

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

THE YORKSHIRE GROUP INC. and
SCOTT PLATTO,

Defendants.

MAUSKOPE, J.

CIVIL ACTION NO.

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

JURY TRIAL DEMANDED.

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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

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

I. SUMMARY

1. Between September 2011 and August 2012, defendants The Yorkshire Group, Inc. (“Yorkshire”) and Scott Platto (“Platto”) solicited retail customers to buy and sell precious metals on a financed basis. These transactions were illegal, off-exchange retail commodity transactions.

2. By this conduct, Defendants have engaged, are engaging, or are about to engage in conduct in violation Section 4(a) of the Commodity Exchange Act (the “Act”), as amended, 7 U.S.C. §§ 6(a) (Supp. IV 2011). Platto committed the acts and omissions alleged herein within the course and scope of his employment, agency or office with Yorkshire. Therefore, Yorkshire is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2012), as principal for the actions and omissions of Platto in violation of the Act.

3. Platto controlled Yorkshire throughout the relevant period and knowingly induced Yorkshire's violations of the Act. Therefore, Platto is liable for Yorkshire's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the CFTC brings this action to enjoin the defendants' unlawful acts and practices, to compel their compliance with the Act, and to further enjoin them from engaging in any commodity-related activity.

5. In addition, the CFTC seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

6. Unless restrained and enjoined by this Court, Defendants 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

7. Section 6c(a) of the Act authorizes the Commission to seek injunctive 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 the Act or any rule, regulation, or order thereunder, 7 U.S.C. §§ 9, 15.

8. The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to Sections 2(c)(2)(D) and 6(c)(1) of the Act, as amended by the Dodd-Frank Act, 7 U.S.C. §§ 2(c)(2)(D), 9(c)(1), 15 (Supp. IV 2011).

9. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Defendants transacted business in this District, and certain transactions, acts and practices alleged in this Complaint occurred, are occurring, and/or are about to occur within this District.

III. THE PARTIES

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

11. Defendant The Yorkshire Group Inc. is a New York corporation with its principal place of business in Staten Island, New York. Yorkshire is a telemarketing firm that solicited retail customers to execute financed precious metals transactions. Yorkshire ceased doing business August 2012. Yorkshire has never been registered with the Commission in any capacity.

12. Defendant Scott Platto is an individual whose last known address was in Staten Island, New York. Platto was the owner, operator and controlling person of Yorkshire. Platto has never been registered with the Commission in any capacity.

IV. OTHER RELEVANT ENTITY

13. Yorkshire introduced customers to Hunter Wise Commodities, LLC (“Hunter Wise”), a precious metals dealer that confirmed the execution of customer precious metal transactions.

14. Hunter Wise is a Nevada company that held itself out on its website as “a physical commodity trading company, wholesaler, market maker, back-office support provider, and

finance company.” Hunter Wise purported to offer, enter into, and confirm the execution of retail commodity transactions involving gold, silver, platinum, palladium and copper throughout the United States using a network of telemarketing solicitors such as Yorkshire that it refers to as “dealers.”

15. On February 25, 2013, the U.S. District Court for the Southern District of Florida, in an action captioned *United States Commodity Futures Trading Commission v. Hunter Wise Commodities, LLC, et al.*, entered a preliminary injunction prohibiting Hunter Wise and other related defendants from, *inter alia*, offering investments in physical metals to the retail public, freezing Hunter Wise’s assets, and appointing a special corporate monitor to assume control over Hunter Wise.

V. STATUTORY BACKGROUND

16. Section 2(c)(2)(D) of the Act, as amended by the Dodd-Frank Act, 7 U.S.C. § 2(c)(2)(D), gives the Commission jurisdiction over “any agreement, contract, or transaction in any commodity” that is entered into with, or offered to, a non-eligible contract participant (“ECP”) “on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis,” (“retail commodity transactions”) with respect to conduct occurring on or after July 16, 2011, subject to certain exceptions not applicable here. Section 2(c)(2)(D) of the Act makes Sections 4(a) and 4b(a)(2)(A) and (C) of the Act applicable to retail commodity transactions “as if” such transactions are contracts for the sale of a commodity for future delivery.

17. The Act defines an ECP, in relevant part, as an individual who has amounts invested on a discretionary basis, the aggregate of which exceeds \$10 million, or \$5 million if the individual enters into the transaction to manage the risk associated with an asset owned or

liability incurred, or reasonably likely to be owned or incurred, by the individual. 7 U.S.C. § 1a(18)(xi). Yorkshire's customers were not ECPs.

18. Section 4(a) of the Act, 7 U.S.C. § 6(a), in relevant part, makes it unlawful for any person to offer to enter into, execute, confirm the execution of, or conduct any office or business anywhere in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery unless the transaction is conducted on or subject to the rules of a board of trade that has been designated or registered by the Commission as a contract market.

VI. FACTS

19. Between September 2011 and August 2012, Yorkshire was a telemarketing firm that solicited retail customers to engage in financed precious metals (gold, silver, platinum and palladium) transactions. Although Yorkshire also offered precious metals on a fully paid basis, the vast majority of its business was in financed precious metals transactions. It is only Yorkshire's financed precious metal transactions through Hunter Wise that are at issue here.

20. Defendants conducted nearly all of their solicitations by telephone. When soliciting customers for financed precious metals transactions, defendants represented that to purchase a certain quantity of metal, the customer needed to deposit only a percentage of the total metal value, typically 25%, and that customer would receive a loan for the remaining amount. The customer would have to pay a finance charge on the loan, as well as a service charge.

