JUDGE COTE 11 CV 2576

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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U.S.D.C. S.D. N.Y.
CASHIERS

U.S. COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. OTMANE EL RHAZI, Defendant.	Civil Action No. _____ **COMPLAINT FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTIES, AND OTHER EQUITABLE RELIEF** **ECF CASE** JURY TRIAL DEMANDED

I.
SUMMARY

The U.S. Commodity Futures Trading Commission ("Commission" or "CFTC"), by and through its attorneys, alleges as follows:

1. Otmane El Rhazi ("El Rhazi" or "Defendant") engaged in a series of illegal palladium and platinum futures transactions involving primarily illiquid contracts at off-the-market prices on the New York Mercantile Exchange, a subsidiary of the CME Group ("NYMEX") markets in order to steal money from a Citibank, N.A. proprietary account (the "Citi account"), for which he exercised trading authority as an employee of Citigroup Global Markets Ltd. ("Citigroup") and pass the money to his own personal account.

2. With this conduct, El Rhazi violated section 4c(a) of the Commodity Exchange Act ("Act"), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), § 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. 6c(a), by entering into a transaction that is of the character of or is commonly known to the trade as, a 'wash sale' or 'accommodation trade' or is a fictitious sale involving the purchase or sale of a commodity for future delivery

which transaction was used or may have been used to hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity; or to determine the price basis of any such transaction in interstate commerce in the commodity; or to deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

3. With this conduct, Defendant further violated Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2011), by entering into illegal noncompetitive transactions to buy and sell futures contracts.

4. With this conduct, Defendant further violated Section 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C), when, in or in connection with on-exchange commodity futures contracts, he made, or caused to be made, for or on behalf of or with other persons, cheated, defrauded or deceived customers by, among other things, knowingly: repeatedly causing the Citi account to lose money by trading with his personal account.

II.
JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, 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.

6. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, to be codified at 7 U.S.C. § 13a-1(e), in that Defendant are found in, inhabit, or transact business in this District, and the acts and practices in violation of the Act have occurred,

are occurring, or are about to occur within this district, among other places. Venue also properly lies with this Court pursuant to 13 U.S.C. 1391(d) (2006)

III.
PARTIES

7. Plaintiff United States Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the Act, as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission's Regulations ("Regulations") promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

8. Defendant Otmane El Rhazi ("El Rhazi") is a Moroccan national residing in Dagenham, Essex, England.

IV.
FACTS

The Illegal Transactions

9. On approximately two dozen days between November 23, 2010 and April 5, 2011, Defendant engaged in a series of palladium and platinum futures transactions offered by NYMEX on the Chicago Mercantile Exchange Globex electronic trading platform ("Globex") whereby he caused the Citi account to trade in illiquid contracts opposite his personal account at off-market prices. The effect was no net change in open positions of the Defendant or the Citi account but a resulting profit to Defendant's personal account and a loss to the Citi account – stealing money from the Citi account to his personal account.

10. Specifically, on approximately two dozen days, Defendant engaged in a series of futures transactions offered by NYMEX on Globex whereby Defendant caused the Citi account to repeatedly trade opposite his personal account, resulting in approximately $300,000 in profits to Defendant's personal account and losses to the Citi account.

11. In each series of offsetting transactions, Defendant profited and the Citi account incurred a loss with no change in open positions held by either.

12. Defendant was not authorized to engage in these series of transactions. Defendant thus misappropriated from the Citi account through these trades. Defendant did not execute these transactions in accordance with the written rules of NYMEX.

13. By knowingly, intentionally and consistently executing trades between his personal account and the Citi account during periods of low volume in order to pass money from the Citi proprietary account to his personal account, Defendant entered into transactions without intent to take a genuine, bona fide position in the market and with the intent to cheat, defraud or deceive.

