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FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

_____)	
COMMODITY FUTURES)	
TRADING COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO _____
)	
BRYAN KEITH HAWKER, and)	
)	
G, HAWKER & STONE, LLC,)	JTG
)	
Defendants.)	
_____)	

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

I.

SUMMARY

1. Since approximately October 2002 through February 2003 (the “relevant period”), Bryan Keith Hawker (“Hawker”), acting individually or as an agent for G, Hawker & Stone, LLC (“GHS”), a limited liability company that he established and operated, has fraudulently solicited and accepted approximately \$311,000 from at least 12 persons (“investors”) to purportedly trade foreign currencies on their behalf. Hawker and GHS made material misrepresentations to investors and prospective investors about Hawker’s allegedly successful experience in trading foreign currencies and the potential risk of foreign currency trading. In addition, Hawker and GHS failed to disclose to investors and prospective investors material facts regarding his criminal background. Hawker also provided one investor with a false trading statement that reflected large profits. Ultimately, Hawker and GHS did not use investor funds to trade foreign currencies; instead, they misappropriated most of the funds they accepted from investors. Defendants have not accounted for those funds.

2. Thus, Hawker and GHS, (collectively the “Defendants”) have engaged, are engaging, or are about to engage in acts and practices which violate Sections 4b(a)(2)(i), 4b(a)(2)(ii), and 4b(a)(2)(iii) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 6b(a)(2)(i), 6b(a)(2)(ii) and 6b(a)(2)(iii), and Commission Regulation 1.1(b) thereunder, 17 C.F.R. § 1.1(b) (2002).

3. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), Plaintiff Commodity Futures Trading Commission (“Commission”) brings this action to enjoin the unlawful acts and practices of defendants Hawker and GHS and to compel their compliance with the provisions of the Act and Regulations thereunder. In addition, the Commission seeks civil

penalties, an accounting and such other equitable relief as the Court may deem necessary or appropriate.

II.

JURISDICTION AND VENUE

4. The Act prohibits fraud in connection with the trading of commodity futures contracts and options and establishes a comprehensive system for regulating the purchase and sale of such contracts and options. 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. In addition, Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B) (2001) confers upon the Commission jurisdiction over certain retail transactions in foreign currency for future delivery, including the transactions alleged in this complaint.

5. 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.

III.

THE PARTIES

6. 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.* (2002).

7. Defendant Bryan Keith Hawker currently resides in Sandy, Utah. Hawker established and at all relevant times was the chief day-to-day manager of GHS. Hawker committed the acts alleged in this complaint individually and as an agent of GHS. Hawker has never been registered with the Commission in any capacity.

8. Defendant G, Hawker & Stone, LLC is a Utah limited liability company established in November 2002 for the purpose of engaging in “the business of acquisition, marketing, development, management and maintenance of various investment projects and properties.” GHS operated out of Hawker’s residence in Sandy, Utah. GHS has never been registered with the Commission in any capacity.

IV.

FACTS

A. Hawker Fraudulently Solicited Investors for Purported Foreign Currency Trading

9. From at least October 2002, Hawker, individually and/or as an agent of GHS, solicited and caused others to solicit investment funds from members of the public to purportedly trade foreign currencies on their behalf.

10. In soliciting one or more investors and prospective investors, Hawker made an number of misrepresentations of material facts, including, but not limited to the following:

- (a) he previously had been successful trading foreign currencies and that his profitable trades outweighed his unprofitable trades; and
- (b) 90% of his trades were successful.

11. The representations in paragraphs 10(a) and (b) were false in that, upon information and belief, Hawker had no record of successful trading of foreign currencies. To the

contrary, Hawker's only known prior performance record showed losses, not profits.

Immediately prior to soliciting investors, from April 18, 2002 through August 3, 2002, Hawker had traded a foreign currency account in his own name at Forex Capital Markets LLC, a registered futures commission merchant. He deposited a total of \$17,000 dollars into that account and sustained net losses of \$6,909,97. Approximately 60% of his trades lost money.

12. In soliciting one or more investors or prospective investors, Hawker also made the following misrepresentations that were *per se* fraudulent:

- (a) the investments would be no or low risk because of the way he traded; and
- (b) he could guarantee a 100% return in 12 months.

13. In soliciting one or more investors or prospective investors, Hawker also represented that he did not need to be registered with the Commission because he operated investment pools that did not exceed \$200,000. Hawker provided one investor with a printout from an Internet site that outlined Commission registration requirements for commodity pool operators.

14. Hawker also failed to provide one or more investors and prospective investors with certain material facts regarding his criminal background, including that:

- (a) on February 15, 2000, he had pled guilty to one, third degree felony count of attempted false/fraudulent insurance and was placed on probation; and
- (b) on January 16, 2002, he was charged with nine counts of state securities fraud, or in the alternative, theft by deception, and one count of unlawful activity and that these charges were pending.

B. The Structure and Explanation of the Purported Investment

15. Hawker and GHS structured the transactions on paper as “private party loan agreements” in which investors purportedly loaned funds to GHS. The loan agreements typically stated that investors would receive 100% interest for a six-month period.

16. Hawker told investors that he would use their funds to trade foreign currencies and that their so-called loans would be repaid through Hawker’s profits in trading foreign currencies. Hawker represented that the investors would get all profits up to 100% on their investments and that he only would be compensated by profits that exceeded the 100% return.

17. None of the investors had any commercial or financial reason to take delivery of any foreign currencies nor did they intend to take physical delivery of any foreign currencies in connection with their investment.

