

transferred pool participant funds into commodity trading accounts at three futures commission merchants (“FCMs”). On April 21, 2008, Phoenix shuttered its doors without warning. On April 22, 2008, Meisner sent a letter to pool participants admitting that Phoenix’s trading accounts were depleted, Phoenix was “out of money” and could no longer operate, and that he had misappropriated pool participant funds to support his lifestyle.

2. Between May 2003 and April 2008, the Defendants solicited and accepted at least \$8 million from at least 26 pool participants for the purpose of trading commodity futures contracts, among other investments. During that time, Phoenix lost at least \$5.8 million in the Phoenix commodity futures trading accounts. Currently these accounts carry negligible or debit balances or have been closed. During the relevant time, Phoenix acted as a commodity pool operator (“CPO”) without the benefit of registration with the Commission.

3. Meisner and Phoenix have cheated and defrauded prospective pool participants and pool participants by misappropriating a portion of the Phoenix pool participants’ funds for their personal use and benefit, making material misrepresentations and failing to disclose material facts about the profitability and risk of their commodity futures trading program. In addition, the Defendants distributed false account statements to pool participants that misrepresented the value of the pool participants’ interests in the Phoenix commodity pool. The Defendants also concealed losses by using monies received from “new” pool participants to repay “earlier” pool participants, in a manner akin to a Ponzi scheme, while guaranteeing profits to new pool participants.

4. Defendants thus have engaged in, are engaged in, or are about to engage in acts and practices that violate anti-fraud and other provisions of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2006), and the Commission's Regulations promulgated thereunder ("Regulations"), 17 C.F.R. §§ 1.1 *et seq.* (2008).

5. Meisner controlled Phoenix and knowingly induced, directly or indirectly, or did not act in good faith regarding Phoenix's violations and, therefore, is liable for Phoenix's violations of the Act and Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b). Phoenix is liable for the violations of the Act and Regulations of Meisner, its agent, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

6. Accordingly, the Commission brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act and Regulations. In addition, the Commission seeks civil penalties, restitution to defrauded pool participants, disgorgement of ill-gotten gains, a permanent trading ban, and such other relief as the Court may deem necessary or appropriate. The Commission also seeks disgorgement of ill-gotten gains by the relief defendant, Victoria R. Meisner ("V. Meisner").

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

II. JURISDICTION AND VENUE

8. The Act establishes a comprehensive system for regulating trading in commodity futures contracts, options on commodity futures contracts and commodity options, and those who are registered or should be registered pursuant to the Act. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person or entity whenever it shall appear to the CFTC that such person or entity has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any CFTC rule, regulation or order.

9. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because the Defendants are found in, inhabit, or transact business in this district and/or the acts and practices in violation of the Act and Regulations have occurred, are occurring, or are about to occur within this district, among other places.

III. THE PARTIES

A. Plaintiff

10. The **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with administering and enforcing the Act and Regulations.

B. Defendants

11. **Phoenix Diversified Investment Corporation** is a Florida corporation organized in October 2001 with its principal place of business in Boca Raton, Florida. Phoenix has never been registered in any capacity with the CFTC and has not applied for any exemption from registration. On April 21, 2008, Phoenix closed its doors.

12. **Michael Alan Meisner** currently resides at 2387 NW 49 Lane, Boca Raton, Florida. Meisner formed Phoenix and was listed as its director and president from its incorporation in October 2001 until March 2005, when his wife, V. Meisner, was substituted as the president and director on Phoenix's corporate records. At all times material to this action, Meisner directly or indirectly controlled Phoenix and its day-to-day operations. Meisner was registered with the CFTC as an associated person ("AP") of Diamond Head Capital, LLC ("Diamond Head"), a registered commodity trading advisor ("CTA"), from March 2005 until April 21, 2008, when his registration was withdrawn by his sponsor. Meisner was the branch office manager of Diamond Head until April 2008.

13. On May 8, 2008, an involuntary petition for relief under Chapter 7 of the U.S. Bankruptcy Code was filed against Phoenix in U.S. Bankruptcy Court for the Southern District of Florida. On May 19, 2008, Meisner filed a personal Chapter 11 bankruptcy in U.S. Bankruptcy Court for the Southern District of Florida.

