



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

**ORIGINAL  
RECEIVED**

MAR 07 2003

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

TODD JAMES SNIVELY,

COMMODITY CONSULTANTS  
INTERNATIONAL, INC.,

a Michigan corporation, and

FUTUREWISE TRADING GROUP, INC.,

a Michigan corporation,

Defendants.

ENTERED

CIVIL ACTION NO. 02-10047  
DISTRICT COURT  
FLINT, MICHIGAN

Hon. Paul V. Gadola  
District Court Judge

Hon. Wallace Capel, Jr.  
Magistrate

FILED  
MAR 11 9 18 AM '03  
CLERK OF DISTRICT COURT  
FLINT, MICHIGAN

MAR 11 9 18 AM '03

**CONSENT ORDER OF PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF AGAINST DEFENDANTS  
TODD JAMES SNIVELY, COMMODITY CONSULTANTS INTERNATIONAL, INC.,  
AND FUTUREWISE TRADING GROUP, INC.**

On February 8, 2002, plaintiff Commodity Futures Trading Commission ("Commission") filed a Complaint against Todd James Snively ("Snively"), Commodity Consultants International, Inc. ("CCI") and Futurewise Trading Group, Inc. ("Futurewise") (collectively the "defendants") seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 et seq. (2001), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2002). The Court entered a statutory restraining order against the defendants on February 8, 2002 and a preliminary injunction against the defendants on February 28, 2002.

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## I.

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint against Snively, CCI and Futurewise without a trial on the merits or any further judicial proceedings, defendants:

1. Consent to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief Against Defendants Snively, CCI and Futurewise ("Order").
2. Affirm that defendants have agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.
3. Acknowledge service of the Summons and Complaint.
4. Admit jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).
5. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).
6. Waive:
  - a. the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, except as set forth below;
  - b. all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Regulations, 17 C.F.R. § 148.1, et seq. (2002), relating to, or arising from, this action;

- c. any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and
- d. all rights of appeal from this Order.

7. By consenting to the entry of this Order, defendants do not contest any of the allegations of the Complaint except as to jurisdiction and venue, which they admit. Defendants agree that neither they nor any of their agents or employees acting under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in this Order, or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect defendants' (i) testimonial obligations; or (ii) their rights to take legal positions in other proceedings to which the Commission is not a party. Defendants shall take all necessary steps to ensure that all of their agents and employees understand and comply with this agreement.

8. Defendants consent to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this case.

## II.

### FINDINGS AND CONCLUSIONS

It further appearing to this Court that there is no just reason for delay, the Court being fully advised in the premises and the Court finding that there is just cause for entry of this Order that fully disposes of all issues in this matter, **THE DEFENDANT DOES NOT CONTEST AND THE COURT FINDS THAT:**

1. This Court has jurisdiction over the subject matter of this action and all parties hereto 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.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), in that the 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.

ORDER FOR PERMANENT INJUNCTION

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Defendants Snively, CCI and Futurewise are permanently restrained, enjoined and prohibited from directly or indirectly:

A. Cheating or defrauding or attempting to cheat or defraud and willfully deceiving or attempting to deceive other persons in or in connection with any order to make, or the making of, any contract or sale of any commodity for future delivery, made, or to be made, for or on behalf of any person if such contract for future delivery is or may be used for (i) hedging any transaction in interstate commerce in such commodity or the products or by products thereof; (ii) determining the price basis of any transaction in interstate commerce in such commodity; or (iii) 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) (2001); and

B. Willfully making or causing to be made to such other person any false report or statement thereof, in violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii) (2001).

2. Defendants Snively, Futurewise and CCI are further permanently restrained, enjoined and prohibited from directly or indirectly denying Commission representatives access to Snively's, CCI's and Futurewise's books and records, in violation of 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 (2002).

3. Defendants Snively, CCI and Futurewise are further permanently restrained, enjoined and prohibited from directly or indirectly:

A. Trading on or subject to the rules of any registered entity;

B. Engaging in, controlling, or directing the trading of any commodity futures, security futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and

C. 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 with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2002), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2002).

4. The injunctive provisions of this Order shall be binding on defendants Snively, CCI and Futurewise, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of the defendants, and upon any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in active concert or participation with defendants Snively, CCI and Futurewise.

