

In the Matter of	:	CFTC Docket No. 02-15
	:	
Stephen Alan Pierce,	:	COMPLAINT AND NOTICE
individually and	:	OF HEARING PURSUANT TO
d/b/a Rapid Fire Swing Trading and	:	SECTIONS 6(c), 6(d) AND 8a(4)
The Chart Traders,	:	OF THE COMMODITY
	:	EXCHANGE ACT, AS AMENDED
	:	
Respondent.	:	
	:	

The Commodity Futures Trading Commission (“Commission”) has received information from its staff that tends to show, and the Commission’s Division of Enforcement (“Division”) alleges, that:

1. During the time period of at least March 2000 through the present (the “relevant time period”), Stephen Alan Pierce, individually and d/b/a “Rapid Fire Swing Trading and Chart Traders” (“Pierce”), a registered commodity trading advisor (“CTA”), used misleading and fraudulent advertising to solicit customers to purchase commodity futures trading recommendations over the internet. He fraudulently touted huge profits from use of his systems and mischaracterized the performance record of the systems as being based on actual trades, when it was actually based on simulated or hypothetical trades. Thus, Pierce violated Sections 4o(1)(A) and 4o(1)(B) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 6o(1)(A) and 6o(1)(B) (2001), and Commission Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2002).

2. In his internet advertising, Pierce also presented trading performance results which were based on hypothetical or simulated data. Section 4.41(b)(1) of the Commission's Regulations, 17 C.F.R. § 4.41(b)(1) (2002), requires a prescribed statement of disclaimer or a statement prescribed pursuant to rules promulgated by a registered futures association, to accompany such statements of simulated performance results. Pierce violated Commission Regulation 4.41(b)(1) by failing to include any prescribed statement of disclaimer with his advertising.

3. Section 4n of the Act, 7 U.S.C. § 6n (2001), and Regulation 4.33, 17 C.F.R. § 4.33 (2002), require CTAs to keep certain books and records including the name and address of each client or subscriber. Pierce failed to do so, thereby violating Section 4n of the Act and Regulation 4.33.

## **II.**

### **PROPOSED RESPONDENTS**

4. Stephen Alan Pierce, who currently resides in Ann Arbor, Michigan, has been registered with the Commission as a CTA since March 2000.

## **III.**

### **FACTS**

5. Pierce is a self-employed web consultant and has developed various internet-based advisory services for use in the futures markets. Since approximately March 2000, Pierce has solicited subscribers for his internet based trading advisory services known generally as the Chart Traders system or Rapid Fire Swing Trading system.

6. Pierce solicited customers from the public through advertisements on the internet. These customers were to receive trading signals by subscription to his websites and e-mail.

7. From March 2000 to the present, Pierce attracted at least 700 subscribers to his trading recommendation services. These subscribers paid aggregate fees to Pierce of at least \$350,000.

A. Misrepresentations And Misleading Advertisements Concerning Hypothetical Nature of Performance

8. Pierce placed ads concerning his trading systems in websites on the internet. These advertisements fraudulently misrepresented that the performance results he used in the advertisements were the results of actual trading, when they were, in fact, simulated or hypothetical results. These websites failed to include required warnings about the limitations of trading performance numbers based on hypothetical or simulated data.

9. The description of Pierce's services conveyed a false impression to the public that Pierce was actually trading, when in fact Pierce was not. For example, on his various websites, Pierce advertised to the public:

- "All tactics in this eBook are actually used everyday by real Chart Traders making real money ... We are blessed to bank thousands of dollars each week in net winning profits from the markets. They have blown by so fast, some days they actually bank over \$5,000.00 in net realized profits. It's A Fact."
- "Take a look at a recent month of real time trading results using this method. These are NOT hypothetical results – This is all actual money made by using this method in real time trading. That's 12 trades on a single contract basis, in 5 recent months (not back testing) of this year, producing net total profits after losses of =\$45,127.50. Staying in each trade for a MAXIMUM of 3 DAYS! These are not back tested results. These are real trades – made in real time with our Chart Traders."
- "Just last month we had 33 trades of which 18 were winners producing =\$10,207.00 in profits-we had 15 losing trades producing – (\$4,132.15) in losses for a NET PROFIT of =\$6,074.85 in one month. Trading one contract in just a few short minutes each day and holding the contract on average of ONLY 3 DAYS!"

