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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT CALIFORNIA

10 COMMODITY FUTURES TRADING) Case No. 01-06926
COMMISSION,)
11 Plaintiff,) COMPLAINT FOR INJUNCTIVE AND
12 vs.) OTHER EQUITABLE RELIEF AND
13 ACRO INFORMATION SERVICE, INC., a) FOR CIVIL PENALTIES UNDER THE
California Corporation, PAKCO HOLDINGS) COMMODITY EXCHANGE ACT, AS
14 LIMITED, a Nevada Corporation, Dr.) AMENDED, 7 U.S.C. §§ 1-25
FLORENTIUS CHAN, SANDY H. CHAN)
15 and ANDREW TAI WAI aka ANDREW)
HONGCHOW WAI,)
16 Defendants)

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18 I.

19 **JURISDICTION AND VENUE**

20 1. This action is brought by Plaintiff Commodity Futures Trading Commission
21 (“CFTC”) against Acro Information Service, Inc. (“Acro”), Pakco Holdings Limited (“Pakco”),
22 Dr. Florentius Chan (“Dr. Chan”), Sandy H. Chan (“Sandy Chan”) and Andrew Tai Wai (“Wai”)
23 (collectively “Defendants”).

24 2. This court has jurisdiction over this action pursuant to Section 6c(a) of the
25 Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 13a-1 (2001), which authorizes the
26 CFTC to seek injunctive relief against any person whenever it shall appear to the CFTC that such
27 person has engaged, is engaging, or is about to engage in any act or practice constituting a
28 violation of the Act or any rule, regulation, or order thereunder. Section 2(c)(2)(B) of the Act, 7

1 U.S.C. § 2(c)(2)(B) (2001), confers on the CFTC jurisdiction over certain retail transactions in
2 foreign currency for future delivery that are contracts for the sale of a commodity for future
3 delivery, including the transactions alleged in this complaint.

4 3. Venue properly lies with this Court as to Defendants pursuant to Section 6c(e) of the
5 Act, 7 U.S.C. § 13a-1(e) (2001), since they are found in, inhabit, or transact business in this
6 District. In addition, venue properly lies with this Court as to Pakco pursuant to 28 U.S.C. §
7 1391(b) and 1391(c), since a substantial part of the events which give rise to the claims against
8 Pakco arise in this judicial district, and Pakco is deemed to reside in this judicial district because
9 its contacts are sufficient to subject it to personal jurisdiction if this district were a separate State,
10 and it is the judicial district within which it has the most significant contacts.

11 **II.**

12 **SUMMARY**

13 4. From December 21, 2000 to the present, Defendants have solicited and accepted
14 orders from retail customers for the purpose of trading illegal off-exchange foreign currency
15 futures contracts. Defendants also have cheated, defrauded and deceived customers by, among
16 other practices, falsely misrepresenting the profit potential and risk of loss from trading in
17 foreign currency futures contracts, in violation of Sections 4(a) and 4b(a)(i) and (iii) of the Act, 7
18 U.S.C. §§ 6(a) and 6b(a)(i) and (iii) (2001).

19 **PARTIES**

20 5. Plaintiff CFTC is an independent federal regulatory agency of the United States
21 empowered to enforce the provisions of the Act, 7 U.S.C. § 1 et seq. (2001), and the regulations
22 promulgated thereunder, 17 C.F.R. § 1.1 et seq. (2001).

23 6. Defendant Acro is a California corporation with its principal place of business
24 located at 2063 Atlantic Boulevard, Suite 300, Monterey Park, California. Acro has never been
25 registered with the CFTC in any capacity.

26 7. Defendant Pakco is a Nevada corporation with its corporate headquarters located at
27 2533 N. Carson St., #4631, Carson City, Nevada. Pakco conducts business at 2063 Atlantic
28

1 Boulevard, Suite 300, Monterey Park, California. While Pakco conducts business in California
2 with California residents, Pakco has not registered with the California Secretary of State to
3 conduct business in the State of California. Pakco has never been registered with the CFTC in
4 any capacity. On client agreements signed prior to November 2000, Pakco is described as a
5 “leveraged foreign exchange trader” located at “9/F 462 Jaffee Road in Hong Kong.” During all
6 times relevant to this Complaint, Pakco did not operate at that location. Neither Pakco nor Acro
7 has ever been licensed or registered in any capacity with the Hong Kong Securities and Futures
8 Commission as required by Hong Kong law.

