

RECEIVED

JUN 24 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL ... S
CLERK, U.S. DISTRICT COURT

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

MICHAEL ZELENER, an individual, a/k/a
MIKHAIL ZELENER, a/k/a MICHAEL
MARSHALL; AMGINE INC., a Nevada
Corporation f/d/b/a BRITISH CAPITAL
GROUP; MARKHAM & Co., a Nevada
Corporation d/b/a BRITISH CAPITAL GROUP
LTD.; and ALARONFX, an Illinois Corporation,

Defendants.

JUDGE KENNELLY

CIVIL ACTION NO: _____

03C 4348

MAGISTRATE JUDGE KEYS

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

1. Plaintiff, Commodity Futures Trading Commission ("CFTC" or "Commission"), an independent federal regulatory agency of the United States, brings this civil action to enforce violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 1 *et seq.* (2000), and for its complaint against defendants Michael Zelener, a/k/a Mikhail Zelener, a/k/a Michael Marshall ("Zelener"); Amgine Inc. ("Amgine") f/d/b/a British Capital Group; Markham & Co. ("Markham") d/b/a British Capital Group, Ltd. ("BCG") (collectively, the "BCG Defendants"); and AlaronFX ("AFX") (collectively "the Defendants"), alleges as follows:

L

SUMMARY

2. Since at least April 2001, and continuing through the present (the "relevant time"), the BCG Defendants have, as an agent of AFX, operated a foreign currency boiler room

that has solicited nearly \$4 million in funds from at least 238 members of the retail public throughout the United States to engage in speculative trading of foreign currency ("forex") futures contracts at AFX. The BCG Defendants fraudulently solicited the investors through aggressive, high-pressure telephone sales tactics, including promises of large profits with limited risks, false and misleading promotional material and material omissions about its fees and the compensation arrangement it had with AFX. However, BCG's customers consistently lose virtually all of their investments within a few months of investing. Indeed, only one customer earned a profit (\$19.21) in calendar year 2002, while the rest of the approximately 143 BCG customer accounts carried at AFX in 2002 incurred total aggregate losses in excess of \$1.4 million. Meantime, during the relevant time, BCG earned more than \$1.4 million in payments or fees from AFX.

3. By virtue of this fraudulent conduct, the BCG Defendants have engaged, are engaging, or are about to engage in acts and practices which violate Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2000).

4. The Commission brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2000) to enjoin the BCG Defendants from soliciting new customers and customer funds and to enjoin all of the Defendants from any other unlawful acts and practices, and to compel their compliance with the Act. In addition, the Commission seeks from each of the Defendants an accounting, disgorgement of Defendants' ill-gotten gains, restitution to investors, monetary civil penalties, and such other relief as this Court may deem necessary or appropriate.

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

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 commodity futures contracts and options on commodity futures contracts to protect the investing public. Section 2(c)(2)(B) of the Act, as amended, 7 U.S.C. § 2, expressly grants the Commission jurisdiction over certain transactions in foreign currency that are contracts for the sale of a commodity for future delivery, including the transactions alleged in this Complaint. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 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(e), because the Defendants are found in, inhabit, or transact business, among other places, in this District, or the acts, practices and omissions in violation of the Act have occurred, are occurring, or are about to occur, within this District, among other places. Specifically, AFX has its principal office in Chicago, Illinois, all of the trading occurs in Chicago, Illinois and some defrauded customers reside in the Northern District of Illinois. Amgine, f/d/b/a BCG and Markham & Co. d/b/a BCG are located in Carson City, Nevada and BCG offices are located in Los Angeles, California, but as previously stated, BCG does business in the Northern District of Illinois.

III.

THE PARTIES

The Plaintiff

8. The Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with the responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 *et seq.* (2000), and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2002).

The Defendants

9. Michael Zelener, age 28, is a resident of Sherman Oaks, California and maintains his business at 5900 Wilshire Blvd., Suite 2120, Los Angeles, California 90036. On information and belief, Zelener is also known as Mikhail Zelener and Michael Marshall. Zelener is the president of Amgine, Markham and BCG and controls the day-to-day operations of BCG. Zelener was registered with the Commission as an Associated Person ("AP") of Amgine between April 25, 2001, and September 8, 2002. He was listed as a principal of Amgine during that same time period. Zelener was registered as an AP of Markham between December 11, 2001, and April 28, 2002. During that same time, he had a Form 3R filed with the National Futures Association ("NFA") listing him as a principal of Markham. At the present, Zelener is not registered with the Commission in any capacity.

