

1 Peter M. Haas phaas@cftc.gov
Richard P. Foelber rfoelber@cftc.gov
2 *Pro Hac Vice*
U.S. Commodity Futures Trading Commission
1155 21st Street N.W.
3 Washington, D.C. 20581
(202) 418-5000 (telephone); (202) 418-5523 (facsimile)

4 THOMAS P. O'BRIEN
5 United States Attorney
LEON W. WEIDMAN
6 Assistant United States Attorney
Chief, Civil Division
7 MARCUS M. KERNER
Assistant United States Attorney
8 California Bar Number: 107014
United States Courthouse, Room 8000
9 411 West 4th Street
Santa Ana, CA 92701
10 Telephone: (714) 338-3532
Facsimile: (714) 338-3523
11 E-mail: marcus.kerner@usdoj.gov
Attorneys for Plaintiff U.S. Commodity
12 Futures Trading Commission

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **SOUTHERN DIVISION**
16

17 **U.S. COMMODITY FUTURES**
18 **TRADING COMMISSION,**

19 **Plaintiff,**

20 **vs.**

21 **SAFEVEST, LLC, JON G. ERVIN, and**
22 **JOHN V. SLYE,**

23 **Defendants.**
24
25
26
27

Case No. SACV08-00474 JVS
(MLGx)

ORDER FOR RESTITUTION,
DISGORGEMENT, CIVIL
MONETARY PENALTY, AND
ANCILLARY EQUITABLE
RELIEF AGAINST
DEFENDANTS JON G. ERVIN
AND JOHN V. SLYE

I.

INTRODUCTION

This matter is before this Court on the Motion of plaintiff United States Commodity Futures Trading Commission (“CFTC”) for entry of an order of restitution, disgorgement, civil monetary penalties, and ancillary equitable relief against defendants Jon G. Ervin (“Ervin”) and John V. Slye (“Slye”).

Pursuant to the Court’s December 1, 2008 default judgments against Ervin and Slye, the CFTC filed a *Motion for Entry of Order of Restitution, Disgorgement, Civil Monetary Penalties, and Ancillary Equitable Relief against Ervin and Slye* (“Motion for Relief”). The Motion for Relief set forth calculations for restitution, disgorgement, and civil monetary penalties, along with a request for appropriate ancillary relief. The Court has considered the complete record in this case, including the Complaint, the CFTC’s *Motion For Statutory Ex Parte Restraining Order, Expedited Discovery, Preliminary Injunction, and Other Equitable Relief* containing sworn testimonial evidence supporting the allegations in the Complaint and the relief requested, *Plaintiff’s Memorandum in Support of Motion for Restitution, Disgorgement, Civil Monetary Penalties, and Ancillary Equitable Relief against Defendants Jon G. Ervin and John V. Slye* and the accompanying *Declaration of Thomas Seamon*, the Court-appointed receiver in this action, setting forth evidence to quantify the amount of restitution and disgorgement. Accordingly, the Court, having reviewed the Motion for relief, hereby grants enters an order for restitution, disgorgement, civil monetary penalties, and ancillary equitable relief against Ervin and Slye.

II.

BACKGROUND

On May 1, 2008 the U.S. Commodity Futures Trading Commission (“CFTC”) filed the Complaint in this matter. The CFTC’s Complaint alleges

1 violations of the antifraud and registration provisions of the Commodity Exchange
2 Act, as amended (“CEA”), 7 U.S.C. §§ 6k(2), 6m(1), 6o(1) (2006). The Complaint
3 alleges that Ervin and Slye participated in an unlawful Ponzi scheme in which they
4 fraudulently solicited over 500 members of the public to send them \$25.7 million
5 to be used in a commodity futures trading pool which they controlled and operated
6 in the name of Safevest, LLC (“Safevest”). The Complaint further alleges that
7 Ervin and Slye did not use those funds for trading and instead misappropriated all
8 the funds. The Complaint requests (1) a statutory ex parte restraining order
9 freezing defendants’ assets, preserving records, and permitting access to records;
10 (2) orders of preliminary and permanent injunction barring defendants from further
11 illegal activities; (3) an accounting of customer funds by defendants; (4) restitution
12 and disgorgement of unlawfully obtained funds; (5) civil monetary penalties;
13 (6) the appointment of a receiver; and (7) any other necessary or appropriate relief.