10. Based on the misleading nature of the promotional material, many subscribers understood that the performance results represented Pierce's actual trading, not simulated or hypothetical results.

B. Misrepresentations Concerning Profit Potential

11. Pierce used misleading and high pressure statements in his web promotions.

These statements overstated profit potential and failed to adequately warn investors of the risks inherent in futures trading. For example, on his various websites, Pierce advertised to the public:

- “You’ll [sic] can make money and get the benefit of knowing you’re dealing with consistent winners that have years of commodity experience successfully trading commodities and futures.”
- “An extremely valuable bonus that can easily pay back more than double your eBook Action Pack fee the SAME DAY. When you purchase, you’ll be granted the rights to use the Chart Traders Trend Monitor-which is responsible for over \$25,329.35 a month in average profits for the small trader!”

12. On his internet websites, Pierce presented hypothetical or simulated performance results of his trading systems without the accompaniment of a required cautionary statement.

13. As a registered CTA acting in the capacity of a CTA, Pierce was required to keep certain books and records and provide them upon the request of Commission representatives. This specifically includes the names and addresses of his clients or subscribers. Pierce failed to keep such records and, in August 2001 and thereafter, was unable to produce them upon the request of Commission representatives.

**IV.**

**COUNT I**

**VIOLATIONS OF SECTIONS 40(1) (A) AND 40(1)(B) OF  
OF THE ACT AND REGULATION 4.41(a): FRAUD BY A CTA**

14. The allegations contained in paragraphs 1 through 13 above are realleged and incorporated herein by reference.

15. During the relevant time period, Pierce was registered as a CTA and acted as a CTA because, for compensation or profit, he engaged in the business of advising others as to the value of or the advisability of trading in commodity futures.

16. During the relevant time period, Pierce violated Sections 4o(1)(A) and 4o(1)(B) of the Act, 7 U.S.C. §§ 6o(1)(A) and 6o(1)(B) (2001), in that, by use of the mails or other means or instrumentalities of interstate commerce, he directly or indirectly employed a device, scheme or artifice to defraud customers or prospective customers, or engaged in a transaction, practice, or course of business which operated as a fraud or deceit upon such persons, including, but not limited to, using false and misleading advertisements, which overstated profit potential, represented hypothetical or simulated trading results as actual trading results and misrepresented Pierce's track record. Pierce engaged in these fraudulent acts, misrepresentations and omissions to convince customers to purchase trading signals generated by him.

17. During the relevant time period, Pierce violated Commission Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2002), in that he advertised in a manner which employed a device, scheme or artifice to defraud customers or prospective customers or involved any transaction, practice or course of business which operated as a fraud or deceit upon any such persons, including, but not limited to, the advertisements described above.

18. Each material misrepresentation or omission, and each willful deception made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act and Regulation 4.41(a).

## **COUNT II**

### **VIOLATION OF COMMISSION REGULATION 4.41(b)(1)(i): FRAUDULENT ADVERTISING**

19. The allegations contained in paragraphs 1 through 13 and 15 through 18 above are realleged and incorporated herein by reference.

20. During the relevant time period, Pierce violated Commission Regulation 4.41(b)(1), 17 C.F.R. § 4.41(b)(1) (2002), in that he presented the performance of a simulated or hypothetical commodity interest account, transaction in a commodity interest or series of

transactions in a commodity interest of a commodity trading advisor, without accompaniment of the following statement:

- (i) "Hypothetical or simulated performance results have certain inherent limitations. Unlike an actual performance record, simulated results do not represent actual trading. Also, since the trades have not actually been executed, the results may have under- or over-compensated for the impact, if any, of certain market factors, such as lack of liquidity. Simulated trading programs in general are also subject to the fact that they are designed with the benefit of hindsight. No representation is being made that any account will or is likely to achieve profits or losses similar to those shown;" or
- (ii) A statement prescribed pursuant to rules promulgated by a registered futures association pursuant to Section 17(j) of the Act.

