

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

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COMMODITY FUTURES TRADING COMMISSION,)	
1155 21 st Street, N.W.)	Case No. AMD 01 CV2320
Washington, DC 20581)	
)	
Plaintiff,)	
)	
v.)	COMPLAINT FOR A
)	PERMANENT INJUNCTION,
)	OTHER EQUITABLE RELIEF
ROTHLIN AND WINDSOR CAPITAL)	AND CIVIL MONETARY
MANAGEMENT, INC.)	PENALTIES
216 Nicholas Court)	
Forest Hill, Maryland)	
Harford County)	
)	
and)	
)	
PETER SCOTT)	
216 Nicholas Court)	
Forest Hill, Maryland)	
Harford County)	
)	
Defendants.)	
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I. SUMMARY

1. Since in or about June 1998, Peter Scott (“Scott”) and Rothlin and Windsor Capital Management Inc. (“R&W Capital”) (collectively “Defendants”) have fraudulently solicited and accepted in excess of \$2,000,000 from as many as six hundred members of the public to participate in a commodity pool, Rothlin and Windsor Future Fund (“R&W Future” or “the Pool”), to trade commodity futures contracts and options on futures contracts. During the course of the Pool’s operations, the Defendants misrepresented to Pool participants and

prospective Pool participants both orally and in writing: (i) the trading done by the Pool; (ii) the performance record of the Pool; (iii) the Pool's value; and (iv) the value of the individual Pool participants' shares in the Pool. The Defendants also misappropriated a portion of the Pool's funds for their personal use and prepared false account statements and made oral misrepresentations to conceal trading losses and their misappropriation.

2. Furthermore, R&W Capital has operated as a commodity pool operator ("CPO") without being registered as such, and, while operating as a CPO, failed to provide Pool participants with complete periodic account statements. R&W Capital also accepted Pool funds other than in the name of the Pool and failed to establish the Pool as a separate entity. Scott was operating as an associated person ("AP") of the CPO without being registered as such.

3. The Defendants' fraudulent solicitations and misrepresentations to Pool participants violate Sections 4b(a)(i)-(iii), 4c(b) and 4o(1) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 6b(a)(i)-(iii), 6c(b) and 6o(1) (1994), and Section 33.10 of the Commission's Regulations (the "Regulations"), 17 C.F.R. § 33.10 (2000).

4. R&W Capital's failure to register as a CPO violates Section 4m(1) of the Act, 7 U.S.C. §6m(1) (1994), and Scott's failure to register as an AP of a CPO violates Section 4k(2) of the Act, 7 U.S.C. §6k(2) (1994). Since R&W Capital allowed Scott to be associated with R&W Capital and knew that Scott was not an AP of R&W Capital, it also violates Section 4k(2) of the Act.

5. R&W Capital's failure to provide complete periodic account statements violates Section 4n(4) of the Act, 7 U.S.C. §6n(4) (1994), and Regulation 4.22, 17 C.F.R. § 4.22 (2000). By failing to receive funds in the name of the Pool and failing to operate the Pool as a separate

entity, R&W Capital violates Section 4.20(a) and (b) of the Regulations, 17 C.F.R. § 4.20(a) and (b) (2000).

6. Since Scott directly or indirectly controls R&W Capital and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting R&W Capital's violations alleged in this Complaint, Scott is liable for R&W Capital's violations of the Act and Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (1994).

7. The actions and omissions of Scott described in this Complaint were done within the scope of his employment with R&W Capital, and therefore R&W Capital is liable for his violations pursuant to Section 2(a)(1)(A)(iii) of the Act, 7 U.S.C. § 2 (1994).

8. Accordingly, the Commodity Futures Trading Commission (the "Commission") brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin the Defendants' unlawful acts and practices and to compel their compliance with the Act. In addition, the Commission seeks disgorgement of the Defendants' ill-gotten gains, restitution to customers, civil monetary penalties and such other relief as this Court may deem necessary or appropriate.

9. 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

10. The Act establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts and options on commodity futures contracts. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that, whenever it shall appear to the Commission 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 Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

11. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because the Defendants are found in, inhabit, or transact business in this District, or the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places. In particular, Scott resides at 216 Nicholas Ct., Forest Hill, Maryland, where he (1) he established a business address for R&W Capital and R&W Future and (2) has solicited Pool participants. The Defendants also solicited and received funds from Pool participants residing in Baltimore and other parts of the District of Maryland.

