

JUDGE BUGH 'ALD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

10 CV 2931

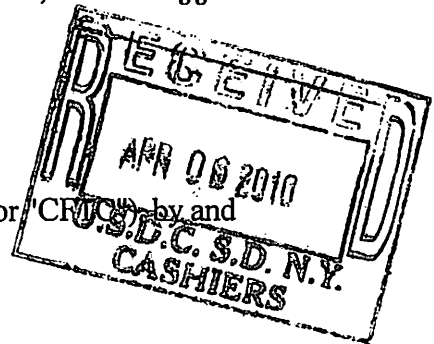
_____)
 U.S. COMMODITY FUTURES)
 TRADING COMMISSION)
)
 Plaintiff,)
)
 v.)
)
 KUEN CHEOL SONG,)
)
 Defendant.)
 _____)

CASE NO. _____

COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE AND
STATUTORY RELIEF AND PENALTIES
UNDER THE COMMODITY EXCHANGE
ACT, AS AMENDED, 7 U.S.C. §§ 1-25

I. SUMMARY

The U.S. Commodity Futures Trading Commission ("Commission" or "CFTC") by and through its attorneys, alleges as follows:



1. Kuen Cheol Song ("Song") is a director of the Singapore-based investment firm Woori Absolute Partners ("Woori").
2. Song controls two accounts for trading on the New York Mercantile Exchange ("NYMEX"): (1) his personal account, Acct. No. ***27Y, held at Futures Commission Merchant ("FCM") Deutsche Bank (the "Personal Account"), and (2) an account on behalf of his employer, Woori, the Woori Absolute Global Opportunity Fund ("WAGOF"), Account No. **WA2, held at FCM Credit Suisse (the "WAGOF Account"). (The Personal Account and the WAGOF Account are collectively referred to as the "Accounts.") Song trades the Accounts on NYMEX's Globex electronic trading platform ("Globex").
3. Beginning at least since August 28, 2009, and continuing through the present, Song has engaged in a series of illegal commodity futures transactions involving Natural Gas and Heating Oil contracts on NYMEX. Through this illegal scheme, Song repeatedly made fictitious, non-

competitive trades between his Personal Account and the WAGOF Account, both of which he controls, whereby Song's personal account virtually always profited at the expense of the WAGOF Account.

4. Specifically, during times of market illiquidity, Song repeatedly entered into fictitious, non-competitive trades by placing virtually simultaneous orders to buy in his Personal Account and orders to sell in the WAGOF Account, or, conversely, placing virtually simultaneous orders to buy in the WAGOF Account and orders to sell in his Personal Account. Subsequently, Song offset these trades at favorable prices that allowed his Personal Account to realize a gain, constituting a money pass between the two accounts. Song's "money pass" trades guaranteed that his Personal Account would virtually always win and that the WAGOF Account, with respect to trades entered opposite his Personal Account, would virtually always lose.

5. Since August 28, 2009, Song's personal account has profited by over \$348,000 through this illegal scheme of fictitious, non-competitive trades.

6. With this conduct, Song has been violating Section 4c(a)(2)(A)(ii) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6c(a)(2)(A)(ii) (2006), by entering into a transaction that is a fictitious sale 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 for the execution of the transaction.

7. Additionally, with this conduct, Song further has been violating Commission Regulation (“Regulation”) 1.38(a), 17 C.F.R. § 1.38(a) (2009), by entering into illegal noncompetitive transactions to buy and sell futures contracts.

8. By dint of this conduct and the further conduct described herein, Song has engaged, is engaging, or is about to engage in acts and practices in violation of certain trade practice provisions of 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), and Regulations.

9. Accordingly pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), the Commission brings this action to enjoin Song’s unlawful acts and practices, and to compel Song to comply with the Act and Regulations. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

10. Unless restrained and enjoined by this Court, defendant Song is 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

11. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), 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.

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), in that Song is found in, inhabits, or transacts 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, among other places.

III. PARTIES

13. Plaintiff, the United States Commodity Futures Trading Commission, is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2009).

14. Defendant Song controls and trades two accounts at NYMEX in New York, NY: (1) his Personal Account, and (2) the WAGOF Account. Under information and belief, Song is a citizen of Singapore. Song has never been registered with the Commission.

