

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

THETA GROUP, L.L.C.,
SHADOWSTONE PARTNERS I, L.L.C.,
SCOTT S. BELL and
R. SCOT RUBEL,

Defendants.

H. STUART CUNNINGHAM
UNITED STATES DISTRICT COURT

CIVIL ACTION
FILE NO.

JUDGE GETTLEMAN

MAGISTRATE JUDGE DENLOW

COMPLAINT FOR TEMPORARY RESTRAINING ORDER,
PRELIMINARY AND PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF

Now comes the Plaintiff, Securities and Exchange Commission
(Commission), and alleges as follows:

1. Defendants Theta Group L.L.C. (Theta), Shadowstone Partners I, L.L.C. (Shadowstone), Scott S. Bell (Bell) and R. Scot Rubel (Rubel), directly and indirectly, have engaged, are engaged and are about to engage in transactions, acts, practices and courses of business which constitute violations of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act of 1933, as amended (Securities Act) [15 U.S.C. §§77q(a)(1), 77q(a)(2) and 77q(a)(3)], Section 10(b) of the Securities Exchange Act of 1934, as amended (Exchange Act) [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] promulgated thereunder.

2. Plaintiff brings this action to enjoin such transactions, acts, practices and courses of business pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§78u(d) and 78u(e)].

JURISDICTION AND VENUE

3. The Court has jurisdiction of this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa].

4. The Defendants will, unless restrained and enjoined, continue to engage in the transactions, acts, practices, and courses of business set forth in this complaint and in transactions, acts, practices and courses of business of similar purport and object.

5. The transactions, acts, practices, and courses of business constituting the violations herein have occurred within the jurisdiction of the United States District Court for the Northern District of Illinois and elsewhere.

6. The Defendants, directly and indirectly, have made, and are making, use of the mails, and of the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business alleged herein in the Northern District of Illinois and elsewhere.

7. There is a reasonable likelihood that, unless restrained and enjoined by this Court, Defendants Theta, Shadowstone, Bell and Rubel will continue to engage in

transactions, acts, practices and courses of business of similar purport and object as those set forth in this complaint.

DEFENDANTS

8. Defendant Theta is a limited liability company located in Chicago, Illinois. Theta has been a member of the Chicago Board Options Exchange (CBOE) since September 1995 and registered as a broker-dealer with the Commission in April 1995.

9. Defendant Shadowstone is located in Lawrenceville, New Jersey, and registered as a broker-dealer with the Commission in September 1996.

10. Defendant Bell, age 35, is a resident of Lawrenceville, New Jersey, and is the President of Shadowstone.

11. Defendant Rubel, age 32, is a resident of Lake Zurich, Illinois, is Theta's sole manager and acts as Theta's trader on the floor of the CBOE.

FACTS

12. From at least October 1995 to the present, Theta, Bell and Rubel have offered and sold approximately \$13.4 million in membership interests in Theta to at least 32 investors in at least 17 states and Canada. However, as of December 2, 1996, only approximately \$3.5 million in cash remained in Theta's accounts.

13. Theta, Bell and Rubel initially provided investors with an offering memorandum which stated that Theta was a member firm of the CBOE and intended to engage in a variety of

investments, including stocks, index and stock options, and futures contracts. The offering memorandum further stated that the managers of Theta, who were Bell and Rubel, would receive a specified management fee based on Theta's total market value. Bell represented to the CBOE in August of 1995 that he was withdrawing his involvement with Theta. Between October 1995 and the present at least \$1.9 million of the \$13.4 million in investor funds has been transferred from Theta to bank accounts for two entities in Princeton, New Jersey, Northern Trading and Hunt Farm Trading, of which Bell is the sole signatory. Under the terms of the offering memorandum, the maximum allowable management fee payable to the managers of Theta would have been less than \$200,000.

14. In late October 1996, a Theta investor transferred \$500,000 of his investment in Theta into Shadowstone, which had opened accounts at a Philadelphia brokerage firm. In August 1996, Bell informed the investor that he was seeking individuals to invest in Shadowstone and that Bell would utilize their monies, in addition to Bell's personal investment of \$200,000, to trade options on the Philadelphia Stock Exchange (PSE).

15. As of November 29, 1996, the Shadowstone account contained approximately \$95 in cash and options with a market value of approximately \$17,106. Further, Bell did not invest \$200,000 into the account and Shadowstone is not and has not been trading options on the PSE.

16. The offering memorandum received by Theta investors contained a chart which provided Theta's "returns" for 1993 and 1994, which were stated to be positive returns of 37.4% and 34.6%, respectively.

