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CENTRAL DISTRICT OF CALIF.
LOS ANGELES

DUPLICATE

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

16 U.S. COMMODITY FUTURES)
17 TRADING COMMISSION,)
18 Plaintiff,)
19 vs.)
20 Monica Sue Schiera, also known as)
21 Monica Schiera-Main and Monica S.)
22 Montes; Brian Main; Gemancer, Inc., a)
23 Nevada Corporation; Gemancer II, Inc.,)
24 a Nevada Corporation; and Trade Pro,)
25 Inc., a California Corporation,)
26 Defendants; and)
27 Moni Inc., a Nevada Corporation; Body)
28 Blasters, a California Corporation; Ria)
Riviera, Inc., a Nevada Corporation;)
Success Direct, a Nevada Corporation;)
and Tri Lynx, Inc., a Nevada)
Corporation,)
Relief Defendants.)

Case No. CV05 2660

COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF AND
FOR CIVIL PENALTIES
UNDER THE COMMODITY
EXCHANGE ACT, AS
AMENDED, 7 U.S.C. §§ 1-25

JUDGE:
TIME:
DATE:
PLACE

CAS
JULIA

1 **I. JURISDICTION AND VENUE**

2 1. Plaintiff United States Commodity Futures Trading Commission
3 (“CFTC” or “Commission”) brings this action against the defendants for engaging
4 in acts and practices that violate provisions of the Commodity Exchange Act, 7
5 U.S.C. § 1 *et seq.* (2002) (the “Act”) and Commission Regulations promulgated
6 thereunder (“Regulations”) 17 C.F.R. § 1.1 *et seq.* (2004).

7 2. This Court has jurisdiction over this action pursuant to Section 6c of
8 the Act, 7 U.S.C. § 13a-1 (2002), which authorizes the Commission to seek
9 injunctive relief against any person whenever it shall appear that such person has
10 engaged, is engaging, or is about to engage in any act or practice constituting a
11 violation of any provision of the Act or any rule, regulation or order thereunder.

12 3. Venue properly lies with this Court pursuant to Section 6c(e) of the
13 Act, 7 U.S.C. § 13a-1(e) (2002), in that Defendants are found in, inhabit, or
14 transact business in this District, and the acts and practices in violation of the Act
15 have occurred, are occurring, or are about to occur within this district, among other
16 places. Specifically, Defendants reside in this district, Defendant corporations
17 maintain offices in this district, send mail from this district, and transact the
18 majority of their business within this district.

19 **II. SUMMARY**

20 4. Since at least April 2001 to the present (“relevant time period”),
21 Defendants Monica Schiera (“Schiera”) and her husband, Brian Main (“Main”),
22 individually and through three entities they caused to be incorporated, incorporated
23 or operated also named as Defendants- Gemancer, Inc. (“Gemancer I”), Gemancer
24 II, Inc. (“Gemancer II”) (collectively, “Gemancer”), and Trade Pro, Inc. (“Trade
25 Pro”) (collectively, the “Defendants”). Schiera and Main operated Gemancer I,
26 Gemancer II and Trade Pro as a common enterprise (all three collectively, the
27 “Gemancer Common Enterprise”). Through this common enterprise, the
28 Defendants were in the business of advising others regarding the trading of

1 commodity futures and options on commodity futures through several commodity
2 futures advisory services, including commodity futures and options trading
3 strategies, trading software, seminars and trading recommendations for commodity
4 futures and options contracts. The Defendants fraudulently marketed their
5 advisory services by making misrepresentations on at least four websites they
6 operated, and in mass mailings of solicitation materials and brochures via the
7 United States mail to thousands of public consumers. As a result of their
8 misleading advertisements and solicitations, the Defendants obtained at least \$2.5
9 million dollars from more than one thousand United States consumers.

10 5. During the relevant time, while acting as Commodity Trading
11 Advisors (“CTAs”) Gemancer I and Trade Pro, through Schiera and Main,
12 fraudulently overstated the profit potential and success of their trading systems and
13 strategies, misrepresented the risk involved in trading commodity futures and
14 options contracts, and misrepresented Schiera’s net worth. In addition, Gemancer I
15 and Trade Pro, through Schiera and Main, omitted the material facts that Schiera
16 has an unprofitable trading record and is a convicted felon and failed to include a
17 hypothetical disclaimer, all in violation of Sections 4o(1)(A) and 4o(1)(B) of the
18 Act, 7 U.S.C. § 6o (2002), and Commission Regulation 4.41(a) and (b), 17 C.F.R.
19 § 4.41(a) and (b) (2004).

20 6. During the relevant time, Schiera and Main were employees and
21 officers of Gemancer I and Trade Pro, as well as controlling persons of Gemancer I
22 and Trade Pro.

