

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission.

Plaintiff,

v.

Ian Bursztyn, John Capuano, Anthony DiNapoli,
Anthony Iannuzzi, John Messina, Stephen Moore,
Vito Napoletano, Patrick Sweeney, Joseph Torre,
and Itradecurrency USA, LLC,

Defendants.

**Order for Entry of Default Judgment,
Injunctive Relief, Civil Monetary
Penalty, and Ancillary Equitable
Relief against Defendant
Itradecurrency USA, LLC**

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CASHIERS

On November 18, 2003, the U.S. Commodity Futures Trading Commission ("Commission") filed a Complaint charging defendant Itradecurrency USA, LLC ("ITC" or "Defendant") and others with cheating or defrauding or attempting to cheat or defraud various banks and willfully deceiving or attempting to deceive various banks by, among other things, converting funds that had been misappropriated from various banks in violation of Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002). The Complaint also charges ITC, pursuant to Section 2(a)(1)(B) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 2(a)(1)(B) (2001), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2002), with liability for any violations of Commission Regulation 1.1(b) by its officers, directors, managers, employees, and agents, in that all such violations were within the scope of their office or employment with ITC. In addition, the Complaint charges ITC with violating Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001).

On November 19, 2003, ITC was properly served with the Complaint pursuant to Rule 4(h)(1) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). ITC failed to answer the

Complaint within the time permitted by Rule 12(a)(1) of the Fed. R. Civ. P. Accordingly, on April 17, 2008, the Clerk of this Court entered a certificate of default against ITC for this Complaint.

The Commission has now submitted its Application for Entry of Default Judgment, Injunctive Relief, Civil Monetary Penalty, and Ancillary Equitable Relief ("Application") against ITC pursuant to Fed. R. Civ. P. 55(b)(2) and Local Rule 55.2(b). The Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Application, and other written submissions of the Commission filed with the Court, and being fully advised, hereby:

GRANTS the Commission's Application against ITC and enters findings of fact and conclusions of law relevant to the allegations in the Complaint. The Court further grants the Commission's request for entry of a default judgment, injunctive relief, damages and ancillary equitable relief. Accordingly, the Court now issues this Order for Entry of Default Judgment, Injunctive Relief, Civil Monetary Penalty, and Ancillary Equitable Relief against Defendant Itradecurrency USA, LLC ("Order").

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and ITC pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, 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.

Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1, in that ITC was found in, inhabited, or transacted business in this district, the acts and practices in violation of the Act occurred within this district, among other places, and ITC benefited from these acts and practices.

B. Findings of Fact

ITC is a New York limited liability company. ITC was owned and operated by Defendants Stephen E. Moore and Anthony Iannuzzi. ITC has never been registered with the Commission in any capacity. ITC is not a financial institution, a broker or dealer, an associated person of a broker or dealer, an insurance company, a financial holding company, a futures commission merchant ("FCM"), or an affiliate of an FCM.

From at least May to November 2003, ITC engaged in a scheme with other co-conspirators to defraud and deceive banks. This scheme was called the "knowledgeable trades" scheme. Through these knowledgeable trades, ITC defrauded and deceived banks by engaging in illegal foreign currency futures transactions to convert bank funds and conceal this conversion from the banks.

The knowledgeable trade scheme operated as follows. In Step 1, in order to convert money from his employer, a trader at a defrauded bank (Bank #1) initiates two foreign currency transactions, in which he buys and sells foreign currency, between Bank #1 and a co-conspirator at another bank ("Bank #2"). The transactions are arranged through a co-conspirator at an interbank broker. Bank #1, the defrauded bank, is on the losing side of these transactions. In Step 2, the interbank broker arranges for another set of foreign currency transactions between Bank #2 and a co-conspirator at ITC, a retail foreign currency dealer. Bank #2 is on the losing side of these transactions. In Step 3, ITC engages in two illegal foreign currency futures

transactions in which it loses money to a retail customer, a Federal Bureau of Investigation account ("FBI account"), which maintains accounts at an FCM and at ITC. In Step 4, the individual who holds the FBI account splits the cash proceeds with his co-conspirators. The persons and entities involved in all of these transactions know from the outset that they are participating in illegal conversions of funds from the banks involved.

ITC knew that the "knowledgeable trades" transactions into which it entered were intended to and did convert bank funds. The foreign currency transactions between ITC and the FBI account were designed to cheat or defraud (or attempt to cheat or defraud) and to deceive the banks in this scheme by converting bank funds to ITC's own use and benefit. ITC helped convert funds totaling \$447,314 from banks.

