

Commodity Futures Trading Commission,

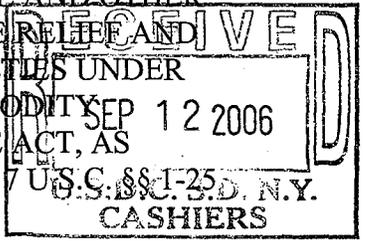
Plaintiff,

v.
American Energy Exchange and York
Commodities

Defendants.

06 CIV _____

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



I.
SUMMARY

The United States Commodity Futures Trading Commission

("Commission" or "CFTC"), by its attorneys, alleges as follows:

1. American Energy Exchange ("AMENX") and York Commodities ("York") (collectively "Defendants") defrauded prospective customers by falsely representing that AMENX is a futures exchange and that York is its broker.
2. Defendants fraudulently solicited and accepted over \$1.39 million from their prospective customers to trade commodity options by making exaggerated profit claims.
3. In reality, customers lost virtually all of their investment through Defendants' misappropriation of customer funds.
4. AMENX violated Section 4(a) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 6(a) (2005), by offering to enter into or entering into futures transactions that are not executed on a board of trade designated by, or registered with, the Commission as either a contract market or a derivatives transaction execution facility.

5. Defendants violated Section 4c(b) of the Act, 7 U.S.C. §6c(b), and Section 32.9(a) and (c) of the Regulations by engaging in fraudulent solicitation in connection with option trading.

6. Unless enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices as more fully described below.

7. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), Plaintiff CFTC brings this action to enjoin the unlawful acts and practices of Defendants and to compel their compliance with the provisions of the Act and Regulations thereunder, as well as for civil penalties, permanent injunctive relief and other relief, including restitution, disgorgement, and civil monetary penalties.

II. **JURISDICTION AND VENUE**

8. The Act establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts and options.

9. 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.

10. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), in that the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district.

III. **THE PARTIES**

11. 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).

12. Defendant American Energy Exchange is an entity which, according to its website, purports to be a private commodities exchange formed by independent oil and gas traders in the United States in 2002, with trading facilities in Chicago added in 2005. It lists its mailing address as 85 Broad Street, New York, NY 10004.

13. Defendant York Commodities is an entity which, according to its website, purports to be a financial services firm offering a full range of services to small and mid sized businesses.

IV. **FACTS**

A. AMENX Purports To Be An Exchange on Which Futures Contracts Are Purportedly Traded

14. AMENX through representations made on its website, www.amenx.com, purports to be an exchange for energy products based at 85 Broad Street, New York, New York.

15. AMENX purports to be an exchange that was formed by independent oil and gas traders in the USA in 2002 with trading facilities added in Chicago in 2005.

16. The AMENX website describes: 1) the energy futures and options contracts for which AMENX purportedly serves as an exchange; 2) expiry schedules for those futures contracts; and 3) the purported members of AMENX.

17. A number of the member firms that the AMENX website purports to be members of AMENX are not, in fact, members of AMENX and have never heard of AMENX.

18. AMENX is not a board of trade designated by, or registered with, the Commission as either a contract market or a derivatives transaction execution facility.

19. Moreover, there is no such entity located at the New York address listed on the AMENX website.

20. According to publicly available documents, the AMENX website is registered to American Energy Exchange, Two North La Salle Street, Chicago IL 60602 U.S.A, with a telephone number of 1 888 460 3582. There is no such entity located at that address. The website administrator is listed as net4all.ch, a web services company located in Lausanne, Switzerland.

B. York Commodities Fraudulently Solicits Customers to Trade Options Purportedly Traded on AMENX

21. York fraudulently solicits customers to purchase options on future contracts purportedly traded on AMENX.

22. York purports through its website, www.york-commodities.com, to be a non-clearing member of both NYMEX and AMENX and to be registered with the NYMEX.

23. In fact, York is neither a non clearing member of nor is registered with NYMEX.

24. The websites for York and AMENX can be viewed by prospective customers in the United States.

25. Neither the York nor AMENX websites restrict the purported opportunity to trade options on AMENX to persons outside the United States. In fact, account opening documents contain sections to be completed by U.S. customers.

26. York solicited customers to trade options on energy futures contracts with AMENX through direct telephone solicitations. These customers are led to believe that AMENX is an exchange and York is its broker, both located in the United States.

27. Customers are given a fax number of (212) 202-7927 and two different toll free numbers to mislead them to believe that York is located in the United States.

