

2. The defendants presented themselves to the retail public as legitimate entities not subject to the jurisdiction of the plaintiff. In the literature provided to prospective investors, Holston and Conetto represented that they traded foreign currency spot and forward contracts, and would place customer funds with a legitimate counterparty, but this was a complete fabrication. In fact, the defendants are a sham operation, and the transactions they offered were illegal off-exchange futures contracts.

3. In the course of soliciting customers to invest in off-exchange futures contracts on foreign currencies, Holston and Conetto made material misrepresentations to investors and prospective investors about the safety of their funds, the risk of trading foreign currencies through Holston and Conetto, the legitimacy of their operation, and trading losses that Conetto purportedly incurred trading Japanese Yen during the first week of March 2003.

4. Thus, Holston and Conetto have engaged, are engaging, or are about to engage in acts and practices which violate Sections 4(a), 4b(a)(2)(i), 4b(a)(2)(ii), and 4b(a)(2)(iii) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 6(a), 6b(a)(2)(i), 6b(a)(2)(ii) and 6b(a)(2)(iii) (2001), and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002).

5. Aizen is the president of Holston and is a controlling person within the meaning of Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001) and, as alleged herein is liable for the violations of Holston.

6. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") brings this action to enjoin the unlawful acts and practices of defendants Holston, Conetto and Aizen and to compel their compliance with the provisions of the Act and Regulations thereunder. In addition, the

Commission seeks civil penalties, an accounting and such other equitable relief as the Court may deem necessary or appropriate.

II.

JURISDICTION AND VENUE

7. The Act prohibits fraud in connection with the trading of commodity futures contracts and options and establishes a comprehensive system for regulating the purchase and sale of such contracts and options. 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) of the Act, 7 U.S.C. § 2(c)(2)(B) (2001) confers upon the Commission jurisdiction over certain retail transactions in foreign currency for future delivery, including the transactions alleged in this complaint.

8. 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

9. Plaintiff 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).

10. Holston, Young, Parker & Associates is a New York corporation located at 130 William St., Suite 401, New York, New York. Holston also holds itself out as having offices in London, Zurich and Tokyo. Holston has never been registered with the Commission in any capacity.

11. Conetto Holding Co., Ltd. purports to be a United Kingdom company. It holds itself out as having an office at 130 William St, Suite 401, New York, New York. Conetto is not registered with the Commission or the Financial Services Authority ("FSA"), the financial services regulator in the United Kingdom.

12. Defendants Holston and Conetto operated and operate their scheme as a common enterprise sharing offices, account documentation, promotional material and commingling the funds received from investors. Conetto and Holston represented that all customer accounts will be carried at Conetto. Holston transmitted all customer funds to Conetto. On information and belief, Conetto remitted to Holston sufficient funds to pay Holston's and Conetto's expenses in New York. Therefore Holston and Conetto operate as a common enterprise. As a common enterprise, Holston and Conetto are jointly and severally liable for the acts of the common scheme.

13. Aleksander Aizen currently resides in Forest Hills, New York, is the president of Holston, and has attested to the accuracy of all of the information provided to the Commission by Holston's attorneys. Aizen was the chief day-to-day manager of Holston. Aizen has never been registered with the Commission in any capacity.

IV.

STATUTORY BACKGROUND

14. 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).

15. Section 1a(12)(A)(v) of the Act, 7 U.S.C. § 1a(12)(A)(v) (2001), defines an “eligible contract participant” as a corporation, partnership, proprietorship, organization, trust, or other entity that: (a) has total assets exceeding \$10 million; (b) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keep-well, support, or other agreement by a financial institution, regulated insurance company, regulated investment company or commodity pool, as defined; or (c) has a net worth exceeding \$1 million and enters the transaction in connection with the conduct of the entity’s business or to manage the risk associated with an asset or liability owned or incurred, or reasonably likely to be owned or incurred by the entity in the conduct of the entity’s business.

16. 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; and (b) such contracts have not been executed or consummated by or through such contract market.

17. Section 1a(6), 7 U.S.C. § 1a(6) (2001), in relevant part, defines a commodity trading advisor (“CTA”) as any person who for compensation or profit engages in the business of advising others as to the value or advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility.

18. In soliciting investors and prospective investors, Holston held itself as a CTA and Conetto as either the trading advisor, counterparty or carrying broker. Conetto was not a registered futures commission merchant or broker dealer in the United States, nor was it a proper counterparty to, or legal intermediary for, retail foreign currency transactions.

V.

FACTS

A. Defendants’ Foreign Currency Transactions Are Illegal Futures

19. Promotional literature distributed by Holston described Holston as a CTA. Specifically, it stated that, “The (CTA’s) of Holston, Young, Parker & Associates trade managed futures and/or exchange contracts for the spot market of clients accounts on a discretionary basis.”

