

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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03 CV 9126 (GBD)

U.S. Commodity Futures Trading Commission,

Plaintiff,

v.

Walter, Scott, Lev & Associates, LLC,  
Michael Ross,  
Maxim Yampolsky,  
Edward Sapienza, Jr.,  
Frank Schiavone,  
Michael Korobov, and  
Boris Shuster, a/k/a/ Robert Shuster,

Defendants, and

Michael Edwards Trading Group, Ltd.,  
JSG Freight Systems, Inc.,  
Shuster, Shuster & Shuster, Ltd.,  
BLJ Consulting, Inc.,  
Winn Industries Division of Ontario, Limited  
(1430214 Ontario, Limited), and  
The Fuzzy Group, Inc.,

Relief Defendants.

**Order for Entry of Judgment by  
Default, Permanent Injunction,  
Ancillary Equitable Relief and Civil  
Monetary Penalty Against  
Defendant Frank Schiavone**

On November 18, 2003, the U.S. Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint charging Defendant Frank Schiavone and others ("Defendant" or "Schiavone") with cheating, defrauding and deceiving investors in an illegal off-exchange foreign currency futures scheme in violation of Section 4(b)(a)(2) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6b(a)(2) (2002), and Commission Regulation ("Regulation") 1.1(b), 17 C.F.R. § 1.1(b) (2001). The Complaint also charged that Schiavone, as an owner and operator of Walter, Scott, Lev & Associates, LLC ("WSL"), directly or indirectly controlled WSL and did not act in good faith or knowingly induced, directly or indirectly,

WSL's violations of Sections 4(a) and 4(b)(a)(2) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2) (2002), and Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2001), making Schiavone liable as a controlling person of WSL for WSL's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

On November 20, 2003, Schiavone was properly served with the summons, complaint and supporting papers pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). Schiavone failed to answer the Complaint within the time permitted by Rule 12(a)(1) of the Fed. R. Civ. P. and provided by this Court in the November 7, 2006 Order lifting the stay of proceedings for Schiavone and providing him with twenty days to file an answer to the Complaint. Schiavone is not an infant, incompetent person, or in the military. Accordingly, on December 7, 2006, the Clerk of this Court entered a certificate of default against Schiavone pursuant to Local Rule 55.1 and 55(a) of the Fed. R. Civ. Pro.

The Commission has now submitted its Application for Entry of Judgment by Default with Injunctive Relief, Civil Monetary Penalties, and Ancillary Equitable Relief Against Schiavone ("Application") 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 Schiavone and enters findings of fact and conclusions of law finding Schiavone liable as to all violations alleged in the Complaint. The Court further grants the Commission's request for injunctive relief, restitution, disgorgement and a civil monetary penalty. Accordingly, the Court now issues the following Order for Entry

of Judgment by Default, Permanent Injunction, Ancillary Equitable Relief and Civil Monetary Penalty Against Defendant Frank Schiavone (“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 Schiavone 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 Schiavone was found in, inhabited, or transacted business in this district, and the acts and practices in violation of the Act and Regulations occurred within this district, among other places.

**B. Findings of Fact**

WSL was a New York limited liability company organized in 1998 with an office at 90 John Street, Suite 407, New York, New York 10038. It has never been registered with the Commission in any capacity.

Schiavone resides in the Federal Correctional Institution in Fort Dix, New Jersey. Schiavone has never been registered with the Commission.

Schiavone was one of the four individuals who formed WSL and served as WSL Treasurer.

From at least January 1999 to at least April 2002 (“relevant time period”), Schiavone and others fraudulently solicited more than 850 customers for the purpose of trading foreign currency

contracts which were, in fact, illegal off-exchange foreign currency futures contracts. Instead of actually trading clients' funds, Schiavone misappropriated a substantial portion of the funds obtained from customers. At the same time, Schiavone misled investors with false monthly account statements showing considerable profits. Schiavone then abruptly notified customers that alleged catastrophic trading losses had wiped out their funds. Schiavone knew that client funds were being misappropriated, that the monthly account statements showing profits were false and that the clients' losses were not due to catastrophic trading losses.

