

February 25, 2015 9:01 AM

TRACEY CORDES, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGANUNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGANU.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

JERRY STAUFFER,

Defendant.

1:15-cv-201

Paul L. Maloney, Chief Judge
United States District Court

CIVIL ACTION NO.

Complaint for Injunctive and Other
Equitable Relief and Civil Monetary
Penalties Under the Commodity
Exchange Act

Plaintiff, U.S. Commodity Futures Trading Commission ("Commission" or "CFTC"), by
its attorneys, alleges as follows:

I. SUMMARY

1. From as early as June 2010 through the present ("Relevant Period"), Jerry Stauffer ("Defendant" or "Stauffer"), defrauded at least 9 members of the public ("pool participants") of at least \$968,000 in connection with pooled investments in retail off-exchange foreign currency contracts ("forex").

2. In order to invest, pool participants were instructed to make their checks payable to "Jerry Stauffer," the commodity pool operator ("CPO"). These checks were deposited into bank accounts in Stauffer's name. In accepting funds from pool participants, Stauffer made no distinction between the pool and Jerry Stauffer as the CPO.

3. To entice members of the public to participate in the pool, Defendant guaranteed pool participants a monthly return on their investment based on profits purportedly earned from forex trading at Interactive Brokers, LLC ("IB"), a Futures Commission Merchant ("FCM"). Pool participants were asked to sign a "Limited Power of Attorney with Exclusive Rights to

Trade Foreign Exchange Currencies” (“LPOA”), and were advised that no more than 2% of their funds would ever be placed at risk per day.

4. In reality, Defendant never traded forex at IB as he told pool participants; rather, of the approximately \$968,000 provided by pool participants to Defendant for forex trading during the Relevant Period, only \$200,000 was deposited into trading accounts, approximately \$144,000 was withdrawn, and approximately \$45,000 was lost trading at a different financial institution. Approximately \$1.2 million was returned to pool participants as purported trading profits and return on principal. Defendant used pool participant funds to pay personal credit card bills and expenses, and transferred funds to his boat company, Atlantic Boat Brokers.

5. To perpetuate his fraud, Defendant prepared and distributed to pool participants trading statements that indicated successful trading at IB, but in fact, falsely represented that trading occurred at IB and the purported amount of pool participant funds contained in the pool’s supposed trading account.

6. By virtue of this conduct and conduct further described herein, Defendant engaged, is engaging, or is about to engage in acts and practices in violation of Sections 4b(a)(2)(A)-(C), and 4Q1 of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 6b(a)(2)(A)-(C), and 6Q(1) (2012) and Commission Regulations (“Regulations”) 4.20(a)-(c), and 5.2(b), 17 C.F.R. §§ 4.20(a)-(c), and 5.2(b) (2014).

7. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the Commission brings this action to enjoin Defendant’s unlawful acts and practices and to compel his compliance with the Act and Regulations and to further enjoin him from engaging in any commodity-related activity. In addition, the Commission seeks restitution, civil monetary

penalties and remedial ancillary relief, including, but not limited to, disgorgement, and trading and registration bans, and such other relief as the Court may deem necessary and appropriate.

8. Unless restrained and enjoined by this Court, Defendant likely will 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

9. Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), authorizes the Commission to seek injunctive and other relief against any person whenever it shall appear to the Commission that such person 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 rule, regulation, or order thereunder.

10. The Court has jurisdiction over the conduct and transactions at issue in this case pursuant to Sections 2(c)(2) and 6c of the Act, 7 U.S.C. §§ 2(c)(2) and 13a-1(2012).

11. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Defendant transacts business in this District, several victims of Defendant's fraud reside in this District, and certain transactions, acts, practices, and courses of business alleged in this Complaint occurred, are occurring, or are about to occur within this District.

III. PARTIES

12. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.* (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2014).

13. Defendant **Jerry Stauffer** is an individual residing in Traverse City, Michigan. On February 16, 2011, Stauffer filed a registration exemption with the Commission, which was subsequently withdrawn on March 5, 2013. Upon information and belief, Stauffer was not entitled to claim this exemption. Stauffer has never been registered with the Commission. Further, Stauffer is the officer, owner, principal, and sole proprietor of Atlantic Boat Brokers. Atlantic Boat Brokers is in the business purchasing new or used boats in the United States.

