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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COMMODITY FUTURES TRADING)
COMMISSION,)

Plaintiff,)

vs.)

BEN OUYANG an individual, YUEN)
KWONG "ANTHONY" WONG dba)
IBF CAPITAL LIMITED COMPANY,)
an individual, and VICTCO)
FINANCIAL SERVICE, INC., a)
California corporation,)

Defendants.)

Case No. CV **03-0833**

NM
(Mcx)

COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE RELIEF
AND FOR CIVIL PENALTIES
UNDER THE COMMODITY
EXCHANGE ACT, AS AMENDED,
7 U.S.C. §§ 1-25

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I.

JURISDICTION AND VENUE

1. Section 2(c)(2)(B) and (C) of the Commodity Exchange Act, 7 U.S.C. § 2 (2001) (the “Act”) grants plaintiff, the Commodity Futures Trading Commission (“Commission”), jurisdiction over certain transactions in foreign currency that are contracts for the sale of a commodity for future delivery, including the transactions alleged in this Complaint. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), 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.

2. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e)(2001), in that Defendants are found in, inhabit, or transact 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.

II.

SUMMARY

3. From at least February, 2001 to the present, Defendants have solicited and accepted funds from retail investors to engage in speculative trading of

1 foreign currency futures contracts. Because these transactions are conducted off-
2 exchange, Defendants have violated Section 4(a) of the Act, 7 U.S.C. §
3
4 6(a)(2001).

5 4. From at least February, 2001 to the present, Defendants Ben Ouyang and
6 Victco Financial Service, Inc. ("Victco") have cheated, defrauded, deceived and
7 issued false statements to Victco's customers and prospective customers, in
8 violation of Section 4b(a)(i), (ii) and (iii) of the Act, 7 U.S.C. § 6b(a)(i), (ii) and
9 (iii) (2001), by engaging in the following fraudulent acts and practices, among
10 others:
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12

13 (a) falsely leading prospective customers to believe that Victco is registered
14 with Plaintiff and is a member of the National Futures Association;

15 (b) falsely representing that the trades of Victco's customers are being
16 effectuated through third party dealers;

17 (c) falsely guaranteeing monthly profits;

18 (d) issuing fictitious account statements to customers;

19 (e) falsely representing to Victco's customers that their funds would be
20 deposited in a bank account in the name of a third party dealer in the United
21 Kingdom, when in fact some of their funds were being deposited in the
22 Defendants' own bank accounts in Los Angeles County, California.
23
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25

26 5. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001),
27 Plaintiff brings this action to enjoin the unlawful acts and practices of Defendants.
28

1 In addition, Plaintiff seeks civil monetary penalties in the amount of not more
2 than the higher of \$120,000 for each violation or triple the monetary gain to
3 Defendants for each violation of the Act, disgorgement of Defendants' ill-gotten
4 gains, restitution to customers, prejudgment interest and such other relief as this
5 Court may deem necessary or appropriate.
6

7
8 6. Unless enjoined by this Court, Defendants are likely to continue to
9 engage in the acts and practices alleged in this Complaint, as more fully described
10 below.
11

12 III.

13 THE PARTIES

14 7. Plaintiff is an independent federal regulatory agency that is charged with
15 responsibility for administering and enforcing the provisions of the Commodity
16 Exchange Act, 7 U.S.C. §§ 1 et seq. (2001).
17

18 8. Defendant **Ben Ouyang** is the owner/operator of defendant Victco
19 Financial Service, Inc., a company which he incorporated in February, 2001. Prior
20 to that time, he was a manager of Acro Information Services, Inc., a foreign
21 currency bucket shop that operated out of Arcadia and Monterey Park, California.
22 Ouyang is believed to reside in Los Angeles County, California. He has never
23 been registered with the Commission in any capacity.
24
25

26 9. Defendant **Yuen Kwong "Anthony" Wong** is the sole proprietor of
27 the fictitiously named business **IBF Capital Limited Company**. He is believed to
28

1 reside in Los Angeles County, California. His principal place of business is in
2 Temple City, California. He has never been registered with the Commission in
3 any capacity.
4

5 10. Defendant **Victco Financial Service, Inc.** is a California corporation
6 incorporated on February 13, 2001. Its principal place of business is at 5546 N.
7 Rosemead Blvd., Suite 202-204, Temple City, CA 91780. Victco has never been
8 registered with the Commission in any capacity, designated by the Commission as
9 a contract market or registered by the Commission as a derivatives transaction
10 execution facility. Victco has never been a member of the National Futures
11 Association.
12
13

