

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

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U.S. DISTRICT COURT
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COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

GEORGE D. HUDGINS, individually and dba
GEORGE D. HUDGINS, L.L.C.

Defendants

BY _____
SUBMITTED UNDER SEAL

CIVIL ACTION NO.:

COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL MONETARY
PENALTIES, AND OTHER EQUITABLE
RELIEF

Plaintiff, Commodity Futures Trading Commission (“Commission”), by its attorneys,
alleges as follows:

I. SUMMARY

1. From at least January 2005 to the present (“relevant period”), Defendant George D. Hudgins dba George D. Hudgins L.L.C. (“Hudgins”) fraudulently solicited members of the general public to pool together millions of dollars to trade futures contracts (“futures”) and options on futures contracts (“options”) in violation of the anti-fraud provisions of the Commodity Exchange Act (“CEA” or “the Act”), as amended, 7 U.S.C. §§ 1 *et seq.* (2002), and Commission Regulations (“Regulations”), 17 C.F.R. §§ 1.1 *et seq.* (2008), promulgated thereunder.

2. In order to induce current and prospective pool participants to invest or reinvest, Hudgins, as the unregistered commodity pool operator (“CPO”) and general partner for the pool, 3737 Financial L.P. aka Hudgins Group aka Hudg-Investments (“3737 Financial” or the

“commodity pool”), made numerous material misrepresentations and omissions, including, among others:

- (a) falsely representing that the commodity pool had a successful track record trading futures and options since 2000, when, in fact, the commodity pool was not even in existence until 2004;
- (b) falsely representing, and grossly inflating, the total amount of funds under management and traded in the commodity pool;
- (c) falsely representing the commodity pool’s purported historical profitability, and grossly inflating any such profitability, when, in fact, Hudgins’ trading in futures and options resulted in losses exceeding \$28 million since December 2003;
- (d) failing to disclose that Hudgins was trading pool participant money in his own personal trading account and not in any trading account opened in the name of the commodity pool; and
- (f) issuing false statements regarding the purported “returns” of the commodity pool in monthly and/or quarterly newsletters and other promotional material.

3. As a result, Defendant has engaged, is engaged, or is about to engage in acts and practices in violation of Sections 4o(1), 4b(a)(2)(i)-(iii), 4c(b), and 4m(1) of the Act, 7 U.S.C. §§ 6o(1), 6(b)(a)(2)(i)-(iii), 6c(b) and 6m(1), and Regulations 4.41(a) and 33.10(a)-(c), 17 C.F.R. §§ 4.41(a) and 33.10(a)-(c).

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the Commission brings this action to enjoin Defendant’s unlawful acts and practices and to compel his compliance with the Act and Regulations. In addition, the Commission seeks civil monetary

penalties and other equitable relief, including restitution to pool participants, disgorgement of Defendant's ill-gotten gains, a permanent trading ban, and such other relief as the Court may deem necessary or appropriate.

5. Unless permanently restrained and enjoined by the Court, Defendant is likely to continue to engage in the illegal acts and practices alleged in this Complaint, as more fully described below.

II. JURISDICTION AND VENUE

6. The Act establishes a comprehensive system for regulating the purchase and sale of futures and options. The Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief 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 any provision of the Act or any rule, regulation, or order thereunder.

7. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), in that Defendant is found in, inhabits, or transacts business in this District, and the acts and practices in violation of the Act and Regulations have occurred, are occurring, or are about to occur within this District, among other places.

III. PARTIES

8. The **Commodity Futures Trading Commission** is a federal independent regulatory agency charged with the administration and enforcement of the CEA, 7 U.S.C. §§ 1 *et seq.*, and the Regulations thereunder, 17 C.F.R. §§ 1.1 *et seq.*

9. **George D. Hudgins** is an individual who resides at 3737 Skyline Drive, Nacogdoches, Texas. Hudgins also does business as "George D. Hudgins LLC," a Texas limited

liability company, created on November 12, 2004 and also located at 3737 Skyline Drive, Nacogdoches, Texas. Hudgins, individually and dba as George D. Hudgins LLC (the general partner of 3737 Financial), controls the day-to-day operations of the commodity pool, including making the commodity pool's trading decisions and opening personal trading accounts at a registered futures commission merchant ("FCM") for the purpose of trading on behalf of the commodity pool. Hudgins has never been registered with the Commission as a CPO or in any other capacity.

