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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED UNDER SEAL

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Commodity Futures Trading Commission,

03 CIV _____

Plaintiff,

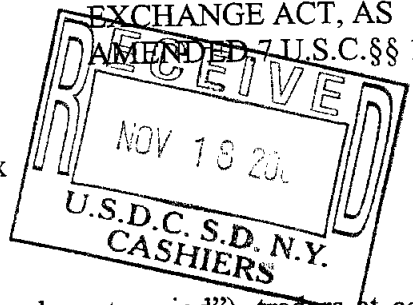
v.

COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF AND
FOR PENALTIES UNDER
THE COMMODITY
EXCHANGE ACT, AS

Ian Bursztyn, John Capuano, Anthony DiNapoli,
Anthony Iannuzzi, John Messina, Stephen Moore,
Vito Napoletano, Patrick Sweeney, Joseph Torre,
and Itradecurrency USA, LLC.

AMENDED, 7 U.S.C. §§ 1-27

Defendants.
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I. SUMMARY

1. From May 2003 to the present (“the relevant period”), traders at certain banks and their co-conspirators in the retail foreign currency business have engaged in a scheme to defraud and deceive the banks that they refer to as “knowledgeable trades.” By engaging in illegal foreign currency futures transactions, these co-conspirators have converted funds belonging to the banks and concealed the conversion from the banks.

2. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and in similar acts and practices, as more fully described below.

3. Accordingly, pursuant to Section 6c of the Act, 7 U.S. C. § 13a-1, the Commodity Futures Trading Commission (“Commission” or “CFTC”) brings this action to enjoin such acts and practices, prevent the dissipation of assets, and compel compliance with the provisions of the Act. In addition, the Commission seeks civil penalties, the appointment of an equity receiver, an accounting, restitution, disgorgement

and such other equitable relief as the Court may deem necessary or appropriate under the circumstances.

II. JURISDICTION AND VENUE

4. The Act and Commission Regulations establishes a comprehensive scheme for regulating the purchase and sale of commodity futures contracts, including over the counter retail foreign currency trading, and prohibit fraud in connection with such trading . This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), 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.

5. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), 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.

6. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2001), in that Defendants are found in, inhabit, or transact business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

III. THE PARTIES

7. Plaintiff United States Commodity Futures Trading Commission, (“CFTC” or “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).

8. Defendant Ian Bursztyn (“Bursztyn”) resides in Commack, New York. Bursztyn is listed as the owner and president of ISB Clearing Corp. (“ISB”), a futures commission merchant, registered with the Commission. Bursztyn has been listed with the Commission since March 17, 2003 as an associated person (“AP”) and principal of ISB.

9. Defendant Vito Napoletano (“Napoletano”) resides in Brooklyn, New York. Napoletano is an undisclosed owner of ISB. He has never been registered with the Commission in any capacity.

10. Defendant Anthony DiNapoli (“DiNapoli”) resides in Brooklyn, New York. DiNapoli has never been registered with the Commission.

11. Defendant John Capuano (“Capuano”) resides in Brooklyn, New York. He has never been registered with the Commission.

12. Defendant Patrick Sweeney (“Sweeney”) resides in Freehold, New Jersey. Sweeney has never been registered with the Commission.

13. Defendant Joseph Torre (“Torre”) resides in Old Bridge, New Jersey. Torre has never been registered with the Commission.

14. Defendant John Messina (“Messina”) resides in Brooklyn, New York. Messina has never been registered with the Commission.

15. Defendant Itradecurrency USA, LLC (“ITC”) is a New York corporation, incorporated in 2001, with offices at 560 Route 303, Orangeburg, NY 10962.

16. Defendant Steven Moore ("Moore") resides in New York, New York. Moore is ITC's President and Chief Executive Officer, and part owner. Moore is listed as a principal and manager of ITC, along with Anthony Iannuzzi, on ITC's website.

17. Anthony Iannuzzi ("Iannuzzi") resides in Goshen, New York. Iannuzzi is Secretary of ITC and listed as a principal and manager of ITC, along with Moore, on ITC's website.

IV. STATUTORY AND REGULATORY BACKGROUND

18. Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001) provides that unless exempted by the Commission, it shall be unlawful for any person to offer to enter into, execute, confirm the execution of, or conduct an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity; (b) such contracts have not been executed or consummated by or through such contract market; and (c) such contract is not evidenced by a written record showing the date, parties, property covered, price, and terms of delivery.

