

FILED UNDER SEAL

Commodity Futures Trading Commission,

Plaintiff,

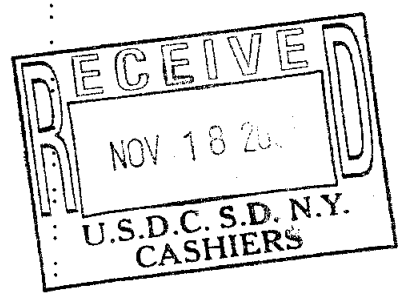
v.

Madison Deane & Associates, Inc., Madison Deane Asia Corporation, New York Capital Assets, Inc., ISB Clearing Corporation, Free Star Capital, Inc., William, Holbrook & Associates LLC, Oxford Capital Group LLC, Vito Napoletano, Leonard Basman, Matthew Salinas, Ian Bursztyn, George Omeste, Damon Ripley and Abdeldayem Mazen.

Defendants.

03CIV _____

COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF AND
FOR PENALTIES UNDER
THE COMMODITY
EXCHANGE ACT, AS
AMENDED, 7 U.S.C. §§ 1-27



I. Summary

1. From at least the spring of 2002 to the present (“relevant time period”), Madison Deane & Associates, Inc. (“Madison Deane”), Madison Deane Asia Corporation (“Madison Deane Asia”), New York Capital Assets, Inc. (“NYCA”), ISB Clearing Corporation (“ISB”), Free Star Capital, Inc. (“Free Star”), William, Holbrook & Associates LLC (“Holbrook”), Oxford Capital Group LLC, (“Oxford”), Vito Napoletano (“Napoletano”), Leonard Basman (“Basman”), Matthew Salinas (“Salinas”), Ian Bursztyn (“Bursztyn”), George Omeste (“Omeste”), Damon Ripley (“Ripley”), and Abdeldayem Mazen (“Mazen”) (collectively, “the Defendants”) have fraudulently solicited funds from the retail public for the purpose of trading managed foreign

currency accounts which are, in fact, illegal off-exchange foreign currency futures contracts. In addition, the defendants have misappropriated and/or misused those customer funds and have issued false statements to customers that did not disclose their unauthorized withdrawal of funds from the customers' accounts.

2. With these practices, Madison Deane, Madison Deane Asia, NYCA, Free Star, Holbrook and Oxford violated Section 4(a) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6(a).

3. With these practices, Madison Deane, Madison Deane Asia, NYCA, Free Star, Holbrook, Oxford, Napoletano, Basman, Bursztyn, Omeste, Salinas, Ripley and Mazen violated Section 4b(a)(2) (i), (ii) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (ii) and (iii) (2002) and Commission Regulation 1.1(b)(i) (ii) and (iii), 17 C.F.R. § 1.1(b) (1), (2) and (3) (2001). [Madison Deane, Madison Deane Asia, ISB, Free Star, Holbrook and Oxford are hereafter referred to collectively as the "Free Star Companies"].

4. With these practices, ISB violated Section 4b(a)(2) (i), (ii) and (iii) of the Act, 7 U.S.C. § 6b(a)(2) (i), (ii) and (iii).

5. Defendants Napoletano, Basman, Bursztyn and Omeste are liable as controlling persons for the violations by Madison Deane, Madison Deane Asia, Free Star, Holbrook and Oxford of Sections 4(a) and 4b(a)(2) (i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2) (i), (ii) and (iii) and Commission Regulation 1.1(b) C.F.R. § 1.1(b) (1), (2) and (3) (2002) pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

6. Defendants Napoletano and Bursztyn are liable as controlling persons for the violations by ISB of Section 4b(a)(2) (i), (ii) and (iii) of the Act, 7 U.S.C. § 6b(a)(2) (i), (ii) and (iii), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

7. Defendant Ripley is liable as a controlling person for the violations by NYCA of Sections 4(a) and 4b(a)(2) (i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2)(2001) and Commission Regulation 1.1(b) C.F.R. § 1.1(b) (2002) pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

8. The Free Star Companies and NYCA are liable for the violations of Section 4b(a)(2) of the Act by its officers, directors, managers, employees and agents, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001), Commission Regulation 1.2, 17 C.F.R. § 1.2 (2000), as all such violations were within the scope of their office or employment with those entities. Madison Deane, Madison Deane Asia, NYCA, Free Star, Holbrook and Oxford are liable for the violations of Regulation 1.1(b) by its officers, directors, managers, employees and agents, pursuant to Section 2(a)(1)(B) of the Act, as all such violations were within the scope of their office or employment with those entities.

