

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

COMMODITY FUTURES )  
TRADING COMMISSION )  
 )  
and )  
 )  
STATE OF MARYLAND EX REL )  
MARYLAND SECURITIES )  
COMMISSIONER )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ANDREW M. SILBERSTEIN )  
 )  
Defendant. )  
 )

Case No.

ROB

04 CV 666

Proposed Order Granting  
Motion For a Preliminary Injunction

Plaintiffs, the Commodity Futures Trading Commission ("Commission"), and the State of Maryland Ex Rel Maryland Securities Commissioner ("State of Maryland"), have filed a Complaint for permanent injunction and other relief, and moved pursuant to Section 6c of the Commodity Exchange Act as amended (the "Act"), 7 U.S.C. § 13a-1 (2001), for a preliminary injunction.

The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's motion for preliminary injunction, and any opposition thereto. As it appears to the Court that there is good cause to believe that the Defendant has engaged, is engaging in or is about to engage in violations of the Act, 7 U.S.C. §§ 1 *et. seq.*, and the Commission's Regulations ("Regulations"), 17 C.F.R. §§ 1 *et. seq.*, and that this is a proper case for granting a Preliminary Injunction to preserve the status quo, protect public customers from further loss and damage, and enable the Commission and the State of Maryland to fulfill their statutory duties, the Court orders as follows:

## RELIEF GRANTED

### I.

#### *Prohibition From Violations of the Act and Regulations*

**IT IS HEREBY ORDERED** that the Defendant, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of the Defendant, and all persons insofar as they are acting in active concert or participation with Defendant who receive actual notice of this order by personal service or otherwise, shall be prohibited and restrained from directly or indirectly:

A. 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 persons, where such contract for future delivery was or could 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,

1. cheating or defrauding or attempting to cheat or defraud other persons;
2. willfully making or causing to be made to other persons false reports or statements thereof, or willfully entering or causing to be entered for other persons false records thereof; and
3. willfully deceiving or attempting to deceive other persons;

in violation of Section 4b(a)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i), (ii) and (iii).

B. using the mails or instrumentalities of interstate commerce in or in connection with his business as a CPO while failing to register with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

C. while acting as a CPO, employing a device, scheme or artifice to defraud pool participants and prospective pool participants, in violation of Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A).

D. while acting as a CPO, engaging in a transaction, practice or course of business which operates as a fraud or deceit upon pool participants and prospective pool participants, in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B).

E. while acting as a CPO, (1) accepting pool funds in his own name; and (2) failing to treat the pool as a separate entity; in violation of Regulation 4.20(a) and (b), 17 C.F.R. § 4.20.

F. while acting as a CPO, failing to furnish periodic account statements to pool participants, in violation of Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and Section 4.22(a) of the Regulations, 17 C.F.R. § 4.22(a).

G. soliciting or accepting funds from prospective and current investors; trading commodity futures contracts or options on futures contracts on any exchange; and marketing and/or selling any seminars or materials relating to trading of commodity futures or options on commodity futures.

## II.

### *Force and Effect*

**IT IS FURTHER ORDERED** that this Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes. The Statutory Restraining Order ordered by the Court shall remain in full force and effect until further order of this Court.

SO ORDERED, at Baltimore, Maryland on this 8<sup>th</sup> day of April, 2004, at

3:55 P.m. EDT

  
UNITED STATES DISTRICT JUDGE