



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Case No. 05cv 2973

COMMODITY FUTURES TRADING)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Complaint for Injunctive and Other
)	Equitable Relief and for Civil Penalties
)	Under the Commodity Exchange Act,
PAUL M. EUSTACE, AND)	as Amended, 7 U.S.C. §§ 1-25
PHILADELPHIA ALTERNATIVE ASSET)	
MANAGEMENT COMPANY, LLC)	
)	
)	
Defendants.)	
)	

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

I.

SUMMARY

1. Beginning in or about March 2003 and continuing through the present (the "relevant period"), Paul M. Eustace ("Eustace") and Philadelphia Alternative Asset Management Company, LLC ("PAAM") (collectively, "Defendants") have fraudulently solicited and accepted at least \$680,000 from at least one member of the general public to participate in a commodity trading pool, Philadelphia Alternative Asset Fund, LP (the "LP Pool"). LP Pool claims to be a hedge fund operated by PAAM and traded by Eustace, and was established to trade, among other things, commodity futures and options contracts.

2. The Defendants issued false statements to the LP Pool participant showing that as of January 31, 2005, the Pool was purportedly trading commodity futures and options and that his share of the LP Pool had increased in value to \$1,118,973.

3. The Defendants also attempted to solicit another prospective LP Pool participant by using a one-page chart purporting to show actual trading results from October 2002 through March 2004 reflecting a cumulative percentage return of 25.38%. In fact, Defendants had not achieved those results trading commodity futures and options for the LP Pool.

4. At the time that these statements were issued, and as Eustace has admitted, the Defendants had not engaged in any commodity futures or options trading in the name of the LP Pool or the LP pool participant.

5. Since approximately July 2004, the Defendants have operated two other commodity pools, the Philadelphia Alternative Asset Fund, Ltd., an off-shore pool ("Off-Shore Pool"), and the Philadelphia Alternative Asset Feeder Fund LLC. ("Feeder Fund"), which allows US customers to participate in the Off-Shore Pool. The Defendants have accepted over \$230 million from pool participants. Those pools traded, among other things, commodity futures and options. According to the Defendants' website, the Off-Shore Pool traded on regulated futures markets.

6. Beginning in February 2005 and continuing through May 2005, the Off-Shore Pool sustained severe trading losses exceeding \$140 million. However, during those same months, the Defendants posted trading results on their website, www.paamcolc.com, reflecting that the Fund was trading profitably for those same months, and issued an account statement to at least one pool participant in the Feeder Fund showing that his account had increased in value in April 2005.

7. The Defendants have engaged, are engaging, or are about to engage in acts and practices that violate the antifraud provisions of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 1 *et seq.*, and the Regulations of the Commodity Futures Trading Commission (“CFTC”), 17 C.F.R. § 1.1 *et seq.*, including Sections 4b(a)(2)(i) - (iii); 4c(b); and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) - (iii); 6c(b); and 6o(1) (2002), and Sections 4.41(a) and 33.10 of the Commission’s Regulations (the “Regulations”), 17 C.F.R. §§ 4.41(a) and 33.10. (2004).

8. Eustace’s actions and failures alleged in this Complaint were done within the scope of his employment with PAAM, and therefore PAAM is liable for his violations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2 (2002).

9. In addition to his direct liability, Eustace directly or indirectly controls PAAM and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting PAAM’s violations alleged in this Complaint, and is therefore liable for PAAM’s violations of the Act and Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

10. Accordingly, the Commission brings his action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), to enjoin the Defendants’ unlawful acts and practices and to compel their compliance with the Act and CFTC Regulations. In addition, the Commission seeks disgorgement of the Defendants’ ill-gotten gains, restitution to pool participants, civil monetary penalties, and such other relief as this Court may deem necessary or appropriate.

11. Unless restrained and enjoined by this Court, the 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.

II.

JURISDICTION AND VENUE

12. 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 to the Commission 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.

13. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002) in that the Defendants 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.

III.

