

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

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U.S. Commodity Futures Trading Commission,)	Civil Case No. 10 -3619
Plaintiff,)	
)	Judge:
v.)	
)	
Marat Yunusov, a/k/a Ayrat Yunusov)	Magistrate Judge:
Defendant.)	
)	

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND PENALTIES UNDER THE COMMODITY EXCHANGE ACT AS AMENDED

I. SUMMARY

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

1. During the evening of June 3 and the morning hours of June 4, 2010 (“June 4th overnight trading session”), Marat Yunusov, who has held himself out to be a Russian national and also uses the name Ayrat Yunusov (“Yunusov”), engaged in a series of illegal commodity futures transactions on the Chicago Mercantile Exchange (“CME”) Globex electronic trading platform, buying and selling thousands of futures contracts, the vast majority of which were in back-month, illiquid markets. Using separate accounts carried at two different registered futures commission merchants (“FCMs”), namely, Open E Cry LLC (“Open E Cry”) and Velocity Futures, LLC (“Velocity”), Yunusov’s trading resulted in over \$7.8 million losses to his Open E Cry account and approximately a \$7.2 million profit to his Velocity account, after commissions and fees.

2. Yunusov had a debit balance of \$8,192 with Open E Cry and consequently no money in his account to cover his trading losses. Because an FCM is required to guarantee its customer losses, Open E Cry has been required to transfer approximately \$7.5 million of its own proprietary funds to cover Yunusov's losses. However, Yunusov's current account balance at Velocity is approximately \$7.2 million, which he may seek to claim at any time.

3. With this conduct, Defendant violated Section 4c(a) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6c(a) (2006), by entering into transactions that are of the character of or are commonly known to the trade as, 'wash sales' or 'accommodation trades' or are fictitious sales.

4. With this conduct, Defendant also violated Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2010), by entering into illegal noncompetitive transactions to buy and sell futures contracts.

II. JURISDICTION AND VENUE

5. 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.

6. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), in that Defendant 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

7. Plaintiff, 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 Commission's Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2010).

8. Marat Yunusov has held himself out as a Russian national. In applying for a trading account at Open E Cry, Yunusov submitted some type of Russian government identification document that identifies him as Marat Yunusov, with a residence in Kazan, Russia, and a birth date of September 29, 1968. In applying for a trading account with Velocity, Yunusov submitted a Russian passport that identifies him as Ayrat Yunusov, also with a residence in Kazan, Russia and a birth date of September 29, 1968. Both identification documents contain photos, and the men in the two photos bear a very strong resemblance to each other.

IV. OTHER RELEVANT ENTITIES

9. Open E Cry LLC is registered with the Commission as an FCM. Its main business office is in Powell, Ohio.

10. Velocity Futures, LLC is registered with the Commission as an FCM. Its main office is in Houston, Texas.

V. FACTS

A. General Background Regarding The Relevant Globex Trading

11. In futures trading, a "round turn trade" is the purchase and subsequent liquidating sale of a particular futures contract or the sale and subsequent covering purchase of a particular

futures contract, with the pair of filled orders resulting in a realized profit or loss. Hereinafter, “round turn trade” will refer to the number of contracts traded on a round turn basis.

12. Trading in futures is generally concentrated in the “front” or “nearby” month contract. The front month contract is the nearest traded month or nearest delivery month of that futures contract. Conversely, trading volume in the back months of futures contracts is typically much smaller than trading in the nearby months, especially during the overnight hours.

13. In its most simple form, trading on Globex involves a trader who enters an order to either buy or sell certain quantities of a particular contract that is posted and matched with any opposite orders already existing or entered on the system.

14. The CME Russian ruble futures contract on Globex (“ruble contract”) allows traders to speculate on the currency fluctuation of the ruble versus the U.S. dollar. The contract size is 2,500,000 rubles and is traded in price increments of \$25 per contract. The Globex trading day for the ruble Monday through Friday begins at 5:00 PM and extends to 4:00 PM (CT) the next day.