C. Relief Defendant

14. **Victoria R. Meisner**, Meisner's wife, currently resides at 2387 NW 49 Lane, Boca Raton, Florida. During the relevant time, V. Meisner was a director and registered agent of Phoenix and an authorized signatory on Phoenix's bank accounts, trading accounts and other material documents. V. Meisner has never been registered with the Commission in any capacity. V. Meisner received funds in the amount of at least \$1 million to which she was not entitled.

IV. STATUTORY AND REGULATORY REQUIREMENTS

15. A "commodity pool" is defined in Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1), as any investment trust, syndicate or similar form of enterprise operated for

the purpose of trading commodity futures, options on commodity futures, and/or commodity options.

16. A CPO is defined in Section 1a(5) of the Act, 7 U.S.C. § 1a(5), as 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, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

17. An AP of a CPO is defined in Regulation 1.3(aa)(3) as any person associated with a CPO as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged.

18. A “participant” is defined in Regulation 4.10(c), 17 C.F.R. § 4.10(c), as any person who has any direct financial interest in a commodity pool.

19. A FCM is defined in Section 1a(20) of the Act, 7 U.S.C. § 1a(20), and Regulation 1.3(p), 17 C.F.R. § 1.3(p), as an individual or organization that solicits or accepts orders for the purchase or sale of commodity futures and accepts funds from customers to support such orders.

V. FACTS

The Defendants Made Material Misrepresentations and Failed to Disclose Material Facts to Prospective Pool Participants and Pool Participants

20. In 2001, Meisner formed Phoenix as an investment company, ostensibly to trade its own funds in proprietary trading accounts using trading systems developed by Meisner. Two years later, Phoenix began to operate as a commodity pool.

21. From around May 2003 to the present, the Defendants solicited funds from members of the public for the purposes of pooling investments for trading commodity futures, among other investments, through Phoenix (the "pool"). Other prospective pool participants were solicited by Meisner's family members and possibly others.

22. Meisner represented to prospective pool participants that he was a highly successful commodity trader who developed and used valuable trading software systems that consistently resulted in profitable commodity futures trades.

23. During the relevant time, Meisner made oral misrepresentations and failed to disclose material facts to pool participants and prospective pool participants regarding the profitability of the Defendants' trading system and its past performance. Among other things, Meisner represented to pool participants and some prospective pool participants that the trading system resulted in profitable trades, which dominated losing trades, and that the system resulted in profits of 2% to 3% per month. At the same time, he failed to disclose that Phoenix's trading accounts, on an overall basis, were losing money.

24. Meisner told at least four pool participants that only 20% of their money would be invested at a given time, and the remaining 80% of their money would be held

in reserves as a “stop-loss” safeguard. In fact, the Defendants did not maintain such a reserve.

25. Meisner provided to at least one prospective pool participant or pool participant a performance table purporting to represent Phoenix’s actual trading performance for an investment of \$100,000 for the period of March 2004 through July 2007. The performance table shows profitable “interest” results for every month but two. The performance table is false in that it showed profits for months in which there were overall losses.

26. By various means, the Defendants falsely represented to Phoenix pool participants that their principal and profits were guaranteed, thereby implying that the risk of loss was minimal in connection with Phoenix’s trading accounts.

27. The Defendants falsely represented to pool participants and prospective pool participants that their compensation would only come from profits derived from the investments. This representation was false because in 2007 a Phoenix ledger shows that Meisner received a “salary” of more than \$1.3 million and a bonus of \$135,961 from Phoenix. In fact, for the year 2007, the Phoenix trading accounts experienced net trading losses of \$306,921.78.

28. The Defendants structured the investment transactions on paper as purported “loans” to Phoenix and provided pool participants with a one-page investment account agreement (“agreement”). Not all of the agreements contained the same terms.

29. The Defendants offered no disclosure documents to pool participants or prospective pool participants regarding the pool. By failing to provide pool participants or prospective pool participants with a disclosure document, the Defendants failed to

disclose, among other things, the risks involved in trading commodity futures, the types of commodity interests or other interests that the pool traded, the pool's actual performance, and fees and expenses.