14 Ervin and Slye failed to plead or otherwise defend in this action. Pursuant to
15 Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 55(a), the Clerk of the Court
16 entered a default against Slye on June 27, 2008, and a default against Ervin on
17 August 6, 2008. (Docket Nos. 28, 36.)

18 On December 1, 2008, the Court entered default judgments against Ervin
19 and Slye pursuant to Fed. R. Civ. P. 55(b)(2). (Docket Nos. 51, 52.) The Court’s
20 judgments against Ervin and Slye included the following: 1) findings that all the
21 required elements for the entry of a default judgment pursuant to Local Rule 55-1
22 are present; 2) findings that Ervin and Slye are each liable for their own violations
23 and for the violations by defendant Safevest LLC of the registration and anti-fraud
24 provisions of Sections Section 4m(1) and 4o(1)(B) of the CEA, 7 U.S.C. §§ 6m(1),
25 6o(1)(B); 3) findings that Ervin and Slye shall be permanently enjoined from
26 future violations of Sections Section 4m(1) and 4o(1)(B) of the CEA, 7 U.S.C.
27 §§ 6m(1), 6o(1)(B); 4) findings that Ervin and Slye shall each be liable for

1 restitution, disgorgement, and a civil monetary penalty, and 5) an order permitting
2 the CFTC to submit an application to the Court setting forth the amounts for
3 restitution, disgorgement, a civil monetary penalties and any ancillary relief
4 requested in the Complaint.

5 On May 18, 2009, the Court held a hearing on the CFTC's Motion for Relief
6 and issued an order. In accordance with the Court's May 18, 2009 order, the Court
7 hereby directs the imposition of the following orders of restitution, disgorgement,
8 civil monetary penalties, and ancillary equitable relief against Ervin and Slye.

9 **III.**

10 **RESTITUTION, DISGORGEMENT,**
11 **CIVIL MONETARY PENALTIES, AND ANCILLARY RELIEF**

12 **IT IS HEREBY ORDERED** that Ervin and Slye shall comply fully with
13 the following terms, conditions and obligations relating to restitution,
14 disgorgement, civil monetary penalties, and ancillary relief.

15 **A. RESTITUTION**

16 1. Ervin and Slye shall be jointly and severally liable to make restitution
17 in the amount of \$17,845,679, plus pre-judgment interest of \$586,252 (for a total
18 of \$18,431,931) and post-judgment interest (the "Restitution Obligation"). The
19 Restitution Obligation shall commence immediately upon entry of this Order. The
20 Restitution Obligation represents the amount of funds that defendants' customers
21 deposited into bank accounts in the name of Safevest as a result of the course of
22 illegal conduct alleged in the Complaint less the amount of identified funds paid to
23 such customers from those bank accounts.

24 2. The Restitution Obligation shall not limit the ability of any customer
25 from proving that a greater amount is owed, and nothing herein shall be construed
26 in any way to limit or abridge the rights of any customers of Ervin or Slye that
27 exist under state or common law.

1 3. Pre-judgment interest was determined by using the underpayment rate
2 established quarterly by the Internal Revenue Service pursuant to 26 U.S.C.
3 § 6621(a)(2) from the date of the filing of the Complaint to the date of the Court's
4 default judgments herein against Ervin and Slye, December 1, 2008.

5 4. Post-judgment interest shall accrue beginning on the date of entry of
6 this Order and shall be determined by using the Treasury Bill rate prevailing on the
7 date of entry of this Order pursuant to 28 U.S.C. § 1961.

8 5. To effect payment of the Restitution Obligation by Ervin and Slye and
9 to effectuate the distribution of restitution, the Court appoints the National Futures
10 Association ("NFA") as Monitor. The Monitor shall collect restitution payments
11 from Ervin and Slye and make distributions as set forth below. Because the
12 Monitor is not being specially compensated for these services, and these services
13 are outside the normal duties of the Monitor, NFA shall not be liable for any action
14 or inaction arising from NFA's appointment as Monitor, other than actions
15 involving fraud.

