UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARCTOS CAPITAL LLC

Plaintiff,

-against-

JOHN DOES 1-5

Defendants.

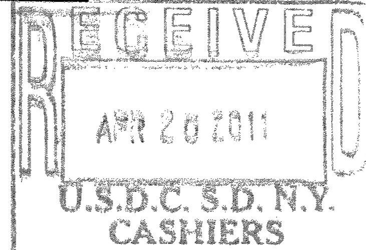
11 CIV 2814

Jury Trial Demanded

Case No._________

Judge McMahon

COMPLAINT



Plaintiff Arctos Capital LLC ("Arctos"), by its attorneys, Leader & Berkon LLP, as and for its Complaint against John Does 1-5, alleges as follows:

NATURE OF ACTION

1. This lawsuit arises out of certain unlawful, collusive, anti-competitive and/or pre-arranged trading activities of certain individuals or entities who traded Continuous Commodities Index Futures (CCI) on an electronic trading system (ETS) operated by ICE Futures U.S. between April 2009 and April 2010 and thereafter. Arctos is a participant in the CCI Futures market, which is a thinly traded market in which there are only a handful of participants. In the course of its trading of CCI Futures contracts, Arctos observed a pattern of trading activity between two or more individuals or entities indicating that certain trades of CCI Futures contracts had been pre-arranged at prices that did not reflect market forces. Indeed, it became evident that these market participants knew the timing, size and price of orders prior to the terms of the order being entered on the ETS and visible to all market participants. Once Arctos began participating in the CCI Futures market, they took carefully coordinated steps to avoid

trading with Arctos and to prevent any price competition. Additionally, there are numerous instances in which these participants made no attempt to obtain a more favorable price, and in fact, engaged in activities that exposed their customers to far greater risk and actual losses, for which there is no legitimate motive. The conduct of these as yet unidentified market participants violates the Commodities Exchange Act, the Sherman Act, and numerous other laws, rules and regulations.

2. The identity of defendants is not yet known because all trading done on the ETS is anonymous, and ICE Futures U.S. has refused to provide the identities of the traders who were involved in such activity absent a subpoena.

3. Prior to 2009, Arctos invested significant funds in researching and developing a strategy for trading in this market. Arctos' participation in the CCI Futures market in 2009 and 2010, although limited as a result of the defendants' unlawful activities, was still very lucrative. As a result of defendants' unlawful activity, Arctos was virtually shut out of the market by April 2010, and suffered significant monetary damages.

PARTIES

4. Arctos is a limited liability corporation duly formed under the laws of the State of New Jersey, with its principal place of business in Rye Brook, New York. Arctos traded CCI Futures Contracts on the ICE Futures U.S. exchange between January 2009 and April 2010.

5. Upon information and belief, defendant John Doe #1 is a person or business entity that traded CCI Futures contracts on an electronic exchange operated by ICE Futures U.S. from April 2009 to the present.

6. Upon information and belief, defendant John Doe #2 is a person or business entity that traded CCI Futures contracts on an electronic exchange operated by ICE Futures U.S. from April 2009 to the present.

7. Upon information and belief, defendant John Does #3 through 5 are persons or business entities that traded CCI Futures contracts on an electronic exchange operated by ICE Futures U.S. from April 2009 to the present

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 7 U.S.C. § 25 (c).

9. This court has personal jurisdiction over the defendants pursuant to Fed. R. Civ. P. 4(k) and /or New York Civil Practice Law and Rules §§ 301 and 302.

10. Venue is proper in this district pursuant to 7 U.S.C. § 25 (c).

FACTUAL BACKGROUND

The CCI Futures Market

11. ICE Futures U.S. is a Designated Contract Market pursuant to the Section 5 of the Commodities Exchange Act, 7 U.S.C. § 7(b) and Commission Regulations 38.3 (a)(i)-(iii). ICE Futures U.S., which is located in New York, is the

exclusive market for futures and option contracts on the Continuous Commodities Index (CCI).

