

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of	:	CFTC DOCKET NO. 04-07
	:	
DAVID YOST, and	:	COMPLAINT AND NOTICE
UR-LINK	:	OF HEARING PURSUANT TO
	:	SECTIONS 6(c) AND 6(d) OF THE
	:	COMMODITY EXCHANGE ACT,
	:	AS AMENDED
Respondents.	:	

I.

The Commodity Futures Trading Commission (“Commission”) has received information from its staff which tends to show, and the Commission’s Division of Enforcement (“Division”) alleges that:

SUMMARY

1. From June 2001 through at least January 2002 (the “relevant period”), David Yost, (“Yost”) individually or as an agent of UR-Link (collectively “Respondents”), solicited and accepted at least \$154,500 from at least 21 investors for purposes of trading foreign currencies. The Respondents defrauded investors by misappropriating at least \$75,500 of investor funds. Respondents also deceived certain investors by issuing statements to them that falsely represented that their funds had been forwarded for forex trading and had made specific profits trading forex when, in fact, their funds were misappropriated by respondents.

RESPONDENTS

2. David Yost is 49 years old and resides in Alta Loma, California 91737. He has never been registered with the Commission in any capacity.

3. UR-Link is a Nevada corporation created on May 7, 1999 and located in Las Vegas, Nevada. UR-Link has never been registered with the Commission in any capacity

FACTS

UR-Link's Formation and Relationship with Grupo Greystone LLC

4. On or about May 1999, Yost formed a corporation named UR-Link, which was created to engage in various multi-level marketing programs.

5. In early June 2001, Yost met with a representative of Grupo Greystone, LLC ("Grupo") in Dallas, Texas to discuss Grupo's forex investment program. During this meeting, Grupo's representative told Yost that he was soliciting funds to invest with a New York firm that traded foreign currency contracts. Grupo's representative stated that investments placed with the firm earned 8 or 9 per cent weekly profits and encouraged Yost to send investment funds to Grupo. Specifically, Grupo's representative stated that he would give UR-Link a projected "target" of 10 per cent weekly profits and that weekly statements Grupo would send UR-Link would show the percentage of the target achieved as well as the actual weekly profits.

UR-Link's Forex Program

6. After his meeting with Grupo's representative, Yost began to solicit his friends and family to invest in forex contracts through UR-Link.

7. All UR-Link forex investors entered into a Capital Management Agreement ("the Agreement") with UR-Link. The Agreement expressly provides that "UR-LINK manages

investment capital and facilitates the trading of major world currency 'lots' or units and ... CLIENT wishes to engage UR-LINK to manage CLIENT'S capital in such markets and compensate UR-LINK from increase." The Agreement further provides that "UR-LINK shall have discretionary power over CLIENT'S capital in an effort to achieve the high yield forex trading objectives desired by CLIENT. Specifically, UR-LINK is authorized to place CLIENT'S capital at risk with one or more trading administrators, banks, brokerage houses, account administrators or agents under such terms and conditions as UR-LINK deems appropriate." The Agreement provides that "CLIENT'S original capital and additions to capital will be placed into trading within 7 days after receipt of cleared funds."

8. Additionally, the Agreement provides that investors would receive weekly account statements, which "summarize that weeks actual trading activity as a percentage of the projected target amount for that week as well as any debits/credits to the CLIENT'S account."

9. Typically, UR-Link gave each investor a projected target rate of between 5 and 7.5 per cent and considered the differential from the 10 per cent target rate it negotiated with Grupo, as its profit.

10. Individuals investing in UR-Link's forex program did so for speculative reasons-- *i.e.*, to profit from the fluctuations in the price of foreign currencies. UR-Link investors did not intend to take delivery or possession of the foreign currency and did not have the capacity to take delivery or possession of foreign currency and did not in fact, take delivery of foreign currency. The transactions UR-Link investors intended to enter into with Grupo or any other trading administrator possess characteristics of futures contracts.

Respondents Misappropriated Investor Funds

11. During the relevant period, Yost individually and as an agent of UR-Link, solicited and accepted at least \$154,500 from about 21 investors for purposes of foreign currency futures trading, but forwarded only \$79,000 of those funds to Grupo.

12. Yost stopped forwarding UR-Link investor funds to Grupo on or about November 1, 2001, but continued to accept investor funds until January 21, 2002. At least 13 investors' funds were not forwarded in whole or in part to Grupo or any other trading administrator.

13. Yost, individually or as an agent of UR-Link, misappropriated at least \$75,500 from investors.

Respondents Issued False Statements to Investors

14. During the relevant period, Grupo issued weekly account statements to UR-Link that purportedly summarized the week's trading activity on behalf of UR-Link as a percentage of the projected 10 per cent target and a total weekly profit.

15. Using the figures shown on the Grupo statements, Yost issued UR-Link account statements to investors. The statements issued by UR-Link contained a calculation of the percentage of the individual investor's projected weekly target that purportedly was achieved and a number representing the investor's apportioned share of the purported total UR-Link profit.

16. Yost sent weekly UR-Link account statements to all investors, even those investors whose funds he failed to send to Grupo for forex trading or whose funds he had only, in part, sent to Grupo.

17. By issuing and sending to certain UR-Link investors account statements, which represented that their entire investment had been placed in forex trading and had earned specific profits, when, in fact, their funds had been misappropriated, respondents issued false statements to them.

