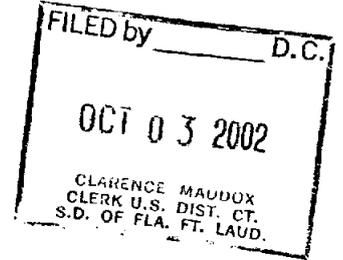


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 00-8880-CIV-ZLOCH



COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

PERMANENT INJUNCTION &
ORDER OF RESTITUTION

MATRIX TRADING GROUP, INC.,
DAVID WEDEEN, and CHRISTOPHER
SMITHERS,

Defendants.

THIS MATTER is before the Court upon the Plaintiff, Commodity Futures Trading Commission's Trial Brief (DE 82) and Defendants Matrix Trading Group, Inc. and Christopher Smithers' Trial Brief and Proposed Findings of Fact and Conclusions of Law (DE 86). The Court has carefully reviewed said Briefs, the exhibits attached to said Briefs, the entire court file, and is otherwise fully advised in the premises.

The Plaintiff, the Commodity Futures Trading Commission (hereinafter "the CFTC") commenced the above-styled cause by filing a Complaint (DE 1) against the Defendants, Matrix Trading Group, Inc., Christopher Smithers, and David Wedeen, alleging violations of § 4c(b) of the Commodity Exchange Act (hereinafter "the Act"). 7 U.S.C. § 6b. Specifically, the CFTC alleges that the Defendants are perpetrating a fraudulent scheme whereby investors were misled

as to the likelihood of profit, the risk involved, and the performance record of the Matrix trading strategy. The Defendants deny the CFTC's allegations and have raised a number of affirmative defenses.

On October 30, 2000, the Court entered a Statutory Restraining Order against the Defendants and set the matter for a hearing on the CFTC's Motion for a Preliminary Injunction. (DE 46). Following the entry of the Statutory Restraining Order, Defendant Matrix Trading Group, Inc. closed its offices and as of the date of this Order it has never resumed its operations. By Order dated December 4, 2000, the Court denied the CFTC's Motion for a Preliminary Injunction. (DE 53). Thereafter the Court set this matter for trial. (DE 57). However, at the pre-trial conference the parties stipulated that the Court make a determination of the CFTC's claims based on the submission of briefs by the parties rather than trial. Thereafter the Court memorialized this stipulation by a written Order (DE 73). Thus, pursuant to Fed.R.Civ.P. 52, the Court makes the following findings of fact and conclusions of law.

I. Findings of Fact

1. Defendant Matrix Trading Group, Inc. was a Florida corporation with its principal place of business at 2655 North

Ocean Drive, Suite 401, Singer Island, Florida 33404.

2. Matrix was registered as a guaranteed introducing broker ("IB") of Universal Financial Holding Corporation from July 10, 2000 to October, 2000.

3. Matrix was registered as a guaranteed IB of First American Discount Corporation from July 22, 1998 to July 9, 2000.

4. Matrix was registered as a commodity trading advisor from May 13, 1999 to October, 2000.

5. Defendant David Wedeen, who resides at 8310 Bob-O-Link Drive, West Palm Beach, Florida 33418, was the President and a principal of Matrix, and was registered as an associated person ("AP") of Matrix from July 22, 1998 to August 1, 2000.

6. Defendant Wedeen is currently a principal and registered as an AP of a sole proprietorship IB under his own name. However, Wedeen has filed a Suggestion of Bankruptcy. See DE 85.

7. Defendant Christopher Smithers, who resides at 12508 Windmill Drive, Palm Beach Gardens, Florida 33418, was the Vice President and a principal of Matrix, and was registered as an AP of Matrix from July 22, 1998 to December 6, 2000.

A. The Matrix Trading Group Operation

8. From March 1998 to July 1998, Smithers was registered as an AP of Infinity Trading Group ("Infinity"), an IB in Palm Beach

Gardens, Florida.

9. From July 1998 to October 2000, Matrix APs solicited members of the general public to open accounts with Matrix to trade commodity options.

10. Wedeen and Smithers operated the Matrix office in Florida from its inception.

11. Each of the principals (Smithers and Wedeen) owned fifty percent of the stock in the company.

12. Matrix employed a total of approximately twenty APs during the entire history of the company.

13. The Matrix APs were hired by Wedeen and Smithers, who made all hiring and firing decisions.

14. Wedeen and Smithers both participated in training the Matrix APs.

B. Matrix Trading Strategy

15. Wedeen commonly gave the Matrix APs specific trades to recommend to customers based upon a comparison of the market positions and activity of large commercial traders to those of small traders using the Commitment of Traders Report (the "Large Traders Report"), a document published by the Commission, and a "market sentiment" report published by Bridge (the "Small Traders Report").