The foreign currency transactions between ITC and the FBI account were illegal off-exchange futures contracts. They involved the purchase and sale of foreign currency for future as opposed to immediate or deferred delivery. ITC and the FBI account did not have any business or personal need for the foreign currency. They did not intend to, and did not, take or make delivery of the foreign currencies as a consequence of these transactions. No accounts were maintained at any foreign financial institution to take or make delivery of foreign currency for any of the parties involved in these transactions. There was never any conversion from U.S. dollars to another currency. All trades were liquidated by offsetting the position by entering into an equal and opposite transaction and thereby taking the profits in dollars. The terms and conditions of these contracts were standardized.

The transactions involved in the knowledgeable trade scheme were not conducted on or subject to the rules of a board of trade that has been designated by the Commission as a contract market, nor were these transactions executed or consummated by or through a contract market or

on a facility registered as a derivatives transaction execution facility. ITC and the FBI account were not eligible contract participants or enumerated regulated counterparties. Neither ITC nor the FBI account were a financial institution, a broker or dealer, an associated person of a broker or dealer, an insurance company, a financial holding company, or an investment bank holding company, an FCM, or an affiliate of an FCM.

C. Conclusions of Law

1. Violations of Commission Regulation 1.1(b)

From at least May 2003 to November 2003, ITC cheated or defrauded or attempted to cheat or defraud banks and willfully deceived or attempted to deceive banks by, among other things, converting funds that had been misappropriated from banks in violation of Regulation 1.1(b), 17 C.F.R. § 1.1(b).

ITC is also liable, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2002), for any violations of Commission Regulation 1.1(b) by its officers, directors, managers, employees, and agents, in that all such violations were within the scope of their office or employment with ITC.

2. Violations of Section 4(a) of the Act

From at least May 2003 to November 2003, ITC 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 for, 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.

3. The Knowledgeable Trades Transactions Were Futures Contracts

The Commission has jurisdiction over the knowledgeable trades transactions because these transactions were foreign currency futures contracts. These contracts were fulfilled through offset to avoid delivery. Further, these foreign currency futures transactions were offered to or entered into with a customer who was not an eligible contract participant pursuant to Section 1a(12) of the Act, 7 U.S.C. § 1a(12). ITC was not a proper counterparty or an affiliate of a proper counterparty pursuant to Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B). Accordingly, the Commission has jurisdiction over these knowledgeable trades transactions.

4. Appropriate Relief

Permanent injunctive relief is warranted in light of the egregious nature of ITC's conduct in converting funds from banks through the sale of illegal foreign currency futures contracts from May to November 2003, as well as ITC's high level of scienter in participating in this well-planned scheme to systematically defraud banks. These facts demonstrate a reasonable likelihood of future violations.

Imposition of a civil monetary penalty is appropriate in this case as ITC's violations of the Act were intentional. Likewise, restitution is appropriate to make the bank victims whole.

II. ORDER FOR RELIEF

A. Permanent Injunction

IT IS HEREBY ORDERED that:

1. ITC is permanently restrained, enjoined and prohibited from directly or indirectly:
 - (1) Cheating or defrauding or attempting to cheat or defraud any person in connection with any account, agreement, contract or transaction described

in Sections 2(c)(1) and 2(c)(2)(B) of the Act, 7 U.S.C. §§ 2(c)(1) and 2(c)(2)(B);

- (2) Willfully making or causing to be made to any person any false report or statement or causing to be entered for any person any false record in connection with any account, agreement, contract or transaction described in Sections 2(c)(1) and 2(c)(2)(B) of the Act, 7 U.S.C. §§ 2(c)(1) and 2(c)(2)(B); and
- (3) Willfully deceiving or attempting to deceive any person by any means whatsoever in connection with any account, agreement, contract or transaction described in Sections 2(c)(1) and 2(c)(2)(B) of the Act, 7 U.S.C. §§ 2(c)(1) and 2(c)(2)(B)

in violation of Commission Regulation 1.1(b), 17 C.F.R. §1.1(b) (2002).

2. ITC is further permanently restrained, enjoined and prohibited from directly or indirectly offering to enter into, entering into, executing, confirming the execution of, or conducting any office or business anywhere in the United States, its territories or possessions for the purpose of soliciting, accepting any order for, or otherwise dealing in, any transaction in, or connection with, a contract for the purchase or sale of a commodity for future delivery in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a)(2001).

