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FILED
CLERK, U.S. DISTRICT COURT
MAR 11 2005
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

LOGGED
CLERK, U.S. DISTRICT COURT
MAR 10 2005
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

BEN OUYANG, et al.,

Defendants.

Case No. CV 03-0833 DSF (Mcx)

~~[PROPOSED]~~ ORDER OF
PERMANENT INJUNCTION AND
ANCILLARY RELIEF

Defendants Ben Ouyang ("Ouyang") and Victco Financial Services, Inc. ("Victco"),
having signed their Consent to this Order of Permanent Injunction and Ancillary
Relief ("Order"), which Consent has been filed with the Court and is incorporated
herein by reference, it appears to the Court that:

cc: Fiscal

DOCKETED ON CM
MAR 14 2005
BY [Signature] 004

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I.

INTRODUCTION

1
2
3 1. On February 5, 2003 Plaintiff Commodity Futures Trading Commission
4 ("Commission") filed a complaint against Defendants Ouyang, Victco and Yuen
5 Kwong "Anthony" Wong dba IBF Capital Limited Company ("Wong") seeking
6 injunctive and other equitable relief, as well as the imposition of civil penalties, for
7 violations of the Commodity Exchange Act, as amended ("Act"), 7. U.S.C. §§ 1 et
8 seq. (2002).

9 2. On February 5, 2003, the Court entered a Statutory Restraining Order And
10 Order To Show Cause Re: Preliminary Injunction ("Statutory Restraining Order")
11 which, inter alia, froze Defendants' assets.

12 3. On March 8, 2004 the Court entered a Final Order of Default Judgment
13 Against Defendant Yuen Kwong "Anthony" Wong dba IBF Capital Limited
14 Company.

15 4. This Court has jurisdiction over this action pursuant to Section 6c(a) of the
16 Act, 7 U.S.C. § 13a-1(a)(2002), which provides that whenever it shall appear to the
17 Commission that any person has engaged, is engaging, or is about to engage in any
18 act or practice constituting a violation of the Act or any rule, regulation, or order
19 thereunder, the Commission may bring an action against such person in the proper
20 District Court of the United States to enjoin such practice, to enforce compliance
21 with the Act, to remove any danger of violation of the Act, and for civil penalties.

1 5. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7
2 U.S.C. § 13a-1(e)(2002), in that at all material times the Defendants were found in,
3 inhabited and transacted business in this district, and the acts and practices in
4 violation of the Act have occurred, are occurring, and are likely to continue to occur
5 within this district, among other places.

6 6. The Court finds that there is good cause for the entry of an order of
7 permanent injunction and other relief against Ouyang and Victco pursuant to
8 Section 6c, 7 U.S.C. § 13a-1 (2002), and the Court directs the entry of a final
9 judgment for permanent injunction, ancillary equitable relief and an award of civil
10 monetary penalties as set forth herein. This Order fully disposes of all
11 controverted issues between Plaintiff Commission and Defendants Ouyang and
12 Victco in this action.

13 II

14 CONCLUSIONS OF LAW

15 7. The Defendants' activities as alleged in the Complaint were subject to
16 the jurisdiction of the Commission pursuant to Section 2(c)(2)(B)(i) and (ii) of the
17 Act, 7 U.S.C. § 2(c)(2)(B)(i) and (ii) (2002).

18 8. Since at least February 2001, and continuing to the date of the filing of
19 the Complaint herein, Defendants have offered to enter into, entered into,
20 executed, confirmed the execution of, or conducted an office or business in the
21 United States for the purpose of soliciting, accepting any order for, or otherwise

1 dealing in transactions in, or in connection with, a contract for the purchase of sale
2 of a commodity for future delivery when: (a) such transactions have not been
3 conducted on or subject to the rules of a board of trade which has been designated
4 or registered by the Commission as a contract market or derivatives transaction
5 execution facility for such commodity, (b) such contracts have not been executed
6 or consummated by or through a member of such contract market, and (c) such
7 contracts have not been evidenced by a record in writing which shows the date, the
8 parties to the contract and their addresses, the property covered and its price, and
9 the terms of delivery, in violation of Section 4(a) of the Act, 7 U.S.C. §
10 6(a)(2002).