IV. STATUTORY BACKGROUND

10. A "commodity pool" is defined in Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1), as any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.

11. A "commodity pool operator" is defined in Section 1a(5) of the Act, 7 U.S.C. § 1(a)(5), as any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

V. FACTS

A. Hudgins' Rosenthal Collins Group Accounts

12. 3737 Financial is a Texas limited partnership created on November 12, 2004 and located at 3737 Skyline Drive, Nacogdoches, Texas. Hudgins receives, accepts and pools funds

from members of the public to trade futures and options through 3737 Financial. Hudgins is the unregistered CPO of 3737 Financial.

13. Rather than opening a commodity trading account with a FCM in the name of the commodity pool -- here, 3737 Financial -- Hudgins opened multiple trading accounts in his own name and traded the funds invested in 3737 Financial in these accounts.

14. On December 15, 2003, Hudgins opened a trading account (hereinafter, Account "00") in the name "George D. Hudgins," at Rosenthal Collins Group L.L.C. ("RCG"), a registered FCM. Through Account "00," Hudgins traded futures and options, including contracts for silver, sugar, and the S&P 500 index.

15. Thereafter, from 2005 to 2007, Hudgins opened a total of six additional trading accounts with RCG in the name "George D. Hudgins" (hereinafter, Accounts "01," "02," "03," "04," "05," and "06").

(a) Account "01" was opened in November 2005. Through that Account, Hudgins traded futures and options, including contracts for T- Bonds, silver, crude oil and the S&P 500 index.

(b) Accounts "02" and "03" were opened in January 2006. Hudgins did no trading in Account "02". Through Account "03", Hudgins traded futures and options in the S&P 500 index.

(c) Account "04" was opened in September 2006. Through that Account, Hudgins traded futures in the S&P 500 index.

(d) Account "05" was opened in September 2007. Through that Account, Hudgins traded futures, including contracts for crude oil, cotton, the S&P 500 index, and coffee.

C. Hudgins' Fraudulent Solicitations of Participants

19. Since as early as January 2005, Hudgins solicited pool participants and prospective pool participants to invest, or remain invested, in the commodity pool through promotional packets, newsletters, group presentations and face-to-face meetings. In these solicitation materials and presentations, Hudgins makes numerous material misrepresentations and omissions to induce pool participants and prospective participants, to invest, or remain invested in the fund, including false representations about the length of time the pool had been in existence, the historical profitability of the pool, and the size of the commodity pool's assets.

(i). January 2005 Promotional Packet

20. For example, in January 2005, Hudgins created and provided to at least one pool participant a promotional packet entitled "Hudg-Investments[:] Making Money in a Bull or Bear Market," which discussed, among other things, the purported historical performance of the commodity pool. In the promotional packet, Hudgins stated that the commodity pool had gross returns of:

- 99% for 2000,
- 55% for 2001,
- 57% for 2002,
- 46% for 2003,
- 47% for 2004, and
- 8.13% for January, 2005.

21. These statements are false and misleading because:

(a) 3737 Financial did not exist until November 2004, and thus the commodity pool had no "returns" during the time period 2000 to October, 2004; and

(b) for the years 2003, 2004, and 2005, RCG trading account records in the name of George D. Hudgins show that, rather than having the net returns claimed, the

trading accounts suffered losses in: December 2003 of \$42,256.26; the full 2004 calendar year of \$1,614,307.97; and January 2005 of \$141,780.51.

22. Hudgins further represented in the promotional packet that 3737 Financial invests in S&P 500 futures, currencies, U.S. treasury bonds, gold and silver and, as of January 2005, had an investment portfolio of approximately \$23 Million. In fact, as of January 2005, the only accounts in existence at RCG in the name "George D. Hudgins" -- Account "00" and Account "06" -- only had a net value of \$75,713.86.

23. Hudgins made these representations regarding the commodity pool in the promotional packet knowing them to be false or with reckless disregard as to their truth.

