

03 CV 9126
03 CIV

U.S. Commodity Futures Trading Commission,

Plaintiff,

v.

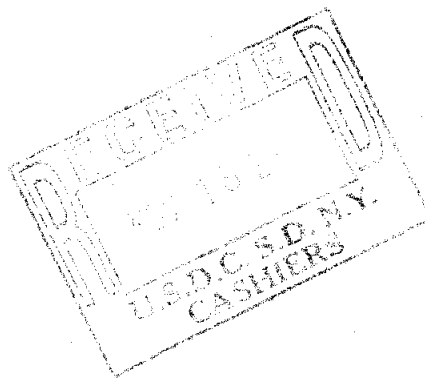
Walter Scott Lev & Associates, LLC,
Michael Ross,
Maxim Yampolsky,
Edward Sapienza, Jr.,
Frank Schiavone,
Michael Korobov, and
Boris Shuster, a/k/a/ Robert Shuster

Defendants, and

Michael Edwards Trading Group, Ltd.,
JSG Freight Systems, Inc.,
Shuster, Shuster & Shuster, Ltd.,
BLJ Consulting, Inc.,
Winn Industries Division of Ontario, Limited
(1430214 Ontario, Limited), and
The Fuzzy Group, Inc.,

Relief Defendants.

COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE
RELIEF AND FOR PENALTIES
UNDER THE COMMODITY
EXCHANGE ACT, AS
AMENDED, 7 U.S.C. §§ 1-27f



I.

SUMMARY

1. From at least January 1999 to at least April 2002 (“relevant time period”), Walter Scott Lev & Associates, LLC (“WSL”), Michael Ross (“Ross”), Maxim Yampolsky (“Yampolsky”), Edward Sapienza, Jr. (“Sapienza”), Frank Schiavone (“Schiavone”), Michael Korobov (“Korobov”), and Boris Shuster, a/k/a/ Robert Shuster (“Shuster”) (collectively, the “Defendants”) fraudulently solicited and obtained approximately \$21.9 million from more than 850 customers for the purpose of trading foreign currency contracts which were, in fact, illegal

off-exchange foreign currency futures contracts. Instead of actually trading their clients' funds, Defendants misappropriated a substantial portion of the \$21.9 million obtained from customers. At the same time, Defendants misled investors with false monthly account statements showing considerable profits. Defendants then abruptly notified customers that alleged catastrophic trading losses had wiped out their funds.

2. With these practices, Defendant WSL violated Sections 4(a) and 4b(a)(2) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 6(a) and 6b(a)(2) (2001) and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002).

3. With the aforementioned practices, Defendants Ross, Yampolsky, Sapienza, Schiavone, Korobov, and Shuster violated Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2001), and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002).

4. Defendants Ross, Yampolsky, Sapienza, Schiavone, and Korobov are liable as controlling persons for the violations of WSL of Sections 4(a) and 4b(a)(2) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2) (2001), and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

5. WSL is liable for the violations of Section 4b(a)(2) of the Act and Commission Regulation 1.1 by its officers, directors, managers, employees, and agents, 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), as all such violations were within the scope of their office or employment with WSL.

6. From at least January 1999 to at least April 2002, Michael Edwards Trading Group, Ltd. ("METG"), JSG Freight Systems, Inc. ("JSG"), Shuster, Shuster & Shuster, Ltd. ("SSS"), BLJ Consulting, Inc. ("BLJ"), Winn Industries Division of Ontario, Limited or

1430214 Ontario, Limited (“Ontario”), and The Fuzzy Group, Inc. (“Fuzzy”) (collectively, the “Relief Defendants”) received the fraudulently obtained funds of WSL customers.

7. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), Plaintiff U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) brings this action to enjoin the unlawful acts and practices of Defendants to compel their compliance with the provisions of the Act and Regulations thereunder. In addition, the Commission seeks civil penalties, an *ex parte* statutory restraining order, an order freezing the assets of the Defendants and Relief Defendants, a preliminary injunction, and the appointment of a receiver over any funds frozen to maintain the status quo for the victims of WSL. Furthermore, the proposed action will ultimately seek permanent injunctive relief and other relief, including restitution, disgorgement, and civil monetary penalties.

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

II.

