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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

NEW YORK OPTIONS EXCHANGE and
TAHOE FUTURES,

Defendants.

07 CV 2376 (LAK)

ECF CASE

[Proposed]
Order For Entry of Judgment by
Default, Permanent Injunction and
Ancillary Equitable Relief Against New
York Options Exchange and Tahoe
Futures

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JUDGE KAPLAN'S CHAMBERS

On March 22, 2007, the Commodity Futures Trading Commission ("Commission") filed a Complaint charging defendant New York Options Exchange ("NYOEX") with illegally offering off-exchange futures contracts in violation of Section 4(a) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 6(a) (2005), and charging NYOEX and defendant Tahoe Futures ("Tahoe") (collectively the "Defendants") with options fraud in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c) (2006) (the "Complaint").

On March 22, 2007, the Court issued an *Ex Parte* Statutory Restraining Order, which, among other things, prohibited Defendants from altering or destroying books, records, and documents, and barring them from denying access to those books, records, or documents to any representative of the Commission;

Proper service of process has been effected, Defendants have failed to answer or otherwise defend this action, and the Clerk has issued a Certificate of Default;

The Commission has now submitted its Application for Entry of Default Judgment, Permanent Injunction and Ancillary Relief ("Application") against NYOEX and Tahoe pursuant

to Fed. R. Civ. P. 55(b)(2) and Local Rule 55.2(b). The Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Application, and other written submissions of the Commission filed with the Court, and being fully advised in the premises, hereby:

GRANTS the Commission's Application for Entry of Judgment by Default Against NYOEX and Tahoe and enters findings of fact and conclusions of law finding NYOEX and Tahoe liable as to all violations as alleged in the Complaint. The Court further grants the Commission's request to assess monetary damages against NYOEX and Tahoe, including restitution and civil monetary penalties. Accordingly, the Court now issues the following Order for Default Judgment, Permanent Injunction and Ancillary Equitable Relief against NYOEX and Tahoe ("Order") on issues of liability and ancillary equitable relief.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and the Defendants pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), 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.

Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1 (2002), in that the acts and practices in violation of the Act and Commission Regulations occurred within this district, among other places.

B. Findings of Fact

NYOEX, through representations made on its website, www.nyoex.com, purports to be an exchange for energy products based at 195 Broadway Street, New York, New York that was formed by independent oil and gas traders in the United States in 2002 with trading facilities added in Chicago in 2005. The NYOEX website describes: 1) the energy futures and options contracts for which NYOEX purportedly serves as an exchange; 2) expiry schedules for those futures contracts; and 3) the purported members of NYOEX.

A number of the firms that the NYOEX website purports to be members of NYOEX are not, in fact, members of NYOEX and have never heard of NYOEX.

NYOEX is not a board of trade designated by, or registered with, the Commission as either a contract market or a derivatives transaction execution facility. Moreover, there is no such entity located at the New York address listed for NYOEX on its website and website registration. The web host server appears to be located in Lausanne, Switzerland.

Tahoe fraudulently solicited customers to purchase options on futures contracts purportedly traded on NYOEX. Tahoe purported through its website, www.tahofutures.com, to be a non-clearing member of both the New York Mercantile Exchange ("NYMEX") and NYOEX and to be registered with NYMEX. In fact, Tahoe is neither a non-clearing member of nor is registered with NYMEX.

The websites for Tahoe and NYOEX could be viewed by prospective customers in the United States. Neither the Tahoe nor NYOEX websites restricted the purported opportunity to trade futures and options on futures contracts on NYOEX to persons outside the United States. In fact, account opening documents contained sections to be completed by United States customers.

Tahoe solicited customers to trade options on energy futures contracts with NYOEX through direct telephone solicitations. These customers were led to believe that NYOEX is an exchange and Tahoe is its broker, and that both were located in the United States. Customers were given a fax number of (203) 547-6675 and two different toll free numbers to mislead them to believe that Tahoe is located in the United States. The fax number, (203) 547-6675, is registered to a United States communications company, j2 Communications, which maintains servers located in the United States. That company in turn leased the use of that number to Tahoe.

Once the customers were advised that they had opened an online trading account on NYOEX that they could access through the NYOEX website, they were instructed to wire their funds to bank accounts located in Hong Kong.

Customers were promised substantial profits when, in fact, the customers lost nearly all of the money that they had forwarded to Defendants. Customers of Tahoe and NYOEX lost in excess of \$5,340,645.00.