THE PARTIES

14. Plaintiff Commission is an independent federal regulatory agency charged with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated under it, 17 C.F.R. §§ 1 *et seq.* (2004).

15. Defendant Eustace is an individual who resides in Ontario, Canada. Eustace is the President of PAAM. He has been registered with the CFTC as the sole Associated Person of PAAM since October 8, 2003, and is listed as its sole principal.

16. Defendant PAAM is a Delaware Limited Liability Company with an office located in King of Prussia, PA. PAAM has been registered with the CFTC as a Commodity Pool Operator (“CPO”) since October 8, 2003 and was a registered Commodity Trading Advisor (“CTA”) from October 8, 2003 until January 13, 2005, when it withdrew its CTA registration.

IV.

FACTS

A. The Defendants Fraudulently Solicited at Least One LP Pool Participant and Issued False Statements to Him

17. Beginning in or about March 2003, Defendants solicited money from at least one known pool participant for participation in the LP Pool, which anticipated trading, among other things, commodity futures and options.

18. In or about March 2003, the LP Pool participant invested \$200,000 with the LP Pool, with the understanding that the LP Pool would be trading futures. The LP Pool participant subsequently increased his investment to more than \$680,000.

19. After his initial investment, Eustace sent the LP Pool participant a fictitious monthly trading account statement purporting to show that the LP pool participant's investment had increased to \$205,965 from trading commodity futures and options.

20. This fictitious monthly account statement was issued on the LP Pool's letterhead and contains Eustace's name and title along the bottom.

21. Throughout the relevant period, Eustace continued to send account statements to the LP Pool participant reflecting the profitable trading of commodity futures and options on behalf of the LP Pool and the LP Pool participant. Those account statements were issued on LP Pool's letterhead and included a signature line for Eustace. Most of the account statements were signed by Eustace.

22. In or around January 2005, Eustace sent the LP pool participant a fictitious monthly trading account statement purporting to show that for the period ending January 31, 2005, the LP Pool participant's share of the pool had a then-current value of over \$1.1 million from the LP Pool's trading of commodity futures and options.

23. This fictitious monthly account statement was issued on the LP Pool's letterhead and signed by Eustace.

24. During the time that the LP pool participant was receiving these fictitious account statements, as Eustace has admitted, the Defendants never managed accounts that traded futures or options in the name of the LP Pool or the LP pool participant.

B. Defendants Presented Fictitious Trading Records To a Prospective Pool Participant

25. On or about March 8, 2004, Eustace sent promotional materials for the LP Pool to at least one prospective participant via e-mail, which included a PowerPoint presentation dated December 2003, describing the LP Pool; a private placement memorandum for the LP Pool dated December 2003; and a one-page document that purported to show actual trading results for the LP Pool for the period October 2002 through March 2004 (the "LP Pool trading chart").

26. The PowerPoint presentation states that PAAM is the "General Manager" of the Pool, and that Eustace is the President of PAAM.

27. The private placement memorandum refers to the LP Pool as "the Fund" and states that it is a "Delaware limited partnership organized for the purpose of achieving capital appreciation through investments in a wide range of capital market instruments," including commodity futures and options.

28. The private placement memorandum also states that "The Fund and the General Partner are recently formed entities and have a limited past performance record."

29. The trading chart states that "the Fund commenced trading under the direction of the Manager in October 2002. The Fund had no transaction history prior to this."

30. The trading chart further states "Past performance may not be indicative of future performance."

31. Each of these statements indicates that actual trading had taken place in the LP Pool by the date of the solicitation documents. Nevertheless, at the time these statements were issued, by Eustace's admission, the Defendants had not actually conducted any trading for the LP Pool.

32. On or about May 26, 2005, Eustace informed the National Futures Association ("NFA"), a self regulatory organization that oversees the commodity futures and options markets, that the trading chart "numbers were meant to demonstrate hypothetical performance of my trading strategies with a gradual escalation of assets" and provided purported back-up documentation reflecting futures trading results. Eustace further explained that "[t]he entity referenced, Philadelphia Alternative Asset Fund, LP, in this document never had a trading account." Philadelphia Alternative Asset Fund, LP is the LP Pool.