23 7. Moni Inc. (“Moni”), Ria Riviera, Inc. (“Ria Riviera”), Body Blasters,
24 Inc. (“Body Blasters”), Success Direct, Inc. (“Success Direct”), and Tri Lynx, Inc.
25 (“Tri Lynx”) (collectively the “Relief Defendants”) have received funds or
26 otherwise benefited from funds that are directly traceable to the funds obtained
27 from the Gemancer Common Enterprise customers through fraud. The Relief
28

1 Defendants do not have a legitimate claim to those funds. Therefore, the
2 Commission seeks disgorgement from the Relief Defendants.

3 8. Accordingly, pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a)
4 (2002), the Commission brings this action to enjoin the unlawful acts and practices
5 of the Defendants and to bar them from engaging in the solicitation of customers in
6 relation to any commodity futures and options related activity. The Commission
7 seeks civil monetary penalties in the amount of not more than the higher of
8 \$120,000 for violations occurring prior to October 23, 2004, and \$130,000 for
9 violations occurring after October 23, 2004, or triple the monetary gain to
10 Defendants for each violation of the Act. In addition, the Commission seeks
11 disgorgement of Defendants' ill-gotten gains, restitution to customers, prejudgment
12 interest, the appointment of an equity receiver if necessary, and such other
13 equitable relief as the Court may deem necessary or appropriate.

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

17 **III. THE PARTIES**

18 **A. Plaintiff**

19 10. Plaintiff United States Commodity Futures Trading Commission is an
20 independent federal regulatory agency that is charged with responsibility for
21 administering and enforcing the provisions of the Commodity Exchange Act,
22 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated thereunder, 17
23 C.F.R. §§ 1 *et seq.* (2004).

24 **B. Defendants**

25 **Individuals**

26 11. Defendant Monica Schiera currently resides in Canyon Country,
27 California. From February 24, 2004 till March 4, 2005 she was incarcerated at
28 Federal Correctional Institution ("FCI") Victorville, a minimum security federal

1 prison located in Victorville, California. She was incarcerated because she violated
2 the terms of her supervised release that followed her 2000 conviction for mail fraud
3 in connection with an advanced fee loan scam. *U.S. v. Schiera*, No. 98-CR-142
4 (C.D.Cal. October 26, 1998). Schiera has never been registered with the
5 Commission in any capacity.

6 12. From the fall of 2001 to at least February 2004, Schiera signed sales
7 solicitation materials and advertisements for Gemancer I “Decoding” trading
8 strategies and Trade Pro software. Prior to her current incarceration, she was listed
9 as the president, principal and 50% owner of Trade Pro. She is the sole signatory
10 for the Trade Pro Bank of America account. From the summer of 2002 to spring of
11 2004, Schiera conducted seminars throughout the United States on commodity
12 futures trading. Since the fall of 2001, Schiera has held herself out as a
13 “millionaire” and successful commodity futures trader. On March 19, 2003,
14 Schiera filed for individual Chapter 7 bankruptcy, *In re Schiera*, No. 03-12373
15 (Bankr. C.D. Cal., March 19, 2003). She was discharged from her debts on July 1,
16 2003. Schiera is an officer and employee of Gemancer I and Trade Pro.

17 13. Defendant Brian Main is married to Schiera and resides in Canyon
18 Country, California. Main is listed as the president, secretary, and treasurer of
19 Gemancer I. Main is also listed as the vice president, second principal and 50%
20 owner of Trade Pro. Main has signatory authority over Gemancer I and Gemancer
21 II bank accounts. In February 2004, Main testified at Schiera’s violation of
22 supervised release hearing that he is the “owner” of Gemancer and Trade Pro. He
23 has never been registered with the Commission in any capacity. Main is an officer
24 and employee of Gemancer I and Trade Pro.

25 **Entities**

26 14. Defendant Gemancer, Inc. is a Nevada corporation, incorporated on
27 April 4, 2001. Initially, the company name was spelled “Germancer” but filed a
28 name change to “Gemancer” on April 19, 2001. Its principal place of business is

1 currently listed as 28305 Industry Drive, Valencia, California. Gemancer I, among
2 other things, is and has been engaged in the business of advertising and soliciting
3 customers to purchase commodity futures and options trading advisory services,
4 including software, written materials, and in-person seminars. It has never been
5 registered with the Commission in any capacity. Brian Main is listed as its
6 president, secretary, and treasurer. Gemancer was created and jointly operated by
7 Schiera and Main.

