

**IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN**

COMMODITY FUTURES TRADING COMMISSION,)	CIVIL ACTION NO. 02-40041
)	
Plaintiff,)	
)	
v.)	
)	
TODD JAMES SNIVELY,)	
)	
COMMODITY CONSULTANTS INTERNATIONAL, INC.,)	
)	
a Michigan corporation, and)	
)	
FUTUREWISE TRADING GROUP, INC.,)	
)	
a Michigan corporation,)	
)	
Defendants.)	
)	

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND
FOR CIVIL PENALTIES UNDER THE COMMODITY EXCHANGE ACT**

I.

SUMMARY

1. Since at least June 2001 and continuing through the present (the “relevant time”), Todd J. Snively (“Snively”), individually and as an agent for Commodity Consultants International, Inc. (“CCI”) and FutureWise Trading Group, Inc. (“FutureWise”) (collectively the “Defendants”), engaged in an internet-based commodity futures trading scheme in which the Defendants solicited and received in excess of \$2.9 million from at least 60 participants (“investors”). The Defendants purportedly operated an internet web-based trading platform and permitted investors to trade for their own accounts on that platform. The Defendants also

purportedly permitted investors to place orders with FutureWise and CCI that FutureWise and CCI represented they would cause to be executed for the investors' accounts. In both instances, the Defendants permitted investors to access their account statements over the internet that purported to show their trading activity. However, on information and belief, Defendants conducted no trading on behalf of investors and did not introduce the investors' accounts to any other entity where trading was conducted on behalf of the investors. On information and belief, the Defendants also misappropriated investor funds for personal use.

2. Using means of interstate commerce, the Defendants issued false statements to investors, concealing the facts that investor funds were not actually being traded as represented.

3. On February 7, 2002, representatives of the Commodity Futures Trading Commission ("Commission" or "CFTC") attempted to review the books and records of CCI and FutureWise, as authorized under the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.* (2001), and Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2001), but were denied access thereto by Snively.

4. Thus, Defendants have engaged, are engaging, or are about to engage in acts and practices which violate Sections 4b(a)(i)-(iii), and 4g(a) of the Act, 7 U.S.C. §§ 6b(a)(i)-(iii), 6g(a) and 6n(3) (2001) and Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2001).

5. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), Plaintiff Commission brings this action to enjoin the unlawful acts and practices of Defendants Snively, CCI and FutureWise and to compel their compliance with the provisions of the Act and Regulations thereunder. In addition, the Commission seeks civil penalties, disgorgement, restitution to investors, an accounting and such other equitable relief as the Court may deem necessary or appropriate.

II.

JURISDICTION AND VENUE

6. The Act prohibits fraud in connection with the trading of commodity futures contracts and establishes a comprehensive system for regulating the purchase and sale of such contracts. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear 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.

7. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2001), in that Defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

8. Unless enjoined by this Court, the defendants are likely to continue to engage in the acts and practice alleged in this Complaint and similar acts and practices, as more fully described below.

III.

THE PARTIES

9. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2001), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2001).

10. Defendant Todd James Snively, age 40, has been registered with the Commission as an associated person (“AP”) of CCI from June 19, 2001 until the present, and as an AP of FutureWise from February 12, 1999 until the present. Snively was president of, and at all relevant times was the day-to-day decision-maker for, defendants CCI and FutureWise. Snively committed the acts alleged in this Complaint individually and as an agent of CCI and FutureWise.

11. Defendant Commodity Consultant International, Inc. is a Michigan corporation, incorporated on May 1, 2001, and located at 39555 Orchard Hill Place, #303, Novi, Michigan 48375. Snively is the president of CCI. CCI is registered with the Commission as a futures commission merchant (“FCM”). CCI is not a member of any futures exchange and, therefore, is not authorized to execute or clear any futures trades on a contract market.

12. Defendant FutureWise Trading Group, Inc. is a Michigan corporation and is located at 39555 Orchard Hill Place, #303, Novi, Michigan 48375. Snively is the president of FutureWise. FutureWise is registered with the Commission as a commodity pool operator (“CPO”), a commodity trading advisor (“CTA”), and an introducing broker (“IB”).

IV.

