

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH--CENTRAL DIVISION**

COMMODITY FUTURES TRADING COMMISSION,	
	Plaintiff,
vs.	
JOHN LARRY SCHENK, et al.,	
	Defendants.

No. 2: 98 CV 00216J

Hon. Bruce Jenkins

**CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER EQUITABLE
RELIEF AGAINST MARK SCHENK AND JOHN STEVEN SCHENK**

I.

1. On March 27, 1998, Plaintiff, Commodity Futures Trading Commission (“Commission”), filed a complaint against Mark Schenk and John Steven Schenk (“Steven Schenk”) among others, seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended, 7 U.S.C. §§ 1 et seq. (1994) (“Act”),¹ and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (1998). On July 13, 1998, this Court entered a Consent Order of Preliminary Injunction against defendants Mark and Steven Schenk, in which they acknowledged service of the Summons and Complaint, admitted jurisdiction of this Court over them and the subject matter of this action and admitted that venue lies properly with this Court.

2. To effect settlement of the matters alleged in the complaint in this action prior to a trial on the merits or any further judicial proceedings, defendants Mark and Steven Schenk and the Commission consent to the entry of this Consent Order of Permanent Injunction Against Mark Schenk and John Steven Schenk (“Order”). Mark and Steven Schenk acknowledge service

¹ On December 21, 2000, the Act was amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106-554 (December 21, 2000).

of the summons and complaint. Mark and Steven Schenk also waive the entry of findings of fact and conclusions of law as provided by Rule 52 of the Federal Rules of Civil Procedure, except as stated below, and waive all rights of appeal from this Order. In addition, Mark and Steven Schenk waive all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commission Regulations, 17 C.F.R. §§ 148.1, et. seq., to seek costs, fees and other expenses relating to or arising from this action. Further, Mark and Steven Schenk waive any claim of Double Jeopardy based upon institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief.

3. Mark and Steven Schenk also consent to the continued jurisdiction of the Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to the case.

4. Mark and Steven Schenk affirm that they have read this Order, and they further affirm that they have agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein. By consenting to this Order, Mark and Steven Schenk neither admit nor deny any of the allegations of the Complaint except as to jurisdiction and venue.

5. Mark and Steven Schenk undertake that neither they nor any of their agents acting under their control or authority shall take any action or make any public statement denying, directly or indirectly, any allegation in the complaint or the Order or creating, or tending to create, the impression that the complaint or the Order is without a factual basis; provided, however, that nothing in this provision affects the defendants' (i) testimonial obligations, or

(ii) right to take legal positions in other proceedings to which the Commission is not a party. Mark and Steven Schenk will undertake all steps necessary to assure that all of their agents understand and comply with this agreement.

6. It further appearing to this Court that there is no just reason for delay, and the Court being fully advised in the premises,

II.

FINDINGS

THE PARTIES AGREE AND THE COURT FINDS THAT:

1. This Court has jurisdiction over this action and all parties hereto pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, in that the defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred within this district, among other places.

III.

ORDER

IT IS THEREFORE ORDERED THAT:

A. Defendants Mark and Steven Schenk are permanently restrained, enjoined and prohibited from directly or indirectly:

1. Cheating or defrauding or attempting to cheat or defraud other persons 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 such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(i) of the Act, 7 U.S.C. § 6b(a)(i) (1994);

2. Willfully making or causing to be made to other persons any false report or statement thereof, or willfully entering or causing to be entered for such persons any false record thereof, in violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii) (1994);
3. While acting as a commodity pool operator (“CPO”) or as an associated person of a CPO, employing any device, scheme or artifice to defraud any client or prospective client and any pool participant or prospective participant, or engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client or any participant or prospective participant, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4q(1) of the Act, 7 U.S.C. § 6q(1) (1994); and
4. While acting as a CPO registered or required to be registered under the Act, directly or indirectly soliciting, accepting or receiving funds, securities or other property from a prospective participant in a commodity pool that they operate or intend to operate, without delivering, on or before the date they engage in such activity, a Disclosure Document conforming to the requirements of Regulation 4.24(a), 17 C.F.R. § 4.24(a), in violation of Regulation 4.21(a), 17 C.F.R. § 4.21(a) (2000).