V.
VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS

COUNT I
Violations of Section 4c(a) of the Act, as amended to be codified at 7 U.S.C. 6c(a)

14. Paragraphs 1 through 13 are re-alleged and incorporated herein.

15. Defendant violated section 4c(a) of the Act, as amended, to be codified at 7 U.S.C. 6c(a), by entering into a transaction that is of the character of or is commonly known to the trade as, a 'wash sale' or 'accommodation trade' or is a fictitious sale involving the purchase or sale of a commodity for future delivery which transaction was used or may have been used to hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity; or to determine the price basis of any such transaction in interstate commerce in the commodity; or to deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

16. Each transaction entered into by the Defendant, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(a) of the Act as amended, to be codified at, 7 U.S.C. § 6c(a).

COUNT II
Violations of Commission Regulation 1.38(a)

17. Paragraphs 1 through 16 are re-alleged and incorporated herein.

18. Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2011), requires that all purchases and sales of commodity futures contracts be executed "openly and competitively."

19. Defendant violated Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2011), by engaging in a series of improper noncompetitive commodity futures transactions.

20. Each transaction entered into by the Defendant, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2011).

COUNT III
Violations of Section 4b(a)(1)(A) and (C) of the Act,
as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A) and (C)

21. Paragraphs 1 through 20 are re-alleged and incorporated herein by reference.

22. Section 4b(a)(1)(A) and (C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A) and (C), make it unlawful:

> for any person, 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 – (A) to cheat or defraud or attempt to cheat or defraud the other person; [and/or] (C) willfully to deceive or attempt to deceive the other person 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 … the other person…

23. As set forth above, El Rhazi, in or in connection with commodity futures contracts, made, or caused to be made, for or on behalf of or with other persons, cheated, defrauded or deceived another person by, among other things, knowingly: repeatedly causing the Citi account to lose money by trading with his personal account, all in violation of Section 4b(a)(1)(A) and (C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A) (C).

24. Each instance of a fraudulent act or omission, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(1)(A) and (C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C).

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 (2006), and pursuant to the Court's own equitable powers:

A. Find that Defendant violated Sections 4c(a) and 4b(a)(1)(A) and (C) of the Act, as amended, to be codified at 7 U.S.C. §§ 6c(a), 6b(a)(1)(A) and (C), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2011);

B. Enter an *ex parte* statutory restraining order and an order of preliminary injunction restraining and enjoining Defendant, and any successors thereof, 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 Defendant, wherever located, including all such records concerning Defendant' business operations;

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 Defendant, wherever located, including all such records concerning Defendant' business operations; and

3. withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of any of the Defendant;

C. Enter orders of preliminary and permanent injunctions prohibiting Defendant, and any other person or entity associated with him, including any successor thereof, from directly or indirectly:

1. engaging in conduct in violation of Sections 4c(a), and 4b(a)(1)(A) and (C) of the Act, as amended, to be codified at 7 U.S.C. §§ 6c(a), 6b(a)(1)(A), (C), and Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2006);

2. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1)(2011)) ("commodity options"), and/or foreign currency (as described in Section 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) ("forex contracts")), for their own personal account or for any account in which they have a direct or indirect interest;

3. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;

4. 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, and/or forex contracts;

5. 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, and/or forex contracts;

6. 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

7. 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 Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2011);

D. Enter an order directing Defendant, and any successors thereof, to provide Plaintiff immediate and continuing access to their books and records;

E. Enter an order directing Defendant, and any successors thereof, to take such steps as are necessary to repatriate to the territory of the United States all funds and assets which are held by Defendant, and any successors thereof, or are under their direct or indirect control, jointly or singly, and deposit such funds into the Registry of this Court and provide the Commission and the Court with a written description of the funds and assets so repatriated;

F. Enter an order directing Defendant, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act and Commission Regulations as described herein, including pre-judgment interest thereon from the date of such violations;

G. Enter an order directing Defendant, and any successors thereof, to make full restitution 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;

H. Enter an order assessing a civil monetary penalty against Defendant, and any successors thereof, in the amount of not more than the higher of $140,000 or triple the monetary gain to the Defendant for each violation by the Defendant of the Act and/or Regulations;

I. Enter an order directing that Defendant, and any successors thereof, 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 transactions or purported commodity futures 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, from, but not limited to, November 23, 2010 through and including the date of such accounting;

J. Enter an order requiring Defendant, and any successors thereof, to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

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

VII.
JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: New York, NY
April 15, 2011

U.S. COMMODITY FUTURES TRADING COMMISSION

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