

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-60297-CIV-COHN/SELTZER

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

VISION FINANCIAL PARTNERS, LLC,
and NEIL PECKER,

Defendants,

and

PROMETHEUS ENTERPRISES, INC.,
WESTWARD INTERNATIONAL LTD.,
COUCARIN HOLDINGS, LTD., and
GDCM TRUST,

Relief Defendants.

**SEALED ORDER GRANTING PLAINTIFF'S EX PARTE MOTION FOR A
STATUTORY INJUNCTION AND RELATED MOTIONS**

THIS CAUSE is before the Court upon Plaintiff's Ex Parte Motion for a Statutory Restraining Order, Preliminary Injunction, and Other Equitable Relief [DE 5] ("Motion"). The Court has considered the pleadings, declarations, exhibits, and memorandum in support, and is otherwise advised in the premises. The Motion will be **GRANTED** to the extent that the Court enters a Statutory Injunction granting Plaintiff the relief it requests. Defendants, Relief Defendants, and other affected persons may move to modify or vacate the statutory injunction after it has been served. However, this Order will remain in effect in the meantime.

I. Findings

The Court makes the following findings:

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to 7 U.S.C. § 13a-1(e) (2012).
2. Venue lies properly within this District pursuant to 7 U.S.C. § 13a-1(e) (2012).
3. The Commission has presented evidence that, from as early as October, 2012, through the present, Defendants have engaged in a fraudulent scheme to solicit nearly \$3 million from at least 120 members of the public in the United States and Canada, to trade off-exchange binary options, which are not excepted or exempted from the Commission's ban on trading options off-exchange. In doing so, Defendants are making false and misleading sales representations to prospective clients and are failing to disclose material facts. Defendants have misappropriated almost \$2 million of client funds for their personal use in connection with their scheme by transferring client funds to Prometheus Enterprises, Inc. ("Prometheus"), Westward International, Ltd. ("Westward"), Coucarin Holdings Ltd. ("Coucarin") and GDCM Trust (collectively, "Relief Defendants"). Relief Defendants are not providing any apparent legitimate services to clients and do not have any interest or entitlement to client funds.
4. In addition to their fraudulent solicitations, Defendants are impermissibly receiving client funds in the name of Vision. Further, Vision and Pecker are advising clients and managing client funds without properly being registered as a commodity trading advisor ("CTA") and an associated person ("AP") of a CTA with the Commission, respectively. Accordingly, the Commission has shown that there is good cause to

believe that Defendants Vision Financial Partners LLC ("Vision"), by and through the actions of its sole employee and agent Neil Pecker ("Pecker"), and Pecker in his individual capacity (collectively, "Defendants"), have engaged, are engaging, and/or are about to engage in acts and practices constituting violations of Sections 4c(b), 4k(3), 4(m)(1), 4o(1), and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(b), 6k(3), 6m(1), 6o(1), and 9(1) (2012), and Commission Regulations ("Regulations") 3.12(a), 4.30, 3.12(a), 32.4(a) and (c), 17 C.F.R §§ 3.12(a), 4.30, 32.4(a) & (c), and 180.1(a) (2015).

5. There is good cause to believe that Relief Defendants are receiving funds, assets, or property as a result of Defendants' violative acts and practices and have been unjustifiably enriched thereby. The Relief Defendants do not have any legitimate interest or entitlement to these funds, assets, or property received as a result of Defendants' violative conduct.

6. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for clients in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendants and Relief Defendants of assets or records unless Defendants and Relief Defendants are immediately enjoined by Order of the Court.

7. There is good cause for the Court to freeze assets owned, controlled, managed, or held by, on, or for the benefit of Defendants and Relief Defendants.

8. There is good cause for entry of an order prohibiting Defendants, Relief Defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendants and Relief Defendants, including any successor therefrom, from destroying records and/or denying agents of the Commission

access to inspect and copy records to ensure that Commission representatives have immediate and complete access to those books and records.

9. Absent the entry of this statutory injunction, Defendant and Relief Defendants are likely to dissipate or transfer assets and destroy business records.

10. This is a proper case for granting an ex parte statutory injunction to preserve the status quo, protect public clients from loss and damage, and enable the Commission to fulfill its statutory duties.

II. Definitions

11. The term "assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, direct or indirectly controlled, and wherever located, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at other financial institutions), credits, receivables, lines of credit, contracts (including spot, futures options, or swap contracts), insurance policies, and all cash, wherever located, whether in the United States or outside the United States.

12. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, all writings or printed matter of any kind, including without limitation: records, correspondence, memoranda, notes, rolodexes, address books, diaries, statistics, email, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice or intra-office

communications, telephone message slips, offers, notations of conversations, bulletins, drawings, plans, computer printouts, computer input or output, teletypes, facsimiles, invoices, worksheets, ledger books, books of accounts, and all drafts, alterations, modifications, changes and amendments of any of the foregoing. The term "document" also includes graphs, charts, photographs, phonographic record, audio and video recordings, computer records, and other data compilations from which information can be obtained or translated, if necessary, through detection devices into reasonable usable form. A draft or non-identical copy is a separate document within the meaning of the term. A document also includes the file and folder tabs associated with each original and copy.

13. "Defendants" refers to Vision Financial Partners, LLC, Neil Pecker, and any person insofar as he or she is acting in the capacity of an officer, agent servant, employee, or attorney of the Defendants and any person who received actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with the Defendants. "Defendants" also refers to any d/b/a, successor, affiliate, subsidiary, or other entity owned, controlled, managed or held by, or on behalf of, or for the benefit of Vision Financial Partners, LLC and Neil Pecker.

14. "Relief Defendants" means and refers to Prometheus Enterprises, Inc., Westward International Ltd., Coucarin Holdings Ltd., and GDCM Trust, and any person insofar as he or she is acting in the capacity of an officer, agent servant, employee, or attorney of the Relief Defendants and any person who received actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with the Relief Defendants. Relief Defendants also refers to any d/b/a,

successor, affiliate, subsidiary, or other entity owned, controlled, managed, or held by, on behalf of, or for the benefit of Prometheus Enterprises, Inc., Westward International Ltd., Coucarin Holdings Ltd., and GDCM Trust.

III. Relief Granted

A. Asset Freeze Order Prohibiting the Transfer, Removal, Dissipation, and Disposal of Assets

15. **IT IS HEREBY ORDERED** that Defendants, Relief Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, including any successor thereof, and persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are immediately restrained and enjoined, except as otherwise ordered by this Court, from directly or indirectly: transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any of assets, wherever located, including Defendants' assets and Relief Defendants' assets held outside the United States.

16. Defendants and Relief Defendants are restrained and enjoined from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name of, or subject to, access by Defendants or Relief Defendants.

17. The assets affected by this order shall not include assets that are obtained by the Defendants and Relief Defendants after the entry of this Order, to the extent that such assets are not derived from or otherwise related to the activities alleged in the Complaint.

B. Directives to Financial Institutions and Others

18. IT IS FURTHER ORDERED, pending further Order of this Court, that any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or asset titled in the name of, held for the benefit of, or otherwise under the control of any Defendants or Relief Defendants, or has held, controlled, or maintained custody of any such account or asset of any Defendants or Relief Defendants at any time since October 12, 2012, shall:

a. Prohibit Defendants and Relief Defendants and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of Defendants' assets or Relief Defendants' assets, except as directed by further order of the Court.

b. Deny Defendants, Relief Defendants, and all other persons access to any safe deposit box that is: (a) owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants or Relief Defendants, either individually or jointly; or (b) otherwise subject to access by Defendants or Relief Defendants.

c. Provide the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each and every account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants or Relief Defendants, either individually or jointly; (b) the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such

account or other asset was remitted; and (e) the identification of any safe deposit box that is either owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants or Relief Defendants, either individually or jointly, or is otherwise subject to access by any Defendants or Relief Defendants.

d. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

e. Cooperate with all reasonable requests of the Commission relating to implementation of this Order, including transferring funds at the Commission's direction and producing records related to Defendants' or Relief Defendants' accounts.

C. Maintenance of and Access to Business Records

IT IS HEREBY ORDERED that:

19. Defendants, Relief Defendants, and all persons or entities who receive notice of this Order by personal service or otherwise, are restrained from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of any Defendant or Relief Defendant.

D. Bond Not Required of Plaintiff

IT IS FURTHER ORDERED that:

20. As Plaintiff Commission is an agency of the United States of America which has made a proper showing under Section 6c(b), 7 U.S.C. § 13a-1(b) (2012), this statutory injunction is granted without bond. Accordingly, the Commission shall not post a bond.

E. Inspection and Copying of Books and Records

IT IS FURTHER ORDERED that:

21. Representatives of the Commission be immediately allowed to inspect the books, records, and other documents of Defendants, Relief Defendants, and their agents including, but not limited to, paper documents, electronically stored information, tape recordings, and computer discs, wherever they may be situated and whether they are in the possession of Defendants, Relief Defendants, or others, and to copy said documents, data and records, either on or off the premises where they may be situated.

