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CLERK, U.S. DISTRICT COURT
MAR 30 2004
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

FILED
CLERK, U.S. DISTRICT COURT
APR - 1 2004
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
SCANNED

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Attorneys for Plaintiff Commodity Futures Trading Commission
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

COMMODITY FUTURES TRADING)
COMMISSION,) Case No. 03-3265 JFW (RCx)
)
Plaintiff,) CONSENT ORDER OF
vs.) PERMANENT INJUNCTION
) AND OTHER EQUITABLE
OSCAR GOLDMAN,) RELIEF AGAINST
Defendant.) DEFENDANT OSCAR
) GOLDMAN

DOCKETED ON CM
APR 2 2004
BY [Signature] 002

On May 9, 2003, plaintiff Commodity Futures Trading Commission
("Commission") filed a Complaint against Oscar Goldman ("Goldman" or
"defendant") seeking injunctive and other equitable relief for violations of the

43

1 Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 et seq. (2001), and
2 the Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2002). Entry of
3 this Consent Order of Permanent Injunction and Other Equitable Relief would
4 conclude this action against defendant Goldman.
5

6 I.

7
8 CONSENTS AND AGREEMENTS

9 To effect settlement of the matters alleged in the Complaint against
10 Goldman without a trial on the merits or any further judicial proceedings,
11 defendant Goldman:
12

13 1. Consents to the entry of this Consent Order of Permanent Injunction and
14 Other Equitable Relief Against Defendant Oscar Goldman ("Order").
15

16 2. Affirms that the defendant has agreed to this Order voluntarily, and that
17 no promise or threat has been made by the Commission or any member, officer,
18 agent or representative thereof, or by any other person, to induce consent to this
19 Order, other than as set forth specifically herein.
20

21 3. Acknowledges service of the Summons and Complaint.

22 4. Admits jurisdiction of this Court over him and the subject matter of this
23 action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).
24

25 5. Admits that venue properly lies with this Court pursuant to Section 6c of
26 the Act, 7 U.S.C. § 13a-1 (2001).
27

28 6. Waives:

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- a. the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, except as set forth below;
- b. all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and Part 148 of the Regulations, 17 C.F.R. § 148.1, et seq. (2003), relating to, or arising from, this action;
- c. any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and
- d. all rights of appeal from this Order.

7. By consenting to the entry of this Order, defendant Goldman neither admits nor denies the allegations of the Complaint except as to jurisdiction and venue, which he admits. Defendant Goldman agrees that neither he nor any of his agents or employees acting under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in this Order, or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect defendant's (i) testimonial obligations; or (ii) his right to take legal positions in other

1 proceedings to which the Commission is not a party. Defendant shall take all
2 necessary steps to ensure that all of his agents and employees understand and
3 comply with this agreement.
4

5 8. Defendant consents to the continued jurisdiction of this Court for the
6 purpose of enforcing the terms and conditions of this Order and for any other
7 purposes relevant to this case.
8

9 II.

10 FINDINGS AND CONCLUSIONS

11 It further appearing to this Court that there is no just reason for delay, the Court
12 being fully advised in the premises and the Court finding that there is just cause for
13 entry of this Order that fully disposes of all issues in this matter, THE PARTIES
14 AGREE AND THE COURT FINDS THAT:
15
16

17 1. This Court has jurisdiction over the subject matter of this action and
18 all parties hereto pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001),
19 which authorizes the Commission to seek injunctive relief against any person
20 whenever it shall appear that such person has engaged, is engaging or is about
21 to engage in any act or practice constituting a violation of any provision of the
22 Act or any rule, regulation or order thereunder.
23
24

25 2. This Court has personal jurisdiction over Goldman and Goldman has
26 waived service of Summons and Complaint and consented to the Court's
27 jurisdiction over him.
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3. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, in that the 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.

ORDER FOR PERMANENT INJUNCTION

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Defendant Goldman is permanently restrained, enjoined and prohibited from directly or indirectly:
 - A. Cheating, defrauding or willfully deceiving or attempting to cheat, defraud or willfully deceiving other persons, 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, in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii); and

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1 B. Operating as a commodity trading advisor ("CTA") who
2 for compensation or profit, engages in the business of
3 advising others, either directly or through publications,
4 writings or electronic media, as to the value of or the
5 advisability of trading in any contract of sale of a
6 commodity for future delivery made or to be made on or
7 subject to the rules of any contract market or derivatives
8 transaction execution facility, without being registered
9 with the Commission as a CTA, in violation of Section
10 4m(1) of the Act, 7 U.S.C. § 6m(1); and

11 C. While acting as a CTA, employing any device, scheme,
12 or artifice to defraud any investor or prospective
13 investor, or engaging in any transaction, practice, or
14 course of business which operates as a fraud or deceit
15 upon any investor or prospective investor by use of the
16 mails or any means or instrumentality of interstate
17 commerce, in violation of Section 4o(1) of the Act,
18 7 U.S.C. § 6o(1); and

19 D. While acting as a CTA, registered or required to be
20 registered with the Commission, soliciting a prospective
21 client, or entering into an agreement with a prospective
22 client to direct the client's commodity interest account or
23 to guide the client's commodity interest trading by
24 means of a systematic program that recommends specific
25 transactions, unless at or before the time he engages in
26 the solicitation or enters into the agreement (which ever
27 is earlier), delivers or causes to be delivered to the
28 prospective client a Disclosure Document for the trading

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1 program pursuant to which he seeks to direct the client's
2 account or to guide the client's trading, containing the
3 information set forth in 17 C.F.R. § 4.34 and 4.35, in
4 violation of Regulation 4.31.
5

