

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED UNDER SEAL

03 CV 9129
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U.S. Commodity Futures Trading Commission,

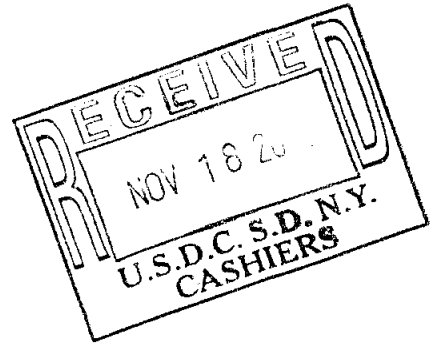
Plaintiff,

v.

Itradecurrency USA, LLC,
Stephen E. Moore, and
Anthony Iannuzzi

Defendants

COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF AND
FOR PENALTIES UNDER
THE COMMODITY
EXCHANGE ACT, AS
AMENDED, 7 U.S.C. §§ 1-27f



I.

SUMMARY

1. From at least December 21, 2000 to the present ("relevant time period"), Itradecurrency USA, LLC ("ITC"), Stephen E. Moore ("Moore") and Anthony Iannuzzi ("Iannuzzi") (collectively, the "Defendants") fraudulently solicited and obtained approximately \$1.6 million from customers for the purpose of trading foreign currency contracts which were, in fact, illegal off-exchange foreign currency futures contracts. Instead of actually trading their clients' funds, a substantial portion of these funds were misused without any investment made in foreign currency contracts.

2. The Defendants presented ITC to the retail public as a legitimate entity. ITC claims on its website that it "provides the sophisticated, qualified investor with direct access to true interbank currency rates without the cumbersome process of dealing with

foreign currency dealers at banks and/or large financial institutions.” ITC further claims to employ a staff that is highly experienced and successful in trading foreign currencies and that is available around the clock “to advise, assist and monitor each and every transaction.” ITC touts its ability to provide individual investors access to the high-volume foreign exchange market, its goal to maximize investors’ profits while managing the risks, and its commission-free transactions as well as provision of interbank rates at no cost.

3. In fact, the Defendants offered illegal off-exchange futures contracts to the general retail public and in the course of soliciting customers to invest in these contracts the Defendants defrauded customers by misappropriating a substantial portion of the customer funds they claimed would be invested.

4. Defendant ITC has engaged, is engaging, or is about to engage in acts and practices which violate Sections 4(a) and 4b(a)(2) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 6(a) and 6b(a)(2) (2001), and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002).

5. Defendants Moore and Iannuzzi have engaged, are engaging, or are about to engage in acts and practices which violate Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2001), and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002).

6. Defendants Moore and Iannuzzi are liable as controlling persons for the violations by ITC of Sections 4(a) and 4b(a)(2) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 6(a) and 6b(a)(2) (2001) and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

7. Defendant ITC is liable for the violations of Section 4b(a)(2) of the Act by its officers, directors, managers, employees, and agents, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2002), as all such violations were within the scope of their office or employment with ITC.

8. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), Plaintiff U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) brings this action to enjoin the unlawful acts and practices of the Defendants and to compel their compliance with the provisions of the Act and Regulations thereunder. In addition, the Commission seeks civil penalties, an *ex parte* statutory restraining order, an order freezing the assets of the Defendants, a preliminary injunction, and the appointment of a receiver over any funds frozen to maintain the status quo for the victims of the Defendants. Furthermore, the proposed action will ultimately seek permanent injunctive relief and other relief, including restitution, disgorgement, and civil monetary penalties.

9. Unless enjoined by this Court, 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 prohibits fraud in connection with the trading of commodity futures contracts and establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), 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. In addition, Section 2(c)(2)(B)(i) and (ii) of the Act, 7 U.S.C. § 2(c)(2)(B) (i) and (ii) (2001), corresponding to the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106-554, 114 Stat. 2763, clarifies the jurisdiction of Plaintiff, the CFTC, over certain transactions in foreign currency that are contracts for the sale of a commodity for future delivery, including the transactions alleged in this Complaint.