21. Defendants told customers that they would also have to pay a commission on the total metal value, with a maximum commission of 15%, and a mark-up on the spot price of the metal, typically 3%. Defendants' customers for the most part could not break even on their

investments, let alone earn a profit, because much of their principal investment was consumed by commissions and fees.

22. After a customer invested, defendants contacted Hunter Wise to effectuate the transaction. Yorkshire collected the funds needed for the transaction from the customer and sent them to Hunter Wise. Hunter Wise provided back office support services to Yorkshire, and provided details of the transaction to the customer.

23. Yorkshire did not deal in physical metals or transfer ownership of any physical metals to customers, did not disburse any funds as loans or store physical metals in any depository for or on behalf of customers. Instead, Yorkshire charged customers commissions for purchasing the metal and interest on loans to buy metal when the metal did not exist. Yorkshire's customers were really only speculating on the price direction of the precious metals.

24. Defendants introduced twelve customers to Hunter Wise and transferred at least \$113,000 to Hunter Wise for the purchase and finance of precious metals. Yorkshire received commissions and fees totaling at least \$7,800 for the retail financed precious metals transactions executed through Hunter Wise.

25. Neither Yorkshire nor Hunter Wise bought, sold, loaned, stored, or transferred any physical metals for these financed precious metals transactions. Likewise, neither Yorkshire nor Hunter Wise actually delivered any precious metals to any customers. Instead, Hunter Wise managed exposure on these transactions using derivatives in margin trading accounts with several entities.

VII. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE:

(Violations of Section 4(a) of the Act, Illegal Off-exchange Trading)

26. Paragraphs 1 through 25 of this Complaint are realleged and incorporated herein by reference.

27. Between September 2011 and the present, the retail commodity transactions described in this Complaint were offered and entered into (a) on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis, (b) with persons who are not ECPs or eligible commercial entities as defined by the Commodity Exchange Act, and (c) not made or conducted on, or subject to, the rules of any board of trade, exchange or contract market.

28. The commodities described herein are commodities as defined by Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (2012).

29. During the relevant period, Defendants violated Section 4(a) of the Act by offering to enter into, entering into, executing, confirming the execution of, or conducting an office or business in the United States for the purpose of soliciting or accepting orders for, or otherwise dealing in, transactions in, or in connection with, retail commodity transactions.

30. Each offer to enter into, entrance into, execution, confirmation, solicitation or acceptance of an order for a retail commodity transaction made during the relevant time period is alleged as a separate and distinct violation of Section 4(a) of the Act.

31. Platto directly or indirectly controlled Yorkshire and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Yorkshire's violations of Section

4(a) alleged in this Complaint. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13(b), Platto is liable for each of Yorkshire's violations of Section 4(a) of the Act.

32. The acts and omissions of Platto described in this Complaint were done within the scope of his employment with Yorkshire. Therefore Yorkshire is liable as a principal for each of Platto's acts, omissions or failures constituting violations of Section 4(a) pursuant to 2(a)(1)(B) of the Act, 7 U.S.C § 2(a)(1)(B).

VIII. RELIEF REQUESTED

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

- A. An order finding that Defendants violated Section 4(a) of the Act, as amended, 7 U.S.C. § 6(a);
- B. An order of permanent injunction prohibiting Defendants, and any other person or entity associated with them, from engaging in conduct in violation of Sections 4(a), 4b and 6(c)(1) of the Act and Commission Regulation 180.1(a);
- C. An order of permanent injunction prohibiting Defendants and any successors from, directly or indirectly:
 - 1) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended), 7 U.S.C. § 1a;
 - 2) Entering into commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1)), 17 C.F.R. § 32.1(b)(1) (2012)) ("commodity options"), security futures products, swaps (as that term is defined in Section 1a(47) of the Act, as

amended, and as further defined by Commission Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx) (2012)) (“swaps”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (“forex contracts”), for their own personal accounts or for any accounts in or over which they have a direct or indirect interest;

- 3) Having any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts traded or executed on their behalf;
- 4) Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts;
- 5) Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling of any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts;
- 6) Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and
- 7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, or any other officer or employee of any

person registered, exempted from registration or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

- D. Enter an order requiring that Defendants, as well as any of their successors, disgorge to any officer appointed or directed by the Court all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices that constitute violations of the Act, as amended, and the Regulations, including pre and post-judgment interest;
- E. Enter an order requiring Defendants, as well as any of their successors, to make full restitution, pursuant to such procedure as the Court may order, to every person or entity whose funds were received or utilized by them in violation of the provisions of the Act and/or Commission Regulations, as described herein, plus pre-judgment interest thereon from the date of such violations, plus post-judgment interest;
- F. Enter an order directing Defendants and any of their successors, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the customers whose funds were received by them as a result of the acts and practices, which constituted violations of the Act, as amended, and the Regulations as described herein;
- G. Enter an order requiring Defendants to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the greater of: (1) triple

their monetary gain for each violation of the Act, as amended, and the Regulations or (2) \$140,000 for each violation committed on or after October 23, 2008;

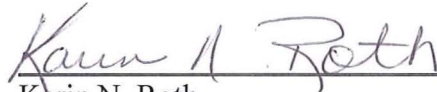
- H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and
- I. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

IX. DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all issues so triable.

Dated: September 25, 2013

Respectfully submitted,



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