

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 12-81311-CV-MIDDLEBROOKS/BRANNON

UNITED STATES COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

vs.

HUNTER WISE COMMODITIES, LLC, *et al.*,

Defendants.

ORDER OF FINAL JUDGMENT, PERMANENT INJUNCTION, CIVIL
MONETARY PENALTY AND OTHER EQUITABLE RELIEF

Final judgment is hereby **ENTERED** in favor of Plaintiff United States Commodity Futures Trading Commission (“CFTC”) and against Defendants Harold Edward Martin, Jr., Fred Jager, Hunter Wise Commodities, LLC, Hunter Wise Services, LLC, Hunter Wise Credit, LLC, and Hunter Wise Trading, LLC (collectively the “Hunter Wise Defendants”) on Counts 1, 2, 3, 12 and 13 of the Complaint.

It is hereby **ORDERED AND ADJUDGED** as follows:

I. PERMANENT INJUNCTION

1. Based upon and in connection with this Court’s Findings of Fact and Conclusions of Law, the Court’s February 19, 2014 Order Granting Summary Judgment to Plaintiff on Counts 1 and 12 of the Complaint (DE 281), and pursuant to Section 6c of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 13a-1 (2012), the Hunter Wise Defendants are **PERMANENTLY RESTRAINED, ENJOINED AND PROHIBITED** from directly or indirectly:

- a. Offering to enter into, entering into, executing, confirming the execution of, or conducting an office or business in the United States for the purpose of soliciting or accepting orders for, or otherwise dealing in retail commodity transactions in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a);
- b. Cheating, defrauding, or attempting to cheat or defraud any person, in or in connection with a retail commodity transaction in violation of Section 4b(a)(2)(A) of the Act, 7 U.S.C. § 6b(a)(2)(A);
- c. Willfully making or causing to be made any false report or statement in or in connection with a retail commodity transaction in violation of Section 4b(a)(2)(B) of the Act, 7 U.S.C. § 6b(a)(2)(B);
- d. Willfully deceiving or attempting to deceive by any means whatsoever any person in or in connection with a retail commodity transaction in violation of Section 4b(a)(2)(C) of the Act, 7 U.S.C. § 6b(a)(2)(C);
- e. Employing or attempting to employ any manipulative device, scheme or artifice to defraud in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Commission Regulation 180.1, 17 C.F.R. § 180.1 (2013);
- f. Making or attempt to make any untrue or misleading statement of a material fact, or omitting a material fact necessary in order to make the statements made not misleading in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Commission Regulation 180.1(a)(2), 17 C.F.R. § 180.1(a)(2);
- g. Engaging, or attempting to engage in, any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in violation

of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Commission Regulation 180.1(a)(3), 17 C.F.R. § 180.1(a)(3).

2. The Hunter Wise Defendants also are **PERMANENTLY RESTRAINED, ENJOINED AND PROHIBITED** from directly or indirectly:
- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a);
 - b. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2013)) (“commodity options”), security futures products, swaps (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47), and as further defined by Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx)), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”), for their own personal account or for any account in which they have a direct or indirect interest;
 - c. Having any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts and/or swaps traded on their behalf;
 - d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps;

- e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts and/or swaps;
- f. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) exempted from registration or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9).

II. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution / Disgorgement

3. The Hunter Wise Defendants are jointly and severally liable for restitution. The Hunter Wise Defendants shall **PAY** restitution in the amount of fifty-two million, six hundred forty-three thousand, three hundred ninety-nine dollars and nineteen cents (\$52,643,399.19) (“Restitution Obligation”).

4. The Hunter Wise Defendants shall pay the Restitution Obligation, plus post-judgment interest, within **ten (10) days** of the date of the entry of this Order. If the Restitution Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2006).

5. The Court-appointed Special Monitor and Corporate Manager, Melanie Damian (“Monitor”), is granted full authority to act as an equity receiver for the Hunter Wise entity defendants. The Monitor shall pursue and collect restitution payments from the Hunter Wise Defendants and make distributions as set forth below.

6. The Hunter Wise Defendants shall make Restitution Obligation payments under this Order to the Monitor in the name “Hunter Wise Settlement/Restitution Fund” and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s, or bank money order, to the Monitor at the office of Damian & Valori LLP, 1000 Brickell Avenue, Suite 1020, Miami, Florida 33131 under cover letter that identifies the paying Defendant and the name and docket number of this proceeding. The paying Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

7. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to the Hunter Wise Defendants’ customers or may defer distribution until such time as the Monitor deems appropriate. The Monitor shall propose a distribution plan to the Court within **sixty (60) days** of the entry of this Order. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible customers is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the CFTC following the instructions for civil monetary penalty payments set forth in Part B. below.

