

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**U. S. COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

vs.

**MATTHEW J. MARCUS,
TECH POWER INC.,
JOHN D. BRINER, and
METROWEST LAW CORP.,**

Defendants.

Civil Action No:

Judge

**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. Over a period of seven consecutive trading dates from January 28, 2014 to February 5, 2014 (“Relevant Period”), Defendants Matthew J. Marcus (“Marcus”) and John D. Briner (“Briner”) engaged in 624 round-turn trades involving 1,248 perfectly matched, pre-arranged, non-competitive transactions in single stock futures (“SSF”) contracts listed on OneChicago LLC (“OneChicago”) to move at least \$390,000 from Defendant MetroWest Law Corporation (“MetroWest”) to Defendant Tech Power Inc. (“Tech Power”) (the two individuals and two corporations, collectively, “Defendants”). By structuring the transactions such that Tech Power would buy at lower prices and sell at higher prices opposite MetroWest, Defendants were

able to ensure that Tech Power would always profit from the transactions, enabling the Defendants to conduct a “money pass” between the two accounts.

2. 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 (i) Section 4c(a) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6c(a) (2012), by entering into transactions that are pre-arranged, fictitious sales, and/or wash sales involving the purchase or sale of commodities for future delivery and (ii) Regulation 1.38(a), 17.C.F.R. § 1.38(a)(2014), by entering into illegal, non-competitive transactions to buy and sell futures contracts.

3. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and in similar acts and practices, as more fully described below.

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the Commission brings this action to enjoin such acts and practices, prevent the dissipation of assets, and compel compliance with the provisions of the Act. In addition, the Commission seeks civil penalties and remedial ancillary relief, including but not limited to, trading bans, restitution, disgorgement, an accounting, pre and post-judgment interest and such other statutory and equitable relief as the Court may deem necessary or appropriate under the circumstances.

II. JURISDICTION AND VENUE

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

6. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because 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

7. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with administering and enforcing the provisions of the Act (2012) and the Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2014).

8. Defendant **Matthew J. Marcus** (“**Marcus**”) is an individual residing in California. Marcus serves as the President, Secretary, Treasurer and Director of Tech Power Inc. Marcus has never been registered with the Commission in any capacity. Marcus was a client of MetroWest Law Corporation and Briner.

9. Defendant **Tech Power Inc.** (“**Tech Power**”) is an information technology company incorporated in Nevada and located in California. It has never been registered with the Commission in any capacity.

10. Defendant **John D. Briner** (“**Briner**”) is an attorney residing in Vancouver, Canada. Briner has never been registered with the Commission in any capacity. Briner owns 100% of MetroWest Law Corporation and is its principal.

11. Defendant **MetroWest Law Corporation** (“**MetroWest**”) is a Canadian law firm located in Vancouver, Canada. It has never been registered with the Commission in any capacity. In October 2013 MetroWest was placed into custodianship by the Law Society of British Columbia, which thereby assumed responsibility for MetroWest’s law practice; however, Briner retained control over a MetroWest trading account -- account number XXXX7543.

IV. FACTUAL BACKGROUND

A. Single Stock Futures Trading on OneChicago

12. OneChicago LLC (“OneChicago”) is a designated contract market located in Chicago, Illinois that provides a marketplace for trading security futures products, such as single stock futures.

13. OneChicago offers an electronic trading platform in which traders place various orders for single stock futures in its central limit order book, and OneChicago’s matching engine arranges trades using those orders.

14. A single stock future (“SSF”) is a contract for future delivery of 100 shares of a single stock (such as Microsoft or Netflix) that may be settled through delivery of the underlying securities on a certain delivery date. At the expiration of the contract, the person who is “short” the SSF delivers the underlying stock to his counterparty, who is “long” the SSF, if he holds the contract at expiration. A trader may hold an SSF position until the delivery date or may close out the position at any time with an offsetting transaction in the same contract. A SSF is a form of “security future,” as defined in Section 1a(44) of the Act, 7 U.S.C. § 1a(44), and is subject to joint regulation by the CFTC and the SEC under Section 2(a)(1)(D) of the CEA, 7 U.S.C. § 2(a)(1)(D) (2012).

15. Generally, futures markets are price discovery markets that provide a centralized marketplace where traders can shift risk. Price discovery occurs through the open and competitive execution of trades on the centralized market. To protect the integrity of the price discovery process, the Act and Regulations generally require offers to be open and available to the market as a whole (*i.e.*, potentially matched with any other offer). The Act and Regulations prohibit trading practices that undermine the price discovery process, such as pre-arranged trading or fictitious sales.

B. Defendants' Trading Accounts

16. Defendants carried out their scheme on OneChicago using two trading accounts held at the same registered futures commission merchant ("FCM").

