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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

20 **COMMODITY FUTURES TRADING**
21 **COMMISSION,**

22 **Plaintiff,**

23 vs.

24 **DBS Capital, Inc. and Douglas Stevens**

25 **Defendants.**

26 **C 03 - 1379 VRW**
27 Case No.

28 **COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE RELIEF
AND FOR CIVIL PENALTIES
UNDER THE COMMODITY
EXCHANGE ACT, AS AMENDED,
7 U.S.C. §§ 1-25**

29 **I.**

30 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

31 **A. Jurisdiction**

32 1. Section 2(c)(2)(B) of the Commodity Exchange Act, as amended, (the "Act") 7
33 U.S.C. § 2 (2001), expressly grants the Commodity Futures Trading Commission
34 ("Commission") jurisdiction over certain retail transactions in foreign currency that are contracts
35 for the sale of a commodity for future delivery, including the transactions alleged in this

36 Complaint

38 ORIGINAL
39 FILED

40 MAR 31 2003

41 E-filing

42 RICHARD W. WICKING
43 U.S. DISTRICT COURT OF CALIFORNIA

44 SEALED
45 BY COURT ORDER

1 Complaint. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7
2 U.S.C. § 13a-1 (2001), which authorizes the Commission to seek injunctive relief against any
3 person whenever it shall appear to the Commission that such person has engaged, is engaging, or
4 is about to engage in any act or practice constituting a violation of any provision of the Act or
5 any rule, regulation or order thereunder.

6 **B. Venue**

7 2. Venue properly lies with the Court pursuant to Section 6c of the Act, in that the
8 Defendants are found in, inhabit, or transact business in this District, and the acts and practices in
9 violation of the Act have occurred, are occurring, or are about to occur within this district.

10 **C. Intradistrict Assignment**

11 3. It is appropriate to assign this case to the San Francisco Division because
12 Defendants are found in, inhabit, or transact business in this division, and the acts, and practices
13 in violation of the Act have occurred, are occurring, or are about to occur within this division.
14

15 **II.**

16 **SUMMARY**

17 4. From at least 1998 through March 21, 2003, the defendants Douglas B. Stevens
18 (“Stevens”) and DBS Capital, Inc. (“DBS”) (collectively, the “defendants”) have operated a
19 foreign currency trading firm in San Francisco and have solicited at least \$5 million, if not
20 significantly more, from approximately 200 retail customers across the country to trade illegal
21 off-exchange foreign currency futures contracts. The defendants misappropriated customer
22 funds for personal and business-related uses, including using customer funds to gamble. To the
23 extent that defendants traded customer funds, defendants consistently lost money trading. The
24 defendants concealed their trading losses and misappropriation from customers by issuing false
25 account statements, and by informing customers both orally and in writing, that their trading
26 accounts were consistently profitable. On March 21, 2003, the defendants notified customers
27 that DBS was shutting its doors because they had insufficient funds to cover customers’
28 purported positive account balances.

1 5. Since at least December 21, 2000, the defendants have violated Sections
2 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2001) and Commission Regulations
3 §1.1(b)(1)-(3), 17 C.F.R. §1.1(b)(1)-(3) (2002), by misappropriating customer funds, and
4 providing false account statements and information both orally and in writing.

5
6 6. Since at least December 21, 2000, the defendants have violated Section 4(a) of
7 the Act, 7 U.S.C. §6(a) (2001), by offering and selling off-exchange foreign currency futures
8 contracts that are not conducted on or subject to the rules of a board of trade designated or
9 registered by the Commission as a contract market or derivatives transaction execution facility
10 for such commodity, or executed or consummated by or through a contract market member.

11 7. Accordingly, pursuant to Section 6c of the Act, as amended by the CFMA, 7
12 U.S.C. § 13a-1 (2001), Plaintiff Commission brings this action to enjoin the unlawful acts and
13 practices of Defendants and to bar them from engaging in any commodity-related activity,
14 including soliciting new customers or customers' funds. In addition, the Commission seeks civil
15 monetary penalties in the amount of not more than the higher of \$120,000 or triple the monetary
16 gain to Defendants for each violation of the Act, disgorgement of Defendants' ill-gotten gains,
17 restitution to customers, prejudgment interest and such other relief as this Court may deem
18 necessary or appropriate.

19
20 8. Defendant Stevens is a controlling person of DBS and as such is liable for DBS's
21 violations of Sections 4(a) and 4b(a)(2)(i)-(iii) of the Act and Commission Regulation 1.1(b)(1)-
22 (3), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

23 9. Unless enjoined by this Court, the defendants are likely to continue to engage in
24 the acts and practices alleged in this Complaint and similar acts and practices, as more fully
25 described below.

