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CHARLOTTE, NC

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U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

PMC STRATEGY, LLC, MICHAEL
HUDSPETH, and TIMOTHY BAILEY,

Defendants.

CASE NO. 3:11cv73

**COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL MONETARY
PENALTIES, AND OTHER EQUITABLE RELIEF**

Plaintiff U.S. Commodity Futures Trading Commission ("Commission") alleges as follows:

I. SUMMARY

1. From at least June 30, 2008 through the present ("relevant period"), Defendant PMC Strategy, LLC ("PMC"), through its principals and controlling persons, Michael Hudspeth ("Hudspeth") and Timothy Bailey ("Bailey"), and Hudspeth and Bailey, individually and in their capacity as officers, employees, and agents of PMC, (collectively "Defendants"), fraudulently solicited approximately \$669,000 from members of the general public ("pool participants") by advising them, that among other things, their funds would be pooled together in the name of PMC and used to trade off-exchange foreign currency contracts ("forex"). Rather than invest all

pool participant funds in forex, however, Defendants only deposited approximately \$497,000 of the funds into PMC's forex trading accounts at Forex Capital Markets LLC ("FXCM") and MB Trading Futures ("MBT"), both registered futures commission merchants ("FCMs"). The remaining \$171,000 remained in PMC's Bank of America ("BOA") account.

2. From July 2008 through April 2010, Defendants suffered forex trading losses of approximately \$300,000. During approximately the same time period, Defendants withdrew from the trading accounts funds totaling approximately \$151,000. Defendants used these funds, as well as the \$171,000 in the BOA account, to remit approximately \$239,000 to pool participants as purported monthly trading profits, despite suffering trading losses in 15 of the 22 months and being net negative from October 2008 onward. Defendants, therefore, were operating a Ponzi scheme. Defendants also misappropriated approximately \$128,000 for their own personal use.

3. As a result of the conduct described above and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of certain anti-fraud provisions of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 1 et seq. (2006), 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). Hudspeth and Bailey, as agents, employees or officers of PMC, committed the acts and omissions described herein within the course and scope of their employment, agency or office with PMC; therefore, PMC is liable under Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Commission Regulation ("Regulation") 1.2, 17 C.F.R. § 1.2 (2011), for violations of the Act, as amended by the CRA, committed by Hudspeth and Bailey.

4. Hudspeth and Bailey are liable under Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), as controlling persons of PMC, for PMC's violations of the Act, as amended by the CRA, because they failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations.

5. Accordingly, pursuant to Section 6c of the Act, to be codified at 7 U.S.C. § 13a-1, and Section 2(c)(2) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin Defendants' unlawful acts and practices, to compel their compliance with the Act, as amended by the CRA, and to further enjoin Defendants from engaging in certain commodity and forex-related activity. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

6. Unless restrained and enjoined by this Court, 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

7. Section 6c(a) of the Act, to be codified at 7 U.S.C. § 13a-1, authorizes the Commission to seek injunctive relief in district court 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 the Act or any rule, regulation, or order thereunder.

8. The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to Section 6c of the Act, to be codified at 7 U.S.C. § 13a-1, and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2).

9. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, to be codified at 7 U.S.C. §13a-1(e) because Defendants are found, inhabit, reside and/or transact business in the Western District of North Carolina, and certain of the transactions, acts, practices, and courses of business alleged to have violated the Act, as amended by the CRA, occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

10. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, to be codified at 7 U.S.C. §§ 1 *et seq.*, as amended by the CRA, and the Regulations promulgated thereunder, 17 C.F.R. §§1.1 *et seq.* (2011). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street NW, Washington, D.C. 20581.

11. Defendant **PMC Strategy, LLC** was incorporated on June 18, 2008 in North Carolina as a member-managed LLC. Although its principal place of business is listed at 1829 Dickerson Blvd., Suite 114, Monroe, North Carolina, 28110, that address is actually the location of an UPS store. PMC, which has never been registered in any capacity with the Commission, is engaged in the business of soliciting and accepting funds from pool participants for the purpose of entering into margined or leveraged agreements, contracts or transactions in forex on behalf of PMC's pool participants.