The Defendants' Trading Accounts

30. During the relevant time, Defendants opened or caused to be opened at least twenty trading accounts in the name of Phoenix at MF Global Inc. ("Man"), at least four trading accounts in the name of Phoenix at Rosenthal Collins Group, LLC ("RCG"), and at least seven trading accounts in the name of Phoenix at RJ O'Brien ("RJO"). Man, RCG and RJO are registered FCMs. Overall, between May 2003 and March 2008, the Phoenix trading accounts suffered net losses of approximately \$5.8 million.

The Defendants Issued False Statements to the Pool Participants

31. During the relevant time, the Defendants provided monthly or quarterly account statements to pool participants. The statements reported, among other things, calculations of the principal amount owed to the pool participant at the beginning of the reporting period, including prior accrued gains ("opening balance"), less withdrawals or interest payments ("debits"), plus deposits ("credits"), plus pro rata trading profits or losses ("interest"), equaling the principal balance at month end ("closing balance"), and the purported rate of return for the reporting period ("rate"). The account statements did not contain trading results or disclose management fees or commissions paid to either the Defendants or third parties.

32. The account statements provided to pool participants were false because the Defendants' investments did not earn the profits or interest shown on the account statements, and because the statements over-stated the net asset value of the pool

participants' interests in the Pool. For example, at least twelve pool participants received quarterly account statements, dated March 31, 2008, that cumulatively show a closing balance of \$4,264,784.05.

33. Between March 2008 and the present, the Defendants refused to comply with at least ten pool participants' withdrawal requests, or tendered bad checks to participants that were returned for insufficient funds.

34. On information and belief, as of May 7, 2008, all of Phoenix's bank accounts were depleted or had negative balances and a total of approximately \$4,514 remained in the Phoenix's trading accounts at Man, RJO and RCG.

The Defendants Misappropriated Pool Participant Funds

35. During the relevant time, the Defendants misappropriated millions of dollars of pool participant funds by, among other things, paying themselves compensation based on the purported profits of the pool.

36. The Defendants were able to issue monthly interest checks to some pool participants during the relevant time because the Defendants were repaying "earlier" pool participants with "new" pool participant funds, in a Ponzi-like manner.

37. The Defendants spent the misappropriated funds on purchases of expensive real estate and luxury automobiles, and in other ways to support a lavish lifestyle.

Meisner's Letters to Pool Participants

38. On April 21, 2008, Meisner sent some or all of the pool participants a letter stating, among other things, that "[I]t is with great regret that I must inform you that

due to an unanticipated cash flow situation, Phoenix will be ceasing its regular day to day business activities.”

39. On April 22, 2008, Meisner wrote a second letter to pool participants admitting, among other things, that Phoenix was out of cash and that there was no money available in any trading account because it was used to pay distributions and support Meisner’s lifestyle, among other things. Meisner also admitted that he falsely structured pool participants’ agreements as loans to Phoenix in an effort to avoid scrutiny and registration requirements of the Commission and securities regulators.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE

VIOLATIONS OF SECTIONS 4b(a)(2)(i) and (iii) OF THE ACT: FRAUD BY MISAPPROPRIATION OF PARTICIPANT FUNDS, MISREPRESENTATIONS AND MATERIAL OMISSIONS

40. The allegations set out in paragraphs 1 through 39 are re-alleged and incorporated herein by reference.

41. From approximately 2004 through April 2008, Defendants violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii), in that they cheated or defrauded or attempted to cheat or defraud other persons; and willfully deceived or attempted to deceive other persons by, among other things, fraudulently soliciting funds from prospective pool participants and pool participants, misrepresenting the likelihood of profits and minimizing or failing to disclose the risk of loss, and misappropriating funds they received from pool participants.

42. Defendants engaged in this conduct in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were

or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or by products thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

43. The actions and omissions of Meisner described in this count were done within the scope of his office with Phoenix. Therefore, Phoenix is also liable for Meisner's violations of Sections 4b(a)(2)(i) and (iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

44. Meisner, directly or indirectly, controlled Phoenix and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Phoenix's violations alleged in this count. Meisner is thereby liable for Phoenix's violations of Sections 4b(a)(2)(i) and (iii) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

45. Each act of misrepresentation or misappropriation of pool participant funds from 2004 through April 2008, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii).

