

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**U. S. COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

v.

**PEREGRINE FINANCIAL GROUP, INC.,
and
RUSSELL R. WASENDORF, SR.,**

Defendants.

Civil Action No: _____

Hon. _____

**Complaint for Injunctive and Other
Equitable Relief and Civil Monetary
Penalties Under the Commodity
Exchange Act**

COMPLAINT

The United States Commodity Futures Trading Commission (“Commission” or “CFTC”), by and through its attorneys, is informed and believes, and based thereon alleges as follows:

INTRODUCTION

1. Defendant Peregrine Financial Group, Inc. (“PFG”) is a registered futures commission merchant (“FCM”). FCMs receive money, securities and other property (“customer funds”) from their customers to margin, guarantee, or secure the customers’ futures and options trades. Under the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 1 *et seq.* (2006), the Act, as amended,¹ to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission’s Regulations (the

¹ The Commodity Exchange Act, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008) and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203 (“Dodd-Frank Act”), Title VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 16, 2010).

“Regulations”) promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011), FCMs are required to segregate and separately account for all customer funds.

2. From at least February 2010 through the present (“relevant time”), PFG and Russell R. Wasendorf, Sr., PFG’s chief executive officer (“CEO”) and sole owner, have failed to maintain adequate customer funds in segregated accounts. That shortfall exceeds and has exceeded \$200 million. PFG and Wasendorf have used customer funds for purposes other than those intended by its customers, and consequently, have misappropriated these funds. The whereabouts of the funds is currently unknown.

3. Additionally, during at least this same period, PFG and Wasendorf have filed false reports with the CFTC regarding the amount of customer segregated funds held by PFG.

4. By this conduct and further conduct described herein, PFG and Wasendorf have engaged, are engaging, or are about to engage in acts and practices that violate certain provisions of the Act, as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission’s Regulations, 17 C.F.R. §§ 1.1 *et seq.* (2012).

5. Accordingly, the CFTC brings this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, to enjoin PFG and Wasendorf’s unlawful acts and practices and to compel their compliance with the Act and the Regulations. Moreover, unless immediately restrained and enjoined by this Court, additional PFG customer funds may be misappropriated or dissipated, and Defendants PFG and Wasendorf are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below. Consequently, the Commission seeks a restraining order pursuant to 6c(a) of the Act, as amended, 7 U.S.C. § 13a-1(a), prohibiting Defendants from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as

requested, any books and records or other documents, and prohibiting any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property. In addition, the Commission seeks remedial ancillary relief, including without limitation restitution, disgorgement, pre- and post-judgment interests, and such other equitable relief as this Court may deem necessary and appropriate, and civil monetary penalties.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006), 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.

7. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), in that Defendants are found in, inhabit and/or transact or have transacted business in this District, and Defendants' acts and practices in violation of this Act occurred, are occurring, and/or are about to occur within this District, among other places.

PARTIES

8. The **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 et seq. (2006), the Act, as amended, to be codified at 7 U.S.C. §§ 1 et seq., and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 et seq. (2012).

9. **Peregrine Financial Group Inc.** is and was at all relevant times a registered FCM located at 311 South Monroe St., Suite 1300, Chicago, Illinois.

10. Defendant **Russell R. Wasendorf, Sr.** resides in Cedar Rapids, Iowa. He is the CEO and sole owner of PFG. He has been registered with the Commission as an associated person (“AP”) of PFG since 1992.

OTHER RELEVANT PARTIES

11. The **National Futures Association** (“NFA”) is a not-for-profit industry membership corporation formed as a registered futures association authorized under Section 17 of the Act, 7 U.S.C. § 21, that operates under the supervision of the CFTC. Its membership is comprised of FCMs and other futures professionals registered with the CFTC. The NFA is responsible, under CFTC oversight, for certain aspects of the regulation of these futures entities and their APs. It focuses primarily on the qualifications and proficiency, financial condition, retail sales practices, and business conduct of its members. At all relevant times to this Complaint, the NFA was PFG’s designated self-regulatory organization (“DSRO”) responsible for monitoring and auditing PFG for compliance with the minimum financial and related reporting requirements of the domestic exchanges of which PFG was a member.