15. The CME E-micro British pound futures contract on Globex (“pound contract”) allows traders to speculate on the currency fluctuation of the British pound versus the U.S. dollar. The contract size is 6,250 British pounds and is traded in price increments of \$0.625 per contract. The Globex trading day for the pound Monday through Friday begins at 5:00 PM and extends to 4:00 PM (CT) the next day.

B. Yunusov’s Futures Trading Prior To The June 4th Overnight Trading Session

16. In December 2009, Yunusov opened an account at Open E Cry. In his account opening documents, Yunusov represented that he had a liquid net worth of \$75,000 to \$100,000. Yunusov initially deposited \$32,600 to fund his trading at Open E Cry.

17. Yunusov used a computer to enter trade orders for his Open E Cry account. From January 2010 through March 2010, he only traded the e-mini S&P 500 futures contract, and lost approximately \$196,000 doing so, not including commissions and fees.

18. In April 2010, Yunusov also opened an account at Velocity. In his account opening documents there, Yunusov represented that he had an annual income that exceeded \$1 million and a liquid net worth that also exceeded \$1 million. He initially deposited \$87,250 to fund his trading at Velocity.

19. In April 2010, Yunusov only traded the ruble and pound contracts in his Open E Cry account.

20. Yunusov also began trading in his Velocity account in April 2010 using a computer. In that account, he traded a mixture of e-mini S&P 500, e-mini NASDAQ, pound and ruble contracts.

21. On April 28, 2010, Yunusov entered orders for the ruble and pound contracts in both his Open E Cry and Velocity accounts in a manner that allowed him to trade against himself in a prearranged, noncompetitive manner as follows:

- a. Yunusov entered a buy or sell order for one of his accounts. Usually within 5 seconds after doing so, Yunusov would enter an opposite but equal quantity buy or sell order for his other account.
- b. Due to the thinly traded nature of the pound and ruble contract markets at the time, Yunusov's respective orders were matched against each other.
- c. After establishing these respective buy and sell positions, he then entered sell and buy orders to offset his initial positions and complete an equal but opposite round turn trade for each account.

22. Yunusov's trading on April 28 resulted in 476 round turn trades of the pound contract and 2 round turn trades of the ruble contract for both his Open E Cry and Velocity accounts. This trading generated a profit of \$16,711 in his pound contract trades and a profit of \$3,000 in his ruble contract trades for his Open E Cry account, and almost equal losses for his Velocity account.

C. Yunusov's Trading During The June 4th Overnight Trading Session

23. During the June 4th overnight trading session, Yunusov engaged in massive prearranged, noncompetitive trading on Globex similar in nature to his trading of April 28, 2010, described above. This trading accounted for at least 81% of the Globex volume for the ruble contract and 99% of the volume for the pound contract. He engaged in this massive trading even though he had a debit balance in his Open E Cry account and only a \$4,171 credit balance in his Velocity account.

24. More specifically, Yunusov entered orders for approximately 10,073 round turn trades of the ruble contract, involving 13 different contract delivery months, for his Open E Cry account and approximately 9,266 similar orders for his Velocity accounts. He used a computer with an Internet Provider address of 94.180.163.130 to enter orders for both accounts. At least 9,266 of those orders were matched in Globex against each other. The other orders were matched against other traders. Those trades resulted in approximately \$9 million in losses to his Open E Cry account and approximately \$8.6 million in profits for his Velocity account, not including commissions and fees.

25. During the same period, Yunusov also entered 35,121 orders for round turn trades of the pound contract for his Open E Cry account and 35,000 similar orders for his Velocity account. At least 35,000 of those orders were matched in Globex against each other. Those

trades resulted in approximately \$1.3 million in profits to his Open E Cry account and similar losses for his Velocity account, not including commissions and fees.

26. Consequently, the overall losses for June 4th overnight trading session in Yunusov's Open E Cry account were approximately \$7.8 million, and the overall profits were approximately \$7.2 million in his Velocity account, after commissions and fees.

27. Yunusov had no positive cash balance in his Open E Cry account to cover his losses. Consequently, Open E Cry was required to transfer proprietary funds to cover the losses. Yunusov's account at Velocity currently reflects a balance of almost \$7.2 million, which he may seek to claim at any time.

