currency contracts are bought

1 and sold at a spot rate, which is an attempt to characterize the
2 investment as a spot or forward trade. However, the foreign
3 currency contracts that defendants purport to offer and sell are
4 actually contracts for future delivery of foreign currencies
5 that are cash settled ("futures contracts"). The prices or
6 pricing formulas are established at the time the contracts are
7 initiated, and may be settled through offset, cancellation, cash
8 settlement or other means to avoid delivery. These contracts
9 are purportedly offered to the general public and are not
10 individually negotiated. They are leveraged positions that
11 remain open for indefinite periods of time.

12 53. The customers who invest with Emerald have no
13 commercial need for the foreign currency. Instead, investors
14 enter into these purported transactions to speculate and profit
15 from anticipated price fluctuations in the markets for these
16 currencies.

17 54. Investors do not anticipate taking - and do not take -
18 delivery of the foreign currencies as a consequence of these
19 investments. Emerald does not require its customers to set up
20 banking relationships to facilitate delivery of foreign
21 currencies. Based on the representations that have been made to
22 investors by Emerald's agents, investors expect that, once the
23 market moves in a favorable direction, Emerald will liquidate
24

1 their investment by authorizing the sale of the contract and
2 that they will take profits.

3 55. Emerald customers are not eligible contract
4 participants and Emerald does not serve as a proper counterparty
5 to the purported contracts.

6 56. Emerald does not conduct its foreign currency futures
7 transactions on or subject to the rules of a board of trade that
8 has been designated by the Commission as a contract market, nor
9 does Emerald execute or consummate transactions by or through a
10 member of such a contract market. Moreover, Emerald does not
11 conduct transactions on a facility registered as a derivatives
12 transaction execution facility.

13 **E. Relief Defendants**

14 57. Lynnwood Jen was not a customer of Emerald and did not
15 deposit investment funds into Emerald's bank accounts. On April
16 20, 2003, Defendant Zhuang approved a wire transfer from
17 Emerald's Wells Fargo Bank account in the amount of \$20,000 to a
18 bank account in the name of Jen.

19 58. Since at least December 1, 2003, customers solicited
20 by CTI to trade through Emerald have been directed to deposit,
21 and have deposited, investment funds into one of two bank
22 accounts in the United States. One account, at Citibank, is in
23 the name of "ACE Capital Advisory Group, Inc." The second
24 account, at Bank of America, in the name of "ACE Emerald W.

1 Holding, Inc." Jen and Esther Pranolo are signatories to the
2 Citibank account in the name of ACE Capital Advisory Group, Inc.

3 59. Emerald and CTI committed fraud upon Emerald's
4 customers in connection with the purchase and sale of illegal
5 foreign currency futures contracts as alleged herein. Jen,
6 Pranolo, ACE Capital Advisory Group, Inc. and ACE Emerald W.
7 Holding, Inc. (collectively, the "relief defendants") have
8 received funds or otherwise benefited from funds that are
9 directly traceable to the funds obtained from Emerald customers
10 through fraud.

11 60. The relief defendants will be unjustly enriched if not
12 required to disgorge the funds or the value of the benefit they
13 received as a result of the fraud by Defendants Emerald and CTI.
14 The relief defendants should be required to disgorge the funds
15 and assets, or the value of the benefit they received from those
16 funds or assets, which are traceable to the fraud by Defendants
17 Emerald and CTI.

18 61. By reason of the foregoing, the relief defendants hold
19 funds and assets in constructive trust for the benefit of
20 Emerald's customers.

1 VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION
2 REGULATIONS

3 COUNT I:

4 FRAUDULENT MISAPPROPRIATION
5 IN VIOLATION OF SECTIONS 4b(a)(2)(i) and 4b(a)(2)(iii)
6 OF THE ACT AND REGULATIONS 1.1(b)(1) and (3)

7 62. Paragraphs 1 through 61 are re-alleged and
8 incorporated herein.

9 63. During the relevant time, Defendants Lu and Zhuang
10 violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C.
11 §§ 6b(a)(2)(i) and (iii) (2001), and Regulation 1.1(b)(1) and
12 (3), 17 C.F.R. §§ 1.1(b)(1) and (3) (2002), in that they cheated
13 or defrauded or attempted to cheat or defraud investors or
14 prospective investors in the investment program, and willfully
15 deceived or attempted to deceive investors or prospective
16 investors, by misappropriating funds received from investors.

17 64. Defendants Lu and Zhuang engaged in the fraudulent
18 misappropriation of investor funds while acting as Emerald's
19 agent. Emerald is thereby liable for Lu and Zhuang's violations
20 of Section 4b(a)(2)(i) and (iii) of the Act and Regulation
21 1.1(b)(1) and (3), pursuant to Section 2(a)(1)(B) of the Act,
22 7 U.S.C. § 2(a)(1)(B).

