

KAPLAN, J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

ARJENT CAPITAL MARKETS LLC,
CHICAGO TRADING MANAGERS LLC,
SPENCER MONTGOMERY and BRIAN
REYNOLDS,

Defendants.

Case No. 12 CV 1832 (LAK)

ECF Case

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**~~PROPOSED~~ ORDER FOR ENTRY OF DEFAULT JUDGMENT, PERMANENT
INJUNCTION AND ANCILLARY EQUITABLE RELIEF AGAINST ARJENT
CAPITAL MARKETS LLC AND CHICAGO TRADING MANAGERS LLC**

On March 13, 2012, Plaintiff U.S. Commodity Futures Trading Commission (the “Commission” or “CFTC”) filed a Complaint against Defendants Arjent Capital Markets LLC (“Arjent”), Chicago Trading Managers LLC (“CT Managers”), Spencer Montgomery (“Montgomery”) and Brian Reynolds (“Reynolds”) (collectively, “Defendants”), seeking injunctive and other equitable relief for violations of the Commodity Exchange Act (the “CEA” or the “Act”), 7 U.S.C. §§ 1 et seq.

Defendants Arjent and CT Managers (the “Defaulting Defendants”) were served on April 18, 2012 and May 1, 2012, respectively.

Proper service of process has been effected, Arjent and CT Managers have failed to answer the Complaint or otherwise defend this action and the Clerk has issued Certificates of Default.

On March 15, 2013, the Commission filed a Motion for Entry of Default Judgment, Permanent Injunction and Ancillary Equitable Relief Against Arjent and CT Managers (the “Motion”).

This Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Motion, Memorandum Of Law In Support of the Motion, Declaration of Judith M. Slowly, and all other papers filed herein, and being fully advised in the premises, pursuant to Federal Rule of Civil Procedure 55(b)(2), hereby:

GRANTS the Commission’s Motion and enters findings of fact and conclusions of law, finding Arjent and CT Managers liable as to all violations as alleged in the Complaint. The Court further grants the Commission’s request to assess civil monetary penalties against Arjent and CT Managers. Accordingly, the Court now issues the following Order for Entry of Default Judgment, Permanent Injunction and Ancillary Equitable Relief (“Order”) against Defendants Arjent and CT Managers.

I. FINDINGS OF FACT

1. From at least June 2008 through at least November 2009 (the “Relevant Period”), the Defaulting Defendants defrauded Pool Participants by knowingly issuing or causing to be issued false account statements for three commodity pools.

2. During the Relevant Period, Arjent operated as a trading vehicle to execute and clear securities and futures trades for commodity pools and traders through a trading account held in Arjent’s name (the “Arjent Trading Account”) at a Futures Commission Merchant (“FCM”). The Arjent Trading Account had a number of subaccounts that were not separate accounts but rather were bookkeeping subcategories. The net liquidating value of the Arjent Trading Account equaled the sum of all positive balances, across all subaccounts, reduced by the

sum of all debit balances, across all subaccounts. On each account statement issued to Arjent for the subaccounts within the Arjent Trading Account, the FCM stated that the total value of the assets held in the subaccount could only be determined “by adding together the values of all related accounts, including accounts with negative values.”

3. CT Managers, a commodity pool operator (“CPO”) registered with the Commission, managed and operated at least two pools (the “CT Pools”) whose funds were deposited in the Arjent Trading Account. The Pool Participants in the CT Pools (the “CT Pool Participants”) invested more than \$9 million during the Relevant Period, which was transferred through Arjent to the Arjent Trading Account, assigned to various subaccounts within the Arjent Trading Account and used to invest in contracts of sale of commodities for future delivery.

4. In 2009, the operator of a third-party commodity pool (the “Third Party Pool”) was solicited to open an account with Arjent and wired \$1.5 million to Arjent, which was assigned to a subaccount within the Arjent Trading Account and used to invest in contracts of sale of commodities for future delivery.

5. Arjent and CT managers had access to comprehensive information relating to the Arjent Trading Account, and were aware of the net liquidating value of the Arjent Trading Account.

6. The Arjent Trading Account had subaccounts with negative balances (the “Arjent Debits”). By June 2009, the Arjent Debits in the Arjent Trading Account amounted to millions of dollars, including losses incurred by traders given access to the Arjent Trading Account and compensation paid to those associated with Arjent. Arjent and CT Managers were aware of the Arjent Debits in the Arjent Trading Account, including the specific nature of the Arjent Debits and how they would be characterized and recorded by Arjent for accounting purposes. Arjent

and CT Managers knew that the Arjent Debits were being held in the Arjent Trading Account throughout the Relevant Period and, because they were growing throughout the Relevant Period, reduced the net liquidating value of the Arjent Trading Account.