JURISDICTION AND VENUE

9. The Act prohibits fraud in connection with the trading of commodity futures contracts and establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts. 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. In addition, Section 2(c)(2)(B)(i) and (ii) of the Act, 7

U.S.C. § 2(c)(2)(B) (i) and (ii) (2001), corresponding to the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106-554, 114 Stat. 2763, clarifies the jurisdiction of Plaintiff, the CFTC, over certain transactions in foreign currency that are contracts for the sale of a commodity for future delivery, including the transactions alleged in this Complaint.

10. WSL, the counterparty to the foreign currency futures transactions entered into by investors as described above is not a proper counterparty for retail foreign currency transactions, and therefore the CFTC has jurisdiction over the transactions in retail foreign currency alleged herein.

11. 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

Plaintiff

12. Plaintiff, United States 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).

Defendants

13. Walter, Scott, Lev & Associates, LLC is a New York limited liability company organized in 1998 with an office at 90 John Street, Suite 407, New York, New York 10038. It

has never been registered with the Commission in any capacity. In addition, WSL is not a financial institution, a futures commission merchant (“FCM”), an affiliate of a FCM, a broker or dealer, an associated person of a broker or dealer, an insurance company, a regulated subsidiary of an insurance company, a financial holding company, or an investment bank holding company.

14. Michael Ross resides in New York, New York. Ross, who went by the nickname “Spot,” was one of the four creators of WSL. Ross was President and Chief Executive Officer of WSL and a signatory, along with Yampolsky, on all WSL bank accounts. Ross has never been registered with the Commission.

15. Maxim Yampolsky resides in New York, New York. Yampolsky was one of the four creators of WSL and a Managing Director. Yampolsky was a signatory, along with Ross, on all WSL bank accounts. Yampolsky has never been registered with the Commission.

16. Edward Sapienza, Jr. (“Sapienza”) resides in New York, New York and Howard Beach, New York. Sapienza was one of the four creators of WSL. Sapienza is the President of both Proposed Relief Defendants Michael Edwards Trading Group, Ltd. and JSG Freight Systems, Inc. Sapienza has never been registered with the Commission.

17. Frank Schiavone resides in Howard Beach, New York. Schiavone was one of the four creators of WSL and served as WSL Treasurer. Schiavone has never been registered with the Commission.

18. Michael Korobov resides in New York, New York. Korobov, who also went by the nickname “Little,” was Treasurer and Chief Operating Officer of WSL. Korobov has never been registered with the Commission.

19. Boris Shuster, a/k/a Robert Shuster resides in Brooklyn, New York and Huntingdon Valley, Pennsylvania. Shuster was the principal solicitor at WSL while he was

employed there. Shuster is also the Chairman or Chief Executive Officer (“CEO”) of Relief Defendant SSS and the sole signatory on SSS’s bank account. Shuster has never been registered with the Commission.

Relief Defendants

20. Michael Edwards Trading Group, Ltd. is a New York corporation incorporated in June 1998 with an office at 7904 156th Avenue, Howard Beach, New York 11414. Sapienza is the President and Secretary of METG and the sole signatory on METG’s bank account. METG has never been registered with the Commission.

21. JSG Freight Systems, Inc. is a New York corporation incorporated in April 1999 with an office at 137-26 96th Street, Ozone Park, New York 11417. Sapienza is the sole signatory on JSG’s bank account. JSG has never been registered with the Commission.

22. Shuster, Shuster & Shuster, Ltd. is a New York corporation incorporated in 1999 with offices at 1 74th St., Apartment 4A, Brooklyn, New York 11209. Shuster is the CEO of SSS and the sole signatory on SSS’s bank account. SSS has never been registered with the Commission.

23. BLJ Consulting Corp. is a New York corporation incorporated in August 2001 with offices at 99-14 63rd Road, Rego Park, New York 11374 and 40006 Kensington Avenue, Philadelphia, Pennsylvania 19124. Yuriy Degtev is President of BLJ and the only authorized signer on the BLJ bank account. BLJ has never been registered with the Commission.

24. Winn Industries Division of Ontario Limited or 1430214 Ontario, Limited is a Canadian corporation with offices located at 7 Mary Gapper Crescent, Richmond Hill, Ontario, Canada L4C 7LB. Alexander Dzedets, a/k/a Sasha Dzedets, is the owner of Ontario and the only

authorized signer on the Ontario bank account. Ontario has never been registered with the Commission.