9. NYCA and Ripley are liable as aiders and abettors under 13(a) of the Act, & U.S.C. § 13c(a) in that they had knowledge of the wrongdoing underlying the violations of Sections 4(a) and 4b(a)(2) of the Act, 7 U.S.C. § 6(a) and 6(b) (2001) and of Regulation 1.1(b) and they intentionally assisted the primary wrongdoers in their violations.

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

11. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the Commodity Futures Trading Commission ("Commission") brings this action to enjoin the unlawful acts and practices of Defendants, to prevent the dissipation of assets and to compel compliance with the provisions of the Act. In addition, the Commission seeks civil penalties, an *ex parte* statutory

restraining order, an order freezing the assets of Defendants, a preliminary injunction and the appointment of a receiver over any funds frozen to maintain the status quo for the victims of the Defendants. Furthermore, the proposed action will ultimately seek permanent injunctive relief and other relief including an accounting, restitution, disgorgement and civil monetary penalties.

II. JURISDICTION AND VENUE

12. Section 2(c)(2)(B)(i) and (ii) of the Act, as amended, 7 U.S.C. § 2(c)(2)(B)(i)-(ii), corresponding to the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106-554, 114 Stat. 2763, clarifies the jurisdiction of Plaintiff over certain transactions in foreign currency that are contracts for the sale of a commodity for future delivery, including the transactions alleged in this Complaint. The Act prohibits fraud in connection with the trading of such commodity futures contracts and establishes a comprehensive system for regulating the purchase and sale of such commodity futures contracts. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), 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.

13. The Free Star Companies (with the exception of ISB) and NYCA are not enumerated counterparties for retail foreign currency transactions, and therefore, the Commission has jurisdiction over the transactions in retail foreign currency alleged herein.

14. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2001), in that Defendants are found in, inhabit, or transact business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places.

III. THE PARTIES

15. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2001), and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2001).

16. Madison Deane & Associates, Inc. is a New York corporation that was incorporated on November 21, 2001, with a business address at 94 McLean Avenue, Staten Island, New York 10305. Currently, it maintains a business address at 2 World Financial Center, 36th floor, New York, New York. Madison Deane has never been registered with the Commission in any capacity. In addition, Madison Deane is not a broker or dealer, or an associated person of a broker or dealer, an insurance company, a regulated subsidiary of an insurance company, a financial holding company, or an investment bank holding company. As such, it is not one of the regulated entities, specified in Section 2(c)(2)(B)(ii), 7 U.S.C. § 2(c)(2)(B)(ii) (2001) of the Act whose foreign currency transactions fall outside the purview of the Commission's jurisdiction.

17. Madison Deane Asia Corporation is a Delaware corporation that filed with the New York Department of State as a foreign business corporation on August 14, 2001, with an address of 50 Broadway, 2nd floor, New York, New York 10004. The registered agent is Vito Napoletano, at the same address. It is currently located at 2 World Financial Center, 36th floor, New York, New York. Madison Deane Asia has never been registered with the Commission in any capacity. In addition, Madison Deane Asia is not one of the regulated entities, specified in Section 2(c)(2)(B)(ii), 7 U.S.C. § 2(c)(2)(B)(ii) (2001) of the Act whose foreign currency transactions fall outside the purview of the Commission's jurisdiction.

18. New York Capital Assets, Inc. is a New York corporation. NYCA was incorporated in New York on September 21, 2001. From late 2001 until approximately August 2002, NYCA operated from 172 Madison Avenue, New York, NY and from the Brooklyn residence of its owner, Damon Ripley. NYCA has never been registered with the Commission in any capacity nor has it ever been one of the regulated entities, specified in Section 2(c)(2)(B)(ii), 7 U.S.C. § 2(c)(2)(B)(ii) (2001) of the Act whose foreign currency transactions fall outside the purview of the Commission's jurisdiction.