## IV.

ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

1. RESTITUTION: Defendants Snively, Futurewise and CCI shall be jointly and severally liable for restitution to investors in the amount of \$6,274,986.84 plus pre-judgment interest thereon from February 8, 2002 to the date of this Order, in the amount of \$302,760. Pre-judgment interest is calculated at the underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. § 662(a)(2). Interest after the date of this Order until the restitution is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961, assessed pursuant to paragraph IV. 2.e., below, of the payment plan. Attachment A, attached hereto, includes the names and last known addresses of the investors to whom restitution shall be made pursuant to this paragraph, together with the amount of restitution payable by defendants to each of them (not including required interest) and the pro-rata distribution percentage by which each investor shall be paid.

Defendants' obligation to make restitution under this paragraph shall be reduced by any pro-rata amounts paid to the investors listed in Exhibit A, attached hereto, pursuant to any restitution ordered in United States of America vs. Approximately \$4.2 Million Held In Comerica Banks Holding Account General, Ledger Demand Deposit Garnished, Case No. 02-70902 (Eastern District of Michigan, Southern Division), which concerns \$4,172,385 that defendant Snively voluntarily surrendered, or any related criminal case.

2. PAYMENT OF RESTITUTION: Restitution shall be made as follows:

- a. Defendants shall make annual restitution payments ("Annual Restitution Payment") according to the payment plan outlined in paragraph IV. 4., below, to an account designated by a Monitor of: a percentage of their adjusted gross income (as defined by the Internal

Revenue Code) earned or received by them during the previous calendar year. The Annual Restitution Payment shall be made on or before July 31 of each calendar year, starting in calendar year 2003 and continuing for ten years or until his restitution amount is paid in full from any source, whichever occurs sooner.<sup>1</sup>

- b. Defendants agree that the National Futures Association is hereby designated as the Monitor for a period of eleven years commencing January 1, 2003. Notice to the Monitor shall be made to Daniel A. Driscoll, Esq., Executive Vice President, Chief Compliance Officer, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, IL 60606.
- c. Defendants shall provide a sworn financial statement to the Monitor on June 30 and December 31 of each calendar year, starting December 30, 2002 and continuing through and including December 31, 2012. The financial statement shall provide;
- i). a true and complete itemization of all of Defendants rights, title and interest in (or claimed in) any asset, wherever, however and by whomever held;
  - ii). an itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of Defendants over the preceding six-month interval; and
  - iii). a detailed description of the source and amount of all Defendants income or earnings, however generated.

Defendants shall also provide the Monitor with complete copies of their signed federal income tax returns, including all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filings they are required to submit to any state tax or revenue authority, on or before May 15 of each calendar year, or as soon thereafter, beginning in 2003 and ending in 2012. If Snively moves his residence at any time he shall provide written notice of his new address to the Monitor and the Commission, through the Director, Division of Enforcement, Commodity Futures Trading Commission, at 1155 21<sup>st</sup> Street, N.W., Washington, DC 20181, within ten calendar (10) days thereof.

<sup>1</sup> The ten year restitution period shall run from January, 2002 through December 31, 2011. Restitution payments for a calendar year shall take place by July 31 of the following year. Therefore, the final restitution payments for the year 2011 will occur on or before July 31, 2012.

- d. If, during the same time period, Snively elects to file a joint tax return, he shall provide all documents called for by this paragraph 2, including the signed and filed joint tax return, plus a draft individual tax return prepared on IRS Form 1040 containing a certification by a licensed certified public accountant that the "Income" section (currently lines 7-22 of Form 1040) truly, accurately and completely reflects all of Snively's income, that the "Adjusted Gross Income" section truly, accurately and completely identifies all deductions that Snively has a right to claim, and that the deductions contained in the "Adjusted Gross Income" section are equal to or less than 50% of the deductions that Snively is entitled to claim on the joint tax return; provided, however that Snively may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely his. Such individual tax return shall include all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filings required to be submitted to any state tax or revenue authority.
- e. Based on the information contained in defendants' tax returns (and, to the extent they are provided, sworn financial statements) and further instructions to be issued by this Court regarding the method of calculating distribution of any funds to investors, the Monitor shall calculate the Annual Restitution Payments to be paid by each defendant for that year and the specific amounts payable to each investor. On or before June 30 of each year and starting in calendar year 2003, the Monitor shall send written notice to defendants with instructions to pay the Annual Restitution Payments on or before July 31 of that year to an account designated by the Monitor, or if defendants' restitution obligations have been satisfied or otherwise discharged, the amount of civil monetary penalty to be paid in accordance with the payment instructions in paragraphs IV. 3. and 4., below. If the Monitor determines that an Annual Restitution Payment is due, then the Monitor will increase the amount of the remaining restitution payment by post-judgment interest calculated to the date of the payment based on the total remaining restitution obligation, pursuant to 28 U.S.C. § 1961. The Monitor shall then disburse any payment by defendants to the investors in the appropriate amounts listed on Attachment A. Based upon the amount of funds available, the Monitor may decide to defer distribution. If at the end of the ten year payment period, any amount of the Annual Restitution Payments of Snively has not been distributed, that amount shall instead be immediately paid and applied as a payment to the civil monetary penalty obligation of Snively, as provided in paragraphs IV. 3. and 4., below.