25. The Fuzzy Group, Inc. is a New York corporation incorporated in October 1999 with an office located at 110-40 72nd Avenue, # 6H, Forest Hills, New York 11375. Vadim Vitebsky is the Chairman or Chief Executive Officer of Fuzzy, and Michael Vitebsky is an authorized signer on the Fuzzy bank account held at J.P. Morgan Chase & Co. Bank. Fuzzy has never been registered with the Commission.

IV.

STATUTORY BACKGROUND

26. Section 2(c)(2)(B)(i)-(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)-(ii) (2001), provides that the CFTC shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, and is “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, of the person is” a regulated entity, as defined therein. Section 2(c)(2)(B)(i)-(ii) of the Act was enacted by Congress as part of the Commodity Futures Modernization Act of 2000 (“CFMA”) in an effort “to clarify the jurisdiction of the Commodity Futures Trading Commission over certain retail foreign exchange transactions and bucket shops that may not be otherwise regulated.” CFMA § 2(5), Pub. L. No. 106-554, 114 Stat. 2763 (2000).

27. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2001), defines an “eligible contract participant” as an individual with total assets exceeding \$10 million or exceeding \$5 million “and who enters into the agreement, contract, or transaction in order to

manage the risk with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.”

28. Before the effective date of the CFMA on December 21, 2000, the Commission through a provision known as the “Treasury Amendment,” had jurisdiction over transactions in foreign currency if they were futures transactions that were “conducted on a board of trade.” 7 U.S.C. § 2(a)(1)(A)(ii) (1994). The Act broadly defined a “board of trade” as “any exchange or association, whether incorporated or unincorporated, of persons who are engaged in the business of buying or selling any commodity or receiving the same for sale on consignment.” 7 U.S.C. § 1a(1) (1994).

29. 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.

30. Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a) (2001) provides in pertinent part that it is unlawful for any person in or in connection with any futures contract of sale of any commodity that is or may be used for hedging or determining the price basis of any transaction or for delivering any commodity in interstate commerce for or on behalf of any other person (i)

to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made any false report or statement thereof, or to enter or cause to be entered any false record, to or for such other person; (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract; or (iv) to bucket such order, or to fill such order by offset against the order of any other person. Prior to the enactment of the CFMA in December 2001, section 4b(a) of the Act provided, in relevant part, for the identical violations as those in 4b(a)(2) of the Act as it now reads.

V.

FACTUAL BACKGROUND

31. During the relevant time period, WSL's scheme operated in the following manner: (1) WSL's account executives first "coldcalled" unsophisticated members of the retail public and powerfully delivered WSL's hard sales pitches, (2) WSL then sent these prospective customers their promotional materials, including WSL's brochures, which inflated profit potential while downplaying risks associated with investments in foreign currencies, and fabricated account statements of other WSL customers, (3) after receiving customers' investments, WSL's account executives solicited more funds after sending them fabricated account statements reflecting large profits in their accounts, and (4) WSL's account executives advised customers usually by telephone and in their Monthly Trading Summaries that the company placed large trades in their accounts and the market moved against them, depleting the majority of funds remaining in their accounts.

32. WSL obtained approximately \$21.9 million from more than 850 customers in less than three and a half years. Less than one half of that amount was returned to customers during the relevant time period.

33. Suddenly, after many purportedly profitable months of trading activity in their accounts, WSL customers received account statements from WSL reflecting that their accounts had had suffered large losses substantially depleting their accounts. WSL customers received phone calls from WSL representatives claiming that the market had moved against them.

34. Only about \$6.25 million (less than thirty percent) of the approximately \$21.9 million in funds obtained by WSL went to an entity with the facility to trade foreign currency contracts. Of that \$6.25 million, approximately \$400,000 was transferred back to WSL from that firm. Transfers of customer funds from WSL to its purported clearing firm were made only during the months of January through April and July through October 2000, and April 2001. The clearing firm has claimed that any records concerning WSL have been destroyed.

Solicitations and Misrepresentations

35. WSL customers were initially contacted by WSL's account executives. Defendant Shuster, the primary solicitor, Defendant Yampolsky, or other WSL account executives would typically tell people that since the stock market was not doing well, investments in the foreign currency markets offered a safer and more lucrative earning potential. The account executives then suggested that investors review WSL's brochures and consider an investment in a managed currency trading account at WSL.

