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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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U.S.D.C. S.D. N.Y.  
CASHIERS

U.S. Commodity Futures Trading Commission,

Plaintiff,

v.

Ian Bursztyrn, 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 Stephen E.  
Moore**

On November 18, 2003, the U.S. Commodity Futures Trading Commission (“Commission”) filed a Complaint charging defendant Stephen Moore (“Moore” or “Defendant”) and others with willfully aiding and abetting the commission of the violation of Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002), pursuant to Section 13(a) of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. § 13c(b) (2001). The Complaint also charges Moore with violating Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002), as a controlling person of defendant Itradecurrency USA. LLC (“ITC”), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001). In addition, Moore was charged with violating Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001), as a controlling person of ITC, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

On November 19, 2003, Moore was properly served with the Complaint pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”). Moore failed to answer the Complaint within the time permitted by Rule 12(a)(1) of the Fed. R. Civ. P. Accordingly, on

March 25, 2008, the Clerk of this Court entered a certificate of default against Moore 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 Moore 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 Moore 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 Stephen E. Moore ("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 Moore 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 Moore 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 Moore benefited from these acts and practices.

**B. Findings of Fact**

Moore currently resides in the Federal Correctional Institution in Otisville, New York.

Moore owned, operated and was the President, principal and manager of ITC, a retail foreign currency dealer.

From at least May to November 2003, Moore knowingly aided and abetted a scheme with other co-conspirators to defraud and deceive banks. This scheme was called the "knowledgeable trades" scheme. Through these knowledgeable trades, Moore helped to defraud and deceive banks by knowingly and willfully 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 illegal foreign currency futures transactions in which it loses money to a retail customer who maintains accounts at a futures commission merchant ("FCM") and at ITC. In Step 4, the retail customer who holds the account at either the FCM or at the retail foreign currency dealer splits the cash proceeds with his co-conspirators.

The persons and entities involved in all of these transactions knew from the outset that they were 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.

Moore knowingly facilitated and profited from this knowledgeable trades scheme. Moore helped convert funds totaling \$447,314 from banks.

The contracts in the knowledgeable trade scheme involved the purchase and sale of foreign currency for future as opposed to immediate or deferred delivery. The parties involved in these transactions did not have any business or personal need for the foreign currency. These parties 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. The parties involved in these foreign currency futures transactions were not eligible contract participants or enumerated

regulated counterparties. None of the parties was 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. In addition, none of the parties was a FCM or an affiliate of a 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, misappropriating bank funds in violation of Regulation 1.1(b), 17 C.F.R. § 1.1(b). Moore aided and abetted ITC's violations, by, among other things, intentionally aiding and abetting the conversion of misappropriated bank funds and is therefore liable, pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2001), for violation of Regulation 1.1(b), 17 C.F.R. § 1.1(b).

Defendant also is liable, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), for violation of Commission Regulation § 1.1(b), 17 C.F.R. § 1.1(b), as a controlling person of ITC, because he did not act in good faith or knowingly induced, directly or indirectly the acts constituting ITC's violation.

**2. Violations of Section 4(a) of the Commodity Exchange Act**

From at least May 2003 to November 2003, ITC violated Section 4(a) of the Act, 7 U.S.C. § 6(a), by offering to enter into, executing, confirming the execution of, or conducting 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. Defendant is liable as a controlling person ITC for violation of Section 4(a) of the Act, 7 U.S.C. § 6(a), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), to the same extent as ITC, because he did not act in good faith or knowingly induced, directly or indirectly the acts constituting ITC's violation..

**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). The counterparty to the customer 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 Moore's conduct in aiding and abetting the conversion of funds from banks through the sale of illegal foreign currency futures contracts from May to November 2003 as well as his 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 Moore'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. Moore 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. Moore 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. Moore 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) (2004), 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) (2004);
- 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. Moore 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.II.2 of this Order.

5. The injunctive provision of this Order shall be binding upon Defendant, upon any person who acts in the capacity of officer, agent, employee, attorney, successor and/or assign of the Defendant 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 the Defendant.



**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

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  
DOT/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 21<sup>st</sup> 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, 19<sup>th</sup> Floor, New York, NY 10005.

**C. Restitution**

**IT IS FURTHER ORDERED** that as of the date of this Order, Defendant shall pay and be jointly and severally liable with his co-defendants in this matter, Anthony Iannuzzi and ITC, for restitution to defrauded victims in the amount of \$447,314 (four hundred forty seven thousand and three hundred fourteen dollars) plus pre-judgment and post-judgment interest. Pre-judgment interest from May 1, 2003, to the date of this Order 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 is ordered to make such payments to Brian Rosner, Esq., the Court-appointed Receiver, Rosner & Napierala, LLP, 26 Broadway, 22<sup>nd</sup> floor, New York, NY 10004-24424 by cashier's check, certified check or postal money order, under cover of a 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 21<sup>st</sup> 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, 19<sup>th</sup> Floor, New York, NY 10005.

**D. Priority of Monetary Sanctions and Partial Payments**

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

Defendant's Restitution Obligation is co-terminus with Defendant's criminal judgment obligation entered against Defendant on May 10, 2007 by the U.S. District Court for the Southern District of New York in *United States v. Moore*, S.D.N.Y. Docket No. 04 Cr. 0476. Accordingly, partial or full satisfaction or discharge of Defendant's criminal judgment obligation shall simultaneously result in identical partial or full satisfaction or discharge of Defendant's Restitution Obligation.

2. Partial Payments - Any acceptance by the Commission and/or Receiver of partial payment of Moore's Restitution Obligation and/or CMP Obligation 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, 22<sup>nd</sup> 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 Moore'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 Moore'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**

Moore 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 Moore, upon any person insofar as he or she is acting in the capacity of officer, agent, servant or employee of Moore, 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 Moore.

**H. Miscellaneous Provisions**

**IT IS FURTHER ORDERED THAT:**

**1. Prohibition on Transfer of Funds**

Moore 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, 19<sup>th</sup> Floor  
   New York, New York 10005  
   Phone: (646) 746-9700  
   Fax: (646) 746-9740

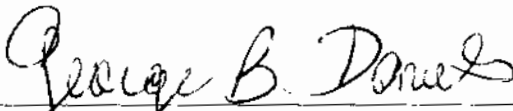
All such notices to the Commission shall reference the name and docket number of this proceeding.

**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.

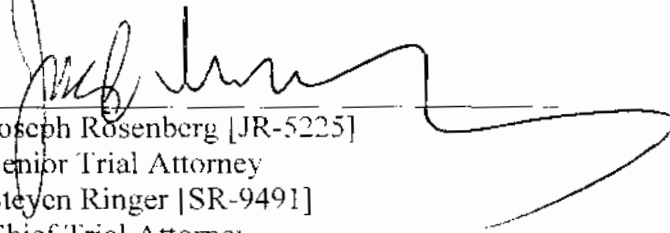
SO ORDERED, at \_\_\_\_\_, New York on this \_\_\_ day of \_\_\_\_\_, 2008.

AUG - 6 2008

  
\_\_\_\_\_  
Honorable George B. Daniels  
U.S. DISTRICT JUDGE

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

By:



Joseph Rosenberg [JR-5225]  
Senior Trial Attorney  
Steven Ringer [SR-9491]  
Chief Trial Attorney  
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COMMISSION  
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