28. During the period of at least April 28, 2010 through June 4, 2010, there was an error in Open E Cry's internal monitoring program that only applied to trading of the ruble contract. The error resulted in trades in the ruble contract appearing on the Open E Cry monitoring program to be only one-tenth as large as they really were. This error did not apply to trading of the pound contract, nor did it affect the actual size of orders being entered on Globex.

29. Upon information and belief, Yunusov became aware of this error and exploited it as part of his trading scheme as follows:

a. In his scheme, Yunusov intentionally generated profits in the pound contract and losses in the ruble contract in his Open E Cry account. Because the losses in the ruble trading only appeared one-tenth as large as they actually were, the profits in the pound trading appeared to significantly offset the ruble losses in Open E Cry's monitoring program.

b. Specifically, during the June 4th overnight trading session, what appeared in Open E Cry's monitoring program to be losses of approximately \$900,000 from Yunusov's

ruble contract trading seemed adequately covered by the profits of \$1.3 million from his pound contract trading.

30. By consistently executing trades between the Open E Cry account and the Velocity account during periods of low volume in order to pass money from the Open E Cry account to his Velocity account, Yunusov entered into transactions without an intent to take a genuine, bona fide position in the market.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS

COUNT I

Violations by Defendant of Section 4c(a) of the Act

31. Paragraphs 1 through 30 are re-alleged and incorporated herein.

32. Defendant entered into transactions that are of the character of or are commonly known to the trade as, ‘wash sales’ or ‘accommodation trades’ or are fictitious sales involving the purchase or sale of commodities for future delivery that are transactions that are used or may be used to a) hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity; b) determine the price basis of any such transaction in interstate commerce in the commodity; or c) deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction. This conduct violates Section 4c(a) of the Act, 7 U.S.C. 6c(a) (2006).

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

COUNT II

Violations by Defendant of Commission Regulation 1.38(a)

34. Paragraphs 1 through 30 are re-alleged and incorporated herein.

35. Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2010), requires that all purchases and sales of commodity futures contracts be executed “openly and competitively.”

36. Defendant violated Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2006), by engaging in a series of noncompetitive commodity futures transactions.

37. Each transaction entered into by the Defendant, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2010).

VII. 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 its own equitable powers:

A. Find Defendant liable for violating Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (2006), and Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2010).

B. Enter an *ex parte* statutory restraining order and/or order of preliminary injunction pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006), restraining Defendant and all persons insofar as they are acting in the capacity of Defendant’s agents, servants, successors, employees, assigns and attorneys, and all persons insofar as they are acting in active concert or participation with Defendant who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape

records or other property of Defendant, wherever located, including all such records concerning Defendant' trading;

2. withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets or other property, wherever situated, including, but not limited to, all funds, personal property, money or securities held in safes or safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the actual or constructive control of or in the name of Yunusov, including, but not limited to the approximate \$7.2 million in purported profits in Yunusov's Velocity account;

C. Enter orders of preliminary and permanent injunction enjoining Defendant and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns and attorneys, and all persons insofar as they are acting in active concert or participation with Defendant who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. engaging in conduct that violates Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (2006), and/or Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2010).

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 Commission 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 Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title

XIII (the CFTC Reauthorization Act of 2008), § 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for any personal or proprietary 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010); and

8. acting as a principal (as that term is defined in Commission 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 Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010);

D. Enter an order requiring Defendant to disgorge all benefits received, including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived,

directly or indirectly, from acts or practices that constitute violations of the Act and/or Commission Regulations as described herein, including pre-judgment and post-judgment interest;

E. Enter an order requiring defendant to make restitution to any persons who have incurred financial losses as a result of Defendant's violations of the provisions of the Act and/or Commission Regulations as described herein, including pre-judgment and post-judgment interest;

F. Enter an order directing each Defendant to pay a civil monetary penalty in the amount of not more than the greater of (1) triple the monetary gain to Defendant for each violation of the Act and/or Commission Regulations, or (2) \$140,000 for each violation of the Act and/or Commission Regulations occurring on or after October 23, 2008, plus post-judgment interest;

G. Enter an order requiring Defendant to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

H. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Respectfully submitted

Date: June 11, 2010

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