6 2. Defendant Goldman is further permanently restrained, enjoined and
7 prohibited from directly or indirectly:
8

- 9 A. Engaging in, controlling, or directing the trading of any
10 commodity futures, options on futures, or options on foreign
11 currency accounts for or on behalf of any other person or entity,
12 whether by power of attorney or otherwise; and
13 B. Applying for registration or claiming exemption from
14 registration with the Commission in any capacity, and engaging
15 in any activity requiring such registration or exemption from
16 registration, except as provided for in Section 4.14(a)(9) of the
17 Commission's Regulations, 17 C.F.R. § 4.14(a)(9) (2002), or
18 acting, directly or indirectly, as a principal, agent, or any other
19 officer, agent or employee of any person registered, required to
20 be registered, or exempted from registration with the
21 Commission, unless such exemption is pursuant to Section
22 4.14(a)(9) of the Commission's Regulations, 17 C.F.R.
23 § 4.14(a)(9). This includes, but is not limited to, soliciting,
24 accepting or receiving any funds, revenue or other property
25 from any person, giving advice for compensation, or soliciting
26 prospective customers related to the purchase or sale of any
27 commodity futures or options on futures.
28

1 3. The injunctive provisions of this Order shall be binding on defendant
2 Goldman and upon any person insofar as he or she is acting in the capacity of
3 officer, agent, servant, employee or attorney of the defendant, and upon any person
4 who receives actual notice of this Order by personal service or otherwise insofar as
5 he or she is acting in active concert or participation with defendant Goldman.
6

7
8 IV.

9 ORDER FOR OTHER EQUITABLE RELIEF

10 IT IS FURTHER ORDERED THAT:

11 1. DISGORGEMENT: Defendant Goldman shall pay disgorgement in
12 the amount of \$95,500. Goldman shall make such payment by electronic funds
13 transfer, or by U.S. postal money order, certified check, bank cashier's check, or
14 bank money order, made payable to the Commodity Futures Trading Commission,
15 and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading
16 Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C.
17 20581, under cover of a letter that identifies Goldman and the name and docket
18 number of the proceedings.
19

20 2. CIVIL MONETARY PENALTY: Goldman shall pay a contingent
21 civil monetary penalty of \$180,000, commencing on his fulfillment, or the
22 discharge, of his total disgorgement obligations as set forth in Paragraph IV.1.,
23 above. Goldman shall make such payment by electronic funds transfer, or by U.S.
24 postal money order, certified check, bank cashier's check, or bank money order,
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1 made payable to the Commodity Futures Trading Commission, and sent to
2 Dennese Posey, Division of Enforcement, Commodity Futures Trading
3 Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C..
4 20581, under cover of a letter that identifies Goldman and the name and docket
5 number of the proceedings.
6

7
8 V.

9 MISCELLANEOUS PROVISIONS

10 A. ENTIRE AGREEMENT, AMENDMENTS and SEVERABILITY.

11 This Order incorporates all of the terms and conditions of the settlement among the
12 parties. Nothing shall serve to amend or modify this Order in any respect
13 whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and (3)
14 approved by order of the Court. If any provision of this Order or the application of
15 any provision or circumstance is held invalid, the remainder of this Order shall not
16 be affected by the holding.
17
18

19 B. WAIVER. The failure of any party at any time or times to require
20 performance of any provision hereof shall in no manner affect the right of such
21 party at a later time to enforce the same or any other provision of this Order. No
22 waiver in one or more instances of the breach of any provision contained in this
23 Order shall be deemed to be, or construed as, a further or continuing waiver of
24 such breach or waiver of the breach of any other provision of this Order.
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C. SUCCESSORS AND ASSIGNS. This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries and administrators.

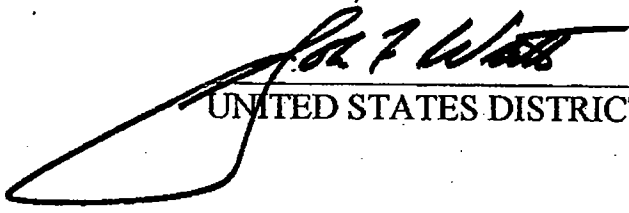
D. TRANSFER OF ASSETS. Defendant Goldman shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any other person for the purpose of concealing such funds from the Court or the Commission until the disgorgement and civil monetary payments have been paid in full, including interest.

E. JURISDICTION. This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

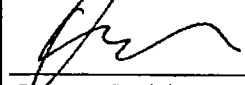
1 There being no just reason for delay, the Clerk of the Court is hereby
2 directed to enter this Consent Order of Permanent Injunction and Other Equitable
3 Relief Against Defendant Oscar Goldman.
4


5 Done and ordered on this 1 day of April, 2004.

5 E M N E D


UNITED STATES DISTRICT COURT JUDGE

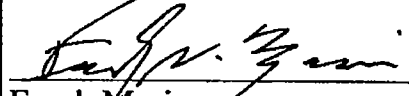
9 Consented to and
10 approved for entry by:

11 
12 Oscar Goldman


Mark Bretscher
Senior Trial Attorney
(Pro hac vice)
Attorney for the Plaintiff
Commodity Futures Trading Commission
525 West Monroe, Suite 1100
Chicago, IL 60661
(312) 596-0529
(312) 596-0714 (fax)

13 Dated: 3/30/04

15 Approved as to form by:

16 
17 Frank Masino
18 Attorney at Law
19 70 Senora Way
20 Corte Madera, CA 94925
(415) 924-6608

Local Counsel:

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