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IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

1:04CV0016

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

ROSS ERSKINE, and GOROS, LLC,

Defendants.

CIVIL ACTION NO. _____

JUDGE WELLS

MAG. JUDGE VECCHIARELLI

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND
FOR CIVIL PENALTIES UNDER THE
COMMODITY EXCHANGE ACT, AS AMENDED

I. SUMMARY

1. From at August 2001 through July 2002 (the "relevant time"), Ross Erskine ("Erskine") and Erskine's company, Goros, LLC ("Goros") (collectively

"defendants"), solicited at least \$320,000 from at least 21 public customers to buy and sell foreign currency futures. Erskine and Goros cheated, defrauded and deceived customers and potential customers by, among other practices, fraudulently misrepresenting the profit potential and risk of loss from trading in foreign currency futures, failing to disclose to customers that 100% of Goros' customers lost money, misrepresenting the amount of commissions Goros charged, failing to disclose to customers a prior regulatory action against Erskine and making other material omissions and misrepresentations to induce the customers to invest, and engaging in unauthorized trading, all in violation of Sections 4b(a)(2)(i) and (iii) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2001) and Regulations 1.1(b)(1) and (3), 17 C.F.R. §§ 1.1(b)(1) and (3) (2003). Finally, Erskine was a controlling person of Goros and is liable for Goros' acts constituting violations of Sections 4b(a)(2)(i) and (iii) and Regulations 1.1(b)(1) and (3), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

2. Accordingly, the Commodity Futures Trading Commission ("Commission or CFTC") 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.

3. 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

4. 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 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 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.

5. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a(e), because the defendants are found in, inhabit, or transact business, among other places, in this district, or the acts and practices in violation of the Act have occurred, are occurring, or are about to occur, among other places, within this district. Specifically, defendants (1) transacted the majority of their business within this district; (2) made phone calls and sent faxes, U.S. mail, and e-mail from this district; and (3) maintained active bank accounts in connection with their business enterprise within this district.

III. FACTS RELEVANT TO ALL COUNTS

A. Statutory Background

6. A commodity trading advisor ("CTA") means, in part, any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the 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.
Section 1a(6) of the Act, 7 U.S.C. § 1a(6).

7. A futures commission merchant ("FCM") means an individual, association, partnership, corporation, or trust that is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility; and in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. Section 1a(20) of the Act, 7 U.S.C. § 1a(20).

8. An introducing broker ("IB") means, in part, any person, other than an associated person of an FCM, engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. Section 1a(23) of the Act, 7 U.S.C. § 1a(23).

9. An associated person ("AP") means, in part, a person associated with any FCM, IB, or CTA as a partner, officer, employee, consultant or agent. Section 4k of the Act, 7 U.S.C. § 4k.

B. The Parties

10. Plaintiff Commission is the independent federal regulatory agency responsible for administering and enforcing the provisions of the Act and the Regulations promulgated thereunder.

11. Goros, LLC is a Nevada limited liability company formed in August 2001. Goros was engaged in the business of trading foreign currencies on behalf of the retail public. Goros was registered with the Commission as an IB from August 2001 through July 2002 and as a CTA from May 2002 through July 2002, when Erskine closed the company and terminated its registrations. Goros' principal place of business was Copley, OH from August 2001 to April 2002, and then Cleveland, OH from April 2002 through July 2002. Goros is not currently registered with the Commission in any capacity and is not currently operating.

12. Ross Erskine currently resides in Austin, Texas. During the period of August 2001 through July 2002, he was the sole owner and manager of Goros. Erskine was also registered as an AP of Goros from August 2001 through July 2002, when he voluntarily terminated his registration. He is currently registered with the Commission as an AP of Professional Market Group ("PMG"). PMG is a registered CTA and IB that Erskine owns and operates.

