

**In The United States District Court
For The Northern District Of Illinois
Eastern Division**

Commodity Futures Trading Commission,
Plaintiff,

vs.

John Martin Lofgren,

and

Melrose Asset Management Corporation,
Defendants.

Civil Action No: CIV 02 C
6222

Complaint For Injunctive And
Other Equitable Relief And
Civil Monetary Penalties Under
The Commodity Exchange Act

I. Summary

1. From at least April 1998 to the present (“relevant time period”), Melrose Asset Management Corporation (“Melrose”) and John Martin Lofgren (“Lofgren”) have solicited and accepted customer funds for use in trading in commodity futures and commodity options in a commodity pool entitled The Melrose Fund, L.L.C. (“the Fund” or “the pool”). They have misappropriated at least \$1,400,000 of those funds and have issued false statements to at least two pool participants that did not disclose their unauthorized withdrawal of funds from the Fund.

2. Specifically, Lofgren and Melrose (collectively “the Defendants”) have engaged, are engaging, or are about to engage in acts or practices which violate the anti-fraud sections of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 *et seq.* (2001), and Commission Regulations thereunder, 17 C.F.R. §§ 1 *et seq.* (2002). Defendants have violated Sections 4b 4c(b) and 4o(1) of the Act, 7 U.S.C. §§6b, 6c(b) and 6o(1), and Commission Regulation 33.10,

17 C.F.R. § 33.10, by misappropriating pool participants' funds and by making false statements to at least two pool participants in connection with commodity futures and options transactions.

3. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and in similar acts and practices, as more fully described below.

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the Commodity Futures Trading Commission ("Commission" or "CFTC") brings this action to enjoin such acts and practices, prevent the dissipation of assets, and compel compliance with the provisions of the Act. In addition, the Commission seeks civil penalties, an accounting, restitution, disgorgement and such other equitable relief as the Court may deem necessary or appropriate under the circumstances.

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, 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 of the Act, 7 U.S.C. § 13a-1(e), in that the Defendants are found in, inhabit, and 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.

III. The Parties and Other Relevant Entities

7. Plaintiff Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.*

8. Defendant John Martin Lofgren is 65 years old and resides in Kenilworth, Illinois. He has been registered as an associated person (“AP”) of various futures commission merchants (“FCMs”) since 1992 and was at one time registered as the Commodity Trading Advisor (“CTA”) and commodity pool operator (“CPO”) of Melrose Trading L.L.C, the predecessor pool to the Melrose Fund. He has been registered as an AP of Melrose since April 15, 1998. Lofgren is a principal and chief executive officer of Melrose.

9. Defendant Melrose Asset Management Corporation is an Illinois corporation. Its registered agent is John Martin Lofgren and its address is 141 West Jackson Boulevard Chicago, Illinois 60604. Melrose is the Manager of the Fund, as well as the CPO and CTA to the Fund and is registered as such. It is also a member of the National Futures Association.

10. The Melrose Fund, L.L.C. is an Illinois limited liability company, organized in February 1998, under the name Melrose Trading L.L.C. The Fund began operating in April 1998 and in June 1999, it changed its name to the Melrose Fund, L.L.C. It is a commodity pool engaged in the speculative trading of commodity futures and options pursuant to the trading instructions of the Fund’s Manager and CPO Melrose.

IV. Facts

A. Statutory Background

11. A “commodity pool” is defined in Commission Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1), as any investment trust, syndicate or similar form of enterprise engaged in the business of investing its pooled funds in trading commodity futures and/or commodity options.

12. 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.

13. A “participant” is defined in Commission Regulation 4.10(c), 17 C.F.R. § 4.10(c), as any person who has any direct financial interest in a commodity pool.

B. The Fraudulent Withdrawals

14. Since the Defendants began operating the Fund in April 1998, they have attracted at least 16 investors to entrust their money to them for the purpose of trading commodities futures and options. On information and belief, the Fund currently has an equity of over \$11 million.

15. In or around January 2001, the Defendants withdrew \$500,000 from the Fund and used it to pay various business and/or personal expenses of the Defendants. This use was not authorized by the Fund. The Defendants did not disclose this withdrawal to the pool participants and sent at least one pool participant a false account statement that did not reflect the withdrawal.

16. In or around December 2001, the Defendants withdrew another \$200,255 from the Fund and used it to pay various business and/or personal expenses of the Defendants. The Defendants did not disclose this withdrawal either to the pool participants and sent at least one pool participant a false account statement that did not reflect the withdrawal.

17. In or around February 2002, the Defendants withdrew another \$750,000 from the Fund and used it to pay various business and/or personal expenses of the Defendants. The Defendants did not disclose this withdrawal to the pool participants and sent at least one pool participant a false account statement that did not reflect the withdrawal.

18. Defendant Lofgren forged the signature of one of the pool participants on letters Lofgren created and dated May 10, 2002. The letters purported to confirm the pool participants' withdrawal of capital from the pool.

19. The letters were requested by auditors who were conducting a financial audit of the Fund and were created by the Defendants to cover their unauthorized and fraudulent withdrawal of funds from the Fund.

V. Violations of the Commodity Exchange Act and Commission Regulations

Count I

Violations of Section 4b of the Act Fraud by Misappropriation and Misrepresentation

20. The allegations set forth in paragraphs 1 through 19 are re-alleged and incorporated herein.

21. Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), makes it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully make or cause to be made to other persons false reports or statements, or willfully enter or cause to be entered for other persons false records; 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 produce 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.

22. From at least January 2001 to the present, the Defendants cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive pool participants by failing to disclose the Defendants' fraudulent withdrawal of funds from the pool and by misappropriating pool funds entrusted to Defendants for trading commodity futures and commodity options.

