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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
CLEVELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

1:04CV1403

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

THE CARNEGIE TRADING GROUP,
LTD., INC.; JOHN C. GLASE; REID
HENSHAW; and JOHN
HOLLENBAUGH,

Defendants.

CIVIL ACTION NO. _____

JUL 23 2004
MAG. JUDGE HEMANN

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

I. SUMMARY

1. The Carnegie Trading Group, Ltd., Inc. ("Carnegie") is an active Ohio-based introducing broker headed by John C. Glase ("Glase") that solicits public customers to trade commodity futures. Frequently using false and misleading sales representations, Carnegie employees, including John Hollenbaugh ("Hollenbaugh") and Reid Henshaw ("Henshaw"),

attracted more than 450 customers since Carnegie was incorporated in February 1997. Through December 2003, these customers collectively realized approximately \$6.2 million in trading losses in their accounts over the past seven years. Specifically, Carnegie employees made false and materially misleading sales solicitations to customers and potential customers by exaggerating the magnitude and likelihood of potential profit, representing that their trade recommendations could result in large profits within short periods of time, downplaying the risk of loss from trading futures and options on futures, and, in light of the profit representations they were making, failing to advise such customers that year-in and year-out, approximately 88.1% to 94.29% of Carnegie's customers lost money trading. Carnegie's employees, including Hollenbaugh and Henshaw, had no reasonable basis to support these representations and omissions of material fact. Carnegie employees, including Hollenbaugh and Henshaw, also distributed to certain customers a false and/or misleading advertisement regarding a proposed trading program. All these acts violated Sections 4b(a)(2)(i) and (iii) and 4c(b) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 6b(a)(2)(i) and (iii) and 6c(b) (2001), and Regulation 33.10, 17 C.F.R. § 33.10 (2003). The violations of Sections 4b(a)(2)(i) and (iii) and 4c(b) of the Act by Hollenbaugh and Henshaw were done within the scope of their employment with Carnegie and, therefore, Carnegie is liable for those violations, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 4 (2001).

2. Glase was a controlling person of Carnegie and is liable for Carnegie's acts constituting violations of Sections 4b(a)(2)(i) and (iii) and 4c(b), and Regulation 33.10, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001). Additionally, Glase violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2003), by failing to supervise diligently the activities of Carnegie's officers, employees, and agents relating to its business as a Commission registrant.

3. Accordingly, the Commission brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin the Defendants' unlawful acts and practices and to compel their compliance with the Act. In addition, the Commission seeks disgorgement of the Defendants' ill-gotten gains, restitution to customers, a civil monetary penalty and such other relief as this Court may deem necessary or appropriate.

4. Unless restrained and enjoined by this Court, the Defendants are 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

5. The Act prohibits fraud in connection with the trading of commodity futures contracts and options on commodity futures contracts and establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts and options on commodity futures contracts. This 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.

6. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a(e), because the Defendants are found in, inhabit, or transact business, among other places, in this district, or the acts and practices in violation of the Act have occurred, are occurring, or are about to occur, among other places, within this district. Specifically, Defendants: (1) transact the majority of their business within this district; (2) make phone calls and send faxes, U.S. mail,

and e-mail from this district; and (3) maintain active bank accounts in connection with their business enterprise within this district.

III. FACTS RELEVANT TO ALL COUNTS

A. Statutory Background

7. A futures commission merchant ("FCM") is defined in Section 1a(20) of the Act, 7 U.S.C. § 1a(20), and Commission Regulation 1.3(p), 17 C.F.R. § 1.3(p), with certain qualifications, as an individual, association, partnership, corporation, or trust that is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility; and in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

8. An introducing broker ("IB") is defined in Section 1a(23) of the Act, 7 U.S.C. § 1a(23), with certain qualifications, as any person, other than an associated person of an FCM, engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

9. An associated person ("AP") is defined in Section 4k of the Act, 7 U.S.C. § 6k and Commission Regulation 1.3(aa)(1) and (2), 17 C.F.R. § 1.3(aa)(1) and (2), with certain qualifications, as a natural person associated with any FCM or IB, as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar

functions), in any capacity that involves: (i) the solicitation or acceptance of customers' or options customers' orders; or (ii) the supervision of any person or persons so engaged.

B. The Parties

10. Plaintiff Commission is the independent federal regulatory agency responsible for administering and enforcing the provisions of the Act and the Regulations promulgated thereunder.