14 IV.

15 FACTUAL ALLEGATIONS

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17 11. From at least February, 2001 to the present, Defendants have
18 conducted business out of Victco's Temple City, California office for the purpose
19 of selling illegal, off-exchange foreign currency contracts to the retail public.
20

21 12. The Defendants' foreign currency transactions are contracts of sale of a
22 commodity for future delivery within the meaning of Section 2(c)(2)(B) and (C) of
23 the Act, 7 U.S.C. § 2(c)(2)(B) and (C) (2001).
24

25 13. Defendants obtain customers by placing advertisements in local foreign
26 language newspapers and on the Internet. Prospective customers who respond to
27 newspaper ads are given promotional brochures, which may be written for the
28

1 most part in Spanish, Korean, Chinese or other languages. Portions of those
2 brochures are written in English. The Defendants' Internet promotional material is
3 in English and was, until recently, accessed on a site with an address of
4 wfsworld.net. A link was provided to ibfbank.uk, which, although it purported to
5 be for an entity located in the United Kingdom, referred the customer back to
6 Victco's phone numbers and address in Los Angeles County.
7
8

9 14. Persons who respond to the Defendants' promotional materials are
10 invited to Defendants' offices for training in trading foreign currency futures
11 contracts or solicited immediately to open up accounts through Victco's brokers.
12 Those who complete training are solicited to open up accounts in their own names
13 or to act as brokers for their friends and relatives. Those who respond to Internet
14 promotions may open up on-line trading accounts, either directly or through
15 Victco's brokers.
16
17

18 15. The Defendants do not conduct their foreign currency futures
19 transactions on or subject to the rules of a board of trade that has been designated
20 by the Commission as a contract market, nor are any of these transactions executed
21 or consummated by or through a member of such a contract market. Defendants
22 do not conduct their transactions on a facility registered as a derivatives
23 transaction execution facility.
24
25

26 16. In their promotional materials, the Defendants make numerous
27 fraudulent misrepresentations, or fraudulently omit to state material facts. Among
28

1 such misrepresentations and omissions are the following:

2 (a) Defendants falsely represent that IBF Capital Limited is regulated by the
3 former UK financial regulatory authority, SFA, and that its customers' funds are
4 maintained in accordance with SFA regulations; in fact IBF Capital Limited is not
5 regulated either by the SFA or its successor agency, the FSA; its customers' funds
6 are not maintained in accordance with any UK regulations; and at least some of
7 those funds are deposited into bank accounts in Los Angeles County controlled by
8 the defendants;
9

10
11
12 (b) Defendants lead prospective customers to believe that Victco is a
13 member of the National Futures Association and is registered with the Commission;
14 in fact, Victco has merely applied for NFA membership as a commodity trading
15 advisor; Victco thus deceives customers into believing that their invested funds
16 are secure in segregated accounts pursuant to NFA rules and Commission
17 regulations; and
18

19
20 (c) Defendants make false promises of guaranteed monthly profits.

21 17. At a time presently unknown to plaintiff, but at least as early as June,
22 2001, the Defendants devised a scheme to defraud members of the retail public
23 who invested their funds with or through Victco to be used to trade foreign
24 currency futures contracts on their behalf.
25

26 18. Pursuant to this scheme, the Defendants have falsely represented to
27 Victco's prospective customers that the counterparties to their foreign currency
28

1 futures trades are “IBF Capital Limited” (a purported UK-regulated entity), or
2 Gain Capital Company (a futures commission merchant that is registered with the
3 Commission).

4
5 19. In the meantime, the Defendants established “dba’s” for themselves in
6 Los Angeles County in the names of IBF and Gain Capital. On June 5, 2001
7 Defendant Ouyang caused a fictitious business name statement to be recorded for
8 himself under the name “Gain Capital Company” in Los Angeles County,
9 California. On October 9, 2001 Defendant Wong, in concert with Defendant
10 Ouyang, caused a fictitious business name statement to be recorded for himself
11 under the name “IBF Capital Limited Company” in Los Angeles County.
12

