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U.S. DISTRICT COURT
DISTRICT OF MARYLAND

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

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 U.S. COMMODITY FUTURES)
 TRADING COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 CALVARY CURRENCIES LLC, a/k/a)
 CALVARY CURRENCY,)
 622 Hungerford Drive, Suite 23)
 Rockville, Maryland 20850)
 (Montgomery County), and)
)
 ARTHUR JOHN KEEFFE, II)
 4532 Windsor Lane)
 Bethesda, Maryland 20814)
 (Montgomery County),)
)
 Defendants.)

BY _____ DEPUTY

CASE NO. **DKC 04 CV 1021**

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

I.

SUMMARY

1. From at least January 2001 to at least August 2002 (“the relevant time period”), Calvary Currencies LLC, a/k/a Calvary Currency, (“Calvary”) and Arthur John Keffe, II (“Keffe”) (collectively, “Defendants”) engaged in fraud involving the solicitation of illegal off-exchange foreign currency futures contracts. Calvary and Keffe solicited customers to send them over \$400,000 to invest in foreign currency futures contracts by making false representations regarding the likelihood of profit and understating the risks associated with trading foreign currency futures contracts, as well as by misrepresenting Calvary’s trading history.

2. Calvary and Keeffe engaged in acts and practices in violation of the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, as amended (2001) (the “Act”), and the Commodity Futures Trading Commission’s Regulations promulgated thereunder (“Regulations”), 17 C.F.R. § 1 *et seq.* (2003). Defendants violated, are violating, or are about to violate:

- a. Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), and Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3), by engaging in fraudulent activity in connection with trading commodity futures contracts including making false representations; and
- b. Section 4(a) of the Act, 7 U.S.C. §6(a), by engaging in the offer and sale of illegal futures contracts.

3. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 Plaintiff brings this action to enjoin Defendants’ unlawful acts and practices, and to compel their compliance with the Act and the Regulations. In addition, Plaintiff seeks civil monetary penalties and remedial ancillary relief including, but not limited to, restitution, pre-judgment and post-judgment interest, and such other relief as this Court may deem necessary or appropriate.

4. Unless restrained and enjoined by this Court, Defendants may continue to engage in the acts and practices alleged in this Complaint or in similar acts and practices, as more fully described below.

II

JURISDICTION AND VENUE

5. The Commodity Exchange Act establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts and options on commodity futures contracts. The Commission possesses jurisdiction, including anti-fraud jurisdiction, pursuant to Section

2(c)(2)(B) and (C) of the Act, to regulate the transactions in foreign currency futures contracts offered and/or entered into with retail customers alleged in this complaint.

6. The Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the Commodity Futures Trading Commission (the “Commission” or “CFTC”) that any 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 promulgated thereunder, the CFTC may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

7. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Defendants are found in, inhabit, or transact business in this District, or the acts and practices in violation of the Act occurred, are occurring, or are about to occur within this District, among other places.

III

THE PARTIES

A. Plaintiff

8. The U.S. Commodity Futures Trading Commission is the independent federal regulatory agency charged with the administration and enforcement of the Act, 7 U.S.C. § 1 *et seq.*, and the Regulations, 17 C.F.R. § 1 *et seq.* The Commission’s main office is located at 1155 21st St, NW, Washington, D.C. 20581.

B. Defendants

9. Arthur John Keeffe, II currently resides at 4532 Windsor Lane, Bethesda, Maryland 20814. Keeffe was the managing partner and sole principal of Calvary. He has never been

registered with the Commission in any capacity. At all times during the relevant time period, Keffe acted individually and as an agent of Calvary.

10. Calvary Currencies LLC was a limited liability company previously registered with the State of Maryland. Its principal place of business, while active, was 622 Hungerford Drive, Suite 23, Rockville, Maryland 20850. Calvary has never been registered with the Commission in any capacity.

IV

FACTS

A. Defendants Traded Futures Contracts

11. The foreign currency futures contracts that Defendants marketed concerned the purchase or sale of uniform amounts of commodities for future delivery at prices or using pricing formulas that were established at the time the contracts were initiated. The contracts could be fulfilled through means other than delivery, and could be held open indefinitely.

12. The Defendants marketed these contracts to the general public. The customers who purchased these futures contracts had no commercial need for the foreign currency. Instead, customers entered into the transactions to speculate and profit from anticipated price fluctuations in the markets for these currencies.

13. Customers did not anticipate taking – and did not take – delivery of foreign currency as a consequence of these investments. If the market moved in a favorable direction, a customer expected to liquidate his or her position by means other than delivery of the commodity.