17. Briner opened a trading account at an FCM in the name of MetroWest Law Corp. in June 2012, and its account number was XXXX7543 ("MetroWest 7543"). Briner had a unique user name and password that allowed him to control trading within MetroWest 7543.

18. According to account documentation, Briner was the only authorized trader for MetroWest 7543, and statements for MetroWest 7543 were sent to Briner via email.

19. In connection with opening MetroWest 7543, Briner signed the FCM's customer agreement on June 11, 2012, affirming that Briner would be responsible for all orders entered using his user name and password. Briner also represented that he would not permit any other person to have access to the MetroWest 7543 account for any purpose, unless specified to the FCM and agreed to by the FCM.

20. Briner made several deposits into MetroWest 7543 throughout 2012 from an account in the name of MetroWest Law Corporation Trust A. These deposits totaled in excess of \$390,000.

21. On information and belief, Briner funded the account with money received from one or more clients of MetroWest. Prior to January 28, 2014, MetroWest 7543 had never placed an order on OneChicago.

22. On January 25, 2013, Marcus opened a trading account with the same FCM in the name of Tech Power Inc., and its account number was XXXX0560 ("Tech Power 0560").

23. According to account documentation, Marcus was the only authorized trader for Tech Power 0560. Marcus had a unique ID and password that allowed him to control trading within Tech Power 0560.

24. In connection with opening Tech Power 0560, Marcus signed the FCM's customer agreement on January 25, 2013, affirming that Marcus would be responsible for all orders entered using his user name and password. Marcus also represented that he would not permit any other person to have access to the Tech Power 0560 account for any purpose, unless specified to the FCM and agreed to by the FCM.

25. Prior to January 28, 2014, Tech Power 0560 had never placed an order on OneChicago.

C. Defendants' Scheme to Pass Money Through SSF Trading

26. A money pass is a form of non-competitive trading in which one trader intentionally loses money to another trader, typically where one trader buys a quantity of contracts at a high price opposite the other trader, and sells back the same quantity of contracts at a low price opposite the same trader, leaving neither trader with a resulting futures or options position (*i.e.*, a "round turn"). What appears to the market to be a legitimate trade between two arm's-length parties is instead a pre-arranged scheme to move money from one account to the other.

27. Beginning on January 28, 2014 and continuing for seven consecutive trading dates through February 5, 2014, Defendants carried out a money pass scheme whereby they moved money from MetroWest to Tech Power through a series of transactions using SSF contracts on OneChicago.

28. In each of those transactions, one of the accounts would place a limit order to buy a specific quantity of SSF for a specific price. Immediately following that order, the other account would enter the market with a limit order to sell the exact same quantity of SSF at an identical price. After their orders were matched in one transaction, Defendants would later enter

into an equal and offsetting transaction to close out the position. This pattern was repeated hundreds of times throughout the Relevant Period.

29. For example, January 28, 2014 Tech Power 0560 placed a limit order to buy one lot of MYGN1D (March expiry) at 12:46:19pm at a price of \$24.97. At 12:46:29pm MetroWest 7543 entered a limit order to sell one lot of MYGN1D (March expiry) at a price of \$24.97. The orders were matched, and the trade was executed at 12:46:29pm. The accounts reversed positions 36 minutes later. At 1:22:31pm Tech Power 0560 entered a limit order to sell one lot of MYGN1D (March expiry) at a price of \$25.42, and at 1:22:39 MetroWest 7543 placed a limit order to buy one lot of MYGN1D (March expiry) at a price of \$25.42. The orders were matched, and the trade was executed at 1:22:39pm. In this transaction, Tech Power 0560 gained \$45.00.

30. Using this methodology, Defendants traded almost exclusively against each other on OneChicago. By placing nearly simultaneous, matching orders and trading in illiquid SSF products, Defendants virtually eliminated the possibility of trading with any other counterparty. During the Relevant Period, Defendants' transactions constituted approximately 98 percent of all trades in eight SSF products.

31. MetroWest 7543 executed a total of 1,248 SSF trades opposite of Tech Power 0560 on OneChicago, resulting in 624 round turn trades. Each time a position was closed out, it resulted in a loss to MetroWest 7543 and a gain to Tech Power 0560. As a result, MetroWest transferred at least \$390,000 to Tech Power.

32. Defendants did not execute these trades in accordance with OneChicago's written rules.

33. Defendants intended these transactions to appear as arm's-length transactions to the market but, instead, they were part of a scheme to pass over \$390,000 from MetroWest 7543 to Tech Power 0560.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE

**Violations of 4c(a) of the Act:
Fictitious Sales**

34. Paragraphs 1 through 33 are re-alleged and incorporated herein.

Defendants MetroWest, Tech Power, Marcus and Briner violated Section 4c(a) of the Act, 7 U.S.C. 6c(a), by entering into a transaction that is of the character of, or is commonly known to the trade as a fictitious sale, specifically a money pass, involving the purchase or sale of a commodity for future delivery which transaction was used or may have been used to hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity; or to determine the price basis of any such transaction in interstate commerce in the commodity; or to deliver any such commodity sold, shipped, or received in interstate commerce.