13
14 20. The Defendants’ recording of such fictitious business statements
15 enabled them to open personal bank accounts in the names of the fictitious
16 businesses in Los Angeles County, and to deposit directly into those bank
17 accounts checks that they had instructed Victco’s customers to make payable to
18 IBF Capital Limited, the purported UK counterparty, or to Gain Capital
19 Corporation, the New Jersey, Commission- registered counterparty. 21. Having
20 thus diverted their customers’ funds directly into the Defendants’ dba bank
21 accounts in Los Angeles, the Defendants then proceeded to bucket their
22 customers’ orders and to generate fictitious account statements.
23
24
25

26 22. In a few instances, the Defendants actually opened and traded accounts
27 for their customers with Gain Capital as the direct counterparty. Defendants
28

1 nonetheless have engaged in fraud in connection with those transactions, by
2 guaranteeing riskless returns and by creating and providing to their customers
3 fictitious "Gain Capital" account statements. These fictitious account statements
4 reflect inflated account balances; which fraudulently induces their customers to
5 continue trading, to refer other customers to Victco, and to make further deposits
6 into their accounts.
7
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9 23. Section 2(c)(2)(B)(i) and (ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i) and (ii)
10 (2001) provides that the Commission shall have jurisdiction over an agreement,
11 contract or transaction in foreign currency that is a sale of a commodity for future
12 delivery, so long as the contract is "offered to, or entered into with, a person that is
13 not an eligible contract participant" unless the counter-party, or the person
14 offering to be the counter-party, is one of the regulated entities enumerated in
15 Section 2(c)(2)(B)(ii)(I)-(VI). Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C)
16 further provides that, notwithstanding subclauses (II) and (III) of subparagraph
17 (B)(ii), agreements, contracts, or transactions described in subparagraph (B) shall be
18 subject to Section 4b of the Act if they are entered into by a futures commission
19 merchant or an affiliate of a futures commission merchant that is not also an entity
20 described in subparagraph (B)(ii).
21
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25 24. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1 (2001), defines an
26 eligible contract participant as an individual who has total assets in excess of: a)
27 \$10 million; or b) \$5 million and who enters the transaction to manage the risk
28

1 associated with an asset owned or a liability incurred, or reasonably likely to be
2 owned or incurred.

3
4 25. At least some, if not all, of the foreign currency futures transactions
5 alleged herein were offered to or entered into with persons who were not eligible
6 contract participants.

7
8 26. The Defendants engaged in fraud in violation of Section 4b of the Act
9 with respect to each of the foreign currency transactions alleged herein. The
10 foreign currency futures transactions other than those transactions in which Gain
11 Capital was the actual, direct counterparty to Defendants' customers, were not
12 entered into with one of the regulated counterparties specified in Section
13 2(c)(2)(B)(ii)(I)-(VI) of the Act and violated Section 4(a) of the Act.

14
15
16 **V.**

17 **COUNT ONE**

18 (Against All Defendants For Violation Of Section 4(a) Of The Commodity
19 Exchange Act: Offer And Sale Of Off-Exchange Commodity Futures Contracts)

20 27. Plaintiff realleges paragraphs 1 through 26 above and incorporates
21 these allegations herein by reference.

22
23 28. Since at least February 2001, and continuing to the present, Defendants
24 have offered to enter into, entered into, executed, confirmed the execution of, or
25 conducted an office or business in the United States for the purpose of soliciting,
26 accepting any order for, or otherwise dealing in transactions in, or in connection
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1 with, a contract for the purchase or sale of a commodity for future delivery when:

2 (a) such transactions have not been conducted on or subject to the rules of a board
3 of trade which has been designated or registered by the Commission as a contract
4 market or derivatives transaction execution facility for such commodity, (b) such
5 contracts have not been executed or consummated by or through a member of such
6 contract market, and (c) such contracts have not been evidenced by a record in
7 writing which shows the date, the parties to the contract and their addresses, the
8 property covered and its price, and the terms of delivery, in violation of Section
9 4(a) of the Act, 7 U.S.C. § 6(a)(2001).
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13 29. Defendant Ouyang, directly or indirectly, controlled Victco, and did not
14 act in good faith or knowingly induced, directly or indirectly, the acts constituting
15 the violations of Section 4(a) of the Act by Victco. Pursuant to Section 13(b) of
16 the Act, 7 U.S.C. § 13c(b) (2001), Defendant Ouyang is liable for the violations of
17 Section 4(a) of the Act to the same extent as Victco.
18

19 30. Defendant Ouyang willfully aided and abetted, counseled, commanded,
20 induced, or procured the commission of violations of Section 4(a) of the Act by
21 Defendant Wong, and has acted in combination and concert with Wong, and
22 pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c (2001), he is a person liable
23 for violating Section 4(a) of the Act.
24
25