11. ITC, the counterparty to the foreign currency futures transactions entered into by investors as described above is not a proper counterparty for retail foreign currency transactions, and therefore the CFTC has jurisdiction over the transactions in retail foreign currency alleged herein.

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2001), in that 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, among other places.

III.

THE PARTIES

Plaintiff

13. Plaintiff, United States Commodity Futures Trading Commission, is an independent federal regulatory agency that is charged with responsibility for

administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2001), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2002).

Defendants

14. Itradecurrency, USA L.L.C. is a New York limited liability company organized in 2001, with offices in Orangeburg, NY. Its predecessor company, itradecurrency.com, L.L.C., was a Delaware limited liability company organized in 1998 with offices in New York, NY. ITC is owned by Independent Service Asset Management, L.L.C. (“ISAM”). ISAM is owned by Moore and Iannuzzi. ITC is not a financial institution, a futures commission merchant (“FCM”), an affiliate of a FCM, a broker or dealer, an associated person of a broker or dealer, an insurance company, a regulated subsidiary of an insurance company, a financial holding company, or an investment bank holding company. ITC has never been registered with the Commission in any capacity.

15. Stephen E. Moore resides in New York, New York. Moore is ITC’s President and is listed as a principal and manager of ITC, along with Iannuzzi, on ITC’s website. Moore is a signatory, along with Iannuzzi, on ITC’s bank account. Moore was listed with the Commission as a Principal and Associated Person (“AP”) of Lasser Marshall, Inc. from 1985 through 1987. Moore subsequently applied to become registered with the Commission as an AP and Principal of ITC in March 2001. Moore’s applications were withdrawn in January 2002 before they were approved or denied.

16. Anthony Iannuzzi resides in Goshen, New York. Iannuzzi is Secretary of ITC and listed as a principal and manager of ITC, along with Moore, on ITC’s website. Iannuzzi is a signatory, along with Moore, on ITC’s bank accounts. Iannuzzi applied to

the National Futures Association (“NFA”) to become listed with the Commission as a Principal and AP of ITC in March 2001. These applications were withdrawn in January 2002.

IV.

STATUTORY BACKGROUND

17. Section 2(c)(2)(B)(i)-(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)-(ii) (2001), provides that the CFTC shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, and is “offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is” a regulated entity, as defined therein. Section 2(c)(2)(B)(i)-(ii) of the Act was enacted by Congress as part of the Commodity Futures Modernization Act of 2000 (“CFMA”) in an effort “to clarify the jurisdiction of the Commodity Futures Trading Commission over certain retail foreign exchange transactions and bucket shops that may not be otherwise regulated.” CFMA § 2(5), Pub. L. No. 106-554, 114 Stat. 2763 (2000).

18. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2001), defines an “eligible contract participant” as an individual with total assets exceeding \$10 million or exceeding \$5 million “and who enters into the agreement, contract, or transaction in order to manage the risk with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.”

19. Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001) provides that unless exempted by the Commission, it shall be unlawful for any person to offer to enter into, execute, confirm the execution of, or conduct an office or business in the United States

for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity; (b) such contracts have not been executed or consummated by or through such contract market; and (c) such contract is not evidenced by a written record showing the date, parties, property covered, price, and terms of delivery.

20. Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a) (2001) provides in pertinent part that it is unlawful for any person in or in connection with any futures contract of sale of any commodity that is or may be used for hedging or determining the price basis of any transaction or for delivering any commodity in interstate commerce for or on behalf of any other person (i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made any false report or statement thereof, or to enter or cause to be entered any false record, to or for such other person; (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract; or (iv) to bucket such order, or to fill such order by offset against the order of any other person.

V.