36. Account executives told prospective customers that WSL customers made large rates of return on their investments. One customer was told that WSL had received a 42 percent rate of return on its customers' investments. Another customer was told that he could expect to make a 25 to 45 percent annual rate of return on his WSL investment. Defendants then sent purported account statements of other WSL customers to substantiate account activity and

profitability of WSL accounts. In fact, those representations were untrue, and the purported account statements were phony.

Promotional Materials

37. Defendants misrepresented and/or omitted at least four key material facts in the promotional brochures, purported customer trading records and other information sent to prospective customers: (1) little or no money entrusted to WSL for the purposes of trading foreign currencies was actually traded; (2) the background, experience, and training of WSL and its staff were materially different than they were represented to be; (3) the profit potential of investments in foreign currencies was exaggerated while the associated risks were minimized; and (4) purported trading records of other WSL customers included with the brochures misrepresented the trading and profits in those customer accounts.

38. Prospective WSL customers were sent purported "actual" customer account statements with names and other identifying information blacked out. These statements always showed substantial monthly profits. In fact, these customer account statements were phony, and the so-called profits they reflected were fictitious.

Customers "Trading Losses"

39. Once prospective customers agreed to open accounts at WSL, they were sent account opening agreements, which affirmed that all funds deposited with WSL would be used for currency trading.

40. Customers were sent monthly account statements entitled "Monthly Trading Summaries" printed on WSL letterhead.

41. WSL account executives routinely called clients to discuss the purported profitability of their accounts and to encourage them to invest more money.

42. After a few months of profitable trading in their accounts, WSL customers routinely began to sustain apparent losses in their accounts. WSL customers were then typically solicited to invest more with WSL in order to recoup the so-called losses. Defendants tailored false trading records to reel in additional investments or to close out the customer accounts, as needed.

43. Defendants separated the trades into winning and losing pools. New accounts would be given winning trades from the winning pool for the first three months of the account. After that, accounts were switched back and forth between the winning and losing pools approximately every three months. Defendants allocated the financial results of trades to the winning or losing pools only after the trades were consummated, such that, for example, clients who had discussed sending more money would keep making money.

44. Once it became apparent that a customer was not going to invest any additional money with WSL, the customer's account sustained a catastrophic loss, substantially depleting the account. The customer was then sent a check for the small amount left in his or her account after the so-called loss had occurred.

45. By April 2002, of the approximately \$21.9 million obtained from customers since January 1999, only about \$9.35 million was returned to customers.

Illegal Futures Contracts

46. The foreign currency contracts that Defendants purported to offer and sell were futures. The contracts were for future delivery of foreign currencies that were cash settled in U.S. dollars. The prices or pricing formulas were established at the time the contracts were initiated and were settled through offset, cancellation, cash settlement or other means to avoid delivery.

47. WSL marketed its managed foreign currency trading accounts to individuals who had assets totaling less than \$5 million and had no business, personal or other need to take or make delivery in foreign currency or to hedge against movements in the foreign currency markets. Instead, investors entered into these transactions to speculate and profit from anticipated price fluctuations in the markets for these currencies.

48. Investors did not anticipate taking – and did not take – delivery of the foreign currencies they purchased as a consequence of these investments. WSL did not require its clients to set up banking relationships to facilitate delivery of the foreign currencies. Once the market moved in a favorable direction, investors expected, based on the representations made to them, WSL to liquidate their investments by authorizing the sale of the contract and taking the profits. The WSL customer account agreement makes reference to the margining and settlement of transactions in WSL customer accounts, and one full paragraph in the customer agreement defines settlement procedures whereby all profits and losses are reflected in customer account statements the following month. WSL's account agreement and solicitation materials provide that commissions are charged on a round-turn basis. Moreover, WSL's brochure assures customers that their principal investments will be protected because WSL will be responsible for all margin requirements, and positions will be exited when stop losses are triggered.

49. WSL was not a proper counterparty or an affiliate of a proper counterparty under the Act authorized to engage in foreign currency futures transactions with retail customers. WSL was not a financial institution, a broker or dealer, or an associated person of a broker or dealer. WSL was not a FCM, or an affiliate of a FCM. WSL did not conduct transactions on a facility designated as a contract market or registered as a derivatives transaction execution facility.