During the relevant time period, at least \$6,800,951 was misappropriated from customers by Schiavone and others.

Schiavone, through WSL, marketed WSL's managed 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. WSL did not require its clients to set up banking relationships to facilitate delivery of the foreign currencies. Once the market moved in a favorable direction, investors expected, based on the representations made to them, WSL to liquidate their investments by authorizing the sale of the contract and taking the profits. The WSL customer account agreement made reference to the margining and settlement of transactions in WSL customer accounts, and one full paragraph in the customer agreement defined settlement procedures whereby all profits and losses were reflected in customer account statements the following month. WSL's account agreement and solicitation materials provided

that commissions are charged on a round-turn basis. Moreover, WSL's brochure assured customers that their principal investments would be protected because WSL would be responsible for all margin requirements, and positions would be exited when stop losses are triggered.

WSL was not a proper counterparty or an affiliate of a proper counterparty under the Act authorized to engage in foreign currency futures transactions with retail customers. WSL was not a financial institution, a broker or dealer, or an associated person of a broker or dealer. WSL was not a Futures Commission Merchant ("FCM"), or an affiliate of a FCM. WSL did not conduct transactions on a facility designated as a contract market or registered as a derivatives transaction execution facility.

WSL, did not conduct the foreign currency futures transactions on or subject to the rules of a board of trade that had been designated by the CFTC as a contract market. WSL, did not conduct transactions on a facility registered as a derivatives transaction execution facility.

Prior to December 21, 2000, WSL's conduct was such that it operated as a board of trade based upon its being a public marketplace offering standardized futures contracts to buyers and sellers with the availability of price information and an execution and settlement mechanism. WSL mass marketed to small investors by providing a foreign currency trading facility that allowed its customers, with a minimum deposit, to become "traders" at its board of trade. WSL recruited traders, many of whom have no prior trading experience, and urged them to solicit the general public through cold calls to invest with WSL. WSL also provided the mechanism for traders to get prices, make orders, execute orders, and offset those orders with matching opposite transactions. WSL further confirmed, both orally and in writing, that the traders' orders had

been executed. WSL's orders were standardized, leveraged contracts of its own devise. The contracts were closed out by entering into an offsetting transaction rather than by taking delivery.

### **C. Conclusions of Law**

#### **1. WSL's Transactions Were Futures Contracts.**

The foreign currency contracts offered and sold by Schiavone, through WSL, were futures contracts. WSL was not a proper counterparty or an affiliate of a proper counterparty authorized under the Act or Regulations to engage in foreign currency future transactions with retail customers.

#### **2. Schiavone is Liable for Violations of Section 4b(a)(2) of the Commodity Exchange Act and Commission Regulation 1.1(b).**

During the relevant time period, Schiavone cheated or defrauded or attempted to cheat or defraud investors or prospective investors of WSL, willfully made or caused to be made false reports or statements, and willfully deceived or attempted to deceive investors or prospective investors by, among other things, knowingly: misappropriating funds received from investors and making false statements regarding trading losses, the risks of trading foreign currencies, the legitimacy of their operation, and the safety of investor funds, all in violation of Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2001), and Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002). Schiavone's conduct was 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 other persons, and 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) (2001).

During the relevant time period, Schiavone, as an owner and operator of WSL, directly or indirectly controlled WSL and its schemes and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting WSL's violations of Section 4b(a)(2) of the Act, 7

U.S.C. § 6b(a)(2) (2001), and Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002). Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), Schiavone is liable for WSL's violations of Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2001), and Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002), to the same extent as WSL.

**3. Schiavone is Liable for Violations of Section 4(a) of the Commodity Exchange Act.**

During the relevant time period, WSL 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 CFTC 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).

During the relevant time period, Schiavone, as an owner and operator of WSL, directly or indirectly controlled WSL and did not act in good faith or knowingly induced, directly or indirectly, WSL's acts constituting the violations of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001). Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), Schiavone is liable for WSL's violations of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001) to the same extent as WSL.

**4. A Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief are Appropriate Remedies.**

Permanent injunctive relief is warranted in light of the egregious nature of Schiavone's knowing fraudulent solicitation of customers in a scheme to systematically defraud the public

through the offer and sale of illegal foreign currency futures contracts. These facts demonstrate a reasonable likelihood of future violations.

Imposition of a civil monetary penalty is appropriate in this case as Schiavone's violations of the Act were intentional and directly affected the numerous victims of this fraud. Likewise, the remedies of restitution and disgorgement are appropriate to compensate the victims of Schiavone's wrongful acts and to deprive Schiavone of the use of ill-gotten gains.

## **II. ORDER FOR RELIEF**

### **A. Permanent Injunction**

#### **IT IS THEREFORE ORDERED THAT:**

1. Schiavone is permanently restrained, enjoined and prohibited from directly or indirectly:

- A. Cheating or defrauding or attempting to cheat or defraud other persons, or willfully making or causing to be made to another person any false report or statement thereof, or willfully entering or causing to be entered for another person any false record thereof, or willfully deceiving or attempting to deceive another person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed with respect to any order or contract for another person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for:
  - (1) hedging any transaction in interstate commerce in a commodity or the products or byproducts thereof;
  - (2) determining the price basis of any transaction in interstate commerce in such commodity; or
  - (3) delivering any commodity sold, shipped, or received in interstate commerce for the fulfillment thereof

in violation of Section 4b(a)(2) of the Act , 7 U.S.C. § 6b(a)(2) (2001) and Section 1.1(b) of the Regulations, 17 C.F.R. §1.1(b) (2001); and



- B. 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).

2. Schiavone is further permanently restrained, enjoined and prohibited from directly or indirectly:

- 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 or accepting any funds from any person in connection with the purchase or sale of any commodity interest;
- 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.

**B. Civil Monetary Penalty**

**IT IS FURTHER ORDERED** that as of the date of entry of this Order, Schiavone shall pay a civil monetary penalty in the amount of \$288,279, consisting of triple his monetary gain of \$96,093, plus post-judgment interest. 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. All payments made by Schiavone pursuant to this Order shall be applied first to satisfy Schiavone's Civil Restitution and Disgorgement obligations and, upon satisfaction of such obligations, shall thereafter be applied to satisfy the civil monetary penalty.

Schiavone shall pay this penalty 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, Schiavone shall make the payment payable to the U.S. Commodity Futures Trading Commission and send to the following address:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Marie Bateman – AMZ-300  
DOT/FAA/MMAC  
6500 S. Macarthur Blvd.  
Oklahoma City, OK 73169

If the payment is to be made by electronic funds transfer, Schiavone shall contact Marie Bateman at 405-954-6569 for instructions. Schiavone shall accompany the payment of the penalty with a cover letter that identifies Schiavone and the name and docket number of this proceeding.

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

**C. Disgorgement and Restitution**

**1. Disgorgement**

**IT IS FURTHER ORDERED** that as of the date of this Order, Schiavone shall disgorge all benefits received, directly or indirectly, from acts or practices which constitute violations of the Act and Regulations as described. Schiavone is therefore liable to disgorge his ill-gotten gains in the amount of \$96,094 plus pre-judgment interest and post-judgment interest. Pre-judgment interest from January 1, 1999 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 entry of this Order pursuant to 28 U.S.C. § 1961.

All disgorgement payments made by Schiavone shall be used to pay restitution to the defrauded customers. Schiavone's disgorgement obligation coincides with his restitution obligation, such that satisfaction in any part of his restitution obligation shall simultaneously result in satisfaction of his disgorgement obligation to the same extent. Further, Schiavone's disgorgement obligation in this matter coincides with the criminal judgment restitution obligation entered against him on September 10, 2004, U.S. District Court for the Southern District of New York in *U.S. v. Ross, et al.*, S.D.N.Y. Docket No. 03 Cr. 1306 ("criminal judgment obligation"). Accordingly, satisfaction in any part of Schiavone's criminal judgment obligation shall simultaneously result in satisfaction of Schiavone's disgorgement obligation to the same extent.