III. THE PARTIES

12. Plaintiff Commission is an independent federal regulatory agency that is charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 et seq., and the regulations promulgated thereunder.

13. Defendant Peter Scott is an individual residing in Forest Hill, Maryland. He is an employee of Defendant R&W Capital. He has been registered as an AP and listed as a principal of Bay Harbor Trading Company, a registered introducing broker (“IB”), of which he is president and owner, since February 2001.

14. Defendant Rothlin and Windsor Capital Management Inc. is a corporation located in Forest Hill, Maryland and incorporated in the state of Maryland. It has never been registered with the Commission in any capacity.

IV. FACTUAL BACKGROUND

15. Beginning in or about June 1998, the Defendants solicited money from Pool participants and prospective Pool participants for a commodity pool that would trade commodity futures contracts and options on commodity futures contracts. During the course of the Pool's operations, the Defendants misrepresented to Pool participants and prospective Pool participants orally and in writing: (i) the trading done by the Pool; (ii) the performance record of the Pool; (iii) the Pool's value; and (iv) the value of the individual Pool participants' shares in the Pool.

16. The Defendants prepared and provided to Pool participants account statements in which all of the following information concerning the Pool's operation was false: (1) the trades made during the month and the profit or loss from each trade; (2) total profits or losses on trades closed during the month; (3) the management fee to be paid to Scott; (4) the Pool's open trade equity, i.e., the value of the open trades of the Pool; (5) the Pool's total value; (6) the rate of return by the Pool for the month; and (7) the value of the Pool participants' share of the Pool as of the end of the month. The fraudulent statements indicated that profitable trading had occurred on behalf of the Pool when, in fact, no such profits had been made.

17. When contacted by Pool participants, the Defendants made oral misrepresentations confirming that the false information contained within the fraudulent account statements were true.

18. Additional Pool participants were obtained by "word of mouth" in large part based upon the false information contained in the fraudulent account statements provided to current Pool participants.

19. When contacted by prospective Pool participants, the Defendants made oral misrepresentations confirming that the false information contained within the fraudulent account statements provided to Pool participants were true.

20. The Defendants misappropriated Pool participants' funds for their personal use. For example, they misappropriated funds for the payment of personal taxes and the purchase of an automobile.

21. Based upon the oral and written misrepresentations made by the Defendants, Pool participants gave them in excess of \$2,000,000 to be invested in the Pool. These funds were deposited directly into R&W Capital's bank account.

22. The Defendants misrepresented orally and in writing to Pool participants that their investments were making substantial rates of return and generating substantial profits. Some Pool participants withdrew their principal and other Pool participants withdrew their principal as well as their purported profits.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE

VIOLATIONS OF SECTIONS 4b(a)(i) - (iii) OF THE ACT : FRAUD BY MISREPRESENTATIONS AND OMISSIONS; FALSE STATEMENTS; AND MISAPPROPRIATION

23. The allegations set forth in paragraphs 1 through 22 are realleged and incorporated herein by reference.

24. Since approximately June 1998, the Defendants have: (i) cheated or defrauded or attempted to cheat or defraud other persons; (ii) willfully made or caused to be made to other persons false reports or statements, or willfully entered or caused to be entered for other persons

false records; and/or (iii) 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)(i-iii) of the Act, 7 U.S.C. § 6b(a)(i-iii).

25. The Defendants knowingly made material misrepresentations and omitted material facts including, but not limited to, the misrepresentations set forth in paragraphs 15-17, 19 and 22, in violation of Section 4b(a)(i) and (iii) of the Act.

26. The Defendants knowingly issued false reports and made false oral statements to participants who invested money with them to trade commodity futures, as set forth in paragraphs 15, 16, and 22, in violation of Section 4b(a)(i), (ii) and (iii) of the Act.

27. By using, for their own personal expenses, funds solicited to trade commodity futures for Pool participants, as set forth in paragraph 20, the Defendants knowingly misappropriated funds in violation of Section 4b(a)(i) and (iii) of the Act.