9 8. Defendant Dr. Chan , the owner of Acro until May 22, 2001, resides at 1681
10 Kingspoint Drive in Walnut, California 91789. His principal place of business until at least May
11 22, 2001 was at 2063 Atlantic Boulevard, Suite 300, Monterey Park, California. Dr. Chan has
12 never been registered with the CFTC in any capacity.

13 9. Defendant Sandy Chan is the wife of Dr. Chan and was the president of Acro until
14 May 22, 2001 with her principal place of business until May 22, 2001 at 2063 Atlantic
15 Boulevard, Suite 300, Monterey Park, California. At least until May 22, 2001, she was the office
16 manager of the Monterey Park office of Acro and was in charge of accounting at the Monterey
17 Park office. Sandy Chan has never been registered with the CFTC in any capacity.

18 10. Defendant Wai is the president of Acro with his principal place of business located
19 at 2063 S. Atlantic Boulevard, Suite 300, Monterey Park, California. He resides at [2107D W.
20 Commonwealth Ave., Apt. 211, Alhambra, CA 91803](#). Before May 2001, Wai was a manager at
21 Acro. Wai is currently registered with the CFTC as the principal and an associated person of
22 Cyber Pacific Traders Inc., an introducing broker. Since at least July 2001, Wai has been the
23 president of Pakco.

24 III.

25 FACTS

26 A. Defendant’s Method of Operation

27 1. Advertisements for employment attract potential customers to Acro.

28 11. From at least February 2000 to the present, Acro has published advertisements

1 offering employment in Asian language newspapers. Advertisements in Chinese make no
2 reference to foreign currency trading but offer jobs requiring little or no experience. They
3 promise “high income,” “excellent working environment,” and assistance obtaining permanent
4 resident status.

5 12. Customers inquiring by telephone about employment are directed to come to Acro’s
6 Monterey Park office.

7 13. After customers come to the Acro office, Acro personnel reveal that the
8 employment offered is for trading foreign currency contracts. Customers are solicited to open
9 accounts for trading foreign currency futures contracts through Acro.

10 14. Many of Acro’s customers are Chinese and, with few exceptions, neither speak nor
11 read English. Acro requires every customer to sign a “client agreement” printed in English with
12 Pakco identified in the agreement as a “leveraged foreign exchange trader”. Until November
13 2000, Pakco was purportedly based in Hong Kong.

14 15. In or about the summer of 2000, Pakco was not conducting business at its Hong
15 Kong address.

16 16. After customers sign a client agreement with Pakco, they are told to deposit funds
17 and begin trading. Customers usually deposit between \$5,000 and \$10,000 to begin trading.
18 Customers make checks payable either to Acro, Dr. Chan or to “cash.” Pakco is not the payee on
19 any of these checks. Checks written by new customers opening accounts at Acro were given to
20 Dr. Chan or to Sandy Chan.

21 17. Defendants traded foreign currency contracts for future delivery at least since
22 December 21, 2000.

23 **2. Acro has misrepresented the potential for profits and the risk of loss.**

24 18. Beginning in at least March 2000, Acro represented to new customers that they
25 would receive training that will make them “successful” foreign currency traders. Customers are
26 told that foreign currency trading is profitable and involved little risk of loss. Acro offers to
27 customers who have had little or no prior investment experience 10 hours or less training in the
28 rudiments of foreign currency trading. Customers are encouraged to “paper trade,” which

1 involves the simulated trading of foreign currency futures contracts. Acro tells customers who
2 had taken the training or who had paper traded that they now had the experience to be
3 “successful” currency traders. Acro employees persuade customers to open trading accounts and
4 tell customers they can make a salary or commission income from trading foreign currency
5 contracts for the accounts of other customers. Customers are told that, after being trained and
6 after trading in their own accounts, they can earn a base monthly salary of from \$500 to \$2000
7 per month with an additional \$40 dollars for each round turn transaction they effect in the
8 accounts of other customers.