16 6. Ervin and Slye shall make their required restitution payments under
17 this Order in the name of "Ervin and Slye Settlement Fund" and shall send such
18 restitution payments by electronic funds transfer, or by U.S. postal money order,
19 certified check, bank cashier's, or bank money order to the Office of
20 Administration, National Futures Association, 300 South Riverside Plaza, Suite
21 1800, Chicago, Illinois 60606 under cover of a letter that identifies Ervin and/or
22 Slye as the payer, the name and Docket number of this action and the name of this
23 Court. Ervin and Slye shall simultaneously transmit copies of the cover letter and
24 form of payment to: (a) the Director, Division of Enforcement, Commodity
25 Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW,
26 Washington, D.C. 20581; (b) the Chief, Office of Cooperative Enforcement,
27 Division of Enforcement, Three Lafayette Centre, 1155 21st Street, NW,

1 Washington, D.C. 20581; and (c) the Regional Counsel, U.S. Commodity Futures
2 Trading Commission, Eastern Regional Office, 140 Broadway, 19th floor, New
3 York, NY 10005.

4 7. The Monitor shall distribute restitution funds to defendants' customers
5 in an equitable manner as determined by the Monitor. The Monitor shall oversee
6 the distribution of funds of the Restitution Obligation and shall have the discretion
7 to defer distribution until such time as it may deem appropriate. In the event that
8 the amount of restitution payments made by Ervin and/or Slye to the Monitor are
9 of a *de minimis* nature such that the Monitor determines that the administrative
10 costs of the making a restitution distribution to customers is impractical, the
11 Monitor may, in its discretion, treat such restitution payments as civil monetary
12 penalty payments, which the Monitor shall forward to the CFTC following the
13 instructions for the CMP Obligation as set forth in Section III.C, below.

14 8. To the extent that any funds accrue to the U.S. Treasury as a result of
15 the Restitution Obligation, such funds shall be transferred to the Monitor for
16 disbursement in accordance with the procedures set forth in the preceding
17 paragraph.

18 9. The Restitution Obligation shall be reduced by the amount of any
19 payment made by Ervin or Slye to satisfy the Disgorgement Obligation herein.

20 10. The Restitution Obligation shall be reduced by the amount of any
21 payments by Safevest to satisfy orders of restitution and/or disgorgement entered
22 against it in this proceeding.

23 **B. DISGORGEMENT**

24 1. Ervin and Slye shall be jointly and severally liable to make
25 disgorgement in the amount of \$17,845,679, plus pre-judgment interest of
26 \$586,252 (for a total of \$18,431,931) and post-judgment interest (the
27 "Disgorgement Obligation"). The Disgorgement Obligation shall commence

1 immediately upon entry of this Order. The Disgorgement Obligation represents
2 the amount of benefits that defendants' received as measured by the amount
3 customers deposited into bank accounts in the name of Safevest as a result of the
4 course of illegal conduct alleged in the Complaint less the amount of identified
5 funds paid to such customers from those bank accounts.

6 2. The Disgorgement Obligation shall not limit the ability of any
7 customer from proving that a greater amount is owed, and nothing herein shall be
8 construed in any way to limit or abridge the rights of any customers of Ervin or
9 Slye that exist under state or common law.

10 3. Pre-judgment interest was determined by using the underpayment rate
11 established quarterly by the Internal Revenue Service pursuant to 26 U.S.C.
12 § 6621(a)(2) from the date of the filing of the Complaint to the date of the
13 judgments herein against Ervin and Slye.

14 4. Post-judgment interest shall accrue beginning on the date of entry of
15 this Order and shall be determined by using the Treasury Bill rate prevailing on the
16 date of entry of this Order pursuant to 28 U.S.C. § 1961.

17 5. To effect payment of the Disgorgement Obligation by Ervin and Slye
18 and to effectuate the distribution of disgorged funds, the Court appoints the
19 National Futures Association ("NFA") as Monitor. The Monitor shall collect
20 disgorgement payments from Ervin and Slye and make distributions as set forth
21 below. Because the Monitor is not being specially compensated for these services,
22 and these services are outside the normal duties of the Monitor, NFA shall not be
23 liable for any action or inaction arising from NFA's appointment as Monitor, other
24 than actions involving fraud.