12. Defendant **Michael Hudspeth** is an incorporator, officer, and director of PMC and resides in Statesville, North Carolina. Hudspeth solicited and interacted with pool participants and had control over funds deposited with PMC. Hudspeth has never been registered in any capacity with the Commission.

13. Defendant **Timothy Bailey** is an incorporator, officer, and director of PMC and

resides in Monroe, North Carolina. Bailey traded PMC's forex accounts and had control over funds deposited with PMC. Bailey is also the pastor at Mt. Olive AME Zion Church in Monroe, North Carolina. Bailey has never been registered in any capacity with the Commission.

IV. FACTS

Defendants' Fraudulent Scheme

14. Beginning in June 2008, Defendants fraudulently solicited at least 20 individuals and entities for the purported purpose of trading a pooled investment operated and managed by Defendants in connection with forex.

15. To induce prospective pool participants to trade forex, Hudspeth advised them in June 2008 that he had been in the investment business for approximately 20 years, and that he had just started a new company, PMC, with two traders, Timothy Bailey and Sam Watkins.

16. Hudspeth advised prospective pool participants that PMC had returned \$160,000 in profits within the six months prior to June 2008 by successfully trading forex.

17. Hudspeth also advised prospective pool participants that only two percent of their money was to be used to trade forex, and therefore, only two percent of a prospective pool participant's funds was ever at risk.

18. Prospective pool participants were told by Hudspeth that PMC operated on a 50/50 compensation/interest agreement, based on the monthly gross return on investment ("ROI"). Each pool participant would receive a monthly check representing 50 percent of the profits made for each pool participant that month by forex trading.

19. In order to allay any potential concerns regarding the risks associated with trading forex, Hudspeth informed prospective pool participants that they would be able to redeem the amount of their initial investment within 30 days of notice. He also told prospective pool

participants that PMC is a family club so everyone can make good money and that Defendants are not in the business to rip anyone off.

20. Most of the above representations made by Hudspeth were false.

21. First, PMC was not incorporated until June 18, 2008 and engaged in no forex trading until July 2008. Further, while PMC's traders, Bailey and Sam Watkins did trade for themselves during January through June 2008, their trading resulted in consistent net losses.

22. Second, Defendants consistently put more than two percent of pool participant funds at risk.

23. Third, as described in more detail below, monthly checks received by pool participants were not calculated using the ROI formula but rather, were part of Defendants' Ponzi scheme. In fact, pool participants subsequently invested additional funds based on the sizable purported monthly profit checks they received from PMC.

24. Fourth, despite pool participants having given PMC the required 30 day redemption notice, PMC has steadfastly refused to return any funds to pool participants in accordance with such redemption requests.

25. In January 2009, Hudspeth contacted pool participants to notify them of a new program offered by PMC. New computer software which PMC had purchased would guarantee a five percent per month ROI, but required a minimum of \$100,000 to participate. Based on the purported success of PMC's previous trading, pool participants invested additional funds into the new program.

26. Upon information and belief, as recently as November, 2010, Defendants are still trying to solicit funds from both pool participants and prospective pool participants.

Pool Participant Funds and Forex Trading

27. In total, Defendants received approximately \$669,000 from pool participants by check and wire transfer payable to PMC for purposes of trading forex. Of this amount, Defendants deposited \$497,000 into PMC trading accounts at FXCM and MBT. The remaining \$171,000 was deposited into PMC's BOA account.

28. In the trading accounts at FXCM and MBT, Defendants sustained losses in 15 of the 22 months they traded pool participant money, losing approximately \$300,000. They were overall net negative from October 2008 onward.