9 19. Acro and its employees have represented to customers that Acro personnel are
10 experienced foreign currency traders making profits trading foreign currency contracts. An Acro
11 brochure states that Acro has “years of experience in the financial investment field” and provided
12 “sophisticated information technologies and a research department” as well as “veteran financial
13 personnel...” Some customers are told that they could make more money in their own accounts
14 and minimize their risk if they allow one of Acro’s brokers to trade for them.

15 20. From time to time newer customers have been told of Acro traders who had
16 realized large profits trading their own accounts. One customer was shown the trading account
17 statements of an Acro manager who had purportedly made profits and who guaranteed the
18 customer she would make money. Weeks later, the manager admitted that the account
19 statements had been based on simulated rather than actual trading.

20 21. Acro has represented to customers that trading losses would be minimized because
21 a) customers were taught to trade by Acro, b) Acro’s employees could trade on customer’s
22 behalf, or c) customers could follow trading advice from Acro’s employees.

23 22. In February 2001, an Acro customer who speaks only Chinese read Acro’s help
24 wanted ad in the Chinese language World Daily News. When she visited the Acro office in
25 response to the ad, an Acro manager falsely told her that all Acro’s customers were making
26 money by trading foreign currency through Acro. The risk of trading foreign currency futures
27 contracts was not adequately disclosed to her. She signed the Acro/Pakco agreement on or about
28 February 26, 2001. Between February 26, 2001 and July 2001 she lost \$12,000 through off-

1 exchange foreign currency futures trading purportedly effected through Acro and Pakco.

2 23. In June and July 2001, Wai, as president of Acro, failed to pay a customer the funds
3 Acro purported to hold for him in a foreign currency futures trading account . Defendants have
4 failed to pay this obligation to this customer.

5 **3. Acro's employees engaged in unauthorized trading**

6 24. Acro personnel also engaged in unauthorized trading of some customers' accounts.
7 Some Acro brokers effected trades in customers' accounts without proper authorization. When
8 some customers requested that accounts be closed to prevent the accrual of daily interest, Acro
9 failed to close such accounts. Trades were executed without customer's permission or contrary
10 to the customer's trading instructions.

11 25. In or about February 2001, an Acro manager failed to execute a sale order placed
12 for the account of one customer. Instead, the customer's futures position remained open
13 subjecting her to margin calls and losses incurred when the market declined.

14 **4. Customers were unable to verify the status of their respective accounts because**
15 **they did not receive account statements.**

16 26. Defendants regularly did not provide written account statements to customers. The
17 information available to customers about the status of their accounts is obtained orally from
18 Acro personnel.

19 27. Customers who want account statements must request them, sometimes several
20 times, from Acro personnel. Pakco account statements are provided by the local office of Acro
21 rather than by Pakco.

22 28. Almost without exception, a short time after customers began trading, Acro
23 employees told customers that the balances in their respective accounts have declined. Each
24 customer was asked to deposit additional money so that he could meet margin calls from Pakco
25 and continue to trade. Prior to that time, most customers were not made aware of margin calls.
26 Some customers trading their own accounts were thereafter assured that their losses could be
27 recovered if customers allowed an Acro "broker" to manage the trading in their accounts.

28 29. Complaining customers were eventually referred to Dr. Chan. He urged some

1 customers to deposit additional money into their account with the promise of future profits and
2 persuaded those customers that the risk of loss could be minimized by allowing Acro personnel
3 to manage the customer's account or by following the trading advice of Acro personnel. Dr.
4 Chan offered credit or partial refunds to some customers.

5 **5. Acro's customers have lost money from these illegal transactions.**

6 30. With one exception, all of Acro's customers known to Plaintiff lost most or all of
7 their money trading with Acro. Some customers traded accounts for others, but none of these
8 accounts was profitable.