11. Defendant The Carnegie Trading Group, Ltd., Inc. is an Ohio corporation, incorporated in February 1997. It has been registered with the Commission as an IB since April 1997. Carnegie operated pursuant to a guarantee agreement with Refco, Inc. ("Refco"), a registered FCM, from 1997 until July 2003, when Carnegie became a guaranteed IB of Man Financial, Ltd. ("Man"), a registered FCM. Carnegie continues to operate pursuant that guarantee. As a result, all of Carnegie's customers maintained accounts at Refco or Man. Carnegie's main office is located in Cleveland, Ohio and, at various times during the relevant period, branch offices were located in Canal Fulton, Columbus and Barberton, Ohio, and St. Petersburg, Florida.

12. Defendant John Glase currently resides in Bay Village, Ohio. He is president and majority-owner of Carnegie. Glase has been registered with the Commission as an associated person ("AP") of Carnegie since March 17, 1997.

13. Defendant Reid Henshaw currently resides in Barberton, Ohio. He was registered as an AP with Carnegie and worked in Carnegie's Canal Fulton, Ohio branch office from August 2002 to March 2003, and from late July 2003 to September 2003, when the office closed and Henshaw voluntarily withdrew his AP registration with Carnegie.

14. Defendant John Hollenbaugh currently resides in North Lawrence, Ohio. He was registered as an AP with Carnegie and worked two stints with Carnegie. He first worked in

Carnegie's Barberton, Ohio branch office from September 1999 to February 2001, when he left to join another commodity futures trading firm. Hollenbaugh rejoined Carnegie as an AP in July 2002 and was the manager of Carnegie's Canal Fulton, Ohio branch office from July 2002 until September 2003, when the office closed, and Hollenbaugh voluntarily withdrew his AP registration.

C. Carnegie Exaggerated the Magnitude and Likelihood of Potential Profits and Downplayed The Risk of Loss to Customers and Potential Customers

15. During the relevant time, Glase and Carnegie employed Hollenbaugh and Henshaw as well as at least 23 others to solicit customers for Carnegie out of its main office in Cleveland, Ohio and branch offices in Ohio and Florida.

16. Carnegie employees, including Hollenbaugh and Henshaw, solicited customers by making cold-calls to names on lead-lists to trade futures and options on futures.

17. When soliciting customers, Carnegie employees, including Hollenbaugh and Henshaw, often made representations of material fact to customers such as the following:

- They could earn 150% to 200% within a couple of weeks;
- They could double or triple their money within a couple of weeks;
- The risk of losing their investment was very low and, at worst, they would either break even or suffer a small loss.

18. During the relevant time, Glase and Hollenbaugh gave at least some Carnegie employees solicitation scripts to read to potential customers over the telephone. One of the scripts stated that a recommended trade "could" result in 50% profit "in the next couple of weeks."

19. Carnegie employees, including Hollenbaugh and Henshaw, knew or should have known that the representations described in paragraphs 17 and 18 exaggerated the magnitude and

likelihood of potential profit and downplayed the risk of loss because they knew or should have known that:

- the futures market is highly speculative and the likelihood of realizing the described profits within the described time periods was remote at best;
- the customers for whom they were APs did not realize the described profits within the described time periods; and
- from one year to the next during each of the last seven years, approximately 88.1% to 94.29% of Carnegie's customers closed their account at a loss, including more than 90% of the customers for whom Hollenbaugh and Henshaw were APs.

D. Carnegie Failed to Advise Customers That The Vast Majority of Its Customers Lost Money Trading

20. Carnegie employees, including Hollenbaugh and Henshaw, made representations to customers and potential customers that they could earn substantial profits trading commodity futures and options contracts, including the representations described in paragraphs 17, 18, 25, and 26 of this complaint. While making these representations of "rosie" profit projections, Carnegie employees, including Hollenbaugh and Henshaw, never disclosed to customers or potential customers that from one year to the next, approximately 88.1% to 94.29% of Carnegie's customers closed their accounts at a loss.

21. Additionally, approximately 95% of Hollenbaugh's customers and 93% of Henshaw's customers who traded during the relevant time lost money, but Hollenbaugh and Henshaw did not disclose this information to their customers and potential customers.

E. Carnegie Represented That Its Recommended Trades Could Make Large Profits In Short Periods of Time.

22. Carnegie employees, including Hollenbaugh and Henshaw, solicited orders by providing trade recommendations to many customers.

23. As Branch Manager of Carnegie's Canal Fulton branch office, Hollenbaugh typically conferred with Glase on a daily basis to decide what trade recommendations to provide to customers. At times, Hollenbaugh also conferred with Henshaw regarding the recommendations. Generally, Hollenbaugh gave the APs in the Canal Fulton office the trade recommendations and they would provide them to their customers. However, on occasion Henshaw would make his own recommendations.