12. The CCI is an index of seventeen commodity futures, including cocoa, coffee, copper, corn, cotton, crude oil, gold, heating oil, live cattle, live hogs, natural gas, orange juice, platinum, silver, soybeans, sugar and wheat.

13. Commodities futures contracts are standardized agreements between two parties to buy or sell a specific asset at a specified future date, the form of which is created by the exchange on which the contract is traded, in this case ICE Futures U.S. The party agreeing to buy the underlying commodity in the future takes a "long" position, and the seller takes a "short" position.

14. CCI Futures contracts are cash-settled contracts that are listed in January, February, April, June, August and November. On the settlement date, cash is transferred from the futures trader who sustained a loss to the party who profited from the trade. On ICE Futures U.S.'s ETS, all trading is anonymous and trades are cleared through a separate entity without disclosing the identity of the traders.

15. Although trading occurs anonymously, the daily volume and the published open interest indicates that there are very few participants in the CCI market. Indeed, there are many days in any given month on which less than ten contracts are traded throughout the course of the trading session.

16. There are two ways in which a holder of CCI futures would typically maintain a long position in the market: (a) purchase a further dated contract at

or near the expiration of the contract that it currently holds and allow the contract to go to cash on the settlement date (trade in the "outright" market) or (b) trade the "spread" or simultaneously sell the current month's contract and buy a further dated contract.

17. At least one other market participant holds a large long position in the CCI futures market. Periodically, that participant rolls his position into the next contract period. As a result, a large number of CCI futures contracts trade over the course of a few days just prior to the expiration of each contract. Arctos recognized this pattern as an opportunity and, in 2009, it entered the market as a seller of CCI futures contracts.

Regulation of Commodities Markets

18. The Commodity Futures Trading Commission ("CFTC") is an independent government agency that regulates commodity futures and options markets in the United States. The CFTC's mission is to protect market users and the public from fraud, manipulation and abusive practices related to the sale of commodity and financial futures and options and to foster open, competitive, and financially sound markets.

19. ICE Futures U.S. submits to the CFTC for approval various rules and regulations through which ICE Futures U.S. conducts trading in various commodities, futures and options. Although ICE Futures U.S. has primary responsibility for ensuring that its rules meet the applicable statutory and regulatory requirements and for enforcing its rules, the CFTC periodically reviews its compliance program.

20. ICE Futures U.S. Membership Rule 2.29 specifically prohibits engaging in "conduct or practices inconsistent with just and equitable principles of trade" and executing a "pre-arranged" trade. Competitive execution is also required under 17 C.F.R. § 1.38.

21. Defendants violated each of these rules and regulations in addition to their violations of the CEA described below.

Defendants React to Arctos' Entry into the Market

22. Prior to April, 2009, the CCI roll would take place with a full order book on both sides of the market. Trades occurred periodically after some price competition between the buy-side and the sell-side, and usually with the buy side stepping up to the offer price. On April 6, 2009, Arctos observed a full order book by early afternoon, as with previous rolls, and market activity appeared to be normal. Shortly thereafter, Arctos submitted an offer to sell 50 contracts in the April-June spread at $10.60, which was eventually at the top of the book and was matched with a bid.

23. Within minutes of the Arctos order being matched with its bid, JOHN DOE #1 substantially reduced the size of its open bids. It is inexplicable that a buyer would suddenly reduce the size of its bids at the exact moment when it achieved a favorable price. The next several trades occurred by the sell side (JOHN DOE #2) reducing its offer to hit the bid price in greater size than what was displayed on the screen.

24. The sudden change in the market behavior was a direct result of the defendants' detection of Arctos' presence in the market, and was intended to avoid trading with Arctos. Rather than allow price competition to drive the price down and achieve a better price for its customer, JOHN DOE #1 reduced the size of its bids, and ultimately stopped placing bids when Arctos offers were at the top of the book. The nature and timing of JOHN DOE #1 and JOHN DOE #2's sudden change in behavior indicates a strong likelihood that they were communicating with each other while conducting their trading activities.

