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U.S. DISTRICT COURT S.D.N.Y.

8 CIV. 1460

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

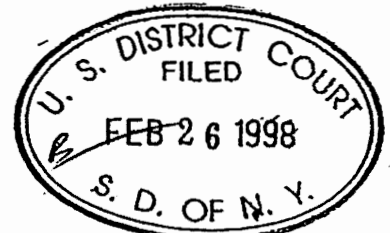
-against-

CHRISTIAN SCHINDLER, a/k/a "RUDOLPH GERNER,"  
a/k/a "RUDY GERNER," INTER CAPITAL  
BROKERAGE, INC., INTERCAP FOREX  
BROKERAGE, INC., and  
INTER-CAPITAL BROKERAGE U.S.A. INC.,

Defendants.

98 Civ. ( )

COMPLAINT



Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against Defendants Christian Schindler ("Schindler"), also known as "Rudolph Gerner," also known as "Rudy Gerner" (together, "Gerner"), and Inter Capital Brokerage, Inc. ("ICB"), Intercap Forex Brokerage, Inc. ("ICF") and Inter-Capital Brokerage U.S.A., Inc. ("ICB-USA") (collectively, the "Intercap Companies"), alleges as follows:

1. Since at least October 1996, Schindler, who previously has been convicted in Germany of financial crimes and who is permanently enjoined from committing commodities fraud, has been defrauding European investors through the fraudulent offer and sale of securities. Schindler, using Gerner as an alias, has fraudulently obtained at least \$5.8 million

from at least forty European investors by inducing them to make various investments in or through the Intercap Companies. Schindler and the Intercap Companies promise investors immediate returns of between 20% to 40% on investments in or related to, among other things, bonds issued by the United States Treasury ("Treasury") and publicly traded stock, which Defendants refer to as "T-Bonds" and "S&P stocks," respectively. Schindler and the Intercap Companies have been misusing the investors' money, and have diverted at least hundreds of thousands of dollars to the benefit of Schindler and the Intercap Companies.

2. Schindler, ICB, ICF and ICB-USA, directly or indirectly, have engaged, are engaging and are about to engage in transactions, acts, practices and courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

3. Unless they are temporarily restrained and preliminarily and permanently enjoined, defendants will continue to engage in the transactions, acts, practices and courses of business set forth in this Complaint and in transactions, acts, practices and courses of business of similar type and object.

#### JURISDICTION AND VENUE

4. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), seeking to temporarily, preliminarily, and permanently restrain and

enjoin the Defendants from engaging in the transactions, acts, practices and courses of business alleged herein. The Commission also seeks a final judgment ordering defendants to disgorge their ill-gotten gains and to pay prejudgment interest thereon, and to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. 78u(d)(3), and such other relief as is just and equitable. The Commission also seeks other equitable relief during the pendency of this action, including a freeze of the Defendants' assets, an accounting, and an order directing the Defendants to repatriate all assets that they have transferred overseas.

5. The Commission, pursuant to the authority conferred upon it by Sections 10(b) and 23(a) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78w(a), has promulgated Rule 10b-5, 17 C.F.R. § 240.10b-5. Rule 10b-5 was in effect at the time of the transactions alleged in this Complaint and remains in effect.

6. Defendants, directly and indirectly, have made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices and courses of business alleged herein. Certain of the transactions, acts, practices and courses of business occurred within the Southern District of New York, including the use of a maildrop in connection with the fraudulent conduct alleged herein.

#### **DEFENDANTS**

7. **Schindler**, age 35, is last known to have resided in Miami Beach, Florida. In or about 1995, Schindler was convicted in Germany of felony criminal fraud. On January 29,

1996, the United States District Court for the Southern District of New York issued a judgment permanently enjoining Schindler from violating Sections 4b(a)(i), 4b(a)(ii), 4d(1), 4m(a), and 4o(1) of the Commodity Exchange Act, 7 U.S.C. §§ 4b(a)(i), 4b(a)(ii), 4d(1), 4m(a), 4o(1). *Commodity Futures Trading Comm'n v. Schindler*, 93 Civ. 2765 (MBM) (S.D.N.Y. Jan. 29, 1996). Schindler uses Gerner as an alias.

8. **ICB** is a corporate designation used by Schindler to identify one of his entities that is engaged in the solicitation, pooling and investment of customers' funds in the securities, commodities and foreign exchange markets. ICB, which Schindler controls, holds itself out as a large brokerage firm with offices throughout the United States, including New York, New York and Miami, Florida. ICB is not registered in any capacity with the Commission or the Commodity Futures Trading Commission ("CFTC"); nor is it a member of the National Association of Securities Dealers, Inc. ("NASD").

9. **ICF** is incorporated under the laws of the Turks and Caicos Islands, British West Indies, with offices located in Miami, Florida. ICF, which is controlled by Schindler, engages in the solicitation, pooling and investment of customers' funds in the securities, commodities and foreign exchange markets. ICF is not registered in any capacity with the Commission or the CFTC; nor is it a member of the NASD.