C. Defendant Eustace Did Not Disclose the Existence and Operation of the LP Pool to NFA

33. In or around September 20, 2004, NFA conducted an audit of PAAM.

34. Eustace was the person at PAAM who responded to all of NFA's questions concerning PAAM.

35. During the on-site audit of PAAM, NFA did not find any documents referring to the LP Pool, and Eustace did not disclose the existence of the LP Pool.

36. As part of its audit, NFA conducted sworn testimony of Eustace and asked him to name all of the accounts over which he exercised any control during 2004. Eustace identified four trading accounts that he managed in 2004. Eustace did not identify or otherwise disclose that he managed the LP Pool.

37. On or about May 20, 2005, NFA asked Eustace about the LP Pool and Eustace said it contained only personal money and might have been traded at F.C. Stone. During the

relevant time period, FC Stone never maintained an account in the name of the LP Pool or Eustace.

38. On or about May 24, 2005, Eustace changed his story and claimed that the LP Pool was never traded.

39. On or about June 8, 2005, Eustace again revised his story, claiming that the LP Pool did not trade, and had never traded, futures or options, but instead had engaged in “swap transactions.”

D. Defendants Issued False Statements to Participants and Posted False Trading Results On Its Website For An Off-Shore Commodity Pool

40. Beginning around July 2004 and continuing through the present, PAAM also operated the Off-Shore Pool which, according to PAAM, trades exclusively on regulated futures markets. PAAM also operated the Feeder Fund, which allows US customers to participate in the Off-Shore Pool. Defendants have solicited and accepted over \$230 million from pool participants to trade in the Off-Shore Pool and Feeder Fund.

41. During the relevant period, the Feeder Fund did not maintain any accounts in its own name.

42. Those pools traded commodity futures and options on U.S. registered entities, or, in other words, on U.S. futures exchanges.

43. Beginning in February 2005 and continuing through May 2005, the Off-Shore Pool sustained severe trading losses which totaled more than \$140 million. By the end of May 2005, the accounts had lost \$85 million, representing approximately 50 percent of the remaining value of the pool.

44. In or about May 2005, the Defendants issued an account statement to one Feeder Fund pool participant showing that his monthly net return for April 2005 was 1.69%.

45. In or about May 2005, the Defendants posted on their website, www.paamcollc.com, the following 2005 net returns for the Off-Shore Pool: 1.25% in February; 1.56% in March; 1.69% in April, with a year-to-date net return of 5.5%.

46. In fact, the Off-Shore Pool's commodity futures and options trading resulted in the following losses during those months: February - \$18 million (-10.36%); March - \$7 million(-4.41%); April - \$33 million (-17.94%); and May - \$85 million (-50.16%).

47. The April 2005 monthly account statement issued to the Feeder Fund pool participant was issued on Feeder Fund letterhead and signed by Paul Eustace.

E. Defendant Eustace Acted with Scienter and is the Controlling Person of PAAM

48. In making the misrepresentations, omissions and false statements identified above, Eustace acted knowingly or with reckless disregard for the truth of those matters.

49. Eustace is the President of PAAM and controls its overall day-to-day operations. Eustace is the only registered Associated Person and listed principal of PAAM, and the only person authorized to trade on behalf of PAAM until approximately March 2005.

50. Eustace failed to act in good faith or knowingly induced, directly or indirectly, the violations alleged herein.

V.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT
COUNT ONE

VIOLATIONS OF SECTIONS 4b(a)(2)(i)-(iii) OF THE ACT :
FRAUD IN THE SALE OF FUTURES CONTRACTS

51. The allegations set forth in paragraphs 1 through 50 are realleged and incorporated herein by reference.

52. Beginning in or about March 2003 and continuing through the present, the Defendants have: (1) cheated or defrauded or attempted to cheat or defraud other persons; (2) willfully made or caused to be made false reports or statements to other persons; and/or (3) willfully deceived or attempted to deceive other persons, in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of any other persons, where such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a) of the Act, 7 U.S.C. § 6b(a), all in violation of Section 4b(a)(2)(i) - (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) - (iii) (2002).