C. Conclusions of Law

1. Violations of Section 4(a) of the Act by NYOEX

Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002), provides that, unless exempted by the Commission, "it shall be unlawful for any person to offer to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States ... for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery..." when: (1) such transactions have not been conducted on or subject to the rules of a board of trade that has been designated or registered by the Commission as a contract market or derivatives

transaction execution facility for such commodity; (2) such contracts have not been executed or consummated by or through a contract market; and (3) such contract is not evidenced by a written record showing the date, parties, property covered, price, and terms of delivery.

NYOEX violated of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002), because it offered to enter into, executed, confirmed the execution of, for the purchase or sale of a commodity for future delivery when: (1) such transactions have not been conducted on or subject to the rules of a board of trade that has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity; (2) such contracts have not been executed or consummated by or through such contract market; and (3) such contracts were not evidenced by a written record showing the date, parties, property covered, price, and terms of delivery.

2. Violations by Defendants of Section 4c(b) of the Act and Section 32.9(a) and (c) of the Regulations: Options Fraud

Section 4c(b) of the Act, 7 U.S.C. § 6c(b), makes it unlawful to offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under the Act that is of the character of, or is commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty," or "decline guaranty," contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.

Commission Regulation 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c), makes it unlawful for any person, directly or indirectly (a) to cheat or defraud or attempt to cheat or defraud any person, or (c) 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, or the confirmation of the execution of any commodity option transaction.

NYOEX and Tahoe violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 32.9(a) and (c), 17 C.F.R. §§ 32.9(a) and (c), because, in connection with offers to enter into, entry into and/or confirmation of the execution of commodity options transactions, they cheated or defrauded or attempted to cheat or defraud customers, and deceived or attempted to deceive customers.

3. Appropriate Relief

Permanent injunctive relief is warranted in light of the egregious nature of the Defendants' conduct in fraudulently soliciting and receiving over \$5,340,645.00 from customers to invest in options on futures contracts as well as Defendants' high level of scienter in conducting a well-planned scheme to systematically defraud the public. These facts demonstrate a reasonable likelihood of future violations.

Imposition of civil monetary penalties is appropriate in this case because Defendants' violations of the Act and Commission Regulations were intentional and directly impacted the numerous victims of this fraud. Likewise, the remedy of restitution is appropriate to compensate the victims of Defendants' wrongful acts.

II. ORDER FOR PERMANENT INJUNCTION

IT IS HEREBY ORDERED that:

A. NYOEX is permanently restrained, enjoined and prohibited from directly or indirectly offering to enter into, entering into, executing, confirming the execution of, or conducting an office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a);

B. NYOEX and Tahoe are permanently restrained, enjoined and prohibited from directly or indirectly:

1. cheating or defrauding or attempting to cheat or defraud any persons; or deceiving or attempting to deceive any person by any means whatsoever, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of any commodity option transaction, in violation of Section 4c(b) of the Act and Commission Regulations 32.9(a) and (c); and

2. offering to enter into, entering into, executing, confirming the execution of, or conducting business for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a commodity option contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe, in violation of Section 4c(b) of the Act;

C. Defendants are permanently prohibited from engaging, directly or indirectly, in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, , 7 U.S.C. § 1a(4) ("commodity interest"), including but not limited to, the following:

- 1. trading on or subject to the rules of any registered entity, at that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);**
- 2. engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;**
- 3. soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest contract;**
- 4. 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) (2004), or acting as a principal, agent or any other officer or employee of any person 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) (2004); and

5. engaging in any business activities related to commodity interest trading;

D. Defendants are further permanently restrained, enjoined and prohibited from filing a petition in bankruptcy without providing the Commission with prompt notice by Certified Mail of such filing, as required by Part IV.C of this Order; and

E. The injunctive provisions of this Order shall be binding upon NYOEX and Tahoe, upon any person insofar as he or she is acting in the capacity of officer, agent, servant or employee of NYOEX or Tahoe, and upon any person who receives actual notice of this Order, by personal service, email or facsimile, insofar as he or she is acting in active concert or participation with NYOEX or Tahoe.

III. RESTITUTION, CIVIL MONETARY PENALTIES, AND OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED that:

A. Restitution

Upon entry of this Order, NYOEX and Tahoe shall pay, jointly and severally, restitution in the amount of \$5,340,645.00, plus post-judgment interest. Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Appointment of Monitor: To effect payment by Defendants and distribution of restitution, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall collect restitution payments from Defendants, and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, the Monitor shall

not be liable for any action or inaction arising from its appointment as Monitor, other than actions involving fraud.