10. **ICB-USA** is incorporated under the laws of the State of Delaware and is authorized to transact business in the State of Florida. ICB-USA, which has offices in Miami, Florida, engages in the solicitation, pooling and investment of customers' funds in the securities, commodities and foreign exchange markets. ICB-USA, which is controlled by

Schindler, is not a member of the NASD or registered in any capacity with the Commission or the CFTC.

**DEFENDANTS' FRAUDULENT SCHEME**

11. Since at least October 1996, Schindler and the Intercap Companies have been defrauding investors by promising them returns of between 20% and 40% from investments in or related to, among other things, "T-Bonds," "S&P stocks," ICF stock, and in foreign currency exchange contracts. Targeting German and Austrian investors, Schindler and the Intercap Companies employ German-speaking salesmen to solicit prospective investors over the telephone. In offering and selling those securities, Schindler, the Intercap Companies, and those employed by them make numerous misrepresentations, including false promises that the investments will be safe and liquid, and will produce the promised profits of between 20% and 40% immediately or within days.

12. Since in or about October 1996, Schindler, the Intercap Companies, and those working on their behalf have raised at least \$5.8 million from forty European investors by making the following representations:

- (a) Gerner is the president of ICB;
- (b) ICB-USA is a member of the NASD;
- (c) ICB and ICB-USA are large brokerage firms, with offices throughout the United States, including New York, New York and Miami, Florida;

- (d) the investors' funds would be used to purchase "T-Bonds," "S&P stocks" and foreign currency exchange contracts, which would earn returns of between 20% and 40%;
- (e) Investors' funds will be maintained in customer-segregated accounts;
- (f) Investors purchasing foreign currency exchange contracts would be buying such contracts individually;
- (g) Investors can liquidate their principal investment and their returns immediately or within days; and
- (h) The offered investments are safe and risk-free either because the transactions are "virtually complete" or because steps have been taken to limit losses to the investors' principal.

13. Each of the foregoing representations was materially false and misleading, in that:

- (a) Schindler, the Intercap Companies, and those working on their behalf omit to disclose that: (i) Gerner is really Schindler; and (ii) Schindler has been convicted of fraud relating to an investment scheme and is enjoined from, among other things, committing commodities fraud;
- (b) ICB-USA is not, and never has been, a member of the NASD;
- (c) Neither ICB nor ICB-USA is, or ever was, registered with the Commission or the CFTC as a brokerage firm. Moreover, until at least September 1997, the New

York, New York address and telephone number given out by Schindler and others for ICB and ICB-USA were merely a mail drop and a telephone relay, respectively;

(d) only a small percentage of the investors funds was used to purchase "T-Bonds," "S&P stocks" and foreign currency exchange contracts. Furthermore, Schindler, the Intercap Companies and those working on their behalf had no basis in fact for promising investors returns of between 20% and 40%;

(e) Investors' funds were not maintained in customer-segregated accounts but were, in fact, pooled with the funds provided by other investors, and thereafter diverted;

(f) Investors' money was pooled to purchase foreign currency contracts;

(g) Schindler and the Intercap Companies had no intention of returning the principal to the investors; and

(h) the offered investments were neither safe nor "risk-free" and, in fact, had not been entered into as described. Moreover, no procedures were implemented to limit losses to investors.

14. Schindler, the Intercap Companies and those working on their behalf fraudulently obtained additional money from certain investors by making other false statements to investors, including:

(a) that legal troubles involving the Commission had developed concerning the investors' prior investments, and these troubles would continue unless the investors provide additional funds; and

(b) unless funds were provided for additional investments, investors would get back neither their principal nor any of the promised returns.

15. In addition to the above, since in or about October 1996, Schindler has directed representatives of the Intercap Companies to create and send to investors fictitious monthly account statements that misrepresent the true condition of the investors' investments.

16. Schindler, ICB, ICF and ICB-USA, each knew or was reckless in not knowing that each of the misrepresentations set forth above was false or misleading when made.

#### **Defendants' Diversion And Misappropriation Of Investors' Funds**

17. Investor funds have been improperly diverted to off-shore accounts, including accounts in Gibraltar and Antigua. Moreover, at least \$1.5 million of the investors' funds have been deposited into bank accounts that Schindler controls. Of that amount, at least \$600,000 has been disbursed, directly or indirectly, to Schindler for his personal use.

#### **CLAIM FOR RELIEF**

*Violations of Section 17(a) of the Securities Act,  
U.S.C. § 77t(a), and Section 10(b) of the Exchange Act,  
U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5*

18. The Commission repeats and realleges the allegations contained in paragraphs 1 through 17 above.

19. The investments described in paragraphs 1 through 17 above are securities, as defined in Section 2(1) of the Securities Act, 15 U.S.C. § 77b(1), and Section 3(a)(10) of the Exchange Act, 15 U.S.C. § 78c(a)(10).