21. Each failure to include the above-mentioned statement of disclaimer made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.41(b)(1).

### **COUNT III**

#### **VIOLATION OF SECTION 4n(3)(A) OF THE ACT AND COMMISSION REGULATION 4.33: FAILURE TO KEEP REQUIRED RECORDS**

22. The allegations contained in paragraphs 1 through 13, 15 through 18 and 20 through 21 above are realleged and incorporated herein by reference.

23. Section 4n(3)(A) of the Act and Commission Regulation 4.33 require CTAs to keep certain books and records. Among other things, CTAs are required to keep the name and address of each client or subscriber and provide them to Commission representatives upon request.

24. During the relevant time period, Pierce violated Section 4n of the Act, 7 U.S.C. § 6n(3)(A) (2001), and Commission Regulation 4.33, 17 C.F.R. § 4.33 (2002), by failing to keep prescribed records of his clients or subscribers.

25. Each failure to keep prescribed records, and to provide such records at the request of Commission representatives, including but not limited to those specifically alleged herein, is

alleged as a separate and distinct violation of Section 4n(3)(A) of the Act and Commission Regulation 4.33.

## **V.**

By reason of the foregoing allegations, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute public administrative proceedings to determine whether the allegations set forth above are true and, if so, whether an appropriate order should be entered in accordance with Sections 6(c), 6(d) and 8a(4) of the Act, 7 U.S.C. §§ 9, 13b and 12a(4) (2001).

Sections 6(c) and 8a(4) of the Act allow the Commission to (1) prohibit respondents from trading on or subject to the rules of any registered entities, and require all registered entities to refuse such persons all privileges thereon for such period as may be specified in the Commission's Order, (2) if the respondent is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of that respondent, (3) assess against a respondent a civil monetary penalty of not more than the higher of \$110,00 for each violation, \$120,000 for violations on or after October 23, 2000, or triple the monetary gain to the respondent for each violation, and (4) require restitution to customers of damages proximately caused by the violations of the respondent.

Section 6(d) of the Act allows the Commission to enter an Order directing that the respondent cease and desist from violating the provisions of the Act and Regulations found to have been violated.

## **VI.**

WHEREFORE, IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the allegations set forth in Section III above be held before an Administrative Law Judge, in accordance with the Commission's Rules of Practice under the Act ("Rules"),

17 C.F.R. §§ 10.1 *et seq.* (2002), at a time and place to be set as provided by Section 10.61 of the Rules, 17 C.F.R. § 10.61, and that all post-hearing procedures shall be conducted pursuant to Sections 10.81 through 10.107 of the Rules, 17 C.F.R. §§ 10.81 through 10.107.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Complaint within twenty (20) days after service, pursuant to Section 10.23 of the Rules, 17 C.F.R. § 10.23, and pursuant to Section 10.12(a) of the Rules, 17 C.F.R. § 10.12(a), shall serve two copies of such Answer and of any documents filed in this proceeding upon Scott R. Williamson, Deputy Regional Counsel, and Mark Bretscher, Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 525 West Monroe, Suite 1100, Chicago, Illinois 60661. If any Respondent fails to file the required Answer or fails to appear at a hearing after being duly served, such Respondent shall be deemed in default and the proceeding may be determined against such Respondent upon consideration of the Complaint, the allegations of which shall be deemed to be true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served upon the Respondents personally or by registered or certified mail, pursuant to Section 10.22 of the Rules, 17 C.F.R. § 10.22.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of the investigative or prosecutorial functions in this or any factually related proceeding will be permitted to participate or advise in the decision in this matter except as witness or counsel in a proceeding held pursuant to notice.

By the Commission.

Dated: July 30, 2002

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Catherine D. Dixon  
Assistant Secretary of the Commission  
Commodity Futures Trading Commission