

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

<b>U.S. COMMODITY FUTURES TRADING COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>CIVIL ACTION NO.</b>
	)	
<b>v.</b>	)	
	)	<b>Complaint for Injunctive and Other</b>
<b>SENTRY ASSET GROUP, LLC DBA</b>	)	<b>Equitable Relief, Restitution and Civil</b>
<b>SENTRY ASSET MANAGEMENT, LLC,</b>	)	<b>Monetary Penalties Under the</b>
<b>AND JOHN PAKEL,</b>	)	<b>Commodity Exchange Act</b>
	)	
<b>Defendants.</b>	)	
	)	
	)	

Plaintiff, U.S. Commodity Futures Trading Commission (“Commission”), by its attorneys, alleges as follows:

**I. SUMMARY**

1. From at least March 2012, and continuing through at least July 2013 (the “Relevant Period”), Defendant Sentry Asset Group, LLC dba Sentry Asset Management, LLC (“SAG”), by and through the actions of its employees and agents, including, but not limited to Defendant, John Pakel (“Pakel”), (collectively, “Defendants”), offered to enter into, or conducted any office or business in the United States, for the purpose of soliciting or accepting any order for the purchase or sale of precious metals from retail customers on a leveraged or financed basis. These transactions constituted illegal, off-exchange retail commodity transactions. By this conduct, Defendants have engaged, are engaging, or are about to engage in conduct in violation of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6(a) and 6d(a) (2012).

2. Pakel controlled SAG throughout the Relevant Period and failed to act in good faith or knowingly induced SAG's violations alleged herein. Therefore, Pakel is liable for SAG's violations pursuant to 7 U.S.C. § 13c(b) (2012).

3. At all relevant times, the acts and omissions of Pakel and others were committed within the scope of their employment, agency, or office with SAG. Therefore, SAG is liable under 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation ("Regulation") 17 C.F.R. § 1.2 (2014), as a principal for the actions and omissions of Pakel, and any other manager, employee or agent of SAG in violation of the Act.

4. Accordingly, pursuant to 7 U.S.C. § 13a-1 (2012), the Commission brings this action to enjoin Defendants' unlawful acts and practices, to compel their compliance with the Act, and to further enjoin them from engaging in any commodity-related activity.

5. In addition, the Commission seeks civil monetary penalties, restitution and remedial ancillary relief, including, but not limited to, trading and registration bans, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

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

## **II. JURISDICTION AND VENUE**

7. 7 U.S.C. § 13a-1 (2012) 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.

8. The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to 7 U.S.C. §§ 2(c)(2)(D) and 13a-1 (2012).

9. Venue properly lies with the Court pursuant to 7 U.S.C. § 13a-1(e) (2012), because Defendants transacted business in this District, and certain transactions, acts, and practices alleged in this Complaint occurred, are occurring, and/or are about to occur within this District.

### III. THE PARTIES

#### A. Plaintiff

10. Plaintiff **U.S Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.* (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2014).

#### B. Defendants

11. Defendant **Sentry Asset Group, LLC dba Sentry Asset Management, LLC** was a Florida limited liability company formed in July, 2011, and dissolved in March, 2014. Its principal place of business was Boca Raton, Florida. SAG was a telemarketing firm that solicited retail customers to invest in off-exchange retail commodity transactions. SAG was never registered with the Commission in any capacity.

12. Defendant **John Pakel** is a resident of Boynton Beach, Florida. Pakel was an owner, operator, and controlling person of SAG, managing its day-to-day operations. Pakel has never been registered with the Commission in any capacity.

#### IV. RELATED ENTITIES

13. SAG introduced customers to **Hunter Wise Commodities, LLC** (“Hunter Wise”), a precious metals dealer that confirmed the execution of customer precious metal transactions, directly or through **Lloyds Commodities, LLC** (“Lloyds”). Hunter Wise was formed as a California company in July 2007 and registered as a Nevada company in October 2010. It maintained business addresses in Las Vegas, Nevada and Irvine, California. Hunter Wise held itself out on its website as “a physical commodity trading company, wholesaler, market maker, back-office support provider, and finance company.” Hunter Wise purported to offer, enter into, and confirm the execution of retail commodity transactions involving gold, silver, platinum, palladium, and copper throughout the United States using a network of telemarketing solicitors such as SAG that it referred to as “dealers.”