24. Hollenbaugh, Henshaw and the other APs in the Canal Fulton branch office represented to customers that recommended trades would likely be profitable or had potential to earn the customer specific dollar amounts or percentages of profit within short periods of time. The alleged basis for these representations was that there had been certain recent price movements in the recommended commodity or a general analysis of price charts and news. Neither Henshaw, Hollenbaugh, Glase, nor anyone else at Carnegie maintained a trading performance record for the Carnegie recommendations or any record at all of the recommendations they provided to customers.

25. Hollenbaugh and Henshaw told at least eight customers that their trade recommendations could generate substantial profits within short periods of time from November 1999 through at least November 2002. For example, Henshaw informed at least one customer that the customer could turn \$10,000 into \$40,000 within a few weeks by following Carnegie's trade recommendations regarding soybean options on futures. Hollenbaugh informed another customer that he could make \$25,000 on a \$5,000 investment within a few weeks if he followed Carnegie's trade recommendations regarding soybean options on futures. There was no reasonable basis for Henshaw's and Hollenbaugh's representations to customers and potential

customers that they could earn considerable profits from these and similar recommendations within short periods of time.

F. Carnegie Provided A Fraudulent Or Misleading Advertisement To Customers

26. At various times from June 2001 through at least January 2003, Carnegie employees, including Hollenbaugh and Henshaw, provided at least eight customers with an advertisement claiming that a Carnegie customer earned 306% profit from April 1999 through February 2001 utilizing a proprietary trading program in S&P 500 futures. The advertisement sought customers to trade this program.

27. The advertisement depicted the customer's monthly profits and losses from April 1999 through February 2001. However, the customer continued to trade his account pursuant to the trading program through August 2002. After February 2001, his account suffered substantial losses, including \$26,266 in March 2001, and \$4,060.58 in April 2001. His cumulative rate of rate of return for the thirty (30) month life of the account was a negative 30.22%

28. Carnegie employees continued to distribute the advertisement to at least eight customers from June 2001 through at least January 2003, but failed to update the advertisement to reflect the substantially declining performance of the trading program after February 2001.

G. Glase Controlled Carnegie

29. During the relevant time, Glase was, at a minimum, the 51% owner of Carnegie. He also founded Carnegie and has been listed on National Futures Association ("NFA") registration records as the president and principal of Carnegie since 1997.

30. Glase has managed and continues to manage the daily operations of Carnegie. Currently, and during the relevant time, he has decided what trade recommendations to provide to customers of the main office, and has advised the managers of Carnegie's branch offices what

trade recommendations to provide to their customers. Since November 2001, Glase has supervised the APs in Carnegie's main office and, from 1997 to November 2001, he shared responsibility for supervising the APs in the main office with another individual. Glase dealt with customer complaints and compliance issues in Carnegie's main and branch offices. He has also referred to himself as Hollenbaugh's boss. Additionally, he decided that Carnegie would solicit customers to trade at Refco and then Man, and he is also a signatory on Carnegie's bank accounts at National City Bank in Cleveland, Ohio.

31. Glase currently runs Carnegie with three APs in Cleveland, Ohio.

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

COUNT ONE

**VIOLATION OF SECTIONS 4b(a)(2)(i) AND (iii) OF THE ACT: FRAUD BY
MISREPRESENTATIONS AND FALSE STATEMENTS**

32. The allegations set forth in paragraphs 1 through 31 are re-alleged and incorporated herein.

33. Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), make it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully deceive or attempt to deceive by any means whatsoever other persons in or in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been 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.

34. Carnegie employees, and specifically Hollenbaugh and Henshaw, violated §§ 4b(a)(2)(i) and (iii) of the Act by: (1) exaggerating the magnitude and likelihood of potential profit and downplaying the risk of loss to customers; (2) failing to inform customers and potential customers that from one year to the next approximately 88.1% to 94.29% of Carnegie's customers who traded during the relevant time closed their accounts at a loss while making contemporaneous claims that, as Carnegie customers, they could earn substantial profits; (3) representing to customers that their trade recommendations could result in large profits within short periods of time when they had no reasonable basis for these representations; and (4) providing a fraudulent or misleading advertisement to customers.

35. The actions and omissions of Carnegie employees, and specifically Hollenbaugh and Henshaw described in this Count were done within the scope of their employment with Carnegie and, therefore, Carnegie is also liable for their violations of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii)(2001), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 4 (2001).

36. During the relevant time, Glase, as principal and manager of Carnegie, directly and indirectly controlled Carnegie and its employees, including Henshaw and Hollenbaugh, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in paragraph 36. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), Glase is liable for the violations described in this Count I to the same extent as Henshaw, Hollenbaugh, and Carnegie.

37. Each material misrepresentation or omission made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i) and (iii) of the Act.

