

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

U.S. COMMODITY FUTURES
TRADING COMMISSION,

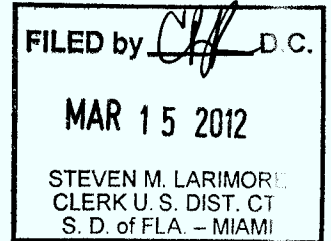
Plaintiff,

v.

ABRAHAM GUTTERMAN,
ALLIANCE CAPITAL METALS LLC, and
AR GOLDMAN WEALTH
MANAGEMENT, LLC d/b/a U.S.
PRINCIPAL FINANCIAL SERVICES,

Defendants.

Civil Action No:



12-CV-21047-COOKE/TURNOFF

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF
AND CIVIL MONETARY PENALTIES UNDER THE COMMODITY EXCHANGE ACT**

The U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”), by and through its attorneys, hereby alleges as follows:

I. SUMMARY

1. From at least November 2009 to the present (the “relevant period”), Alliance Capital Metals LLC (“ACM”) and AR Goldman Wealth Management, LLC, d/b/a U.S. Principal Financial Services (“ARGWM”), by and through their employees and agents, and Abraham Gutterman (“Gutterman”), as their controlling person, (collectively, “Defendants”), fraudulently solicited and accepted at least \$483,725.88 from at least 15 customers for the purpose of trading gold and oil commodity options contracts (“commodity options”), but instead ACM, ARGWM and Gutterman misappropriated all of these funds for Defendants’ personal use.

2. ACM and ARGWM, by and through their employees and agents, falsely represented to customers and prospective customers that ACM and ARGWM were successful options trading companies that had made a lot of money for their customers, and that ACM was registered with the Commodity Futures Trading Commission (“CFTC”) and the National Futures Association (“NFA”), among other things.

3. By virtue of this conduct and the conduct further described herein, Defendants have engaged, are engaging, or are about to engage in conduct in violation of the Commodity Exchange Act (the “Act”) as amended by the Food, Conservation and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011). Specifically, Defendants have engaged in options fraud, in violation of Section 4c(b) of the Act, 7 U.S.C. §§ 6c(b), and Regulations 32.9 and 33.10, 17 C.F.R. §§ 32.9, 33.10 (2011).

4. Unless restrained and enjoined by this Court, Defendants are likely to continue engaging in the acts and practices alleged in this complaint or in similar acts and practices.

5. Accordingly, the CFTC brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin Defendants’ unlawful acts and practices and to compel their compliance with the Act and the Regulations promulgated thereunder. In addition, the CFTC seeks restitution, rescission, civil monetary penalties, and such other equitable relief as this Court may deem necessary or appropriate.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), which authorizes the CFTC to seek injunctive relief in the proper district

court of the United States against any person whenever it shall appear to the CFTC 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 promulgated thereunder.

7. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because the principal places of business of ACM and ARGWM are in this District, Gutterman resides in this district, Defendants transacted 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.

III. THE PARTIES

8. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as amended, 7 U.S.C. §§ 1 *et seq.* and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

9. Defendant **Alliance Capital Metals LLC** is a Florida limited liability company with a business address in Aventura, Florida and a website address of alliancecapitalmetals.com. ACM was incorporated in Florida as a limited liability company on November 18, 2011. ACM has at least four employees who solicit public customers for the purpose of trading gold commodity options contracts (“gold options”). ACM has never been registered with the Commission in any capacity.

10. Defendant **AR Goldman Wealth Management, LLC**, doing business as **U.S. Principal Financial Services**, is a Florida limited liability company with a business address in Aventura, Florida. ARGWM was incorporated in Florida as a limited liability company on November 9, 2009. U.S. Principal Financial Services was registered as a fictitious name for AR

Goldman Wealth Management, LLC on August 2, 2010. ARGWM has at least two employees that solicit or have solicited public customers for the purpose of trading gold options and one employee that solicits or has solicited public customers for the purpose of trading oil options. ARGWM has never been registered with the Commission in any capacity.

11. Defendant **Abraham Gutterman** is the managing member of ACM and ARGWM and is responsible for all facets of ACM's and ARGWM's operations. Gutterman resides in South Florida. Gutterman has never been registered with the Commission in any capacity.

IV. RELATED ENTITY

12. **Alliance Capital LLC**, doing business as **Alliance Capital Professionals LLC** ("AC"), is a Florida foreign limited liability company incorporated in Delaware in February 2011, with a business address in Sunny Isles Beach, Florida. Gutterman is the managing member of AC and is responsible for all facets of AC's operations, including opening accounts in the names of AC. AC has accepted funds from public customers for the purpose of trading gold options. AC has never been registered with the Commission in any capacity.

V. FACTS

A. Solicitation Fraud

13. Defendants ACM and ARGWM, by and through their employees and agents, solicited U.S. customers to invest in commodity options via cold-calls, ACM's website, and at least one face-to-face meeting in a bar in Hialeah, Florida. ACM and ARGWM, by and through their employees and agents, used high pressure sales tactics calling customers repeatedly and promising large profits to convince them to invest.