17. Theta acknowledged in an August 1, 1996 letter, which was signed by Rubel, that Theta was formed as a limited liability company in 1995 and became a CBOE member in October 1995.

18. Theta investors were told through conversations and faxed statements with Bell, Rubel and Theta's employees that all of Theta's monthly returns between October 1995 and October 1996 were positive, except for a 1% decline in July. However, as Theta acknowledged to investors in October 1996, Theta had actually lost 30% for the year on a "liquidation value basis".

COUNT I

**Violations of Section 17(a)(1) of the
Securities Act [15 U.S.C. §77q(a)(1)]**

19. Paragraphs 1 through 18 are hereby realleged and incorporated by reference herein.

20. From at least October 1995 through the present, Defendants Theta, Bell and Rubel, in the offer and sale of securities in the form of membership interests in Theta, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, have employed and are employing devices, schemes and artifices to defraud, all as more fully described in Paragraphs 12, 13, and 16 through 18 above and 22 below.

21. From at least August 1996 through the present, Defendants Shadowstone and Bell, in the offer and sale of securities in the form of membership interests in Shadowstone, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, have employed and are employing devices, schemes and artifices to defraud, all as more fully described in Paragraphs 14 and 15 above and 23 below.

22. In the offer and sale of securities in the form of membership interests in Theta, and as part of the scheme to defraud, Theta, Bell and Rubel have made and are making false and misleading statements of material fact and have omitted and are omitting to state material facts to investors and prospective investors, concerning, among other items, the following:

- (a) the fees to be to Bell and Rubel;
- (b) the financial condition of Theta;
- (c) Theta's performance history; and
- (d) the risks involved in investing in Theta.

23. In the offer and sale of securities in the form of membership interests in Shadowstone, and as part of the scheme to defraud, Shadowstone and Bell have made and are making false and misleading statements of material fact and have omitted and are omitting to state material facts to investors and prospective investors, concerning, among other items, the following:

- (a) Bell's personal investment in Shadowstone;
and

(b) the membership status of Shadowstone on the PSE.

24. Defendants Theta, Bell and Rubel knew or were reckless in not knowing of the facts and circumstances described in Paragraphs 20 and 22 above.

25. Defendants Shadowstone and Bell knew or were reckless in not knowing of the facts and circumstances described in Paragraphs 21 and 23 above.

26. By reason of the activities described in Paragraphs 19 through 25 above, Defendants Theta, Shadowstone, Bell and Rubel have violated and are violating Section 17(a)(1) of the Securities Act [15 U.S.C. 77q(a)(1)].

COUNT II

Violations of Section 17(a)(2) and 17(a)(3)
of the Securities Act
[15 U.S.C. §§77q(a)(2) and 77q(a)(3)]

27. Paragraphs 1 through 18, 22 and 23 are hereby realleged and incorporated by reference herein.

28. From at least October 1995 through the present, Defendants Theta, Bell and Rubel, in the offer and sale of securities in the form of membership interests in Theta, by the use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, have obtained and are obtaining money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which

they were made, not misleading; and have engaged and are engaging in transactions, practices and courses of business which have operated and will operate as a fraud and deceit upon purchasers and prospective purchasers of the membership interests, all as more fully described in Paragraphs 12, 13, 16 through 18 and 22 above.

29. From at least August 1996 through the present, Defendants Shadowstone and Bell, in the offer and sale of securities in the form of membership interests in Shadowstone, by the use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, have obtained and are obtaining money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and have engaged and are engaging in transactions, practices and courses of business which operated and will operate as a fraud and deceit upon purchasers and prospective purchasers of the membership interests, all as more fully described in Paragraphs 14, 15 and 23 above.

30. By reason of the activities described in Paragraphs 27 through 29 above, Defendants Theta, Shadowstone, Bell and Rubel have violated and are violating Sections 17(a) (2) and 17(a) (3) of the Securities Act [15 U.S.C. §§77q(a) (2) and 77q(a) (3)].

COUNT III

**Violations of Section 10(b) of the Exchange Act
[15 U.S.C. §78j(b)] and Rule 10b-5
[17 C.F.R. §240.10b-5] thereunder**

31. Paragraphs 1 through 18, 22 and 23 are hereby realleged and incorporated by reference herein.

32. From at least October 1995 through the present, Defendants Theta, Bell and Rubel, in connection with the purchase and sale of securities in the form of membership interests in Theta, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, have employed and are employing devices, schemes and artifices to defraud; have made and are making untrue statements of material fact and have omitted and are omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and have engaged and are engaging in acts, practices and courses of business which have operated and will operate as a fraud and deceit upon purchasers and sellers of such securities, all as more fully described in Paragraphs 12, 13, 16 through 18 and 22 above.