53. The Defendants, knowingly or with reckless disregard for the truth, violated Section 4b(a)(2)(i) - (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) - (iii) by, among other things (a) issuing false account statements to at least one LP pool participant showing fictitious futures trading; (b) omitting to inform at least one LP pool participant of the material information that defendants had not engaged in any futures trading in the name of the LP Pool or LP Pool participants; (c) providing false trading results to at least one prospective LP Pool participant showing profitable actual trading; (d) providing false account statements to at least one Feeder Fund pool participant; and (e) posting false trading results for the Off-Shore Pool on its website.

54. In addition to his direct liability, the actions and failures of Eustace as alleged herein were done within the scope of his employment with PAAM, and therefore PAAM is liable for his violations of Section 4b(a)(2)(i) - (iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2 (2002).

55. Defendant Eustace, directly or indirectly, controlled PAAM and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting PAAM's violations alleged in this count, and therefore Defendant Eustace is liable for PAAM's violations of Section 4b(a)(2)(i) - (iii) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

56. Each act of issuing of false account statements; each failure to disclose material facts; each act of showing false trading results to prospective participants; and each posting of false trading results on the Defendants' website by the Defendants including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i) - (iii) of the Act.

COUNT TWO

VIOLATIONS OF SECTION 4c(b) OF THE ACT AND REGULATION 33.10: OPTIONS FRAUD

57. The allegations set forth in paragraphs 1 through 56 are realleged and incorporated herein by reference.

58. Beginning in or about March 2003 and continuing through the present, the Defendants have: (1) cheated or defrauded or attempted to cheat or defraud other persons; (2) made or caused to be made to any other person any false report or statement thereof; and/or (3) deceived or attempted to deceive other persons, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, commodity option

transactions, all in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10(a) – (c), 17 C.F.R. § 33.10 (a) – (c).

59. The Defendants, knowingly or with reckless disregard for the truth, violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10(a) – (c), 17 C.F.R. § 33.10 (a) – (c) by, among other things: (a) issuing false account statements to at least one LP pool participant showing fictitious commodity options trading; (b) omitting to inform at least one LP pool participant that defendants had not engaged in any commodity options trading in the name of the LP Pool or LP Pool participants; (c) providing false trading results to at least one prospective LP pool participant; (d) providing false account statements to at least one Feeder Fund pool participant; and (e) posting false trading results for the Off-Shore Pool on its website.

60. In addition to his direct liability, the actions and failures of Eustace as alleged herein were done within the scope of his employment with PAAM, and therefore PAAM is liable for his violation of Section 4c(b) of the Act and Regulation 33.10 (a) – (c), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2 (2002).

61. Defendant Eustace, directly or indirectly, controlled PAAM and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations of PAAM alleged in this count, and thereby Eustace is liable for PAAM's violations of Section 4c(b) of the Act and Regulation 33.10 (a) – (c), pursuant to Section 13(b) of the Act.

62. Each act of issuing of false account statements; each failure to disclose material facts; each act of showing false trading results to prospective participants; and each posting of false trading results on the Defendants' website by the Defendants including, but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act and Regulation 33.10 (a) – (c).

COUNT THREE

**VIOLATIONS OF SECTION 4o(1) OF THE ACT AND REGULATION 4.41(a):
FRAUD BY A COMMODITY POOL OPERATOR AND AN ASSOCIATED PERSON OF
A COMMODITY POOL OPERATOR**

63. The allegations set forth in paragraphs 1 through 62 are realleged and incorporated herein by reference.

64. Beginning in or about March 2003 and continuing through the present, Defendant PAAM was a registered CPO and acted as a CPO by soliciting, accepting or receiving funds from others and engaging in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in commodities for future delivery or options on futures contracts on or subject to the rules of a contract market. Defendant Eustace was a registered AP of a CPO, PAAM, and acted as an AP of a CPO by soliciting prospective pool participants.