C. Hawker Provided a False Trading Statement to One Investor

18. In February 2003, Hawker provided one investor with a statement entitled “foreign currency trading results” that reflects eleven foreign currency trades for that month. Ten of the purported trades are winning trades with an aggregate profit of \$260,750. The one losing trade reflects a \$15,470 loss. Upon information and belief, that statement is a total fabrication.

D. Hawker and GHS Accepted and Misappropriated Investor Funds

19. Hawker and GHS accepted approximately \$311,000 from at least 12 investors. Upon information and belief, Hawker and GHS failed to use any of the investor funds to trade foreign currencies, but instead misappropriated most of the investor funds. Defendants have not accounted for those funds.

E. Statutory Background

20. Section 2(c)(2)(B)(i)-(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)-(ii) (2001), provides that the CFTC 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 that contract is “offered to, entered into with, a person that is not an eligible contract participant,” unless the counterparty, or the person offering to be a counterparty, is a regulated entity, as defined therein. Section 2(c)(2)(B)(i)-(ii) of the Act was enacted by Congress as part of the Commodity Futures Modernization Act of 2000 (“CFMA”) in an effort “to clarify the jurisdiction of the Commodity Futures Trading Commission over certain retail foreign exchange transactions and bucket shops that may not otherwise be regulated.” CFMA § 2(5), Pub. L. No. 106-554, 114 Stat. 2763 (2000).

21. Section 1a(12)(A)(v) of the Act, 7 U.S.C. § 1a(12)(A)(v) (2001), defines an “eligible contract participant” as a corporation, partnership, proprietorship, organization, trust, or other entity that: (a) has total assets exceeding \$10 million; (b) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keep-well, support, or other agreement by a financial institution, regulated insurance company, regulated investment company or commodity pool, as defined; or (c) has a net worth exceeding \$1 million and enters the transaction in connection with the conduct of the entity’s business or to manage the risk associated with an asset or liability owned or incurred, or reasonably likely to be owned or incurred by the entity in the conduct of the entity’s business.

22. In soliciting investors and prospective investors, Hawker and GHS were proposing to act as either counterparties or intermediaries between the investors and a futures commission merchant. Neither Hawker nor GHS were proper counterparties to, or legal

intermediaries for, retail foreign currency transactions. Furthermore, when discussing Commission registration requirements with at least one investor, Hawker implicitly acknowledged that he was purportedly trading financial instruments, *i.e.*, futures or options, regulated by the Commission. Consequently, the Commission has jurisdiction over Hawker's and GHS's purported foreign currency trading enterprise.

v.

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

COUNT I

**FRAUD BY MISAPPROPRIATION AND MISREPRESENTATION
VIOLATIONS OF SECTIONS 4b(a)(2)(i), 4b(a)(2)(ii) and 4b(a)(2)(iii)
OF THE ACT AND REGULATIONS 1.1(b)(1), (2) and (3)**

23. Paragraphs 1 through 22 are re-alleged and incorporated herein.

24. During the relevant time, Hawker violated Sections 4b(a)(2)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (ii) and (iii), and Regulations 1.1(b)(1), (2) and (3), 17 C.F.R. §§ 1.1(b)(1), (2) and (3) (2002), in that he cheated or defrauded or attempted to cheat or defraud investors or prospective investors in the investment program, made false statements and willfully deceived or attempted to deceive investors or prospective investors by, among other things: misappropriating funds received from investors, issuing a fabricated trading statement, misrepresenting his past success trading foreign currencies to investors and prospective investors, failing to disclose material facts about his criminal background, overemphasizing prospective profits and downplaying risk of loss, and presenting an unbalanced image of the two in connection with foreign currency trading.

25. Defendant 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.

26. The actions and omissions of Hawker described in this count were done within the scope of his employment and as an agent of GHS. Therefore, GHS also is liable for Hawker's violations of Sections 4b(a)(2)(i), (ii) and (iii) of the Act and Regulations 1.1(b)(1), (2) and (3), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

27. Hawker, directly or indirectly, controlled GHS and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting GHS's violations alleged in this count. Hawker thereby is liable for GHS's violations of Sections 4b(a)(2)(i), (ii) and (iii) of the Act and Regulations 1.1(b)(1), (2) and (3), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

28. Each material misrepresentation or omission, false statement, misappropriation of investor funds and willful deception made during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i), (ii) and (iii) of the Act and Regulations 1.1(b)(1), (2) and (3).

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 Defendants violated Sections 4b(a)(2)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (ii) and (iii), and Regulations 1.1(b)(1), (2) and (3), 17 C.F.R. §§ 1.1(b)(1), (2) and (3) (2002);
- B. Enter orders of preliminary and permanent injunction restraining and enjoining 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 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 Defendants' 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, or in the name of Defendants.

- C. Enter orders of preliminary and permanent injunctions prohibiting the Defendants and any other person or entity associated with them, including any successor thereof, from:
1. engaging in conduct, in violation of Sections 4b(a)(2)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (ii), and (iii), and Regulation 1.1(b)(1), (2) and (3), 17 C.F.R. §§ 1.1(b)(1), (2) and (3) (2002);
 2. 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;
- D. 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;
- E. Enter an order directing the Defendants to make full restitution to every customer whose funds were received by him 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;

- F. 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;
- G. 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 clients 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, October 2002 to and including the date of such accounting;
- H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- I. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: March 12, 2003

Respectfully submitted,

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