16. When the Large Traders Report showed that the large commercial traders were buying or selling a given commodity futures contract and the Small Traders Report showed that the smaller traders were selling or buying options on that futures contract, Matrix advised customers to follow the large commercial traders and buy or sell.

17. Matrix APs at times provided their own trading advice, independent of recommendations made by Wedeen.

18. Wedeen and Smithers were generally aware of the commodity options purchased by Matrix customers.

19. Wedeen and Smithers placed many of Matrix's customer trades with Matrix's futures commission merchant and reviewed daily equity runs that disclosed the equity positions of Matrix customer accounts.

C. Matrix Telephone Sales Solicitations

20. In telephone sales solicitations, Wedeen, Smithers, and the other Matrix APs under the direct supervision of Wedeen and Smithers misrepresented the likelihood of customers profiting from the purchase of commodity options. See DE 84, Ex. 18, Beckwith Dec.; DE 83, Ex. 5, at p.55-56; DE 84, Ex. 24 Peery Dec.; DE 83 Ex. 5, at p.27, 28, 35; DE 84, Ex. 29 Sero Dec.; Ex. 28 Sayer Dec.; Ex. 26 Reed Dec.; Ex. 27 Savage Dec.; Ex. 30 Stewart Dec.; Ex. 23,

Overcash Dec.

21. The Matrix APs routinely told customers that an easily predictable price move would translate into large profits to the customer and that the price move and large profits were to be expected. See DE 84, Ex. 18, Beckwith Dec.; DE 83, Ex. 5, at p.55-56; DE 84, Ex. 24 Peery Dec.; DE 83 Ex. 5, at p.27, 28, 35; DE 84, Ex. 29 Sero Dec.; Ex. 28 Sayer Dec.; Ex. 26 Reed Dec.; Ex. 27 Savage Dec.; Ex. 30 Stewart Dec.; Ex. 23, Overcash Dec.

22. The Matrix APs commonly told customers that a trading recommendation was a "sure thing," (DE 83, Ex. 8, Brubaker Dep. at p. 14, 18, 24; DE 84, Ex. 24 Peery Dec.; DE 84, Ex. 27, Savage Dep.) the performance record of Matrix was "incredible" with profits virtually guaranteed (DE 83, Ex. 5 at p. 29), or that they were very successful, their clients always made money (DE 83, Ex. 9 Stewart Dep. at p. 11 -14) and the client would more than double his money in a short period of time (Id. at p. 15; DE 83, Ex. 5 at p. 8, 29, 55-56; Ex 4. at p. 27, 28, 35).

23. The Matrix APs also routinely failed to disclose adequately the risk of loss inherent in trading commodity options. DE 83, Ex. 8 Brubaker Dep. at p. 23; DE 84, Ex. 24 Peery Dec.; DE 84, Ex. 26 Reed Dec.; DE 84, Ex. 23, Overcash Dec.; DE 83, Ex. 5 at p. 51, 58, 75, 97.

24. Matrix's high-pressure sales tactics and misrepresentations and omissions falsely conveyed the impression that while losses on commodity options were theoretically possible, purchasing commodity options with Matrix was virtually risk free. DE 83, Ex. 8 Brubaker Dep. at p. 23; DE 84, Ex. 24 Peery Dec.; DE 84, Ex. 26 Reed Dec.; DE 84, Ex. 23, Overcash Dec.; DE 83, Ex. 5 at p. 51, 58, 75, 97.

25. Matrix APs commonly told customers that they could expect "high profits with low risk," or words to that effect, that customer risk in buying options was lower than in any other type of trade, and that the Matrix strategy had a success rate anywhere from over 50% to as high as 100%, thereby eliminating the risk in trading. DE 83, Ex. 8 Brubaker Dep. at p. 23; DE 84, Ex. 24 Peery Dec.; DE 84, Ex. 26 Reed Dec.; DE 84, Ex. 23, Overcash Dec.; DE 83, Ex. 5 at p. 51, 58, 75, 97.

26. One investor was given the impression that "their success rate was so good I couldn't lose money." DE 83, Ex. 5 at p. 22.

27. The Matrix APs also overstated Matrix's performance record for customers. DE 84, Ex. 18, Beckwith Dec.; DE 84, Ex. 24 Peery Dec.; DE 84, Ex. 29 Sero Dec.; DE 83, Ex. 5 at p. 7.