14. Customers did not negotiate individual purchase agreements with Defendants. The rules for margin calls, and other terms and conditions of Defendant's contracts, as set by Defendants, were standardized. The contracts sold by Defendants required customers to pay a predetermined portion of the total contract price as a "margin" payment when the contract was purchased, and required customers to make additional margin payments if adverse changes in the market price of the commodities caused the equity in their respective accounts to fall below a specified percentage.

B. Fraudulent Misrepresentations of Profits and Risks

15. Beginning in or around January 2001, Defendants began soliciting customers to invest in foreign currency futures contracts by falsely representing the profit potential of trading foreign currency futures contracts and failing to inform them of the associated risks and misrepresenting how those risks would be managed.

16. Defendants made various misrepresentations to prospective customers regarding their likelihood of making money if they traded foreign currency futures contracts through Calvary, as well as false statements regarding Calvary's past performance in trading foreign currency futures contracts when in fact, every individual who invested funds with Defendants lost all of their money. Indeed, during the lifetime of Calvary's accounts with Gain Capital, Inc. ("Gain Capital"), a registered futures commission merchant ("FCM"), Calvary consistently lost customer funds in trading, only occasionally managing to achieve a trading day with even the most marginal positive return. Despite this, Defendants made misrepresentations that include:

- a. Keeffe told at least one prospective customer that he had doubled customers' money in the past and that he could easily double the prospective customer's money;
- b. a salesperson for Calvary told a prospective customer that the profit potential of trading foreign currency futures contracts was easily 100% or more;
- c. Keeffe told another prospective customer that he had "made a lot of people a lot of money" and that he could make the customer "a lot of money"; and
- d. in a letter sent to a prospective customer in April 2001, Keeffe represented that Calvary's "success in the market has been quite extraordinary," when in fact, Calvary's trading statements for the same time period show year-to-date losses of \$22,948.

17. During the course of their customer solicitations, Defendants failed to disclose the risks associated with trading foreign currency futures contracts to potential customers, and falsely represented that Calvary would use stop-loss orders to minimize the risk. By failing to adequately disclose the risks inherent in trading futures, they falsely conveyed that trading foreign currency futures contracts with Defendants was highly profitable and either risk-free or a low-risk investment. For example:

- a. When a prospective customer told Keeffe that he was not interested in risky investments, Keeffe replied that foreign currency futures contracts trading had "no risk, if you know what you're doing"; and
- b. Keeffe told a different prospective customer that Keeffe would minimize the risk of trading foreign currency futures contracts by using stop-loss orders. In reality,

and according to Keefe's admission, stop-loss orders were not used on a regular basis.

18. As a result of Defendants' misrepresentations regarding profit and risk, customers invested a total of \$406,920 with Calvary.

C. Offer and Sale of Illegal Off-Exchange Foreign Currency Futures Contracts

19. Defendants did not conduct their foreign currency futures trading on or subject to the rules of a board of trade designated by the Commission as a contract market, nor were any of these transactions executed or consummated by or through a member of such a contract market. Furthermore, Defendants did not conduct their transactions on a facility registered as a derivatives transaction execution facility.

20. Defendants traded customer funds through Gain Capital, or through other third-party trading firms that were unregistered FCMs at the time that the trading occurred.

21. Defendants did not properly establish accounts in the names of individual customers at Gain Capital. Instead, it traded customers funds through corporate accounts in its own name. In fact, Calvary falsely stated on its account opening documentation for Gain Capital that no other persons had a financial interest in the accounts.

22. When individuals agreed to open accounts with Calvary, Calvary directed them to make their checks payable to Calvary or to wire transfer funds into a Calvary bank account. Customer funds were then transferred to trading accounts in Calvary's name at Gain Capital or other third-party trading firms.

23. Calvary provided some of its customers with account statements, on Calvary letterhead, that purported to show trading activity in their Calvary accounts.

24. At least four Calvary customers, if not all, were not “eligible contract participants” as defined in the Act.

25. Calvary was not a counterparty eligible under Section 2(c)(2)(B) the Act to offer and/or enter into foreign currency futures contracts with retail customers.

D. Controlling Person Liability

26. Keeffe was the founder, managing partner and sole principal of Calvary. He had the power to control all of the acts alleged as violations herein, and was responsible for all aspects of Calvary’s business, including, but not limited to, hiring, training and supervising Calvary’s employees; selecting, opening and closing of all trading accounts and bank accounts; preparation of account statements; actual customer solicitations; and review of all correspondence sent to customers on behalf of Calvary. Keeffe was also responsible for ensuring that Calvary was in compliance with all applicable laws and regulations.