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III.

THE PARTIES

10. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2001), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2002).

11. Defendant DBS Capital, Inc. is a California corporation incorporated in January 1997. DBS's principal place of business is 1255 Post Street, San Francisco, CA 94104. From July 1997 through October 1998, DBS was registered with the Commission as a Commodity Pool Operator ("CPO"). DBS has not been registered with the Commission in any capacity since it withdrew its registration as a CPO in October 1998.

12. Defendant Douglas Stevens resides at 320 Northgate Ave., Daly City, CA 94015. DBS's incorporation documents list Stevens as the President of DBS. Stevens was registered as an associated person ("AP") and listed as a principal of DBS from July 1997 until October 1998. Although DBS withdrew its registration as a CPO in October 1998, Stevens continues to act as its President. Stevens is also registered as an AP and listed as a principal of Premier Trading Group ("Premier"), a registered CPO and Commodity Trading Advisor ("CTA") from May 1999 until the present. Stevens is the President of Premier.

IV.

FACTS

A. Solicitation of Customers

13. Since at least 1998, and continuing through the present, the defendants have solicited the retail public to buy and sell foreign currency contracts to speculate on the movement of foreign currency prices in the purported foreign currency "spot" market. In reality, Defendants are offering illegal foreign currency futures contracts to retail customers.

14. Since at least 1998 and continuing through the present, the defendants have solicited at least \$5 million dollars from at least 200 retail customers.

1 15. The defendants solicited prospective customers via the DBS Internet website
2 located at www.dbscapital.com, as well as by telephone solicitations and word-of-mouth.

3 16. The DBS website and DBS Sales Brochures tout the profitability of foreign
4 currency investments by claiming that a 100% rate of return on investments is not uncommon
5 and that foreign currency investment provides the highest returns.

6 17. The defendants informed customers, both orally and in writing, that their trading
7 accounts were consistently profitable; as alleged below, those statements were false.

8 18. As a result of these false statements, some customers encouraged their friends and
9 family members to invest with DBS.

10 **B. The DBS Investment**

11 19. The defendants required prospective customers to fill out DBS account opening
12 documents.

13 20. The DBS account opening documents state that DBS, among others, “may act on
14 the other side of the customer order by the purchase or sale for an account in which DBS or any
15 person affiliated with DBS has a direct or indirect interest.”

16 21. The defendants instructed customers to wire money or make their checks payable
17 to DBS.

18 22. The defendants deposited customers’ checks into an account in Stevens’s name.

19 23. Beginning around November 2001, the defendants opened four trading accounts
20 in the name of DBS at Refco FX Advisors, a foreign currency trading firm (the “Refco
21 accounts”).

22 24. Stevens was the authorized signatory for the Refco accounts.

23 25. Stevens had sole trading authority over the Refco accounts.

24 26. The defendants did not disclose to Refco that the Refco accounts contained funds
25 of customers other than DBS.

26 27. Beginning around November 2001, and continuing through the present, the
27 defendants transferred approximately \$1.2 million dollars of customer funds to the Refco
28 accounts.

1 **C. Defendants Misappropriated Customer Funds, Made Misrepresentations**
2 **and Issued False Statements to Customers**

3 28. Starting in at least 1998 and continuing through approximately March 2003, the
4 defendants provided DBS trading account statements to customers on a weekly and sometimes
5 daily basis. The trading account statements purport to show the trade date, the type of currency
6 traded, the exchange rate, commissions charged, the account balance and the profit and loss in
7 each account.

8 29. During the same time period, the trading account statements the defendants sent
9 to DBS's customers showed that the customer trading accounts were consistently profitable.
10 Defendants also provided oral reports to customers purportedly confirming that the defendants
11 were profitably trading on behalf of customers.

12 30. On or about March 5, 2003, a number of DBS customers asked Stevens to verify
13 that the trade information included on their account statements was true and accurate.

14 31. On or about March 19, 2003, Stevens showed these customers purported Refco
15 account statements, which reflected that DBS's account at Refco had an approximate balance of
16 \$11 million.

17 32. Refco account records indicate that on or about March 19, 2003, the four Refco
18 accounts had a combined account value of less than \$100,000.

19 33. On or about March 12, 2003, the defendants provided at least one customer with
20 an account statement purporting to show that his DBS account value was approximately
21 \$196,833.07.

22 34. On or about March 14, 2003, the defendants provided at least one customer with
23 an account statement purporting to show that his DBS account value was approximately
24 \$206,924.33.