19. ISB Clearing Corporation is a Delaware corporation that filed as a foreign business corporation with the New York Department of State on November 1, 2001. ISB is presently located at 2 World Financial Center, New York, NY. Ian Burstyn is the president of ISB and Napoletano is an undisclosed owner of the firm. ISB applied to the National Futures Association ("NFA") for registration as a Futures Commission Merchant ("FCM") on November 25, 2002, and became registered as an FCM effective March 17, 2003.

20. Free Star Capital, Inc. is a Delaware corporation that registered with the New York Department of State as a foreign business corporation on August 14, 2001. Free Star's original address for the purpose of serving process was 50 Broadway, 2nd Floor, New York, NY 10004. Free Star's registered agent is Napoletano. Free Star occupied offices at 172 Madison Avenue, New York, NY from approximately August 2001 to October 2002 when it relocated to the 36th floor of 2 World Financial Center, 225 Liberty Street, New York, NY. Free Star has never been registered with the Commission in any capacity and has never been one of the entities listed in Section 2(c)(2)(B)(ii), 7 U.S.C. § 2(c)(2)(B)(ii) (2001) of the Act whose foreign currency transactions fall outside the purview of the Commission's jurisdiction.

21. William, Holbrook & Associates, LLC filed with the New York Department of State as a limited liability corporation on December 31, 2002. Holbrook was formerly located on the 36th floor of 2 World Financial Center, 225 Liberty Street, New York, NY. In April or May 2003 it relocated to 94 McLean Avenue, Staten Island, NY. Holbrook has never been registered with the Commission in any capacity nor has it ever been one of the regulated entities, specified in Section 2(c)(2)(B)(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(ii) (2001) whose foreign currency transactions fall outside the purview of the Commission's jurisdiction.

22. Oxford Capital Group, LLC filed with the New York Department of State as a limited liability corporation on February 27, 2002. Oxford operated from various locations in Manhattan until October 2002. Since then, it has operated from offices on the 36th floor of 2 World Financial Center, 225 Liberty Street, New York, NY. Oxford has never been registered with the Commission in any capacity nor has it ever been one of the regulated entities, specified in Section 2(c)(2)(B)(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(ii) (2001) whose foreign currency transactions fall outside the purview of the Commission's jurisdiction.

23. Vito Napoletano resides in Staten Island, New York. Napoletano has never been registered with the Commission in any capacity. Napoletano is the owner of and/or exercises control over Madison Deane, Madison Deane Asia, ISB, Free Star. In addition, Napoletano exercises control over NYCA, Holbrook and Oxford.

24. Leonard Basman resides in Staten Island, New York. Basman appears on corporate records as the president of Madison Deane, which is wholly owned by Napoletano. Basman has never been registered with the Commission in any capacity.

25. Matthew Salinas resides in Queens, New York. Salinas operates and maintains Free Star's computerized currency trading system. He has never been registered with the Commission in any capacity.

26. Ian Bursztyn resides in Long Island, New York. Bursztyn is listed on corporate documents as the president of ISB. Bursztyn has been registered with the Commission since March 17, 2003 as an associated person and principal of ISB.

27. George Omeste resides in Staten Island, New York. Since 1998, Omeste has played a role in Napoletano's foreign currency businesses and maintains an ownership interest and decision making authority in some of the entities mentioned herein. He has never been registered with the Commission in any capacity.

28. Damon Ripley resides in Brooklyn, NY and is currently incarcerated in a New York correctional facility. Ripley owned and operated NYCA. He has never been registered with the Commission in any capacity.

29. Abdeldayem Mazen resides in Brooklyn, NY and is a broker with Madison Deane. Mazen has never been registered with the Commission in any capacity.

IV. STATUTORY BACKGROUND

30. Section 2(c)(2)(B)(i)-(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)-(ii) (2001), provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is the sale of a commodity for future delivery, and is "offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is" a regulated entity as defined therein. Section 2(c)(2)(B)(i)-(ii) of the Act was enacted by Congress as part of the Commodity Futures Modernization Act of 2000 ("CFMA") in an effort to clarify the jurisdiction of the Commission

over certain retail foreign exchange transaction and bucket shops that may not otherwise be regulated.” CFMA § 2(5), Pub. L. No. 106-554, 114 Stat. 2763 (2000).

31. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2001) defines an “eligible contract participant” as an individual with total assets exceeding \$10 million or exceeding \$5 million “and who enters into the agreement, contract or transaction in order to manage the risk with an asset owned or liability incurred, or reasonably likely to be owned or incurred by the individual.”

32. Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001) provides that unless exempted by the Commission, it shall be unlawful for any person to offer to enter into, execute, confirm, the execution of, or conduct an office or business in the United States for the purpose of soliciting, accepting, any order for, or otherwise dealing in transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity; (b) such contracts have not been executed or consummated by or through such contract market; and (c) such contract is not evidenced by a written record showing the date, parties, property covered, price and terms of delivery.

33. Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2001) provides, in pertinent part, it is unlawful for any person in or in connection with any sale of any futures contract of any commodity that is or may be used for hedging or determining the price basis of any transaction or for delivering any commodity in interstate commerce for or on behalf of any other person (i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made any false report or statement thereof, or to enter into or cause to be entered any

false record, to or for such other person; (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract; or (iv) to bucket such order, or to fill such order by offset against the order of any other person.

34. Commission Regulation § 1.1(b), 17 C.F.R. § 1.1(b) (2002) provides in relevant part that for any foreign currency transaction within the Commission's jurisdiction, it shall be unlawful for any person directly or indirectly, in or in connection with any account, agreement, contract or transaction... (1) to cheat or defraud or attempt to cheat or defraud any person; (2) willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or (3) willfully to deceive or attempt to deceive any person by any means whatsoever.

35. Section 2(a)(1)(A)(iii) of the Act, 7 U.S.C. § 4, and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2002) provide that the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent or other person.

36. Pursuant to Section 13(a) of the Act 7 U.S.C. § 13c(a) (2001), any person who commits, or willfully aids, abets, counsels, commands, induces, procures, the commission of, a violation of any of the provisions of the Act, or any of the rules, regulations or orders issued pursuant to the Act, or who in combination or concert with any other person in any such violation may be held responsible for such violation as a principal.

37. Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001) provides that any person who, directly or indirectly, controls any person who has violated any provision of the Act may be held

liable for such violation in any action brought by the Commission to the same extent as the controlled person.

V. FACTUAL BACKGROUND

Summary

38. Since at least spring of 2002, Napoletano has exercised ownership, control and influence over the day-to-day operations of a number of foreign currency trading entities and ancillary businesses including the Free Star Companies and NYCA. All of these entities play important and, in some cases, distinct roles in Napoletano's overall scheme to lure unsuspecting and unsophisticated members of the retail public into sending these companies substantial sums of money purportedly to invest in foreign currency contracts. Most of the money sent by the investors is misappropriated by Napoletano and a small group of associates, which includes defendants Omeste, Bursztyn, Basman, Salinas, Mazen and Ripley.

Madison Deane, Free Star and NYCA's Misappropriation of Customer Funds

39. Napoletano has diverted customer money from Madison Deane and Free Star bank accounts to another foreign currency trading entity, defendant NYCA. These same funds have been used by Napoletano and Ripley for purposes other than trading foreign currency on behalf of customers. NYCA was owned and operated by defendant Ripley.

NYCA Misrepresented Its Status As a Proper Counterparty to Napoletano's Companies

40. NYCA solicited customers and directed them to wire monies to an entity owned and controlled by Napoletano. Subsequently, NYCA changed its role and purported to act as an enumerated counterparty by agreeing to furnish a fraudulent letter to Napoletano wherein it falsely claimed to have sufficient funds to act as a proper counterparty.

Vito Napoletano and the Free Star Companies

41. The Free Star Companies constitute a group of foreign currency trading firms associated with or controlled by Napoletano. They began operating from a number of locations throughout New York City in 2001.