8. The Hunter Wise Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify the customers to whom the Monitor, in her sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. The Hunter Wise Defendants shall execute any documents necessary to release funds that they have in any repository, bank, investment, or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

9. Until discharged by the Court, the Monitor shall provide the CFTC at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' customers during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

10. The amounts payable to each customer shall not limit the ability of any customer to prove that a greater amount is owed by Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law.

11. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of the Hunter Wise Defendants who suffered a loss is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution that has not been paid by the Hunter Wise Defendants to ensure continued compliance with any provision of this Order and to hold the Hunter Wise Defendants in contempt for any violations of any provision of this Order.

12. To the extent that any funds accrue to the U.S. Treasury for satisfaction of the Hunter Wise Defendants' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

B. Civil Monetary Penalty

13. The Hunter Wise Defendants jointly and severally shall **PAY** a civil monetary penalty of fifty-five million, four hundred forty-five thousand, eight hundred ninety-two dollars and thirty-nine cents (\$55,445,892.39) ("CMP Obligation"), which represents triple the monetary gain received by the Hunter Wise Defendants by reason of their wrongdoing in this action.

14. The Hunter Wise Defendants shall pay the CMP Obligation, plus post-judgment interest, within **ten (10) days** of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2006).

15. The Hunter Wise Defendants shall pay their CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, the paying Defendant shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. The paying Defendant shall accompany payment of the CMP Obligation with a cover letter that identifies the Hunter Wise Defendant and the name and docket number of this proceeding. The paying Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

C. Provisions Related to Monetary Sanctions

16. Partial Satisfaction: Any acceptance by the CFTC or the Monitor of partial payment of the Hunter Wise Defendants' Restitution Obligation or CMP Obligation shall not be deemed a waiver of the Hunter Wise Defendants' obligation to make further payments pursuant to this Order, or a waiver of the CFTC's right to seek to compel payment of any remaining balance.

III. MISCELLANEOUS PROVISIONS

17. Notice: All notices required to be given by any provision in this Order shall be sent certified mail, return receipt requested, as follows:

Notice to CFTC:

Rosemary Hollinger
Deputy Director
U.S. Commodity Futures Trading Commission
525 W. Monroe, Suite 1100
Chicago, Illinois 60661

Notice to Defendants Harold Edward Martin and Fred Jager:

Harris L. Kay, Jeffry Henderson
Henderson & Lyman
175 West Jackson Boulevard
Suite 240
Chicago, IL 60604

Notice to the Hunter Wise entities:

Melanie Damian, in her capacity as Corporate Manager
Damian & Valori LLP
1000 Brickell Avenue, Suite 1020
Miami, Florida 33131

All such notices to the CFTC shall reference the name and docket number of this action.

18. Change of Address/Phone: Until such time as the Hunter Wise Defendants satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Order, the Hunter Wise Defendants shall provide written notice to the CFTC by certified mail of any change to their telephone numbers and mailing addresses within **ten (10) calendar days** of the change.

19. Invalidation: If any provision of this Order or if the application of any provision or circumstance is held invalid, then the remainder of this Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

20. Waiver: The failure of any party to this Order or of any of the Hunter Wise Defendants' customers at any time to require performance of any provision of this Order shall in no manner affect the right of the party or customer at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Order.

21. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Order and for all other purposes related to this action, including any motion by the Hunter Wise Defendants to modify or for relief from the terms of this Order.

22. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Order shall be binding upon the Hunter Wise Defendants, upon any person

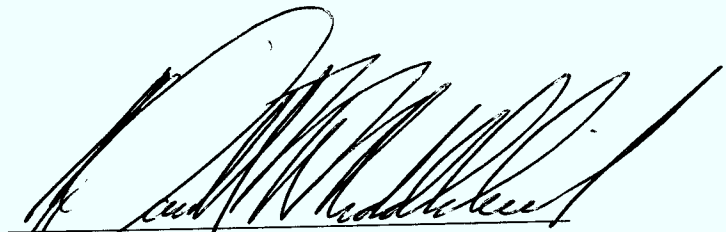
under their authority or control, and upon any person who receives actual notice of this Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Hunter Wise Defendants.

23. There being no just reason for delay, the Clerk of the Court is hereby directed to **ENTER** this Order of Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief against Hunter Wise Commodities, LLC, Hunter Wise Services, LLC, Hunter Wise Credit, LLC, Hunter Wise Trading, LLC, Harold Edward Martin, Jr., and Fred Jager.

24. All pending motions are **DENIED AS MOOT**.

25. The Clerk of Court shall **CLOSE** this case.

DONE AND ORDERED in Chambers in West Palm Beach, Florida, this 15 day of May, 2014.



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record
Melanie E. Damian, Special Monitor and Corporate Manager
John A. King, II, *pro se* Defendant
Chadewick Hopkins, *pro se* Defendant