(ii). Newsletters

24. Hudgins created and provided to pool participants and prospective pool participants monthly and quarterly newsletters entitled "The Hudg-Report" that discussed the purported historical performance of the commodity pool. In particular in the February 2005, February 2006 and Fourth Quarter 2006 Hudg-Reports, Hudgins represented, among other things, that the commodity pool had a net profit of:

- 8.13% for January 2005,
- approximately 3% for January 2006, and
- 29.27% for Fourth Quarter 2006, respectively.

25. Similar to the returns listed in the promotional packet, these representations were false and misleading. RCG trading account records in the name George D. Hudgins show a loss in January 2005 of \$141,780.51, a loss in January 2006 of \$661,977.71 and a loss in Fourth Quarter 2006 of \$988,157.24.

26. Hudgins made these representations regarding the commodity pool in the newsletters knowing them to be false or with reckless disregard as to their truth.

(iii). January 2007 Presentation

27. In January, 2007 Hudgins made a presentation during an annual meeting of pool participants and prospective pool participants in Nacogdoches, Texas (the "January 2007 presentation"). During the presentation, Hudgins made, among others, the following material misrepresentations and omissions:

(a) Hudgins represented that the commodity pool had a net profit of 99% for 2000, 54.96% for 2001, 57.12% for 2002, 45.86% for 2003 and 46.79% for 2004.

These representations are false and misleading for the reasons set forth in paragraph 21, above. Additionally, Hudgins represented that the commodity pool had profits of 52.33% for 2005 and 22.5% for 2006. These representations are false because in 2005 and 2006 the RCG trading accounts suffered losses of \$9,445,989.11 and \$11,192,620.05, respectively;

(b) Hudgins represented that the commodity pool, and his trading on behalf of the commodity pool, did not need to be regulated, but failed to disclose that in fact the operation of commodity pools is regulated by the Commission and that he was required to be registered as a CPO;

(c) Hudgins represented that the commodity pool's trading account was at RCG, but failed to disclose that no 3737 Financial account existed at RCG and that the only accounts at RCG were Hudgins' personal trading accounts;

(d) Hudgins represented that, as of January 2007, 3737 Financial had an investment portfolio of approximately \$80 Million and that there were about 100 pool participants. In fact, at that time, the net value of Hudgins' trading accounts at RCG in the name of George D. Hudgins was negative \$100,199.38.

28. Hudgins made these representations regarding the commodity pool during the presentation knowing them to be false or with reckless disregard as to their truth.

(iv). *February 2008 Meeting with Three Prospective Pool Participants*

29. In or about January 2008, one prospective pool participant learned about Hudgins and the commodity pool through several pool participants. The prospective pool participant reviewed the Hudg-Report newsletters dated February 2005, February 2006, Second Quarter 2006, Third Quarter 2006 and Fourth Quarter 2006 as well as the January 2005 promotional packet that discussed, among other things, the purportedly large returns on investments in the commodity pool.

30. This prospective pool participant also learned that Hudgins had a DVD recording of the January 2007 presentation, to pool participants and prospective pool participants.

31. The prospective pool participant requested via telephone and obtained via the U.S. mail a copy of the DVD. After reviewing it, the prospective pool participant and two other prospective pool participants met with Hudgins in early February 2008 (the "February 2008 meeting") in his office located at 3737 Skyline Drive, Nacogdoches, Texas, the same address as his primary residence and 3737 Financial.

32. At this meeting, Hudgins told the three prospective pool participants that he trades in futures, including futures on crude oil, gold, currency, pork bellies and grain, and that since 2000, the commodity pool had made a profit each year. In particular, Hudgins stated that in 2007, the commodity pool made a net profit of 57%, that there were at least 200 individuals invested in the commodity pool, and that while several of these investors had hundreds of thousands of dollars invested in 3737 Financial, others had millions of dollars invested.

33. Hudgins also represented during the February 2008 meeting that 3737 Financial had a present value of approximately \$200 Million, that half of that consisted of Hudgins' personal money and that all trades for the commodity pool were cleared through RCG. He represented further that in January 2007 the pool had a value of \$100 Million.

34. Hudgins told the three prospective pool participants that he required each to invest a minimum of \$100,000 in the commodity pool. Hudgins also stated that his operating fee was 20% of net profit.

35. Hudgins informed the three prospective pool participants that because 3737 Financial was now worth \$200 Million it was getting too big to handle. As such he was "fixing to shut this thing down," "stop taking anymore money," and even "start paying out some of the profits" rather than reinvest them into 3737 Financial.