20. Schindler and the Intercap Companies, directly and indirectly, singly and in concert, knowingly or recklessly, by use of the means or instruments of transportation or communication in, and the means or instruments of, interstate commerce or by use of the mails, in the offer or sale, and in connection with the purchase or sale, of securities: (a) have employed, are employing and are about to employ, devices, schemes or artifices to defraud; (b) have obtained, are obtaining and are about to obtain, money or property by means of, or otherwise have made, are making and are about to make, untrue statements of material fact, or have omitted, are omitting and are about to omit, to state material facts necessary to make the statements, in the light of the circumstances under which they were made, not misleading; or (c) have engaged and are engaging in transactions, acts, practices and courses of business which have operated, are operating or will operate, as a fraud or deceit upon purchasers or other persons.

21. Schindler, the Intercap Companies, and those working on their behalf made the false or misleading representations described in paragraphs 1 through 17 above.

22. The false and misleading statements made by defendants, as set forth in paragraphs 1 through 17 above, were material.

23. As part and in furtherance of this violative conduct, defendants knowingly or recklessly engaged in the fraudulent conduct alleged in paragraphs 1 through 17 above.

24. By reason of the transactions, acts, practices and courses of business set forth above, defendants have violated and, unless restrained and enjoined, will again violate Section

17(a) of the Securities Act, 15 U.S.C. § 77t(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

**RELIEF REQUESTED**

**WHEREFORE**, Plaintiff respectfully requests that this Court:

**I.**

Grant an Order temporarily and preliminarily, and a Final Judgment permanently, enjoining defendants Schindler, ICB, ICF and ICB-USA, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

**II.**

Grant an Order temporarily and preliminarily, and a Final Judgment permanently, enjoining defendants Schindler, ICB, ICF and ICB-USA, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

**III.**

Grant an Order directing Schindler, ICB, ICF and ICB-USA, and each of them, to file with this Court and serve upon plaintiff Commission, within five business days, or within such

extension of time as the Commission agrees, a verified written accounting, signed by them under penalty of perjury, of:

- 1) All assets, liabilities and property currently held directly or indirectly by or for the benefit of defendants Schindler, ICB, ICF and ICB-USA, and each of them, including but not limited to bank accounts, brokerage accounts, investments, business interests, loans, lines of credit, and real and personal property wherever situated, describing each asset and liability, and its current location and amount;
- 2) All money, property, assets, and other income received by defendants Schindler, ICB, ICF and ICB-USA, and each of them, or for their direct or indirect benefit, in or at any time from January 1, 1996 to the date of the accounting, describing the source, amount, disposition and current location of each of the items listed;
- 3) The names and last known addresses of all bailees, debtors, and other persons and entities which are currently holding the assets, funds or property of defendants Schindler, ICB, ICF and ICB-USA, and each of them; and.

All assets, funds, securities, real or personal property received by defendants Schindler, ICB, ICF and ICB-USA, and each of them, or any other person controlled by them, from persons who provided money to defendants in connection with the offer, purchase or sale of investments of any kind, and the disposition of such assets, funds, investments, and real or personal property.

#### IV.

Grant an Order directing Schindler, ICB, ICF and ICB-USA to repatriate to the United States all funds that they have transferred overseas since January 1, 1996.

#### V.

Grant a Final Judgment directing Schindler, ICB, ICF and ICB-USA to disgorge their unjust enrichment from the fraudulent conduct alleged in this Complaint and to pay prejudgment interest thereon.

#### VI.

Grant an Order directing that Schindler, ICB, ICF and ICB-USA and their officers, agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation with each of them, who receive actual notice of such Order by personal service, facsimile service, or otherwise, and each of them, hold and retain within their control, and otherwise prevent any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal of any assets, funds, or other properties (including money, real or personal property, securities, choses in action or property of any kind whatsoever) of Schindler, ICB, ICF and ICB-USA currently held by them or under their control, whether held in any of their names or for any of their direct or indirect beneficial interest wherever situated, and directing each of the financial or brokerage institutions, debtors, and bailees, or any other person or entity holding such assets, funds, or other properties of Schindler, ICB, ICF and ICB-USA, and each of them, to hold or retain within its control and prohibit the withdrawal, removal,

transfer, or other disposal of any such assets, funds, or other properties, except for reasonable living expenses for Schindler to which the Commission agrees by stipulation or which the Court may grant.

#### VII.

Grant an Order enjoining and restraining Schindler, ICB, ICF and ICB-USA or any person or entity acting at their direction or on their behalf from destroying, altering, concealing or otherwise interfering with the access of the plaintiff to any and all documents, books and records which are in the possession, custody or control of Schindler, ICB, ICF and ICB-USA, their agents, employees, servants, accountants, financial or brokerage institutions, and attorneys that refer, reflect or relate to the allegations of the Complaint, including, but not limited to, documents, books and records referring, reflecting or relating to Schindler's, ICB's, ICF's and ICB-USA's finances, business operations, and their offer or sale of securities and the use of proceeds therefrom.

#### VIII.


Grant a Final Judgment assessing penalties against defendants Schindler, ICB, ICF and ICB-USA pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), for the violations alleged herein.

IX.

Grant such other and further relief as is just and proper.

Dated: New York, New York  
February 25, 1998

Respectfully submitted,

  
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