3. CIVIL MONETARY PENALTY: Snively shall pay a contingent civil monetary penalty of \$360,000, pursuant to the payment plan outlined in paragraph IV. 4., below,



commencing upon Snively's fulfillment or the discharge of his total restitution obligation as set forth in paragraphs IV. 1. and 2., above. Snively shall make an annual civil monetary penalty payment ("Annual CMP Payment") following Snively's satisfaction or discharge of his restitution obligation, and continuing until December 31, 2012 (or until the civil monetary penalty is paid in full, if that happens first).<sup>2</sup> Snively shall make each such Annual CMP Payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Snively and the name and docket number of the proceeding; Snively shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor and to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581.

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<sup>2</sup> Should the amount due under the payment plan for any Annual Restitution Payment by Snively be greater than the balance due on Snively's restitution obligation, the amount due under the payment plan not paid as restitution will constitute Snively's first Annual CMP Payment and be paid as specified above.

4. ANNUAL PAYMENT: The Annual Payment (the Annual Restitution Payments for all defendants and the contingent Annual CMP Payments for Snively after his full restitution obligation has been satisfied) shall be calculated as follows:

| a. Where Adjusted Gross<br>Income Plus Net Cash<br>Receipts Total: | <u>Percent of Total to be Paid By Each<br/>Defendant is:</u>                                 |
|--------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| Under \$25,000                                                     | 0%                                                                                           |
| \$25,000 up to and<br>including \$50,000                           | 20% of the amount between \$25,000 and<br>\$50,000                                           |
| \$50,000 up to and<br>including \$100,000                          | \$5,000 (20% of \$25,000)<br>plus 30% of the amount between<br>\$50,000 and \$100,000        |
| Above \$100,000                                                    | \$20,000 (20% of \$25,000 plus 30%<br>of \$50,000) plus 40% of the amount<br>above \$100,000 |

- b. Defendants shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all duties with respect to the restitution and civil monetary penalty payments. They will cooperate fully with the Monitor and the Commission in explaining their financial income and earnings, status of assets, financial statements, asset transfers and tax returns, and shall provide any information concerning themselves as may be required by the Commission and/or the Monitor. Furthermore, defendants shall provide such additional information and documents with respect thereto as may be requested by the Commission and/or the Monitor.

4. THIRD-PARTY BENEFICIARIES: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the individuals identified in Attachment A is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution amount which has not been paid by defendants, to ensure continued compliance with any provision of this Order and to hold defendants in contempt for any violations of any provision of this Order.

5. COLLATERAL AGREEMENTS: Defendants shall immediately notify the Commission if they make or have previously made any agreement with any investor obligating them to make payments outside of this Order. Defendants shall also provide immediate evidence to the Court and to the Commission of any payments made pursuant to such agreement. Upon being notified of any payments made by defendants to investors outside of this Order, and receiving evidence of such payments, the Commission will have the right to reduce and offset defendants' obligations to specified investors, on an annual basis, and to make any other changes in the restitution distribution schedule that it deems appropriate.

6. TRANSFER OF ASSETS: Defendants shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any other person for the purpose of concealing such funds from the Court, the Commission, the Monitor or any investor or until the Restitution Amounts and/or Annual CMP payments have been paid in full.

7. DEFAULT: Any failure by defendants to carry out any of the terms, conditions or obligations under any paragraph of this Order shall constitute an Event of Default. If any Event of Default occurs the Commission (or its designee) shall be entitled to:

- a. an order requiring immediate payment of any unpaid Annual Restitution Payments, and/or Annual CMP Payments, or, at the Commission's option, the entire unpaid balance, or any unpaid portion, of the restitution and/or civil monetary penalty amount set forth above in Paragraphs IV. 1. through 4. above; and/or
- b. move the Court for imposition of all other available remedies, including,

but not limited to, an order holding defendants in contempt for violation of this Order.