28. The fax number (212) 202-7927 is registered to a United States communications company, j2 Communications, which maintains servers located in the United States. That company in turn leases the use of that number to York.

29. Once the customers are solicited, the customers are then advised that they have opened an online trading account on AMENX which they can access through the AMENX website and are instructed to wire their funds to a bank account located in Hong Kong.

30. Customers were promised substantial profits when, in fact, most customers lost money.

V.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS

COUNT I- Violations by AMENX of Section 4(a) of the Act: Offer of Illegal Off-Exchange Futures Contracts

31. Paragraphs 1 through 30 are re-alleged and incorporated herein.

32. Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002), provides that unless exempted by the Commission, “it shall be unlawful for any person to offer to enter into,

execute, confirm the execution of, or conduct 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: (1) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity; (2) such contracts have not been executed or consummated by or through such contract market; and (3) such contract is not evidenced by a written record showing the date, parties, property covered, price, and terms of delivery.

33. AMENX offered to enter into, executed, confirmed the execution of, a contract for the purchase or sale of a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions were not conducted on or subject to the rules of a board of trade which was designated or registered by the CFTC as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts were not executed or consummated by or through such contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002).

34. Each offer to enter into futures transaction not conducted on a designated contract market or registered derivatives transaction execution facility, including but not limited to those offered by AMENX as specifically alleged herein, is alleged as a separate and distinct violation of Section 4(a) of the Act.

COUNT II – Violations by Defendants of Section 4c(b) of the Act and Section 32.9(a) and (c) of the Regulations: Options Fraud

35. Paragraphs 1 through 34 are re-alleged and incorporated herein.

36. Section 4c(b) of the Act, 7 U.S.C. § 6c(b), makes it unlawful to offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under the Act which is of the character of, or is commonly known to the trade as, an “option,” “privilege,” “indemnity,” “bid,” “offer,” “put,” “call,” “advance guaranty,” or “decline guaranty,” contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.

37. Commission Regulation 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c), makes it unlawful for any person, directly or indirectly (a) to cheat or defraud or attempt to cheat or defraud any person; (c) to deceive any other person by any means whatsoever, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of any commodity option transaction.

38. AMENX and York, in connection with offers to enter into, the entry of, the confirmation of the execution of commodity options transactions, cheated or defrauded or attempted to cheat or defraud customers, and deceived or attempted to deceive customers, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Section 32.9(a) and (c) of the Commissions Regulations, 17 C.F.R. §§ 32.9(a) and (c).

39. Each material misrepresentation or omission, false statement, misappropriation of investor funds, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act.

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 (2002), and pursuant to the Court's own equitable powers enter:

A. an order finding that Defendants violated Section 4c(b) of the Act, 7 U.S.C. §§ 6c(b), and Commission Regulations 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c) and that AMENX violated Section 4(a) of the Act, 7 U.S.C. §6(a);

B. an *ex parte* statutory restraining order and an Order of preliminary injunction restraining and enjoining the Defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of the Defendants, wherever located, including all such records concerning the Defendants' business operations; and
2. 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 the Defendants, wherever located, including all such records concerning the Defendants' business operations.

C. preliminary and permanent injunctions prohibiting Defendants from engaging in conduct in violation of Sections 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c) and prohibiting AMENX from violating Section 4(a) of the Act, 7 U.S.C. § 6(a); including prohibiting the Defendants from operating the fraudulent websites;

D. an order directing Defendants to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or of the Commission Regulations, as described herein, and interest thereon from the date of such violations;

E. an order directing Defendants to make full restitution, pursuant to such procedure as the Court may order, to every customer whose funds were received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;

F. an order assessing a civil monetary penalty against each Defendant in the amount of not more than the higher of \$130,000 or triple the monetary gain to the defendant for each violation by the defendant of the Act and Commission Regulations;

G. an order directing that the Defendants to make an accounting to the Court of all their assets and liabilities, together with all funds they received from and paid to clients and other persons in connection with commodity futures and options transactions or purported commodity futures and options transactions, and all disbursements for any purpose whatsoever of funds received from commodity transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind; and

H. such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: New York, NY
September 12, 2006

COMMODITY FUTURES TRADING
COMMISSION

Stephen J. Obie
Regional Counsel/Associate Director



David W. Oakland (DO-3535)
Manal Sultan (MS-8068)
Division of Enforcement
U.S. Commodity Futures Trading Commission
Eastern Regional Office
140 Broadway, 19th Floor
New York, NY 10005
(646) 746-9769