8 15. Defendant Gemancer II, Inc. is a Nevada corporation incorporated on
9 March 7, 2003 but currently is in default. Its principal place of business is
10 currently listed as 28305 Industry Drive, Valencia, California, the same as
11 Gemancer I. Gemancer II accepts deposits from clients for the purchase of
12 Gemancer I and Trade Pro commodity futures and options trading advisory
13 services. It has never been registered with the Commission in any capacity. Main
14 owns Gemancer II. It shares offices and employees with Gemancer I, and its funds
15 are commingled with Gemancer I funds.

16 16. Defendant Trade Pro, Inc. is a California Corporation, incorporated on
17 May 19, 2003. Initially, Monica Schiera was listed as the registered agent. Its
18 principal place of business is 28305 Industry Drive, Valencia, California, the same
19 as the Gemancer entities. Trade Pro purports to have created and sells a software
20 program that makes specific commodity futures trading buy and sell
21 recommendations. It has never been registered with the Commission in any
22 capacity. Trade Pro shares ownership, offices, and employees with Gemancer I.
23 According to Defendant Main, Gemancer and Trade Pro are "one company," and
24 constitute a common enterprise.

25 C. Relief Defendants

26 17. Relief Defendant Moni Inc. is a revoked Nevada corporation, initially
27 incorporated on June 30, 2000. Its listed address is the residential address of
28 Defendant Schiera in Castaic, California. Defendant Schiera is listed as the

1 president and secretary of Moni and is the sole signatory on the primary Moni bank
2 account, and her name is imprinted on all of the checks. In addition, Moni
3 provided funds that were deposited into commodity futures trading accounts in the
4 name of Monica Schiera. Moni received funds that can be traced directly to
5 Gemancer I's fraudulent activity, and does not have a legitimate claim to these
6 funds. Schiera pays for personal expenses through this entity.

7 18. Relief Defendant Ria Riviera, Inc., is a Nevada corporation, currently
8 in permanent default status, incorporated on January 28, 1998. The address on the
9 checks is a previous residential address of Schiera. Ria Riviera received funds that
10 can be traced directly to Gemancer I's fraudulent activity, and does not have a
11 legitimate claim to these funds.

12 19. Relief Defendant Body Blasters, Inc. is a California corporation
13 incorporated on October 29, 2003. Schiera is listed as its registered agent. Its
14 address is listed as 28305 Industry Drive, Valencia, California, 91355, the same as
15 Gemancer. Schiera is listed as president and "CFO" and is the sole signatory on
16 the Bank of America checking account for Body Blasters. Gemancer and Trade
17 Pro pay Body Blasters' general operating expenses. Body Blasters received funds
18 that can be traced directly to Gemancer I's fraudulent activity, and does not have a
19 legitimate claim to these funds.

20 20. Relief Defendant Success Direct, Inc. is a Nevada corporation,
21 currently in default status, incorporated on March 12, 2003. It has the same
22 registered agent and officers as Gemancer II. Schiera is listed as president on the
23 Bank of America checking account. Success Direct received funds that can be
24 traced directly to Gemancer's fraudulent activity, and does not have a legitimate
25 claim to these funds.

26 21. Relief Defendant Tri Lynx, Inc., is a Nevada Corporation, currently in
27 default status, incorporated on March 11, 2003. Defendant Main is the President,
28 Secretary, Treasurer, and Director of Tri Lynx and is listed as the owner on the

1 Bank of American checking account. Tri Lynx received funds that can be traced
2 directly to Gemancer's fraudulent activity, and does not have a legitimate claim to
3 these funds.

4 **IV. FACTS COMMON TO ALL COUNTS**

5 **A. Statutory Background**

6 22. A commodity trading advisor ("CTA") is defined in Section 1a(6) of
7 the Act, 7 U.S.C. § 1a(6), and means, in part, any person who, for compensation or
8 profit, engages in the business of advising others, either directly or through
9 publications, writings, or electronic media, as to the value of or the advisability of
10 trading in any contract of sale of a commodity for future delivery made or to be
11 made on or subject to the rules of a contract market or derivatives transaction
12 execution facility.

13 23. Section 4o(1) of the Act, 7 U.S.C. 6o(1), makes it unlawful for a CTA,
14 by use of the mails or any means or instrumentality of interstate commerce, directly
15 or indirectly: (A) to employ any device, scheme, or artifice to defraud any client or
16 participant or prospective client or participant; or (B) to engage in any transaction,
17 practice, or course of business which operates as a fraud or deceit upon any client
18 or prospective client.

19 24. Commission Regulation 4.41(a) makes it unlawful for a CTA, or any
20 principal thereof, to advertise in a manner which: (1) employs any device, scheme
21 or artifice to defraud any client or prospective client; or (2) involves any
22 transaction, practice or course of business which operates as a fraud or deceit upon
23 any client or any prospective client.