3. ITC is further permanently restrained, enjoined and prohibited from engaging directly or indirectly in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4), ("commodity interest"), including but not limited to the following:

- A. Trading on or subject to the rules of any registered entity, at that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);
- B. Engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- C. Soliciting, receiving, or accepting any funds from any person in connection with the purchase or sale of any commodity interest contract;

- D. 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), or acting as a principal, 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);
- E. Entering into any commodity interest transactions for his own personal account, for any account in which he has a direct or indirect interest and/or having any commodity interests traded on his behalf; and/or
- F. Engaging in any business activities related to commodity interest trading.

4. ITC is further permanently restrained, enjoined and prohibited from filing a petition in bankruptcy without providing the Commission with prompt notice by Certified Mail of such filing pursuant to Part II.H.2 of this Order.

5. The injunctive provision of this Order shall be binding upon ITC, upon any person who acts in the capacity of officer, agent, employee, attorney, successor and/or assign of the ITC and upon any person who receives actual notice of this Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with ITC.

B. Civil Monetary Penalty

IT IS FURTHER ORDERED that as of the date of entry of this Order,

Defendant shall pay a civil monetary penalty in the amount of \$240,000, plus post judgment interest (the "CMP Obligation"). Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Defendant shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by

other than electronic funds transfer, Defendant shall make the payment payable to the U.S.

Commodity Futures Trading Commission and send to the following address:

U.S. Commodity Futures Trading Commission
Division of Enforcement
Attention: Marie Bateman – AMZ-300
DOI/FAA/MMAC
6500 South MacArthur Boulevard
Oklahoma City, OK 73169
Telephone: 405-954-6569

If the payment is to be made by electronic funds transfer, Defendant shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Defendant shall accompany the payment of the penalty with a cover letter that identifies Defendant and the name and docket number of this proceeding.

Defendant shall simultaneously transmit copies of the cover letter and the form of payment to (a) Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, (b) Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address, and (c) Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19th Floor, New York, NY 10005.

C. Restitution

IT IS FURTHER ORDERED that as of the date of entry of this Order, Defendant shall pay, jointly and severally with his co-defendants in this matter, Stephen E. Moore and Anthony Iannuzzi, for restitution to defrauded customers in the amount of \$447,314 (four hundred forty seven thousand and three hundred fourteen dollars), plus pre-judgment and post-judgment interest (the "Restitution Obligation"). Pre-judgment interest shall accrue from May 1, 2003 to the date of entry of this Order and shall be determined by using the underpayment rate

established quarterly by the Internal Revenue Service pursuant to 26 U.S.C. § 6621(a)(2). Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961.

Defendant shall pay the Restitution Obligation to Brian Rosner, Esq., the Court-appointed Receiver, Rosner & Napierala, LLP, 26 Broadway, 22nd floor, New York, NY 10004-24424 by cashier's check, certified check or postal money order, under cover of a letter that identifies Defendant, the name and docket number of this action and the name of this Court. Defendant shall simultaneously transmit copies of the cover letter and the form of payment to (a) Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, (b) Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address, and (c) Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19th Floor, New York, NY 10005.

D. Priority of Monetary Sanctions and Partial Payments

1. Priority of Monetary Sanctions - All payments by ITC pursuant to this Order shall first be applied to satisfy ITC's Restitution Obligation. After satisfaction of ITC's Restitution Obligation, payments by ITC pursuant to this Order shall be applied to satisfy ITC's CMP Obligation.

2. Partial Payments - Any acceptance by the Commission and/or Receiver of partial payment of ITC's restitution obligation and/or civil monetary penalty shall not be deemed a waiver of the respective requirement to make further payments pursuant to this Order, or a

waiver of the Commission's and/or Receiver's right to seek to compel payment of any remaining balance.

E. Appointment of Permanent Receiver

1. Permanent Receiver: Brian Rosner, Esq., Rosner & Napierala, LLP, 26 Broadway, 22nd floor, New York, NY 10004-24424 (the "Receiver") is appointed as a permanent equity Receiver to take into his immediate custody, control, and possession all cash, cashier's checks, funds, assets, and property of Defendant, including funds or property of investors wherever found, whether held in the name of Defendant 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, to prevent further evasions and violations of the Act and Commission Regulations by the Defendant and to satisfy Defendant's Restitution Obligation and to pay Defendant's CMP Obligation.