22. Defendants shall, within 72 hours of the issuance of this Order, cause to be prepared and delivered to the Commission, a detailed and complete schedule of all passwords and identification (ID) numbers for all websites and all accounts at any bank, financial institution or brokerage firm (including any introducing broker or futures commission merchant) operated by or to which any of the Defendants have access.

23. Defendants shall, within 72 hour of the issuance of this Order, cause to be prepared and delivered to the Commission, a detailed and complete schedule of all desk top computers, laptop computers and or mobile devices owned and/or used by them in connection with their business. The schedules required by this section shall

include at a minimum the make, model and description of each, along with the location, the name of the person primarily assigned to use the computer and/or mobile communication device, and all passwords necessary to access and use the software contained on the computer and/or mobile communication device. The Commission shall be authorized to make an electronic, digital or hard copy of all of the data contained on the computer(s) and/or mobile communication device(s).

F. Service of Order and Assistance of the United States Marshals Service

IT IS FURTHER ORDERED that:

24. Copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of Defendants or Relief Defendants, or that may be subject to any provision of this Order.

25. Commission representatives, including but not limited to Eugenia Vroustouris, Michelle Bougas, Elizabeth Davis, and Erica Bodin, and representatives of the United States Marshal Service are specially appointed by the Court to effect service of this Order.

26. The United States Marshal's Service, in order to ensure the safety of Commission representatives, is authorized to accompany and assist the Commission's representatives outside and inside the premises, as well as secure the premises, in the service and execution of this Order and to undertake such efforts as are reasonably necessary to ensure that the Commission's representatives have an unimpeded right to inspect and copy books, records and documents as set forth above wherever such books, records, and documents are or are believed by the Commission to be located.

G. Service on the Commission

IT IS FURTHER ORDERED that:

27. Defendants and Relief Defendants shall comply with all electronic filing rules and requirements of the U.S. District Court of the Southern District of Florida and shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Eugenia Vroustouris, Senior Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, by electronic filing, e-mail, personal delivery or courier service (such as Federal Express or United Parcel Service) and not by regular mail due to potential delay resulting from heightened security and decontamination procedures applicable to the Commission's regular mail.

H. Opportunity to Be Heard

IT IS FURTHER ORDERED that:

28. Defendants, Relief Defendants, and any other person affected by this Order may move for its modification or vacatur. Upon such a motion, the Court will set a briefing schedule and set an evidentiary hearing.

I. Force and Effect

IT IS FURTHER ORDERED that:

29. This Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

IV. Orders on Related Motions

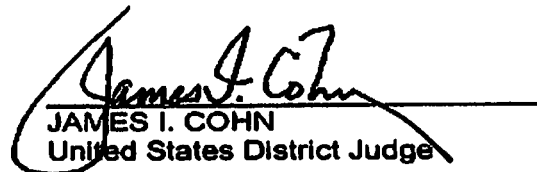
30. Plaintiff's Ex Parte Motion to Temporarily Seal the Docket and Case File [DE 2] is **GRANTED**. This case shall remain sealed through February 23, 2016. This

Order shall not prevent Plaintiff from notifying the parties—and financial institutions or other entities or persons who hold or have held, control or have controlled, or maintain or have maintained custody of any of Defendants' or Relief Defendants' assets—of the contents of this order and the complaint, and serving both upon them.

31. Plaintiff's Ex Parte Motion for Expedited Discovery [DE 3] is **GRANTED** to the following extent. Per Fed. R. Civ. P. 26(d), the Commission may conduct discovery at any time after service of this Order, to take the deposition(s) of and demand the production of documents from any person or entity for the purpose of discovering the nature, location, status, sources, and extent of the assets of Defendants and Relief Defendants, and to ascertain the location of documents reflecting the business transactions, so that the Commission can determine the full extent of Defendants' alleged wrongdoing. The Court will not otherwise order this discovery to take place on an expedited basis.

32. Plaintiff's Motion for Leave to Exceed Page Limitation Imposed by Local Rule 7.1(c)(2) [DE 4] is **GRANTED**. The Court has considered the entirety of Plaintiff's Ex Parte Motion for Statutory Restraining Order, Preliminary Injunction, and Other Equitable Relief.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 19th day of February, 2016.


JAMES I. COHN
United States District Judge

Copies provided to:
Counsel of record via email