28. The actions and omissions of Scott described in this count were done within the scope of his employment with R&W Capital and, therefore, R&W Capital is also liable for Scott's violations of Section 4b(a)(i)-(iii) of the Act, pursuant to Section 2a(1)(A)(iii) of the Act, 7 U.S.C. § 2 (1994).

29. Scott, directly or indirectly, controlled R&W Capital and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting R&W Capital's violations alleged in this count, and thereby Scott is liable for R&W Capital's violations of Section 4b(a)(i)-(iii) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (1994).

30. Each act of misappropriation, each material misrepresentation or omission, and each false report or statement made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(i) - (iii) of the Act.

COUNT TWO

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

31. The allegations set forth in paragraphs 1 through 30 are realleged and incorporated herein by reference.

32. Beginning in or about June 1998, the Defendants: (i) cheated or defrauded or attempted to cheat or defraud other persons; (ii) willfully made or caused to be made to other persons false reports or statements, or willfully entered or caused to be entered for other persons false records; and/or (iii) willfully 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, 17 C.F.R. § 33.10.

33. The Defendants knowingly made material misrepresentations and omitted material facts including, but not limited to, the misrepresentations set forth in paragraphs 15-17, 19 and 22, in violation of Section 4c(b) of the Act and Regulation 33.10(a) and(c), 17 C.F.R. § 33.10(a) and (c).

34. The Defendants knowingly issued false reports and have made false statements to Pool participants who invested money with them to trade options on commodity futures

contracts, as set forth in paragraphs 15, 16 and 22, in violation of Section 4c(b) of the Act and Regulation 33.10.

35. By using, for their own personal expenses, funds solicited to trade options on commodity futures contracts for Pool participants, as set forth in paragraph 20, the Defendants knowingly misappropriated funds in violation of Section 4c(b) of the Act and Regulation 33.10(a) and (c).

36. The actions and omissions of Scott described in this Count were done within the scope of his employment with R&W Capital and therefore R&W Capital is liable for Scott's violation of Section 4c(b) of the Act and Regulation 33.10, pursuant to Section 2a(1)(A)(iii) of the Act.

37. Scott, directly or indirectly, controlled R&W Capital and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations of R&W Capital alleged in this count, and thereby Scott is liable for R&W Capital's violations of Section 4c(b) of the Act and Regulation 33.10, pursuant to Section 13(b) of the Act.

38. Each act of misappropriation, each material misrepresentation or omission, and each false report or statement made during the relevant time period, 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.

COUNT THREE

VIOLATIONS OF SECTION 4c(1) OF THE ACT: FRAUD BY A COMMODITY POOL OPERATOR

39. The allegations set forth in paragraphs 1 through 38 are realleged and incorporated herein by reference.

40. Beginning in or about February 1999, R&W Capital 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 on or subject to the rules of a contract market. Scott acted as an AP of a CPO by soliciting prospective Pool participants.

41. Beginning in or about February 1999, R&W Capital, while acting as a CPO, and Scott, while acting as an AP of R&W Capital, employed a device, scheme or artifice to defraud Pool participants and prospective Pool participants, in violation of Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A).

42. Beginning in or about February 1999, R&W Capital, while acting as a CPO, and Scott, while acting as an AP of R&W Capital, engaged in a transaction, practice or course of business which has operated as a fraud or deceit upon Pool participants and prospective Pool participants, in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B).

43. The Defendants knowingly made material misrepresentations and omitted material facts including, but not limited to, the misrepresentations set forth in paragraphs 15-17, 19 and 22, in violation of Section 4o(1)(A) and (B) of the Act.

44. The Defendants knowingly issued false reports and made false statements to Pool participants who invested money with them to trade commodity futures and options on commodity futures contracts in the Pool, as set forth in paragraphs 15, 16 and 22, in violation of Section 4o(1)(A) and (B) of the Act.

45. By using, for their own personal expenses, funds solicited to trade commodity futures and options on commodity futures contracts for Pool participants, as set forth in

paragraph 20, the Defendants have knowingly misappropriated funds in violation of Section 4o(1) of the Act.

46. The actions and omissions of Scott described in this Count were done within the scope of his employment with R&W Capital and therefore R&W Capital is liable for Scott's violation of Section 4o(1) of the Act, pursuant to Section 2a(1)(A)(iii) of the Act.