14. On February 19, 2014, this Court, in an action captioned *CFTC v. Hunter Wise Commodities, LLC*, granted the Commission’s Motion for Summary Judgment finding that Hunter Wise and the other defendants violated 7 U.S.C. § 6(a) (2012). Case No. 9:12-cv-81311-DMM (S.D. Fla. Feb. 19, 2014).

15. Lloyds is a Florida limited liability company with its principal place of business in Palm Beach Gardens, Florida. Lloyds was an intermediary firm that recruited precious metals dealers to solicit customers who would execute retail commodity transactions through Hunter Wise. Lloyds has never been registered with the Commission.

16. SAG also introduced customers to **AmeriFirst Management, LLC** (“AmeriFirst”), a precious metals wholesaler and clearing firm that purported to confirm the execution of customer off-exchange retail commodity transactions.

17. AmeriFirst held itself out on its website as a precious metals clearing and financing firm for precious metals dealers and claimed to provide dealers with “tangible assets in a growing physical market” and guarantee[s] that every ounce of metal in [the dealer’s] customers [sic] account exists and is ready for delivery at any point and time.” On its website, AmeriFirst’s product offering was gold, silver, and platinum in bar and coin form. AmeriFirst also claimed on its website to provide customer financing options for precious metal dealers. It operated throughout the United States using a network of over 30 solicitation firms such as SAG that it refers to as “dealers.”

18. On February 25, 2013, AmeriFirst ceased operations.

19. On September 17, 2013, this Court, in an action captioned *CFTC v. AmeriFirst Management, LLC*, entered a Consent Order of Permanent Injunction Against AmeriFirst, finding that AmeriFirst violated 7 U.S.C. § 6(a) (2012). Case No. 9:13-cv-61637-WPD (S.D. Fla. Sept. 17, 2013). In the order, AmeriFirst neither admitted nor denied its violations of 7 U.S.C. § 6(a) (2012). *Id.*

#### V. STATUTORY BACKGROUND

20. 7 U.S.C. §2(c)(2)(D) (2012) gives the Commission jurisdiction over “any agreement, contract, or transaction in any commodity” that is entered into with, or offered to, a non-eligible contract participant (“ECP”) “on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis” (“retail commodity transactions”) with respect to conduct occurring on or after July 16, 2011, subject to certain exceptions not applicable here. 7 U.S.C. § 2(c)(2)(D) makes 7 U.S.C. § 6(a) (2012) applicable to retail commodity transactions “as if” such transactions are contracts for the sale of a commodity for future delivery.

21. The Act defines an ECP, in relevant part, as an individual who has amounts invested on a discretionary basis, the aggregate of which exceeds \$10 million, or \$5 million if the individual enters into the transaction to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual. 7 U.S.C. § 1a(18)(xi) (2012).

22. 7 U.S.C. § 6(a) (2012) in relevant part, makes it is unlawful for any person to offer to enter into, execute, confirm the execution of, or conduct any office or business anywhere in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery unless the transaction is conducted on or subject to the rules of a board of trade that has been designated or registered by the Commission as a contract market.

23. 7 U.S.C. § 6d(a) (2012) in relevant part, provides that it shall be unlawful for any person to be a futures commission merchant (“FCM”) unless such person shall have registered with the Commission as an FCM. In pertinent part, 17 C.F.R §1a (28) (2014) defines an FCM as “an individual, association, partnership, corporation, or trust that is engaged in soliciting or in accepting orders for...any agreement, contract, or transaction described in 7 U.S.C. § 2(c)(2)(C)(i) of this title or 7 U.S.C. § 2(c)(2)(D)(i)...”

## VI. FACTS

24. During the Relevant Period, SAG was a telemarketing firm that solicited retail customers to engage in off-exchange retail commodity transactions involving leveraged precious metals. Although SAG also offered precious metals on a fully paid basis, the vast majority of its

business was in off-exchange retail commodity transactions. It is only SAG's off-exchange retail commodity transactions through Hunter Wise and AmeriFirst that are at issue here.

25. During the Relevant Period, Pakel was a managing member, owner and controlling person of SAG. Pakel was a signatory on SAG bank accounts, and entered into agreements with AmeriFirst on behalf of SAG.

26. At various times during the Relevant Period, SAG employed Pakel and other individuals to, among other things, solicit retail customers to engage in off-exchange retail commodity transactions.

