



On November 24, 2003, upon consent of Vitebsky, this Court entered an Order of Permanent Injunction against Vitebsky ("Nov. 2003 Order of Permanent Injunction") permanently enjoining him from directly or indirectly:

1. 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, or bucketing any order, or filling any order by offset against the order or orders of another person, or willfully and knowingly and without the prior consent of another person becoming the buyer in respect to any selling order of such person, or becoming the seller in respect to any buying order of such 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:
  - a) hedging any transaction in interstate commerce in a commodity or the products or byproducts thereof;
  - b) determining the price basis of any transaction in interstate commerce in such commodity; or
  - c) 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 promulgated thereunder ("Regulations"), 17 C.F.R. §1.1(b) (2002); or

2. Offering to enter into, entering into, executing, confirming the execution of, or conducting any office or business anywhere in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in 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).

It was further ordered in the Nov. 2003 Order of Permanent Injunction that the injunctive provisions shall be binding on Vitebsky, upon any person insofar as he or she is acting in the capacity of agent, servant, employee, successor, assign, or attorney of Vitebsky, 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 Vitebsky. The Nov. 2003 Order of Permanent Injunction also provided that it shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

## **II. CONSENTS AND AGREEMENTS**

To effect Settlement of the Actions alleged in the Complaint against Vitebsky without a trial on the merits or any further judicial proceedings, Vitebsky:

1. Consents to the entry of this Order of Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendant Michael Vitebsky ("Order").
2. Affirms that he has agreed to this Order voluntarily, and that no threat or promise other than as specifically contained herein been made by the Commission or any member, officer, agent, or representative thereof, or by any other person to induce Defendant's consent to this Order.
3. Acknowledges service of the Summons and the Complaint.
4. Admits jurisdiction of this Court over him, admits that the Court has subject matter jurisdiction over this Action, and admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006).
5. Waives:
  - (a) any and all claims that he may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2008), relating to or arising from this proceeding;
  - (b) any and all claims that he may possess under the Small Business Regulatory Enforcement Act, 1996 HR 3136, Pub. L. 104-121, §§ 231-232, 110 Stat. 862-63

(Mar. 29, 1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (2007), relating to or arising from this proceeding;

(c) any claim of double jeopardy based upon the institution of this proceeding or the entry in the Action of any order imposing a civil monetary penalty or any other relief;

(d) any and all claims or defenses that Vitebsky may possess under 28 U.S.C. § 2462 (2004) or any other statute of limitations applicable to or arising from this Action, including, but not limited to, enforcement of this Order and/or Vitebsky's obligation to pay a civil monetary penalty as set forth in Part V.A, below;and

(e) any and all rights of appeal in this Action.

6. Defendant does not consent to the use of this Order, or the findings of fact or conclusions of law in this Order, as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy relating to Defendant, a Commission registration proceeding relating to Defendant, or to enforce the terms of this Order. Solely with respect to any bankruptcy proceeding relating to Defendant, a Commission registration proceeding related to Defendant and any proceeding to enforce this Order, Defendant agrees that the allegations of the Complaint and all of the findings of fact and conclusions of law in this Order shall be taken as true and correct and be given preclusive effect, without further proof. Furthermore, Defendant agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by Part V of this Order, of any bankruptcy proceeding filed by, on behalf of, or against him.

7. Agrees that no provision of this Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Defendant in any other proceeding.

8. Agrees that neither he nor any of his agents, employees, or representatives acting under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation of the Complaint or findings of fact or conclusions of law in this Order, or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Vitebsky's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Vitebsky shall take all necessary steps to ensure that all of his agents, employees, and representatives understand and comply with this agreement.

9. Consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to the Action, even if Vitebsky now or in the future resides outside the jurisdiction.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court, being fully advised of the facts, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law, a permanent injunction, a civil monetary penalty and ancillary equitable relief pursuant to § 6c of the Act, 7 U.S.C. § 13 a-1, as set forth herein.

#### **A. Findings of Fact**

1. The Commission is an independent federal regulatory agency charged with the responsibility of administering and enforcing the provisions of the Act and Regulations.

2. Vitebsky is a New York State resident. Vitebsky is not registered with the Commission in any capacity.

3. Vitebsky and others participated in a scheme in which he used A.S. Templeton Group, Inc. ("AST"), a company where he was both president and treasurer, to fraudulently

solicit funds from clients for foreign currency (“forex”) transactions, which were transactions in illegal off-exchange forex futures contracts. Vitebsky helped divert client funds for unauthorized purposes and willfully made or caused to be made to customers false representations regarding the profitability of their accounts.

4. Vitebsky, through AST, marketed forex trading accounts to clients who had assets totaling less than \$5 million and had no business, personal or other need to take or make delivery in forex or to hedge against movements in the forex markets. Instead, clients entered into these transactions to speculate and profit from anticipated price fluctuations in the markets for these currencies. Clients did not anticipate taking – and did not take – delivery of the forex they purchased as a consequence of these investments.

5. All of the forex transactions offered and sold were agreements, contracts or transactions in forex that were for the sale of a commodity for future delivery (“futures”).

6. All of the forex transactions offered and sold were offered to, or entered into with, persons who did not qualify as eligible contract participants, meaning that these clients were retail customers whose transactions are contemplated by Section 2(c)(2)(C) of the Act to be within the Commission’s jurisdiction.

7. The counterparties, or the persons offering to be the counterparties, to the forex futures transactions were not one of proper counterparties specified in Section 2(c)(2)(B)(ii) of the Act.

8. Vitebsky, through AST, did not conduct the forex futures transactions 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.

Vitebsky, through AST, did not conduct transactions on a facility registered as a derivatives transaction execution facility.