24 25. Commission Regulation 4.41(b) prohibits any person from presenting
25 the performance of any simulated or hypothetical commodity interest account,
26 transaction in a commodity interest or series of transactions in a commodity
27 interest of a CTA, unless it is accompanied by the proscribed disclaimer set out in
28 regulation 4.41(b)(1)(i) or (ii).

1 **B. How the Scheme Worked: Defendants' Business**

2 26. In April 2001, Schiera and Main created Gemancer for the purpose of
3 marketing commodity futures and options advisory services.

4 27. Gemancer, among other things, solicits members of the retail public to
5 purchase its various commodity futures and options trading advisory services.
6 Gemancer also advertises and solicits a "get rich quick" scheme involving real
7 estate that is not the subject of this lawsuit, except to the extent that customer funds
8 were commingled. Financial records show that the commodities futures trading
9 advisory services are a substantial part of Gemancer's income.

10 28. Among other things, Gemancer engages in the business of soliciting
11 others to purchase and subscribe to its commodity futures and options on
12 commodity futures trading advice, through its marketed materials, websites,
13 members-only subscription newsletters, and in person seminars or "boot camp"
14 training seminars. The commodity futures trading advisory services created,
15 advertised and marketed have evolved over the relevant time period. The advisory
16 services, including but not limited to, binders, bound packets of materials
17 purporting to be manuals, "special reports," audiotapes, videotapes, and
18 newsletters, provide commodity futures and options trading advice to clients and
19 potential clients.

20 29. In May 2003, Schiera created Trade Pro for the sole purpose of
21 creating and marketing a commodity futures and options trading software program
22 that is marketed by both Trade Pro and Gemancer.

23 30. Trade Pro engages in the business of advising others through its in
24 person training seminars, subscription based newsletters and software as to the
25 value or the advisability of trading in commodity futures and options contracts.
26 The *Trade Pro* software is proprietary software which purports to identify specific
27 buy and sell patterns for predicting price movements in commodity futures
28 contracts and options on futures contracts in order to provide the user with signals

1 for when to buy and sell. The Trade Pro in-person training seminars teach the
2 “Reverse Market Timing System,” a system to trade commodity futures contracts,
3 and the members only website provides commodity futures and options trading
4 advice.

5 31. As part of the common enterprise, Schiera and Main were, and still
6 are, responsible for distributing Trade Pro’s promotional literature, newsletters and
7 all programs and documentation necessary for the clients to obtain the software.

8 32. Defendants Gemancer I and Trade Pro acted as CTAs in that they, for
9 compensation or profit, engage in the business of advising others, either directly or
10 indirectly, during seminars and through publications, writings, websites, and
11 software as to the value of or the advisability of trading in any contract of sale of a
12 commodity for future delivery made or to be made on or subject to the rules of a
13 contract market or derivatives transaction execution facility. Gemancer I and
14 Trade Pro, through Schiera and Main, commit their fraudulent acts and practices
15 while acting as CTAs. Schiera and Main engage in their fraudulent conduct as
16 officers and employees of Gemancer I and Trade Pro.

17 33. Between June 2001 and April 2002, Gemancer I, through Main,
18 registered and operated two websites: gemancer.com and commodityfortunes.com.
19 Both websites were used to solicit members of the public to obtain commodity
20 futures and options trading advisory services from Gemancer.

21 34. Between June 2003 and the present, Gemancer I, through Main,
22 registered and operated two additional websites: tradeprosoftware.com and
23 tradeprofutures.com. These websites were used to solicit members of the public to
24 buy and use *Trade Pro*, commodity trading computer software, and to attend Trade
25 Pro seminars. The Defendants created the Trade Pro software.

26 35. Gemancer II appears to be a sister company to Gemancer I. Gemancer
27 I client funds are deposited into Gemancer II’s bank account. Gemancer I and
28

1 Trade Pro's employees and service providers are paid out of both Gemancer I and
2 Gemancer II bank accounts.

3 **C. Defendants' Misrepresentations**

4 36. The solicitations and promotional materials distributed by the
5 Defendants to consumers fraudulently overstate the profit potential of their
6 systems, misrepresent the risk involved in trading commodity futures and options
7 contracts and misrepresent Schiera's success at trading commodity futures contract.
8 In addition, they omit the material facts that Schiera has an unprofitable trading
9 record and is a convicted felon.