42. The Free Star Companies, with Napoletano at their helm, carried out the misappropriation scheme in the following manner: Account executives (“AEs”) working for the money-raising arms of the Free Star Companies called unsophisticated investors and, using well-honed high pressure sales techniques, touted the desirability of using foreign currency trading as a safe investment choice offering high returns.

43. The Free Star Companies then sent the prospective investors promotional materials including brochures that inflated profit potential while downplaying the risks associated with investment in foreign currency. Periodically, investors also received fabricated account statements that reflected fictitious trading in their account. Some prospective customers also received a Napoletano-created “track record” purporting to show profitable customer trading by the Free Star Companies. The track record did not reflect the actual trading of any of the Free Star Companies’ customers.

44. After receiving the initial money from investors, Free Star Companies’ AEs solicited additional funds by forwarding falsified account statements or falsely informing customers of profitable trading activity in the targeted customer’s account. In this connection, the Free Star Companies, through the efforts of Napoletano, Bursztyn, Omeste, Basman and Salinas, created fictitious trades and chose the customer or group of customers to be assigned the trades with the expectation of securing additional investor money.

45. Once it was determined that an investor would not, or was not able to commit additional funds to foreign currency investments, the investor's account was substantially depleted by fictitious trades. Customer accounts were depleted when Napoletano and the other individual defendants determined that they needed cash to meet operating costs, including rent and salaries, or they wanted to reward themselves with extra cash or luxury items. The monies, purportedly lost by the investor in the fictitious losing trades, ended up, directly or indirectly, in Napoletano's pocket in that the Free Star Companies and NYCA almost always took the opposite side of the investor's trades.

46. At times, in order to hide the misappropriation of customer monies, Napoletano had false documentation created reflecting that money was owed him in commissions.

47. Madison Deane Asia and Oxford are two shell companies that exist only on paper and are controlled by Napoletano and are used to hold and maintain customer money on behalf of the Free Star Companies and to further create an appearance of actual trading and to launder funds.

Solicitation and Misrepresentations In Cold Calls and Promotional Materials

48. Free Star Companies' customers were contacted through "cold calls" by AEs working off purchased leads. AEs would typically downplay the risk of foreign currency trading, telling prospective customers that foreign currency trading was an attractive, safe alternative to the stock market.

49. At one point, at Napoletano's direction, the Free Star Companies sent prospective customers a false track record showing customer profits that did not in fact exist.

50. Other deceptive representations made by the Free Star Companies' AEs included making the false assertion that they were compensated solely on performance and that no

commissions were charged. Also, promotional material, including material that appeared on Free Star Companies' web sites, failed to inform prospective investors that little or no money entrusted to the Defendants for foreign currency trading would actually be traded.

Misrepresentations in Free Star Companies' Customer Account Agreements

51. Free Star Companies' opening account documents falsely informed customers that customers were dealing with regulated entities. One such document falsely claimed that Holbrook was an "investment advisor under the new Commodity Futures Trading Commission [Commission] regulations and introduces investors to [Commission] regulated enumerated parties. ITC is one such entity." In fact, ITC (Itradecurrency) is a company that is neither a registrant nor a regulated enumerated party.

Misappropriation of Customer Funds and Fictitious Trading

52. The Free Star Companies misappropriated customer monies in order to meet salaries, fund other operating costs, and to pay for parties, gifts, and other personal items. The misappropriation was accomplished, in large part, through the creation of fictitious trades. Most of the trades reported to customers of the Free Star Companies never actually took place. Instead, winning and losing trades were fabricated by Salinas, after Napoletano had discussed the financial needs of the Free Star Companies with Omeste, Bursztyn, Basman and others. Losing trades were assigned to customer accounts targeted for depletion. Losses incurred by customers with respect to these fictitious trades resulted in equivalent gains for the Free Star Companies since they were the counterparties to these trades.

Misappropriation of Customer Funds by Mazen

53. In August 2003, one of the Madison Deane brokers, Mazen, with Napoletano's knowledge and consent, prepared a list of clients and the amounts Mazen wanted each of his clients to lose in trading. As a result, Free Star's computer operator, defendant Salinas, knowingly posted fictitious trades showing losses to Mazen's customers' accounts. Mazen was paid for his participation in the scheme.

