

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT  
DISTRICT OF MASS.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

FRANK J. RUSSO, FJR CORPORATION,  
RUSSO ASSOCIATES LIMITED PARTNERSHIP,  
and ELIOT PARTNERS,

Defendants.

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CA 10984 MEL

Civil Action  
No.

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Securities and Exchange Commission ("Commission") alleges the following against Defendants Frank J. Russo ("Russo"), FJR Corporation ("FJR"), Russo Associates Limited Partnership ("Russo Associates"), and Eliot Partners (collectively, "Defendants"):

**PRELIMINARY STATEMENT**

1. From at least 1996 through May 2006, Defendant Russo and his investment advisory corporation, Defendant FJR, raised approximately \$15- 25 million from at least 160 investors. Russo and FJR lured investors into becoming limited partners in two unregistered investment companies, Defendants Russo Associates and Eliot Partners, by telling them, among other things, that these companies would invest in bonds and other investment securities and that investors could expect returns of at least 10%. In fact, Defendants did not invest the funds as promised. When Defendants had difficulty generating the 10% returns through other investments, Russo and FJR invested at least \$11.5 million in client funds in a California

investments, Russo and FJR invested at least \$11.5 million in client funds in a California corporation, which Russo co-founded with a friend from college. When that investment proved illiquid, Defendants began a Ponzi scheme, using new investor money to pay returns and redemptions to earlier investors. In furtherance of the scheme, Defendants lulled investors into a false sense of security by, among other things, providing them with falsified account statements that purportedly reflected the promised returns and falsely claimed that they had been investing in bonds, commodities and currencies.

2. Unless enjoined, Defendants will continue to engage in acts, practices, and courses of business as set forth in this Complaint or in acts, practices, and courses of business of similar object and purpose. Accordingly, the Commission seeks: (i) entry of a permanent injunction prohibiting Defendants from further violations of the relevant provisions of the federal securities laws; (ii) disgorgement of Defendants' ill-gotten gains, plus pre-judgment interest; and (iii) the imposition of civil monetary penalties against Defendants Russo and FJR due to the egregious nature of their violations. In addition, because of the risk that Defendants will continue violating the federal securities laws and the danger that any remaining investor funds will be dissipated or concealed before entry of a final judgment, the Commission seeks preliminary equitable relief to: (i) prohibit Defendants from continuing to violate the relevant provisions of the federal securities laws; (ii) freeze Defendants' assets and otherwise maintain the status quo; (iii) require Defendants to submit an accounting of investor funds and other assets in their possession; (iv) prevent Defendants from destroying relevant documents; and (v) authorize the Commission to undertake expedited discovery.

## JURISDICTION

3. The Commission seeks a permanent injunction and disgorgement pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)], and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)]. The Commission seeks the imposition of civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

4. This Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d), 77v(a)], Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78aa], and Sections 209(3) and 214 of the Advisers Act [15 U.S.C. § 80b-9(d), 80b-14]. Venue is proper in this District because much of Defendants' wrongful conduct occurred here and most of the defrauded investors live here.

5. In connection with the conduct described in this Complaint, Defendants directly or indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce.

6. The Defendants' conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to other persons.

## DEFENDANTS

7. Defendants Frank J. Russo ("Russo"), 51, a resident of Wakefield, Massachusetts, is the founder, President, and Treasurer of FJR, as well as being one of two Directors. He owns and controls FJR.

8. FJR Corporation ("FJR"), a Massachusetts corporation with its principal place of business at Russo's Wakefield residence, is an unregistered investment advisory firm, which was established by Russo in 1987. It is the general partner of both Russo Associates and Eliot Partners. FJR manages client assets through these partnerships.

9. Russo Associates Limited Partnership ("Russo Associates"), a limited partnership organized under the laws of Massachusetts with its principal place of business at Russo's Wakefield residence, was formed by Russo in 1990 to serve as an investment vehicle. It is controlled by Russo.

10. Eliot Partners, a purported limited partnership with a principal place of business at Russo's Wakefield residence, was formed in the early 1990s to serve as an investment vehicle. It is controlled by Russo.

#### **FACTS**

11. By the early 1990s, Russo had formed Russo Associates and Eliot Partners to serve as investment vehicles. FJR is the general partner to both of these limited partnerships.

12. From as early as 1996, Russo and FJR have been offering and selling interests in Russo Associates and Eliot Partners to investors in at least 12 states. Most investors, however, are from Massachusetts.

13. Neither Eliot Partners nor Russo Associates has ever been registered with the Commission as an investment company.

14. No registration statement has ever been filed with the Commission or has ever been in effect with respect to the offering of interests in Russo Associates or Eliot Partners.