10 **1. Promotional Materials Misrepresent the Success of Gemancer I's**
11 **and Trade Pro's Trading Advisory Services**

12 37. Since at least April 2002, Gemancer I and Trade Pro, through Schiera
13 and Main, made material misrepresentations to potential clients in the promotion
14 and solicitation of their commodity futures and options trading advisory services
15 when it misrepresented the success of their trading systems by making promises
16 and guarantees of profits. Specifically, promotional materials state:

- 17 a. Schiera has been "consistently profiting over 90% of my trades: by
18 following her trading strategies, and the Gemancer "Decoding
19 System" "...guarantees that 90% or more of your trades will make
20 you money..."
- 21 b. the "Reverse Market Timing System" is a "profitable strategy" and
22 "...once you discover this strategy, you'll wonder how ANYONE can
23 trade successfully without it."
- 24 c. Trade Pro software has "dramatically increased [Schiera's] profit
25 percentage" and "Trade Pro [software] will give you the signals you
26 need to successfully trade the highly lucrative indices [S&P500]"

27 38. These statements are false. No registered futures commission
28 merchant ("FCM") carries any commodity futures accounts identified for

1 Gemancer I, Gemancer II, Trade Pro, or Brian Main. Since November 2002,
2 Schiera opened and traded three commodity futures trading accounts held in her
3 own name. Schiera has had net losses in all three commodity futures trading
4 accounts that she has traded.

5 39. Schiera drafted, reviewed, and approved of statements a and c and
6 knew they were false. Main reviewed each of these statements and knew they were
7 false. Main and Schiera each took steps to convey these false statements to
8 potential clients and clients.

9 **2. Promotional Materials Misrepresent Defendant Schiera's**
10 **Commodity Trading Success and Net Worth.**

11 40. Since at least April 2002, Gemancer I and Trade Pro, through Main
12 and Schiera, made material misrepresentations as to her success trading commodity
13 futures and options contracts and claims about her net worth. Specifically, in the
14 Gemancer promotional materials, the title "Millionaire" was included with
15 Schiera's name, Schiera claims that over 90% of her trades are consistently
16 profitable, "pulling in millions of dollars to date" by utilizing her trading strategies
17 in the Gemancer materials. In addition, according to the Trade Pro solicitation
18 materials, Schiera claims that the Trade Pro software resulted in a 114% profit "in
19 2 days with the S&P500."

20 41. These representations are false and misleading. Schiera drafted,
21 reviewed, and approved the statements and knew they were false. Main reviewed
22 each of these statements and knew they were false. Main and Schiera each took
23 steps to convey these false statements to potential clients and clients.

24 **3. Defendants' Misrepresentations About the Risks of Trading**
25 **Commodity Futures and Options Contracts**

26
27 42. Since at least April 2002, Gemancer I and Trade Pro, through Main
28 and Schiera, made material misrepresentations to clients and potential clients in the
promotion of their commodity futures and options trading advisory services on the

1 four websites and in promotional material as to the risks involved in trading
2 commodity futures and options contracts. Specifically, the materials minimized
3 the risks involved in trading commodity futures and options, making claims such
4 as, trading commodities “is not risky at all”, “how to make thousands a week
5 trading options with almost no risk!”, and the statement “although the results of
6 Trade Pro have been extremely effective and profitable,” was added to a purported
7 risk disclosure, thus undermining the risk.

8 43. These statements are false and misleading. Schiera drafted, reviewed,
9 and approved of the statements and knew they were false. Main reviewed each of
10 these statements and knew they were false. Main and Schiera took steps to convey
11 these false statements to potential clients and clients.

12 **D. Omissions in the Promotional Material**

13 44. Since at least April 2002, Gemancer I and Trade Pro, through Schiera
14 and Main, failed to disclose that the touted commodity futures trading results were
15 hypothetical trading results. For example, the Advanced Trading Secrets
16 Workshop promotional materials state, “Last year it was calculated that 92.3% of
17 my trades were successful. The year before it was 87.1%. This year, so far, I’m at
18 90.8%.”

19 45. By omitting the fact that these results were based on hypothetical
20 trading, these statements were misleading. Schiera drafted, reviewed, and
21 approved of the statements and knew the statements omitted the material
22 information that the trading was hypothetical. Main reviewed each of these
23 statements and knew the statements omitted the material information that the
24 trading was hypothetical. Main and Schiera each took steps to convey these
25 statements to potential clients and clients.

26 46. During the relevant time period, Gemancer I and Trade Pro, through
27 Schiera and Main, also failed to disclose in their solicitation materials that Schiera
28

1 has a prior federal felony fraud conviction. Main, Schiera's husband, knew of her
2 criminal background.

3 47. Schiera drafted, reviewed, and approved of the promotional materials
4 and knew they did not include her felony conviction. Main reviewed the
5 promotional materials and knew they did not include Schiera's felony conviction.
6 Main and Schiera took steps to convey these promotional materials to potential
7 clients and clients.

8 **E. Main and Schiera are Controlling Persons of Gemancer I and**
9 **Gemancer II, and are Liable For Their Violations**

10 48. During relevant time period, Main and Schiera individually and
11 together executed control over the Gemancer corporate entities.