27. Pakel and SAG's other employees conducted nearly all of their solicitations by telephone. When soliciting customers for off-exchange retail commodity transactions, Pakel and SAG's other employees represented that to purchase a certain quantity of metal, the customers needed to deposit a percentage of the total metal value, and that customers would receive a loan for the remaining amount. Lloyds, Hunter Wise or AmeriFirst provided the financing for the loans to the customers. However, SAG did not disclose to all of their customers Lloyds', Hunter Wise's or AmeriFirst's involvement in their off-exchange retail commodity transactions.

28. After a non-ECP customer invested, SAG contacted Lloyds, Hunter Wise or AmeriFirst to effectuate the transaction. SAG collected the funds needed for the transaction from the customer and sent them to Lloyds, Hunter Wise or AmeriFirst. Lloyds purportedly forwarded funds that it received from SAG to Hunter Wise. Hunter Wise and AmeriFirst provided back office support services to SAG and provided access to the details of the transaction to the customer.

29. With respect to the retail commodity transactions, SAG charged customers commissions, storage and other fees for purchasing the metal and interest on loans to buy metal.

Lloyds/Hunter Wise provided SAG's share of the commissions and fees to SAG after it received the customer's funds from SAG. AmeriFirst initially operated in a similar fashion, but it later directed SAG to deduct its commissions and fees from customer funds before forwarding those funds to AmeriFirst.

30. With the exception of a few instances which are not the subject of this action, SAG's customers did not take delivery of precious metals. Rather, the vast majority of SAG's customers were only engaging in these transactions with SAG in order to speculate on the price direction of the precious metals.

31. Of more than \$1.1 million collected by SAG during the Relevant Period, \$278,767 was paid to managers of SAG, presumably in the form of fees and commissions.

32. SAG, Lloyds, Hunter Wise and AmeriFirst never bought, sold, loaned, stored, or transferred any physical metals for these off-exchange retail commodity transactions. Likewise, SAG, Lloyds, Hunter Wise and AmeriFirst never delivered any precious metals to any customers with respect to these financed metals transactions.

33. At all times during the Relevant Period, Pakel was an owner, operator and controlling person of SAG. He exercised control over the day-to-day operations of SAG, opened bank accounts and entered into agreements on behalf of SAG.

## **VII. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

### **COUNT I**

#### **ILLEGAL OFF-EXCHANGE TRADING Violations of 7 U.S.C. § 6(a) (2012)**

34. Paragraphs 1 through 33 of this Complaint are re-alleged and incorporated herein by reference.

35. During the Relevant Period, the retail commodity transactions described in this Complaint were offered and entered into by Defendants (a) on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis, (b) with persons who are not ECPs or eligible commercial entities as defined by the Act, and (c) not made or conducted on, or subject to, the rules of any board of trade, exchange or contract market.

36. The retail commodity transactions described herein are commodities as defined in 7 U.S.C. § 1a(9) (2012).

37. As set forth above, during the Relevant Period, Defendants SAG and Pakel violated 7 U.S.C. § 6(a) (2012) by 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, transactions in, or in connection with, retail commodity transactions.

38. Each offer to enter into, entrance into, execution, confirmation, solicitation, or acceptance of an order for a retail commodity transaction made during the Relevant Period to a non-ECP customer is alleged as a separate and distinct violation of 7 U.S.C. § 6(a) (2012).

39. Pakel directly or indirectly controlled SAG and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting SAG's violations of 7 U.S.C. § 6(a) (2012), alleged in this Complaint. Therefore, pursuant to 7 U.S.C. § 13c(b) (2012), Pakel is liable for each of SAG's violations of 7 U.S.C. § 6(a) (2012).

40. The acts and omissions of Pakel and the managers, agents and or persons acting for SAG described in this Complaint were done within the scope of their employment, agency or office with SAG. Therefore, SAG is liable as a principal for each act, omission, or failure of

Pakel and SAG's other managers, agents or persons acting for SAG, constituting violations of 7 U.S.C. § 6(a) (2012), pursuant to 7 U.S.C § 2(a)(1)(B) (2012) and 17 C.F.R. § 1.2 (2014).