18. Pursuant to the provisions of UR-Link's Capital Management Agreement, investors were required to give written notice 15 days prior to the end of a 13-week trading cycle to receive a return of their funds. Many investors requested a return of their money, but have not been repaid by Yost or UR-Link.

Statutory Background

19. Section 2(c)(2)(B)(i)-(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)-(ii) (2001), 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 that 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 a counterparty, is a regulated entity, as defined therein.

20. Section 1a(12)(A)(xi) of the Act defines an eligible contract participant as either (1) an individual who has total assets in excess of ten million dollars (\$10,000,000) or (2) an individual who has total assets in excess of five million dollars (\$5,000,000) and who enters the transaction to manage the risk associated with an asset he owns.

21. Section 2(c)(2)(B)(ii) grants the Commission jurisdiction over retail sales of foreign currency unless the counterparty, or the person offering to be the counterparty, of the retail customer is: a financial institution, a broker or securities dealer, an associated person of a

broker or dealer, an insurance company, a financial holding company or an investment bank holding company.

22. The UR-Link investors were not eligible contract participants with regard to either their assets or their purposes in foreign currency trading. Neither UR-Link nor Grupo fall within the classes enumerated in Paragraph 21 and thus, neither is a proper counterparty for retail foreign currency transactions. The Commission, therefore, has jurisdiction over the foreign currency futures transactions that UR-Link investors intended to enter into with Grupo.

COUNT I

VIOLATIONS OF SECTION 4b(a)(2)(i), (ii) and (iii) OF THE ACT: FRAUD BY MISAPPROPRIATION AND MISREPRESENTATION; PROVIDING FALSE STATEMENTS TO INVESTORS

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

24. During the relevant time, Yost violated Section 4b(a)(2)(i) and (iii) of the Act 7 U.S.C. §§ 6b(a)(2)(i) and (iii), in that he cheated or defrauded or attempted to cheat or defraud investors in UR-Link's investment program and willfully deceived or attempted to deceive investors by misappropriating at least \$75,500 received from investors and using the funds for personal and business expenses. Yost also defrauded and willfully deceived investors by issuing and sending to certain investors UR-Link account statements, which represented that their entire investment had been placed in forex trading and had earned specific profits, when, in fact, their funds had been misappropriated by Respondents.

25. During the relevant time, Yost violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii), in that he, or persons working under his direction, willfully made or caused to be made false reports or statements by issuing and sending to certain investors UR-Link account

statements, which represented that their entire investment had been placed in forex trading and that their funds had made specific profits, when, in fact, their funds had been misappropriated by respondents.

26. Respondents 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.

27. The actions of Yost described in this count were done within the scope of his employment and as an agent of UR-Link. Therefore, UR-Link, as Yost's principal, is also liable for Yost's violations of Section 4b(a)(2)(i), (ii) and (iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

28. Each material misrepresentation, each false report or statement, and each 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 Section 4b(a)(2)(i), (ii) and (iii) of the Act.

II.

By reason of the foregoing allegations by the Division, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute administrative proceedings to determine whether the allegations set forth in Section I are true

and, if so, whether orders should be entered in accordance with Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9 and 13b (2001).

Section 6(c) of the Act allows the Commission to (1) prohibit a respondent from trading on or subject to the rules of any contract market and require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the Commission's Order, (2) if the respondent is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of that respondent, (3) assess against a respondent a civil monetary penalty of not more than the higher of \$120,000 or triple the monetary gain to the respondent for each violation, and (4) require restitution to customers of damages proximately caused by the violations of the respondent.

Section 6(d) of the Act allows the Commission to enter an Order directing that a respondent cease and desist from violating the provisions of the Act and Regulations found to have been violated.

III.

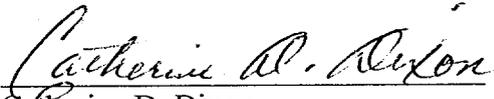
WHEREFORE, IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence and hearing argument on the allegations set forth in Section I above be held before an Administrative Law Judge, in accordance with the Rules of Practice under the Act, ("Rules"), 17 C.F.R. §§ 10.1 *et seq.* (2003), at a time and place to be fixed as provided by Section 10.61 of the Rules, 17 C.F.R. § 10.61 and that all post-hearing procedures shall be conducted pursuant to Sections 10.81 through 10.107 of the Rules, 17 C.F.R. §§ 10.81 through 10.107 (2003).

IT IS FURTHER ORDERED that the Respondents shall file an Answer to the allegations against them in the Complaint within twenty (20) days after service, pursuant to Section 10.23 of the Rules, 17 C.F.R. § 10.23 (2003), and shall serve two copies of such Answer and of any document filed in this proceeding upon Rosemary Hollinger, Associate Director, or Diane M. Romaniuk, Senior Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, Illinois 60661. If a Respondent fails to file the required Answer or fails to appear at a hearing after being duly served, he shall be deemed in default, and the proceeding may be determined against him upon consideration of the Complaint, the allegations of which shall be deemed to be true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served on Respondent personally or by registered or certified mail forthwith pursuant to Section 10.22 of the Rules, 17 C.F.R. § 10.22 (2003).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of the investigative or prosecutorial functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this matter except as witness or counsel in proceedings held pursuant to notice.

By the Commission.


Catherine D. Dixon
Assistant Secretary to the Commission
Commodity Futures Trading Commission

Date: December 22, 2003