12 49. During the relevant time period, Main signed the checks that paid for
13 the everyday business expenses of Gemancer I. Main signed the checks that helped
14 market and distribute the Gemancer I trading systems, including payments for
15 employees, mailing lists, printing brochures, and postage. Main's name was signed
16 on the checks.

17 50. Main opened bank accounts in the name of Gemancer I and Gemancer
18 II, and is the signatory on bank accounts for Gemancer I and Gemancer II at Bank
19 of America. Main used these bank accounts to transfer funds from one entity to
20 another. Those funds were used to pay for business expenses in creating and
21 soliciting clients to purchase the commodity futures and options trading systems.
22 Main opened at least two credit card accounts that were connected to the Bank of
23 America accounts as a means of directing funds.

24 51. Main reviewed all promotional materials prior to sending to potential
25 customers.

26 52. Both Main and Schiera had power to hire and fire employees and
27 vendors.
28

1 53. Schiera trained sales staff and provided the information that was to be
2 used by telephone sales representatives.

3 54. Schiera wrote and signed all promotional materials of Gemancer I.
4 Schiera presented at all seminars and performed on the video and audio recordings.
5 Schiera opened the trading accounts for trading commodity futures contracts.

6 55. At times, Schiera used Main's signature stamp to sign checks for the
7 Gemancer I and Gemancer II bank accounts.

8 **F. Main and Schiera Are Controlling Persons of Trade Pro, and Are**
9 **Liable For Its Violations**

10 56. Since at least May 2003, Main and Schiera controlled Trade Pro.

11 57. Schiera opened a bank account in the name of Trade Pro, and is the
12 sole signatory for Trade Pro's bank account. Schiera used the bank account to
13 transfer funds to and from the Gemancer Common Enterprise. In addition, Schiera
14 used this bank account to accept client funds for the purchase of the *Trade Pro*
15 software and commodity trading advisory services. Those funds and funds
16 transferred from Gemancer I and Gemancer II were used to pay for business
17 expenses in creating and soliciting clients to purchase the commodity futures and
18 options trading software. Moreover, Schiera signed all documents establishing a
19 merchant account for Trade Pro at the Canadian company Terra Payments, Inc.
20 (also known as Surefire Commerce, Inc. or Optimal Payments Inc.)

21 58. From Trade Pro's inception to the time she returned to federal prison
22 in February 2004, Schiera signed the promotional materials that market and
23 distribute the *Trade Pro* trading software. Schiera also claims to have developed
24 the software as well as profited greatly trading commodity futures using the
25 software.

26 59. Since Schiera's incarceration in February 2004, Main has edited the
27 promotional materials, used Schiera's signature stamp on checks, and continues to
28 solicit potential customers to purchase products through Trade Pro. Main makes

1 weekly visits to prison and obtains Schiera's input as to solicitation
2 recommendations, but maintains the power to incorporate them into the materials.

3 **V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

4 **COUNT I**

5 **VIOLATIONS OF SECTIONS 4o OF THE ACT AND VIOLATIONS OF**
6 **COMMISSION REGULATION 4.41(a)(1)**

7
8 60. The allegations contained in paragraphs 1 through 59 are realleged
9 and incorporated herein by reference.

10 61. During the relevant time period, Gemancer I and Trade Pro acted as
11 CTAs in that, for compensation or profit, they engaged in the business of advising
12 others as to the value or the advisability of trading in commodity futures and
13 commodity options.

14 62. Pursuant to Section 2(a)(1)(B) of the Act, during the relevant time
15 period, Gemancer I and Trade Pro violated Sections 4o(1)(A) and (B) of the Act
16 through the acts of their officers and employees, Schiera and Main, in that, by use
17 of the mails and the internet, they directly or indirectly employed a device, scheme,
18 or artifice to defraud clients or prospective clients, and they engaged in
19 transactions, practices or courses of business which operated as a fraud or deceit
20 upon such persons. The devices, schemes, artifices, transactions, practices or
21 courses of business included, but were not limited to, using false and misleading
22 promotional material which overstated the profit potential for the trading systems
23 they were selling, failing to adequately warn of the risks inherent in trading
24 commodity futures and commodity options, misrepresenting the level of risk
25 inherent in trading commodity futures and options contracts, and failing to disclose
26 material facts about Schiera's past trading performance and history of fraudulent
27 conduct.

1 63. During the relevant time period Schiera and Main, while acting as
2 officers and employees of Gemancer and Trade Pro, caused Gemancer I and Trade
3 Pro to violate Commission Regulation 4.41(a), pursuant to Section 2(A)(1)(B) of
4 the Act, in that as CTAs, they advertised in a manner that employed a device,
5 scheme or artifice to defraud customers or prospective customers or involved
6 transactions, practices, or courses of business that operated as a fraud or deceit
7 upon such persons as described in the preceding paragraphs.