20. The Commission Regulations require CTAs to provide prospective clients with a Disclosure Document, which among other things carries the warning that "The Commodity Futures Trading Commission has not passed upon the merits of participating in this trading program or on the accuracy of this Disclosure Document." Regulation 4.34, 17 C.F.R. § 4.34 (2002). Regulation 4.34 does not apply to trading advisors who trade bona fide spot or forward contracts. Holston provided its prospective clients with a Disclosure Document carrying the above cautionary statement.

21. Holston and Conetto have engaged in an elaborate scheme to defraud retail investors since May 2002. Their promotional materials and account opening documents describe an investment opportunity to profit based upon the fluctuations in the relative values of foreign currencies. While the defendants claim that their investments are in spot or forward contracts, many of the characteristics of the instruments they tout are characteristics of futures contracts. For instance, Holton's Disclosure Document states, "Conetto will select the contracts and markets which will be followed, the contracts and markets which will be actively traded and the contract months in which positions will be maintained. Conetto will also determine when to roll over a position (i.e., liquidate a position which is about to expire and initiate a new position in a more distant contract month)." The Disclosure Document goes on to discuss various factors the traders take into consideration including open interest and trading volumes. This language is consistent with trading commodity futures, but inconsistent with trading in spot and forward contracts.

22. The foreign currency contracts that defendants purport to offer and sell are futures. The contracts are for future delivery of foreign currencies that are cash settled in US

dollars. The prices or pricing formulas are established at the time the contracts are initiated, and may be settled through offset, cancellation, cash settlement or other means to avoid delivery.

23. The investors who purchase these futures contracts have no commercial need for the foreign currency. Instead, investors enter into these transactions to speculate and profit from anticipated price fluctuations in the markets for these currencies.

24. Investors do not anticipate taking – and do not take – delivery of the foreign currencies they purchase as a consequence of these investments. Holston and Conetto do not require their clients to set up banking relationships to facilitate delivery of the foreign currencies. Once the market moves in a favorable direction, an investor expects, based on the representations that have been made to them, Holston or Conetto to liquidate his or her investment by authorizing the sale of the contract and taking the profits.

25. Defendants do not conduct their foreign currency futures transactions on or subject to the rules of a board of trade that has been designated by the CFTC as a contract market, nor are defendants' transactions executed or consummated by or through a member of such a contract market. Defendants do not conduct transactions on a facility registered as a derivatives transaction execution facility.

26. By holding itself as a CTA, providing a Disclosure Document that suggested that they are CTAs and by offering advice to investors in trading futures contracts on foreign currencies, Holston acted as a CTA.

B. DEFENDANTS CHEATED AND DEFRAUDED THEIR INVESTORS

27. From at least May 2002, Holston and Conetto, as a common enterprise, solicited investment funds from members of the public, including persons in this district, to purportedly trade foreign currency contracts on their behalf.

28. In soliciting prospective investors, Holston and Conetto made a number of misrepresentations of material facts, including but not limited to the following:

- (a) Holston had a worldwide presence including offices in London, Zurich and Tokyo;
- (b) client accounts would be carried by a CFTC-registered FCM or other institution qualified under the CFMA to transact off-exchange currency contracts with persons who are not Eligible Contract Participants;
- (c) Conetto was an eligible counter party under the CFMA; and
- (d) Conetto was regulated by the "Securities and Futures Association" or "SFA" in London.

29. The representations in paragraphs 28 (a) through (d) were intended to create the impression that Holston and Conetto were legitimate firms operating within the requirements of the CFMA. However, these statements were false, in that:

- (a) neither Holston nor Conetto has offices in London, Zurich and Tokyo;
- (b) if client accounts were established anywhere, they were established at Conetto, which Holston describes as its carrying broker;
- (c) Conetto is not a regulated entity as defined in the CFMA and is not otherwise qualified to act as a counter party to foreign currency transactions with retail investors; and; and
- (d) Conetto is not registered with the Financial Services Authority ("FSA"), the United Kingdom's financial regulator, and there is no such entity as the "Securities and Futures Association" or "SFA" in London.

30. In soliciting prospective investors, Holston and Conetto made statements minimizing or misstating the risk of loss. These statements were *per se* fraudulent, and included representations that:

- (a) Conetto is able to limit risk because it always has stop-loss orders in place; and
- (b) the downside risk in major currencies is limited because the value of "a major currency cannot be reduced to zero value".

31. Conetto also represented that it would limit customer losses by judiciously using leverage, trading in many currencies and using several trading firms. In light of its announcement of catastrophic losses in Japanese Yen, this statement appears to be false.

C. Defendants Issued False Statements

32. During the first week of March 2003, the defendants notified their clients that due to an adverse move in the Japanese Yen market, Holston's and Conetto's customer accounts had lost 80-85% of their value and that trading at Holston and Conetto had been temporarily suspended.