IV. FACTS

15. A futures contract is an agreement to purchase or sell a commodity for delivery, in the future, at a price determined at the initiation of the contract, that obligates each party to fulfill the contract at the specified price. Futures contracts are used to assume, or shift, price risk and may be satisfied by delivery or offset.

16. The natural gas futures contract traded on NYMEX is for a volume of 10,000 million British thermal units (MMBtu) of natural gas for delivery at the Henry Hub in Louisiana during the month specified in the contract.

17. The heating oil futures contract traded on NYMEX is for a volume of 42,000 gallons of “No. 2 Fuel Oil” for delivery at New York, New York during the month specified in the contract.

18. NYMEX is a designated contract market under Section 5(b) of the Act and Regulations 38.3(a)(1)(ii) and (iii).

19. Globex is an electronic trading platform used to trade, i.e., buy or sell, futures contracts listed on NYMEX. Globex runs continuously and, therefore, it is not restricted by geography or time zones.

20. Since August 28, 2009, Song, who controls and trades his Personal Account and the WAGOF Account, engaged in a series of natural gas and heating oil futures transactions executed on NYMEX’s Globex platform. During this time, Song repeatedly, illegally, and self-servingly, traded futures contracts between his Personal Account and the WAGOF Account.

21. Song engaged in two patterns of inter-account trading activity, as follows:

(a) Song would buy commodity futures contracts for his Personal Account at lower prices from the WAGOF Account and then sell them back, i.e., offset the previously established position, to the WAGOF Account at higher prices, or

(b) Song would sell commodity futures contracts from his Personal Account at higher prices to the WAGOF Account and subsequently buy them back, i.e., offset the previously established position, from the WAGOF Account at lower prices.

In general, this series of offsetting transactions resulted in no change in open positions held by the Accounts.

22. For example, on December 21, 2009 at 6:06 p.m., Song entered buy orders in his Personal Account, while entering sell orders for the WAGOF Account designed to trade against the Personal Account, resulting in the execution of the following January 2010 natural gas futures contracts on the NYMEX: 30 @ 5.677. At 8:08 p.m., Song then sold 30 January 2010 natural gas futures contracts from the Personal Account at 5.743 while buying 30 for the WAGOF Account opposite the sale for the Personal Account. This series of transactions resulted in a gain to the Personal Account of \$19,800.

23. For example, on January 7, 2010 between 6:01 p.m. and 6:31 p.m., Song entered buy orders in his Personal Account, while entering sell orders for the WAGOF Account designed to trade against the Personal Account, resulting in the execution of the following February 2010 natural gas futures contracts on the NYMEX: 10 @ 5.82, 18 @ 5.801, 2 @ 5.801. At 2:05 a.m. on January 8, 2010, Song then sold 30 February 2010 natural gas futures contracts from the Personal Account at 5.846 while buying 30 for the WAGOF Account opposite the sale for the Personal Account. This series of transactions resulted in a gain to the Personal Account of \$11,600.

24. Additionally, on January 21, 2010 between 9:16 p.m. and 9:17 p.m., Song entered sell orders in his Personal Account, while entering buy orders for the WAGOF Account designed to trade against the Personal Account, resulting in the execution of the following February 2010 natural gas futures contracts on the NYMEX: 10 @ 5.679. At 12:41 a.m. on January 22, 2010, Song then sold 10 February 2010 natural gas futures contracts for the WAGOF Account at 5.663 while buying 10 for his Personal Account opposite the sale for the WAGOF Account. This series of transactions resulted in a gain to the Personal Account of \$1,600.

25. Again, on January 25, 2010 at 6:04 p.m., Song entered buy orders in his Personal Account, while entering sell orders for the WAGOF Account designed to trade against the Personal Account, resulting in the execution of the following March 2010 natural gas futures contracts on the NYMEX: 19 @ 5.645. Between 6:12 p.m. and 6:13 p.m, Song then sold 19 March 2010 natural gas futures contracts from the Personal Account, 18 @ 5.666 and 1 @ 5.659, while buying 19 for the WAGOF Account opposite the sale for the Personal Account. This series of transactions resulted in a gain to the Personal Account of \$3,920.

26. Likewise, on February 4, 2010 at 6:01 p.m., Song entered sell orders in his Personal Account, while entering buy orders for the WAGOF Account designed to trade against the Personal Account, resulting in the execution of the following March 2010 natural gas futures contracts on the NYMEX: 10 @ 5.486. At 2:48 a.m. on February 5, 2010, Song then sold 10 March 2010 natural gas futures contracts for the WAGOF Account at 5.463 while buying 10 for his Personal Account opposite the sale for the WAGOF Account. This series of transactions resulted in a gain to the Personal Account of \$2,300.