19. Regulation § 1.1(b) makes it unlawful for any person, directly or indirectly, in or in connection with any account, agreement, contract, or transaction that is subject to the Commission's jurisdiction over certain transactions in foreign currency that are contracts for the sale of a commodity for future delivery to, among other things, cheat

or defraud or attempt to cheat or defraud any person, or willfully to deceive or attempt to deceive any person by any means whatsoever.

20. Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), any person who commits, or who willfully aids, abets, counsels, commands, induces, procures the commission of, a violation of any of the provisions of the Act, or any of the rules regulations or orders issued pursuant to the Act, or who in combination or concert with any other person in any such violation may be held responsible for such violation as a principal.

21. Section 2(c)(2)(B)(i) and (ii) of the Act, 7 U.S.C. § 2(c)(2)(B) (i) and (ii) (2001) gives the Commission jurisdiction over an agreement, contract, or transaction in foreign currency, including the transactions alleged in the Complaint, that is a contract of sale of a commodity for future delivery or an option on such a contract that is offered to, or entered into with, a person who is a member of the retail public, who is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, is a regulated entity specified in the Act.

22. The CFTC has jurisdiction over the specific illegal transactions in retail foreign currency alleged herein because the counterparties to the foreign currency futures transactions at issue in this Complaint, are not eligible contract participants for retail foreign currency transactions, 7 U.S.C. §1a(12), and also are not regulated counterparties pursuant to Section 2(c)(2)(B)(ii).

23. Section 1a(12) of the Act, 7 U.S.C. §1a(12), defines an “eligible contract participant” as a financial institution, an insurance company, an investment company, a commodity pool that has total assets exceeding \$5 million and is formed and operated by

a person subject to regulation, a corporation that has total assets exceeding \$10,000,000, a broker or dealer or an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered person makes and keeps records under Section 15C(b) of 17(h) of the Securities and Exchange Act, or a futures commission merchant subject to regulation under the Commodity Exchange Act.

24. Section 2(c)(2)(B)(ii) (I) – (VI) of the Act identifies an appropriate counterparty as a financial institution, broker dealer or its associated persons, futures commission merchant or its affiliated persons, insurance company, financial holding company or investment bank holding company.

V. FACTS

25. During the relevant period, traders at certain banks and their co-conspirators in the retail foreign currency business have engaged in a scheme to defraud the banks that they refer to as a “knowledgeable trades” scheme. Through these “knowledgeable trades,” defendants cheated, defrauded and deceived these banks by knowingly and willfully engaging in illegal foreign currency futures transactions to convert bank funds for their own use and to conceal this conversion from the banks. Ultimately, the traders and their co-conspirators received and shared the knowledgeable trades scheme’s proceeds in cash.

26. The knowledgeable trades scheme has involved transactions with traders at several banks, including UBS-Warburg and JP Morgan Chase (the “defrauded banks”).

27. The knowledgeable trades scheme has operated as follows. In Step 1, in order to embezzle money from his employer, a trader at a defrauded bank (Bank #1) initiates two foreign currency transactions, in which he buys and sells foreign currency,

between Bank #1 and a co-conspirator at another bank ("Bank #2"). The transactions are arranged through a co-conspirator at an interbank broker. Bank #1, the defrauded bank, is on the losing side of these transactions. In Step 2, the interbank broker arranges for another set of foreign currency transactions between Bank #2 and a co-conspirator at ITC, a retail foreign currency dealer. Bank #2 is on the losing side of these transactions. In Step 3, ITC engages in two illegal foreign currency futures transactions in which it loses money to a retail customer, a Federal Bureau of Investigation account ("FBI account"), which maintains accounts at a futures commission merchant and ITC. In Step 4, the individual who holds the FBI account splits the cash proceeds with his co-conspirators. The persons and entities involved in all of these transactions know from the outset that they are participating in illegal conversions of funds from the banks involved.

28. The following transactions on July 15, 2003 illustrate these steps. A trader on the UBS-Warburg's Euro desk entered into a set of U.S. Dollar-Euro transactions that intentionally resulted in a loss of \$14,700 for UBS-Warburg. The UBS-Warburg trader contacted Patrick Sweeney ("Sweeney"), his co-conspirator at Garban-Intercapital ("Garban"), an interbank broker, and fraudulently arranged a set of U.S. Dollar-Euro transactions between UBS-Warburg and RZB, so that RZB would end up with the profit. Sweeney recorded the details of these transactions, including the dates, amount of currency and price. Sweeney contacted ITC and arranged another set of U.S. Dollar-Euro currency transactions between RZB and ITC, whereby ITC would end up with the profit which ITC knew represented funds belonging to UBS-Warburg. ITC then created a set of U.S. Dollar-Euro transactions between ITC and the FBI account, with the result that the FBI account profited. The co-conspirators split the cash proceeds of these and other

transactions on August 8, 2003. Again, ITC knew from the outset that the transactions into which it ultimately entered were intended to (and then did) convert bank funds.