28. The Matrix APs commonly told customers that many Matrix customers were making money through their accounts at Matrix, that

Matrix had high success rates, varying from "more than 50%" to "100% success" based on their strategy for analyzing market data, and that the Matrix system had "a really good track record." DE 84, Ex. 18, Beckwith Dec.; DE 84, Ex. 24 Peery Dec.; DE 84, Ex. 29 Sero Dec.; DE 83, Ex. 5 at p. 7.

D. Matrix Trading Results

29. Customers of Matrix entered into commodity option trades which seldom, if ever, made profits of the magnitude represented.

30. From July 1998 to July 2000, Matrix opened approximately 451 accounts, approximately ninety-two percent (92%) of which lost money.

31. Total net losses in Matrix's four-hundred and fifteen (415) unprofitable accounts were approximately \$3,245,513.43, while total net profits in Matrix's thirty-six (36) profitable accounts for this time period were approximately \$93,624.35.

32. From approximately July 1998 to July 2000, Matrix customers paid approximately \$1,451,604.06 in commissions.

33. Smithers alone made \$140,000 at Matrix in 1999 and approximately \$101,000 in 1998.

34. Both Wedeen and Smithers testified that they were aware that their clients were losing money.

35. Wedeen acknowledged that "the majority of clients lost

money" and that the Matrix strategy "need[ed] a better timing technique" for determining when to enter trades.

36. Smithers stated that he was aware of the losses suffered by customers of Matrix APs.

E. Supervision and Training at Matrix

37. Wedeen was primarily responsible for training Matrix's APs and monitoring their customer solicitations.

38. Smithers was also responsible for supervising and training the Matrix APs and monitoring their customer solicitations.

39. Wedeen exercised day-to-day authority over all of Matrix's operations and performed all important managerial and supervisory functions, including those related to compliance.

40. Wedeen set the commissions, salaries and bonuses at Matrix, and possessed the final authority in all hiring, disciplinary and firing decisions.

41. Smithers walked around the office of Matrix, monitoring the Matrix APs' telephone solicitations.

42. Smithers also stated that he trained the Matrix APs in how to make presentations to prospective clients.

43. Matrix did not have a compliance officer for the first two years of its operation.

44. Matrix did not provide a copy of the compliance manual to the APs.

45. Many of the APs did not even know the location of the compliance manual in the office.

46. Matrix did not provide APs with any other compliance materials.

47. Smithers himself only read the Matrix compliance manual once and testified before the CFTC that he did not know if it was ever updated.

48. At the time of his testimony, Smithers also did not know any of the contents of the compliance manual.

49. Matrix implemented various supervisory controls and procedures as recommended by Scan Management in September, 2000, only after the filing of the instant Complaint.

50. Matrix appointed a compliance officer at that time.

F. Smithers' Prior History of Fraud at Infinity Group

51. Prior to working at Matrix, Smithers worked at Infinity Trading Group ("Infinity") from in or about March 1998 to July 1998.

52. As he did at Matrix, Smithers solicited members of the general public to open accounts with Infinity to trade commodity options.

53. In telephone sales solicitations while at Infinity, Smithers misrepresented the likelihood of a customer profiting from the purchase of commodity options, stating that specific trades were almost certain to result in profits, failed to disclose adequately the risk of loss inherent in trading commodity options, overstated his performance record for customers, and falsely represented both that he had made millions trading options and that all of his customers were making money. DE 84, Ex. 25 Ray Dec.

G. Wedeen & Smithers Intend to Continue to Work in the Commodities Business

54. Wedeen is still active in the commodities business and committed to building a business. Wedeen Hearing Testimony, Exhibit 5, p.146.

55. Smithers concedes in his own Brief (DE 86), through his own lawyer, that he intends to continue in the business of soliciting customers to trade commodities.

II. Conclusions of Law

1. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331. In the instant Complaint the CFTC alleges that the Defendants have (1) fraudulently misrepresented and omitted material facts while soliciting customers to trade options on commodity futures in violation of Section 4c(b) of the

Act, 7 U.S.C. § 6c(b) and Section 33.10 of the CFTC's Regulations codified as 17 C.F.R. § 33.10; and (2) failed to diligently supervise the handling of commodity interest accounts by their partners and employees, in violation of Section 166.3 of the CFTC's Regulations, codified as 17 C.F.R. § 166.3.

A. Matrix, Wedeen, and Smithers Violated Section 4c(b) of the Act and Commission Regulation 33.10

2. Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Section 33.10 of the Regulations, 17 C.F.R. § 33.10, make it unlawful to cheat or defraud, or attempt to cheat or defraud, any person in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, exchange-traded commodity option transactions.