14. Specifically, ACM and ARGWM, by and through their employees and agents, made the following misrepresentations and omissions of material fact to persuade customers to invest with them:

- a. customers would “make a killing” if they invested in commodity options through ACM and ARGWM;
- b. customers would make approximately \$200,000 to \$300,000 in less than three months with a \$20,000 investment in gold options;
- c. the majority of ACM’s and ARGWM’s prior customers bought gold options in 20 contract lots and those customers’ investments had increased significantly;
- d. customers needed to “get in now” because the price of gold was about to rise from prices of approximately \$1,700 to \$1,800 per ounce to \$2,500 per ounce;
- e. for every dollar the price per ounce of gold goes up, the customer’s options contracts would increase in value by \$500-\$2,000;
- f. gold options are a good investment for retirement savings and after investing with ACM and ARGWM the customer would have more than enough money to retire within just a few months;
- g. ACM is registered with the Commission;
- h. ACM uses TD Ameritrade to clear commodity options trades; and
- i. ACM had been in business for eleven years.

15. ACM and ARGWM, by and through their employees and agents, knew that these statements were false or recklessly disregarded the truth of these statements while making them. Defendants did not trade commodity options on behalf of customers, but misappropriated all of the funds they solicited and accepted for that purpose.

16. ACM has never been registered with the Commission in any capacity, and neither TD Ameritrade or, on information and belief, any other clearing firm had any type of clearing relationship with ACM. Further, ACM has only been in business for at most two years, not eleven years as ACM represented.

17. Based on ACM's and ARGWM's above misrepresentations, at least 15 customers agreed to invest \$483,725.88 with ACM and ARGWM for the purpose of trading commodity options with ACM and ARGWM and wired the money to bank accounts in the names of AC, ACM, and ARGWM at ACM's and ARGWM's direction.

18. Defendants did not provide customers with any documentation of their investments or account activity statements, and when one customer asked how his investment was doing ACM and ARGWM, by and through their employees and agents, advised him to watch the price of gold on business news television stations.

19. When customers requested that ACM and ARGWM sell their purported commodity options and return the balance of the funds to the customers, ACM and ARGWM, by and through their employees and agents, refused and instead pressured customers not to sell their investments. No money was ever returned to the customers.

20. Within a few months of investing with ACM and ARGWM, ACM and ARGWM, by and through their employees and agents, advised customers that all of their funds had been lost trading commodity options and the only way to recoup their investments was to invest additional funds with ACM and ARGWM.

21. At least three customers paid Defendants approximately \$27,300 for what ACM and ARGWM, by and through their employees and agents, described as "protection" for the customers' investments. ACM and ARGWM, by and through their employees and agents,

referred to this “protection” as a “put option” or a “short cushion” that was purportedly meant to purchase additional gold options if the price per ounce of gold went below a certain price.

Defendants misappropriated these funds for their personal use as well.

B. Defendants Misappropriated Customer Funds

22. Defendants never disclosed to customers that their funds would be used for any purposes other than trading gold and oil options. Nevertheless, Defendants misappropriated all of the at least \$483,725.88 that they solicited and accepted from customers for the purpose of trading gold and oil options. Defendants used the misappropriated funds for various personal expenses and purchases, including, but not limited to, restaurants, gambling, entertainment, and retail purchases. Defendants never disclosed to customers that their funds would be, or had been, used for these purposes.

C. Gutterman Controls ACM, AC, and ARGWM

23. Gutterman is the founder, principal, president and managing member of ACM, AC, and ARGWM, and during the relevant time, held himself out to the public as such. Upon information and belief, Gutterman manages the day to day operations of ACM, AC, and ARGWM. During the relevant time, Gutterman was the sole authorized signatory on bank accounts in the names of ACM, AC, and ARGWM.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE

**Violations of Section 4c(b) of the Act and Regulations 32.9 and 33.10,
Commodity Options Fraud**

24. Paragraphs 1 through 23 are realleged and incorporated herein.

25. Section 4c(b) of the Act, 7 U.S.C. § 6c(b), provides that no person shall engage in any commodity option transaction regulated under the Act contrary to any rule, regulation, or

order of the Commission. Regulation 32.9 makes it unlawful for any person, directly or indirectly, to cheat or defraud or attempt to cheat or defraud any other person, or to deceive or attempt to deceive any other person by any means whatsoever, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, any off exchange commodity option transaction. Regulation 33.10, 17 C.F.R § 33.10, makes it unlawful for any person, directly or indirectly, to cheat or defraud or attempt to cheat or defraud any other person, or to deceive or attempt to deceive any other person by any means whatsoever, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any on exchange commodity option transaction.

26. During the relevant period, ACM and ARGWM, by and through their employees and agents, violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulations 32.9 and 33.10, 17 C.F.R. §§ 32.9 and 33.10, by cheating or defrauding, or attempting to cheat or defraud, and willfully deceiving, or attempting to deceive their customers to invest in both on and off exchange commodity options through Defendants by: 1) misrepresenting that ACM and ARGWM would open accounts on behalf of customers to purchase gold options and would trade the accounts for them; (2) misrepresenting that ACM and ARGWM had successfully traded gold options for customers and made customers considerable profits; (3) misrepresenting that ACM was registered with the CFTC and the NFA; (4) misrepresenting that ACM cleared commodity options and/or futures contracts through TD Ameritrade; (5) misrepresenting that ACM had been in business for 11 years; and (6) misappropriating customer funds.