FACTS

13. In or around June 2001, the Defendants began to solicit investment funds from members of the public, through means of internet marketing and otherwise for the purported purpose of investing in commodity futures using an internet web-based trading platform purportedly operated by the Defendants. Snively engaged in these activities individually and as a controlling person and agent of CCI and FutureWise.

14. During the relevant time, the Defendants received at least \$2.9 million from at least 60 investors located within and outside of this district for the purported purpose of investing in commodity futures.

15. The Defendants purportedly operated an internet web-based trading platform and permitted investors to trade for their own accounts on that platform. The Defendants represented that they charged low commissions and provided other services to induce investors to use the Defendants' trading platform and services.

16. The Defendants also represented to investors that investors could call in trades to CCI and FutureWise that CCI and FutureWise would cause to be executed on their behalf. The Defendants represented that they charged low commissions and provided other services to induce investors to use the Defendants' commodity futures trading services.

17. The Defendants permitted investors to access their account statements over the internet that were created by Defendants or persons working under their direction and that purported to show their investors' trading activity. The Defendants induced investors to maintain and add to their investments by concealing and exaggerating the true extent of their trading activities. The fictitious account statements represented that investors' funds were growing from trading; in fact, on information and belief, the Defendants engaged in little or no actual trading on behalf of investors.

18. On information and belief, on the morning of February 6, 2002, Snively withdrew more than \$2 million of investor funds from a customer segregated bank account held in the name of CCI.

19. On February 7, 2002, representatives of the Commission contacted Snively and demanded immediate inspection of the books and records of defendants CCI and FutureWise.

Snively refused to allow such inspection, as required by the Act and Commission Regulations thereunder.

IV.

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

COUNT I

**VIOLATIONS OF SECTION 4b(a)(i) AND (iii) OF THE ACT: FRAUD BY
MISAPPROPRIATION AND MISREPRESENTATIONS**

20. Paragraphs 1 through 19 are re-alleged and incorporated herein.

21. During the relevant time, Snively, CCI and FutureWise violated Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii) (2001), in that they cheated or defrauded or attempted to cheat or defraud investors, and willfully deceived or attempted to deceive investors by, among other things: misrepresenting to investors that their funds were being used to trade commodity futures when they were not; misrepresenting to investors the profits and value of their accounts; and misappropriating investor funds for their personal use.

22. The Defendants engaged in this conduct in or in connection with orders to make, or the making of, any commodity for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

23. To the extent that Snively engaged in such conduct as an agent of CCI and FutureWise, those entities as Snively's principals are also liable for his violations of Section 4b(a)(i) and (iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 4 (2001).

24. 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 4b(a)(i) and (iii) of the Act.

25. Snively directly or indirectly controlled CCI and FutureWise and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations committed by CCI and FutureWise and is liable as a controlling person for those violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b)(2001).

COUNT II

VIOLATIONS OF SECTION 4b(a)(ii) OF THE ACT: PROVIDING FALSE STATEMENTS TO INVESTORS

26. Paragraphs 1 through 25 are re-alleged and incorporated herein.

27. During the relevant time, the Defendants violated Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii) (2001), in that they, or persons working under their direction, willfully made or caused to be made false reports or statements thereof by preparing and making available to investors on the internet false trading account statements.

28. The Defendants, or persons working under their direction, engaged in this conduct in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price

basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

29. To the extent that Snively engaged in such conduct as an agent of CCI and FutureWise, those entities as Snively's principals are also liable for his violations of Section 4b(a)(ii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 4 (2001).

30. Snively directly or indirectly controlled CCI and FutureWise and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations committed by CCI and FutureWise and is liable as a controlling person for those violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b)(2001).

31. Each false report or statement 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 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii) (2001).

COUNT III

VIOLATIONS OF SECTIONS 4g(a) OF THE ACT AND REGULATIONS 1.31 AND 1.35: REFUSAL TO PERMIT COMMISSION REPRESENTATIVES TO EXAMINE BOOKS AND RECORDS

32. Paragraphs 1 through 31 are re-alleged and incorporated herein.

33. Pursuant to Section 4g(a) of the Act, 7 U.S.C. § 6g(a) (2001) and Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2001), a person registered as an FCM must keep certain books and records, including but not limited to information about commodity transactions and positions of customers, and keep them open to inspection on request by any representative of the Commission or the Department of Justice.