3. Under these provisions, liability for solicitation fraud involving options is established when a person or entity is found to have made misleading statements of, or omitted to disclose, material facts with scienter. See CFTC v. Commonwealth Financial Group, Inc., 874 F. Supp. 1345, 1354 (S.D. Fla. 1994) (violation of the anti-fraud provisions of the Act occurs when (1) an entity or person makes misrepresentations or deceptive omissions (2) with scienter and (3) the misrepresentations are material); In re Staryk, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,206 at 45,810 (CFTC Dec. 18, 1997) (scienter is a necessary element to

options as well as futures fraud); see also Hammond v. Smith Barney, Harris Upham & Co., [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,657-36,659 (CFTC March 1, 1990) (scienter is a necessary element to establish futures fraud).

4. The Court notes that "a statement or omitted fact is 'material' if there is a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest." R&W Tech. Serv., Ltd. v. Commodity Futures Trading Commission, 205 F.3d 165, 169 (5th Cir. 2000). Moreover, "because extravagant claims understate the inherent risks in commodities trading, a reasonable investor would find [such] fraudulent misrepresentations to be material." Id. at 170. See also In re JCC, Inc., [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,080 at 41,576 n.23 (CFTC May 12, 1994) ("When the language of a solicitation obscures the important distinction between the possibility of substantial profit and the probability that it will be earned, it is likely to be materially misleading to customers"); CFTC v. British Am. Commodity Options Corp., [1977-1980 Transfer Binder] Comm Fut. L. Rep. (CCH) ¶ 20,662, at 22,701 (S.D.N.Y. 1978) ("[U]nsupported and unreasonable predictions [of price shifts] unmistakably implied the near-certainty of sizeable and immediate returns, and were thus materially misleading to

potential investors"); Commonwealth, 874 F. Supp. at 353-54.

5. The Court finds that the Defendants misrepresented and omitted material facts concerning the likelihood and extent of profits to be made trading commodity options, the risks inherent in trading such options, and the actual performance record in trading commodity options pursuant to the Matrix strategy. Based upon Matrix customers' trading results and the admissions of Wedeen concerning the failure of Wedeen's trading system, these misrepresentations and omissions of material facts were made knowingly or in the alternative, with reckless disregard for the truth.

6. Similarly, any fact that would enable customers to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. See In re Commodities International Corp., [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943 at 44,563-44,564 (CFTC Jan. 14, 1997) (misrepresentations and omissions to customers were material and fraudulent because customers could not properly evaluate their circumstances with regard to risk of loss and opportunity for profit); see also Sudol v. Shearson Loeb and Rhoades, Inc., [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,748 (CFTC Sept. 30, 1985).

7. The Court finds that the misstatements and omissions regarding profit potential, risk of loss, and performance record by the Defendants were material because a reasonable investor would have relied on these statements in determining whether to invest in the commodities markets and particularly with Matrix.

8. It is well established that promises of large and certain profits, like the promises made by the Defendants here, are material and fraudulent. Munnell v. Paine Webber Jackson Curtis, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,313, at 32,863 (CFTC Oct. 8, 1986) (statements that an investor could conservatively expect a profit of 32% per year amount to a guarantee of profitability and are inherently fraudulent); R&W Tech. Serv., Ltd., 205 F.3d 165 at 170 ("[P]etitioners also misrepresented the risks of futures trading by making bold predictions of high profits. Such claims amount[] to the type of guarantee of profit prohibited under Section 4b of the Act.").

9. Similarly, failure to disclose adequately the risks involved in commodity options trading is fraudulent. Keller v. First National Monetary Corp., [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,402 at 29,823 (CFTC Oct. 22, 1984).

10. Linking disclosure of risks to representations of virtually certain profits, as did the Defendants, also is

fraudulent. See Commonwealth Financial Group, 874 F. Supp. 1345, 1353 (S.D. Fla. 1994) (combining claims that risks are subject to certain limitations, with "predictions of profit [that] exceeded 'mere optimism'" violated § 4c(b) of the Act and § 33.10 of the Regulations); Levine v. Refco, Inc., [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,488 at 36,115 (CFTC July 11, 1989) ("bold predictions of significant profit coupled with claims that risks are subject to certain limitations amount to the type of guarantee of profits" that is prohibited).

