

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case Number: 12-CV-81311-Middlebrooks/Brannon

U.S. COMMODITY FUTURES TRADING COMMISSION )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
HUNTER WISE COMMODITIES, LLC et al. )  
 )  
Defendants. )  
\_\_\_\_\_ )

**DEFENDANTS', NEWBRIDGE ALLIANCE, INC. AND JOHN KING,  
RESPONSE TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND  
INCORPORATED MEMORANDUM OF LAW**

COMES NOW, the Defendants, NEWBRIDGE ALLIANCE, INC. ("Newbridge") and JOHN KING ("King"), by and through their undersigned counsel, and pursuant to the applicable Federal Rules of Civil Procedure and the Southern District of Florida Local Rules, hereby file their Response in Opposition to Plaintiff's, Commodity Futures Trading Commission ("CFTC"), Motion for an Order of Preliminary Injunction ("Motion"), and in support thereof states as follows:

**Introduction**

1. On or about December 5, 2012, Plaintiff filed its original Complaint in the United States District Court for the Southern District of Florida, alleging multiple causes of action against multiple Defendants.

2. Specifically, the Complaint alleges claims against Newbridge and King for violation of Section 4(a) of the Act (Count I), violation of Section 4(b) of the Act (Count VIII), and violations of Section 6(c)(1) of the Act and Regulation 180.1 (Count IX).

3. CFTC also filed its Motion, requesting an Order of preliminary injunction over the Defendants. The Motion essentially restates Plaintiff's allegations in the Complaint with some additional background.

4. On January 22, 2013, Defendants filed their Motion to Dismiss the CFTC's Complaint ("Motion") [DE 32] alleging, among other things, that the CFTC lacks regulatory jurisdiction over the Defendants and their transactions with customers.

5. On January 22, 2013, Defendant, Hunter Wise, filed its Memorandum of Law in Opposition to Plaintiff's Motion for Preliminary Injunction ("Hunter Wise Memorandum") [DE 36], citing among other things, that Plaintiff lacks regulatory jurisdiction over the Defendants and their transactions and, as such, has not, and cannot, establish the elements necessary to obtain a preliminary injunction against a private litigant. See Hunter Wise Memorandum, [DE 36 section II].

6. Specifically, Plaintiff cannot show a substantial likelihood of success merits against Defendants, nor can it balance the harm that would occur to Defendants' business (i.e. asset freeze, accounting, disgorgement of income, etc.) against the alleged injury that would occur to the Plaintiff should Defendants continue operating.

7. As stated in Defendants' Motion, Plaintiff lacks jurisdiction over the transactions of Defendants and its customers [DE 32]. Furthermore, Plaintiff fails to substantiate any of its allegations of fraud against the Defendants, let alone justify a preliminary injunction against the Defendants.

8. As such, Defendants would incorporate and adopt the arguments stated in their Motion to Dismiss [DE 32] in opposition to Plaintiff's Motion. As the CFTC has failed to allege any facts that substantiate its claims, a preliminary injunction should not be issued.

9. Defendants would also join in the Hunter Wise Memorandum [DE 36] and their opposition of Plaintiff's request for a preliminary injunction.

#### **Conclusion**

For the above reasons, Defendants, NEWBRIDGE ALLIANCE, INC. and JOHN KING, respectfully request the Court to enter an Order denying Plaintiff's, U.S. COMMODITY FUTURES TRADING COMMISSION, Motion for and Order of Preliminary Injunction as it relates to Defendants, and such further relief that is necessary and just.

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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on January 23, 2013, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF and is also being served on all counsel of record listed in the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

/s/ Jeffrey C. Pepin  
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**SERVICE LIST**

**U.S. Commodity Futures Trading Commission v. Hunter Wise Commodities, LLC et al.**  
**CASE NO.: 12-CV-81311-Middlebrooks/Brannon**

*Via Email and CM/ECF*

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