B. Defendants Mark and Steven Schenk are permanently restrained, enjoined and prohibited from directly or indirectly:

1. Acting as a futures commission merchant, commodity pool operator, commodity trading advisor, introducing broker, floor broker, floor trader or as an associated person or other agent of any registrant as defined under the Act;
2. Seeking registration or exemption from registration with the Commission in any capacity for which registration with the Commission is required under the Act;
3. Soliciting, receiving or accepting any money, securities or property from others in connection with the purchase or sale of commodity interests;
4. Soliciting, accepting or placing orders from others for the purchase or sale of commodity interests, giving advice or other information in connection with the purchase or sale of commodity interest contracts, introducing customers to any

other person engaged in the business of commodity interest trading, issuing statements or reports to others concerning commodity interest trading, or otherwise engaging in any business activities related to commodity interest trading; and

5. Controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, directly or indirectly, whether by power of attorney or otherwise.

C. Defendants Mark and Steven Schenk are further restrained, enjoined and prohibited from directly or indirectly trading commodity futures contracts or options on commodity futures contracts (“commodity interests”) for their own personal account or having any commodity interest traded on their behalf for a period of ten years from the date of this Order.

D. The injunctive provisions of this Order shall be binding upon Mark and Steven Schenk, upon any person insofar as he or she is acting in the capacity of officer, servant, agent, employee or attorney of either of them, 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 Mark or Steven Schenk.

E. Within five days of the date of this Order, Mark Schenk and Steve Schenk shall make restitution jointly and severally in the total amount of \$ 18,000 (“Restitution Amount”) to make whole the investors in the Wasatch Fund whose funds were received or disposed of by Mark and Steve Schenk in connection with their operation of the Sunrise Fund in the individual amounts set forth in Exhibit A attached to this Order. Such payment shall be made within five days of the date of this Order to an account designated by the National Futures Association (“NFA”); the NFA shall distribute such funds as restitution payments to the Wasatch Fund investors in the individual amounts set forth in Exhibit A attached. In the event that the NFA is not able to effect any payment to any Wasatch Fund investor within 180 days of the date of this

Order, the NFA shall, within ten (10) days thereafter, distribute that remaining amount to the remaining Wasatch Fund investors listed on Exhibit A on a pro rata basis.. Communications to the NFA shall be directed to

Daniel Driscoll
Executive Vice President, Compliance
National Futures Association
200 W. Madison St.
Chicago, Illinois 60606

F. Within six months of the date of this Order, Defendant Steve Schenk is ordered to disgorge \$ 16,000, representing his total profits from the conduct alleged in the Commission's Complaint. Defendant , Mark Schenk is ordered to pay disgorgement of \$ 16,000 representing his total profits from the conduct alleged in the Commission's Complaint, in two payments of \$8,000 each. Mark Schenk's first payment shall be made within six months of the date of this Order, and his second payment shall be made within twelve months of the date of this Order. Disgorgement shall be directed to the Commodity Futures Trading Commission, Division of Trading and Markets, 1155 21st St., N.W., Washington, D.C. 20581 to the attention of Dennese Posey or her successor under a cover letter that identifies the defendant making the payment and the name and docket number of this proceeding. A copy of the cover letter and the form of payment shall be simultaneously transmitted to Phyllis J. Cela, Acting Director, or her successor, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st St., N.W., Washington, D.C. 20581.

G. This Consent 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.

H. 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.

I. This Order shall inure to the benefit of and be binding upon the successors, assigns, heirs, beneficiaries, designees and administrators of the parties hereto.

J. Upon being served with copies of this Order after entry by the Court, Mark and Steven Schenk shall sign acknowledgments of such service and serve such acknowledgements on the Court and Commission within seven (7) calendar days.

K. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order, and the application of the provision to any other person or circumstance, shall not be affected by the holding.

L. This Court shall retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

M. There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order of Permanent Injunction.

DONE AND ORDERED this 29th day of March, 2001.

HONORABLE BRUCE S. JENKINS
UNITED STATES DISTRICT COURT JUDGE
DISTRICT OF UTAH

Approved for Entry:

David King
Attorney for
John Steven Schenk
Mark Schenk

Rosemary Hollinger
Senior Trial Attorney

Consented and
Approved for entry:

John Steven Schenk

Mark Schenk

Rosemary Hollinger
Attorney for: Commodity Futures Trading Commission
Suite 1600-N
300 S. Riverside Plaza
Chicago, IL 60606
312-886-3174 (RH)

E. Neal Gunnarson
Bar Number 4084
Assistant Attorney General
Attorney General's Office of Consumer Rights
160 East 300 South
Salt Lake City, Utah 84114-6760
801-366-0310