V.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

**VIOLATIONS OF SECTION 4b(a)(2)(i) and (iii)
OF THE ACT, 7 U.S.C. § 6b(a)(2)(i) and (iii), AND
REGULATION 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3):
FRAUD IN CONNECTION WITH COMMODITY FUTURES CONTRACTS**

27. Paragraphs 1 through 26 are realleged and incorporated herein by reference.

28. During the relevant time period, Defendants and other persons or entities under their supervision or control, or acting in combination or concert with them, violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii), in that they (1) cheated or defrauded or attempted to cheat or defraud other persons; and (2) willfully deceived or attempted

to deceive other persons by, among other things, misrepresenting the profit potential of trading through Calvary, misrepresenting their trading history, and failing to disclose the associated risks of trading foreign currency futures contracts.

29. The acts and omissions alleged in this Count were made in or in connection with orders to make, or the making of contracts 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.

30. Calvary and Keeffe are directly liable for violations of Section 4b(a)(i) and (iii) of the Act by making material misrepresentations to customers and/or potential customers regarding profit potential and the risk associated with trading foreign currency futures contracts in order to solicit them to invest with Calvary.

31. Keeffe controls or controlled Calvary, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Calvary's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Keeffe is liable for Calvary's violations of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii), and Section 1.1(b)(1) and (3) of the Regulations, 17 C.F.R. § 1.1(b)(1) and (3), as described in this Count.

32. Keeffe and Calvary employees engaged in the illegal conduct alleged in this Count within the scope of their offices or employment as agents of Calvary. Therefore, Calvary is

liable as a principal for the violations of its agents pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

33. Each false, deceptive, or misleading representation of material facts and each failure to disclose material facts, including, but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii), and Section 1.1(b)(1) and (3) of the Regulations, 17 C.F.R. §1.1(b)(1) and (3).

COUNT II

VIOLATIONS OF SECTION 4(a) OF THE ACT, 7 U.S.C. § 6(a): OFFER AND SALE OF ILLEGAL FUTURES CONTRACTS

34. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

35. During the relevant time period, Defendants, and other persons or entities under their supervision or control, or acting in combination or concert with them, have offered to enter into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered with the CFTC as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts have not been executed or consummated by or through a member of such contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a).

36. Calvary and Keeffe are directly liable for violations of Section 4(a) of the Act by offering to enter into, entering into, executing and confirming the execution of, or conducting an

office for the purpose of soliciting or accepting orders for foreign currency futures transactions, on behalf of Calvary's customers, which were not conducted on a designated contract market or a derivatives transaction execution facility.

37. Keeffe controls or controlled Calvary, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Calvary's conduct alleged in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13(b), Keeffe is liable for Calvary's violations of Section 4(a) of the Act, 7 U.S.C. § 6(a), as described in this Count.

38. Keeffe and Calvary employees engaged in the illegal conduct alleged in this Count within the scope of their offices or employment as agents of Calvary. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), Calvary is liable as a principal for the illegal conduct of its agents pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

39. Each illegal offer to enter into, execution of, confirmation of the execution of, or operation of an office for the purpose of soliciting or accepting orders for foreign currency futures transactions not conducted on a designated contract market or a derivatives transaction execution facility including, but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4(a) of the Act, 7 U.S.C. § 6(a).

VI

RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter an order of permanent injunction:

A. restraining and enjoining Defendants, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Defendants, and all

persons insofar as they are acting in active concert or participation with Defendants, who receive actual notice of the order, by personal service or otherwise, from directly or indirectly:

1. Cheating or defrauding or attempting to cheat or defraud other persons and willfully making or causing to be made to other persons any false report or statement thereof, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be 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, in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii), and Section 1.1(b)(1) and (3) of the Regulations, 17 C.F.R. §1.1(b)(1) and (3); and
2. Offering to enter into, executing, confirming the execution of, or conducting an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, contracts for the purchase or sale of a commodity for future delivery when: (a) such transactions are not conducted on or subject to the rules of a board of trade designated or registered with the CFTC as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts are not executed or consummated by or through a member of such contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a);

B. prohibiting Defendants, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Defendants, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of the Order by personal service or otherwise, from directly or indirectly: (1) soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest contract; (2) placing orders or giving advice or price quotations, or other information in connection with the purchase or sale of commodity interest contracts for themselves and others; (3) introducing customers to any other person engaged in the business of commodity interest

trading; (4) issuing statements or reports to others concerning commodity interest trading; and
(5) otherwise engaging in any business activities related to commodity interest trading;

C. requiring Defendants to make restitution for harm caused by their violations of the provisions of the Act and the Regulations as described herein, including pre-judgment and post-judgment interest;

D. requiring Defendants to pay civil monetary penalties under Section 6c of the Act, 7 U.S.C. § 9a, to be assessed by the Court separately against each of them, in amounts not more than the higher of \$120,000 or triple the monetary gain to Defendants for each violation of the Act; and

E. such other equitable relief, including the appointment of a temporary or permanent receiver, as the Court may deem necessary or appropriate under the circumstances.

Respectfully submitted,



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