11. *Pro forma* risk disclosures are an insufficient defense to such fraud. Keller v. First National Monetary Corp., [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,402 at 29,823 (CFTC Oct. 22, 1984) ("statements that lead investors to believe that a particular investment is risk free and will almost certainly yield a profit are not protected from claims of fraud simply because the broker has made *pro forma* disclosure of risk"); JCC, Inc. v. CFTC, 63 F.3d 1557, 1569 (11th Cir. 1995); Clayton Brokerage Co. of St. Louis v. CFTC, 794 F.2d 573, 580-81 (11th Cir. 1985) ("[P]resentation of the risk disclosure statement does not relieve a broker of any obligation under the [Act] to disclose all material information about risk to customers."). Moreover, the Court finds that the boilerplate risk disclosure language used by the

Defendants does not overcome the material misrepresentations made by the Defendants and the Matrix APs. CFTC v. Sidoti, 178 F.3d 1132, 1136 (11th Cir. 1999).

12. Consequently, the Defendants' assertions that all Matrix customers signed risk disclosure forms does not mean that no fraud occurred. Rather, multiple customers testified that they were told that the forms were *pro forma* - a mere formality given the high likelihood of profit investing at Matrix.

13. Finally, the Court notes that misrepresentations and omissions regarding a defendant's actual performance record in options trading are material and fraudulent. See Sidoti, 178 F.3d at 1136 (finding fraudulent solicitation where APs distorted firm's poor track record in telephone solicitations).

14. The experience level of a customer does not vitiate the materiality of misrepresentations. Any fact that would enable customers to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. See In re Commodities International Corp., [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943 at 44,563-44,564 (CFTC Jan. 14, 1997) (misrepresentations and omissions to customers were material and fraudulent because customers could not properly evaluate their circumstances with regard to risk of loss and opportunity for

profit); see also Sudol v. Shearson Loeb and Rhoades, Inc., [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,748 (CFTC Sept. 30, 1985). By telling customers that Matrix had a good system for making money when profiting through trading at Matrix was unlikely, the Defendants withheld a material fact which would have enabled customers to assess independently the risk inherent in trading.

B. Wedeen, Smithers, and the Matrix APs Made Material Factual Misrepresentations and Omissions with Scienter

15. The Court notes that Scienter requires proof that the Defendants committed the alleged wrongful acts "intentionally or with reckless disregard for [their] duties under the Act." Hammond v. Smith Barney, Harris Upham & Co., [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,657-36,659 (CFTC March 1, 1990) (scienter is a necessary element to establish futures fraud); CFTC v. Savage, 611 F.2d 270, 283 (9th Cir. 1979) ("Knowledge, of course, exists when one acts in careless disregard of whether his acts amount to cheating").

16. Even absent direct evidence regarding the intent of a firm's principals and brokers, the requirement of scienter has been satisfied where the principals and employees of a firm are clearly aware of the significant losses suffered by their clients. Commonwealth, 874 F. Supp. at 1354-55.

17. The Court concludes that Wedeen and Smithers were aware

that the strategy touted by Matrix APs was without merit. As principals of Matrix, Wedeen and Smithers had access to Matrix's equity runs, as well as customer month-end account statements, showing all open positions and whether option positions that had closed during the month were profitable or had expired worthless. Smithers himself testified that he was aware of how the APs' customers were doing. See DE 83, Ex. 5. at p. 222-24. Wedeen, Smithers, and Matrix APs therefore had information clearly showing the results of the option trades of their customers. Given that 92% of Matrix's customers lost money and that those losses began accruing from the outset, and given that Matrix's principals either were aware or should have been aware of the true state of affairs, this Court finds that their claims of profit and profit potential were made with knowledge of their falsity or, at the very least, with reckless disregard for the truth.

18. Smithers made similar misrepresentations with reckless disregard for the truth as an AP at Infinity. He told customers that he had made millions of dollars investing in commodities, and that all of his customers were making money. Smithers knew that neither of these representations was true.

C. Matrix Is Liable for the Acts of Its Officers and Employees

19. Section 2(a)(1)(A)(iii) of the Act, 7 U.S.C. § 4 provides that "the act, omission, or failure of any . . . agent, or other person acting for any . . . corporation, or within the scope of his employment or office shall be deemed the act, omission, or failure of such . . . corporation, . . . as well as of such official, agent, or other person."

20. Matrix is therefore liable for the acts, omissions and failures of Wedeen, Smithers, and the other Matrix APs described above. Sidoti, 178 F.3d at 1135 (section 2(a)(1)(A)(iii) of the Act makes a principal liable for the acts of his agent); Stotler v. Commodity Futures Trading Commission, 855 F.2d 1288, 1292 (7th Cir. 1988) (section 2(a)(1)(A)(iii) imposes vicarious liability on principal for acts of agent regardless of the principals knowledge of its agent's acts); Clayton Brokerage v. Commodity Futures Trading Commission, 794 F.2d 573, 581 (11th Cir. 1986) (section 2(a)(1)(A)(iii) provides respondeat superior and general principal-agent standards for imposing liability).