36. During the meeting, two of the prospective pool participants each wrote a check payable to 3737 Financial in the amount of \$100,000. Hudgins, as general partner of 3737 Financial, then executed separate one page agreements with each of the investors acknowledging receipt of the \$100,000 and agreeing to split the profits with 80% going to the pool participants and 20% going to Hudgins. At least one of the checks was subsequently deposited in the account of 3737 Financial at BancorpSouth Bank, Nacogdoches, Texas.

37. Similar to the representations Hudgins made in the promotional packet, the newsletters and during the January 2007 presentation, the representations made at the February 2008 meeting were false and misleading. In particular, rather than making a profit of 57% for 2007, RCG trading account records in the name George D. Hudgins show that the commodity pool suffered a loss in 2007 of \$5,077,748.50. Further, as of January 31, 2008, the total net value of the investments in the RCG accounts in the name George. D. Hudgins was \$4,498,850.45

rather than the approximately \$200 Million that Hudgins represented at the February 2008 meeting.

38. Hudgins made these representations regarding the commodity pool in the February 2008 meeting knowing them to be false or with reckless disregard as to their truth.

D. Value of Hudgins' Accounts at RCG

39. As of January 31, 2007, the total net value of the investments in RCG accounts in the name George D. Hudgins was negative \$100,199.38; *i.e.*, the accounts were operating at a loss. This is in stark contrast to Hudgins' representation at the January 2007 presentation to pool participants and prospective pool participants that the commodity pool contained, at that time, approximately \$80 Million, and the February 2008 meeting in which Hudgins represented the value of the commodity pool to have been \$100 million in January 2007.

40. As of January 31, 2008, the total net value of the investments in the RCG accounts in the name George D. Hudgins was \$4,498,850.45. This is in stark contrast to Hudgins' representation at the February 2008 meeting that the commodity pool contained approximately \$200 Million.

41. The relationship between what Hudgins told pool participants and prospective pool participants in his varied solicitations and actual RCG trading account values is detailed in the chart below:

Time period	Hudgins' Misrepresentations as to profit as a percent	Actual losses
2000	99%	3737 Financial did not exist
2001	55%	3737 Financial did not exist
2002	57%	3737 Financial did not exist
2003	46%	3737 Financial did not exist; however, losses suffered in the RCG accounts in

		December 2003 were \$42,256.26
2004	46.79%	3737 Financial did not exist until November 2004; however, losses suffered in the RCG accounts were \$1,614,307.97
January 2005	8.13%	Losses suffered in the RCG accounts were \$141,780.51
2005	52.33%	Losses suffered in the RCG accounts were \$9,445,989.11
January 2006	3%	Losses suffered in the RCG accounts were \$661,977.71
Fourth Quarter 2006	29.27%	Losses suffered in the RCG accounts were \$988,157.24
2006	22.5%	Losses suffered in the RCG accounts were \$11,192,620.05
2007	57%	Losses suffered in the RCG accounts were \$5,077,748.5

42. While on April 30, 2008, the RCG accounts in the name of George D. Hudgins show a net liquidating value of \$8,197,044.94, in actuality Hudgins has lost a total of \$28,966,527.71 in the RCG accounts from December 2003 through April 2008 trading futures and options.

VI. VIOLATIONS OF THE ACT AND REGULATIONS

COUNT ONE

Fraud By Commodity Pool Operator

**(Violations of Section 40(1) of the Act, 7 U.S.C. § 60(1),
and Regulation 4.41(a), 17 C.F.R. § 4.41(a))**

43. Paragraphs 1 through 42 are realleged and incorporated herein.
44. Section 40(1) of the Act, 7 U.S.C. § 60(1), prohibits CPOs from using the mails or any other means of interstate commerce to:

(A) employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

(B) engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

45. Regulation 4.41(a) provides that no CPO may advertise in a manner that:
- (1) Employs any device, scheme or artifice to defraud any participant or client or prospective participant or client; or
 - (2) Involves any transaction, practice, or course of business which operates as a fraud or deceit upon any participant or client or any prospective participant or client.

46. During the relevant period, Hudgins acted as a CPO by soliciting, accepting or receiving funds from others and engaging in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in futures and options on futures.