26 31. Each foreign currency futures transaction not conducted on a
27 designated contract market made during the relevant time period, including but not
28

1 limited to those conducted by the Defendants as specifically alleged herein, is
2 alleged as a separate and distinct violation of Section 4(a) of the Act.
3

4 **VI.**

5 **COUNT TWO**

6 (Against Defendants Ouyang And Victco For Violation Of Section 4b(a)(i), (ii)
7 And (iii) Of The Commodity Exchange Act; Fraud In Connection With The Offer
8 And Sale Of Commodity Futures Contracts)

9 32. Plaintiff realleges paragraphs 1 through 26 above and incorporates
10 these allegations herein by reference.
11

12 33. By engaging in the foregoing fraudulent acts and practices alleged in
13 Paragraphs 18 through 22 above, Defendants Ouyang and Victco, in or in
14 connection with orders to make, or the making of, contracts of sale of commodities
15 for future delivery, made or to be made, for or on behalf of any other persons,
16 where such contracts for future delivery were or could be used for the purposes set
17 forth in Section 4b(a) of the Act, 7 U.S.C. § 6b(a) (2001), have: cheated or
18 defrauded or attempted to defraud other persons; willfully made false reports or
19 statements to other persons in regard to such orders or contracts; and willfully
20 deceived or attempted to deceive other persons, all in violation of Section 4b(a)(i),
21 (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i), (ii) and (iii) (2001).
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24

25 34. Defendant Ouyang, directly or indirectly, controlled Victco, and did not
26 act in good faith or knowingly induced, directly or indirectly, the acts constituting
27 the violations described herein. Pursuant to Section 13(b) of the Act, 7 U.S.C. §
28

1 13c(b) (2001), Ouyang is liable for the violations of Section 4b(a) of the Act, 7
2 U.S.C. § 6b(a) (2001), to the same extent as Victco.

3
4 35. Each fraudulent act, misrepresentation or practice by Defendants
5 Ouyang or Victco in connection with a foreign currency futures transaction, not
6 limited to those specifically alleged herein, is alleged as a separate and distinct
7 violation of Section 4b(a)(i), (ii) and (iii) of the Act.
8

9 **VII.**

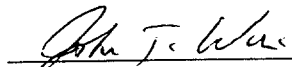
10 **RELIEF REQUESTED**

11 WHEREFORE, Plaintiff Commodity Futures Trading Commission
12 respectfully requests that this Court, as authorized by Section 6c of the Act, 7
13 U.S.C. § 13a-1(2001), and pursuant to the Court's equitable powers, enter:
14

- 15
- 16 1. an order of permanent injunction prohibiting Defendants Ouyang,
17 Victco and Wong and any other person or entity associated with
18 them, including any successor thereof, from (a) engaging in, or
19 aiding and abetting, conduct violative of Section 4(a) of the Act, 7
20 U.S.C. § 6(a) (2001);
 - 21 2. an order of permanent injunction prohibiting defendants Ouyang and
22 Victco and any other person or entity associated with them, including
23 any successor thereof, from engaging in conduct violative of Section
24 4b(a)(i), (ii) and (iii) of the Commodity Exchange Act, 7 U.S.C. §
25 6b(a)(i), (ii) and (iii) (2001);
26
27
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- 1 3. an order directing Defendants Ouyang, Victco and Wong and any
2 successors thereof, to disgorge, pursuant to such procedure as the
3 Court may order, all benefits received from the acts or practices
4 which constituted violations of the Act, as described herein, and
5 interest thereon from the date of such violations;
6
7 4. an order directing Defendants Ouyang, Victco and Wong to make full
8 restitution to every customer whose funds were received by them as a
9 result of acts and practices which constituted violations of the Act,
10 and interest thereon from the date of such violations;
11
12 5. an order directing Defendants Ouyang, Victco and Wong to pay a
13 civil penalty in the amount of not more than the higher of \$120,000
14 for each violation or triple the monetary gain to Defendants for each
15 violation of the Act;
16
17 6. an order requiring Defendants Ouyang, Victco and Wong to pay costs
18 and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
19
20 7. such other and further remedial ancillary relief as the Court may deem
21 just and proper.
22
23
24

25 Dated: February 4, 2003



John T. Wise
Attorney for Plaintiff
Commodity Futures
Trading Commission