29. Of the remaining approximately \$197,000 in the FXCM and MBT accounts, Defendants withdrew approximately \$151,000 and deposited these funds into the BOA account. The remaining \$46,000 was transferred to an offshore forex trading account.

30. Defendants used the BOA account to pay purported monthly profits to PMC pool participants, to finance PMC's ongoing operations and to pay PMC's principals.

31. In total, Defendants misappropriated approximately \$128,000 in pool participant funds for their own personal use.

Defendants Concealed Trading Losses With False Statements

32. Defendants, through false representations and statements concealed their unsuccessful trading and their on-going fraud by sending false statements to pool participants.

33. Beginning in at least July 2008 and continuing through April 2010, Defendants sent purported profit checks to pool participants each month, when in fact, actual forex trading by Defendants during this period resulted in net monthly losses more than 66% of the time.

34. For example, three pool participants received a check for October 2008 trading profits in the amount of \$1,000 when Defendants' actual forex trading that month resulted in total

net losses of \$195,585.98. Pool participants were not informed of the losses for that month or any other month.

35. In February 2010, Defendants stopped sending profit checks to pool participants.

36. When the pool participants demanded explanations and asked for return of their initial investment, Hudspeth, Bailey and Watkins explained that PMC could not return their funds because if it did, every PMC pool participant would lose their investment.

37. When pool participants demanded to see PMC's business records to verify PMC's assertion, PMC refused. Defendants sent an email to pool participants on September 1, 2010 informing them that PMC's accountant advised them against doing so because PMC was a private company. In the same email, however, Defendants admitted that PMC had sustained a large six-figure loss in 2009.

38. At all relevant times, Hudspeth and Bailey were signatories on PMC's banking account and therefore had knowledge of PMC's financial issues.

39. Further, Bailey drafted e-mails indicating the percentage of total ROI mid-month profits and Hudspeth sent the e-mails to at least one pool participant. These e-mails misrepresented the actual forex trading results. Actual trades were reflected nowhere on the e-mails and the e-mails did not indicate where pool participant money was being held or traded.

Forex Transactions Entered into on Behalf of PMC's Pool Participants

40. Neither Defendants nor the FCMs that were counterparties to the forex transactions entered into and /or contemplated by Defendants and the pool participants were financial institutions, registered broker dealers (or their associated persons), insurance companies, bank holding companies or investment bank holding companies.

41. Neither Defendants nor the pool participants who provided funds to the Defendants were "eligible contract participants" as that term is defined in the Act. See Section 1a(12)(A)(v) of the Act, to be codified at 7 U.S.C. § 1a(12) (an "eligible contract participant," as relevant here, is "a corporation . . . that has total assets exceeding \$10,000,000 . . ." or an individual with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction "to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual").

42. Defendants traded foreign currency on a margined or leveraged basis in the trading accounts containing pool participants' funds. The foreign currency transactions conducted by Defendants neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these foreign currency contacts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

Hudspeth and Bailey are Control Persons of PMC Strategy, LLC

43. At all material times, Hudspeth and Bailey were principals of PMC and together were responsible for the corporation's acts.

44. Hudspeth was responsible for soliciting and interacting with prospective pool participants and pool participants. He utilized false sales solicitations tactics to induce prospective pool participants to send money to PMC. Further, Hudspeth opened the trading account at MBT on behalf of PMC and, upon information and belief, had the authority and ability to examine the trading accounts at both MBT and FXCM before he sent out false profit checks to pool participants. Thus, Hudspeth knew, consciously avoided learning, or acted recklessly in failing to learn that the purported

monthly profit checks signed by himself, on behalf of PMC, which were sent to pool participants as well as himself and Bailey, contained false information.