25. Upon information and belief, JOHN DOE #1 and JOHN DOE #2 intended to, and did, prevent Arctos from meaningfully participating in the market during the April 2009 roll period.

Defendants Continue to Engage in Pre-Arranged Trading and Conspire to Prevent Arctos from Participating in the Market

26. During the next roll, on or about May 26, 2009, JOHN DOE #1 and JOHN DOE #2 changed their strategy and conducted a large number of trades in the outright market.

27. There is far more risk in trading in the outright market due to price fluctuations, and for this reason, rolling a client's position in the outright market is highly unusual. It is also less efficient. Indeed, it is a disadvantage to the ultimate customer of JOHN DOE #1, and upon information and belief, JOHN DOE #1 had not rolled its position by trading in the outright market on any prior occasion. There is no economic reason for conducting the May 2009 roll in this manner, unless the defendants were intentionally trying to prevent Arctos from participating in the roll.

28. Even more puzzling is that JOHN DOE #1 was selling its CCI Futures contracts below historical theoretical value, contrary to its economic interest.

29. When Arctos realized that the roll was occurring in the outright market, it began purchasing contracts from JOHN DOE #1. Once again, when Arctos began participating, JOHN DOE #1 and JOHN DOE #2 coordinated their activities to avoid conducting any trades with Arctos. Defendants behavior cannot be explained as a mere coincidence. Absent pre-trading communications, defendants could not have excluded Arctos from an otherwise anonymous market in this manner.

30. Defendants continued to prevent Arctos from any meaningful participation in the market during the June 2009 roll.

31. During the roll period at the end of July and August, 2009, JOHN DOE #1 and JOHN DOE #2 resumed trading in the spreads, but rather than place a number of bids and offers as they had done prior to Arctos' participation, each trade was done almost instantaneously with an offer displayed for less than two minutes and a trade occurring at that price, but at an increased volume than what was shown on the screen. There was no attempt by JOHN DOE #1 to get a better price, i.e. from Arctos. This could not occur absent communication between the buyer and seller prior to the orders being submitted.

32. Absent this collusion between JOHN DOE #1 and JOHN DOE #2, Arctos' participation in the market would have driven the prices down, ostensibly to the benefit of JOHN DOE #1 or its customer. The trading behavior of JOHN DOE #1, which allowed the price of the CCI to remain artificially high, to the detriment of its customer,

is indicative of a kick back or other unlawful arrangement between JOHN DOE #1 and JOHN DOE #2.

33. On October 22, 2009, Arctos placed resting orders for the November 09 – April 10 spread on the book for the entire length of time that the market was open. Just one day prior, JOHN DOE #1 was willing to buy this spread at $8.90 and several hundred contracts traded that day. On October 22, JOHN DOE #2 competed with Arctos to see how low Arctos was willing to go. Despite that the price went down to $5.95, JOHN DOE #1 did not trade with Arctos. JOHN DOE #1 only bid when JOHN DOE #2's offer was at the top of the book, thereby avoiding any trades with Arctos. Very few contracts traded on that day.

34. On October 23, 2009, no trades occurred when Arctos' offer was at the top of the book, sometimes for more than an hour. Trades occurred at higher prices earlier in the day. In the afternoon, Arctos' offer was at the top of the book for 30 minutes. Suddenly, JOHN DOE #2 offered 100 lots at $7.40, and within seconds, JOHN DOE #1 buys 237 lots at that price. JOHN DOE #1 had to have known that JOHN DOE #2's offer was an iceberg, having hidden quantities behind it. There were no further trades on that day. The likelihood that this activity occurred without collusion between JOHN DOE #1 and JOHN DOE #2 is extremely low.