25 35. On or about March 14, 2003, the defendants provided at least one customer with
26 an account statement purporting to show that his DBS account value was approximately
27 \$263,167.43.

1 36. On or about March 19, 2003 the defendants provided at least one customer with
2 an account statement purporting to show that his DBS account value was approximately
3 \$111,693.75.

4 37. On or about March 21, 2003, the defendants sent DBS customers a letter stating
5 that DBS would be “shutting its doors” and DBS did “not have the funds available to pay its
6 clients in full.” The letter went on to state that DBS was going to disburse the remaining
7 customer funds based on each DBS customer’s account size and the “one time payment will be a
8 very small proportion to what your accounts reflected on March 14, 2003.” The letter was
9 signed by Stevens.

10 38. Refco account records indicate that on March 21, 2003, the four Refco accounts
11 had a combined account value of less than \$100,000.

12 39. Stevens has admitted that, beginning in 1998, he consistently lost money trading
13 customer funds, and he covered up the losses by issuing false account statements to the DBS
14 customers.

15 40. Stevens has also admitted that he misappropriated DBS customer funds to pay for
16 personal and business-related expenses, such as to fund a gambling trip to the Peppermill casino
17 in Reno, Nevada and to pay for the business expenses of Premier Trading Group, a firm he
18 owned and operated.

19 **D. Defendants’ Purported Foreign Currency Transactions Are Illegal Futures**
20 **Contracts**

21 41. The defendant DBS acted as the unlawful counterparty to all of the transactions
22 entered into by the retail customers.

23 42. The defendants purport to offer contracts in “spot” foreign currency to retail
24 investors, which in reality are illegal off-exchange futures contracts. The foreign currency
25 contracts that Defendants offer and sell are futures contracts because they have the
26 characteristics indicative of a futures contract.
27
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1 43. The contracts represent contracts for future delivery of foreign currencies that are
2 cash settled in US dollars. The prices are established at the time the contracts are initiated, and
3 may be settled through offset, cancellation, cash settlement or other means to avoid delivery.

4 44. The defendants market the DBS contracts to the general public as a means to
5 speculate and profit from anticipated price fluctuations in the markets for these currencies.
6

7 45. Unlike parties to a spot transaction, small retail investors, such as DBS's
8 customers, who purchase these futures contracts, typically have no commercial need for the
9 foreign currency.

10 46. The defendants do not conduct their foreign currency futures transactions on or
11 subject to the rules of a board of trade that has been designated or registered by the Commission
12 as a contract market or derivatives transaction execution facility for such commodity.

13 47. The defendants do not execute or consummate their contracts by or through a
14 contract market, and the contracts are not evidenced by a record in writing, as required. As a
15 result, the contracts are illegal futures contracts.
16

17 **E. Controlling Person Liability**

18 48. Stevens is a controlling person of DBS and is listed on DBS's incorporation
19 documents and trading account opening statements as the President of DBS. Stevens also
20 managed the daily operations of DBS. Specifically, Stevens made the hiring, payroll and trading
21 decisions for DBS.
22

23 **V.**

24 **VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

25 49. Section 2(c)(2)(B)(i)-(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)-(ii) (2001), provides
26 that the CFTC shall have jurisdiction over an agreement, contract or transaction in foreign
27 currency that is a contract of sale of a commodity for future delivery, so long as the contract is
28 "offered to, or entered into with, a person that is not an eligible contract participant" unless the
counterparty, or the person offering to be the counterparty, is a regulated person or entity, as
defined therein.

1 induced, directly or indirectly, the acts constituting the violations of Sections 4b(a)(2)(i)-(iii) of
2 the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2001), and Commission Regulation 1.1(b)(1)-(3), 17 C.F.R.
3 § 1.1(b)(1)-(3)(2001), as described in this Count I. Pursuant to Section 13(b) of the Act, 7 U.S.C.
4 § 13c(b) (2001), Stevens is liable for DBS's violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7
5 U.S.C. § 6b(a)(2)(i)-(iii) (2001), and Commission Regulation 1.1(b)(1)-(3), 17 C.F.R.
6 § 1.1(b)(1)-(3)(2001), as described in this Count I.

7 56. Each fraudulent misrepresentation and omission and false statement by
8 defendants, including those specifically alleged herein, is alleged as a separate and distinct
9 violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2001), and
10 Commission Regulation 1.1(b)(1)-(3), 17 C.F.R. § 1.1(b)(1)-
11 (3)(2001).