C. Overview of Goros Enterprise

13. During the relevant time, Erskine and Goros solicited the retail public to buy and sell foreign currency futures. Erskine personally solicited at least seven of Goros' customers using an alias, Brian Turner, which Erskine did not disclose to customers and potential customers. Erskine and Goros operated with telemarketers or

"openers" whom they hired from newspaper advertisements to place cold calls to names on lead lists.

14. Once a potential customer indicated an interest in investing, the opener turned the potential customer over to Erskine or one of Goros' "closers" to close the deal. Goros employed approximately sixteen openers and five to six closers during the life of the company.

D. Goros Directed The Trading of Customer Accounts

15. Goros maintained fourteen of its customer accounts at Gain Capital, Inc. ("Gain"), a registered FCM. The remaining seven customer accounts were maintained at two other registered FCMs, Vision Limited Partnership ("Vision"), which had one account, and FX Solutions, which had six accounts. Erskine made the trading decisions and placed the trading orders with these FCMs for all of Goros' customers.

16. Goros did not draft its own account opening documents or risk disclosure. Instead, it provided customers with account opening documents and risk disclosures from the FCMs it traded through.

E. Erskine Controlled Goros

17. Erskine was the sole owner of Goros, and is listed on National Futures Association ("NFA") registration records as the president and principal of Goros from August 2001 through July 2002, when the office closed. Erskine managed all the daily operations of the Goros office during the relevant time and made the trading decisions for Goros' customers. He also supervised Goros' openers and closers in their fraudulent solicitation of clients. Further, Erskine was the only authorized signatory on the Goros bank accounts at Key Bank and National City Bank, both in Ohio.

F. Erskine and Goros Engaged in Solicitation Fraud

18. Erskine and Goros' openers and closers fraudulently exaggerated the likelihood and magnitude of potential profits and minimized the risk of loss to customers. For example, Erskine and Goros' other openers and closers told potential customers that:

- they would earn 100% to 400% in one month's time;
- they would earn a quarter to a half a million dollars in two to three weeks;
- if the euro made a "one point move" the customer could earn \$5,000 on a \$15,000 investment; and
- it was a "sure thing" that customers would earn large profits.

19. Erskine and Goros' openers and closers had no reasonable basis for making these profit claims, particularly because they knew or should have known that 100% of Goros' customers lost all or most of their investment, the foreign currency market is highly speculative and the likelihood of realizing the described profits is remote.

20. While the account documentation given to customers contained some warnings of the risks of investing in foreign currency transactions, the warnings it contained were inconsistent with and vitiated by Erskine's and other Goros openers and closers' oral representations.

G. Erskine and Goros Offered Foreign Currency Futures

21. Erskine and Goros' openers and closers advised customers that their funds would be used for "spot trading" in "foreign currencies" as a means of profiting on price fluctuations in foreign currencies. The potential customers understood that they had an opportunity to take a position in the value of a foreign currency, mainly Eurodollars

("euros") and Japanese yen ("yen"), relative to the U.S. dollar, through a registered FCM. The customers were told that they could maintain their foreign currency positions until such time as they decided to close them out. In fact, Goros' customers were actually trading futures contracts.

22. In late January 2002, Erskine decided to divide Goros into two divisions, one that continued to trade what he claims were spot foreign currencies and the other that traded futures. Goros issued a letter and fax cover pages with "Goros Futures" letterhead to its customers and to Vision. Goros became a guaranteed IB of Vision on January 31, 2002, but only one Goros customer traded futures through Vision. Vision terminated its relationship with Erskine and Goros in early March 2002 after receiving a letter from the NFA stating that they were investigating Erskine for inconsistencies in a document he filed with them that was required for registration regarding prior regulatory actions against him in Texas and Wisconsin. Goros' "futures" division did not obtain any other customers.

23. Goros' customer investments were margined or leveraged 50 times. For example, if a customer invested \$1,000, he could purchase 50,000 euros.