35. The pattern of activity during each roll period from 2009 to 2010 indicates that at least two participants in the CCI Futures market were actively conspiring with each other to conduct trades at pre-arranged prices, which were not reflective of

market forces. This activity prevented any competition in the market and resulted in artificially high prices.

AS AND FOR A FIRST CLAIM
(For Violation of 7 U.S.C. § 6c (a))

36. Plaintiff hereby repeats and realleges each and every allegation contained in Paragraphs 1 through 35 as if fully set forth.

37. 7 U.S.C. § 6c (a) provides, in pertinent part, that it is unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction that may be used for hedging or determining the price basis of any transaction in interstate commerce in the commodity if the transaction is of the character of, or is commonly known to the trade as a "wash sale," "accommodation trade" or "fictitious sale" or is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.

38. A pre-arranged transaction is of the same character as a fictitious sale, which causes prices to be reported, registered or recorded which were not true and bona fide prices.

39. By engaging in pre-arranged transactions, defendants have violated the CEA. Such violations were willful and intentional.

40. Plaintiff sold one or more CCI futures contracts during the relevant time period, and was injured by the defendants' conduct.

41. As a result of defendants' unlawful activities, plaintiff is entitled to actual damages and punitive or exemplary damages.

AS AND FOR A SECOND CLAIM
(For Violation of 7 U.S.C. § 13 (a)(2))

42. Plaintiff hereby repeats and realleges the allegations contained in Paragraphs 1 through 41 of the Complaint as if fully set forth.

43. 7 U.S.C. § 13 (a) (2) makes it a felony for any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce.

44. Manipulation has been judicially defined as "the creation of an artificial price by planned action."

45. By engaging in pre-arranged transactions and other conduct designed to remove competition from the CCI Futures Market, defendants have violated the CEA. Such violations were willful and intentional.

46. Plaintiff sold one or more CCI futures contracts during the relevant time period, and was injured by the defendants' conduct.

47. As a result of defendants' unlawful activities, plaintiff is entitled to actual damages and punitive or exemplary damages.

AS AND FOR A THIRD CLAIM
(For Violations of the Sherman Act)

48. Plaintiff hereby repeats and realleges the allegations contained in Paragraphs 1 through 47 of the Complaint as if fully set forth.

49. JOHN DOES 1 through 5 engaged in a contract, combination and conspiracy for the purpose of executing trades of CCI futures contracts at pre-arranged, non-competitive, artificial prices, which were not reflective of market forces.

50. JOHN DOES 1 through 5 engaged in a contract, combination and conspiracy for the purpose of preventing Arctos from participating in the CCI Futures market.

51. Given their positions in the market, JOHN DOES 1-5 possessed market power in the market for the dale of CCI Futures, and had the ability to affect the price of CCI futures contracts.

52. By communicating with each other prior to the execution of their transactions on the ETS, JOHN DOES 1-5 intended to limit competition and exclude Arctos from trading in CCI futures market.

53. Defendants' illegal conspiracy and its impact on the market for CCI futures, occurred in or affected interstate commerce.

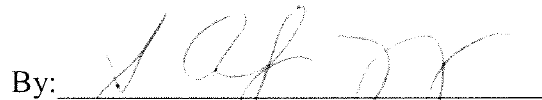
54. As a result of the defendants' collusive, anti-competitive conduct, Arctos has been damaged.

55. Plaintiff seeks treble damages pursuant to 15 U.S.C. § 15.

WHEREFORE, plaintiff Arctos Capital LLC respectfully requests that this Court enter Judgment in its favor and against JOHN DOES 1-5 in an amount to be determined at trial, but no less than $60,000,000, together with such other and further relief as this Court deems just and proper.

Dated: New York, New York
April 26, 2011

LEADER & BERKON LLP



By:________________________
GLEN SILVERSTEIN
S. ALYSSA YOUNG
630 Third Avenue, 17th Floor
New York, New York 10017
(212) 486-2400

Attorneys for Plaintiff