23 65. Defendant Zhuang engaged in the fraudulent
24 misappropriation of investor funds while acting as CTI's agent.
CTI is thereby liable for Zhuang's violations of Section

1 4b(a) (2) (i) and (iii) of the Act and Regulation 1.1(b) (1) and
2 (3), pursuant to Section 2(a) (1) (B) of the Act, 7 U.S.C.
3 § 2(a) (1) (B).

4 66. Defendants engaged in this conduct in or in connection
5 with orders to make, or the making of, contracts of sale of
6 commodities for future delivery, made, or to be made, for or on
7 behalf of other persons where such contracts for future delivery
8 were or may have been used for (a) hedging any transaction in
9 interstate commerce in such commodity, or the products or
10 byproducts thereof, or (b) determining the price basis of any
11 transaction in interstate commerce in such commodity, or
12 (c) delivering any such commodity sold, shipped, or received in
13 interstate commerce for the fulfillment thereof.

14 67. Each misappropriation of investor funds made during
15 the relevant period, including but not limited to those
16 specifically alleged herein, is alleged as a separate and
17 distinct violation of Sections 4b(a) (2) (i) and (iii) of the Act
18 and Regulations 1.1(b) (1) and (3).

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1 commerce in such commodity, or (c) delivering any such commodity
2 sold, shipped, or received in interstate commerce for the
3 fulfillment thereof.

4 71. Each misrepresentation made during the relevant
5 period, including but not limited to those specifically alleged
6 herein, is alleged as a separate and distinct violation of
7 Section 4b(a) (2) (i) and (iii) of the Act and Regulation
8 1.1(b) (1) and (3).

9 **COUNT III:**
10 **MISREPRESENTATION AS A REGISTERED ENTITY**
11 **IN VIOLATION OF SECTION 4h OF THE ACT**

12 72. Paragraphs 1 through 61 are re-alleged and
13 incorporated herein.

14 73. During the relevant time period, Defendants Emerald
15 and CTI, through their agents, misrepresented Emerald as a
16 registered FCM with the Commission in their solicitation of
17 customers. Emerald and CTI further misrepresented Emerald's
18 affiliations with ACE by claiming the contracts would be
19 executed through an entity that is registered with the
20 Commission. As a result, these misrepresentations are direct
21 violations of Section 4h of the Act, 7 U.S.C. § 6h (2001).

22 74. Each misrepresentation made during the relevant
23 period, including but not limited to those specifically alleged
24 herein, is alleged as a separate and distinct violation of
Section 4h of the Act.

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VII. RELIEF REQUESTED

Wherefore, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

- a. Find that the defendants violated Sections 4(a), 4b(a)(2)(i) and (iii), and 4h of the Act, 7 U.S.C. §§ 6(a), 6b(a)(2)(i) and (iii), 6h, and Regulation 1.1(b)(1) and (3), 17 C.F.R. §§ 1.1(b)(1) and (3) (2002);
- b. Enter an order of permanent injunction prohibiting the defendants and any successors thereof from engaging in conduct in violation of Sections 4(a), 4b(a)(2)(i) and (iii), and 4h of the Act, 7 U.S.C. §§ 6(a), 6b(a)(2)(i) and (iii), 6h, and Regulation 1.1(b)(1) and (3), 17 C.F.R. §§ 1.1(b)(1) and (3) (2002), or soliciting funds for, engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- c. Enter an order directing the defendants and relief defendants and any successors thereof, to disgorge pursuant to such procedure as the Court may order, all benefits received from the acts or practices that

1 constituted violations of the Act, as described herein,
2 and interest thereon from the date of such violations;

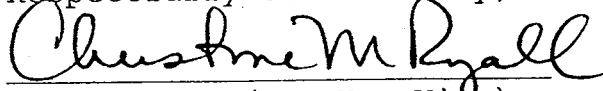
3 d. Enter an order directing the defendants and relief
4 defendants to make full restitution to every Emerald
5 customer as a result of acts and practices that
6 constituted violations of the Act, as described herein,
7 and interest thereon from the date of such violations;

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

13 f. Enter an order directing that the defendants make an
14 accounting to the court of all their assets and
15 liabilities, together with all funds they received from
16 and paid to clients and other persons in connection
17 with commodity futures transactions or purported
18 commodity futures transactions, and all disbursements
19 for any purpose whatsoever of funds received from
20 commodity transactions, including salaries,
21 commissions, interest, fees, loans and other
22 disbursements of money and property of any kind, from,
23 but not limited to, March 2002 to and including the
24 date of such accounting;

- 1 g. Enter an order requiring the defendants to pay costs
2 and fees as permitted by 28 U.S.C. §§ 1920 and
3 2412(a)(2); and
4 h. Order such other and further remedial ancillary relief
5 as the Court may deem appropriate.

6 Respectfully submitted by,

7 

8 Jamie Brown (Pro Hac Vice)

9 Christine Ryall (Pro Hac Vice)

10 John Dunfee (Pro Hac Vice)

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19 Attorneys for Plaintiff

20 Commodity Futures Trading Commission

21 Dated: May 10, 2004