STATUTORY BACKGROUND

12. A futures commission merchant or “FCM” is defined in Section 1a(28) of the Act, as amended, to be codified at 7 U.S.C. § 1a(28), as any individual, association, partnership, corporation or trust that is engaged in soliciting or accepting orders for the purchase or sale of any commodity for future delivery and, “in or in connection with such solicitation or acceptance of orders, accepts any money, securities or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.”

13. Customer funds are defined in Regulation 1.3(gg), 17 C.F.R. § 1.3(gg) (2012), as “all money, securities, and property received by a futures commission merchant or by a clearing organization from, for, or on behalf of customers or options customers.”

14. Under Regulation 1.10(b), 17 C.F.R. § 1.10(b) (2012), with limited exception, FCMs must file monthly financial reports with the Commission through CFTC Form 1-FR-FCM, commonly known as a “1-FR” or “financial report.” Pursuant to Regulation 1.32, 17 C.F.R. § 1.32 (2012), FCMs must also monitor and compute their segregation requirements and customer funds on deposit in segregated accounts on a daily basis and maintain copies of these reports, commonly known as a “daily segregation computation.”

PFG AND WASENDORF FAILED TO SEGREGATE CUSTOMER FUNDS AND MISAPPROPRIATED THOSE FUNDS

Background

15. At all relevant times to this Complaint, PFG kept its segregated customer funds in account XXXX1845 (“1845 customer seg account”) at a U.S. Bank branch in Cedar Falls, Iowa. Wasendorf controlled that account as one of its three signatories.

16. In July 2012, NFA conducted an audit of PFG. In connection with the audit, PFG represented to NFA that it held in excess of \$220 million in the 1845 customer seg account, when, in fact, that account held approximately only \$5.1 million.

17. On information and belief, on or about July 9, 2012, Wasendorf attempted to commit suicide at PFG offices in Cedar Rapids, Iowa. He is reported to be in a coma as a result of that attempt.

18. In the immediate aftermath of that incident, the staff of the NFA received information that Wasendorf may have falsified certain bank records.

PFG and Wasendorf Have Failed To Maintain Customer Funds in Segregation and Have Misappropriated At Least \$200 Million Of Customer Funds

19. Since at least February 2010, PFG and Wasendorf have failed to maintain adequate customer funds in segregated accounts and have misappropriated those customer funds for purposes other than intended by its customers. In particular,

- a. On or about February 28, 2010, PFG records showed a balance of approximately \$207 million in the 1845 customer seg account. PFG had received at least that amount from customers. However, the actual balance in the account was less than \$10 million.
- b. On or about March 30, 2011, PFG records showed a balance of approximately \$218 million in the 1845 customer seg account. PFG had received at least that amount from customers. However, the actual balance in the account was less than \$10 million.
- c. On or about July 9, 2012, PFG records showed a balance of approximately \$225 million in the 1845 customer seg account. PFG had received at least that amount from customers. However, the actual balance in the account was approximately \$5 million.

PFG and Wasendorf Made False Statements in Documents Filed with the Commission

20. In its capacity as an FCM, PFG filed monthly 1-FR statements with the CFTC. One section of the 1-FR statements requires the reporting of “funds in segregation for customers trading on U.S. Commodity Exchanges.” Those statements are filed electronically.

21. Since August 15, 2011, Wasendorf filed and or caused to be filed at least three 1-FR statements on behalf of PRG which falsely reported the amount of funds in customer segregated accounts.

**I. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND
COMMISSION REGULATIONS
Count I**

**Violations of Section 4d(a) of the Act and Regulation 1.20(a):
PFG and Wasendorf Failed to Segregate Customer Funds**

22. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

23. Section 4d(a) of the Act, as amended, 7 U.S.C. § 6d(a), makes it unlawful for an FCM to solicit or accept orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless it treats and deals with all money, securities, and property received by it to margin, guarantee, or secure the trades or contracts of any customer, or accruing to such customer as the result of such trades or contracts, as belonging to such customer.

24. Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2012), requires in part that all customer funds be separately accounted for and segregated as belonging to commodity or option customers and deposited under an account name which clearly identifies them as such and shows that they are segregated as required by the Act and Regulations.

25. From at least February 2010 through the present, PFG, by and through Wasendorf, failed to treat customer funds as belonging to its customers and failed to segregate and separately account for customer funds. By this conduct, PFG and Wasendorf violated Section 4d(a) of the Act, as amended, 7 U.S.C. § 6d(a), and Regulation 1.20(a) (2012).

