

U.S. DISTRICT COURT E.D.N.Y.

FILED

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★ JUL 21 2005 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LONG ISLAND OFFICE

Commodity Futures Trading Commission,
Plaintiff,

2:05-CV-02547 (TCP) (MLO)

v.

Anthony Michael Frisone,
Windsor Forex Trading Corp.,
and COES FX Clearing, Inc.

**CONSENT ORDER OF
PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF
AGAINST DEFENDANT COES FX
CLEARING INC.**

Defendants.

On May 26, 2005, Plaintiff Commodity Futures Trading Commission (the "Commission") filed a Complaint against Defendant COES FX Clearing, Inc. ("COES FX"), seeking injunctive and other equitable relief for alleged violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.* (2002). Specifically, the Complaint alleges that the Defendant COES FX is liable, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2005), for the acts and practices of the defendants Anthony F. Frisone ("Frisone") and Windsor Forex Trading Corp. ("WFTC"), which allegedly violated Section 4b(a) of the Act, 7 U.S.C. § 6b(a)(2002).

By consenting to the entry of this *Consent Order of Permanent Injunction and Other Equitable Relief Against Defendant COES FX Clearing Inc* ("Order"), COES FX neither admits nor denies the allegations of the Complaint or any portion of this Order. COES FX is entering this Order as a settlement of a disputed liability to avoid the cost and expenses of litigation and for other undisclosed and confidential business reasons. COES FX cannot attest to the accuracy or inaccuracy as to claims of fact with respect to any other party in this litigation as COES FX lacks personal knowledge regarding those other parties. Therefore, as with all allegations in the

Complaint or any portion of this Order, COES FX neither admits nor denies the allegations relating to any other party.

I. CONSENT AND AGREEMENT

To effect settlement of the matters alleged in the Complaint in this action without a trial on the merits or any further judicial proceedings, COES FX:

1. Consents to the entry of this *Consent Order of Permanent Injunction and Other Equitable Relief Against Defendant COES FX Clearing Inc.* (“Order”).
2. Affirms that it has read and agreed to this Order voluntarily and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.
3. Acknowledges service of the Summons and Complaint.
4. Solely for purposes of this Order, admits that this Court has jurisdiction over it and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).
5. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).
6. Waives:
 - a. All claims which may be available under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), to seek costs, fees and other expenses relating to, or arising from, this action;
 - b. Any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and

c. All rights of appeal from this Order.

7. No provision of this Order shall in any way limit or impair the ability of any person to seek any legal or equitable remedy against COES FX or any other person in any other proceeding.

8. By consenting to the entry of this Order, COES FX neither admits nor denies the allegations of the Complaint, the Findings of Fact or Conclusions of Law contained in this Order. COES FX does not consent to the use of this Order, or the findings of fact or conclusions of law, as the basis for any other proceeding brought by the CFTC, other than a proceeding in bankruptcy relating to the terms of this Order. Solely with respect to any bankruptcy proceeding relating to COES FX or any proceeding to enforce this Order, COES FX agrees that the allegations of the Complaint and the findings in this Order shall be taken as true and correct and be given preclusive effect, without further proof. Furthermore, COES FX agrees to provide immediate notice to this Court and the CFTC by certified mail, in the manner required by Part V of this Order, of any bankruptcy proceeding filed by, on behalf of, or against it.

9. Except as provided herein, COES FX agrees that neither it nor any of its agents, servants, employees, contractors or attorneys shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in the Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect COES FX's (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. COES FX shall take all necessary steps to ensure that all of its agents, servants, employees, contractors and attorneys understand and comply with this agreement.

II. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law, and a permanent injunction and ancillary equitable relief pursuant to § 6c of the Act, 7 U.S.C. § 13a-1 (2002), as set forth herein. These findings of fact and conclusions of law are entered solely for the purposes of this settlement with defendant COES FX.

A. Findings of Fact

1. Since at least December 2002 and continuing through March 2004, if not later (“the relevant period”), WFTC, through its Account Executives (“AEs”) and under the control of Frisone, fraudulently solicited certain retail customers to commit funds to the speculative trading of foreign currency by promising steady profits and limited risks therein. Additionally, WFTC, through its AEs and under the control of Frisone, had the Power of Attorney to trade the accounts of 20 retail customers. During the relevant period, WFTC introduced certain customers exclusively to COES FX.

2. WFTC marketed its services to the public through cold-calls, promotional materials, the www.windsorforex.com (“Windsorforex.com”) website, and, on at least one occasion, an investment seminar.

3. In telephone solicitations, WFTC AEs made numerous fraudulent and misleading representations to prospective customers concerning the likely returns from and the risks involved in trading foreign currency, as well as the customers’ ability to access to their account information via the Internet. WFTC AEs also downplayed the risk of loss, telling prospective customers that the trading of foreign currency involved relatively low risk because: (a) their

accounts would be traded with leverage of no more than two to three times the value of their account; and (b) a stop-loss order was in place so that trading in their account would automatically be halted if their account balance ever fell by more than 25 percent of its opening balance. None of these claims was true.