FACTUAL BACKGROUND

21. The Defendants solicit investors to open managed currency trading accounts at ITC. After customers decide to invest with ITC, they must sign Managed Account Agreements and Limited Powers-of-Attorney giving ITC Account Managers the

authority to manage their accounts and to purchase, sell, and trade foreign currencies on their behalf. Customers must also sign ITC's Foreign Currency Account Agreement in consideration of ITC agreeing to enter into foreign exchange transactions.

22. ITC obtained approximately \$1.64 million from customers for the purpose of trading foreign currency contracts.

23. Approximately half of the \$1.64 million (approximately \$820,000) obtained from customers has been misappropriated by Defendants and never used to trade foreign currency contracts on behalf of customers.

Illegal Futures Contracts

24. The foreign currency contracts that Defendants purport to offer and sell are futures. The contracts are for future delivery of foreign currencies and are cash settled in U.S. dollars. The prices or pricing formulas are established at the time the contracts are initiated and are settled through offset, cancellation, cash settlement or other means to avoid delivery.

25. The ITC customer account agreement provides that customers must provide and maintain ITC's margin requirements and that the transactions in ITC customer accounts are leveraged.

26. The ITC customer account agreement provides that stop loss orders may be placed on trades. The ITC agreement also discusses settlement dates and offsets.

27. ITC's customer account agreement states that ITC acts as the counterparty to its customers.

28. Defendants market their managed foreign currency trading accounts to the general public. Defendants do not require clients to set up banking relationships to

facilitate delivery of the foreign currencies. ITC is not a proper counterparty or an affiliate of a proper counterparty under the Act authorized to engage in foreign currency futures transactions with retail customers. ITC is not a financial institution, a broker or dealer, or an AP of a broker or dealer. Although ITC makes a self-serving claim on its website that it is an AP of Coastal Financial Securities (“Coastal”), a registered broker/dealer since 1984, the documentary evidence belies this fact. Coastal has never filed any forms with the Securities Exchange Commission in which it identifies ITC as an associated person and there is every indication that ITC does not have sufficient assets to be a material associated person pursuant to the Securities Exchange Act of 1934. ITC does not conduct transactions on a facility designated as a contract market or registered as a derivatives transaction execution facility.

29. Defendants do not conduct their foreign currency futures transactions on or subject to the rules of a board of trade that is designated by the CFTC as a contract market. Defendants do not conduct transactions on a facility registered as a derivatives transaction execution facility.

Controlling Persons

30. Moore is ITC’s President and is listed as a principal and manager of ITC on ITC’s website. Moore is a signatory on ITC’s bank accounts.

31. Iannuzzi is Secretary of ITC and listed as a principal and manager of ITC on ITC’s website. Iannuzzi is also a signatory on ITC’s bank accounts.

VI.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS

COUNT I - Violations of Section 4b(a)(2) of the Act and Commission Regulation 1.1(b): Fraud in the Sale of Futures Contracts

32. Paragraphs 1 through 31 are re-alleged and incorporated herein.

33. During the relevant time period, Defendants have cheated or defrauded or attempted to cheat or defraud investors or prospective investors of ITC and willfully deceived or attempted to deceive investors or prospective investors by, among other things, misappropriating funds received from investors in violation of Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2001), and Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002). Defendants' conduct is in connection with the 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, and such contracts for future delivery are or could be used for the purposes set forth in Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a) (2001).

34. During the relevant time period, Moore and Iannuzzi, as the owners and operators of ITC, have directly or indirectly controlled ITC and its schemes and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count I. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), as described in this Count I, Moore and Iannuzzi are liable for the violations described in this Count I, to the same extent as ITC.

35. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2002), ITC is liable for any violations of Section 4b(a)(2) of the Act by its officers, directors, managers, employees, and agents, in that all such violations were within the scope of their office or employment with ITC.

36. Each material misrepresentation or omission, false statement, misappropriation of investor funds, and willful deception made during the relevant

period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2) of the Act and Commission Regulation 1.1(b).