11 9. Defendant Ouyang, directly or indirectly, controlled Victco, and did not
12 act in good faith or knowingly induced, directly or indirectly, the acts constituting
13 the violations of Sections 4(a) of the Act by Victco. Pursuant to Section 13(b) of
14 the Act, 7 U.S.C. § 13c(b) (2002), Defendant Ouyang is liable for the violations of
15 Section 4(a) of the Act to the same extent as Victco.

16 10. Defendant Ouyang willfully aided and abetted, counseled, commanded,
17 induced, or procured the commission of violations of Section 4(a) of the Act by
18 Defendant Wong, and has acted in combination and concert with Wong, and
19 pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2002), he is a person liable
20 for violating Section 4(a) of the Act.

1 11. Since at least February 2001, and continuing to the date of the filing of
2 the Complaint herein, Defendants Ouyang and Victco, in or in connection with
3 orders to make, or the making of, contracts of sale of commodities for future
4 delivery, made or to be made, for or on behalf of any other persons, where such
5 contracts for future delivery were or could be used for the purposes set forth in
6 Section 4b(a) of the Act, 7 U.S.C. § 6b(a) (2002), have: cheated or defrauded or
7 attempted to defraud other persons; willfully made false reports or statements to
8 other persons in regard to such orders or contracts; and willfully deceived or
9 attempted to deceive other persons, all in violation of Section 4b(a)(i), (ii) and (iii)
10 of the Act, 7 U.S.C. §§ 6b(a)(i), (ii) and (iii) (2002).

11 12. Defendant Ouyang, directly or indirectly, controlled Victco, and did not
12 act in good faith or knowingly induced, directly or indirectly, the acts constituting
13 the violations of Section 4b of the Act by Victco. Pursuant to Section 13(b) of the
14 Act, 7 U.S.C. § 13c(b) (2002), Ouyang is liable for the violations of Section 4b(a)
15 of the Act to the same extent as Victco.

16 13. Under the totality of the circumstances, there is a reasonable likelihood of
17 future violations of the Act by Ouyang and Victco. Therefore, a permanent
18 injunction should issue in this action.

19 14. Based upon principles of equity, there is good cause for entry of an order
20 directing Ouyang and Victco to make restitution to investors in a manner approved
21 by the Court.

1 execution facility for such commodity; and

2 (ii) such contracts have not been executed or consummated by
3 or through a contract market.

4 PROVIDED, HOWEVER, that this prohibition shall not apply to foreign
5 currency contracts offered to a person who is an eligible contract participant
6 within the meaning of Section 1a(12) of the Commodity Exchange Act, 7
7 U.S.C. § 1a(12)(A)(xi) (2002), or where the counterparty to such contracts,
8 or the person offering to be the counterparty, is one of the regulated entities
9 enumerated in Section 2(c)(2)(B)(i)-(ii) of the Commodity Exchange Act, 7
10 U.S.C. § 2(c)(2)(B)(i)-(ii) (2002).

11 B. Violating, or aiding and abetting any other person in violating,
12 Sections 4b(a)(i), (ii) or (iii) of the Commodity Exchange Act, 7 U.S.C.
13 § 6b(a)(i), (ii) or (iii) (2002), by, in or in connection with any order to make,
14 or the making of, any contract of sale of any commodity for future delivery,
15 made, or to be made, for or on behalf of any other person if such contract for
16 future delivery is or may be used for (i) hedging any transaction in interstate
17 commerce in such commodity or the products or byproducts thereof, or (ii)
18 determining the price basis of any transaction in interstate commerce in such
19 commodity, or (iii) delivering any such commodity sold, shipped, or received
20 in interstate commerce for the fulfillment thereof,

21 (a) cheating or defrauding or attempting to cheat or defraud such

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other person;

(b) wilfully making or causing to be made to such other person any false report or statement thereof, or wilfully entering or causing to be entered for such person any false record thereof; or

(c) willfully deceiving or attempting to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person.

IV.

ORDER FOR PAYMENT OF RESTITUTION AND
CIVIL MONETARY PENALTIES

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT:

17. Ouyang and Victco are jointly and severally liable for customer restitution in an amount of up to the total amount of funds frozen pursuant to the Statutory Restraining Order (“Restitution Obligation”).