IV. FACTS

14. During the Relevant Period, Stauffer solicited prospective pool participants in person to send funds to him to trade forex in a commodity pool he operated. As part of his solicitation, Defendant told prospective pool participants that he traded forex for a living, was a successful trader and that he taught forex trading classes. Defendant showed at least one pool participant past performance charts, indicating his success at trading forex. Stauffer told at least one pool participant that the forex trading would occur at IB, a reputable FCM. In reality, Stauffer's minimal forex trading prior to the Relevant Period was unprofitable.

15. Defendant reinforced the belief that he was highly successful by guaranteeing a return on prospective pool participants' investments. Defendant had pool participants sign an LPOA which promised prospective pool participants, among other things: 1) a steady 5% monthly return on investment; or 2) the monthly return would be rolled over each month and pool participants would receive compound interest of 5% in their account; or 3) a steady 10% monthly return on investment. The LPOAs were countersigned by Stauffer.

16. Defendant's representations prompted at least 9 pool participants to provide Defendant approximately \$968,000 for trading forex in the pool. In order to invest, pool participants were instructed to make their checks payable to "Jerry Stauffer," the CPO. These

checks were deposited into bank accounts in Stauffer's name. In accepting funds from pool participants, Stauffer made no distinction between the pool and Jerry Stauffer as the CPO, accepted money in his own name and commingled pool participant funds with his own funds.

17. In June 2010, Defendant opened a trading account at IB ("2010 IB trading account"), but never deposited any pool participant funds into the account. The account subsequently closed in September 2010.

18. Stauffer misrepresented to pool participants that the 2010 IB trading account was funded. For instance, Stauffer gave one pool participant an outgoing wire transfer request, indicating that the pool participant's funds were deposited into Defendant's bank account at Citibank, N.A. ("Citibank") in June 2010, when in fact, Stauffer did not have a bank account at that institution. Stauffer then gave the same pool participant a copy of a July 2010 trading statement of the 2010 IB trading account, reflecting a transfer of the supposed Citibank funds (and other funds from his purported Citibank account) into the account.

19. Rather than fully fund and trade the 2010 IB trading account as he told pool participants he would, Defendant opened a forex trading account at OANDA, a Retail Foreign Exchange Dealer ("RFED") in February 2011, and funded it with approximately \$95,000. Over the life of the OANDA trading account, Defendant withdrew approximately \$93,000, and made approximately \$8,500 in profits from trading forex. In January 2012, Defendant opened a trading account at FX Direct Dealer, another RFED. Stauffer similarly funded this account with \$95,000, incurred trading losses of approximately \$54,000, and withdrew the remaining approximately \$41,000. In April 2012, Stauffer opened a second forex trading account at IB, funding it with approximately \$10,000; however, no trading activity occurred during the life of this account, and Stauffer made three withdrawals totaling \$9,850.

20. In order to conceal and perpetrate his fraud, Defendant sent numerous pool participants false 2010 IB trading account statements that indicated Defendant was engaged in profitable trading at IB in the United Kingdom, when in fact, he conducted no trading at all for the pool at IB, either in the United States or the United Kingdom.

21. According to these fraudulent 2010 IB trading account statements, Defendant's alleged trading in January 2012 resulted in an account balance of approximately \$683,000, and the trading in November 2012 resulted in an account balance of approximately \$799,000. Pool participants were paid profits from the purported successful trading in the UK, when in reality, Defendant did not have an account at IB in the UK and failed to earn any profits whatsoever in any IB trading account. These purported profits and successful trading results prompted existing pool participants to invest additional funds, and caused at least two pool participants to solicit friends and family to participate in the pool.

22. In August 2013, Defendant emailed pool participants that his 2010 IB trading account had been hacked and the account had been traded in such a manner as to incur substantial losses. Defendant provided numerous pool participants with an IB account statement for July 2013, which showed a purported loss of more than \$695,000. Defendant also spoke with one or more pool participants over the telephone regarding the hacking.

23. Defendant told pool participants that he called IB's customer service in Connecticut and London, and was advised that the attack occurred through Defendant's computer, and was not related to a security problem with IB's security network.

24. Defendant also told pool participants that he notified the International Operations Division of the FBI about the attack and that he also hired a company called Cyber Investigation Services to investigate the attack.

25. In September 2013, Defendant notified pool participants via email that IB informed him that someone with his personal information had contacted IB and requested access to the account. Defendant became suspicious that someone was attempting to steal his identity and, therefore, decided to close his trading account. As a result, Defendant told pool participants that the remaining funds would be transferred to a trading account at OANDA. Defendant told at least one pool participant that he planned to recoup the losses by trading at OANDA, and that he subsequently planned to make each pool participant whole.