9 31. One customer has been unsuccessfully attempting to withdraw his account balance
10 of approximately \$27,000 since June 2001. During the week of July 23, the check delivered to
11 him for this balance was returned due to insufficient funds.

12 **B. Defendants' foreign currency futures transactions are illegal.**

13 32. The foreign currency contracts that Defendants market concern the purchase or sale
14 of commodities for future delivery at prices or using pricing formulas that are established at the
15 time the contracts are initiated, and may be fulfilled through offset, cancellation, cash settlement
16 or other means to avoid delivery.

17 33. The Defendants market these contracts to the general public. The customers who
18 purchase these futures contracts have no commercial need for the foreign currency. Instead,
19 customers enter into these transactions to speculate and profit from anticipated price fluctuations
20 in the markets for these currencies.

21 34. Customers do not anticipate taking -- and do not take -- delivery of the foreign
22 currencies they purchase as a consequence of these investments. Once the market moves in a
23 favorable direction, a customer expects to liquidate his or her investment by authorizing the sale
24 of the contract and taking the profits.

25 35. Customers do not negotiate individual purchase agreements with Defendants. The
26 rules for margin calls and other terms and conditions of Defendants' contracts, as set by
27 Defendants, are standardized.

28 36. Defendants do not conduct their foreign currency futures transactions on or subject

1 to the rules of a board of trade that has been designated by the CFTC as a contract market, nor
2 are Defendants' transactions executed or consummated by or through a member of such a
3 contract market. Defendants do not conduct transactions on a facility registered as a derivatives
4 transaction execution facility.

5 37. Section 2(c)(2)(B)(i)-(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)-(ii) (2001), provides
6 that the CFTC shall have jurisdiction over an agreement, contract or transaction in foreign
7 currency that is a sale of a commodity for future delivery, so long as the contract is "offered to,
8 or entered into with, a person that is not an eligible contract participant" unless the counter-party,
9 or the person offering to be the counter-party, is a regulated entity, as defined therein.

10 38. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2001), defines an
11 eligible contract participant as an individual who has total assets in excess of: a) \$10 million; or
12 b) \$5 million and who enters the transaction to manage the risk associated with the asset he
13 owns. At least some, if not all, of the foreign currency futures transactions alleged herein were
14 offered to or entered into with persons who were not eligible contract participants.

15 39. Defendants are not proper counter-parties for retail foreign currency transactions,
16 and therefore the CFTC has jurisdiction over the transactions in retail foreign currency alleged
17 herein.

18 IV.

19 Violation of the Commodity Exchange Act

20 COUNT I

21 Violations of Section 4b(a)(i) and (iii) of the Act: Fraud in the Sale of Illegal Off-Exchange

22 Futures Contracts

23 40. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 through
24 39.

25 41. From at least December 21, 2000 and continuing to the present, Defendants Acro,
26 and Pakco in or in connection with orders to make, or the making of, contracts of sale of
27 commodities for future delivery, made or to be made, for or on behalf of any other persons,
28 where such contracts for future delivery were or could be used for the purposes set forth in

1 Section 4b(a) of the Act, 7 U.S.C. § 6b(a) (2001), have: (i) cheated or defrauded or attempted to
2 defraud other persons; (ii) willfully made or caused to be made to other persons false reports or
3 statements thereof, or willfully entered or caused to be entered for other persons false records
4 thereof; and (iii) willfully deceived or attempted to deceive other persons, all in violation of
5 Sections 4b(a)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(i)-(iii) (2001).

6 42. The Defendants Acro and Pakco have committed specific fraudulent acts in
7 violation of Section 4b including, but not limited to:

8 a) misrepresenting the profit potential of foreign exchange futures trading to at least one
9 customer in and after February 2001 in connection with her trades in foreign exchange futures
10 contracts through Acro and Pakco since February 2001;

11 b) misrepresenting the risk of loss through futures transactions to at least the same
12 customer at the time of her foreign currency futures transactions beginning in February 2001;

13 c) engaging in fraudulent unauthorized trading by failing to follow the specific trading
14 instructions of at least one other customer in and about February 2001;

15 d) soliciting the public to engage in foreign exchange futures transactions through
16 newspaper ads, in at least May 2001 promising high income; and

17 e) failing to pay to a customer funds represented to be in his account in June and July
18 2001.