Upon the occurrence of an Event of Default based upon a claim or cause of action that defendants failed to make any Annual Restitution Payments and/or Annual CMP Payments when due, defendants will be barred from asserting any defense, including expiration of any statute of limitations, waiver, estoppel or laches, where such defense is based on the alleged failure of the Commission to pursue such claims or causes of action during the pendency of this civil action, during the negotiation of defendants' consents to this Order or while this Order remains in effect. The only issue that defendants may raise in defense is whether they made the Annual Restitution Payments and/or Annual CMP Payments as directed by the Monitor. Any motion by the Commission for entry of an order pursuant to this paragraph requiring payment of less than the full amount of the restitution and/or civil monetary penalty, set forth in paragraphs IV. 1. through 4., above, or any acceptance by the Commission of partial payment of the Annual Restitution Payments and/or Annual CMP Payments made by defendants shall not be deemed a waiver of the Commission's right to require defendants to make further payments pursuant to the payment plans set forth above, or, in the event of a further Event of Default, a waiver of the Commission's right to require immediate payment of the entire remaining balance, or any unpaid portion, of the restitution amount and/or civil monetary penalty set forth in paragraphs IV. 1. through 4., above.

8. Based upon Snively's sworn representations in his Statement of Financial Condition dated December 16, 2002, and other evidence provided by Snively about himself, CCI and Futurewise, the Court herein is not ordering immediate payment of the entire restitution obligation and civil monetary penalty. This determination is contingent upon the

accuracy and completeness of Snively's Statement of Financial Condition and other evidence provided by Snively regarding his, CCI's and Futurewise's financial condition. If at any time following the entry of this Order, the Commission obtains information indicating that Snively's representations concerning his, CCI's and Futurewise's financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to defendants, petition this Court for an order requiring Snively, CCI and Futurewise to make immediate payment of their entire restitution obligation and/or civil monetary penalty, or of any portion thereof, the amount of which shall be determined by the Commission. In connection with any such petition, the only issues shall be whether the financial information provided by Snively was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Snively, CCI and Futurewise to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Order, and the Commission may also request additional discovery. Snively, CCI and Futurewise may not, by way of defense to such petition, challenge the validity of this Order, contest the allegations in the Complaint filed by the Commission, or assert that payment of restitution or civil monetary penalty should not be ordered. If in such motion the Commission moves for, and the Court orders, payment of less than the full amount of the restitution obligation or the full amount of civil monetary penalty, such motion will not be deemed a waiver of the Commission's right to require defendants to make further payment pursuant to the payment plans set forth above.

V.

MISCELLANEOUS PROVISIONS

A. ENTIRE AGREEMENT, AMENDMENTS and SEVERABILITY. This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and (3) approved by order of the Court. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.

B. SUCCESSORS AND ASSIGNS. This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries and administrators.

C. JURISDICTION. This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

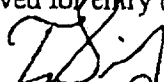
There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Equitable Relief Against Snively, CCI and Futurewise.

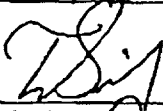
Done and ordered on this 10<sup>th</sup> day of MARCH, 2003.




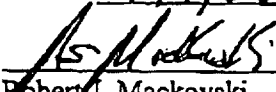
UNITED STATES DISTRICT COURT JUDGE

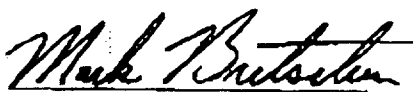
Consented to and approved for entry by:

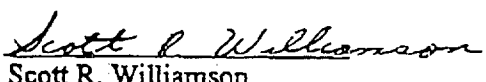
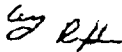
  
Todd Snively  
Dated: 1/9/03

  
Todd Snively  
President,  
Commodity Consultants International, Inc.  
Dated: 1/9/03

  
Todd J. Snively  
President,  
Futurewise Trading Group, Inc.  
Dated: 1/9/03

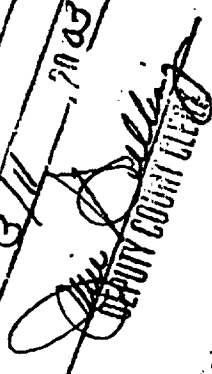
  
Robert J. Mackovski  
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Dated: 1-16-03  
Attorney For Defendants

  
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 by   
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