12 COUNT II

13 VIOLATIONS OF SECTION 4(a) OF THE ACT: 14 SALE OF ILLEGAL OFF EXCHANGE FUTURES CONTRACTS

15 57. Paragraphs 1 through 56 are re-alleged and incorporated herein.

16 58. Since at least December 22, 2000 and continuing to the present, the defendants
17 have offered to enter into, executed, confirmed the execution of, or conducted an office or
18 business in the United States for the purpose of soliciting, accepting any order for, or otherwise
19 dealing in transactions in, or in connection with, a contract for the purchase or sale of a
20 commodity for future delivery when: (a) such transactions have not been conducted on or subject
21 to the rules of a board of trade which has been designated or registered by the CFTC as a
22 contract market or derivatives transaction execution facility for such commodity, and (b) such
23 contracts have not been executed or consummated by or through such contract market, in
24 violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001).

25 59. Since at least December 21, 2000 and continuing to the present, defendant
26 Stevens directly or indirectly controlled DBS and did not act in good faith or knowingly induced,
27 directly or indirectly, the acts constituting the violations of Section 4(a) of the Act, 7 U.S.C.
28 § 6(a) (2001), as described in this Count II. Pursuant to Section 13(b) of the Act, 7 U.S.C.

1 § 13c(b)(2001), Stevens is liable for DBS' violations of Section 4(a) of the Act, 7 U.S.C. § 6(a)
2 (2001), as described in this Count II.

3 60. Each foreign currency futures transaction not conducted on a designated contract
4 market or registered derivatives transaction execution facility made during the relevant time
5 period, including but not limited to those conducted by the defendants as specifically alleged
6 herein, is alleged as a separate and distinct violation of Section 4(a) of the Act, 7 U.S.C. § 6(a)
7 (2001).

8 **VI.**

9 **RELIEF REQUESTED**

10 WHEREFORE, the Commission respectfully requests that this Court, as authorized by
11 Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to the Court's own equitable powers, enter:

- 12 1. orders of preliminary and permanent injunction prohibiting defendants and any
13 other person or entity associated with them, including any successor thereof, from
14 engaging in conduct violative of Sections 4(a) and 4b(a)(2)(i)-(iii) of the Act and
15 Commission Regulation 1.1(b)(1)-(3);
- 16 2. an *ex parte* statutory restraining order and an order of preliminary injunction
17 restraining and enjoining defendants and all persons insofar as they are acting in
18 the capacity of their agents, servants, successors, assigns, and attorneys, and all
19 persons insofar as they are acting in active concert or participation with him who
20 receive actual notice of such order by personal service or otherwise, from directly
21 or indirectly:
 - 22 a. destroying, mutilating, concealing, altering or disposing of any books and
23 records, documents, correspondence, brochures, manuals, electronically
24 stored data, tape records or other property of defendants, wherever
25 located, including all such records concerning defendants' business
26 operations;
 - 27 b. refusing to permit authorized representatives of the Commission to
28 inspect, when and as requested, any books and records, documents,

1 correspondence, brochures, manuals, electronically stored data, tape
2 records or other property of defendants, wherever located, including all
3 such records concerning defendants' business operations; and

4 c. withdrawing, transferring, removing, dissipating, concealing or disposing
5 of, in any manner, any funds, assets, or other property, wherever situated,
6 including but not limited to, all funds, personal property, money or
7 securities held in safes, safety deposit boxes and all funds on deposit in
8 any financial institution, bank or savings and loan account held by, under
9 the control, or in the name of any of the defendants;

10 3. an order directing defendants to provide plaintiff immediate and continuing access
11 to their books and records, make an accounting to the Court of all of their assets
12 and liabilities, together with all funds they received from and paid to customers
13 and other persons;

14 4. an order directing defendants and any successors thereof, to disgorge, pursuant to
15 such procedure as the Court may order, all benefits received from the acts or
16 practices which constituted violations of the Act, as described herein, and interest
17 thereon from the date of such violations;

18 5. an order directing defendants to make full restitution to every customer whose
19 funds were received by them as a result of acts and practices which constituted
20 violations of the Act, as described herein, and interest thereon from the date of
21 such violations;

22 6. an order directing defendants to pay a civil penalty in the amount of not more than
23 the higher of \$120,000 or triple the monetary gain to Defendants for each
24 violation of the Act;

25 7. an order requiring defendants to pay costs and fees as permitted by 28 U.S.C.
26 §§ 1920 and 2412(a)(2) (2001); and
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1 8. such other and further remedial ancillary relief as the Court may deem
2 appropriate.
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4 Date: March 31, 2003

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