23. The Defendants also cheated or defrauded or attempted to cheat or defraud pool participants by willfully making or causing to be made false reports and false statements to at least two pool participants who invested money with Defendants to trade commodity futures contracts and options.

24. The actions and omissions of Lofgren described in this count were done within the scope of his employment with Melrose. Therefore, Melrose is also liable for Lofgren's violations of Section 4b(a)(2)(i)-(iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2a(1)(B).

25. Lofgren, directly or indirectly, controlled Melrose and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Melrose's violations alleged in

this count. Lofgren is thereby liable for Melrose's violations of Section 4b(a)(2)(i)-(iii) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

26. Each act of misappropriation, each material misrepresentation or omission, and each false report or statement 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 4b(a)(2)(i)-(iii) of the Act.

Count II

Violations Of Section 4c(b) of the Act and Commission Regulation 33.10: Options Fraud and Misappropriation

27. Paragraphs 1 through 26 are realleged and incorporated herein.

28. From at least January 2001 to the present, Defendants violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c), in that they cheated or defrauded or attempted to cheat or defraud or deceived or attempted to deceive pool participants by failing to disclose their fraudulent withdrawal of funds from the pool and by misappropriating pool funds entrusted to Defendants for trading commodity futures and commodity options.

29. From at least January 2001 to the present, Defendants violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 33.10(b), 17 C.F.R. § 33.10(b), in that they made false reports and false statements to at least two pool participants who invested money with Defendants to trade commodity futures contracts and options.

30. Defendants' violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 33.10, 17 C.F.R. § 33.10, as set forth in paragraphs 28 and 29, were

committed in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, commodity options transactions.

31. The actions and omissions of Lofgren described in this count were done within the scope of his employment with Melrose. Therefore, Melrose is also liable for Lofgren's violations of Section 4c(b) of the Act and Commission Regulation 33.10, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2a(1)(B).

32. Lofgren, directly or indirectly, controlled Melrose and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Melrose's violations alleged in this count. Lofgren is thereby liable for Melrose's violations of Section 4c(b) of the Act and Commission Regulation 33.10, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

33. Each act of misappropriating participants' funds and making false reports or false statements that occurred 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) of the Act, 7 U.S.C. § 6c(b) and Commission Regulation 33.10, 17 C.F.R. § 33.10.

Count III

Violations of Section 4c(1) of the Act: Commodity Pool Fraud

34. Paragraphs 1 through 33 are realleged and incorporated herein.

35. During the relevant time period, Melrose acted as a CPO in that it engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, has solicited, accepted or received funds, securities or property from others 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. Melrose also acted as a CTA

during the relevant time in that it directed the trading in the Fund account. During this time period, Lofgren acted as AP to Melrose in both capacities.

36. From at least January 2001 through the present, Defendants have violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that they directly or indirectly employed or are employing a device, scheme, or artifice to defraud commodity pool participants, or have engaged or is engaging in transactions, practices or a course of business which operated as a fraud or deceit upon commodity pool participants by means of the acts and practices described in paragraphs 14 through 19.

37. In connection with such conduct, Defendants used or are using the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CPO and CTA and an AP of a CPO and CTA.

38. The actions and omissions of Lofgren described in this count were done within the scope of his employment with Melrose. Therefore, Melrose is also liable for Lofgren's violations of Section 4o(1) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2a(1)(B).

39. Lofgren, directly or indirectly, controlled Melrose and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Melrose's violations alleged in this count. Lofgren is thereby liable for Melrose's violations of Section 4o(1), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

40. Each act of misappropriating pool funds and making false reports or false statements that occurred during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1).

VI. 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 Defendants liable for violating Sections 4b, 4c(b), and 4o(1) of the Act, 7 U.S.C. §§ 6b, 6c(b), and 6o(1), and Commission Regulation 33.10, 17 C.F.R. §§ 33.10;

B. Enter an order of permanent injunction enjoining Defendants 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 Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Engaging in conduct in violation of Sections 4b, 4c(b), and 4o(1) of the Act, 7 U.S.C. §§ 6b, 6c(b), and 6o(1); and Commission Regulation 33.10, 17 C.F.R. §33.10;
2. Directly or indirectly soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity futures or options contract;
3. Engaging in, controlling, or directing the trading of any commodity futures or options accounts, on his own behalf or for or on behalf of any other person or entity, whether by power of attorney or otherwise;
4. Introducing customers to any other person engaged in the business of commodity futures and options trading;
5. Issuing statements or reports to others concerning commodity futures or options trading;
6. Otherwise engaging in any business activities related to commodity futures or options trading.

C. Enter an order pursuant to Section 6c(a) of the Act restraining Defendants and all persons insofar as they are acting in the capacity of Defendants' agents, servants, successors, employees, 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 the Defendants;

D. Enter an order directing that Defendants provide the Plaintiff immediate and continuing access to their books and records, make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds they received from and paid to investors and other persons in connection with commodity futures or options transactions or purported commodity futures or options transactions, including the names, addresses and telephone numbers of any such persons from whom they received such funds from April 1998 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from commodity investors, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from April 1998 to and including the date of such accounting;

E. Enter an order requiring Defendants to disgorge to any officer appointed or directed by the Court or directly to the pool participants all benefits received including, but not

limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest;

F. Enter an order requiring Defendants to make restitution by making whole each and every pool participant whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre-judgment interest;

G. Enter an order requiring Defendants to pay civil penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain to Defendant for each violation of the Act and Regulations or 2) \$110,000 for each violation of the Act and Regulations occurring between November 27, 1996, and October 23, 2000, and \$120,000 for each violation of the Act and Regulations occurring after October 23, 2000;

H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and

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

Date: August 30, 2002

Respectfully submitted,

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