8 64. Each material misrepresentation or deceptive omission made during
9 the relevant time including, but not limited to, those specifically alleged herein, is
10 alleged as a separate and distinct violation of Section 4o(1)(A) and 4o(1)(B) of the
11 Act and Commission Regulation 4.41(a).

12 65. During the relevant time period, Main and Schiera, directly or
13 indirectly controlled Gemancer I and Trade Pro respectively, and did not act in
14 good faith, or knowingly induced, directly or indirectly, the acts constituting
15 Gemancer I and Trade Pro's violations, and are thus liable for Gemancer I and
16 Trade Pro's violations of Sections 4o(1)(A) and 4o(1)(B) of the Act, and
17 Commission Regulation 4.41(a), pursuant to Section 13(b) of the Act.

18 66. During the relevant time period, Schiera and Main were employees or
19 agents for Gemancer I and Trade Pro, and their actions alleged in Paragraphs 26
20 through 59 above were undertaken within the scope that employment or agency.
21 Gemancer I and Trade Pro are therefore each liable as principals for the foregoing
22 acts of their employees or agents, Schiera and Main, by operation of Section
23 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

24 67. Defendants Gemancer I, Gemancer II and Trade Pro are also jointly
25 and severally liable for the acts and practices of Gemancer I and Trade Pro in that
26 they collectively comprise the Gemancer Common Enterprise.

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COUNT II

**VIOLATION OF COMMISSION REGULATION 4.41(b):
FAILURE TO PROVIDE DISCLOSURE REGARDING LIMITATIONS
OF HYPOTHETICAL TRADING RESULTS**

68. Paragraphs 1 through 59 of this Complaint are realleged and incorporated herein by reference.

69. Through the conduct described above, Gemancer I and Trade Pro, while acting as CTAs, and Schiera and Main while acting as officers and employees of Gemancer I and Trade Pro, presented the performance of simulated and hypothetical commodity interest accounts without prominently including the required disclosure, in violation of Section 4.41(b) of the Regulations, 17 C.F.R. § 4.41(b) (2004).

70. Each failure to include the required hypothetical disclosure, including those specifically alleged herein, constitutes a separate and distinct violation of Regulation 4.41(b).

71. During the relevant time period, Main and Schiera, directly or indirectly controlled Gemancer I and Trade Pro respectively, and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting Gemancer I and Trade Pro's violations, and are thus liable for Gemancer I's and Trade Pro's violations of Commission Regulation 4.41(b), pursuant to Section 13(b) of the Act.

72. During the relevant time period, Schiera and Main were employees or agents for Gemancer I and Trade Pro, and their actions alleged in Paragraphs 26 through 59 above were undertaken within the scope that employment or agency.

73. Gemancer I and Trade Pro are therefore each liable as principals for the foregoing acts of their employees or agents, Schiera and Main, by operation of Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

1 (2002), and Commission Regulations 4.41(a) and 4.41(b), 17 C.F.R. §§ 4.41(a) and
2 (b) (2004).

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

- 8 1. While acting as CTAs, employing any device, scheme, or artifice
9 to defraud any client or prospective client; or engaging in any
10 transaction, practice, or course of business which operates as a
11 fraud or deceit upon any client or prospective participant, by use of
12 the mails or any means or instrumentality of interstate commerce,
13 in violation of Section 4o(1) of the Act; or
- 14 2. While acting as CTAs, or principals thereof, advertising in a
15 manner which employs any device, scheme or artifice to defraud
16 any client or prospective client; or advertising in a manner which
17 involves any transaction, practice or course of business which
18 operates as a fraud or deceit upon any client or prospective client,
19 in violation of Regulation 4.41(a).

20 C. Enter an *ex parte* statutory restraining order and an order of
21 preliminary injunction pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a)
22 (2002), restraining Defendants and all persons insofar as they are acting in the
23 capacity of their agents, servants, successors, employees, assigns, and attorneys,
24 and all persons insofar as they are acting in active concert or participation with
25 Defendants who receive actual notice of such order by personal service or
26 otherwise, from directly or indirectly:

- 27 1. Destroying, mutilating, concealing, altering or disposing of any
28 books and records, documents, correspondence, brochures,
manuals, electronically stored data, tape records or other property
of Defendants, wherever located, including all such records
concerning Defendants' business operations;