7. By June 2009, the Arjent Debits amounted to millions of dollars. In December 2009, Arjent acknowledged that “since October 2009, Arjent has carried negative capital balances of approximately \$6.8 million.”

8. By transferring and maintaining both the CT Pools’ and Third Party Pool’s (collectively, the “Pools”) funds in the Arjent Trading Account, Arjent and CT Managers knowingly depleted the assets of both Pools. The netting of the Arjent Debits with the Pools’ assets reduced the value of the assets being held for the Pools. Arjent and CT Managers knew that the Pools’ assets were depleted by the maintenance of the Arjent Debits in the Arjent Trading Account. Importantly, Arjent and CT Managers further knew that if the Arjent Trading Account was liquidated by the FCM or otherwise, the FCM would only provide funds and/or assets totaling the net liquidating value of the Arjent Trading Account as a whole.

9. Nonetheless, on at least ten occasions, CT Managers issued or caused to be issued statements to CT Pool Participants that fraudulently inflated the Net Asset Value (“NAV”) for each CT Pool in that the statements did not reflect the dilution of the CT Pools’ assets caused by the Arjent Debits in the Arjent Trading Account. For example, in February 2009, statements to CT Pool Participants, when aggregated, showed that CT Pool Participants had a total NAV of \$8,877,518, when the actual net liquidating value of the entire Arjent Trading Account totaled \$3,562,347—less than half the value reported to CT Pool Participants.

10. Similarly, Arjent issued or caused to be issued a statement to the Third Party Pool in August 2009 that fraudulently inflated the valuation of the account and falsely indicated that

the account was clearing at a non-existent affiliate of the FCM. The false value, when totaled with the valuation statements provided to the CT Pool Participants for that month, exceeded the actual value of the Arjent Trading Account by more than \$3 million, which was approximately double the actual value of the Arjent Trading Account.

11. Arjent knew that CT Managers' account statements were fraudulent and intentionally participated in the fraud. Arjent held the CT Pool Participants' funds in the Arjent Trading Account along with the Arjent Debits and knew, through Arjent's managing members, that the Arjent Trading Account was being used to report NAVs to the CT Pool Participants that were greater than the total assets held in the Arjent Trading Account.

12. Arjent and CT Managers ceased operating in or about March 2010, shortly after they became aware of the CFTC investigation. In connection with the winding up of Arjent and CT Managers' business, two of Arjent's managing members paid the CT Pool Participants the amount reported on their respective account statements.

II. CONCLUSIONS OF LAW

A. Jurisdiction and Venue

13. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), which provides that whenever it shall appear to the 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 in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

14. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because the acts and practices in violation of the Act occurred within this District.

B. Violations of CEA Section 4b

15. By the conduct described in paragraphs 1 through 12 above, Arjent and CT Managers cheated and defrauded or attempted to cheat and defraud and willfully deceived or attempted to deceive CT Pool Participants and the Third Party Pool; willfully made or caused to be made to CT Pool Participants and the Third Party Pool false reports and willfully entered or caused to be entered false records for pool participants and the Third Party pool by, among other things, knowingly or recklessly issuing or causing the issuance of account statements that fraudulently misrepresented the NAV of the CT Pool Participants' investment and issuing or causing the issuance of at least one statement that fraudulently misrepresented the cash balance of the Third Party Pool's investment, in or in connection with orders to make, or the making of, contracts of sale of commodities in interstate commerce or for future delivery made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of other persons, in violation of Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (Supp. II 2009).

C. Violations of CEA Section 4o

16. Further, by the conduct described in paragraphs 1 through 12 above, CT Managers, a commodity pool operator, acting with scienter, used the mails or other means or instrumentalities of interstate commerce directly or indirectly to employ a device, scheme, or artifice to defraud the CT Pool Participants and the Third Party Pool, or to engage in transactions, practices or courses of business which operated as a fraud and deceit upon the CT Pool Participants and the Third Party Pool, all in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2006).

D. Derivative Liability

17. Defendant CT Managers is vicariously liable for any violations of the Act described in paragraphs 1 through 12 above by virtue of the acts of its managing members, representatives, employees and agents, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2.

18. Defendant Arjent is vicariously liable for any violations of the Act described in paragraphs 1 through 12 above by virtue of the acts of its managing members, representatives, employees and agents, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2.

