

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4 UNITED STATES COMMODITY FUTURES
5 TRADING COMMISSION,

6 Plaintiff,

7 v.

8 JAMES D. CROMBIE,

9 Defendants.
10 _____/

No. C 11-04577 CW

JUDGMENT AND ORDER
GRANTING PLAINTIFF
CFTC'S MOTION FOR
PERMANENT
INJUNCTION,
RESTITUTION, AND
IMPOSITION OF
CIVIL MONETARY
PENALTIES AGAINST
DEFENDANT JAMES D.
CROMBIE

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12 On July 26, 2013, the Court granted the motion of Plaintiff
13 United States Commodity Futures Trading Commission (CFTC) for
14 summary judgment on each count in the CFTC's Amended Complaint.
15 (Dkt. No. 267.) The Court also denied Defendant James D.
16 Crombie's cross-motion for summary judgment and his motion for
17 leave to file new claims. Id.

18 The Court instructed the CFTC to file a motion addressing the
19 relief it seeks. The CFTC now moves the Court for an order
20 permanently enjoining Crombie from participating in markets
21 regulated by the CFTC and requiring him to pay restitution and a
22 civil monetary penalty. Having considered the papers submitted by
23 the parties, the Court GRANTS the CFTC's motion. It is therefore
24 ORDERED and ADJUDGED as follows:
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1 I. JUDGMENT

2 1. Consistent with the findings of fact and conclusions of
3 law set forth in the Court's July 26, 2013 Order, the Court hereby
4 enters the following judgment:

5 a. Crombie violated Section 9(a)(4) of the Commodity
6 Exchange Act (the Act), 7 U.S.C. § 13(a)(4)(2012), by
7 willfully misrepresenting to the National Futures Association
8 (NFA) information regarding Crombie's financial performance
9 history and loans Crombie had received from individuals; and

10 b. Crombie violated Sections 4b(a)(1)(A), (B) and
11 4o(1)(A), (B) of the Act, 7 of the Act, 7 U.S.C. §§
12 6b(a)(1)(A), (B); 6o(1)(A), (B) (2012), by willfully making
13 misrepresentations and omissions to prospective customers of
14 Paron Capital Management, LLC (Paron).

15 2. As a result of these violations of the Act, and as set
16 forth in more detail below, the Court orders that Crombie is
17 permanently enjoined from further violations of the Act and from
18 future participation in the markets regulated by the CFTC.

19 3. As a result of these violations of the Act, and as set
20 forth in more detail below, Crombie shall pay:

21 a. Restitution in the amount of seven hundred forty-
22 six thousand, four hundred sixty dollars and twenty-eight
23 cents (\$746,460.28) plus pre-judgment interest in the amount
24 of forty-three thousand eighty dollars and nineteen cents
25 (\$43,080.19), plus any post-judgment interest as determined
26 by statute; and

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1 b. A civil monetary penalty in the amount of seven
2 hundred fifty thousand dollars (\$750,000), plus any post-
3 judgment interest as determined by statute.

4 II. PERMANENT INJUNCTION

5 4. Pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1
6 (2012), Crombie is permanently restrained, enjoined and prohibited
7 from directly or indirectly:

8 a. Engaging, directly or indirectly, in any conduct in
9 violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4)
10 (2012);

11 b. Engaging, directly or indirectly, in any conduct in
12 violation of Sections 4b(a)(1)(A), (B) of the Act, 7 U.S.C.
13 §§ 6b(a)(1)(A), (B) (2012); or

14 c. Engaging, directly or indirectly, in any conduct in
15 violation of Sections 4o(1)(A), (B) of the Act, 7 U.S.C. §§
16 6o(1)(A), (B) (2012).

17 5. Crombie is also permanently restrained, enjoined and
18 prohibited from directly or indirectly:

19 a. Trading on or subject to the rules of any
20 registered entity (as that term is defined in Section 1a of
21 the Act, 7 U.S.C. § 1a (2012));

22 b. Entering into any transactions involving commodity
23 futures, options on commodity futures, commodity options (as
24 that term is defined in Regulation 1.3 (hh), 17 C.F.R. §
25 1.3(hh) (2011)), security futures products, swaps (as that
26 term is defined in Section 1a(47) of the Act, 7 U.S.C. §
27 1a(47), and as further defined by Regulation 1.3(xxx), 17
28 C.F.R. § 1.3(xxx)), and/or foreign currency (as described in

