

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

03 CV 2258

Commodity Futures Trading Commission,

Plaintiff,

v.

U.S. Securities & Futures Corp.

Defendant.

03 CIV _____

COMPLAINT FOR
INJUNCTIVE AND
OTHER EQUITABLE
RELIEF AND FOR
CIVIL MONETARY PENALTIES
UNDER THE COMMODITY
EXCHANGE ACT, AS
AMENDED, 7 U.S.C. §§ 1-25

02 2003

I.

SUMMARY

1. From at least February 28, 2003 to the present, Defendant U.S. Securities & Futures Corp., has fallen below the adjusted net capital requirements it must meet to continue doing business as a futures commission merchant ("FCM") registered with the Commodity Futures Trading Commission ("Commission"). Within the last year, USSFC has repeatedly triggered the FCM early warning requirements and dangerously depleted its required assets. With these practices, the defendant has violated Section 4f(b) of the Commodity Exchange Act, 7 U.S.C. § 6f(b) (2002), and Commission Regulation 1.17(a), 17 C.F.R. § 1.17(a) (2002).

II.

JURISDICTION AND VENUE

2. Section 4f(b) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 6f(b) (2002), requires that each registered FCM shall at all times continue to meet prescribed minimum financial requirements. Commission Regulation 1.17(a)(1) requires that each person registered as a FCM must maintain adjusted net capital equal to or in excess of \$250,000.

3. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), 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.

4. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), in that defendant is found in, inhabits, or transacts 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

5. 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.* (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2002).

6. Defendant U.S. Securities & Futures Corp. is a New York corporation that maintains its principal place of business at 100 Wall Street, 22nd Floor, New York, New York

10005. Since October 18, 1994, USSFC has been registered with the Commission as a FCM. USSFC is also registered with the Securities and Exchange Commission ("SEC") as a securities broker-dealer.

IV.

FACTS

7. The Commission maintains certain early warning capital requirements to provide notice to the Commission when a company is in danger of falling below minimum financial requirements. The early warning capital requirements are intended to ensure customer protection and the financial stability of the marketplace. The early warning notice requirement for USSFC is \$375,000, which represents 150% of the minimum dollar requirements necessary to function as a FCM.

8. Beginning in December 1, 2001, the firm's net capital dropped about 40.7%, from \$448,686 to \$265,968, which was below the early warning requirement of \$375,000. The net capital continued to fluctuate throughout 2002. As of January 31, 2002, USSFC's net capital was \$267,907. As of April 30, 2002, USSFC's net capital was \$323,742. As of June 30, 2002, the net capital was above the early warning level. As of November 30, 2002, and December 31, 2002, the firm was again below the early warning level.

9. In a letter dated February 24, 2003, USSFC indicated that it was "becoming impossible for USSF[C] to maintain its \$250,000 net capital requirement as an FCM." On March 24, 2003, USSFC notified the Commission that it went under its minimum net capital requirement of \$250,000 during the month of February 2003. The letter states that the firm's net capital stood at \$155,622 on February 28, 2003, a net capital deficiency of \$94,398.

10. In July 2002, the operators of USSFC registered a new entity, E-Futures, LLC as an introducing broker. E-Futures, LLC maintains offices at 100 Wall Street, 22nd Floor, New York, NY, in the same location as USSFC. Many of the individuals registered as associated persons ("APs") of USSFC are also registered as APs of E-Futures, LLC.

11. By letter dated February 21, 2003, USSFC notified the Commission that it intended to transfer all its introduced customer accounts to E-Futures, LLC., effective February 28, 2003. USSFC has apparently moved its customer accounts to this new entity, and significantly, as of February 28, 2003, has apparently dissipated the minimum net capital it is required to maintain.

12. In October 2000, Defendant was charged in an administrative complaint filed by the Commission with, among other things, participating in a massive allocation fraud between early 1996 and October 1998, involving a German foreign broker, failing to take adequate steps to ensure that the customer funds it accepted to margin, guarantee or secure trades and contracts were sufficiently protected and failing to notify the Commission of material financial changes on some six occasions in a 2 ½ year period between 1997 and 2000. Among the remedies sought in the administrative action were a cease and desist order, an order suspending or revoking USSFC's registration, an order prohibiting USSFC from trading on or subject to the rules of any contract market and requiring all contract markets to refuse it trading privileges, a civil monetary penalty, and restitution. A hearing in this matter before Administrative Law Judge ("ALJ") George H. Painter concluded in September 2002 and all post-hearing briefs were filed by February 2003. The ALJ has not yet rendered an Initial Decision.

13. During the course of the administrative proceedings, USSFC attempted to withdraw its FCM registration. In so doing, USSFC is attempting to limit the penalties available

to the ALJ should he find that USSFC committed the violations outlined in the administrative complaint. The Commission objected to any change in USSFC's registration status while the administrative charges were pending. USSFC has continued to be registered with the Commission as a FCM; but on March 27, 2003, USSFC again filed a withdrawal request.

14. Having not been permitted to withdraw its registration legally as a FCM, USSFC has engaged in a course of conduct to remove assets from the company and to attempt to put itself beyond the Commission's reach.

COUNT

VIOLATION OF SECTION 4f(b) OF THE ACT AND COMMISSION REGULATION 1.17(a)

15. Paragraphs 1 through 14 are re-alleged and incorporated herein.

16. Since at least February 28, 2003, USSFC has failed to maintain the prescribed minimum financial requirements required for FCMs registered with the Commission in violation of Section 4f(b) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 6f(b) (2002) and Commission Regulation 1.17(a)(1), 17 C.F.R. § 1.17(a)(1) (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 the Court's own equitable powers, enter:

1. orders of preliminary and permanent injunction prohibiting defendant and any other person or entity associated with it, including any successor thereof, from engaging in conduct violative of Sections 4f(b) of the Act and Commission Regulation 1.17(a);

2. an *ex parte* statutory restraining order and an order of preliminary injunction restraining and enjoining defendant and all persons insofar as they are acting in the capacity of its agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with it who receive actual notice of such order by personal service or otherwise, from directly or indirectly:
 - a. destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendant, wherever located, including all such records concerning defendant's business operations;
 - b. 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 defendant, wherever located, including all such records concerning defendant's business operations; and
 - c. 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 the defendant;

3. an order directing defendant to provide plaintiff immediate and continuing access to its books and records, make an accounting to the Court of all of its assets and liabilities, together with all funds they received from and paid to its owners, principals, customers, E-Futures, LLC, and other persons;
4. an order directing defendant to pay a civil penalty in the amount of not more than the higher of \$ 120,000 for each violation occurring after October 23, 2000 or triple the monetary gain to defendant for each violation of the Act or Regulations;
6. an order requiring defendant to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
7. such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: New York, New York
April 2, 2003

U.S. COMMODITY FUTURES TRADING COMMISSION

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