15. In total, Russo and FJR have raised at least \$15 million from at least 160 investors

in Russo Associates and Eliot Partners.

16. Depending on the partnership, Russo and FJR told investors they could expect at least a 10% return on their investments. Russo and FJR told investors that they would keep any profits up to those amounts. For investors in Russo Associates, any profits over those amounts would be split evenly between the investor and FJR. For Eliot Partners investors, Russo and FJR provided a sliding scale for profits above 10% whereby the investor and FJR would split the profits at different percentages depending on the return; if the profits were 15% or greater, the investor and FJR split the profits evenly.

17. In the late 1990s, Russo and FJR faced difficulties generating profits of at least 10%. They began investing funds from Russo Associates and Eliot Partners in a privately-held corporation located in California (the "California Entity"), co-founded in 1993 by Russo and a friend of Russo's. Russo was and is the California Entity's Chief Financial Officer and he and his friend are its sole Directors.

18. As the California Entity needed more financing, Russo and FJR increased the investments until the investments from Russo Associates and Eliot Partners totaled over \$11.5 million.

19. The investment in the California Entity was high risk and illiquid. Defendants never disclosed the investments in the California Entity to investors in Russo Associates and Eliot Partners.

20. Instead, Russo and FJR made misleading and inconsistent statements to investors about what the partnerships were invested in and what they would invest in going forward. The Russo Associates limited partnership document which Russo and FJR presented to some

investors stated that they would invest in “investment securities excluding commodity futures contracts, with the express aim to maximize return on investment” (emphasis in original). In conversations with investors prior to their investments, however, Russo told certain investors that he intended to invest in bonds. He told other investors that he would invest in stocks, bonds, and options using his own short-term trading strategy. Russo promised other investors simply that he would pursue conservative, safe investments.

21. Defendants also made other misrepresentations as to the nature and profitability of their investments by Russo Associates and Eliot Partners. In the 2004 year end statement for Eliot Partners, for example, Russo, FJR, and Eliot Partners reported 14.36% annualized return for the partnership and made the following remarks about the investment:

Since our last statement, we managed to generate additional incremental return by way of some neutral trading in the Bonds. After many months of up-trending prices, Bonds finally slowed its ascent in the last quarter of 2004 . . . This type of price action is ideal for application of neutral trading strategies. As a result our trading filter produced two opportunities in this market that worked beautifully as we closed out the year. . . . Coupled with the base-building action in the Grains and the Currencies seemingly finding some exchange equilibrium with the U.S. Dollar, the prospects for above-average returns using our strategies are encouraging.

22. In Eliot Partners’ 2005 year end statement, Russo, FJR, and Eliot Partners reported annualized returns of 13.36% for the partnership and discussed the partnership’s investment strategy and the outlook for the future as follows:

During this past quarter, we had two positions in play, namely Bonds and Grains. These positions all unfolded well and were closed out by early-December. With no available trades making it through our filter through month-end, our return flattened a bit as we closed out the trading year. With geopolitical crosscurrents on the wane and oil prices settling down- albeit at loft levels- it is projected that most commodities and futures vehicles will exhibit decreased volatility for near-term. . . . As stated here previously, statistically it has been proven that our neutral

trading approach should have application over 60% of the time during any given trading period.

23. Russo, FJR, and Russo Associates made similar misrepresentations regarding the nature and profitability of the investments by Russo Associates in the periodic and year-end statements for Russo Associates.

24. Beginning no later than 2002, to hide the partnerships' lack of profitability and their illiquidity, Russo and FJR began using funds from new investors to make monthly dividend payments to investors and to fund redemption requests.

25. Although Russo and FJR engaged in some legitimate investment activity with funds from Russo Associates and Eliot Partners, over time they ended up transferring virtually all the funds to the California Entity, an illiquid investment.

26. With the exception of the undisclosed and illiquid investment in the California Entity, Russo Associates and Eliot Partners currently have no other assets of any consequence.

#### **FIRST CLAIM**

#### **Fraud in the Purchase or Sale of Securities in Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (All Defendants)**

27. Plaintiff Commission repeats and realleges paragraphs 1 through 26 above.

28. By engaging in the conduct described above, Defendants, directly or indirectly, acting knowingly or recklessly, in connection with the purchase or sale of securities, by the use of means and instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange: (a) have employed or are employing devices, schemes or artifices to defraud; (b) have made or are making untrue statements of material fact or have omitted or are omitting to state a material fact necessary to make the statements made, in the light of the circumstances

under which they were made, not misleading; and (c) have engaged or are engaging in acts, practices or courses of business which operate as a fraud or deceit upon certain persons.