1 Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, 7 U.S.C. §§
2 2(c)(2)(B) and 2(c)(2)(C)(i) (2012)) (forex contracts) for
3 his own personal account or for any account in which he has a
4 direct or indirect interest;

5 c. Having any commodity futures, options on commodity
6 futures, commodity options, security futures products, swaps,
7 and/or forex contracts traded on his behalf;

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

13 e. Soliciting, receiving or accepting any funds from
14 any person for the purpose of purchasing or selling any
15 commodity futures, options on commodity futures, commodity
16 options, security futures products, swaps and/or forex
17 contracts;

18 f. Applying for registration or claiming exemption
19 from registration with the Commission in any capacity, and
20 engaging in any activity requiring such registration or
21 exemption from registration with the Commission, except as
22 provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)
23 (2012); and/or

24 g. Acting as a principal (as that term is defined in
25 Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent or any
26 other officer or employee of any person (as that term is
27 defined in Section 1a of the Act, 7 U.S.C. § 1a (2012))
28 registered, exempted from registration or required to be

1 registered with the Commission except as provided for in
2 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

3 III. RESTITUTION

4 6. Crombie shall pay restitution in the amount of seven
5 hundred forty-six thousand, four hundred sixty dollars and twenty-
6 eight cents (\$746,460.28) plus pre-judgment interest in the amount
7 of forty-three thousand eighty dollars and nineteen cents
8 (\$43,080.19) (collectively, the Restitution Obligation), plus
9 post-judgment interest, within ten (10) days of the date of the
10 entry of this Order. Post-judgment interest shall accrue on the
11 Restitution Obligation beginning on the date of entry of this
12 Order and shall be determined by using the Treasury Bill rate
13 prevailing on the date of entry of this Order, pursuant to 28
14 U.S.C. § 1961.

15 7. To effect payment of the Restitution Obligation and the
16 distribution of any restitution payments to Crombie's and/or
17 Paron's customers or clients, the Court appoints the National
18 Futures Association (NFA) as Monitor. The Monitor shall collect
19 restitution payments from Crombie and make distributions as set
20 forth below. Because the Monitor is acting as an officer of this
21 Court in performing these services, NFA shall not be liable for
22 any action or inaction arising from NFA's appointment as Monitor,
23 other than actions involving fraud.

24 8. Crombie shall make Restitution Obligation payments under
25 this Order to the Monitor in the name "Crombie - Restitution Fund"
26 and shall send such Restitution Obligation payments by electronic
27 funds transfer, or by U.S. postal money order, certified check,
28 bank cashier's check, or bank money order, to the Office of

United States District Court
For the Northern District of California

1 Administration, National Futures Association, 300 South Riverside
2 Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter
3 that identifies the paying Defendant and the name and docket
4 number of this proceeding. Crombie shall simultaneously transmit
5 copies of the cover letter and the form of payment to the Chief
6 Financial Officer, Commodity Futures Trading Commission, Three
7 Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

8 9. The Monitor shall oversee the Restitution Obligation and
9 shall have the discretion to determine the manner of distribution
10 of such funds in an equitable fashion to Crombie's and/or Paron's
11 customers or clients identified by the CFTC or may defer
12 distribution until such time as the Monitor deems appropriate. In
13 the event that the amount of Restitution Obligation payments to
14 the Monitor are of a de minimis nature such that the Monitor
15 determines that the administrative cost of making a distribution
16 to eligible customers or clients is impractical, the Monitor may,
17 in its discretion, treat such restitution payments as civil
18 monetary penalty payments, which the Monitor shall forward to the
19 CFTC following the instructions for civil monetary penalty
20 payments set forth in Part III below.

21 10. Crombie shall cooperate with the Monitor as appropriate
22 to provide such information as the Monitor deems necessary and
23 appropriate to identify Crombie's and/or Paron's customers or
24 clients whom the Monitor, in its sole discretion, may determine to
25 include in any plan for distribution of any Restitution Obligation
26 payments. Crombie shall execute any documents necessary to
27 release funds that he has in any repository, bank, investment or
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1 other financial institution, wherever located, in order to make
2 partial or total payment toward the Restitution Obligation.

3 11. The Monitor shall provide the Commission at the
4 beginning of each calendar year with a report detailing the
5 disbursement of funds to Crombie's and/or Paron's customers or
6 clients during the previous year. The Monitor shall transmit this
7 report under a cover letter that identifies the name and docket
8 number of this proceeding to the Chief Financial Officer,
9 Commodity Futures Trading Commission, Three Lafayette Centre, 1155
10 21st Street, NW, Washington, D.C. 20581.