## **COUNT II**

### **FAILURE TO REGISTER Violations of 7 U.S.C. § 6d(a) (2012)**

41. Paragraphs 1 through 40 of this Complaint are re-alleged and incorporated herein by reference.

42. During the relevant period, SAG, through its managers, agents and employees, acted as an FCM by soliciting and accepting orders for agreements, contracts, or transactions described in 7 U.S.C. § 2(c)(2)(D)(i) (2012), *i.e.*, retail commodity transactions.

43. 7 U.S.C. § 6d(a) (2012) provides that it shall be unlawful for any person to be an FCM unless such person shall have registered with the Commission as an FCM.

44. During the relevant period, Defendants failed to register with the Commission as an FCM, and therefore, violated 7 U.S.C. § 6d(a) (2012).

45. Pakel directly or indirectly controlled SAG and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting SAG's violations of 7 U.S.C. § 6d(a) (2012), alleged in this Complaint. Therefore, pursuant to 7 U.S.C. § 13c(b) (2012), Pakel is liable for each of SAG's violations of 7 U.S.C. § 6d(a) (2012).

46. The acts, omissions and failures of Pakel and other managers, agents or persons acting for SAG described in this Complaint occurred within the scope of their employment, agency or office with SAG, and are deemed to be the acts, omissions and failures of SAG by operation of 7 U.S.C. § 2(a)(1)(B) (2012) and 17 C.F.R. § 1.2 (2014).

**VIII. RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that this Court, as authorized by 7 U.S.C. § 13a-1 (2012), and pursuant to its own equitable powers, enter:

- A. An order finding that Defendants violated 7 U.S.C. §§ 6(a) and 6d(a) (2012);
- B. An order of permanent injunction prohibiting Defendants and any other person or entity associated with them, from engaging in conduct in violation of 7 U.S.C. §§ 6(a) and 6d(a) (2012);
- C. An order of permanent injunction prohibiting Defendants, and any other person or entity associated with them, from directly or indirectly:
  - 1) Trading on or subject to the rules of any registered entity (as that term is defined in 7 U.S.C. § 1a(40) (2012));
  - 2) Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in 17 C.F.R. § 1.3(hh) (2014) (commodity options)), swaps (as that term is defined in 7 U.S.C. § 1a(47) (2012), as further defined by 17 C.F.R. § 1.3(xxx) (2014) (swaps)), security futures products, and/or foreign currency (as described in 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (2012) (forex contracts)), for their own personal accounts or for any account in which they have a direct or indirect interest;
  - 3) Having any commodity futures, options on commodity futures, commodity options, swaps, security futures products, and/or forex contracts traded on their behalf;

- 4) 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, swaps, options on commodity futures, commodity options, security futures products, and/or forex contracts;
  - 5) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling of any commodity futures, swaps, options on commodity futures, commodity options, security futures products, and/or forex contracts;
  - 6) Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9) (2014);
  - 7) Acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a) (2014)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9) (2014); and
  - 8) Engaging in any business activities related to commodity futures, swaps, options on commodity futures, commodity options, security futures products and/or forex products.
- D. An order directing Defendants, as well as any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices that constitute violations of the Act, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

- E. An order directing Defendants, as well as any successors thereof, to make full restitution, pursuant to such procedure as the Court may order, to every customer whose funds Defendants received or caused another person or entity to receive as a result of acts and practices which constituted violations of the Act, as described herein, and pre- and post-judgment interest thereon from the date of such violations;
- F. An order directing Defendants, as well as any successors thereof, to rescind, pursuant to such procedure as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the customers whose funds were received by them as a result of the acts and practices which constituted violations of the Act, as described herein;
- G. An order directing Defendants, as well as any successors thereof, to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the greater of (1) triple their monetary gain to Defendants for each violation of the Act; or (2) \$140,000 for each violation committed, plus post-judgment interest;
- H. An order directing Defendants, as well as any successors thereof, to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2012); and
- I. Such other and further relief as the Court deems proper.

Date: April 20, 2015

Respectfully submitted,

U.S. COMMODITY FUTURES  
TRADING COMMISSION

s/Eugenia Vroustouris

Eugenia Vroustouris  
Senior Trial Attorney  
VA Bar No. 43681  
Fl. Special Bar No. A5501470  
evroustouris@cftc.gov

James H Holl, III  
Chief Trial Attorney  
D.C. Bar No. 453473  
Fl. Special Bar No. A5501063  
jholl@cftc.gov

U.S. Commodity Futures Trading  
Commission  
Division of Enforcement  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5937  
Attorneys for Plaintiff