19. Arjent aided, abetted, counseled, commanded, induced and/or procured the act or acts of CT Managers in violation of Sections 4b(a)(1)(A)-(C) and 4o(1)(A) and (B) of the Act; therefore, pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2006), Arjent is also liable for CT Managers' violations of those Sections of the Act.

20. Unless restrained and enjoined by this Court, there is a reasonable likelihood that the Defaulting Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

III. PERMANENT INJUNCTION

IT IS HEREBY ORDERD THAT:

21. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, Defendants Arjent and CT Managers, are permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. cheating or defrauding, or attempting to cheat or defraud, other persons; or willfully making or causing to be made to other persons any false report or statement or willfully entering or causing to be entered for the person any

false record; or willfully deceiving or attempting to deceive other persons by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for other persons, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person, in violation of Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (Supp. II 2009); and

- b. as a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant, in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B).

22. Defendants Arjent and CT Managers are also permanently restrained, enjoined and prohibited from, directly or indirectly:

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended by the Dodd-Frank Wall

Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), 7 U.S.C. § 1a;

- b. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2011) (“commodity options”), security futures products, swaps (as that term is defined in Section 1a(47) of the Act, as amended, and as further defined by Commission regulation 1.3(xxx), 17 C.F.R. 1.3(xxx)), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”), for their own personal accounts or for any account in which they have a direct or indirect interest;
- c. Having any commodity futures, options on commodity futures, commodity options, security futures products, swaps and/or forex contracts traded on their behalf;
- d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, swaps and/or forex contracts;
- e. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on

commodity futures, commodity options, security futures products, swaps and/or forex contracts;

- f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, or any other officer or employee of any person registered, exempted from registration or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

23. The injunctive provisions of this Order shall be binding upon any of the following persons who receive actual notice of this Order, by personal service, first-class mail, email, facsimile or otherwise: Defendants Arjent and CT Managers, any officer, agent, servant or employee of Defendants Arjent and/or CT Managers, and any person who is acting in active concert or participation with Defendants Arjent and CT Managers.

IV. CIVIL MONETARY PENALTY

IT IS FURTHER ORDERED THAT:

24. Defendants Arjent and CT Managers shall, jointly and severally, pay a civil monetary penalty in the amount of one million four hundred thousand dollars (\$1,400,000) and that Arjent shall pay an additional civil monetary penalty in the amount of one hundred forty thousand dollars (\$140,000) (collectively, the “CMP Obligation”), plus post-judgment interest.

Post-judgment interest shall accrue on the CMP Obligation commencing on the date of entry of this Order and shall be determined by using the United States Treasury Bill rate prevailing on that date pursuant to 28 U.S.C. § 1961.

25. The Defaulting Defendants shall pay their CMP Obligation and post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
Attn: Accounts Receivables- AMZ 340 DOT/FAA/MMAC
E-mail Box: 9-AMC-AMZ-AR-CFTC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, Defaulting Defendants shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Defaulting Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies them and the name and docket number of this proceeding. Defaulting Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

26. Partial Satisfaction: Any acceptance by the Commission of partial payment from Defaulting Defendants of the CMP Obligation shall not be deemed a waiver of Defaulting Defendants' obligation to make further payments pursuant to this Order, or a waiver of the

Commission's right to seek to compel payment from Defaulting Defendants of any remaining balance.

V. MISCELLANEOUS PROVISIONS

27. Notice: All notices required to be given by any provision in this Order shall be sent certified mail, return receipt requested, to the CFTC as follows:

Director, Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, DC 20581

Stephen J. Obie
Associate Director/Regional Counsel
Division of Enforcement
Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005
Telephone: (646) 746-9766
Fax: (646) 746-9940

All such notices to the CFTC shall reference the name and docket number of this action.

28. Prohibition on Transfer of Funds: Defaulting Defendants shall not transfer, or cause others to transfer, funds or other property to the custody, possession, or control of any members of their family or any other person or entity for the purpose of concealing such funds from this Court or the Commission until the CMP Obligation set forth above have been satisfied in full.

29. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Order and for all other purposes related to this action, including any motion by Arjent and/or CT Managers to modify or for relief from the terms of this Order.

30. There being no just cause for delay, the Clerk of the Court shall enter final judgment against Arjent and CT Managers in this action forthwith and without further delay.

There being no pending matters remaining in this matter, the case may be closed.

IT IS SO ORDERED on this 15 day of May, 2013.



Lewis A. Kaplan
UNITED STATES DISTRICT JUDGE