10. Amgine, Inc. is a Nevada corporation incorporated on May 11, 1998. Amgine is, or during the relevant time, was doing business in California as British Capital Group. Its principal place of business is at 5900 Wilshire Blvd., Suite 2120, Los Angeles, California 90036. Amgine became registered with the Commission on April 25, 2001 as a Commodity Trading Advisor ("CTA") and Commodity Pool Operator ("CPO") and as an Introducing Broker ("IB")

on May 22, 2001. Amgine withdrew its IB registration on July 5, 2002, and its CPO and CTA registrations on or about September 8, 2002. Amgine is not currently registered with the Commission in any capacity.

11. Markham & Co. is a Nevada corporation incorporated on March 21, 2001. Markham is doing business in California as British Capital Group, Ltd. Its' principal place of business is at 5900 Wilshire Blvd., Suite 2120, Los Angeles, California 90036. Markham & Co. was registered with the Commission as an IB from December 11, 2001, until April 28, 2002. Markham is not currently registered with the Commission in any capacity.

12. AlaronFX, Inc. is an Illinois corporation organized on April 23, 2001. Its' principal place of business is 822 W. Washington Blvd., Chicago, Illinois 60607. It is an affiliate of Alaron Trading Corporation. AFX purports to be a dealer in foreign currency and foreign currency options contracts. AFX is not currently registered with the Commission in any capacity.

Other Relevant Entities

13. Alaron Trading Corporation ("Alaron") is an Illinois corporation organized on May 15, 1989. Its' principal place of business is 822 W. Washington Blvd., Chicago, Illinois 60607. Alaron is registered as a Futures Commission Merchant ("FCM") with the Commission and is a member of the National Futures Association ("NFA").

IV.

FACTS RELEVANT TO ALL COUNTS

Solicitation of Investors

14. Since at least April 2001 to the present time, the BCG Defendants fraudulently solicited retail customers to open "Managed Currency Trading Accounts" to trade foreign currency futures contracts at AFX.

15. Between September 2001 and March 2002, BCG was a Guaranteed Introducing Broker ("GIB") to Alaron. After March 2002, BCG continued its business relationship with Alaron and its affiliate, AFX on the same basis.

16. On information and belief, at all relevant times, BCG's relationship with AFX was exclusive.

17. Zelener is the President and officer of BCG. He controls and is responsible for BCG's overall operations. He runs and maintains the daily functions of the office, hires employees and instructs the staff regarding customer solicitations. On information and belief, BCG had about 4-5 employees at any one time. On or around March 21, 2001, Zelener caused fictitious business name statements to be recorded in California declaring Amgine as d/b/a British Capital Group and Markham as d/b/a British Capital Group, Ltd. In January 2002, Amgine's California fictitious business registration was forfeited.

18. On information and belief, from time to time, Alaron required Zelener to submit all BCG's advertisements and promotional material to it for its approval.

19. BCG, through its promotional material and verbal solicitations, touts itself and its foreign currency investment program as a stable, conservative, high yield, low risk investment program staffed with professionals who oversee customer accounts on a 24-hour basis. The

purported purpose of the program is to make money by speculating on the movement of foreign currency prices.

20. The BCG Defendants solicit prospective investors by operating a boiler-room sales operation where sales associates, hired through newspaper ads, engage in nationwide telephone solicitations by making cold-calls to potential investors identified on lead lists. Many of the investors are unsophisticated investors with little investment experience who are unfamiliar with forex transactions, which are cash-settled foreign currency contracts traded over the counter, principal to principal, on a cash-settled basis.

21. BCG's customers made speculative investments, did not intend to take delivery of currency, did not have the capacity to take delivery of currency, and did not, in fact, take delivery of currency.

22. The BCG Defendants instruct their sales associates what to say to potential investors to persuade them to invest. During their solicitations, the BCG sales associates make numerous fraudulent misrepresentations or fraudulently omit to state material facts. Among such misrepresentations and omissions are the following:

(a) BCG traders had a 14-month track record of making 10% profit per month with no losses; and

(b) Investors would make at least "10% a month" and "as much as 120% in yearly returns." In fact, the BCG Defendants' actual trading track record and the track record of the investors' accounts they managed were not truthfully represented to investors and potential investors. During 2002, with one exception, every BCG customer lost money in their BCG managed account at AFX. The one customer who made money made \$19.21.

23. BCG Defendants misrepresent the risk of loss to potential investors. For example, BCG sales associates have told some investors: (a) that losses are unlikely; (b) they could limit losses by using a "stop-loss" trading technique; (c) that the BCG traders do not take extensive risk; (d) only 20% of an investors' equity would be used for trading; and (e) they would notify investors if an investor account fell below 50% in equity. Each of these statements is false.

24. BCG sales associates also falsely told potential investors that they would they would have 24-hour access to check the status of their accounts through a BCG or AFX website and that they would also receive monthly statements showing the profits or losses in their accounts. Investors rarely received monthly account statements and were not told how to access their accounts electronically. More significantly, Zelener instructed one BCG sales associate to tell a customer who had not received an account statement that he had made 10%. When the customer later received an account statement, he learned he had lost money.