29. During the relevant time period, there have been more than 60 transactions such as those described above.

30. ITC is committing fraud in connection with transactions in foreign currency in violation of Section 1.1 of the Commission's Regulations. The foreign currency transactions between ITC and the FBI account were designed to cheat or defraud (or attempt to cheat or defraud) and to deceive the banks in this scheme by means of converting bank funds to Defendants' own use and benefit.

31. Burzstyn and Napoletano, the owners of the futures commission merchant where the FBI maintains its account, have knowingly facilitated and profited from the knowledgeable trades scheme.

32. At ITC, Moore and Iannuzzi have knowingly facilitated and profited from the knowledgeable trades scheme.

33. During the relevant time period, in addition to Sweeney, two other interbank brokers at Garban, Torre and Messina, have knowingly aided and abetted the fraudulent conversion of bank funds alleged in this Complaint, by facilitating the original fraudulent bank trades and the subsequent transactions, which include the transactions between ITC and the FBI account, for the purpose of converting bank funds, for their own use and the use of others. Two former interbank brokers, DiNapoli and Capuano, also have knowingly aided and abetted the fraudulent trades alleged in this complaint by introducing the Garban traders to Napoletano and Burzstyn and assisting in the transfer of

cash from the ITC-FBI account transactions to the bank traders. DiNapoli and Capuano have knowingly shared in the profits from the knowledgeable trades scheme.

The Transactions Between ITC and the FBI account Are Illegal, Off-Exchange Futures Contracts

34. The foreign currency transactions between ITC and the FBI account are illegal off-exchange futures contracts. The contracts concern the purchase or sale of foreign currency for future delivery at prices or using pricing formulas that are established at the time the contracts are initiated, and are fulfilled through offset to avoid delivery.

35. The FBI account does not intend to, and does not, take or make delivery of the foreign currencies it purchases or sells. The FBI account does not maintain any accounts at any foreign financial institution to take or make delivery of foreign currency for any investor. ITC does not require that the FBI account have an account in which it can take or make delivery of a foreign currency. There is never any conversion from U.S. Dollars to another currency. All trades are liquidated by offsetting the position by entering into an equal and opposite transaction and thereby taking the profits in dollars. The terms and conditions of ITC's contracts are standardized.

ITC and the FBI Account Are Not Eligible Contract Participants or Enumerated, Regulated Counterparties

36. Under Section 2(c)(2)(B) of the Act, the Commission has jurisdiction over foreign currency futures transactions that are offered or entered into with a persons who are not eligible contract participants, and only if the counterparty is one of the enumerated, regulated entities. Neither ITC nor the FBI account is an eligible contract participant, Section 1a(12) of the Act, 7 U.S.C. §§ 1a(12), and neither is an enumerated,

regulated counterparty. Section 2(c)(2)(B)(ii)(I) – (VI) of the Act, 7 U.S.C. §2(c)(2)(B)(ii)(I) – (VI).

VI.

COUNT I

**VIOLATION OF SECTION 4(a) OF THE ACT: Sale of Illegal Off-Exchange
Futures Contracts**

37. Paragraphs 1 through 36 are re-alleged and incorporated herein.

38. During the relevant time period, ITC has offered to enter into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade designated or registered by the CFTC as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts have not been executed or consummated by or through such contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001).

39. During the relevant time period, Moore and Iannuzzi, as the owners and operators of ITC, have directly or indirectly controlled ITC and have not acted in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count I. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), Moore and Iannuzzi are liable for the violations of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001), described in this Count I, to the same extent as ITC.

40. Each foreign currency futures transaction not conducted on a designated contract market or registered derivatives transaction execution facility made during the

relevant time period, including but not limited to those conducted by Defendants as specifically alleged herein, is alleged as a separate and distinct violation of Section 4(a) of the Act.

COUNT II

VIOLATION OF COMMISSION REGULATION 1.1(b): Fraud In The Sale Of Futures Contracts

41. Paragraphs 1 through 40 are re-alleged and incorporated herein.

42. During the relevant time period, ITC cheated or defrauded or attempted to cheat or defraud various banks, and willfully deceived or attempted to deceive various banks by, among other things, converting funds that had been misappropriated from various banks. Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002). Defendants' conduct was in connection with accounts, agreements, contracts or transactions in foreign currency that are contracts for the sale of a commodity for future delivery.