47. Scott, directly or indirectly, controlled R&W Capital and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting R&W Capital's violations alleged in this count, and thereby Scott is liable for R&W Capital's violation of Section 4o(1) of the Act, pursuant to Section 13(b) of the Act.

48. Each act of misappropriation, each material misrepresentation or omission, and each false report or statement made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4o(1) of the Act.

COUNT FOUR

VIOLATIONS OF SECTION 4m(1) OF THE ACT: FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR

49. The allegations set forth in paragraphs 1 through 48 are realleged and incorporated herein by reference.

50. Beginning in or about February 1999, R&W Capital has used the mails or instrumentalities of interstate commerce in or in connection with its business as a CPO while failing to register as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

51. Scott, directly or indirectly, controlled R&W Capital and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting R&W Capital's violations

alleged in this count, and thereby Scott is liable for R&W Capital's violation of Section 4m(1) of the Act, pursuant to Section 13(b) of the Act.

COUNT FIVE

VIOLATIONS OF SECTION 4k(2) OF THE ACT:
FAILURE TO REGISTER AS AN ASSOCIATED PERSON

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

53. Beginning in or about February 1999, Scott was associated with a CPO, R&W Capital, and involved in the solicitation of funds for participation in a commodity pool while failing to register as an AP of the CPO, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

54. R&W Capital permitted Scott to become and remain associated with R&W Capital and knew, or should have known, that Scott was not registered as an associated person of R&W Capital, in violation of Section 4k(2) of the Act.

COUNT SIX

VIOLATIONS OF SECTION 4n(4) OF THE ACT AND REGULATION 4.22:
FAILURE TO PROVIDE PERIODIC ACCOUNT STATEMENTS

55. The allegations set forth in paragraphs 1 through 54 are realleged and incorporated herein by reference.

56. Beginning in or about February 1999, R&W Capital was required to furnish annual and monthly account statements to Pool participants. The monthly account statements prepared by R&W Capital and provided to Pool participants failed to provide the required information accurately. Additionally, R&W Capital did not prepare an annual account statement certified by an independent accountant. Accordingly, R&W Capital failed to provide the

required account statements to Pool participants, in violation of Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and Regulation 4.22, 17 C.F.R. § 4.22.

57. Scott, directly or indirectly, controlled R&W Capital and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting R&W Capital's violations alleged in this count, and thereby Scott is liable for R&W Capital's violation of Section 4n(4) of the Act and Regulation 4.22, pursuant to Section 13(b) of the Act.

COUNT SEVEN

VIOLATIONS OF REGULATION 4.20(a) and (b): CPO ACCEPTING POOL FUNDS OTHER THAN IN THE NAME OF THE POOL AND FAILURE TO TREAT THE POOL AS A SEPARATE ENTITY

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

59. Beginning in or about February 1999, by failing to open a trading account or a bank account in the name of the Pool, R&W Capital failed to operate the Pool as a legal separate entity, in violation of Regulation 4.20(a), 17 C.F.R. § 4.20(a).

60. Beginning in or about February 1999, R&W Capital, while operating as a CPO, accepted Pool funds in its own name, in violation of Regulation 4.20(b), 17 C.F.R. § 4.20(b).

61. Scott, directly or indirectly, controlled R&W Capital and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting R&W Capital's violations alleged in this count, and thereby Scott is liable for R&W Capital's violation of Regulation 4.20(a) and (b), pursuant to Section 13(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, 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)(i-iii), 4c(b), 4k(2), 4m(1), 4n(4) and 4o(1) of the Act and Sections 4.20(a) and (b), 4.22 and 33.10 of the Commission's Regulations, and from engaging in any commodity-related activity, including soliciting new customers or customer funds or 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 customer 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) a civil penalty against each Defendant in the amount of not more than the higher of \$110,000 or triple the monetary gain to the Defendant for each violation by the Defendant of the Act or Regulations prior to October 23, 2000, and not more than the higher of \$120,000 or triple the monetary gain to the Defendant for each violation by the Defendant of the Act or Regulations after October 23, 2000; and

- e) such other and further remedial ancillary relief as the Court may deem appropriate.

Respectfully submitted,

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