47. As set out in paragraphs 1 through 42, during the relevant period, Hudgins employed a device, scheme or artifice to defraud pool participants and prospective pool participants or engaged in a transaction, practice or course of business, including through advertising in newsletters, seminars, and promotional packages, which operated as a fraud or

deceit upon commodity futures and options pool participants and prospective commodity futures and options pool participants in violation of Section 40(1) of the Act, 7 U.S.C. § 60(1) and Regulation 4.41(a), 17 C.F.R. § 4.41.(a).

48. Each misrepresentation or omission of material fact, actual or attempted act to cheat, defraud, or deceive, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 40(1) of the Act, 7 U.S.C. § 60(1), and Regulation 4.41(a), 17 C.F.R. § 4.41(a).

COUNT TWO

Fraud in Connection with a Futures Contract

(Violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii))

49. Paragraphs 1 through 48 are realleged and incorporated herein.

50. Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2), makes 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, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (B) determining the price basis of any transaction in interstate commerce in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—(i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made to such other person any false report or statement thereof, . . .[or]; (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person.

51. As set out in paragraphs 1 through 42, during the relevant period, Hudgins cheated or defrauded or attempted to cheat or defraud, willfully made or caused to be made false

reports about the purported profitability of 3737 Financial in monthly or quarterly newsletters and other promotional material, and willfully deceived or attempted to deceive pool participants and prospective pool participants by making misrepresentations of material facts, and omitting material facts in violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii).

52. Each misrepresentation or omission of material fact, actual or attempted act to cheat, defraud, or deceive, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii).

COUNT THREE

Fraud in Connection with an Options Contract

(Violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulations 33.10(a)-(c), 17 C.F.R. §§ 33.10(a)-(c))

53. Paragraphs 1 through 52 are realleged and incorporated herein.

54. Section 4c(b) of the Act, 7 U.S.C. § 6c(b), makes it unlawful to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity regulated under the Act which is of the character of, or is commonly known to the trade as, an “option,” “privilege,” “indemnity,” “bid,” “offer,” “put,” “call,” “advance guaranty,” or “decline guaranty,” contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.

55. Regulations 33.10(a)-(c), 17 C.F.R. §§ 33.10(a)-(c), make it unlawful for any person, directly or indirectly, (a) to cheat or defraud or attempt to cheat or defraud any person; (b) to make or cause to be made any false report or statement, or (c) to deceive or attempt to

deceive any other person by any means whatsoever, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction.

56. As set out in paragraphs 1 through 42, during the relevant period, Hudgins violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Sections 33.10(a)-(c) of the Regulations, 17 C.F.R. §§ 33.10(a)-(c), in that, in connection with offers to enter into, the entry of, or the confirmation of the execution of, commodity options transactions, Hudgins cheated, defrauded, or deceived, or attempted to cheat, defraud or deceive, other persons, by making false, deceptive or misleading representations of material facts and by failing to disclose material facts, and by making or caused to be made false reports about the purported profitability of 3737 Financial in monthly or quarterly newsletters and other promotional material.

57. Each misrepresentation or omission of material fact, actual or attempted act to cheat, defraud, or deceive, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulations 33.10(a)-(c), 17 C.F.R. §§ 33.10(a)-(c).

COUNT FOUR

Failure to Register As a Commodity Pool Operator

(Violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1))

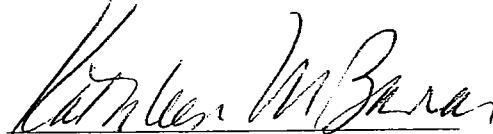
58. Paragraphs 1 through 57 are realleged and incorporated herein.

59. Section 4m(1) of the Act, 7 U.S.C. § 6m(1), provides that it is unlawful for any CPO, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as a CPO.

60. As set out in paragraphs 17 and 31, during the relevant period, Hudgins has used the mails or instrumentalities of interstate commerce in or in connection with a commodity pool

CERTIFICATE OF SEALING

Pursuant to Local Rule CV-5(a)(7), I certify that on May 13, 2008, Plaintiff's filed a Motion to Temporarily Seal the Docket and File in the above captioned action.

A handwritten signature in cursive script, reading "Kathleen M. Banar". The signature is written in black ink and is positioned above a horizontal line.

Kathleen M. Banar