26. In reality, Stauffer's trading account at IB was never hacked, nor did the account sustain trading losses as a result thereof as was told to pool participants, because over the life of the account, no trading occurred. Given this fact, it is highly doubtful that Defendant contacted either the FBI or Cyber Investigation Services to investigate a hacking incident of a trading account that never traded and was closed in September 2010.

27. Contrary to what was told to pool participants, Defendant did not close his IB account on his own volition. In August 2013, IB terminated its relationship with Stauffer and closed his only funded account, which was opened in April 2012. Further, Defendant did not transfer any funds to his existing OANDA account in or after July 2013.

28. Defendant's purported forex pool was a sham. Out of the approximately \$968,000 received from pool participants, Defendant deposited only \$200,000 in trading accounts, withdrew approximately \$144,000, and approximately \$45,000 was lost trading. Defendant returned approximately \$1.2 million in the form of purported monthly profits from forex trading and/or return of principal.

29. Stauffer misappropriated pool participant funds by using them for purposes other than trading. In fact, he traded a very small amount of pool participant funds, used pool

participant funds to pay personal credit cards and expenses, transferred funds to his boat company, Atlantic Boat Brokers, and paid pool participants purported profits (in the manner of a Ponzi scheme) on the virtually non-existent trading.

30. Defendant knowingly and willfully made, or caused other pool participants to make, multiple material misrepresentations and omissions in his solicitation of existing and prospective pool participants, including as described above. In making their investment decisions, existing and prospective participants in the pool relied on Defendant's material misrepresentations and omissions including statements regarding Stauffer's trading activity, purported profits earned from that trading, and manner in which pool participants' funds would be used.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND COMMISSION REGULATIONS**

COUNT I

FRAUD IN CONNECTION WITH FOREX

Violations of 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2012) and 17 C.F.R. § 5.2(b) (2014)

31. Paragraphs 1 through 30 are re-alleged and incorporated herein by reference.

32. Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2012), make it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market

(A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; or (C) willfully to

deceive or attempt to deceive the other person by any means whatsoever...

Regulation 5.2(b), 17 C.F.R. § 5.2(b) (2014), makes it unlawful

for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction (1) to cheat or defraud or attempt to cheat or defraud any person; (2) willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or (3) willfully to deceive or attempt to deceive any person by any means whatsoever.

33. During the Relevant Period, Defendant violated Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2012), and Regulation 5.2(b), 17 C.F.R. § 5.2(b) (2014), in or in connection with an order to make or the making of forex contracts for or on behalf of other persons, by, among other things: (i) misappropriating pool participants' funds; (ii) making material fraudulent statements to existing and prospective pool participants about Defendant's forex trading and profitability; and (iii) issuing false account statements to pool participants.

34. Defendant engaged in the acts and practices described above willfully, knowingly, or with reckless disregard for the truth.

35. Each act of misappropriation, misrepresentation or omission of material fact, and issuance of a false statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2012), and Regulation 5.2(b), 17 C.F.R. § 5.2(b) (2014).

COUNT II

FRAUD BY A COMMODITY POOL OPERATOR Violations of 7 U.S.C. § 6c(1) (2012)

36. Paragraphs 1 through 35 are re-alleged and incorporated herein by reference.

37. Section 4q(1) of the Act, 7 U.S.C. § 6q(1) (2012), makes it unlawful

for a... commodity pool operator, or associated person of a commodity pool operator by use of the mails or any means or instrumentality of interstate commerce, directly or ~~indirectly~~

(A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

(B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

38. Section 1a(11), 7 U.S.C. § 1a(11)(2012), defines a “commodity pool operator,” in relevant part, as a person

engaged in a business that is of the nature of a commodity pool, 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 commodity interests, including ~~any~~

II. [forex] agreement, contract or transaction...

39. From at least July 16, 2011¹ to the present, Stauffer operated as a commodity pool operator in that he engaged in a business that is of the nature of an investment trust, syndicate or similar form of enterprise, and in connection therewith, solicited, accept, or received funds, securities, or property from others for the purpose of trading forex.

40. From at least July 16, 2011 to the present, Stauffer, through the use of the mails or other means or instrumentalities of interstate commerce (including through the use of telephone calls and electronic mail with pool participants), violated Section 4q(1) of the Act, 7 U.S.C. §

¹ As of July 16, 2011, the statutory definition of a commodity pool operator was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376, (July 21, 2010), to include commodity pool operators operating commodity pools that solicit and accept funds for the purpose of trading forex, in addition to other commodity interests.