11 12. The amounts payable to each customer or client shall not
12 limit the ability of any customer or client from proving that a
13 greater amount is owed from Crombie or any other person or entity,
14 and nothing herein shall be construed in any way to limit or
15 abridge the rights of any customer or client that exist under
16 state or common law.

17 13. Pursuant to Rule 71 of the Federal Rules of Civil
18 Procedure, each customer or client of Crombie and/or Paron who
19 suffered a loss is explicitly made an intended beneficiary of this
20 Order and may seek to enforce obedience of this Order to obtain
21 satisfaction of any portion of the restitution that has not been
22 paid by Crombie.

23 14. To the extent that any funds accrue to the U.S. Treasury
24 for satisfaction of Crombie's Restitution Obligation, such funds
25 shall be transferred to the Monitor for disbursement in accordance
26 with the procedures set forth above.

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1 IV. CIVIL MONETARY PENALTY

2 15. Crombie shall pay a civil monetary penalty in the amount
3 of seven hundred fifty thousand dollars (\$750,000.00) (CMP
4 Obligation), plus post-judgment interest, within ten (10) days of
5 the date of the entry of this Order. Post-judgment interest shall
6 accrue on the CMP Obligation beginning on the date of entry of
7 this Order and shall be determined by using the Treasury Bill rate
8 prevailing on the date of entry of this Order, pursuant to 28
9 U.S.C. § 1961.
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11 16. Crombie shall pay his CMP Obligation by electronic funds
12 transfer, U.S. postal money order, certified check, bank cashier's
13 check, or bank money order. If payment is to be made other than
14 by electronic funds transfer, then the payment shall be made
15 payable to the Commodity Futures Trading Commission and sent to
16 the address below:
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18 Commodity Futures Trading Commission
19 Division of Enforcement
20 ATTN: Accounts Receivables - AMZ 340
21 E-mail Box: 9-AMC-AMZ-AR-CFTC DOT/FAA/MMAC
22 6500 S. MacArthur Blvd.
23 Oklahoma City, OK 73169
24 Telephone: (405) 954-5644

25 If payment by electronic funds transfer is chosen, Crombie
26 shall contact Linda Zurhorst or her successor at the address above
27 to receive payment instructions and shall fully comply with those
28 instructions. Crombie shall accompany payment of the CMP
Obligation with a cover letter that identifies Crombie and the
name and docket number of this proceeding. Crombie shall

1 simultaneously transmit copies of the cover letter and the form of
2 payment to the Chief Financial Officer, Commodity Futures Trading
3 Commission, Three Lafayette Centre, 1155 21st Street, NW,
4 Washington, DC 20581.

5 V. MISCELLANEOUS PROVISIONS

6 17. All notices required to be given by any provision in
7 this Order shall be sent certified mail, return receipt requested,
8 as follows:

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10 Notice to CFTC: Director, Division of Enforcement
Three Lafayette Centre
11 1121 21st Street NW
Washington, DC 20581
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13 Notice to Crombie: James D. Crombie
P.O. Box 2140
14 Merrifield, VA 22116
15 james.d.crombie@gmail.com
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17 All such notices to the CFTC shall reference the name and
18 docket number of this action.

19 18. Until such time as Crombie satisfies in full his
20 Restitution Obligation and CMP Obligation as set forth in this
21 Order, Crombie shall provide written notice to the Commission by
22 certified mail of any change to his telephone number and mailing
23 address within ten (10) calendar days of the change.

24 19. This Court shall retain jurisdiction of this action in
25 order to implement and carry out the terms of all orders and
26 decrees, including orders setting the appropriate amounts of
27 restitution and civil monetary penalty, that may be entered
28 herein, to entertain any suitable application or motion for

1 additional relief within the jurisdiction of the Court, to assure
2 compliance with this Order and for any other purpose relevant to
3 this action.

4 20. The injunctive and equitable relief provisions of this
5 Order shall be binding upon Crombie, upon any person under his
6 authority or control, and upon any person who receives actual
7 notice of this Order, by personal service, e-mail, facsimile or
8 otherwise insofar as he or she is acting in active concert or
9 participation with Crombie.

10 IT IS SO ORDERED AND ADJUDGED.

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13 Dated: 11/21/2013

14 CLAUDIA WILKEN
15 United States District Judge
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