24. Most, if not all, of Goros' customers intended to make speculative investments and did not intend to take delivery of any foreign currency. Nor did such customers have the capacity to take delivery of currency, and they did not, in fact, take delivery of currency. Goros' customers were typically unsophisticated and unfamiliar with foreign currency transactions.

H. Erskine and Goros Engaged in Unauthorized Trading

25. Erskine continued to trade at least four customer accounts after receiving customer requests to close out their accounts and refund the balances. Erskine told some customers that they would recoup their losses and ignored others. Despite receiving verbal instructions to stop trading, Erskine continued to trade their accounts. Erskine's trading merely led to additional losses, and at least two of these customers' accounts were traded down or close to zero balances.

26. For example, one customer requested that Erskine close his account and refund the balance at least three times verbally and twice in writing from June 14, 2002 through July 26, 2002. His account balance was approximately \$35,000 at his initial request on June 14, 2002, but was traded down to approximately \$1,000 before Erskine finally closed his account and returned the \$1,000 on August 1, 2002.

I. Goros Misrepresented Commission Charges To Customers

27. Goros charged five pips per each purchase or sale. (A pip is the smallest incremental movement in pricing of currency). For example, with respect to buying and selling a euro, a pip is .0001. If Goros obtained a price of 1.1411 from the FCM for purchase of one euro, it would charge the customer 5 pips so the total price of the transaction would be 1.1416. However, the customers' statements only stated the price as 1.1416, and did not explain that the price included a five pip mark up for commissions. In addition, Goros charged customers 20% of any net monthly profits earned in the account.

28. Although Erskine and Goros provided customers with a one paragraph commission sheet informing them of these commission charges before they invested,

Erskine verbally contradicted that material information contained in the commission sheet to at least five customers. Erskine misrepresented to at least four customers that it would not charge them any commissions unless their accounts earned a profit, and told at least one customer that he would be charged \$250 per round turn trade.

J. Erskine Failed to Disclose A Prior Regulatory Action Against Him

29. Erskine solicited customers and prospective customers without disclosing certain material facts regarding a prior regulatory action against him. On October 24, 2000, the State of Wisconsin Department of Securities issued an Order of Prohibition and Revocation against him in *In the Matter of MAS Fortune, Inc. a/k/a Forex Trading, Inc., Ross G. Erskine et al.* File No. S-00087, requiring that he cease and desist from selling unregistered securities to Wisconsin residents without a license.

IV. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE

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

30. The allegations set forth in paragraphs 1 through 29 are re-alleged and incorporated herein.

31. Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), make it unlawful for any person to cheat or defraud or attempt to cheat or defraud or willfully deceive or attempt to deceive by any means whatsoever other persons, in or in connection with any order to make, or the making of, any contract of sale of any commodity, for future delivery, made, or to be made, for or on behalf of such 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. Regulations 1.1(b)(1) and (3), 17 C.F.R. §§ 1.1(b)(1) and (3) (2003), make it unlawful for any person engaging in transactions in foreign currency to cheat or defraud or attempt to cheat or defraud any person; or willfully to deceive or attempt to deceive any person by any means whatsoever. Goros is liable for the acts of Erskine and its other agents pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

32. Defendants willfully violated §§ 4b(a)(2)(i) and (iii) of the Act and Regulations 1.1(b)(1) and (3), by making the following misrepresentations or misleading statements to customers: (1) promising customers large profits with minimal or no risk; (2) failing to disclose to customers that 100% of Goros' customers were actually losing money; (3) misrepresenting the commissions that Goros charged; (4) failing to disclose to customers and potential customers that the Wisconsin Department of Securities entered orders against Erskine for fraudulent solicitation and sales of unregistered securities, among other things; and (5) misrepresenting Erskine's identity as Brian Turner.

33. During the relevant time, Erskine, as principal and manager of Goros, directly or indirectly controlled Goros and its scheme and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in Count I. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), Erskine is liable for the violations described in this Count I to the same extent as Goros.