43. Napoletano, Bursztyn, Sweeney, Torre, Messina, DiNapoli, Capuano, Moore and Iannuzzi are liable as aiders and abettors under 13(a) of the Act, in that they had knowledge of the wrongdoing underlying the violation of Regulation 1.1(b) and they intentionally assisted the primary wrongdoer.

44. During the relevant time period, Iannuzzi and Moore, as the owners and operators of ITC, directly or indirectly controlled ITC and its schemes and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count II. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), as described in this Count II, Iannuzzi and Moore are liable for the violations described in this Count I, to the same extent as ITC.

45. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2002), ITC is liable for any violations of Section 1.1(b) of the Regulations by its officers, directors, managers, employees, and agents, in that all such violations were within the scope of their office or employment with ITC.

46. Each material misrepresentation or omission, knowing conversion of funds, and willful deception made during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Commission Regulation 1.1(b).

VII. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), and pursuant to the Court's own equitable powers:

A. Find that Defendants ITC, Moore and Iannuzzi have violated Section 4(a) of the Act, 7 U.S.C. §§ 6(a) and Defendants have violated Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002);

B. Enter an *ex parte* statutory restraining order and an order of preliminary injunction restraining and enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored

data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;

2. refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;
3. withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of any of the Defendants; and
4. appointing a temporary receiver to take into his or her immediate custody, control, and possession all cash, cashier's checks, funds, assets, and property of Defendants and Relief Defendants, including funds or property of investors wherever found, whether held in the name of any of the Defendants, Relief Defendants, or otherwise, including, but not limited to, all books and records of account and original entry, electronically stored data, tape recordings, all funds, securities, contents of safety deposit boxes, metals, currencies, coins, real or personal property, commodity futures trading accounts, bank and trust accounts, mutual fund accounts, credit card line-of-credit accounts and other assets, of whatever kind and nature and wherever situated, and authorizing, empowering

and directing such receiver to collect and take charge of and to hold and administer the same subject to further order of the Court, in order to prevent irreparable loss, damage and injury to investors, to conserve and prevent the dissipation of funds, and to prevent further evasions and violations of the federal commodity laws by the Defendants;

C. Enter orders of preliminary and permanent injunctions prohibiting Defendants and any other person or entity associated with them, including any successor thereof, from:

1. engaging in conduct, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) and Regulation 1.1(b), 17 C.F.R. § 1.1(b); and
2. soliciting funds for, engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;

D. Enter an order directing Defendants to provide Plaintiff immediate and continuing access to their books and records;

E. Enter an order appointing a permanent equity receiver to take into his or her immediate custody, control, and possession all cash, cashier's checks, funds, assets, and property of Defendants, including funds or property of investors wherever found, whether held in the name of any of the Defendants or otherwise, including, but not limited to, all books and records of account and original entry, electronically stored data, tape recordings, all funds, securities, contents of safety deposit boxes, metals, currencies, coins, real or personal property, commodity futures trading accounts, bank and trust accounts, mutual fund accounts, credit card line-of-credit accounts and other assets, of

whatever kind and nature and wherever situated, and authorizing, empowering and directing such receiver to collect and take charge of and to hold and administer the same subject to further order of the Court, in order to prevent irreparable loss, damage and injury to investors, to conserve and prevent the dissipation of funds, and to prevent further evasions and violations of the federal commodity laws by the Defendants;

F. Enter an order directing Defendants to take such steps as are necessary to repatriate to the territory of the United States all of its funds and assets described herein which are held by Defendants or are under their direct or indirect control, jointly or singly, and deposit such funds into the Registry of this Court and provide the Commission, equity receiver, and the Court with a written description of the funds and assets so repatriated;

G. Enter an order directing Defendants, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest thereon from the date of such violations;

H. Enter an order directing Defendants to make full restitution to those whose funds were received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;

I. Enter an order assessing a civil monetary penalty against each defendant in the amount of not more than the higher of \$120,000 or triple the monetary gain to the defendant for each violation by the defendant of the Act and Commission Regulations;

J. Enter an order directing that Defendants make an accounting to the court of all their assets and liabilities, together with all funds they received from and paid to clients and other persons in connection with commodity futures transactions or purported commodity futures transactions, and all disbursements for any purpose whatsoever of funds received from commodity transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind, from, but not limited to from May 2003, through and including the date of such accounting;

K. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2001); and

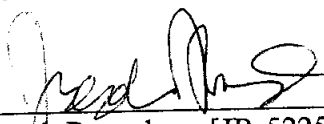
L. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: New York, New York
November 17, 2003

U.S. COMMODITY FUTURES TRADING COMMISSION

Stephen J. Obie
Regional Counsel

By: _____


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