COUNT TWO
VIOLATIONS OF SECTION 4b(a)(ii) OF THE ACT:
FRAUD BY PROVIDING FALSE STATEMENTS TO POOL PARTICIPANTS

46. The allegations set out in paragraphs 1 through 39 are re-alleged and incorporated herein by reference.

47. Since at least 2004 through April 2008, Defendants violated Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii), in that they have willfully made or caused to be made false reports or statements regarding the Phoenix pool to pool participants.

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

49. The actions and omissions of Meisner described in this count were done within the scope of his office with Phoenix. Therefore, Phoenix is also liable for Meisner's violations of Section 4b(a)(2)(ii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

50. Meisner, directly or indirectly, controlled Phoenix and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Phoenix's violations alleged in this count. Meisner is thereby liable for Phoenix's violations of Section 4b(a)(2)(ii) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

51. Each false report or statement made from 2004 through April 2008, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii).

COUNT THREE
VIOLATIONS OF SECTION 4o(1) OF THE ACT:
FRAUD BY A COMMODITY POOL OPERATOR AND AN ASSOCIATED
PERSON OF A COMMODITY POOL OPERATOR

52. The allegations set out in paragraphs 1 through 39 are re-alleged and incorporated herein by reference.

53. Since at least 2003 through the present, Phoenix acted as a CPO in that it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, and has solicited, accepted or received funds, securities or property from others for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

54. Since at least 2003 through the present, Meisner acted as an AP of Phoenix in that he was associated with Phoenix as an officer, employee, and/or agent in a capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool and/or (ii) the supervision of any person or persons so engaged.

55. From approximately 2004 through the present, Defendants violated Section 4o(1) of the Act, 7 U.S.C. §6o(1), in that they directly or indirectly employed or are employing a device, scheme, or artifice to defraud commodity pool participants or prospective commodity pool participants, or have engaged or are engaging in transactions, practices or courses of business that operated as a fraud or deceit upon commodity pool participants or prospective commodity pool participants by using the mails or other means or instrumentalities of interstate commerce, and by means of the acts and practices described in paragraphs 1 through 38 above.

56. The actions of Meisner described in this count were done within the scope of his office with Phoenix. Therefore, Phoenix is also liable for Meisner's violations of Section 4o(1) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

57. Meisner, directly or indirectly, controlled Phoenix and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Phoenix's violations alleged in this count. Meisner is thereby liable for Phoenix's violations of Section 4o(1) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

58. Each act of engaging in a transaction, practice or a course of business that operated as a fraud or deceit upon commodity pool participants or prospective commodity pool participants during the relevant time, including but not limited to the acts and practices specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1).

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

59. The allegations set out in paragraphs 1 through 39 are re-alleged and incorporated herein by reference.

60. Phoenix has acted as a CPO of the Pool since at least 2003, in that it accepted and received funds from pool participants for the purpose of trading commodity futures and engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, and has solicited, accepted or received funds, securities or property from others for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market without

the benefit of registration as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

61. Meisner, directly or indirectly, controlled Phoenix and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Phoenix's violations alleged in this count. Meisner is thereby liable for Phoenix's violations of Section 4m(1) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

62. Each use of the mails or any means or instrumentality of interstate commerce in connection with his business as a CPO without proper registration during the relevant time, including but not limited to those specifically alleged here, is alleged as a separate and distinct violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

COUNT FIVE
VIOLATIONS OF REGULATIONS 4.21 AND 4.22
FAILURE TO PROVIDE POOL DISCLOSURE DOCUMENTS AND ACCOUNT
STATEMENTS

63. The allegations set out in paragraphs 1 through 39 are re-alleged and incorporated herein by reference.

64. Regulation 4.21, 17 C.F.R. § 4.21, requires that, prior to soliciting, accepting or receiving funds, a CPO must furnish the prospective pool participant with a written "Disclosure Document" containing specific information set forth by regulation. In addition, prior to accepting or receiving funds, a CPO is required to receive from prospective pool participants an acknowledgement signed and dated by the prospective participants that they received the Disclosure Document.

65. Regulation 4.22, 17 C.F.R. § 4.22, requires that a CPO, registered or required to be registered under the Act, periodically distribute to each pool participant an account statement containing the information required by regulation.