COUNT II**VIOLATION OF SECTION 4c(b) OF THE ACT AND COMMISSION REGULATION 33.10, FRAUD IN CONNECTION WITH COMMODITY OPTION TRANSACTIONS**

38. The allegations set forth in paragraphs 1 through 33 are re-alleged and incorporated herein.

39. Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Commission Regulation 33.10 make it unlawful for any person directly or indirectly to cheat or defraud or attempt to cheat or defraud any other person; to make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; 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, the confirmation of the execution of, or the maintenance of, any commodity option transaction.

40. Hollenbaugh and Henshaw violated Section 4c(b) and Regulation 33.10 in connection with commodity options transactions by: 1) exaggerating the magnitude and likelihood of potential profit and downplaying the risk of loss to customers; (2) failing to inform customers and potential customers that from one year to the next approximately 88.1% to 94.29% of Carnegie's customers who traded during the relevant time lost money, and over 93% of the customers for whom Hollenbaugh and Henshaw were APs lost money; (3) representing to customers that their trade recommendations could result in large profits within short periods of time when they had no reasonable basis for these representations; and (4) providing a fraudulent or misleading advertisement to customers.

41. The actions and omissions of Hollenbaugh and Henshaw described in this Count were done within the scope of their employment with Carnegie and, therefore, Carnegie is also

liable for their violations of Section 4c(b), 7 U.S.C. § 6c(b), and Regulation 33.10 of the Act, 17 C.F.R. § 33.10 (2003), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 4 (2001).

42. During the relevant time, Glase, as principal and manager of Carnegie, directly and indirectly controlled Carnegie and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in Count II. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), Glase is liable for the violations described in this Count II to the same extent as Carnegie.

43. Each material misrepresentation or omission made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) and Regulation 33.10.

COUNT III

VIOLATION OF COMMISSION REGULATION 166.3: FAILURE TO SUPERVISE DILIGENTLY

44. The allegations set forth in paragraphs 1 through 33 are re-alleged and incorporated herein.

45. Commission Regulation 166.3 requires each Commission registrant, except an AP who has no supervisory duties, to supervise diligently the handling of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents relating to its business as a Commission registrant.

46. Glase violated Regulations 166.3 because he allowed Carnegie's APs to:

- (1) exaggerate the magnitude and likelihood of potential profit and downplay the risk of loss;
- (2) fail to inform customers and potential customers that approximately 88.1% to 94.29% of Carnegie's customers who traded during the relevant time lost money;
- (3) represent to customers that their trade recommendations could result in large profits within short periods of time when

they had no reasonable basis for these representations; and (4) provide false or misleading advertisements to customers.

47. Each material misrepresentation or omission made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 166.3.

V. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

- A. Find that defendants violated Sections 4b(a)(2)(i) and (iii) and 4c(b) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), and 6c(b) (2001), and Regulations 33.10 and 166.3, 17 C.F.R. §§ 33.10 and 166.3 (2003);
- B. Enter an order of preliminary injunction restraining and enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them 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 Defendants, wherever located, including all such records concerning Defendants' business operations;
 2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents,

correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations; and

3. 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, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of defendants.

C. Enter orders of preliminary and permanent injunctions prohibiting the Defendants and any other person or entity associated with them, including any successor thereof, from:

1. engaging in conduct, in violation of Sections 4b(a)(2)(i) and (iii) and 4c(b) of Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), and 6c(b) (2001) and Regulations 33.10 and 166.3, 17 C.F.R. §§ 33.10 and 166.3 (2003);
2. engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise.

D. Enter an order directing the Defendants and any successor thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or Regulations, as described herein, and interest thereon from the date of such violations;

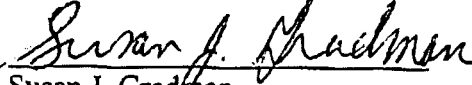
- E. Enter an order directing the Defendants to make full restitution to every customer whose funds were received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, including pre-judgment interest;
- F. Enter an order assessing a civil monetary penalty against each Defendant in the amount of not more than the higher of \$120,000 or triple the monetary gain to each Defendant for each violation by the Defendants of the Act or Regulations;
- G. Enter an order directing that the Defendants make an accounting to the court of all their assets and liabilities, together with all funds they received from and paid to customers and other persons in connection with commodity futures transactions or purported commodity futures transactions, and all disbursements for any purpose whatsoever of funds received from commodity clients, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from, but not limited to, February 1997 to and including the date of such accounting;
- H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- I. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: July 22, 2004

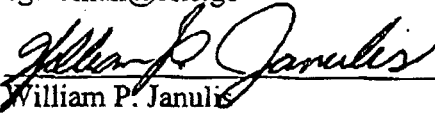
Respectfully submitted,

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