Schiavone shall pay disgorgement to Brian Rosner, Esq., the Court-appointed Receiver, Rosner & Napierala, LLP, 26 Broadway, 22<sup>nd</sup> Floor, New York, NY 10004-24424 by electronic

funds transfer, or by U.S. postal money order, certified check, bank cashier's check or bank money order, under cover of a letter that identifies Schiavone and the name and Docket number of the proceeding; Schiavone shall simultaneously transmit a copy of the cover letter and the form of payment to the Director and to the Office of Cooperative Enforcement, Division of Enforcement, U.S. Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581, and to the Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at the following address: 140 Broadway, 19<sup>th</sup> Floor, New York, NY 10005.

## **2. Restitution**

**IT IS FURTHER ORDERED** that as of the date of this Order, Schiavone shall pay and be jointly and severally liable with his co-conspirator in this matter (*CFTC v. Walter, Scott, Lev & Assoc., LLC, et al.*, Docket Number 03 CV 9126 (GBD)), Michael Korobov, for restitution to defrauded customers in the amount of \$6,800,951 plus pre-judgment and post-judgment interest. Pre-judgment interest shall accrue from January 1, 1999, to the date 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. Schiavone 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 the name and Docket number of this action and the name of this Court, with a copy to the Director and to the Office of Cooperative Enforcement, Division of Enforcement, U.S. Commodity Futures Trading Commission, at the following address: Three

Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581, and to the Regional Council, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at the following address: 140 Broadway, 19<sup>th</sup> Floor, New York, NY 10005.

All payments made pursuant to this Order by Schiavone shall first be made to the defrauded customers for restitution pursuant to a payment plan that will be determined by the Court until those amounts (including interest) are fully satisfied. All payments after the restitution and disgorgement obligations have been satisfied shall then be applied to the civil monetary penalty described herein.

Schiavone's restitution obligation coincides with his disgorgement obligation and with the criminal judgment obligation entered against him on September 10, 2004, U.S. District Court for the Southern District of New York in *U.S. v. Ross, et al.*, S.D.N.Y. Docket No. 03 Cr. 1306. Accordingly, satisfaction of any part of Schiavone's disgorgement obligation or satisfaction in any part of Schiavone's criminal judgment restitution obligation shall simultaneously result in satisfaction of Schiavone's restitution obligation in this matter to the same extent.

**D. Prohibition on Transfer of Funds**

**IT IS FURTHER ORDERED** that Schiavone 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.

**E. Permanent Receiver**

**IT IS FURTHER ORDERED** that Brian Rosner, Esq., Rosner & Napierala, LLP, 26 Broadway, 22<sup>nd</sup> Floor, New York, NY 10004-24424 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 Schiavone, including funds or property of investors wherever found, whether held in the name of Schiavone 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 federal commodity laws by Schiavone and to satisfy Schiavone's obligations to pay restitution, disgorge his ill-gotten gains and to pay a civil monetary penalty.

**F. Notices**

**IT IS FURTHER ORDERED** that 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

Notice to Receiver:      Brian Rosner, Esq.  
Rosner & Napierala, LLP  
26 Broadway, 22<sup>nd</sup> Floor  
New York, NY 10004-2442  
Phone: (212) 785-2577  
Fax: (212) 785-5203.

**G. Jurisdiction**

**IT IS FURTHER ORDERED** that 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 1:00 PM, New York on this 24<sup>th</sup> day of March, 2008

  
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

U.S. COMMODITY FUTURES TRADING  
COMMISSION

Stephen J. Obie  
Regional Counsel

By:  \_\_\_\_\_

Sheila L. Marhamati [SM-8016]  
Trial Attorney

Steven Ringer [SR- 9491]  
Chief Trial Attorney

U.S. COMMODITY FUTURES TRADING  
COMMISSION

140 Broadway, 19<sup>th</sup> Floor  
New York, New York 10005  
(646) 746-9743  
(646) 746-9940 (facsimile)  
smarhamati@cftc.gov