34. By denying Commission representatives access to CCI's books and records, CCI violated Section 4g(a) and Regulations 1.31 and 1.35.

35. Snively willfully aided and abetted CCI in its violations of Section 4g(a) of the Act and Regulations 1.31 and 1.35, and is therefore liable for such violations pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2001).

36. Snively directly or indirectly controlled CCI and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations committed by CCI and is liable as a controlling person for those violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b)(2001).

IV.

RELIEF REQUESTED

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

A. Find Defendants liable for violating Sections 4b(a)(i)-(iii), and 4g(a) of the Act, 7 U.S.C. §§ 6b(a)(i)-(iii), and 6g(a) (2001), and Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2001);

B. Enter orders of preliminary and permanent injunction restraining and enjoining Defendants and all persons insofar as they are acting as their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with him who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Cheating, defrauding or willfully deceiving or attempting to cheat, defraud or willfully deceive other persons, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such

commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(i) and (iii);

2. Willfully to make or cause to be made to other persons any false report or statement thereof, or willfully to enter or cause to be entered for such persons any false record thereof, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii);
3. Denying access to the books and records of CCI and FutureWise to representatives of the Commission or the Department of Justice, in violation of Section 4g(a) of the Act, 7 U.S.C. §§ 6g(a) and 6n(3), and Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2001);
4. 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) (2001); engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any person or entity, whether by power of attorney or otherwise; and
5. 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, except as provided for in Regulation 4.41(a)(9), 17 C.F.R. § 4.41(a)(9) (2001), or acting as a principal, agent, or any other officer or agent of any person registered, required to be registered, or exempted from registration with the Commission, except as provided for in Regulation 4.41(a)(9), 17 C.F.R. § 4.41(a)(9) (2001).

C. Enter orders of preliminary injunction restraining and enjoining Defendants and all persons insofar as they are acting as their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with him who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically

stored data, tape records or other property of defendants, wherever located, including all such records concerning Defendants' business operations;

2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendants, wherever located, including all such records concerning defendant's business operations; and
3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control of, or in the name of, Snively, CCI or FutureWise.

D. Enter an order requiring Defendants to pay civil penalties under the Act in amounts of not more than the higher of \$120,000 for each violation of the Act and Regulations, or triple the monetary gain to Defendants, for each violation of the Act and Regulations described herein;

E. Enter an order directing Defendants to provide Plaintiff immediate and continuing access to their books and records, make an accounting to the Court of all of their assets and liabilities, together with all funds they received from and paid to investors and other persons in connection with commodity futures transactions or purported commodity futures transactions, including the names, addresses and telephone numbers of any such persons from whom they received such funds from June 1, 2001, to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from commodity investors, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from June 1, 2001, to and including the date of such accounting;

F. Enter an order requiring Defendants to disgorge all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived,

directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest;

G. Enter an order requiring Defendants to make restitution by making whole each and every investor whose funds were received or utilized by Defendants in violation of the provisions of the Act as described herein, including pre-judgment interest;

H. Enter an order rescinding all contracts entered into by Defendants with any investor; and

I. Order such other and further remedial ancillary relief as this Court may deem necessary and appropriate under the circumstances.

Date: February 7, 2002

ATTORNEYS FOR PLAINTIFF

COMMODITY FUTURES TRADING
COMMISSION
300 South Riverside Plaza, Suite 1600N
Chicago, IL 60606-6615
(312) 886-3090 (Williamson)
(312) 353-1969 (Greenwald)
(312) 886-3223 (Bretscher)
(312) 353-4502 (facsimile)

Mark Bretscher
Senior Trial Attorney

Clifford C. Histed
Trial Attorney

Local Counsel:

William Woodard
Assistant U.S. Attorney
Eastern District of Michigan
Civil Division
211 W. Fort Street
Suite 2000
Detroit, Michigan 48226
313-226-9100
313-226-3271 (facsimile)

Robert J. Greenwald
Senior Trial Attorney

Scott R. Williamson
Deputy Regional Counsel
Illinois ARDC No. 06191293