29. By engaging in the conduct described above, Defendants violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

**SECOND CLAIM**  
**Fraud in the Offer or Sale of Securities in Violation of**  
**Section 17(a) of the Securities Act**  
**(All Defendants)**

30. Plaintiff Commission repeats and realleges paragraphs 1 through 26 above.

31. By engaging in the conduct described above, Defendants, directly and indirectly, in the offer or sale of securities by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails: (a) acting knowingly or recklessly, have employed or are employing devices, schemes or artifices to defraud; (b) have obtained or are obtaining money or property by means of untrue statements of material fact or omissions to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) have engaged or are engaging in transactions, practices or courses of business which operate as a fraud or deceit upon purchasers of the securities.

32. By engaging in the conduct described above, Defendants violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**THIRD CLAIM**  
**Fraud by Investment Advisers in Violation of**  
**Sections 206(1) and (2) of the Advisers Act**  
**(FJR and Russo)**

33. Plaintiff Commission repeats and realleges paragraphs 1 through 26 above.



34. FJR and Russo were “investment advisers” within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)].

35. By engaging in the conduct described above, FJR and Russo, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, acting intentionally, knowingly or recklessly: (a) has employed or is employing devices, schemes, or artifices to defraud; or (b) has engaged or is engaging in transactions, practices, or courses of business which operate as a fraud or deceit upon a client or prospective client.

36. By engaging in the conduct described above, FJR and Russo violated Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)].

**FOURTH CLAIM**  
**Unregistered Offer and Sale of Securities in Violation of**  
**Sections 5(a) and 5(c) of the Securities Act**  
**(All Defendants)**

37. Plaintiff Commission repeats and realleges paragraphs 1 through 26 above.

38. By engaging in the conduct described above, Defendants, directly or indirectly, by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails: (a) without a registration statement in effect as to the securities, sold such securities through the use or medium of a prospectus or otherwise, or carried or caused to be carried such securities for the purpose of sale or for delivery after sale; or (b) offered to sell or offered to buy through the use or medium of a prospectus or otherwise securities as to which a registration statement had not been filed.

39. By engaging in the conduct described above, Defendants violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

**FIFTH CLAIM**

**Offer and Sale of Securities Without Registration in Violation of  
Section 7(a) of the Investment Company Act of 1940  
(Russo Associates and Eliot Partners)**

40. Plaintiff Commission repeats and realleges paragraphs 1 through 26 above.

41. From the early 1990s to the present, Russo Associates and Eliot Partners were, or held themselves out as being engaged, primarily in the business of investing, reinvesting or trading in securities.

42. By engaging in the conduct described above, Russo Associates and Eliot Partners, directly or indirectly, without being registered with the Commission as an investment company:

(a) offered for sale, sold, or delivered after sale, by the use of the mails or a means or instrumentality of interstate commerce, a security or interest in a security; or offered for sale, sold, or delivered after sale any such security or interest, having reason to believe that such security or interest would be made the subject of a public offering by the use of the mails or a means or instrumentality of interstate commerce; (b) purchased, redeemed, retired, or otherwise acquired or attempted to acquire, by the use of the mails or a means or instrumentality of interstate commerce, a security or interest in a security; or (c) engaged in any business in interstate commerce.

43. By engaging in the conduct described above, Russo Associates and Eliot Partners violated Section 7(a) of the Investment Company Act [15 U.S.C. § 80a-7(a)].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission requests that this Court:

A. Enter a preliminary injunction, order freezing assets and order for other equitable relief in the form submitted with the Commission's motion for such relief;

B. Enter a permanent injunction restraining Defendants and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of:

1. Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5];
2. Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]; and
3. Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)];

C. Enter a permanent injunction restraining Russo and FJR and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of Sections 206(1) and (2) of the Advisers Act [15 U.S.C. § 80b-6(1), (2)];

D. Enter a permanent injunction restraining Russo Associates and Eliot Partners and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or

otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of Section 7(a) of the Investment Company Act [15 U.S.C. § 80a-7(a)];

E. Require Defendants to disgorge their ill-gotten gains and losses avoided, plus pre-judgment interest, with said monies to be distributed in accordance with a plan of distribution to be ordered by the Court;

F. Order Russo and FJR to pay an appropriate civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)];

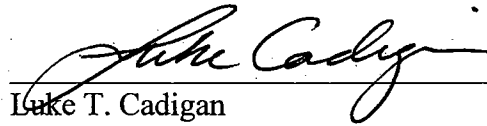
G. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

H. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,

**SECURITIES AND EXCHANGE  
COMMISSION,**

By its attorneys,



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