25. Zelener sent a packet of materials to customers who indicated an interest in investing. Typically, the packet included a one-page BCG customer profile sheet, BCG's promotional brochure, AFX account opening documents and AFX's customer agreement.

26. The BCG promotional materials explained that the investor would have a "British Capital Group Managed Currency Trading Account" with BCG, and that BCG would manage and trade the investor's accounts.

27. The AFX account opening documents included a power of attorney to BCG, as agent, to trade the investors' account and a one page "Fee Payment Authorization." The Fee Payment Authorization authorized AFX to pay BCG management or incentive fees in an amount "not to exceed 20% of profits realized" on the customers' account.

28. After filling out the account opening documents, BCG directed investors to send their account documents and investment funds directly to AFX. Upon receipt of the account opening documents, AFX opened an individual account for each investor on a fully disclosed basis.

29. In the BCG promotional materials, the BCG Defendants make numerous fraudulent misrepresentations, or fraudulently omit to state material facts, in that:

(a) BCG Defendants falsely represent that their accounts are: “[P]rofessionally managed 24 hours a day” and because BCG is operating 24 hours a day, “traders are always in a position to take advantage of market movements”, and “traders and analysts professionally supervise the ...account program on a 24 hour basis. In fact, BCG had only one person who purported to be the BCG trader and that individual was not in the BCG offices during the day. In addition, at least one customer was told that the offices were closed from around December 20, 2002 through January 6, 2003. BCG had no round-the-clock, professional trader supervision monitoring the foreign currency markets for the benefit of the customers.

(b) BCG Defendants and promotional materials falsely represent that there is a “high degree of liquidity”, and “funds are available to the client upon 48 hours notice.” In fact, when investors requested return of the balance in their accounts, BCG either ignored their request or did not respond to the investor until the investors’ account had lost all remaining funds.

(c) In soliciting prospective investors, the BCG Defendants made statements minimizing or misstating the risk of loss. These statements were *per se* fraudulent, and included representations that: BCG is able to limit risk because it uses “stop-loss orders”; and the downside risk in major currencies is limited because the value of “a major currency cannot be

reduced to zero value.” By stating “a major currency cannot be reduced to zero,” BCG promotional materials falsely imply that customers cannot lose their entire investment.

(d) The materials state that “our traders do not receive commissions and are paid strictly on performance” and each account is subject to a 2% annual administration fee and a performance fee limited to 20% of profits attained. These representations falsely lead customers to believe that BCG is not receiving any compensation unless the customer’s account is profitable.

(e) The BCG Defendants omitted material facts by failing to disclose the existence of a compensation agreement they have with AFX. The failure to disclose the mark-up of the bid-ask spread deceived customers into believing they were getting competitive prices. The lack of disclosure impaired the customers’ ability to determine how the mark-up would affect the profitability of the transactions.

(f) BCG Defendants’ materials state that a client may personally contact his account executive and obtain the most recent information regarding his account. In fact, customers typically are unable to contact their account executives. In addition, the BCG Defendants failed to respond to investor complaints.

(g) The BCG Defendants’ promotional materials contain a page entitled “References” that lists the telephone numbers or worldwide web addresses of the Commission, the National Futures Association (“NFA”), and the Better Business Bureau in California and other persons and entities. This material is deceptive and leads prospective investors to believe that BCG is a business in good standing with the Commission and the Better Business Bureau. The list of References also leads prospective investors to believe that BCG is a member of the NFA and is registered with the Commission by listing a registration number next to NFA’s name. The

material is deceptive because it creates the impression that BCG is a registrant subject to NFA oversight. In fact, BCG has no registration status, and the NFA registration number listed in the Defendants' promotional materials corresponds to Alaron and not BCG.

30. AFX knew that BCG customers were not receiving regular monthly account statements. Some BCG investors contacted AFX to learn the status of their account. AFX provided those investors with either a copy of their account statement or instructions on how to access their account information on the internet. The account statements AFX provided to BCG or directly to BCG's customers did not disclose AFX's compensation to BCG.

31. At all relevant times, BCG operated as AFX's agent.

32. Between October 2001, and the present, the BCG Defendants introduced at least 238 accounts to AFX, including customers in this district. In the aggregate, these customers deposited approximately \$4 million with AFX, where most of their funds were lost trading or paid to BCG Defendants and AFX in compensation and fees. During the relevant time period AFX paid the BCG Defendants in excess of \$1.4 million in compensation and fees.