27. During the relevant period Gutterman violated Section 4c(b) of the 7 U.S.C. § 6c(b), and Regulations 32.9 and 33.10, 17 C.F.R. §§ 32.9 and 33.10, by cheating or defrauding, or attempting to cheat or defraud, and willfully deceiving, or attempting to deceive customers by

misappropriating funds that ACM and ARGWM solicited and accepted, by and through their employees and agents, for the purpose of trading commodity options.

28. The foregoing acts, omissions, and failures of Gutterman and ACM's and ARGWM's other employees occurred within the scope of their employment, office, or agency with ACM and ARGWM. Therefore, ACM and ARGWM are liable for Gutterman's and their other employees' acts, omissions, and failures constituting violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), pursuant to Section 2(a)(1)(B) of the Act, as amended, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

29. Gutterman controlled ACM and ARGWM and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting ACM's and ARGWM's violations alleged in this count. Therefore, Gutterman is liable for ACM's and ARGWM's violations of Section 4c(b) of the Act 7 U.S.C. § 6c(b), and Regulations 32.9 and 33.10, 17 C.F.R. §§ 32.9 and 33.10, as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

30. Each false, deceptive, or misleading representation of material fact and each failure to disclose material facts, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulations 32.9 and 33.10, 17 C.F.R. §§ 32.9 and 33.10.

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 Defendants liable for violating Section 4c(b) of the Act, 7 U.S.C. §§ 6c(b), and Regulations 32.9 and 33.10, 17 C.F.R. §§ 32.9 and 33.10 (2011);

B. Enter an *ex parte* statutory restraining order and an order of preliminary injunction pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), restraining Defendants and all persons insofar as they are acting in the capacity of Defendants' agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants 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 or safety deposit boxes and all funds on deposit in any financial institution, bank, or savings and loan account held by, under the actual or constructive control of, or in the name of Defendants;

C. Enter an order directing that Defendants make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds Defendants received from and paid to

customers or any other person in connection with transactions or purported transactions for the purchase, sale, or delivery of commodity futures or commodity options including the names, mailing addresses, email addresses, and telephone numbers of any such persons from whom Defendants received such funds from November 1, 2009 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from customers and other persons, including salaries, commissions, fees, loans, and other disbursements of money and property of any kind, from November 1, 2009 to and including the date of such accounting;

D. Enter an order requiring Defendants immediately to identify and provide an accounting for all assets and property that they currently maintain outside the United States, including, but not limited to, all funds on deposit in any financial institution, futures commission merchant, bank, or savings and loan account held by, under the actual or constructive control of, or in the name of Defendants, whether jointly or otherwise, and requiring them to repatriate all funds held in such accounts by paying them to the Registry of the Court, or as otherwise ordered by the Court, for further disposition in this case;

E. Enter orders of preliminary and permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Engaging in conduct in violation of Section 4c(b), 7 U.S.C. § 6c(b) (2006), and Regulations 32.9 and 33.10, 17 C.F.R. §§ 32.9 and 33.10 (2011);
2. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act as amended, 7 U.S.C. § 1a);

3. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2011)) (“commodity options”), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;

4. Having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on their behalf;

5. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;

6. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;

7. 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) (2011); and/or

8. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) registered, exempted from registration or required to be registered with the Commission except as provided for

in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

F. Enter an order directing Defendants to make restitution by making whole each and every customer whose funds were received or used by Defendants in violation of the provisions of the Act as described herein, including pre- and post-judgment interest;

G. Enter an order requiring Defendants to disgorge to any officer appointed or directed by the Court, or directly to customers, 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 and post-judgment interest;

H. Enter an order directing Defendants and any successors thereof to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between Defendants and any of the customers whose funds were received by Defendants as a result of the acts and practices which constituted violations of the Act as described herein and restore to each participant the full amount of his or her original investment;

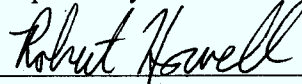
I. Enter an order requiring Defendants to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of \$140,000 for each violation of the Act or triple the monetary gain to Defendants for each violation of the Act described herein, plus post-judgment interest;

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

K. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Date: March 15, 2012

Respectfully submitted,



Robert Howell
Senior Trial Attorney
Commodity Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, Illinois 60661
(312) 596-0590 phone
(312) 596-0714 facsimile
rhowell@cftc.gov
Special Bar ID # A5501716

Susan Gradman
Chief Trial Attorney
Commodity Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, Illinois 60661
(312) 596-0523 phone
(312) 596-0714 facsimile
sgradman@cftc.gov
Special Bar ID # A5501721

Rosemary Hollinger
Associate Director
Commodity Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, Illinois 60661
(312) 596-0520 phone
(312) 596-0714 facsimile
rhollinger@cftc.gov
Special Bar ID # A5500849