45. Bailey is PMC's Chief Executive Officer. He opened the trading accounts at FXCM and was the only trader authorized to trade PMC's accounts, and therefore, knew that PMC's trading was unprofitable. Nevertheless, Bailey withdrew monthly sums from PMC's BOA account, to which he was not entitled, which represented purported trading gains from PMC's trading.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE:

**Violations of Sections 4b(a)(2)(A)-(C) of the Act,
as amended by the CRA
(Fraudulent Solicitation, Misappropriation and False Statements)**

46. The allegations set forth in paragraphs 1 through 45 are re-alleged and incorporated herein by reference.

47. Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), make it unlawful

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market - (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contact for or, in the case of paragraph (2), with the other person.

Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, applies to the foreign currency transactions, agreements or contracts offered by Defendants. *See* Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iv).

48. As set forth above, from at least June 2008 through the present, in or in connection with foreign currency contracts, made, or to be made, for or on behalf of or with, other persons, Defendants cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool participants; willfully deceived or attempted to deceive pool participants or prospective pool participants by, among other things, knowingly (i) misappropriating pool participant funds that purportedly were to be used to trade forex; (ii) fraudulently soliciting pool participants and prospective pool participants; (iii) issuing false profit checks, all in violation of Sections 4b(a)(2)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C).

49. As set forth above, from at least June 18, 2008 through the present, in or in connection with forex contracts, made, or to be made, for or on behalf of or with, other persons, Defendants willfully made or caused to be made to the other person any false report or statement or willfully entered or caused to be entered for the other person any false record among other things, knowingly issuing false profit checks and false ROI e-mails, all in violation of Section 4b(a)(2)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(B).

50. PMC, by and through its agents, including Hudspeth and Bailey, engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

51. Hudspeth controlled PMC, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, PMC's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), Hudspeth is liable for PMC's violations of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

52. Bailey controlled PMC, directly or indirectly, and did not act in good faith or

knowingly induced, directly or indirectly, PMC's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b), Bailey is liable for PMC's violations of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

53. The foregoing acts, misrepresentations, omissions, and failures of Hudspeth and Bailey occurred within the scope of their employment, office or agency with PMC; therefore, PMC is liable for these acts, misrepresentations, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B) and Regulation 1.2, 17 C.F.R. § 1.2 (2010).

54. Each act of misappropriation, misrepresentation or omission of material facts, and making or causing to be made a false report or statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court, as authorized by Section 6c of the Act, to be codified at 7 U.S.C. § 13a-1, and pursuant to its own equitable powers, enter:

- a) An order finding that Defendants violated Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C);
- b) An order of permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, from engaging, directly or indirectly:
 - (i) in conduct in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, and as amended by the Dodd-Frank Wall Street Reform and Consumer Protection

Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C);

(ii) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended by the CRA and Dodd-Frank Act, to be codified at 7 U.S.C. § 1a);

(iii) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2010)) ("commodity options"), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 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;

(iv) having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;

(v) 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, and/or forex contracts;

(vi) 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, and/or forex contracts;

(vii) 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) (2010); and

(viii) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2010)), 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).

c) An order directing Defendants, as well as any successors to any Defendant, 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, as amended by the CRA, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

d) An order directing Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act, as amended by the CRA, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) An order directing each Defendant to pay a civil monetary penalty for each violation of the Act, as amended by the CRA, described herein, plus post-judgment interest, in the amount of the higher of: 1) \$140,000 for each violation of the Act, as amended by the CRA, committed on or after October 23, 2008; 2) \$130,000 for each violation of the Act, as amended by the CRA, committed between June 18, 2008 and October 23, 2008; or 3) triple the monetary gain to the Defendants for each violation of the Act, as amended by the CRA, described herein, plus post-judgment interest;

f) 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 them and any of the customers whose funds were received by them

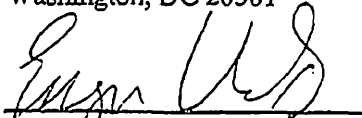
as a result of the acts and practices which constituted violations of the Act, as amended by the CRA, as described herein;

g) An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

h) Such other and further relief as the Court deems proper.

February 9, 2011

Respectfully Submitted,
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