The Free Star Companies and NYCA Offered Illegal Futures Contracts

54. The foreign currency contracts that the Free Star Companies and NYCA purported to offer and sell were futures contracts. The contracts were for future delivery of foreign currencies that were cash settled in U.S. dollars. The prices or pricing formulas were established at the time the contracts were initiated and were settled through offset, cancellation, cash settlement or other means calculated to avoid delivery.

55. The Free Star Companies and NYCA marketed their foreign currency trading accounts to individuals who had assets totaling less than \$5 million and had no business, personal or other need to take or make delivery in foreign currency or to hedge against movements in the foreign currency markets. Instead, investors entered into these transactions to speculate and profit from anticipated price fluctuations in the markets for these currencies. Investors did not anticipate taking – and did not take – delivery of the foreign currencies they purchased as a consequence of these investments. The Free Star Companies and NYCA did not require investors to set up banking relationships in order to facilitate delivery of the foreign currencies.

56. The Free Star Companies and NYCA customer account agreements made reference to the margining and settlement of transactions in the customer accounts, and language

in the customer agreements defined settlement procedures whereby all profits and losses were reflected in customer account statements the following month.

57. The Free Star Companies (except for ISB after March 17, 2003) and NYCA have never been proper counterparties or affiliates of proper counterparties under the Act authorized to engage in foreign currency future transactions with retail customers. The Free Star Companies (except for ISB after March 17, 2003) and NYCA were not financial institutions, brokers or dealers, or associated persons or affiliates of a broker dealer. The Free Star Companies (except for ISB after March 17, 2003) and NYCA were never FCMs or affiliates of FCMs. The Free Star Companies and NYCA did not conduct transactions on a facility designated as a contract market or registered as a derivatives transaction execution facility.

58. Also, the Free Star Companies (except for ISB after March 17, 2003) and NYCA did not conduct their foreign currency futures transactions on or subject to the rules of a board of trade that had been designated by the Commission as a contract market, nor were their transactions executed or consummated by or through a member of such contract market. These defendants did not conduct transactions on a facility registered as a derivatives execution facility.

Controlling Persons

59. Defendant Napoletano is the owner of or has a financial interest in Madison Deane, Madison Deane Asia, ISB, Free Star and Oxford. Defendant Napoletano also controls many of the business activities of Holbrook.

60. Defendant Omeste maintains an undisclosed financial interest in the Free Star Companies, has assisted in running the operations of the Free Star Companies and has actively participated in the various schemes to defraud customers and misappropriate their investments.

61. Defendant Bursztyn is listed as the president of ISB, has assisted Napoletano in running the Free Star companies and has actively participated in the various schemes to defraud customers and misappropriate their investments.

62. Defendant Basman is listed as the president of Madison Deane, has assisted in running the operations of the Free Star Companies and has actively participated in the various schemes to defraud customers and misappropriate their investments at the Free Star companies.

63. Defendant Ripley was the owner and operator of NYCA and actively participated in the various schemes to defraud customers and misappropriate their investments.

VI. Violations of the Commodity Exchange Act and Commission Regulation

64. Section 2(c)(2)(B)(i)-(iii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)-(iii) (2001), provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a contract of sale of a commodity for future delivery, so long as the contract is “offered to, or entered into with, a person that is not an eligible contract participant” unless the counterparty, or the person offering to be the counterparty, is a regulated person or entity, as defined therein.

65. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2001), defines an eligible contract participant as an individual who has total assets in excess of: a) \$10 million; or b) \$5 million and who enters the transaction to manage the risk associated with the asset he owns or liability incurred, or reasonably likely to be owned or incurred by the individual. Most, if not all, of the foreign currency futures transactions alleged herein were offered to or entered into with persons who were members of the general retail public and were not eligible contract participants.

66. To the extent that any transactions were actually entered into, the Free Star Companies (except for ISB after it became registered as a FCM) and NYCA, as described above were not proper counterparties for retail foreign currency transactions. Therefore, the Commission has jurisdiction over the transactions in retail foreign currency as alleged herein.