66. As alleged above, during the relevant period, Phoenix failed to furnish prospective pool participants with a written Disclosure Document and failed to receive signed and dated acknowledgements from the prospective pool participants stating that they received the Disclosure Document in violation of Regulation 4.21, 17 C.F.R. § 4.21.

67. As alleged above, during the relevant period, Phoenix failed to furnish pool participants with account statements containing the information required by regulation, in violation of Regulation 4.22, 17 C.F.R. § 4.22.

68. Meisner, directly or indirectly, controlled Phoenix and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Phoenix's violations alleged in this count. Meisner is thereby liable for Phoenix's violations of Regulations 4.21 and 4.22, 17 C.F.R. § 4.21 and 4.22 pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

69. Each failure by Phoenix to provide a pool participant with a Disclosure Document and/or account statement during the relevant time, including but not limited to those specifically alleged here, is alleged as separate and distinct violations of Regulations 4.21 and 4.22, 17 C.F.R. § 4.21 and 4.22.

COUNT SIX

DISGORGEMENT OF POOL PARTICIPANT FUNDS FROM THE RELIEF DEFENDANT

70. The allegations set out in paragraphs 1 through 39 are re-alleged and incorporated herein by reference.

71. The Defendants have defrauded prospective pool participants and pool participants in connection with soliciting funds for the trading of commodity futures contracts.

72. The Defendants have misappropriated pool participant funds.

73. V. Meisner has received funds that were obtained as a result of the Defendants' fraud.

74. V. Meisner has no legitimate entitlement to, or interest in, the funds derived or received as a result of the Defendants' fraudulent conduct.

75. V. Meisner should be required to disgorge the funds that she received from the Defendants' fraudulent conduct, or the value of those funds that she may have subsequently transferred to third parties.

76. By reasons of the foregoing, V. Meisner holds funds in constructive trust for the benefit of the Phoenix pools' participants who were victimized by the Defendants' fraud.

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 enter:

A. An order finding Defendants each liable for violating Sections 4b(a)(i)-(iii), 4m(1) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(i)-(iii), 6m(1) and 6o(1) (2006), and Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21 and 4.22 (2008).

B. An order of preliminary injunction pursuant to Section 6c(a) of the Act restraining Defendants and all persons or entities insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants wherever located;
2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of the Defendants wherever located, including all such records concerning Defendant's business operations;
3. Withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, or other property, wherever situated, including, but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes, and all funds on deposit in any financial institution, bank, or savings and loan account held by, under the control of, or in the name of Defendants.

C. Orders of preliminary and permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly engaging in conduct in violation of Sections 4b(a)(2)(i), (ii) and (iii), 4m(1), and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (ii) and (iii), 6m, and 6o(1) (2006); and Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21 and 4.22 (2008);

D. Orders of preliminary and permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly

1. trading on or subject to the rules of any registered entity, at that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);

2. entering into any transactions involving commodity futures, options on commodity futures, and/or commodity options, as that term is defined in Regulation 32.1(b)(1) (“commodity options”), for their own personal account or for any account in which they have a direct or indirect interest
3. having any commodity futures, options on commodity futures and/or commodity options traded on their behalf;
4. 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 futures, options on commodity futures, and/or commodity options;
5. soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, and/or commodity options;
6. 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 that the Defendants shall be permitted to engage in activity as a commodity trading advisor, as that term is defined by Section 1a(6) of the Act, 7 U.S.C. § 1a(6) (“CTA”), provided that they do not engage in any of the activities proscribed by Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9);
7. acting as a principal, agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except that the Defendants shall be permitted to act as a principal, agent or any other officer or employee of any CTA that does not engage in any of the activities proscribed by Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9); and
8. any business activity related to trading commodity futures, options on commodity futures, and/or commodity options.