18. A civil monetary penalty is ordered against Ouyang and Victco, jointly and severally, in the amount of \$120,000.

19. The National Futures Association is designated as Monitor to oversee

1 restitution payments made pursuant to this Order. Notice to the Monitor in
2 connection with further proceedings in this action shall be addressed as follows:

3 Mr. Daniel A. Driscoll, or his successor
4 Executive Vice President, Compliance
5 National Futures Association
6 200 West Madison Street
7 Chicago, IL 60606

8 20. In satisfaction of the Restitution Obligation, all funds frozen pursuant
9 to the Statutory Restraining Order shall be transferred within sixty (60) days of the
10 date of this Order to an account designated by the Monitor. Such funds include,
11 but are not limited to, the following:

12 (a) \$375,278 frozen in accounts held with FXCM;

13 (b) \$688,020.35 frozen in accounts held with Gain Capital, Inc.

14 21. Such funds shall be distributed to Defendants' customers by the Monitor
15 in accordance with a plan of recommended distribution, when approved by this
16 Court, following summary proceedings held in accordance with principles of equity.
17 See generally *CFTC v. Topworth Intern., Ltd.*, 205 F.3d 1107 (9th Cir.1999).

18 22. In the event that any unclaimed funds remain in the account established
19 by the Monitor following distribution of restitution to customers, such funds shall be
20 paid to the United States Treasury. Any such unclaimed funds shall not be credited
21 to Ouyang's or Victco's obligation to pay a civil monetary penalty.
22

1 shall take any action or make any public statement denying, directly or indirectly,
2 any allegation in the Complaint or finding or conclusion in this Order, or creating,
3 or tending to create the impression that the Complaint or this Order is without a
4 factual basis; provided, however, that nothing in this provision shall affect their:
5 (i) testimonial obligations; or (ii) right to take legal positions in other proceedings
6 to which the Commission is not a party. Ouyang and Victco shall take all steps
7 necessary to ensure that their agents and employees comply with this provision.

8 26. This Court shall retain jurisdiction of this matter in connection with the
9 anticipated motion to be filed by the Commission seeking the Court's approval of a
10 plan of customer restitution as contemplated by Paragraph 22 above.

11 27. This Order shall inure to the benefit of and be binding upon the
12 successors, assigns, heirs, beneficiaries and administrators of the parties.

13 28. Upon being served with a copy of this Order after entry by the Court,
14 Defendant Ouyang shall sign an acknowledgment of such service on behalf of
15 himself and Victco and serve such acknowledgment on counsel for the Commission
16 within seven (7) days.
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29. Upon being served with a copy of this Order after entry by the Court, the Commission shall serve a copy of the Order upon the Monitor within (7) calendar days.

SCANNED

IT IS SO ORDERED:

Dated: 3/10, 2004

Dale S. Ischier
United States District Judge

Consented to and
Approved for Entry by:

Dated March 8, 2004

John T. Wise
John T. Wise
Attorney for Plaintiff

Dated: _____, 2004

Hank Vanderkam
Hank Vanderkam
Attorney for Defendants
Ben Ouyang and Victco Financial
Service, Inc.

1 PROOF OF SERVICE

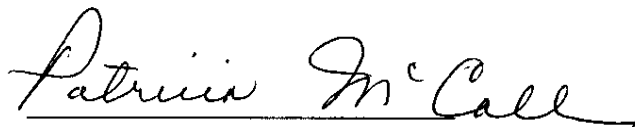
2 I certify and declare that I am over the age of 18 years, not a party to the above-
3 entitled action, and temporarily employed in the office of a member of the Bar of
4 this Court at whose direction the service was made. My business address is 140
5 Broadway, 19th Floor, New York, NY 10005. On March 8, 2005 I served a true
6 copy of [PROPOSED] ORDER OF PERMANENT INJUNCTION AND
7 ANCILLARY RELIEF by depositing it with the United States Postal Service in a
8 sealed envelope with the postage thereon fully prepaid to:

9 Eric T. Smith, Esq.
10 850 East Chapman Ave, Suite C
Orange, CA 92866

Hank Vanderkam, Esq.
Vanderkam & Associates
1301 Travis, Suite 1200
Houston, TX 77002

11
12 I declare under penalty of perjury under the laws of the United States of
13 America that the foregoing is true and correct.

14 Executed on March 8, 2005 at New York, New York.

15
16 
17 Patricia McCall