33. Upon information and belief, there was not a significant deterioration in the value of the Japanese Yen during the first week of March 2003 that would have resulted in catastrophic losses trading foreign currency. Therefore, this statement appears to be false. Furthermore, the defendants' announcement appears to be a deliberate attempt to delay discovery of their fraud.

D. Defendants Misappropriated Customer Funds

34. Since May 2002, Holston and Conetto accepted \$6.4 million from at least 230 investors. All customer funds were immediately transferred to the Bank of Cyprus, Cyprus, and, upon information and belief, Olympiy Sky Bank, Moscow, Russia. Conetto was unwilling to disclose to Commission representatives the identity of the financial institution(s) at which customer funds were traded. Therefore, upon information and belief, Holston and Conetto failed

to use any of the investor funds to trade foreign currencies, but instead misappropriated most of the customer funds.

VI.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND COMMISSION REGULATIONS**

COUNT I

**FRAUD BY MISAPPROPRIATION AND MISREPRESENTATION
VIOLATIONS OF SECTIONS 4b(a)(2)(i), 4b(a)(2)(ii) and 4b(a)(2)(iii)
OF THE ACT AND REGULATIONS 1.1(b)(1), (2) and (3)**

35. Paragraphs 1 through 34 are re-alleged and incorporated herein.

36. During the relevant time, Holston and Conetto, as a common enterprise, violated Sections 4b(a)(2)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (ii) and (iii), and Regulations 1.1(b)(1), (2) and (3), 17 C.F.R. §§ 1.1(b)(1), (2) and (3) (2002), in that they cheated or defrauded or attempted to cheat or defraud investors or prospective investors in the investment program, made false statements and willfully deceived or attempted to deceive investors or prospective investors by, among other things: misappropriating funds received from investors, making false statements regarding trading losses, the risks of trading foreign currencies, the legitimacy of their operation, and the safety of investor funds.

37. Defendant engaged in this conduct 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 other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

38. Aizen, directly or indirectly, controlled Holston and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Holston's violations alleged in this count. Aizen thereby is liable for Holston's violations of Sections 4b(a)(2)(i), (ii) and (iii) of the Act and Regulations 1.1(b)(1), (2) and (3), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

39. 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 Sections 4b(a)(2)(i), (ii) and (iii) of the Act and Regulations 1.1(b)(1) and (3).

COUNT II

VIOLATIONS OF SECTION 4(a) OF THE ACT: SALE OF ILLEGAL OFF EXCHANGE FUTURES CONTRACTS

40. Paragraphs 1 through 34 are re-alleged and incorporated herein.

41. Since at least May 2002, and continuing to the present, Holston and Conetto, as a common enterprise, have 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 which has been designated or registered by the Commission 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).

42. Aizen, directly or indirectly, controlled Holston and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Holston's violations alleged in

this court. Aizen thereby is liable for Holston's violations of Sections 4(a) of the Act, 7 U.S.C. § 6(a) (2001) pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

43. 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 the defendants as specifically alleged herein, is alleged as a separate and distinct violation of Section 4(a) of the Act.

VII.

RELIEF REQUESTED

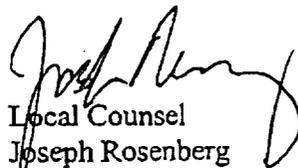
WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

- A. Find that Defendants violated Sections 4(a), 4b(a)(2)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6(a), 6b(a)(2)(i), (ii) and (iii), and Regulations 1.1(b)(1), (2) and (3), 17 C.F.R. §§ 1.1(b)(1), (2) and (3) (2002);
- B. Enter orders of preliminary and permanent 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; 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 Defendants.
- C. Enter orders of preliminary and permanent injunctions prohibiting the 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), 4b(a)(2)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6(a), 6b(a)(2)(i), (ii), and (iii), and Regulation 1.1(b)(1), (2) and (3), 17 C.F.R. §§ 1.1(b)(1), (2) and (3) (2002);
 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 the 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;
- E. Enter 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;
- F. 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 or Regulations;
- G. Enter an order directing that the 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, May 2002 to and including the date of such accounting;
- H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- I. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: March 13, 2003



Local Counsel
Joseph Rosenberg
JR 5225
Commodity Futures Trading Commission
140 Broadway
New York, New York 10005
(646) 746-9765

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF
COMMODITY FUTURES TRADING
COMMISSION

525 West Monroe Street, Suite 1100
Chicago, Illinois 60661



Vincent B. Johnson
VJ 6206
Trial Attorney
(312) 596-0547
(312) 596-0714 (facsimile)

William P. Janulis
WJ 8099
Team Leader
(312) 596-0547

Scott R. Williamson
SW 9752
Deputy Regional Counsel
(312) 596-5060

Rosemary Hollinger
RH 6870
Associate Director
(312) 596-0520