D. Wedeen and Smithers Violated Section 4c(b) of the Act and Regulation 33.10 by Aiding and Abetting Violations of Those Provisions and Through Their Conduct as Controlling Persons

i. Aiding and Abetting

21. The Court notes that pursuant to Section 13(a) of the

Act, an individual is liable as an aider and abettor, if he "willfully aids, abets, counsels, commands, induces, or procures the commission of, a violation of any of the provisions of [the Act or CFTC Rules]." 7 U.S.C. § 13c(a); Sidoti, 178 F.3d at 1136.

Liability as an aider and abettor requires proof that (1) the Act was violated, (2) the defendant had knowledge of the wrongdoing underlying the violation, and (3) the defendant intentionally assisted the primary wrongdoer. In re Shahrokh Nikkhah, 2000 WL 622872 at *10 (CFTC May 12, 2000); CFTC v. Commonwealth Financial Group, 874 F. Supp. 1345, 1356 (S.D. Fla. 1994) (to be liable for aiding and abetting under Section 13(a) of the Act, a person must "knowingly associate[] himself with an unlawful venture and seek[] by his actions to make it succeed.").

22. Here, the evidence established that Wedeen developed the fraudulent contents of Matrix's telephone solicitations. He also was primarily responsible for training Matrix's APs and monitoring their customer solicitations. Smithers was also responsible for supervising and training the Matrix APs and monitoring their customer solicitations. Thus, the participation of Wedeen and Smithers in Matrix's fraudulent solicitations was knowing, and both clearly sought by their actions for Matrix's solicitations to succeed. In re Grossfeld, [Current Transfer Binder] Comm. Fut. L.

Rep. (CCH) ¶ 26,921 (CFTC Dec.10,1996) (individuals who participated in the development of promotional materials and trained and monitored APs aided and abetted IB's fraudulent solicitation of customers).

23. Thus, pursuant to Section 13(a) of the Act, the Court finds that Wedeen and Smithers aided and abetted Matrix's violations of the antifraud provisions of the Act and Commission Regulations.

ii. Controlling Person Liability

24. To be liable as a controlling person under Section 13(b) of the Act, a person must possess the requisite degree of control. Besides general control over the operations of the entity principally liable, Section 13(b) requires that a person be "possessed [of] the power or ability to control the specific transaction or activity upon which the primary violation was predicated, even if such power was not exercised." Monieson v. CFTC, 996 F.2d. 852, 860 (7th Cir. 1993).

25. In addition, the CFTC must prove that the controlling person "did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation." Sidoti, 178 F.3d at 1136. The conduct of both Wedeen and Smithers, which continued consistently for two years, meets this test.

26. Wedeen and Smithers both had the requisite power and control. Wedeen exercised day-to-day authority over all of Matrix's operations and performed all important managerial and supervisory functions, including those related to compliance.

27. The Court notes that, Wedeen set the commissions, salaries and bonuses at Matrix, and possessed the final authority in all hiring, disciplinary and firing decisions. See Commonwealth, 874 F. Supp. at 1357 (controlling person in charge of hiring and firing, negotiating contracts, company finances, and regulatory issues was liable as a controlling person for the statements of brokers). Most importantly, he had the power to control the content of the Matrix telephone solicitations, and was the primary person responsible for training and supervising Matrix APs.

28. Smithers also was responsible for supervising and training the Matrix APs as part of his duties as Vice President. Smithers testified that he trained the Matrix APs in how to make presentations to prospective clients. Smithers also testified that he walked around the floor of Matrix, making sure that the APs were making balanced presentations.

29. The Court finds that Wedeen and Smithers both knowingly induced the fraudulent conduct and failed to act in good faith.

Knowing inducement requires a showing that "the controlling person had actual or constructive knowledge of the core activities that constitute the violation at issue and allowed them to continue." In re Spiegel, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24, 103 at 34, 767 (CFTC Jan. 12, 1988). As earlier detailed, Wedeen directly participated in the development of all aspects of Matrix's fraudulent solicitations, while Smithers directly supervised and trained the Matrix APs to make the fraudulent solicitations. Smithers monitored customer solicitations by the Matrix APs. Thus, both had actual knowledge of all the core activities of the fraud.