COUNT II – Violations of Section 4(a) of the Act: Sale of Illegal Off-Exchange Futures Contracts

37. Paragraphs 1 through 36 are re-alleged and incorporated herein.

38. During the relevant time period, ITC has offered to enter into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade designated or registered by the CFTC as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts have not been executed or consummated by or through such contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001).

39. During the relevant time period, Moore and Iannuzzi, as the principals and officers of ITC, have directly or indirectly controlled ITC and have not acted in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count II. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), Moore and Iannuzzi are liable for the violations of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001), described in this Count II, to the same extent as ITC.

40. Each foreign currency futures transaction not conducted on a designated contract market or registered derivatives transaction execution facility made during the

relevant time period, including but not limited to those conducted by Defendants as specifically alleged herein, is alleged as a separate and distinct violation of Section 4(a) of the Act.

VII.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), and pursuant to the Court's own equitable powers:

A. Find that Defendants have violated Sections 4(a) and 4b(a)(2) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2) (2001), and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002);

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

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 Defendants; and

4. appointing a temporary receiver to take into his or her immediate custody, control, and possession all cash, cashier's checks, funds, assets, and property of Defendants, including funds or property of investors wherever found, whether held in the name of any of the Defendants, or otherwise, including, but not limited to, all books and records of account and original entry, electronically stored data, tape recordings, all funds, securities, contents of safety deposit boxes, metals, currencies, coins, real or personal property, commodity futures trading accounts, bank and trust accounts, mutual fund accounts, credit card line-of-credit accounts and other assets, of whatever kind and nature and wherever situated, and authorizing, empowering and directing such receiver to collect and take charge of and to hold and administer the same subject to further order of the Court, in order to prevent irreparable loss, damage and injury to investors, to conserve and prevent the dissipation of funds, and to prevent further evasions and violations of the federal commodity laws by the Defendants;

C. Enter orders of preliminary and permanent injunctions prohibiting Defendants and any other person or entity associated with them, including any successor thereof, from:

1. engaging in conduct, in violation of Sections 4(a) and 4b(a)(2) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2) (2001), and Regulation 1.1(b), 17 C.F.R. § 1.1(b); and

2. soliciting funds for, engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;

D. Enter an order directing Defendants to provide Plaintiff immediate and continuing access to their books and records;

E. Enter an order appointing a permanent equity receiver to take into his or her immediate custody, control, and possession all cash, cashier's checks, funds, assets, and property of Defendants, including funds or property of investors wherever found, whether held in the name of any of the Defendants or otherwise, including, but not limited to, all books and records of account and original entry, electronically stored data, tape recordings, all funds, securities, contents of safety deposit boxes, metals, currencies, coins, real or personal property, commodity futures trading accounts, bank and trust accounts, mutual fund accounts, credit card line-of-credit accounts and other assets, of whatever kind and nature and wherever situated, and authorizing, empowering and directing such receiver to collect and take charge of and to hold and administer the same subject to further order of the Court, in order to prevent irreparable loss, damage and

injury to investors, to conserve and prevent the dissipation of funds, and to prevent further evasions and violations of the federal commodity laws by the Defendants;

F. Enter an order directing Defendants to take such steps as are necessary to repatriate to the territory of the United States all funds and assets of ITC customers described herein which are held by Defendants 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, equity receiver, and the Court with a written description of the funds and assets so repatriated;

G. Enter an order directing Defendants, 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 as described herein, including pre-judgment interest thereon from the date of such violations;

H. Enter an order directing Defendants to make full restitution to every investor 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;

I. Enter an order assessing a civil monetary penalty against each Defendant in the amount of 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 and Commission Regulations;

J. Enter an order directing that Defendants 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, December 21, 2000 through and including the date of such accounting;

K. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2001); and

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

Dated: New York, NY,
November 19, 2003

U.S. COMMODITY FUTURES TRADING COMMISSION

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