25 6. Ervin and Slye shall make their required disgorgement payments
26 under this Order in the name of "Ervin and Slye Settlement Fund" and shall send
27 such disgorgement payments by electronic funds transfer, or by U.S. postal money

1 order, certified check, bank cashier's, or bank money order to the Office of
2 Administration, National Futures Association, 300 South Riverside Plaza, Suite
3 1800, Chicago, Illinois 60606 under cover of a letter that identifies Ervin and/or
4 Slye as the payer, the name and Docket number of this action and the name of this
5 Court. Ervin and /or Slye shall simultaneously transmit copies of the cover letter
6 and form of payment to: (a) the Director, Division of Enforcement, Commodity
7 Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW,
8 Washington, D.C. 20581; (b) the Chief, Office of Cooperative Enforcement,
9 Division of Enforcement, Three Lafayette Centre, 1155 21st Street, NW,
10 Washington, D.C. 20581; and (c) the Regional Counsel, U.S. Commodity Futures
11 Trading Commission, Eastern Regional Office, 140 Broadway, 19th floor, New
12 York, NY 10005.

13 7. The Monitor shall distribute disgorgement funds to defendants'
14 customers in an equitable manner as determined by the Monitor. The Monitor
15 shall oversee the distribution of funds of the Disgorgement Obligation and shall
16 have the discretion to defer distribution until such time as it may deem appropriate.
17 In the event that the amount of disgorgement payments made by Ervin and/or Slye
18 to the Monitor are of a *de minimis* nature such that the Monitor determines that the
19 administrative costs of the making a distribution to customers is impractical, the
20 Monitor may, in its discretion, treat such disgorgement payments as civil monetary
21 penalty payments, which the Monitor shall forward to the CFTC following the
22 instructions for the CMP Obligation as set forth in Section III.C, below.

23 8. To the extent that any funds accrue to the U.S. Treasury as a result of
24 the Disgorgement Obligation, such funds shall be transferred to the Monitor for
25 disbursement in accordance with the procedures set forth in the preceding
26 paragraph.
27

1 9. The Disgorgement Obligation shall be reduced by the amount of any
2 payment made by Ervin or Slye to satisfy the Restitution Obligation herein.

3 10. The Disgorgement Obligation shall be reduced by the amount of any
4 payments made by Safevest to satisfy orders of restitution and/or disgorgement
5 entered against it in this proceeding.

6 **C. CIVIL MONETARY PENALTIES**

7 1. Pursuant to Section 6c of the CEA, 7 U.S.C. § 13a-1 (2006), judgment
8 is entered as of the date of this Order against Ervin and Slye to each pay a civil
9 monetary penalty in the amount of \$1,000,000, plus post-judgment interest (the
10 “CMP Obligation”).

11 2. Post-judgment interest shall accrue beginning on the date of entry of
12 this Order and shall be determined by using the Treasury Bill rate prevailing on the
13 date of entry of this Order pursuant to 28 U.S.C. § 1961.

14 3. Ervin and Slye shall each pay their CMP Obligation by electronic
15 funds transfer, U.S. postal money order, certified check, bank cashier’s check, or
16 bank money order. If payment is to be made by other than electronic funds
17 transfer, Ervin and Slye shall make the payment payable to the U.S. Commodity
18 Futures Trading Commission and send to the following address:

19 Commodity Futures Trading Commission
20 Division of Enforcement
21 Attention: Marie Bateman – AMZ-300
22 DOT/FAA/MMAC
23 6500 South MacArthur Boulevard
24 Oklahoma City, OK 73169
25 Telephone: 405-954-6569

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

1 shall simultaneously transmit copies of the cover letter and the form of payment to
2 the (a) Director, Division of Enforcement, Commodity Futures Trading
3 Commission, at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C.
4 20581, and (b) Chief, Office of Cooperative Enforcement, Division of
5 Enforcement, at the same address.