- 1 2. Refusing to permit authorized representatives of the Commission
2 to inspect, when and as requested by those representatives, any
3 books and records, documents, correspondence, brochures,
4 manuals, electronically stored data, tape records or other property
5 of Defendants, wherever located, including all such records
6 concerning Defendants' business operations; and
7
8 3. Withdrawing, transferring, removing, dissipating, concealing or
9 disposing of, in any manner, any funds, or other property, wherever
10 situated, including but not limited to, all funds, personal property,
11 money or securities held in safes, safety deposit boxes and all
12 funds on deposit in any financial institution, bank or savings and
13 loan account held by, under the control of, or in the name of the
14 Defendants;

11 D. Enter an order directing that Defendants provide the Plaintiff
12 immediate and continuing access to Defendants' books and records, including
13 access to their computer files containing accounting information (i.e. Quickbooks,
14 or similar software), make an accounting to the Court of all of Defendants' assets
15 and liabilities, together with all funds they received from clients, including the
16 names, addresses and telephone numbers of any such clients from April 2001 up to
17 the date of such accounting, and all disbursements for any purpose whatsoever of
18 funds received from clients, including salaries, commissions, fees, loans and other
19 disbursements of money and property of any kind, from April 2001 up to and
20 including the date of such accounting. The accounting shall be provided in an
21 electronic format such as Quicken, Excel, or other accounting or electronic format
22 spreadsheet;

23 E. Enter an order requiring Defendants immediately to identify and
24 provide an accounting for all assets and property that they currently maintain
25 outside the United States, including but not limited to all funds on deposit in any
26 financial institution, futures commission merchants, bank or savings and loan
27 account held by, under the control of, or in the name of the Defendants, whether
28 jointly or otherwise, and requiring Defendants to repatriate all funds held in such

1 accounts by paying them to the Clerk of the Court or as otherwise ordered by the
2 Court, for further disposition in this case;

3 F. Enter an order prohibiting Defendants, all persons insofar as they are
4 acting in the capacity of agents, servants, employees, successors, assigns, or
5 attorneys of the Defendants, and all persons insofar as they are acting in active
6 concert or participation with Defendants who receive actual notice of the Order by
7 personal service or otherwise, from:

- 8 1. Engaging in the business of advising customers, giving price
9 quotations, or other information, either directly or through
10 publications, writings, or electronic media, as to the value or the
11 advisability of trading in any contract of sale of a commodity for
12 future delivery or an option thereon, except as provided for in
13 Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9) (2004), and
14 permanently prohibiting Defendants from engaging in any activity
15 requiring registration or exemption from registration, or acting as a
16 principal, agent or officer of any person registered, except as
17 provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9)
18 (2004).
- 19 2. Engaging in, controlling, or directing the trading of any
20 commodity futures and options accounts, on their own behalf or
21 for on behalf of any other person or entity, whether by power of
22 attorney or otherwise;
- 23 3. Introducing customers to any other person engaged in the business
24 of trading in commodity futures and options;
- 25 4. Placing orders in connection with the purchase or sale of
26 commodity futures and options contracts for themselves and
27 others; and
- 28 5. Otherwise engaging in any business activities related to
commodity futures and options trading.

26 G. Enter an order requiring Defendants and Relief Defendants to
27 disgorge to any officer appointed or directed by the Court or directly to their
28 customers all benefits received including, but not limited to, salaries, commissions,

1 loans, fees, revenues and trading profits derived, directly or indirectly, from acts or
2 practices which constitute violations of the Act as described herein, including pre-
3 judgment interest;

4 H. Enter an order requiring Defendants to make restitution by making
5 whole each and every customer whose funds were received or utilized by them in
6 violation of any provisions of the Act or Regulations thereunder as described
7 herein, including pre-judgment interest;

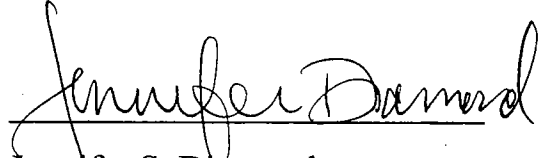
8 I. Enter an order requiring Defendants to pay civil monetary penalties
9 under the Act, to be assessed by the Court, in amounts of not more than the higher
10 of \$120,000 for each violation before October 24, 2004 and \$130,000 for
11 violations after October 24, 2004, or triple the monetary gain to Defendants for
12 each violation of the Act and Regulations described herein;

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

15 K. Enter an order for such further relief, as this Court may deem
16 necessary and appropriate under the circumstances.

17
18 Date: April 12, 2005

Respectfully Submitted,



Jennifer S. Diamond
Susan J. Gradman
Attorneys for Plaintiff
U.S. Commodity Futures
Trading Commission



KENT KAWAKAMI

(SIGNED BY

ABRAHAM C. MELTZER
CAL. STATE BAR # 162659
ON BEHALF OF KENT KAWAKAMI)