30. In addition, both Wedeen and Smithers failed to act in good faith. A controlling person acts in bad faith if he "did not maintain a reasonably adequate system of internal supervision and control over the [employee] or did not enforce with any reasonable diligence such system." Monieson, 996 F 2d. at 860 (citations omitted); In re Apache Trading Corp., No. 87-14, 1992 WL 52596 (CFTC Mar. 11, 1992).

31. The Court concludes that Wedeen and Smithers did not have a meaningful system of internal controls, which is evidenced by the fraudulent telephone solicitations at Matrix and by the specific evidence concerning Wedeen and Smithers' failure to supervise

Matrix APs. Consequently, the Court finds that both Wedeen and Smithers are liable for Matrix's fraudulent conduct.

E. Matrix, Wedeen, and Smithers Violated Commission Regulation § 166.3 by Failing to Diligently Supervise the Matrix APs

i. Legal Standard

32. To determine whether a registrant has failed to supervise diligently, the Court must first determine whether there existed a program of supervision designed to detect violations and, if so, whether the relevant policies and procedures were followed in practice. See In re GNP Commodities, Inc., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39, 219 (CFTC August 11, 1992) aff'd sub nom., Monieson v. CFTC, 996 F 2d. 852 (7th Cir. 1993).

33. Evidence of underlying violations of the Act "is probative of a firm's failure to supervise, if the violations which occurred are of a type which should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly." In re Paragon Futures Association, [1990-1992 Transfer Binder] 2 Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC April 1, 1992).

34. The Eleventh Circuit has found a violation of § 166.3 where a firm and its principal "failed to establish or maintain meaningful procedures for detecting fraud by their employees" and

the principal "knew of specific incidents of misconduct, yet failed to take reasonable steps to correct the problems." Sidoti, 178 F.3d at 1137.

F. Wedeen, Smithers & Matrix Failed to Supervise Matrix APs

35. As detailed above, Wedeen, Smithers, and Matrix each had supervisory authority over the approximately twenty APs employed by Matrix. Wedeen and Smithers failed to maintain meaningful procedures for detecting fraud by their employees - Wedeen and Smithers actually trained the APs to make these misrepresentations during their telephone solicitations. Yet, in spite of the claims of success and profitability made by Matrix APs in a one room office, Wedeen and Smithers never took adequate steps to correct the misconduct.

36. Wedeen and Smithers both testified that they oversaw an internal system designed to ensure that customers received a "balanced presentation" describing both the potential profits and the potential risks involved in trading commodity options. However, the testimony of the Matrix APs, along with numerous customer declarations, shows that the Matrix telephone solicitations were anything but balanced. By failing to implement meaningful procedures for detecting fraud and failing to follow Matrix's purported internal control procedures with regard to

telephone solicitations, Wedeen and Smithers violated § 166.3. See Crothers v. CFTC, 33 F.3d 405, 410-11 (4th Cir. 1994).

G. The "Satisfied Customer" Defense Does Not Overcome Proof of Violation of the Act

37. The Court notes that a "satisfied customer" defense is insufficient to overcome proof of violation of the Act. CFTC v. IBS, Inc., 2000 WL 1347175, at *20 (June 20, 2000 W.D.N.C.) (the Court held that the CFTC need not prove that every customer was defrauded.) See FTC v. Amy Travel Service, Inc., 875 F.2d 564, 572 (the existence of some satisfied customers is not relevant to whether customers were deceived and does not constitute a defense, since the FTC does not need to prove that every customer was injured); FTC v. Five-Star Auto Club, 97 F.Supp.2d 502 (S.D.N.Y. 2000). This vitiates the customer Declarations filed by the Defendants, as well as the testimony provided by Timothy Marshall and Tom King at the October 19, 2000 hearing.

H. Permanent Injunction is Necessary and Appropriate

38. The CFTC is entitled to injunctive relief upon a showing that a violation has occurred and is likely to continue unless enjoined. CFTC v. Muller, 570 F.2d 1296, 1300 (5th Cir. 1978); CFTC v. Hunt, 591 F.2d 1211, 1220 (7th Cir. 1979), cert denied, 442 U.S. 921 (1979); CFTC v. British American Commodity Options Corp., 560

F.2d 135, 141 (2nd Cir. 1977).

39. Wedeen, Smithers, and other Matrix APs have violated the Act and Regulations by fraudulently misrepresenting and omitting material facts in telephone solicitations, and Wedeen and Smithers have failed to supervise the handling of commodity trading accounts by their partners and employees. These violations continued for a period of approximately two years. In fact, the violations increased in severity and impact on customers over time. Matrix customers lost more than \$1.8 million in 1999 alone; they lost nearly \$1.2 million in the first half of 2000.