35. Defendant Marcus is liable for Tech Power's violations of Section 4c(a) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), because Marcus controlled Tech Power and either did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Tech Power's violations alleged in this count.

36. Defendant Briner is liable for MetroWest's violations of Section 4c(a) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), because Briner controlled MetroWest and either did not act in good faith or knowingly induced, directly or indirectly, the acts constituting MetroWest's violations alleged in this count.

37. The acts of Defendant Marcus occurred during the scope of his employment or agency with Tech Power and are deemed to be the acts of Tech Power by operation of Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012) and Regulation 1.2, 17 C.F.R. § 1.2 (2014).

38. The acts of Defendant Briner occurred during the scope of his employment or agency with MetroWest and are deemed to be the acts of MetroWest by operation of Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) and Regulation 1.2, 17 C.F.R. § 1.2.

39. Each transaction entered into by Defendants, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(a) of the Act.

COUNT TWO

Violations of Commission Regulation 1.38(a): Non-Competitive Transactions

40. Paragraphs 1 through 39 are re-alleged and incorporated herein.

41. Regulation 1.38, 17 C.F.R. §1.38 (2014) requires that all purchases and sales of commodity futures contracts, including single stock futures, be executed “openly and competitively.”

42. Defendants MetroWest, Tech Power, Marcus and Briner violated Regulation 1.38 by knowingly engaging in a series of non-competitive single stock futures transactions.

43. Defendant Marcus is liable for Tech Power’s violations of Section 4c(a) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), because Marcus controlled Tech Power and either did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Tech Power’s violations alleged in this count.

44. Defendant Briner is liable for MetroWest’s violations of Section 4c(a) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), because Briner controlled MetroWest

and either did not act in good faith or knowingly induced, directly or indirectly, the acts constituting MetroWest's violations alleged in this count.

45. The acts of Defendant Marcus occurred during the scope of his employment or agency with Tech Power and are deemed to be the acts of Tech Power by operation of Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) and Regulation 1.2, 17 C.F.R. § 1.2.

46. The acts of Defendant Briner occurred during the scope of his employment or agency with MetroWest and are deemed to be the acts of MetroWest by operation of Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) and Regulation 1.2, 17 C.F.R. § 1.2.

47. Each transaction entered into by Defendants, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 1.38(a), 17 C.F.R. §1.38.

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 (2014), and pursuant to its own equitable powers:

A. Enter an order finding Defendants liable for violating Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (2012) and Commission Regulation 1.38(a), 17 C.F.R. §1.38(a) (2014);

B. Enter a statutory restraining order restraining and enjoining Defendants, and any successors thereof, 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, associated with the illegal conduct alleged above including, but not limited to, all funds on deposit in MetroWest 7543, Tech Power 0560, and all other of Defendants' bank accounts or trading accounts that received funds as a result of the unlawful conduct;

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

1. Engaging in conduct in violation of Sections 4c(a) of the Act, 7 U.S.C. § 6c(a), and Regulation 1.38(a), 17 C.F.R. § 1.38(a);
2. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29));
3. Entering into any transactions involving "commodity interests" (as that term is defined in regulation 1.3(yy), 17 C.F.R. § 1.3(yy) 2014), for accounts held in the name of any Defendant or for accounts in which any Defendant has a direct or indirect interest;
4. Having any interests traded on any Defendants' 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 interests;
6. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any interests;
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) (2014); and

8. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2014)), agent, or any other officer or employee of any person registered, exempted from registration or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014).

D. An order requiring each Defendant to pay civil penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain for each violation of the Act; or (2) \$140,000 for each violation of the Act and Commission Regulations;

E. 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, trading profits, revenues, salaries, commissions, fees or loans derived directly or indirectly from acts or practices which constitute violations of the Act and Commission Regulations as described herein, including pre-judgment interest thereon from the date of such violations;

F. An order directing Defendants, and any successors thereof, to make full restitution to every customer, client or 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;

G. An order directing that Defendants, and any successors thereof, make an accounting to the Court of all of their assets and liabilities, together with all funds they received from and paid to clients and other persons in connection with commodity futures transactions and all disbursements for any purpose whatsoever of funds received from commodity transactions, including salaries, commissions, interest, fees, loans and other disbursement of money or property of any kind from June 1, 2012 to the date of such accounting.

H. An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2012); and

I. An order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Respectfully submitted,

Date: April 14, 2015

/s/ Lindsey Evans

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