COUNT I

VIOLATIONS OF SECTION 4b(a)(2)(i), (ii) AND (iii) OF THE ACT AND COMMISSION REGULATION 1.1(b)(1), (2) AND (3)

67. Paragraphs 1 through 66 are re-alleged and incorporated herein.

68. During the relevant time period, Madison Deane, Madison Deane Asia, NYCA, Free Star, Holbrook, Oxford, ISB, Napoletano, Basman, Salinas, Bursztyn, Omeste, Ripley and Mazen, in or in connection with the orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made, for or on behalf of any persons, where such contracts for future delivery, were or could be used for the purposes set forth in Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2001), have cheated or defrauded or attempted to cheat and defraud investors or prospective investors in the Free Star Companies and NYCA, have willfully made or caused to be made to investors false reports or statements, or willfully entered into or caused to be entered for such investors false records, and willfully deceived or attempted to deceive investors or prospective investors by, among other things, making material misrepresentations to investors regarding the profitability of their accounts and failing to disclose the fraudulent withdrawal of funds from the investors' accounts, all in violation of Sections 4b(a)(2)(i), (ii) and (iii) of the Act, 7 U.S.C. § 6b(a)(2) (i), (ii) and (iii) (2001). Further, by such conduct, Madison Deane, Madison Deane Asia, NYCA, Free Star, Holbrook, Oxford, Napoletano, Basman, Salinas, Bursztyn, Omeste, Ripley and Mazen are in violation of Commission Regulation 1.1(b) (1), (2) and (3) (2001).

69. From at least spring 2002, Napoletano, Omeste, Bursztyn and Basman, as the owners and/or operators of the Free Star Companies and Ripley as the owner and operator of NYCA, directly or indirectly, controlled the Free Star Companies and NYCA respectively and their schemes and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count I. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), as described in this Count I, Napoletano, Omeste, Bursztyn, Baseman, and Ripley are liable for the violations described in this Count I, to the same extent as to all persons and entities under their control who have committed the violations described in Count I.

70. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2, the Free Star Companies and NYCA are liable for any violations of Section 4b(a)(2) (i), (ii) and (iii) of the Act by its officers, directors, managers, employees and agents, in that all such violations were within the scope of their office or employment with the Free Star Companies and NYCA. Further pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) Madison Deane, Madison Deane Asia, NYCA, Free Star, Holbrook and Oxford are liable for any violations Commission Regulation 1.1 by its officers, directors, managers, employees and agents, in that all such violations were within the scope of their office or employment with these companies.

71. Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13a-1(a)(2001) Ripley and NYCA are liable as aiders and abettors, in that they had knowledge of the wrongdoing underlying the violation of Section 4b of the Act and Commission Regulation § 1.1(b) and that they intentionally assisted the primary wrongdoers.

72. Each material misrepresentation or omission, false statement, misappropriation of investor funds, and willful deception made during the relevant time period, including but not

limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b and Commission Regulation 1.1(b).

COUNT II

VIOLATIONS OF SECTION 4(a) OF THE ACT, 7 U.S.C. § 6(a) (2001): SALE OF ILLEGAL OFF-EXCHANGE FUTURES CONTRACTS

73. Paragraphs 1 through 72 are re-alleged and incorporated herein.

74. Since at least spring 2002, the Free Star Companies (except for ISB) and NYCA have offered to enter into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, accepting any order, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions were not conducted on or subject to the rules of a board of trade which was designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity and, (b) such contracts were not executed or consummated by or through such contract market in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001).

75. From at least spring 2002, Napoletano, Omeste, Bursztyn, Baseman, as the owners and/or operators of the Free Star Companies (except for ISB) and Ripley as the owner and operator of NYCA, directly or indirectly, controlled the Free Star Companies and NYCA respectively and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count II. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), as described in this Count II, Napoletano, Omeste, Bursztyn, Baseman and Ripley are liable for the violations described in this Count II to the same extent as the Free Star Companies (except ISB) and NYCA.

76. Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13a-1(a)(2001) Ripley and NYCA are also liable as aiders and abettors, in that they had knowledge of the wrongdoing underlying the violation of Section 4(a) of the Act and that they intentionally assisted the primary wrongdoer.

