

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

U.S. COMMODITY FUTURES TRADING)	
COMMISSION,)	
)	Plaintiff,
)	
)	No. 1:15-cv-201
-v-)	
)	Honorable Paul L. Maloney
JERRY STAUFFER,)	
)	Defendant.
_____)	

ORDER

The United States Commodity Futures Trading Commission (Commission) filed this civil action against Jerry Stauffer alleging multiple violations of the Commodity Exchange Act and its regulations. The Commission asserted that Stauffer, who represented that he was investing in foreign currency through currency trades (forex), defrauded his investors. At the same time this lawsuit was filed, Stauffer was prosecuted by the Government for related crimes. In 2016, Stauffer was convicted of both wire fraud and money laundering and is currently serving a 10-year sentence followed by 3 years of supervised release.

One matter remains. The Commission requests the Court impose a lifetime ban on Stauffer, a permanent injunction, preventing him from trading in the markets regulated by the Commission. (ECF No. 62.) Stauffer opposes the motion. (ECF No. 63.) Having reviewed the motion and response, the Court agrees that an injunction is warranted, but declines to impose a lifetime ban.

Having reviewed the record, the Court imposes a fifteen-year injunction on Stauffer during which he may not, directly or through another person or entity, trade in the markets regulated by the Commission.

I.

Section 6c of the Commodity Exchanges Act, 7 U.S.C. § 13a-1, authorizes district courts to enjoin individuals from violating the Act, or its associated rules and regulations.¹ For these statutory injunctions, the Commission must establish a violation of the Act and some reasonable likelihood of future violations. *CFTC v. Hunter Wise Commodities, LLC*, 749 F.3d 967, 974 (11th Cir. 2014); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979). A court may infer a reasonable likelihood of future violations based on the defendant's prior conduct. *SEC v. Washington Cty. Util. Dist.*, 676 F.2d 218, 227 (6th Cir. 1982) ("Proof of past violations of the securities laws serves as a basis for an inference that future violations may occur."). In its motion, the Commission has described Stauffer's fraudulent conduct, which occurred over approximately five years, involved more than a dozen victims and approximately \$1.8 million. Stauffer has not disputed the Commission's summary.

Two district courts have found that this statutory provision permits trading bans altogether, not just injunctions against future violations of the Act. *CFTC v. Arrington*, 998

¹ Many courts have granted the Commission's request for trading bans on individuals or upheld a trading ban imposed by the Commission in an administrative proceeding. *See, e.g., Ryan v. CFTC*, 145 F.3d 910 (7th Cir. 1998). In most of these cases, the individuals were brokers, floor traders, or associated persons, all of whom must be registered under the Act, 7 U.S.C. § 12a(1). Upon a felony conviction, registered individuals are suspended from registration and reregistration for five years or longer, as the Commission may decide. 7 U.S.C. § 13(b). The statutory suspension includes "using, or participating in any manner in, any market regulated by the Commission." *Id.* The explicit statutory authority to suspend registered individuals from trading does not appear to extend to non-registered individuals.

F. Supp. 2d 847, 874 (D. Neb. 2014) ("Broader injunctions prohibiting trading activity, in addition to enjoining defendants from future violations, may be warranted."); *CFTC v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d 676, 692 (D. Md. 2000) ("The pervasiveness and seriousness of Baragosh's violations justify the issuance of a permanent injunction prohibiting him from violating the Act and from engaging in any commodity-related activity, including soliciting customers and funds.") *aff'd in part and vacated in part CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002). The Commission has successfully sought trading bans against individuals in civil actions. *See, e.g., CFTC v. Li*, No. 15 C 5839, 2016 WL 8256329, at *10-*11 (N.D. Ill. Dec. 9, 2016); *CFTC v. Hays*, No. 09-259, 2011 WL 311366, at *3 (D. Minn. Jan. 28, 2011). And, at least one circuit court has upheld a permanent trading ban imposed by a district court finding the ban was not an abuse of discretion. *CFTC v. Wilshire Inv. Mgmt. Corp.*, 531 F.3d 1339, 1346 (11th Cir. 2008) (affirming the imposition of a permanent injunction prohibiting three defendants from engaging in any commodity-related activity and referencing § 13a-1(b).)

Stauffer asserts two reasons not to impose a lifetime ban. First, he argues there is no evidence that he is a threat to the markets. Second, he argues that lifetime bans are unwarranted and generally inconsistent with precedent.

The Commission has demonstrated that Stauffer's conduct, fraud, poses a risk to the market. Securities frauds undermine the public's confidence in the markets. *See Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 345 (2005) (explaining that the securities statutes maintain the public's confidence in the markets by deterring fraud); *Chadbourne & Parke LLP v. Troice*, 134 S. Ct. 1058, 1074 (2014) (Kennedy, J. dissenting) (arguing against a

narrow interpretation of the Securities Litigation Uniform Standards Act because it would inhibit the ability to "police frauds and abuses that undermine confidence in national securities markets.").

Taking all of the relevant facts into account, the Court concludes that a 15-year ban on trading in the markets regulated by the Commission is warranted. The ban shall begin immediately. The trading ban will prevent Stauffer from trading while he is incarcerated and while he is serving his three years of supervised release. After Stauffer's release from incarceration and after he has served his term of supervised release, but no sooner than 10 years from the date of this Order, Stauffer may petition the Court to have the trading restriction lifted.

Accordingly, the Commission's motion for a permanent personal trading ban against Stauffer (ECF No. 62) is **GRANTED IN PART**.

The Court imposes an injunction, for a term of years described above, on Jerry Stauffer which

- a. Prohibits Stauffer from trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012); and
- b. Prohibits Stauffer from entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3yy, 17 C.F.R. § 1.3(yy) (2017) for his own personal account or for any account in which he has a direct or indirect interest;
- c. Prohibits Stauffer from having any commodity interests traded on his behalf; and
- d. Confirms that this Order supplements and is in addition to the injunctive provisions set forth in the Consent Order entered by this Court on February 13, 2018 (ECF No. 60), and that the Consent Order remains in full force and effect.

IT IS SO ORDERED.

Date: March 30, 2018

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge