

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

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WESTERN DISTRICT OF NEW YORK

JAN 22 2009

U.S. COMMODITY FUTURES)
TRADING COMMISSION)
)
)
Plaintiff,)
)
v.)
ATWOOD & JAMES, LTD., a New York)
Corporation,)
ATWOOD & JAMES, S.A., INC., a New)
York Corporation,)
MICHAEL A. KARDONICK, an)
individual, and)
GARY REICH SHAPOFF, an individual)
)
Defendants.)
_____)

BY: *AK*
~~COMPLAINT FOR INJUNCTIVE~~
AND OTHER EQUITABLE
RELIEF AND FOR CIVIL
PENALTIES UNDER THE
COMMODITY EXCHANGE ACT

09 CV 6032 *CTS*

CASE NO. _____

I.

SUMMARY

1. Since at least 2001 and continuing through the present ("relevant period"), Defendants Atwood & James Ltd. ("Atwood Ltd."), Atwood & James S.A., Inc. ("Atwood S.A.") (together, "Atwood"), Michael Allan Kardonick ("Kardonick"), and Gary Reich Shapoff ("Shapoff") (collectively the "Defendants") fraudulently solicited and accepted funds from individuals located throughout the world for the purpose of trading retail foreign currency options. Based on available bank records, and upon information and belief, Defendants successfully solicited more than \$1 million, and continue to solicit, from individuals for the purported purpose of trading retail foreign currency options.

2. In soliciting prospective clients, Defendants Atwood and Kardonick falsely

represent, among other things, that (1) Atwood and its traders are licensed and regulated in the United States, (2) trading will occur on U.S. exchanges, (3) Atwood and Kardonick have 30 years of experience and success trading foreign currency options, and (4) by using a particular trading strategy, Atwood virtually guarantees profitable returns on all trades and promises that clients will never lose their principal investment. In their solicitations, Atwood and Kardonick fail to disclose, among other things, that Kardonick and others at Atwood have criminal fraud convictions. Defendant Shapoff fraudulently solicited at least one Atwood client by falsely representing that Atwood had an office in Rochester, New York staffed with 16 traders. In his solicitations, Shapoff failed to disclose, among other things, his criminal fraud conviction.

3. Atwood and Kardonick are not well-established, successful traders. The only commodity trading accounts located are personal commodity futures and options accounts held in Kardonick's name. From 2003 through September 2008, Kardonick lost approximately \$1.7 million trading futures and options in these accounts.

4. Atwood and Kardonick also are misappropriating client funds to pay for personal and other expenses, such as airline tickets and internet services.

5. Atwood also created and issued false trade confirmations showing apparent foreign currency option trades executed on behalf of clients and indicating that client funds are held in individual segregated accounts. The trade confirmations do not reflect that the trades occurred on an exchange or through a clearing firm or any entity registered and permitted to accept customer funds. The trading confirmations also do not reflect any counterparty to the transactions, other than Atwood.

6. By virtue of this conduct and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in connection with the offering of, entering into, confirmation of the execution of, or the maintenance of foreign currency options in violation of the anti-fraud and false reporting provisions of Section 4c(b), of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 6c(b) (2006), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act ("CRA")), §§ 13101-13204, 122 Stat. 1651 (to be codified at 7 U.S.C. §§ 1 *et seq.* (effective June 18, 2008)), and Commission Regulations 1.1(b) and 32.9, 17 C.F.R. §§ 1.1(b) and 32.9 (2008).

7. Kardonick, Shapoff, and other Atwood employees, officers and agents, committed the acts and omissions described herein within the course and scope of their employment, office or agency at Atwood. Therefore, Atwood is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), as principal for its agents' violations of the Act and Commission Regulations.

8. Accordingly, pursuant to Sections 6c and 2(c)(2)(B) of the Act, 7 U.S.C. §§ 13a-1 and 2(c)(2)(B) (2006), and Section 2(c)(2)(B) of Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(B), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act and Commission Regulations and to further enjoin Defendants from engaging in any commodity-related activity. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans.

restitution, disgorgement, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

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

II.

JURISDICTION AND VENUE

10. Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

11. The Commission has jurisdiction over the offered retail foreign currency options here pursuant to Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B) (2006), for transactions that occurred before June 18, 2008, and pursuant to Section 2(c)(2)(B)(i) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(B)(i), for conduct that occurred after June 18, 2008.

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), in that Defendants transact business in this District, among other places, 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

A. Plaintiff

13. The **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 et seq. (2006), and the regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2008).

B. Defendants

14. **Atwood Ltd.** is a registered New York corporation. Atwood Ltd. operates out of Rio de Janeiro, Brazil but claims that its main office is in Rochester, New York. Atwood Ltd., along with Atwood S.A., engages in the business of soliciting and accepting funds from clients to trade foreign currency options on their behalf. Atwood Ltd. has never been registered with the Commission in any capacity. Atwood Ltd. also is not a regulated entity that constitutes a proper counterparty to off-exchange foreign currency transactions with retail customers, or non-eligible contract participants, within the meaning of Section 2(c)(2)(B) of the Act, 7 U.S.C § 2(c)(2)(B) (2006), for conduct that occurred before June 18, 2008, or within the meaning of Section 2(c)(2)(B)(i) of the Act as amended by the CRA, to be codified at 7 U.S.C § 2(c)(2)(B)(i), for conduct that occurred on or after June 18, 2008.

15. **Atwood S.A.** is a registered New York corporation. Atwood S.A. operates out of Rio de Janeiro, Brazil but claims its main office in Rochester, New York. Atwood S.A., along with Atwood Ltd., is engaged in the business of soliciting clients and

accepting funds from clients to trade foreign currency options with or on their behalf. Atwood S.A. has never been registered with the Commission in any capacity. Atwood S.A. also is not a regulated entity that constitutes a proper counterparty to off-exchange foreign currency transactions with retail customers, or non-eligible contract participants, within the meaning of Section 2(c)(2)(B) of the Act, 7 U.S.C § 2(c)(2)(B) (2006), for conduct that occurred before June 18, 2008, or within the meaning of Section 2(c)(2)(B)(i) of the Act as amended by the CRA, to be codified at 7 U.S.C § 2(c)(2)(B)(i), for conduct that occurred on or after June 18, 2008.

16. **Kardonick** is an individual who maintains addresses in Brooklyn, New York, Pembroke Pines, Florida and Rio de Janeiro, Brazil. Kardonick, through Atwood, is engaged in the business of soliciting clients and accepting funds to trade foreign currency options with or on their behalf. Kardonick has identified himself as the president or a principal of Atwood. Other Atwood representatives and the Atwood website describe Kardonick as Atwood's head analyst and trader. Kardonick is a signatory on bank accounts in the name of Atwood Ltd. and Atwood S.A. He has never been registered with the Commission in any capacity. Kardonick has criminal convictions for mail and wire fraud.

17. **Shapoff** is an individual whose last known residential address is in Pittsford, New York. Shapoff is an agent, employee or officer of Atwood and has solicited clients on behalf of Atwood to trade foreign currency options. Shapoff was the subject of two CFTC reparations cases in 1979 in which the allegations included misrepresentation, non-disclosure, misuse of customer funds and order execution. Shapoff also has criminal

convictions for mail and wire fraud. Shapoff is a signatory on an Atwood S.A. bank account.

IV.

FACTS

Defendants' Successful Solicitation of Clients

18. During the relevant period, Atwood and Kardonick fraudulently solicited and accepted funds from at least five individuals located throughout the world, including the United States, the United Kingdom and other parts of Western Europe, for the purported purpose of trading foreign currency options. As alleged below, based upon available bank records and upon information and belief, Atwood and Kardonick have fraudulently solicited more than \$1 million dollars, and continue to fraudulently solicit funds from clients throughout the world. Atwood and Kardonick also are misappropriating client funds for personal use.

19. Atwood solicits clients through the internet at www.atwoodjames.com, mail flyers, other promotional material, cold calling and other personal solicitations. Atwood S.A.'s solicitations focus on prospective clients located in Portugal and Atwood Ltd.'s solicitations focus on prospective clients located in the United States, the United Kingdom and elsewhere. However, Atwood S.A. and Atwood Ltd. representatives generally refer only to "Atwood" in their oral solicitations of prospective clients.

20. In its written and oral solicitations, Atwood, directly and through its employees, agents and officers, makes material misrepresentations and omissions concerning, among other things, Atwood's operations and regulatory status. Atwood and

Kardonick's lengthy and successful trading histories, the safety of clients' principal investment due to the use of certain trading strategies, and Kardonick and Shapoff's criminal records. Overall, Atwood conveys to prospective clients that profitable returns on small investments in foreign currency options are highly likely, if not virtually guaranteed.

21. Through its website, www.atwoodjames.com, promotional material and customer agreements, Atwood offers trading in foreign currency options in the "global foreign exchange market" ("forex market"). The website provides a detailed description of the forex market, advice on investing in foreign currency options, as well as regularly updated market reports. Through its oral solicitations of at least certain prospective clients, Atwood emphasizes that Atwood trades foreign currency options on U.S. exchanges on behalf of its clients.

22. On the website and in the flyers and other materials, Atwood creates an appearance of a sophisticated global enterprise. Its website contact information indicates its office is in Rio de Janeiro, Brazil. In email correspondence, Atwood also lists offices in Amsterdam, London and New York City. To create the appearance of a strong European presence, Atwood uses what appears to be a British royal family crest with the letters "A" and "J" emblazoned on it as its logo, and "Ltd" in its name, a British commonwealth term for incorporation. The Atwood website also claims to serve "clients all over Western and Central Europe." Similarly, with respect to their solicitations of prospective clients in areas such as Portugal, Atwood uses "S.A." in its name and logo.

23. Yet, in recent oral solicitations, Atwood emphasizes that while having a global

presence, its main office is in Rochester, New York. Earlier United States clients understood Atwood's main office to be in New York City.

24. Atwood's website reassures prospective clients that, with Atwood, the customer receives over 30 years of combined tenure in the forex market with the ability to "instantly choose and execute trades most likely to succeed for our clients." Atwood's website provides further reassurance about Atwood's experience by stating that "it has unparalleled knowledge of the forex market supported by experience in commodity futures and options." Atwood further claims on the website that it has focused on forex exclusively the last fifteen years. By such claims, Atwood implies that it has been profitably engaged in foreign currency trading for much of the time after its initial incorporation in 1978.

25. Atwood also uses promotional flyers that similarly emphasize its claimed almost 30-year trading history. At least one Atwood client saw an Atwood flyer stating, "Small movements. Big benefits ... Every day for the past 29 years, we have been making timely and intelligent decisions on behalf of our clients. Isn't it time you found out how you can earn big investments from small currency movements?"

26. According to its website and oral solicitations, Atwood purportedly assigns a team of three, a broker, analyst, and strategist, to each client account, and promises weekly contact to discuss planned transactions. Clients either provide powers of attorney to allow Atwood to trade on their behalf without explicit approval, i.e., with discretion, or authorize all transactions to be executed on their behalf.

27. Atwood purports to offer four month trades where at the end of four months

Atwood exercises the options, and the client can elect to withdraw principal and revenue or reinvest and plan another four month trade.

28. In its website, Atwood pronounces that "Our goal for you is a 30% return in four months. That is equivalent to a 90% annual return. When is the last time your stocks almost doubled in a year!"

29. In the website, Atwood provides an example of "A Typical Forex Trading Experience" to show how they may achieve this goal by using a trading strategy called a "straddle." Atwood's website describes a straddle as "playing on both sides of the fence" and as an "insurance policy" against heavy losses.

30. Atwood's website also represents that Atwood trades through a clearing firm and deals with established firms. To convince prospective clients that Atwood is a "legitimate company," Atwood's website answers the question of "how do I know that I am dealing with a legitimate company" by stating that "it is important to trade with firms which are utilizing established financial entities" and claiming its "current clearing firm did \$28 billion dollars in business last year."

31. The Atwood website also reassures prospective clients that they will be able to track an option's current market value because "currencies are traded on exchanges that have continuous electronic quotation systems."

32. To further lull prospective clients into believing that Atwood is legitimate and regulated, the website then claims that the Atwood advisors and principals "although they are not have required to be licensed to trade foreign currency options, have been licensed through various governmental agencies at one time or another in the past most still are."

33. Atwood's personal solicitations repeat the claims of Atwood's vast and successful trading experience, the legitimacy of Atwood and its representatives through licensing, regulation and exchange trading, the likelihood of profits, and the security of clients' principal through the use of the straddle strategy.

34. The personal solicitations alleged below are typical of Atwood's personal solicitations of at least four Atwood clients. At least some, if not all, of Atwood clients are retail clients or non-eligible contract participants as defined by Section 1a(12)(xi) of the Act, 7 U.S.C. § 1a(12)(xi) (2006).

35. Shortly after mailing in an Atwood postage-paid flyer, or sometimes without prior contact, prospective clients receive a call from an Atwood trading advisor. The Atwood advisor urges prospective clients to purchase options in Eurodollars or the Japanese Yen in order to capitalize on markets that Atwood represents will move dramatically.

36. During these initial calls with at least certain prospective clients, Atwood representatives emphasized that Atwood is a licensed or registered U.S. entity regulated by the U.S. government to trade foreign currency options, and in certain instances, claim the trading occurred on U.S. exchanges.

37. Atwood also reinforces the use and protections of the straddle strategy. Atwood representatives tell prospective clients that, with this strategy, clients will not lose their principal. Those same representatives create the impression that Atwood's trading strategy virtually guarantees profits. For example, one prospective client was told that he would never lose his investment and if he did, he would be the "unluckiest trader in

history.”

38. In recent solicitations, Atwood told clients and prospective clients that Atwood conducts its business and trading out of its main office in Rochester, New York. The Atwood website and emails do not provide any information concerning a Rochester office. To the contrary, the website lists only an address and telephone number in Rio de Janeiro, Brazil. Atwood emails identify other Atwood offices purportedly located in Amsterdam, London and New York City, but not Rochester. When questioned by prospective clients, Atwood representatives provide a Rochester address, a local Rochester telephone number and a toll-free telephone number.

39. At least three of Atwood’s clients called the Rochester local and toll-free telephone numbers to verify that Atwood was a U.S. company with a legitimate and substantial presence in the United States.

40. In one instance, a prospective client called the Rochester number and a person named “Gary” answered the telephone. “Gary” told this client that all Atwood advisors were out of the office and that no other executives were available to talk at that time. Gary also told the client that the Rochester office had 16 other people in it, but that none had direct lines because they were traders and did not wish to be interrupted while trading.

41. Prospective clients are satisfied after calling the Rochester numbers that they are dealing with a legitimate U.S. entity based in Rochester, New York.

42. During the telephone solicitations, if prospective clients question Atwood’s claim that clients’ principal will not be at risk through options trading, or if they are

unable to invest the minimum investment amount of \$13,000, the Atwood representative refers them to the website and a "senior trading advisor," or to Kardonick himself, who representatives and Kardonick himself describe as Atwood's head trading advisor.

43. Atwood representatives inform prospective clients that Kardonick has over 30 years of trading experience with a virtually spotless trading history. Representatives also tell prospective clients that Kardonick makes the decisions on whether a prospective client may invest less than the required minimum amount.

44. Kardonick boasts to prospective clients that he is one of the best in the business with over 30 years of experience in options trading "on Wall Street" and regales them with supposed connections with heads of state, Wall Street and politicians. He reiterates that when trading with Atwood, clients' principal investments are safe and profitable returns are virtually guaranteed.

45. As part of their solicitations, Atwood provides a Customer Advisory Agreement for clients to sign (the "Agreement"). The Agreement references on-exchange and over-the-counter trading of foreign currency options but does not specify where or with whom trading occurs. The only trading entity referenced is Atwood.

46. The Agreement also provides that Atwood will charge a \$220 commission fee and a \$20 administrative fee per option contract.

47. Atwood instructs the prospective clients to strike certain risk disclosure provisions in the Agreement, including provisions stating that "as a result of market conditions and other factors, you may sustain a loss your initial investment and any additional fund[s] you deposit," and "[s]trategies utilizing ...straddles may have as much

risk as simple long or short positions. It may be difficult or impossible to execute orders and offset or liquidate open market position due to market liquidity and /or operations.”

48. At the same time, Atwood instructs prospective clients to highlight a statement in the Agreement that emphasizes the much higher probability of a profitable return based on the straddle strategy touted in Atwood’s personal solicitations of prospective clients. The highlighted statement provides:

However options traded on a weighted straddle basis have a much higher probability of making money Then [sic] just playing calls or puts alone, also buying options closer to market price greatly enhances your chances of making money.

49. The highlighted statement reinforces Atwood’s oral reassurances to prospective clients concerning the security of their investment through use of the straddle strategy and eviscerates the risk disclosure set forth immediately above it in the Agreement, which includes the statement that “an option is an extremely complicated trading vehicle, which carries substantial risks ...”

50. Atwood instructs clients to wire funds to U.S. bank accounts held in the name of Atwood. Kardonick is a signatory on the Atwood bank accounts, and Shapoff is a signatory on at least one Atwood bank account.

51. Thereafter, Atwood sends confirmations on Atwood letterhead of the profitable trades purportedly executed by Atwood traders. The confirmations contain the client’s name, the client’s account number, analyst name, and the date and details of the trades. The confirmations do not reflect any exchange, clearing firm, or counterparty information. The only company identified on the confirmations is Atwood. Based on the

confirmations. Atwood clients believed their funds were held in segregated accounts in their individual names.

52. Along with the confirmations showing profitable trading, Atwood also makes oral representations that clients are making money through Atwood's trading.

53. After receiving written and oral representations of profitable trading based on their initial investments, some Atwood clients invest additional funds with Atwood.

54. To the extent that Atwood and Kardonick actually engaged in any trading on behalf of clients, in at least one instance, Atwood and Kardonick traded client funds without client authorization. The client had not granted Atwood power of attorney over the trading of his account. He initially authorized certain trades in Euro options. Shortly thereafter, Atwood informed the client that his Euro options trade had reached its strike price and, if client relinquished his position, he would sell for a profit of \$1,000 or 15%. The client instructed Atwood to exercise the option and pay him his principal and return. Instead, according to a trade confirmation, Atwood sold the Euro option and bought five Japanese Yen puts for a total of \$6,650. When the client complained, an Atwood representative said Kardonick had authorized the trade.

55. With respect to at least certain Atwood clients, Atwood eventually notified them that all their funds had been lost in trading, including their principal investments. Despite demands by clients, Atwood refuses to refund clients' principal. Atwood also refuses to provide additional documentation that Atwood was indeed trading on behalf of the clients.

Defendants' Solicitations Are False and Misleading

56. Defendants' solicitations of prospective and existing clients as alleged above are materially false and misleading because, among other things:

(a) Atwood Ltd., Atwood S.A., and Kardonick do not hold any known licenses or registrations with the United States government in connection with the trading of foreign currency options; specifically, Atwood and Kardonick are not registered with the Commission, the Securities and Exchange Commission or upon information and belief, any other financial regulator;

(b) Atwood has not been profitably trading foreign currency options for the last fifteen years on behalf of clients; as detailed below, no Atwood trading accounts have been located and based on available records, funds in Atwood bank accounts were not used for trading on behalf of clients; in addition, although Atwood Ltd. has an incorporation date of 1978, the New York Division of Corporations dissolved it in 1982, and Atwood did not form again until 2005. Similarly, Atwood S.A. did not form until 2003;

(c) Defendants fail to disclose that Kardonick and Shapoff have criminal fraud convictions;

(d) Atwood does not maintain an office with staff in Rochester, New York. The Rochester address Atwood provides is the address of a retail clothing store and the Rochester telephone number Atwood provides is the home telephone number of Gary R. Shapoff; and

(e) even with the use of the straddle strategy, clients' principal is at risk when trading foreign currency options.

57. Atwood's solicitations are also false and misleading because, despite claims that it successfully trades on U.S. exchanges and that Atwood trades through a clearing firm, no evidence has been found yet that Atwood ever traded on behalf of or in the name of clients on U.S. exchanges or indeed, anywhere. Likewise, there is no evidence that Atwood had, or has a relationship with a clearing firm. For example, no commodity options or foreign currency trading accounts held in the name of or for the benefit of

Atwood clients have been located at any Futures Commission Merchant ("FCM") registered with the Commission or elsewhere. Moreover, no trading accounts in the name of or controlled by Atwood Ltd. or Atwood S.A. have been located yet at any FCM or elsewhere.

58. Atwood and Kardonick's solicitations are also false and misleading because Kardonick is not a successful foreign currency options trader. Personal commodity futures and options trading accounts of Kardonick maintained at FCMs reflect that from 2003 through September 2008, Kardonick sustained net trading losses of approximately \$1.7 million.

59. Defendants knowingly or with reckless disregard made the above-alleged material misrepresentations or omissions. Atwood clients relied on these misrepresentations and omissions in making their decisions to trade foreign currency options with Atwood.

Atwood and Kardonick Are Misappropriating Funds

60. From March 2007 to at least September 2007, Atwood accepted at least \$1.2 million, if not millions more, into its corporate bank accounts from largely foreign bank accounts, almost all in the name of individuals located primarily in the United Kingdom. Upon information and belief, Atwood accepted these funds from Atwood clients for the purported purpose of trading foreign currency options.

61. Atwood and Kardonick are misappropriating client funds for personal use and to make payments to other Atwood clients. For example, throughout the months of March, May and September 2007, Kardonick withdrew directly or transferred into

personal bank accounts a significant amount of funds from the Atwood bank accounts. At least some, if not all, of those funds belonged to Atwood clients and were to be used for trading foreign currency options. Instead, Kardonick misappropriated the funds. Among other uses of the misappropriated funds, Kardonick gave some of the client funds to his wife and son.

V.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND
COMMISSION REGULATIONS**

COUNT

**Violations of Section 4c(b) of the Act and Commission Regulations 1.1 (b)(1)-(3)
and 32.9(a)-(c)**

(Fraud in Connection with Foreign Currency Options)

62. The allegations set forth in paragraphs 1 through 61 are realleged and incorporated herein by reference.

63. Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), provides that no person shall engage in any commodity option transaction regulated under the Act contrary to any rule, regulation, or order of the Commission. Furthermore, Commission Regulations 32.9(a)-(c), 17 C.F.R. §§ 32.9(a)-(c) (2008), make it unlawful for any person, directly or indirectly,

(a) to cheat or defraud or attempt to cheat or defraud any other person; (b) to make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; (c) to deceive or attempt to deceive any other person by any means whatsoever: in or in connection with . . . any commodity option transaction.

64. Commission Regulations 1.1(b)(1)-(3), 17 C.F.R. §§ 1.1(b)(1)-(3) (2008), likewise prohibit cheating, defrauding, deceit, and attempts thereof, and false statements in connection with foreign currency transactions subject to the Act.

65. As set forth above, since at least November 2005 and continuing through the present, Atwood, Ltd., Atwood S.A. and Kardonick violated, and continue to violate, Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Commission Regulations 1.1(b)(1)-(3) and 32.9(a)-(c), 17 C.F.R. §§ 1.1(b)(1)-(3) and 32.9(a)-(c) (2006), by making false, deceptive, or misleading representations and omissions of material facts in their solicitations of prospective and existing clients to trade foreign currency options, by engaging in unauthorized trading, by issuing false oral and written statements concerning the profitability of trading on behalf of clients, and by misappropriating client funds.

66. Shapoff also violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Commission Regulations 1.1(b)(1) and (3) and 32.9(a) and (c), 17 C.F.R. §§ 1.1(b)(1) and (3), and 32.9(a) and (c) (2008), by making false, deceptive, or misleading representations and omissions of material facts in his solicitation of at least one prospective client to trade foreign currency options.

67. As set forth above, Atwood Ltd. and Atwood S.A. violated, and continue to violate, Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Commission Regulations 1.1(b)(2) and 32.9(b), 17 C.F.R. §§ 1.1(b)(2) and 32.9(b) (2008), by, among other things, knowingly providing or causing to be provided oral and written false statements and reports to Atwood clients concerning Atwood's trading of foreign currency options with or on behalf of clients.

68. The foregoing acts, misrepresentations, omissions, and failures of Kardonick, Shapoff and other Atwood employees, officers or agents occurred, and are occurring, within the scope of their employment, office or agency with Atwood; therefore, Atwood is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2008).

69. Each misappropriation, issuance of a false statement, act of unauthorized trading, and misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Commission Regulations 1.1(b)(1)-(3) and 32.9(a)-(c), 17 C.F.R. §§ 1.1(b)(1)-(3), and 32.9(a)-(c) (2008).

RELIEF REQUESTED

WHEREFORE, the Plaintiffs respectfully request that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers enter:

- a) a permanent injunction prohibiting the Defendants from engaging in conduct violative of Sections 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Commission Regulations 1.1(b) and 32.9, 17 C.F.R. §§ 1.1(b) and 32.9 (2008);
- b) an order directing the Defendants to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or Commission Regulations, as described herein, and interest thereon from the date of such violations;
- c) an order directing the Defendants to make full restitution to every client whose funds were received as a result of acts and practices that constituted violations of the Act and Commission Regulations, described herein, and interest thereon from the date of such violations;
- d) an order directing the Defendants to each pay a civil monetary penalty

of not more than the higher of \$120,000 for each violation of the Act committed prior to October 23, 2004, \$130,000 for each violation of the Act committed on or between October 23, 2004 and October 22, 2008, or \$140,000 for each violation of the Act committed on or after October 23, 2008, or triple the monetary gain to the Defendants plus post-judgment interest; and

e) such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: January 22, 2009

ATTORNEYS FOR THE PLAINTIFF
U.S. COMMODITY FUTURES TRADING
COMMISSION



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