26. Wasendorf controlled PFG and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting PFG's violations alleged in this count. Wasendorf is therefore additionally liable for PFG's violations of Section 4d(a) of the Act, as amended, 7 U.S.C. § 6d(a), and Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2012), as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

27. Each and every day that PFG failed to segregate customer funds constitutes a separate and distinct violation of Section 4d(a) of the Act, as amended, 7 U.S.C. §6d(a), and Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2012).

Count II
Violations of Section 4b(a)(1)(A), (C) of the Act, as amended:
Fraud by Misappropriation

28. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

29. Section 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C. §6b(a)(1)(A), (C), makes it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person: (A) to cheat or defraud or attempt to cheat or defraud such other person; or (C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for such other person.

30. By misappropriating customer funds for purposes other than those intended by its customers, PFG, by and through Wasendorf, and Wasendorf individually, violated Section 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A), (C).

31. Wasendorf controlled PFG and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting PFG's violations alleged in this count. Wasendorf is therefore additionally liable for PFG's violations of Section 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A), (C) as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

32. Each and every day that PFG and Wasendorf misappropriated customer funds for purposes other than those intended by its customers constitutes a separate and distinct violation of Section 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A), (C).

Count III

Violation of Section 6(c)(2) of the Act: Making False Statement of Material Facts to the Commission

33. Paragraphs 1 through 21 are realleged and incorporated herein by reference

34. By filing false 1-FR statements with the Commission on and after August 15, 2011, PFG, by and through Wasendorf, and Wasendorf individually, violated Section 6(c)(2) of the Act, as amended, 7 U.S.C. §§ 9, 15.

35. Wasendorf controlled PFG and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting PFG's violations alleged in this count. Wasendorf is therefore additionally liable for PFG's violations of Section 6(c)(2) of the Act, as amended, 7 U.S.C. §§ 9, 15.

36. Each and every false 1-FR statement that PFG and Wasendorf filed with the Commission constitutes a separate and distinct violation of Section 6(c)(2) of the Act, as amended, 7 U.S.C. §§ 9, 15.

II. RELIEF REQUESTED

WHEREFORE, for the reasons stated above, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1 (Supp. III 2009), and pursuant to its own equitable powers:

A. Enter an statutory restraining order with notice pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (Supp. III 2009), 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 Defendants 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 or safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the actual or constructive control of or in the name of Defendants; and

B. As part of the statutory restraining order, appoint a temporary receiver to administer the statutory restraining order and perform such other duties that the Court may consider appropriate;

C. Enter an order of preliminary injunction directing that Defendants make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds Defendants received from and paid to customers and other persons in connection with forex, commodity futures options on commodity futures and retail commodity transactions entered into on a leveraged or financed basis or purported forex, commodity futures and options on commodity futures and retail transactions entered into on a leveraged or financed basis, including the names, mailing addresses, email addresses and telephone numbers of any such persons from whom they received such funds from January 1, 2008 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from customers, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from January 1, 2008 to and including the date of such accounting;

D. Enter orders of preliminary and 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 engaging in conduct in violation of Sections 4d(a), 4b(a)(1)(A), (C), and 6(c)(2) of the Act, as amended, to be codified at 7 U.S.C. § 6d(a), 6b(a)(1)(A), (C), and 9(2), and Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2012);

E. Enter further orders of preliminary and permanent injunction enjoining Defendant Wasendorf from:

1. 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;

2. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Commission Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2012)) (“commodity options”); security futures products, 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 any personal or proprietary account or for any account in which he has a direct or indirect interest;

3. having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on his 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, 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 any commodity futures, 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012);

7. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012);

F. Enter an order directing Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act as described herein, and pre- and post-judgment interest thereon from the date of such violations;

G. Enter an order directing Defendants, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and profits derived, directly or indirectly, from acts or practices which constitute violations of the Act and Regulations as described herein, including pre-judgment interest thereon from the date of such violations;

H. Enter an order assessing a civil monetary penalty against Defendants and any successors thereof, in the amount of the higher of \$140,000 for each violation of the Act or Regulations committed or triple the monetary gain to each Defendant for each violation of the Act or Regulations described herein occurring on or after October 23, 2008, plus post-judgment interest;

I. Enter an order requiring Defendants, and any successors thereof, to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

J. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Respectfully submitted,

Date: July 10, 2012

/s/ William P. Janulis

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