34. Each material misrepresentation or omission made during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i) and (iii) of the Act and Regulations 1.1(b)(1) and (3).

COUNT TWO

**FRAUD BY UNAUTHORIZED TRADING
VIOLATIONS OF SECTIONS 4b(a)(2)(i) and (iii) OF THE ACT AND
REGULATIONS 1.1(b)(1) and (3)**

35. The allegations set forth in paragraphs 1 through 29 are re-alleged and incorporated herein.

36. Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), makes it unlawful for any person to cheat or defraud or attempt to cheat or defraud or willfully deceive or attempt to deceive by any means whatsoever other persons, in or in connection with any order to make, or the making of, any contract of sale of any commodity, for future delivery, made, or to be made, for or on behalf of such 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. Goros is liable for the acts of Erskine and its other agents pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

37. Defendants willfully violated §§ 4b(a)(2)(i) of the Act and Regulations 1.1(b)(1) and (3), by causing transactions in foreign currency to be executed on behalf of customers, after customers directed Goros to cease trading in their accounts.

38. During the relevant time, Erskine, as principal and manager of Goros, directly or indirectly controlled Goros and its scheme and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in Count II. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), Erskine is liable for the violations described in this Count to the same extent as Goros.

39. Each unauthorized trade made during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i) and (iii) of the Act and Regulations 1.1(b)(1) and (3).

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:

- A. Find that defendants violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2001) and Regulations 1.1(b)(1) and (3);
- B. Enter a temporary restraining order with notice and an order of preliminary injunction restraining and enjoining Erskine and all persons insofar as they are acting in the capacity of his agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Erskine 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 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2001) and Regulations 1.1(b)(1) and (3), 17 C.F.R. §§ 1.1(b)(1) and (3) (2003);
 2. 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; and
 3. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2003), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration with the Commission, except as provided for in Regulation 4.14(a)(9). This includes, but is not limited to, soliciting, accepting, or receiving any funds, revenue or other property from any other person, giving commodity trading advice for compensation, except as provided in Regulation 4.14(a)(9), or soliciting prospective customers related to the purchase or sale of commodity futures or options.
- D. Enter an order directing the defendants and any successor thereof, 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;

- E. Enter an order directing the defendants to make full restitution to every customer 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;
- F. Enter an order assessing a civil monetary penalty against defendants in the amount of not more than the higher of \$120,000 or triple the monetary gain to the defendants for each violation by the defendants 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 clients, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from, but not limited to, August 2001 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.

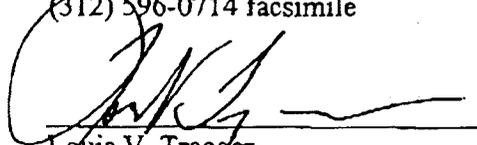
Dated: January 5, 2004

Respectfully submitted,

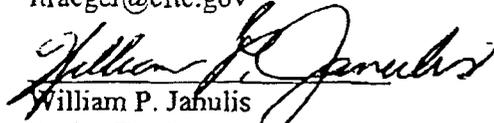
ATTORNEYS FOR PLAINTIFF
COMMODITY FUTURES TRADING
COMMISSION

525 West Monroe Street
Suite 1100

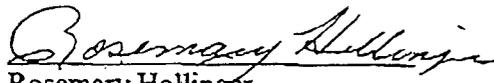
Chicago, Illinois 60661
(312) 596-0714 facsimile



Louis V. Traeger
Senior Trial Attorney
California State Bar No. 38714
(312) 596-0563
ltraeger@cftc.gov



William P. Janulis
Senior Trial Attorney
Illinois ARDC No. 1326449
(312) 596-0545
wjjanulis@cftc.gov



Rosemary Hollinger
Regional Counsel and Associate Director
Illinois ARDC No. 03123647
(312) 596-0520
rhollinger@cftc.gov