Statutory Background

33. Section 2(c)(2)(B)(i) and (ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i) and (ii) (2000) provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, so long as the contract is "offered to, or entered into with, a person that is not an eligible contract participant" unless the counterparty, or the person offering to be the counterparty, is one of the regulated entities enumerated in Section 2(c)(2)(B)(ii)(I-VI). FCMs and their affiliates are regulated entities enumerated in that section. Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) further provides that, notwithstanding subclauses (II) and (III) of subparagraph (B)(ii), agreements, contracts, or

transactions in retail foreign currency described in subparagraph (B) shall be subject to Section 4b of the Act (antifraud provision) if they are entered into by a futures commission merchant or an affiliate of a futures commission merchant that is not also an entity described in subparagraph (B)(ii). Since this complaint alleges a violation of Section 4b of the Act, the Commission has jurisdiction over the Defendants' fraudulent acts.

34. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1 (2000), defines an eligible contract participant as an individual who has total assets in excess of: a) \$10 million; or b) \$5 million and who enters the transaction to manage the risk associated with an asset owned or a liability incurred, or reasonably likely to be owned or incurred.

35. Most, if not all, of the foreign futures transactions alleged herein were offered to or entered into with persons who were not eligible contract participants.

V.

COUNT ONE

Fraud and Deceit in the Sales of Futures Contracts
in Violation of Section 4b(a)(2)(i),(iii) of the Act .

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

37. By engaging in the foregoing fraudulent acts and practices alleged in Paragraphs 15 through 35 above, BCG Defendants, 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 any other persons, where such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a) of the Act, 7 U.S.C. § 6b(a) (2000), have: (a) cheated or defrauded or attempted to cheat or defraud other persons; and (b) willfully deceived or attempted to deceive other persons, all in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2000). Each misrepresentation, omission, actual or attempted act to

cheat or defraud, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2).

38. Zelener directly or indirectly controlled BCG and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting BCG's violations alleged in this Complaint. Zelener is therefore liable for each of BCG's violations of the Act and Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. §13c(b) (2000).

39. The actions and omissions of Zelener and the BCG sales associates described in this Complaint were done within the scope of their employment with BCG. Therefore, BCG is liable as a principal for each of the violations of Zelener and the BCG sales associates pursuant to 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) and Regulation 1.2, 17 C.F.R. § 1.2 (2002).

40. The actions and omissions of the BCG Defendants described in this Complaint were done as agents of AFX. Therefore, AFX is liable as a principal for each of the BCG Defendants' violations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2000), and Regulation 1.2, 17 C.F.R. § 1.2 (2002).

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, and pursuant to its own equitable powers:

- A. Find that the Defendants violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii);
- B. Enter orders of preliminary and permanent injunction restraining and enjoining:
BCG Defendants and AFX and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all

persons insofar as they are acting in active concert or participation with them 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; and
 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 Defendants' business operations.
- C. Enter orders of preliminary and permanent injunction restraining and enjoining: the BCG Defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly 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, or in the name of Defendants.

- D. Enter orders of preliminary and permanent injunctions prohibiting the BCG Defendants and AFX and any other person or entity associated with them, including any successor thereof, from engaging in conduct, in violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2001);
- E. Enter orders of preliminary and permanent injunctions prohibiting the BCG Defendants and any other person or entity associated with them, including any successor thereof, from soliciting funds for, engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- F. Enter an order directing the Defendants, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, 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 thereon from the date of such violations;
- G. Enter an order directing the Defendants to make full restitution to every investor whose funds were received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;
- H. Enter an order assessing a civil monetary penalty against each Defendant in the amount of not more than the higher of \$120,000 or triple the monetary gain to the Defendant for each violation by the Defendant of the Act or Regulations;

- I. Enter an order directing that the Defendants make an accounting to the court of all 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, and all disbursements for any purpose whatsoever of funds received from commodity transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind, from, but not limited to, April 2001 to and including the date of such accounting;
- J. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- K. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: _____

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF
COMMODITY FUTURES TRADING
COMMISSION
525 West Monroe Street, Suite 1100
Chicago, Illinois 60661
(312) 596-0714 (facsimile)



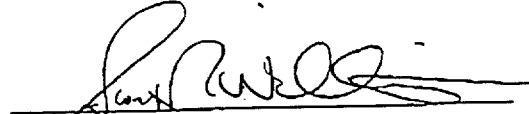
Ava M. Gould
Lead Trial Attorney
(312) 596-0535
(312) 596-0714 (facsimile)
agould@cftc.gov



Diane Romaniuk
Senior Trial Attorney

(312) 596-0541
(312) 596-0714 (facsimile)

Camille Arnold
Senior Trial Attorney
(312) 596-0524
(312) 596-0714 (facsimile)
camold@cftc.gov



Scott R. Williamson
Deputy Regional Counsel
(312) 596-5060

Rosemary Hollinger
Associate Director
(312) 596-0520