E. An order directing that Defendants make an accounting to the Court of all of Defendants’ assets and liabilities, together with all funds Defendants received from and paid to pool participants and other persons in connection with commodity futures and options transactions or purported commodity futures and options transactions, including the names, mailing addresses, email addresses and telephone numbers of any such persons from whom they received such funds from September 2004 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from

pool participants, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from May 2003 to and including the date of such accounting;

F. An order requiring Defendants immediately to identify and provide an accounting for all assets and property that they currently maintain outside the United States, including, but not limited to, all funds on deposit in any financial institution, futures commission merchant, bank, or savings and loan accounts held by, under the control of, or in the name of Michael Meisner, V. Meisner, Phoenix Diversified Investment Corporation, whether held jointly or otherwise, and requiring them to repatriate all funds held in such accounts by paying them to the Clerk of the Court, or as otherwise ordered by the Court, for further disposition in this case.

G. An order requiring Defendants to disgorge to any officer appointed or directed by the Court all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices that constitute violations of the Act and Regulations as described herein, including pre-judgment interest;

H. An order requiring V. Meisner, and any third party transferee, to disgorge pursuant to such procedure as the Court may order, all funds or other benefits from funds received directly or indirectly, from acts or practices that constitute violations of the Act and Regulations as described herein, including pre-judgment interest;

I. An order requiring Defendants to make restitution by making whole each and every pool participant or other person whose funds were received or utilized by them

in violation of the provisions of the Act and Regulations as described herein, including pre-judgment interest;

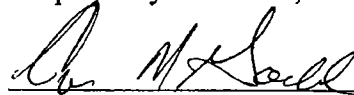
J. An order requiring Defendants to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of: (1) triple the monetary gain to Defendants for each violation of the Act and/or Regulations; or (2) a penalty of \$120,000 for each such violation committed prior to October 23, 2004 or \$130,000 for each such violation committed on or after October 23, 2004;

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

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

Date: September 23, 2008

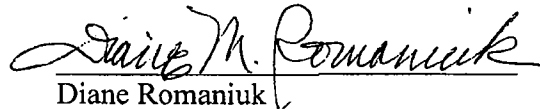
Respectfully submitted,



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Diane Romaniuk

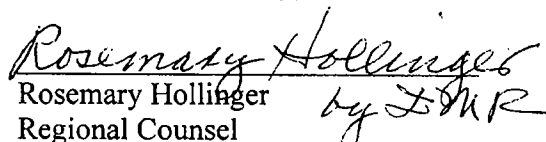
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JS 44 (Rev. 2/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

| | |
|---|---|
| <p>I. (a) PLAINTIFFS</p> <p>Commodity Futures Trading Commission</p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number)</p> <p>Ava Gould, Commodity Futures Trading Commission 525 W. Monroe, Suite 1100 Chicago, IL 60661 (312) 596-0535 (See attachment for other attorneys)</p> | <p>DEFENDANTS 08-81044</p> <p>Michael A. Meisner, Phoenix Diversified Investment Corporation, Victoria R. Meisner</p> <p>County of Residence of First Listed Defendant <u>Palm Beach</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.</p> <p>Attorneys (If Known) Sherri B. Simpson, Esq., H. Scott Hecker, Esq., CIV-RYSKAMP Magistrate Judge, VITUNAC</p> |
|---|---|

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

| | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

W.P.B. 08-81044 - CV-RYSKAMP-VITUNAC

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|--|--|--|--|--|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | <p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | <p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 740 State Reapportionment <input type="checkbox"/> 741 Air Trust <input type="checkbox"/> 7430 and Banking <input type="checkbox"/> 7450 Commerce <input type="checkbox"/> 7460 Corporation <input type="checkbox"/> 7470 Intestate, Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Set TV <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | LABOR | | |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | | |

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Re-filed- (see VI below)

4 Reinstated or Recopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). a) Re-filed Case YES NO b) Related Cases YES NO

(See instructions second page): JUDGE (See Notice of Related Cases) DOCKET NUMBER

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

Plaintiff CFTC brings this action to enjoin the defendants' violations of the C.E.A., 7 U.S.C. 1 et. seq. (1994), as amended (2002) and the Commission Regulations promulgated thereunder, 17 C.F.R. 1 et. seq. (2008)

LENGTH OF TRIAL via 7-10 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD: *Sherri B. Simpson* DATE: 9/23/08

FOR OFFICE USE ONLY

AMOUNT WAIVED RECEIPT # _____ IFP _____

FILED BY
 2008 SEP 23
 CLERK OF DISTRICT COURT
 MIAMI, FLORIDA

Attachment – Attorneys for Plaintiff

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