

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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12:56 pm, Sep 29, 2015

In the Matter of:

Barbara Cohen and Pure Reason,
LLC,

Respondents.

CFTC Docket No. 15 - 39

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, AS AMENDED,
MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that on October 22, 2014, Barbara Cohen (“Cohen”) violated Section 6(c)(2) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 9(2) (2012) and during the period from March 2012 to January 2013 (“2012-2013 period”) Cohen violated Commission Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2014), pursuant to § 13(b) of the Act, 7 USC §13c(b). Also, during the 2012-2013 period, Pure Reason, LLC (“Pure Reason”) violated Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2014). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Cohen and Pure Reason (collectively, “Respondents”) engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, as Amended, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.¹

¹ Respondents consent to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondents do not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents

III.

The Commission finds the following:

A. SUMMARY

In connection with the Commission's investigation of Respondents, on October 22, 2014, Cohen knowingly made false and misleading statements to Commission staff while testifying under oath. Cohen falsely testified that she was authorized to trade and traded an account that she never in fact traded or had any authority to trade.

Further, during the 2012-2013 period, Pure Reason's website, which was developed and maintained by Cohen, promoted Pure Reason's trading software by demonstrating profitable trading results without disclosing that these results were based on hypothetical, and not actual, trading.

B. RESPONDENTS

Barbara Cohen, resides in Tarpon Springs, Florida. Cohen has been registered as an associated person ("AP") of Pure Reason since August 2007 and is an owner, principal and Chief Operating Officer ("COO") of Pure Reason. In addition, Cohen has been registered as an AP of Vankar Trading Corporation ("Vankar") since May 2014, and is a branch manager and forex AP of Vankar.

Pure Reason, LLC, has been registered in Florida as a limited liability company since September 2005, has its principal place of business in Tarpon Springs, Florida, and has been registered with the Commission as a commodity trading advisor ("CTA") since August 2007.

C. FACTS

During the 2012-2013 period, Cohen developed and maintained a website on behalf of Pure Reason, a registered CTA, to promote the sale of a software trading program and courses on how to use the software. Cohen, a registered AP of Pure Reason, also is a principal, part owner, and COO of Pure Reason.

Cohen was the prime author of the software program sold by Pure Reason, taught a number of classes offered by Pure Reason and represented on the website that she had traded crude oil products. Through this software, customers received indicators of market trends in such products as e-mini futures contracts, crude oil futures contracts and foreign currency transactions.

consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

The website, which contained links to weekly promotional webinars, also contained demonstrations of trading profits earned during these webinars using Pure Reason's software program. These profitable trading results, however, were based on hypothetical trades and there was no disclaimer on the website or during the webinars that these were not actual trading results. Cohen testified that she was aware that these profitable trade results were based on hypothetical trades.

False Statements Made To Commission

During the course of the Commission's investigation of this matter, staff issued a demand to Pure Reason to produce, in part, documents and/or other information substantiating claims on Pure Reason's website that Cohen had traded crude oil. In response, Pure Reason produced a "Performance Summary" ("PS") of a trading account from a futures commission merchant ("FCM") which according to counsel for Pure Reason and Cohen represented Cohen's trading history. The PS contained an account number but no account name. When staff contacted the FCM for more information regarding this account, staff was informed that Cohen was not associated with the account and was not authorized to trade the account.

On October 22, 2014, Cohen testified, under oath, regarding the PS produced by Pure Reason to Commission staff. Cohen testified that only she and her partner were authorized to trade the account on the PS. When asked if the trades listed on the PS were trades she placed, Cohen falsely testified, "Some. Not all. He [Cohen's partner] traded, I traded, depending on the day and the time and who was trading ..." Commission staff further confirmed from Cohen's partner that neither he nor Cohen was authorized to trade the account reflected on the PS and that he never in fact placed any trades for this account.

IV.

LEGAL DISCUSSION

A. Cohen Violated Section 6(c)(2) Of The Act

Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012), provides that it is unlawful "for any person to make any false or misleading statement of a material fact to the Commission . . . or to omit to state in any such statement any material fact that is necessary to make any statement of material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading." During investigative testimony, while under oath, Cohen made false and misleading statements to Commission staff regarding her trading of an account that she never traded and that she never was authorized to trade. Cohen knew or reasonably should have known that her statements were both false and misleading. Further, these statements were material because they went to the heart of a document that Commission staff was analyzing pursuant to the Commission's investigation of Respondents.

B. Pure Reason Violated Regulation 4.41(b)

Regulation 4.41(b), 17 C.F.R § 4.41(b), prohibits any person from presenting the performance of any simulated or hypothetical commodity interest account, transaction or series of transactions of a CTA unless the hypothetical disclaimer set forth in Regulation 4.41(b)(1)(i) or (ii) is disclosed. During the 2012-2013 period, Pure Reason, a registered CTA, promoted profitable trading results from its software trading program on its website and webinars. These profitable trading results, however, were based on hypothetical trades and there was no disclaimer on the website or during the webinars that these were not actual trading results. By this conduct, Pure Reason violated Regulation 4.41(b), 17 C.F.R § 4.41(b). *CFTC v. Vartuli*, 228 F.3d 94, 107 (2d Cir. 2000) (phrasing and placement of disclosure appeared designed to mislead and violated Regulation 4.41(b)).