60(1)(2012), by: (i) misappropriating pool participants' funds; (ii) making fraudulent statements and omissions to existing and prospective pool participants about his forex trading and profitability; and (iii) issuing false account reports to pool participants.

41. Defendant engaged in the acts and practices described in this count willfully, knowingly, or with reckless disregard for the truth.

42. Each act of misappropriation, misrepresentation or omission of material fact, and issuance of a false statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 40(1) of the Act, 7 U.S.C. § 60(1)(2012).

COUNT III

PROHIBITED ACTIVITIES OF A COMMODITY POOL OPERATOR Violations of 17 C.F.R. §§ 4.20(a)-(c) (2014)

43. The allegations set forth in paragraphs 1 through 42 are re-alleged and incorporated herein by reference.

44. Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2014), provides that a commodity pool operator "must operate its pool as an entity cognizable as a legal entity separate from that of the pool operator." Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2014), provides that all funds received by a CPO from a pool participant must be accepted in the name of the pool, and a CPO may not accept funds in its own name. Regulation 4.20 (c), 17 C.F.R. § 4.20(c) (2014), provides that commodity pool funds may not be commingled with the funds of the CPO or any other person.

45. During the Relevant Period, Stauffer violated Regulations 4.20(a)-(c), 17 C.F.R. §§ 4.20(a)-(c) (2014), by *inter alia* (i) not operating the pool as a separate legal entity from himself; (ii) receiving pool participant funds in his own name, rather than in the name of a pool; and (iii) by commingling pool participant funds with his own funds.

46. Each instance of Stauffer failing to operate the pool as an separate legal entity, accepting funds in his own name, and commingling pool participant funds, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulations 4.20(a)-(c), 17 C.F.R. §§ 4.20(a)-(c) (2014).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and pursuant to its own equitable powers, enter:

- A. An order finding that Defendant violated Sections 4b(a)(2)(A)-(C), and 4Q(1) of the Act 7, U.S.C. §§6b(a)(2)(A)-(C), and 6Q(1) (2012), and Regulations 4.20(a)-(c), and 5.2(b), 17 C.F.R. §§ 4.20(a)-(c), and 5.2(b) (2014);
- B. An order of permanent injunction prohibiting Defendant and any other person or entity associated with him, from engaging in conduct in violation of Sections 4b(a)(2)(A)-(C) and 4Q(1) of the Act, 7 U.S.C. §§6b(a)(2)(A)-(C) and 6Q(1) (2012), and Regulations 4.20(a)-(c), and 5.2(b), 17 C.F.R. §§ 4.20(a)-(c), and 5.2(b) (2014);
- C. An order of permanent injunction prohibiting Defendant, and any other person or entity associated with him, from directly or indirectly:
 - 1. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2012));
 - 2. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2014)) (commodity options), swaps (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (2012), as further defined by Regulation 1.3, 17 C.F.R. § 1.3 (2014), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (2012) (forex contracts)) for their own personal accounts or proprietary account or for any account in which they have a direct or indirect interest;
 - 3. Having any commodity futures, swaps, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on their behalf;

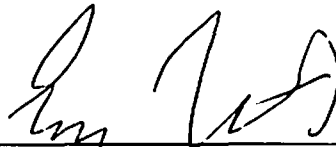
4. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, swaps, options on commodity futures, commodity options, security futures products, and/or forex contracts;
 5. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, swaps, options on commodity futures, commodity options, security futures products, forex contracts, and/or retail commodity transactions;
 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 as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014);
 7. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014); and
 8. Engaging in any business activities related to commodity futures, options on commodity futures, commodity options, swaps, security futures products and/or forex products.
- D. An order directing Defendant, as well as any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act and the Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;
- E. An order directing Defendant, as well as any successors thereof, to make full restitution, pursuant to such procedure as the Court may order, to every pool participant whose funds Defendant received or caused another person or entity to receive as a result of acts and practices which constitute violations of the Act and the Regulations, as described herein, and pre- and post-judgment interest from the date of such violations;
- F. An order directing Defendant, as well as any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between Defendant and any of the pool participants whose funds were received by Defendant as a result of the acts and practices which constituted violations of the Act and the Regulations as described herein;

- G. An order directing Defendant, and any successors thereof, 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 Defendant for each violation of the Act and/or Regulations; or (2) \$140,000 for each violation committed, plus post-judgment interest;
- H. An order directing Defendant, and any successors thereof, to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2012); and
- I. Such other and further relief as the Court deems proper.

Dated: February 15, 2005

Respectfully submitted,

PLAINTIFF U.S. COMMODITY FUTURES
TRADING COMMISSION



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