6 **D. ANCILLARY EQUITABLE RELIEF**

7 **1. Prohibition on Activities Related to Trading in any Commodity**

8 Ervin and Slye are each permanently restrained, enjoined, and prohibited
9 from engaging, directly or indirectly, in any activity related to trading in any
10 commodity, as that term is defined in Section 1a (4) of the CEA, 7 U.S.C. § 1a (4)
11 (2006) (“commodity interest”), including, but not limited to, the following:

- 12 a. Trading on or subject to the rules of any registered entity, at that term
13 is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006);
- 14 b. Engaging in, controlling or directing the trading for any commodity
15 interest account for or on behalf of any other person or entity, directly
16 or indirectly, whether by power of attorney or otherwise;
- 17 c. Soliciting, receiving or accepting any funds from any person in
18 connection with the purchase or sale of any commodity interest
19 contract;
- 20 d. Applying for registration or claiming exemption from registration
21 with the Commission in any capacity, and engaging in any activity
22 requiring such registration or exemption from registration with the
23 Commission, except as provided for in Regulation 4.14 (a)(9),
24 17 C.F.R. § 4.14(a)(9) (2009), or acting as a principal, agent or any
25 other officer or employee of any person registered, exempted from
26 registration or required to be registered with the Commission, except
27 as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9)
(2009);
- e. Entering into any commodity interest transactions for their own
personal account, for any account in which they has a direct or
indirect interest and/or having any commodity interests traded on their
behalf; and

1 f. Engaging in any business activities related to commodity interest
2 trading.

3 This provision shall bind Ervin and Slye, any person who acts in the
4 capacity of officer, agent, servant or employee of either Ervin or Slye (other than
5 the Receiver and any of the Receiver's agents), and any person who receives actual
6 notice of this order, by personal service, email or facsimile, insofar as he or she
7 acts in active concert or participation with either Ervin or Slye.

8 **2. Application of Payments**

9 All payments by Ervin and Slye pursuant to this Order shall first be applied
10 to satisfaction of the Restitution Obligation and the Disgorgement Obligation.
11 After satisfaction of the Restitution Obligation and Disgorgement Obligation,
12 payments by Ervin and Slye pursuant to this Order shall be applied to satisfy the
13 CMP Obligation.

14 **3. Partial Payments**

15 Any acceptance by the CFTC and/or Monitor of partial payment of the
16 Restitution Obligation, Disgorgement Obligation and/or CMP Obligation shall not
17 be deemed a waiver of the respective requirement to make further payments
18 pursuant to this Order, or a waiver of the right of the CFTC and/or Monitor to seek
19 to compel payment of any remaining balance.

20 **4. Prohibition on Transfer of Assets**

21 Ervin and Slye shall each not transfer, or cause others to transfer, funds or
22 other property to their custody, possession, or control of any members of their
23 family or any other person or entity for the purpose of concealing such funds from
24 this Court, the CFTC, or the Monitor until the Restitution Obligation,
25 Disgorgement Obligation, and CPM Obligation have been satisfied under this
26 Order.
27

1 **5. Cooperation**

2 Ervin and Slye shall each cooperate fully with the CFTC and any
3 government agency seeking to enforce the provisions of this Order in carrying out
4 all duties with respect to the Restitution Obligation, Disgorgement Obligation, and
5 CMP Obligation. Ervin and Slye shall cooperate fully with the CFTC and any
6 government agency seeking to enforce the provisions of this Order in explaining
7 their financial income and earnings, status of assets, financial statements, asset
8 transfers and tax returns, and shall provide any information as may be required by
9 the CFTC and any government agency seeking to enforce the provisions of this
10 Order.

11 **6. Notice**

12 All notices required by this Order shall be sent by certified mail, return
13 receipt requested. Ervin and Slye shall each provide the CFTC and the Monitor
14 with written notice of all changes to their contact telephone number and/or mailing
15 address.

16 **E. JURISDICTION**

17 This Court shall retain jurisdiction of this cause to assure compliance with
18 this Order and for all other purposes related to this action. This Order shall be
19 interpreted and enforced according to the Federal Rules of Civil Procedure, the
20 Local Rules of the United States District Court for the Central District of

21 //

22 //

23 //

24 //

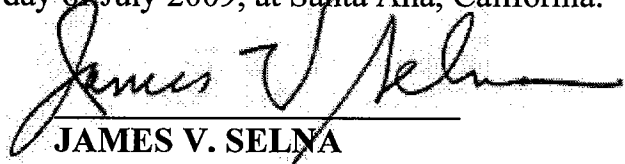
25

26

27

1 California, and all provisions of the CEA and CFTC Regulations relating or
2 referring to the obligations hereunder.

3
4 Done and Ordered this 13th day of July 2009, at Santa Ana, California.

5 

6 **JAMES V. SELNA**
7 **UNITED STATES DISTRICT JUDGE**

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27