C. Derivative Liability

1. Cohen's Controlling Person Liability

Cohen controlled Pure Reason and, as a controlling person, is liable for Pure Reason's violations of the Act and Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), which provides that a person who, directly or indirectly, controls any person who has violated any provision of the Act or any rule, regulation or order issued pursuant to the Act may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person; the Commission has the burden of proving that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation. *See Monieson v. CFTC*, 996 F.2d 852, 858 (7th Cir. 1993); *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1334 (11th Cir. 2002). A "fundamental purpose" of the statute is "to reach behind the corporate entity to the controlling individuals of the corporation and to impose liability for violations of the Act directly on such individuals as well as on the corporation itself." *Id.* (quoting *JCC, Inc. v. CFTC*, 63 F.3d 1557, 1567 (11th Cir. 1995)).

To establish controlling person liability under Section 13(b) of the Act, 7 U.S.C. § 13c(b), the Commission must show (1) control; and (2) lack of good faith or knowing inducement of the acts constituting the violation. *See In re First Nat'l Trading Corp.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,142, at 41,787 (CFTC July 20, 1994), *aff'd without opinion sub nom. Pick v. CFTC*, 99 F.3d 1139 (6th Cir. 1996). To establish control, a defendant must possess general control over the operation of the entity principally liable. *See R.J. Fitzgerald*, 310 F.3d at 1334. The Commission must show "that the defendant exercised general control over the operation of the entity principally liable and possessed the power or ability to control the specific transaction or activity upon which the primary violation was predicated, even if such power was not exercised." *CFTC v. Int'l Fin. Services, Inc.*, 323 F. Supp. 2d 482, 504 (S.D.N.Y. 2004) (quoting *CFTC v. Baragosh*, 278 F.3d 319, 330 (4th Cir.), *cert. denied*, 537 U.S. 950 (2002)). Control is "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise." *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103, n.4 (CFTC Jan. 12, 1988). "Section [13(b)], therefore, is about power and imposing liability for those who fail to exercise it to prevent illegal conduct." *R.J. Fitzgerald*, 310 F.3d at 1334.

Cohen was an officer, principal, and part owner of Pure Reason and therefore had the power to control Pure Reason. See *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103, at 34,767 (CFTC Jan. 12, 1988); see also *Apache Trading Corp.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,251, at 38,795 (CFTC Mar. 11, 1992) (finding that an individual controls a corporation where he “directs the economic aspects of the firm”). In addition, Cohen was responsible for the content of Pure Reason’s website, and therefore possessed the power or ability to control the specific transaction or activity upon which the violation of Regulation 4.41(b) was predicated.

To establish the “knowing inducement” element of the controlling person violation, the Commission must show that “the controlling person had actual or constructive knowledge of the core activities that constitute the violations at issue and allowed them to continue.” *JCC, Inc. v. CFTC*, 63 F.3d 1557, 1568 (11th Cir. 1995) (quoting *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103, at 34,767 (CFTC Jan. 12, 1988)). In this case, Cohen was an owner, COO and principal of Pure Reason and was responsible for developing and maintaining Pure Reason’s website. Here, the website which Cohen controlled, had links to webinars which displayed trading results without any hypothetical disclaimer. Further, Cohen knew that these trading results were hypothetical and there was no disclaimer on the website or during the webinars. Accordingly, Cohen knowingly induced, directly or indirectly, the conduct that constitutes a violation of the Act. Consequently, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), she is liable for Pure Reason’s violation of Regulation 4.41(b).

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, on October 22, 2014, Cohen violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012) and during the 2012-2013 period, Cohen violated Commission Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2014), pursuant to § 13(b) of the Act, 7 USC §13c(b). Also, during the 2012-2013 period, Pure Reason, LLC (“Pure Reason”) violated Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2014).

VI.

OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waive:

1. the filing and service of a complaint and notice of hearing;
 2. a hearing;
 3. all post-hearing procedures;
 4. judicial review by any court;
 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 6. any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2013), relating to, or arising from, this proceeding;
 7. any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
 8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that Cohen violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012) and Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2014), pursuant to § 13(b) of the Act, 7 USC §13c(b); and Pure Reason violated Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2014);
 2. orders Cohen to cease and desist from violating Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012) and Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2014), pursuant to § 13(b) of the Act, 7 USC §13c(b); and Pure Reason to cease and desist from violating Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2014);
 3. orders Respondents, jointly and severally, to pay a civil monetary penalty in the amount of one hundred forty thousand dollars (\$140,000), plus post-judgment interest; and
 4. orders Respondents and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Cohen shall cease and desist from violating Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012) and Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2014), pursuant to § 13(b) of the Act, 7 USC §13c(b); and Pure Reason shall cease and desist from violating Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2014);
- B. Respondents, jointly and severally, shall pay a civil monetary penalty in the amount of one hundred forty thousand dollars (\$140,000), plus post-judgment interest (the "CMP Obligation"). Post-judgment interest shall accrue on the CMP Obligation 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 (2006). Respondents shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and

- C. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
2. Cohen agrees that she shall not engage, directly or indirectly, for one year from the date of entry of this Order in 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) (2013).
3. Cooperation with the Commission: Respondents shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.
4. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
5. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligation as set forth in this Order, Respondents shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

The provisions of this Order shall be effective as of this date.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 29, 2015