77. Each foreign currency futures transaction not concluded on a designated contract market or registered derivatives transaction execution facility made during the relevant time period, including, but not limited to those conducted by Defendants as specifically alleged herein, is alleged as a separate and distinct violation of Section 4(a) of the Act, 7 U.S.C. §6(a)(2001).

VII. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), and pursuant to the Court's own equitable powers:

A. Find that Defendants have violated Sections 4(a) and 4b(a)(2) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2) (2001), and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002);

B. Enter an *ex parte* statutory restraining order and an order of preliminary injunction restraining and enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them 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;

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, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of any of the Defendants; and

4. appointing a temporary receiver to take into his or her immediate custody, control, and possession all cash, cashier's checks, funds, assets, and property of Defendants and Relief Defendants, including funds or property of investors wherever found, whether held in the name of any of the Defendants, or otherwise, including, but not limited to, all books and records of account and original entry, electronically stored data, tape recordings, all funds, securities, contents of safety deposit boxes, metals, currencies, coins, real or personal property, commodity futures trading accounts, bank and trust accounts, mutual fund accounts, credit card line-of-credit accounts and other assets, of whatever kind and nature and wherever situated, and authorizing, empowering and directing such receiver to collect and take charge of and to hold and administer the same subject to further order of the Court, in order to prevent irreparable loss, damage

and injury to investors, to conserve and prevent the dissipation of funds, and to prevent further evasions and violations of the federal commodity laws by the Defendants;

C. Enter orders of preliminary and permanent injunctions prohibiting Defendants and any other person or entity associated with them, including any successor thereof, from:

1. engaging in conduct, in violation of Sections 4(a) and 4b(a)(2) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2) (2001), and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b); and
2. soliciting funds for, engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;

D. Enter an order directing Defendants to provide Plaintiff immediate and continuing access to their books and records;

E. Enter an order appointing a permanent equity receiver to take into his or her immediate custody, control, and possession all cash, cashier's checks, funds, assets, and property of Defendants, including funds or property of investors wherever found, whether held in the name of any of the Defendants or otherwise, including, but not limited to, all books and records of account and original entry, electronically stored data, tape recordings, all funds, securities, contents of safety deposit boxes, metals, currencies, coins, real or personal property, commodity futures trading accounts, bank and trust accounts, mutual fund accounts, credit card line-of-credit accounts and other assets, of whatever kind and nature and wherever situated, and authorizing, empowering and directing such receiver to collect and take charge of and to hold and administer the same subject to further order of the Court, in order to prevent irreparable loss, damage and

injury to investors, to conserve and prevent the dissipation of funds, and to prevent further evasions and violations of the federal commodity laws by the Defendants;

F. Enter an order directing Defendants to take such steps as are necessary to repatriate to the territory of the United States all funds and assets of the Defendants' customers described herein which are held by Defendants or are under their direct or indirect control, jointly or singly, and deposit such funds into the Registry of this Court and provide the Commission, equity receiver, and the Court with a written description of the funds and assets so repatriated;

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 trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest thereon from the date of such violations;

H. Enter an order directing Defendants to make full restitution to every investor whose funds were received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;

I. Enter an order assessing a civil monetary penalty against each defendant in the amount of not more than the higher of \$120,000 or triple the monetary gain to the defendant for each violation by the defendant of the Act and Commission Regulations;

J. Enter an order directing that Defendants make an accounting to the court of all their assets and liabilities, together with all funds they received from and paid to clients and other persons in connection with commodity futures transactions or purported commodity futures transactions, and all disbursements for any purpose whatsoever of funds received from commodity transactions, including salaries, commissions, interest, fees, loans and other

disbursements of money and property of any kind, from, but not limited to, spring 2002 through and including the date of such accounting;

K. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2001); and

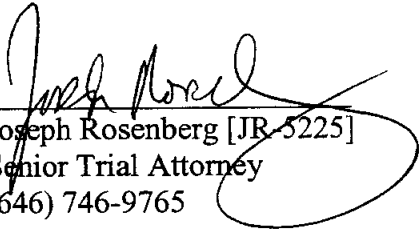
L. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: New York, NY
November 17, 2003

U.S. COMMODITY FUTURES TRADING COMMISSION

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