**B. Conclusions of Law**

1. This Court has subject matter jurisdiction over this Action and the allegations in the Complaint pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

2. In addition, Section 2(c)(2) of the Act, 7 U.S.C. § 2(c)(2) (2002), confers upon the Commission jurisdiction over certain retail transactions in forex for future delivery, including the transactions alleged in the Complaint.

3. This Court has personal jurisdiction over Vitebsky pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, who acknowledges service of the Complaint and consents to the Court's jurisdiction over him.

4. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, because Vitebsky was a resident of this district, transacted business in the district, and the acts and practices in violation of the Act and Regulations have occurred, among other places, within this district.

5. The forex contracts offered and sold in this Action were futures contracts.

6. With the aforementioned practices, Vitebsky violated Sections 4(a) and 4b(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).

7. There is good cause for entry of an order permanently enjoining Vitebsky from engaging in future violations of the Act and Regulations, requiring Vitebsky to pay a civil monetary penalty and for the other equitable relief stated in this Order.

#### **IV. ORDER FOR PERMANENT INJUNCTION**

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

1. The Nov. 2003 Order of Permanent Injunction is incorporated herein permanently enjoining Vitebsky from directly or indirectly violating Sections 4b(a)(2) and 4(a) of the Act, 7 U.S.C. §§ 6b(a)(2) and 6(a)(2002), and Section 1.1(b) of the Regulations, 17 C.F.R.

§1.1(b)(2001);

2. Vitebsky 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) (2006);
- 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) (2008), 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) (2008);



E. Entering into any commodity interest transactions for their own personal accounts, for any account in which they have a direct or indirect interest and/or having any commodity interests traded on their behalves; and/or

F. Engaging in any business activities related to commodity interest trading.

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

**V. ORDER FOR CIVIL MONETARY PENALTY AND OTHER EQUITABLE  
RELIEF**

**A. Civil Monetary Penalty**

**IT IS FURTHER ORDERED THAT** Vitebsky shall pay a civil monetary penalty (the “CMP Obligation”) in the amount of two hundred forty thousand dollars (\$240,000) plus post judgment interest.

The forfeiture obligation imposed against Vitebsky in *U.S. v. Vitebsky*, 04 Cr. 419 (ILG) (“Forfeiture Obligation”), which is in the amount of two hundred twenty thousand dollars (\$220,000), shall take priority over the CMP Obligation such that Vitebsky shall satisfy the Forfeiture Obligation in full before making payments on the CMP Obligation. Upon satisfaction in full of the Forfeiture Obligation, Vitebsky shall immediately transmit a notice of such satisfaction to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and the Chief, Office of Cooperative Enforcement, at the same address. Post judgment interest shall accrue beginning on the day Vitebsky satisfies the Forfeiture Obligation 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.

Vitebsky shall pay this 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, Vitebsky shall make the payment payable to the Commodity Futures Trading Commission and send it 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  
Telephone: 405-954-6569

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

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

**B. Partial Payments**

1. Partial Payments - Any acceptance by the Commission of partial payment of Vitebsky's CMP obligation shall not be deemed a waiver of the requirement to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

**C. Miscellaneous Provisions**

1. Cooperation - Vitebsky shall fully cooperate with and assist the Commission in this proceeding and in any related inquiry, investigation, or legal proceeding. Such cooperation shall include, but not be limited to: (1) responding promptly, completely, and truthfully to any inquiries or requests for information; (2) promptly executing any documents and providing any information to the Commission that the Commission deems necessary to effectuate this Order; (3) authenticating documents; (4) testifying completely and truthfully; and (5) not asserting privileges under the Fifth Amendment of the United States Constitution.

2. Equitable Relief Provisions - The equitable relief provisions of this Order shall be binding upon Vitebsky and any person who is acting in the capacity of officer, agent, employee, servant or attorney of Vitebsky, and any person acting in active concert or participation with Vitebsky who receives actual notice of this Order by personal service or otherwise.

3. Prohibition on Transfer of Funds - Vitebsky 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 or any officer that may be appointed by the Court.

4. 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 the Action.

5. Entire Agreement and Amendments - This Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

6. Invalidation - If any provision of this Order, or if the application of any provisions or circumstances is held invalid, the remainder of this Order and the application of the provisions to any other person or circumstance shall not be affected by the holding.

7. Waiver - The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Order.

8. Counterparts and Facsimile Execution - This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by facsimile or otherwise) to the other party, it being understood that all parties need

not sign the same counterpart. Any counterpart or other signature to this Agreement that is delivered by facsimile shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Agreement.

9. Continuing Jurisdiction of this Court - This Court shall retain jurisdiction of the Action to assure compliance with this Order and for all other purposes related to this Action, including but not limited to considering any suitable application or motion for additional relief within the jurisdiction of the Court.

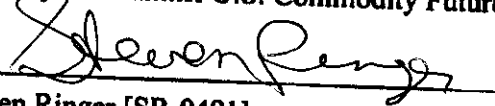
IT IS SO ORDERED.

Dated: 3/26/09

[Signature]  
UNITED STATES DISTRICT COURT JUDGE

CONSENTED TO AND APPROVED BY:

U.S. COMMODITY FUTURES TRADING COMMISSION  
Attorney for Plaintiff U.S. Commodity Futures Trading Commission

By: 

Steven Ringer [SR-9491]  
140 Broadway, 19<sup>th</sup> Floor  
New York, New York 10005

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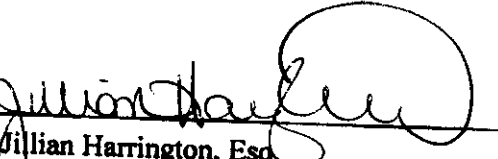
Defendant Michael Vitebsky

By: 

Michael Vitebsky

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Jillian Harrington  
Attorney for Defendant Michael Vitebsky

By: 

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