19 43. From December 21, 2000 and continuing through at least May 22, 2001, Dr. Chan,
20 as the owner and operator of Acro, directly or indirectly controlled Acro and did not act in good
21 faith or knowingly induced, directly or indirectly, the acts constituting the violations described in
22 this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (1994), Dr. Chan is liable for
23 the violations of Section 4b of the Act, 7 U.S.C. §6b to the same extent as Acro.

24 44. Each fraudulent misrepresentation and omission, including those specifically
25 alleged herein, is alleged as a separate and distinct violation of Section 4b of the Act.
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1 **Count II**

2 **Violation of Section 4(a) of the Act**

3 45. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 through
4 44.

5 46. Since at least December 21, 2000, and continuing to the present, all the Defendants
6 have offered to enter into, entered into, executed, confirmed the execution of, or conducted an
7 office or business in the United States for the purpose of soliciting, accepting any order for, or
8 otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a
9 commodity for future delivery when: (a) such transactions have not been conducted on or subject
10 to the rules of a board of trade which has been designated or registered by the by the CFTC as a
11 contract market or derivatives transaction execution facility for such commodity, and (b) such
12 contracts have not been executed or consummated by or through a member of such contract
13 market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001).

14 47. From at least December 21, 2000 and continuing through at least May 22, 2001, Dr.
15 Chan and Sandy Chan, as the owners and operators of Acro, directly or indirectly controlled
16 Acro and did not act in good faith or knowingly induced, directly or indirectly, the acts
17 constituting the violations described in this Count. Pursuant to Section 13(b) of the Act, 7
18 U.S.C. § 13c(b) (1994), Dr. Chan and Sandy Chan are liable for the violations of Section 4(a) of
19 the Act, 7 U.S.C. §6(a) to the same extent as Acro.

20 48. From on or before May 22, 2001, and continuing through the present, Wai, as the
21 owner and operator of Acro, directly or indirectly controlled Acro and did not act in good faith or
22 knowingly induced, directly or indirectly, the acts constituting the violations described in this
23 Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (1994), Wai is liable for the
24 violations of Section 4(a) of the Act, 7 U.S.C. §6(a) to the same extent as Acro.

25 49. Each foreign currency futures transaction not conducted on a designated contract
26 market or registered derivatives transaction execution facility made during the relevant time
27 period, including but not limited to those conducted by the Defendants as specifically alleged
28 herein, is alleged as a separate and distinct violation of Section 4(a) of the Act, 7 U.S.C. § 6(a)

1 (2001).

2 **RELIEF**

3 WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

4 A. Orders of preliminary and permanent injunction prohibiting the Defendants and any
5 other person or entity associated with them, or any successor thereof, from engaging
6 in conduct violative of Section 4(a) of the Act;

7 B. An order directing the Defendants and any successors thereof to disgorge, pursuant to
8 such procedure as the Court may order, all benefits received from the acts or practices
9 which constitute violations of the Act, as described herein, and interest thereon from
10 the date of such violations;

11 C. An order directing the Defendants to make full restitution to every customer whose
12 funds were received by them as a result of acts and practices which constituted
13 violations of the Act, as described herein, and interest thereon from the date of such
14 violations;

15 D. An order directing the Defendants to pay a civil penalty in the amount of not more
16 than the higher of \$120,000.00 for each violation or triple the monetary gain to
17 Defendants for each violation of the Act;

18 E. An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§
19 1920 and 2412(a)(2); and

20 F. Such other and further relief as the Court deems just and proper.

21
22 Dated: August 9, 2001

23 _____
24 Myrna D. Morganstern
25 Attorney for Plaintiff
26 Commodity Futures Trading Commission
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