33. From at least August 1996 through the present, Defendants Shadowstone and Bell, in connection with the purchase and sale of securities in the form of membership interests in Shadowstone, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly,

have employed and are employing devices, schemes and artifices to defraud; have made and are making untrue statements of material fact and have omitted and are omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and have engaged and are engaging in acts, practices and courses of business which have operated and will operate as a fraud and deceit upon purchasers and sellers of such securities, all as more fully described in Paragraphs 14, 15 and 23 above.

34. Defendants Theta, Bell and Rubel knew or were reckless in not knowing of the facts and circumstances described in Paragraph 32 above.

35. Defendants Shadowstone and Bell knew or were reckless in not knowing of the facts and circumstances described in Paragraphs 33 above.

36. By reason of the activities described in Paragraphs 31 through 35 above, Defendants Theta, Shadowstone, Bell and Rubel have violated and are violating Section 10(b) of the Exchange Act, as amended [15 U.S.C. §78j (b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

WHEREFORE, the Plaintiff respectfully requests that the Court:

I.

Find that the Defendants committed the violations alleged above.

II.

Grant a Temporary Restraining Order and Orders of Preliminary and Permanent Injunction, in forms consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining Defendants Theta, Shadowstone, Bell and Rubel, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the Temporary Restraining Order, the Order of Preliminary Injunction and the Order of Permanent Injunction by personal service or otherwise, and each of them, from directly or indirectly, engaging in the acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Sections 17(a) (1), 17(a) (2) and 17(a) (3) of the Securities Act [15 U.S.C. §§77q(a) (1), 77q(a) (2) and 77q(a) (3)], Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5]

III.

Grant a Temporary Restraining Order and Orders of Preliminary and Permanent Injunction restraining and enjoining:

A. Defendants Theta, Shadowstone, Bell and Rubel, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the Temporary Restraining Order, the Order of Preliminary Injunction and the Order of Permanent Injunction by personal service or otherwise, and each of them, from directly or indirectly destroying, mutilating, concealing, altering or

disposing of in any manner, any of the books, records, documents, computer data, correspondence, brochures, manuals, obligations or other property of or pertaining to the Defendants, wherever located; and

B. Defendants Theta, Shadowstone and Bell, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the Temporary Restraining Order, the Order of Preliminary Injunction and the Order of Permanent Injunction by personal service or otherwise, and each of them, from directly or indirectly transferring, selling, assigning, pledging, dissipating, concealing or otherwise disposing of in any manner, any funds, assets, or other property belonging to, or in the possession, custody or control of Theta, Shadowstone and Bell, wherever located.

IV.

Grant an Order requiring the Defendants to:

- A. produce to the Plaintiff, within five days of the issuance of the Temporary Restraining Order, all books, records and other documents in the Defendants actual or constructive possession relating to the offer or sale of the membership interests sold by the Defendants; and
- B. provide to the Court, within five days of issuance of the Temporary Restraining Order, an accounting of all funds received from investors

in connection with the membership interests sold by the Defendants, the uses to which such investor funds were put and the amounts of any remaining such funds and their location, and an accounting of any remaining assets of the Defendants, and their location; provided, however, that nothing in the Order shall be construed to require the Defendants to abandon any constitutional or other legal privilege which they may have available to them.

V.

Grant an Order requiring Theta, Shadowstone and Bell to produce to the Plaintiff, within five days of the issuance of the Temporary Restraining Order, all current accountant's reports, bank statements, documents indicating title to real or personal property, and any other indicia of ownership or interest in property of any of the defendants, which indicia of ownership or interest are now in the Defendants' actual or constructive possession.

VI.

Grant an Order requiring Defendants Theta, Shadowstone, Bell and Rubel to disgorge any and all ill-gotten gains (including prejudgment interest).

VII.

Impose civil penalties against Defendants Theta, Shadowstone, Bell and Rubel in accordance with Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

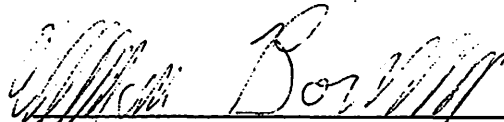
VIII.

Retain jurisdiction of this action in accordance with the principals of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

IX.

Grant Orders for such further relief as the Court may deem appropriate.

Respectfully submitted,



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