27. These transactions, in which Song's Personal Account bought from and sold to the WAGOF Account at profitable prices, effected the transfer of money from Woori to Song.

28. Song has repeated this money pass trading pattern at least 408 times since August 28, 2009. Moreover, Song intentionally executed these parallel orders to buy and sell during periods of low volume with the purpose of having the opposite orders find and match each other on Globex.

29. In addition, Song's Personal Account has disproportionately traded opposite to the WAGOF Account. Indeed, since August 2009, in terms of trading volume, over 88% of Song's Personal Account trades were traded opposite to the WAGOF Account. Likewise, over 52% of the WAGOF Account's trades were executed opposite to Song's Personal Account.

30. NYMEX's rules do not allow Song to execute trades in the manner described in this complaint.

31. In totem, under information and belief, Song's Personal Account has gained at least \$326,000 based on Song's illegal commodity futures transactions. Likewise, WAGOF's account has lost at least \$326,000.

32. By consistently executing trades between the Personal Account and the WAGOF Account during periods of low volume in order to pass money from the WAGOF Account to his Personal Account, Song entered into transactions without intent to take a genuine, bona fide position in the market.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND COMMISSION REGULATIONS**

COUNT I – Violations by Song of Section 4c(a)(2)(A)(ii) of the Act

33. Paragraphs 1 through 32 are re-alleged and incorporated herein.

34. Song violated Section 4c(a)(2)(A)(ii) of the Act, 7 U.S.C. 6c(a)(2)(A)(ii) (2006), by entering into a transaction that is a fictitious sale 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 for the execution of the transaction.

35. Each transaction entered into by the Song, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(a)(2)(A)(ii) of the Act, 7 U.S.C. § 6c(a) (2006) (2)(A)(ii).

COUNT II - Violations by Song of Regulation 1.38(a)

36. Paragraphs 1 through 35 are re-alleged and incorporated herein.

37. Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2009), requires that all purchases and sales of commodity futures contracts be executed "openly and competitively."

38. Song violated Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2009), by engaging in a series of improper noncompetitive commodity futures transactions.

39. Each transaction entered into by the Song, 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(a) (2009).

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 (2006), and pursuant to the Court's own equitable powers:

- A. Find that Song violated Section 4c(a)(2)(A)(ii) of the Act, 7 U.S.C. § 6c(a)(2)(A)(ii) (2006), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2009);
- B. Enter an order of permanent injunction prohibiting Song and any other person or entity associated with him, including any successor thereof, from:
 1. engaging in conduct in violation of Section 4c(a)(2)(A)(ii) of the Act, 7 U.S.C. § 6c(a)(2)(A)(ii) (2006), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2009);
 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) (2006);

3. 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) (2009)) (“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, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for his own personal account or for any account in which he has a direct or indirect interest;
4. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on his 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 futures, options on commodity futures, commodity options, and/or forex contracts;
6. 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;
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) (2009);
8. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2009)), 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) (2009).

C. Enter an order directing Song, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act and Regulations as described herein, including pre-judgment interest thereon from the date of such violations;

D. Enter an order directing Song, and any successors thereof, to make full restitution to every investor who suffered losses 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.

E. Enter an order assessing a civil monetary penalty against Song and any successors thereof, in the amount of not more than the higher of \$140,000 or triple the monetary gain to Song for each violation by Song of the Act and Regulations;

F. Enter an order requiring Song, and any successors thereof, to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006);

G. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: April 5, 2010

New York, NY

U.S. COMMODITY FUTURES TRADING COMMISSION



Joseph Rosenberg
U.S. Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005
p: (646) 746-9765
f: (646) 746-9939
<jrosenberg@cftc.gov>

Paul G. Hayeck (*pro hac vice* admission pending)
Peter M. Haas (*pro hac vice* admission pending)
A. Daniel Ullman II (*pro hac vice* admission pending)
U.S. Commodity Futures Trading Commission
Division of Enforcement
1155 21st Street, N.W.
Washington D.C. 20581
p: (202) 418-5000
f: (202) 418-5523
phayeck@cftc.gov
phaas@cftc.gov
dullman@cftc.gov