40. Such "past illegal conduct is highly suggestive of the likelihood of future violations." CFTC v. Crown Colony Commodity Options, Ltd., 434 F. Supp. 911, 919 (S.D.N.Y. 1977); Hunt, 591 F.2d at 1220; British American, 560 F.2d at 142.

41. Under such circumstances, a district court may infer a likelihood of future violations from defendants' past unlawful conduct. CFTC v. American Board of Trade, Inc., 803 F.2d 1242, 1251 (2nd Cir. 1986); CFTC v. Heritage Capital Advisory Services, Ltd., [1982-1984 Transfer Binder] Comm. Fut. L. Rep. ¶ 21,627 at 26,385 (N.D. Ill. 1982).

42. Based upon Smithers and Wedeen's avowed intention to continue the solicitation of investors, it is appropriate for the

Court to enter a permanent injunction restraining Smithers and Wedeen from continuing to violate the Act and Regulations, including violations through the continued solicitation and/or maintenance of customer accounts.

Restitution

43. The CFTC may seek restitution in order to compensate victims of fraud. CFTC v. Midland Rare Coin Exchange, Inc., 71 F.Supp.2d, 1257, 1264 (S.D. Fla. 1999); CFTC v. Rosenberg, 85 F.Supp.2d 424, 448 (D.N.J. 2000); Indosuez Carr Futures, Inc. v. CFTC, 27 F.3d 1260, 1264 (7th Cir. 1994).

44. Here the CFTC seeks restitution for each of the Matrix customers who relied to their detriment upon the misrepresentations of the Matrix APs. The sixteen customers who provided declarations and testimony in this case lost a total of \$299,129.20 through their investments with Matrix. The Court notes that customer reliance on the Defendants' misrepresentations is a necessary element for restitution relief. Rosenberg, 85 F.Supp.2d at 447; In Re Staryk, 1997 WL 778236, at *13 (CFTC Dec. 4, 1998). Here, the Court finds that the CFTC has demonstrated that each of the sixteen individuals relied on the Defendants' misrepresentations and omissions in making their individual investments with Matrix. Thus, the Court finds that the CFTC is entitled to an order of

restitution in the amount of \$299,129.20, to be divided among the sixteen customers in the amounts shown in Exhibit A. The Defendants are jointly and severally liable for this amount of restitution.

45. The Court finds that a civil penalty is not warranted.

46. To the extent any of these Conclusions of Law constitute Findings of Fact, they are hereby adopted as both.

III. Conclusion

47. Based on the foregoing the Court finds that the Defendants have violated Section 4c(b) of the Act and Sections 33.10 and 166.3 of the Regulations.

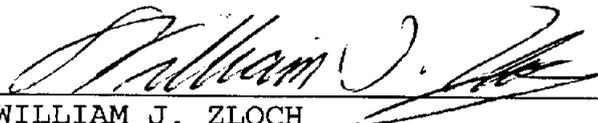
48. Defendants Matrix Trading Group, Inc. Christopher Smithers and David Wedeen are permanently enjoined from engaging in conduct violative of Section 4c(b) of the Act and Sections 33.10 and 166.3 of the Regulations and from engaging in any commodity-related activity, including soliciting new customers. Moreover, Defendants Smithers and Wedeen are permanently enjoined from trading commodity futures and options on futures on behalf of any other person or entity, including, but not limited to, any association, partnership, corporation, or trust.

49. The Defendants are ordered to make full restitution to the sixteen customers listed in Exhibit A in the amount of

\$299,129.20.

A separate Final Judgment will be entered herein consistent with the Court's Findings of Fact & Conclusions of Law.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 3rd day of OCTOBER, 2002.


WILLIAM J. ZLOCH
Chief United States District Judge

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EXHIBIT A

SCHEDULE OF CUSTOMER LOSSES

CUSTOMER	AMOUNT OF LOSS
MAUDINE BRUBAKER	\$207,000.00
WILLIAM MINOR	\$11,7000.00
HARRY BECKWITH	\$5,000.00
KAHALIF BREAU	\$1,000.00
AN LAM	\$1,8000.00
MIKE MCCARTY	\$37,000.00
RONALD MERCATANTE	\$5,000.00
OSCAR L. OCERCASH, Jr.	\$2,872.20
J. MICHAEL PEERY	\$1,800.00
RYAN RAY	\$9,000.00
ROBERT REED	\$7,500.00
DAVID S. SAVAGE	\$1,567.00
LARRY SAYER	\$2,000.00
THOMAS SERO	\$1,135.00
DUNCAN A. STEWART	\$4,800.00
TOTAL	\$299,129.20