50. Defendants did not conduct their foreign currency futures transactions on or subject to the rules of a board of trade that had been designated by the CFTC as a contract market. Defendants did not conduct transactions on a facility registered as a derivatives transaction execution facility.

51. Prior to December 21, 2000, WSL's conduct was such that it operated as a board of trade based upon its being a public marketplace offering standardized futures contracts to buyers and sellers with the availability of price information and an execution and settlement mechanism. WSL mass marketed to small investors by providing a foreign currency trading facility that allowed its customers, with a minimum deposit, to become "traders" at its board of trade. WSL recruited traders, many of whom have no prior trading experience, and urged them to solicit the general public through cold calls to invest with WSL. WSL provided traders with brochures for use in soliciting potential customers. WSL also provided the mechanism for traders to get prices, make orders, execute orders, and offset those orders with matching opposite transactions. WSL further confirmed, both orally and in writing, that the traders' orders had been executed. WSL's orders were standardized, leveraged contracts of its own devise. The contracts were closed out by entering into an offsetting transaction rather than by taking delivery.

Misappropriation of Customer Money

52. Ross, Yampolsky, Sapienza, Schiavone, and Korobov each had their own individual American Express card, which debited from the WSL American Express business account. Each individual charged thousands of dollars on various personal expenses, such as fancy car leases, expensive restaurants, air travel, limousines, etc.

53. Additionally, of the approximately \$12.5 million taken in from customers net, Ross received at least \$581,000, Yampolsky received at least \$625,000, Sapienza received at

least \$38,000, Schiavone received at least \$96,000, Korobov received at least \$330,000, and Shuster received at least \$48,000.

54. METG received at least \$844,000 of fraudulently obtained customer funds from WSL. Of that, METG only transferred \$200 back to WSL's bank accounts. Sapienza is the President and Secretary of METG.

55. JSG received at least \$419,000 of fraudulently obtained customer funds from WSL. Of that, JSG transferred only about \$2,100 back to WSL's bank accounts. Sapienza is the only authorized signatory on the JSG account.

56. SSS received at least \$699,000 of fraudulently obtained funds from WSL. There is no record that any money flowed back from SSS to WSL customers or WSL's accounts. SSS's CEO and the signatory on its bank account is Shuster. SSS's New York commercial address is, in fact, Shuster's residential address.

57. BLJ received at least \$684,000 of fraudulently obtained funds from WSL. There is no record that any money flowed back from BLJ to WSL customers or WSL's accounts. BLJ then transferred the money to offshore banks.

58. Ontario received at least \$140,000 of fraudulently obtained customer funds from WSL. Upon information and belief, Ontario is a construction company based in Ontario, Canada. There is no record that any money flowed back from Ontario to WSL customers or WSL's accounts.

59. Fuzzy received at least \$81,000 of fraudulently obtained funds from WSL. There is no record that any money flowed back from Fuzzy to WSL customers or WSL's accounts.

Controlling Persons

60. Ross was one of four individuals who formed WSL. Ross signed most of the checks drawn on the WSL accounts. Ross signed documents as President and Chief Executive Officer of WSL. Ross had the authority to hire and fire WSL staff. Ross was a signatory on all WSL accounts. Ross had a WSL expense account, which he could use to make personal purchases that were charged to WSL.

61. Yampolsky was one of the four individuals who formed WSL. Yampolsky directly supervised the account executives and cold callers. Yampolsky also solicited customers. Yampolsky signed documents as Managing Director of WSL. Yampolsky was a signatory on all WSL accounts and had the authority to hire and fire WSL staff. Yampolsky had a WSL expense account, which he could use to make personal purchases that were charged to WSL.

62. Sapienza was one of the four individuals who formed WSL. Sapienza intentionally kept his name off of WSL documents because he had filed for bankruptcy and was trying to hide his assets. Sapienza had the authority to hire and fire staff. Sapienza had a WSL expense account, which he could use to make personal purchases that were charged to WSL. Sapienza's two companies METG and JSG together received more than \$1.25 million from WSL.

63. Schiavone was one of the four individuals who formed WSL. Schiavone signed documents as Treasurer of WSL. Schiavone had a WSL expense account, which he could use to make personal purchases that were charged to WSL.

64. Korobov was one of the five partners at WSL. Korobov sat in an office with Yampolsky, Ross, and Sapienza, as opposed to in the boardroom with the other staff. Korobov signed WSL documents as Chief Operating Officer and Treasurer and also solicited customers.