Defendants shall make restitution payments under this Order in the name "NYOEX - Restitution Fund" and shall send such restitution payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to Office of Administration, National Futures Association, 200 W. Madison Street #1600, Chicago, Illinois 60606-3447 under cover letter that identifies the paying Defendant and the name and docket number of this proceeding. They paying Defendant shall simultaneously transmit copies of the cover letter and the form of payment to (a) the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and (b) the Chief, Office of Cooperative Enforcement, at the same address.

The Monitor shall oversee Defendants' restitution obligations, and shall have discretion to determine the manner for distribution of funds in an equitable fashion to defrauded NYOEX and Tahoe customers, as appropriate, or may defer distribution until such time as it deems appropriate. In the event that the amount of restitution payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative costs of the making a restitution distribution is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part III.B, below.

The Defendants shall cooperate with the Monitor as appropriate to provide such information as the NFA deems necessary and appropriate to identify NYOEX and Tahoe

customers to whom the Monitor, in the Monitor's sole discretion, may determine to include in any plan for distribution of any restitution payments.

B. Civil Monetary Penalties

Upon entry of this Order, Defendants shall pay civil monetary penalties in the following amounts, plus post-judgment interest: NYOEX \$260,000; and Tahoe \$130,000. Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

The Defendants shall pay their civil monetary penalties by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, the payments shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman - AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-6569

If payment by electronic transfer is chosen, the paying Defendant shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. The paying Defendant shall accompany payment of the penalty with a cover letter that identifies the paying Defendant, and the name and docket number of this proceeding. The paying Defendant shall simultaneously transmit copies of the cover letter and the form of payment to 1) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and 2) the Chief, Office of Cooperative Enforcement, at the same address.

C. Priority Of Monetary Sanctions And Partial Payments

All payments by Defendants pursuant to this Order shall first be applied to satisfaction of their restitution obligations, consistent with the authority granted the Monitor in Part III.A, above. After satisfaction of their restitution obligations, payments by Defendants pursuant to this Order shall be applied to satisfy Defendants' civil monetary penalty obligations.

Any acceptance by the Commission and/or Monitor of partial payment of Defendants' restitution obligations and/or civil monetary penalty obligations shall not be deemed a waiver of the respective requirement to make further payments pursuant to this Consent Order, or a waiver of the Commission's and/or Monitor's right to seek to compel payment of any remaining balance.

D. Accounting

NYOEX and Tahoe shall provide an accounting to the Court within thirty (30) days hereof of all of NYOEX's and Tahoe's assets and liabilities, together with all funds it received from and paid to clients and other persons in connection with commodity interest transactions or purported commodity interest transactions, and all disbursements for any purpose whatsoever of funds received from commodity interest transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind, from, but not limited to, January 2006 through and including the date of such accounting.

E. Cooperation

Defendants shall cooperate fully with the Commission, the Monitor, and/or any government agency seeking to enforce the restitution and civil monetary provisions of this Order

by providing any requested information relating to their financial status including, but not limited to, income and earnings, assets, financial statements, asset transfers, and tax returns.

IV MISCELLANEOUS PROVISIONS

A. Partial Lifting of Freeze: Any order entered in this proceeding freezing Defendants' assets or prohibiting the Defendants' transfer of funds or other property shall remain in full force and effect, except that Defendants shall be permitted to use such assets, funds, or property to satisfy their restitution and/or civil monetary penalty obligations as set forth in Parts III.A and III.B, above;

B. Third-Party Beneficiaries: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the defrauded customers of NYOEX and Tahoe is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution amount which has not been paid by Defendants;

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

Notice to Commission: Stephen J. Obie, Regional Counsel
U.S. Commodity Futures Trading Commission
Division of Enforcement - Eastern Regional Office
140 Broadway, 19th floor
New York, New York 10005

Notice to the NFA: Office of Administration
National Futures Association
200 W. Madison St., #1600
Chicago, IL 60606-3447

All such notices to the Commission shall reference the name and docket number of this proceeding; and

D. This Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

SO ORDERED, at NY, New York on this 23 day of July, 2007.



Honorable Lewis A. Kaplan
UNITED STATES DISTRICT JUDGE 

**THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON _____**