2. The Receiver shall oversee IFC's Restitution Obligation, and shall have discretion to determine the manner for distribution of funds in an equitable fashion to Defendant's defrauded customers, as appropriate, or may defer distribution until such time as it deems appropriate. In the event that the amount of restitution payments to the Receiver are of a *de minimis* nature such that the Receiver determines that the administrative costs of making a

restitution distribution is impractical, the Receiver may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Receiver shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part II.B. above.

3. The Receiver, subject to approval of the Court, is entitled to reasonable compensation for the performance of duties pursuant to this Order by it and all personnel hired by the Receiver, including counsel to the Receiver, and is also entitled to the cost of actual out-of-pocket expenses incurred by them (the "Receivership fees and expenses").

4. Within ninety (90) days after the Court approves and enters orders for final judgment against all the defendants in the following cases, 03 CV 9124, 03 CV 9126, 03 CIV 9127, 03 CV 9128 and 03 CV 9129, the Receiver shall submit to the Court for approval, and serve upon the parties, a Distribution Plan setting forth the Receiver's methodology and protocol for disbursing funds to ITC's defrauded customers. Such Distribution Plan shall be consistent with the authority granted to the Receiver in Part II.E.2 above.

5. Since inception of the Receivership, the Receiver has made to the Court and served upon the parties requests for compensation containing periodic reports which state the status of the of the Receiver's activities in connection with the collection and disbursement of funds and which include the Receiver's request for compensation of Receivership fees and expenses. The Receiver shall continue to file such reports periodically over the course of the Receivership, in any event at least every (90) days.

6. The Receiver's requests for compensation of Receivership fees and expenses shall itemize the specific out-of-pocket expenses and the time and specific nature of services rendered by the Receiver and all personnel hired by the Receiver. The Receiver shall not increase the

hourly rates used as the bases for such fee applications without prior approval of this Court. The Commission shall have the opportunity to review and to object to each such request for compensation. Compensation approved by this Court shall be paid from funds held in the Receivership Checking Account.

7. To the extent that any funds accrue to the U.S. Treasury as a result of the Restitution Obligation provided for in this Order, such funds shall be transferred to the Receiver for disbursement in accordance with the procedures set forth in paragraph II.E.2 above.

F. Cooperation

ITC shall cooperate fully with the Commission, the Receiver, and/or any government agency seeking to enforce the restitution and civil monetary provisions of this Order by providing any requested information relating to his financial status including, but not limited to, income and earnings, assets, financial statements, asset transfers, and tax returns.

G. Equitable Relief Provisions

The equitable relief provisions of this Order shall be binding upon ITC, upon any person insofar as he or she is acting in the capacity of officer, agent, servant or employee of ITC, and upon any person who receives actual notice of this Order, by personal service, email, facsimile or otherwise, insofar as he or she is acting in active concert or participation with ITC.

H. Miscellaneous Provisions

IT IS FURTHER ORDERED THAT:

1. Prohibition on Transfer of Funds

ITC shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any other person for the purpose of concealing such funds or property from the Court, the Plaintiff, the Receiver, or any officer that may be appointed by the Court.

2. Notices

All notices required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to Commission: Regional Counsel
 U.S. Commodity Futures Trading Commission
 Division of Enforcement - Eastern Regional Office
 140 Broadway, 19th Floor
 New York, New York 10005
 Phone: (646) 746-9700
 Fax: (646) 746-9740

All such notices to the Commission shall reference the name and docket number of this proceeding.

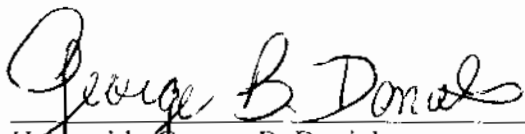
3. Continuing Jurisdiction of this Court

This Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

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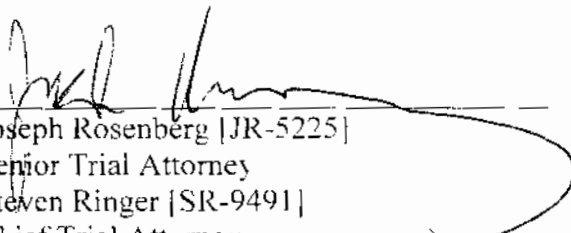
SO ORDERED, at _____, New York on this ____ day of _____, 2008.



Honorable George B. Daniels
UNITED STATES DISTRICT COURT
GEORGE B. DANIELS

Respectfully submitted,
U.S. COMMODITY FUTURES TRADING
COMMISSION
Stephen J. Obie
Regional Counsel

By:



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