65. Beginning in or about March 2003 and continuing through the present, Defendant PAAM, while acting as a CPO, and Defendant Eustace, while acting as an AP of PAAM, knowingly or with reckless disregard for the truth, employed a device, scheme or artifice to defraud LP pool participants and prospective LP Pool, Off-Shore Pool and Feeder Fund pool participants, in violation of Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A), and Commission Regulation 4.41(a)(1), 17 C.F.R. § 4.41(a)(1).

66. Beginning in or about March 2003 and continuing through the present, Defendant PAAM, while acting as a CPO, and Defendant Eustace, while acting as an AP of PAAM, engaged in a transaction, practice or course of business which has operated as a fraud or deceit upon LP Pool, Off-Shore Pool and Feeder Fund pool participants and prospective LP Pool, Off-

Shore Pool and Feeder Fund pool participants, in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B), and Commission Regulation 4.41(a)(2), 17 C.F.R. § 4.41(a)(2).

67. The Defendants, knowingly or with reckless disregard for the truth, violated Sections 4o(1)(A) and (B) of the Act by, among other things: (a) issuing false account statements to at least one LP pool participant showing fictitious commodity futures and options trading; (b) omitting to inform at least one LP pool participant that the Defendants had not engaged in any commodity futures or options trading in the name of the pool or the pool participants; (c) providing false trading results to at least one prospective LP pool participant; (d) providing false account statements to at least one Feeder Fund pool participant; and (e) posting false trading results for the Off-Shore Pool on its website.

68. The Defendants, knowingly or with reckless disregard for the truth, violated Commission Regulations 4.41(a)(1) and (2), 17 C.F.R. § 4.41(a)(1) and (2) by, among other things: (a) posting false trading results for the Off-Shore Pool on its website, and (b) providing false trading results to at least one prospective LP pool participant.

69. In addition to his direct liability, the actions and failures of Eustace as alleged herein were done within the scope of his employment with PAAM, and therefore PAAM is liable for his violations of Sections 4o(1)(A) and (B) of the Act, and Commission Regulation 4.41(a)(1) and (2) pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2 (2002).

70. Defendant Eustace, directly or indirectly, controlled PAAM and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting PAAM's violations alleged in this count, and thereby Defendant Eustace is liable for PAAM's violations of Sections 4o(1)(A) and (B) of the Act, and Commission Regulation 4.41(a)(1) and (2), pursuant to Section 13(b) of the Act.

71. Each act of issuing of false account statements; each failure to disclose material facts; each act of showing false trading results to prospective participants; and each posting of false trading results on the Defendants' website by the Defendants including, but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4o(1)(A) and (B) of the Act.

72. Each act of showing false trading results to prospective participants; and each posting of false trading results on the Defendants' website by the Defendants including, but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4o(1)(A) and (B) of the Act. and Commission Regulation 4.41(a)(1) and (2).

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, and pursuant to its own equitable powers, enter:

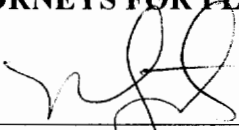
- a) a permanent injunction prohibiting the Defendants and any other person or entity associated with them, including any successor thereof, from engaging in conduct violative of Sections 4b(a)(2)(i) - (iii), 4c(b), and 4o(1) (A) and (B) of the Act and Sections 4.41 and 33.10 of the Commission's Regulations, and from engaging in any commodity-related activity, including soliciting new pool participants or pool funds;
- b) an order directing the 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 Regulations, as described herein, and interest thereon from the date of such violations;
- c) an order directing the Defendants to make full restitution to every pool participant whose funds were received by him 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;

- d) an order requiring Defendants to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of \$120,000 for each violation before October 24, 2004 and \$130,000 for violations on or after October 24, 2004, or triple the monetary gain to Defendants for each violation of the Act and Regulations described herein; and
- e) such other and further remedial ancillary relief as the Court may deem appropriate.

Date: June 28, 2005

Respectfully submitted by,

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