Korobov had a WSL expense account, which he could use to make personal purchases that were charged to WSL.

VI.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND COMMISSION REGULATIONS**

**COUNT I - Violations of Section 4b(a)(2) of the Act and Commission Regulation 1.1(b):
Fraud in the Sale of Futures Contracts**

65. Paragraphs 1 through 64 are re-alleged and incorporated herein.

66. During the relevant time period, Defendants cheated or defrauded or attempted to cheat or defraud investors or prospective investors of WSL, willfully made or caused to be made false reports or statements, and willfully deceived or attempted to deceive investors or prospective investors by, among other things: misappropriating funds received from investors and making false statements regarding trading losses, the risks of trading foreign currencies, the legitimacy of their operation, and the safety of investor funds, all in violation of Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2001), and Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002). Defendants' conduct was in connection with the orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made, for or on behalf of any other persons, and such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a) (2001).

67. From at least January 1999 and continuing to at least April 2002, Ross, Yampolsky, Sapienza, Schiavone, and Korobov, as the owners and operators of WSL, directly or indirectly controlled WSL 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 I. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), as described in this Count I, Ross,

Yampolsky, Sapienza, Schiavone, and Korobov are liable for the violations described in this Count I, to the same extent as WSL.

68. 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), WSL is liable for any violations of Section 4b(a)(2) of the Act and Commission Regulation 1.1(b) by its officers, directors, managers, employees, and agents, in that all such violations were within the scope of their office or employment with WSL.

69. Each material misrepresentation or omission, false statement, misappropriation of investor 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 Section 4b(a)(2) of the Act and Commission Regulation 1.1(b).

COUNT II – Violations of Section 4(a) of the Act: Offer and Sale of Illegal Off-Exchange Futures Contracts

70. Paragraphs 1 through 69 are re-alleged and incorporated herein.

71. Since at least January 1999 and continuing to at least April 2002, WSL 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 were not conducted on or subject to the rules of a board of trade which was designated or registered by the CFTC as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts were not 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).

72. From at least January 1999 and continuing to at least April 2002, Ross, Yampolsky, Sapienza, Schiavone, and Korobov, as the owners and operators of WSL, directly or indirectly controlled WSL 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), Ross, Yampolsky, Sapienza, Schiavone, and Korobov are liable for the violations of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001), described in this Count II, to the same extent as WSL.

73. 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 III - Unjust Enrichment: Disgorgement of the Assets of the Relief Defendants

74. Paragraphs 1 through 73 are re-alleged and incorporated herein.

75. WSL committed a fraud upon its customers in connection with the purchase and sale of foreign currency contracts as alleged herein.

76. Relief Defendants, METG, JSG, SSS, BLJ, Ontario, and Fuzzy received funds or otherwise benefited from funds that are directly traceable to the funds obtained from WSL customers through fraud.

77. METG, JSG, SSS, BLJ, Ontario, and Fuzzy will be unjustly enriched if they are not required to disgorge the funds or the value of the benefit they received as a result of WSL's fraud. METG, JSG, SSS, BLJ, Ontario, and Fuzzy have no legitimate claim to these funds.

78. METG, JSG, SSS, BLJ, Ontario, and Fuzzy should be required to disgorge the funds and assets, or the value of the benefit they received from those funds and assets, which are traceable to WSL's fraud.

79. By reason of the foregoing, METG, JSG, SSS, BLJ, Ontario, and Fuzzy hold funds and assets in constructive trust for the benefit of WSL's customers.

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 violated Sections 4(a) and 4b(a)(2) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2) (2001), and 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 Relief 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 Sections 4(a) and 4b(a)(2) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2) (2001), 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 and Relief 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 the assets of the Relief Defendants that are traceable to the fraud and 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 and Relief Defendants to take such steps as are necessary to repatriate to the territory of the United States all funds and assets of WSL customers described herein which are held by Defendants and Relief 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 every investor 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, December 2000 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);

L. Find that each of the Relief Defendants received or benefited from funds fraudulently obtained from WSL customers, has no legitimate claim to these funds, and was unjustly enriched by these funds.

M. Enter an order directing Relief Defendants, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received, 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; and

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

Dated: New York, NY
November 14, 2003

U.S. COMMODITY FUTURES TRADING COMMISSION

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