4. One of the principal services touted by WFTC AEs was 24-hour access via the Internet for customers to access their account information. Customers were informed by WFTC that they would receive daily and monthly account statements through the COES FX website. In fact, customers were unable to access their accounts or obtain account statements through the COES FX website for intermittent periods of time. During these times, the customers relied on the representations of WFTC's AEs as to their account balance and to receive account statements. WFTC's AEs misrepresented the profits and losses in customer accounts, as well as belatedly, if at all, fulfilling customer requests for account statements. In certain instances, if customers were unable to get account statements or information from WFTC, customers received account statements after then making requests by telephone, email and/or fax to COES FX.

5. Statements in WFTC promotional materials falsely and materially misrepresented the likely profits from and risks associated with foreign currency trading in the WFTC promotional materials. WFTC promotional materials also stated that customers would have "24 hour complete account access including all activities and current account balances" via the Internet. However, WFTC customers often did not have any access, let alone 24 hour access, to their account information via the Internet.

6. During the relevant time period, the Windsorforex.com website materially misrepresented the likely profits from and risks associated with foreign currency trading, making false representations such as:

- a. "We have a 15 year track record of successful trading in the Forex market. (Anthony M. Frisone) *"President and Head Trader."*
- b. "Clients that started with us in 1998 have enjoyed over an 18% annual net return for the five-year period through the 1st quarter of 2003."
- c. "We take the most conservative approach to this market of any firm in our industry. Our standard leverage for trading is 3:1, Positions are taken with stops programmed to maximize down-side risk at 1.05%."

While these material misrepresentations were subsequently removed from the Windsorforex.com website, it continued materially to misrepresent the risks involved in foreign currency trading during the relevant time period by stating that "[a]ll FOREX trading is regulated by the CFTC."

7. The AEs and agents of Defendant WFTC intended that each of the 20 customers rely on their fraudulent misrepresentations regarding profit potential and risk of loss as detailed above. Most, if not all, of these 20 customers relied on the fraudulent misrepresentations of the AEs and agents of Defendant WFTC when opening trading accounts and depositing funds to or maintaining funds within those accounts to be traded by Defendants WFTC and Frisone. As a result of their investment with Defendants WFTC and Frisone, these 20 customers lost a total of \$246,601.92.

8. Defendant Frisone also made false and misleading statements to prospective customers and customers. For example, Frisone told one customer that his funds would be leveraged at a ratio of no more than 3:1, and that all trading in his account would be halted if losses exceeded 25% of his initial deposit. Frisone told another customer that he would double her investment in approximately six months. Frisone knew that these statements were false and misleading because he employed leverage far exceeding a three to one ratio in trading customer accounts, and he continued to trade customer funds well past the 25% loss limit, trading many

customers' accounts until almost all of their deposit had been consumed by commissions and losses.

9. On at least two occasions, WFTC—through Frisone—fraudulently lulled customers into continued trading in their accounts by guaranteeing that WFTC would recoup the losses incurred therein through further trading in foreign currency.

10. On at least two occasions, WFTC—through Frisone—caused transactions to be effected in a customer's account after the customer had sent WFTC written instructions to cease all trading activity in the account. The trades effected during that period caused the account balance to decline from \$5,387.42 to \$587.58.

11. Defendant Frisone intended that each of the customers rely on his fraudulent misrepresentations regarding profit potential and risk of loss as detailed above. Most, if not all, of these customers relied on the fraudulent misrepresentations of Defendant Frisone when opening trading accounts and depositing funds to or maintaining funds within those accounts to be traded by Defendants WFTC and Frisone.

12. Since at least late March 2003, WFTC acted as COES FX's Introducing Broker in soliciting customers to open accounts with COES FX for the purpose of speculating in foreign currency.

13. On March 28, 2003, Frisone, on behalf of WFTC, presented an investment seminar on the trading of foreign currencies to members of the public in Boca Raton, Florida. Michael Wiener of COES FX, Inc. (the parent corporation of COES FX) was a speaker at the seminar, invited by Frisone and WFTC.

14. From April 2003 through March 2004, WFTC and other introducing brokers introduced customers to COES FX. Of the customers introduced by WFTC, thirteen opened new

accounts with COES FX while the remaining seven transferred existing accounts to COES FX that were held at Universal FX, Inc. over which WFTC had trading authority. Of the accounts identified by Plaintiff, COES FX accepted \$327,204.12 in customer funds.

15. WFTC used COES FX account opening documents, its power of attorney form and other documentation that customers needed to trade foreign currency at COES FX. In addition, customers sent their funds to COES FX. COES FX also provided WFTC with information and passwords to pass on to customers so that customers could access the COES FX web site and their account information, including daily and monthly account statements. Furthermore, customers could contact COES FX by phone, fax or email to obtain this same information or to resolve complaints concerning WFTC's delay in providing them with account statements.

B. Conclusions of Law

1. 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.

2. Section 2(c)(2)(B)(i) and (ii) of the Act provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery (or option thereon) or an option, so long as: 1) the contract is "offered to, or entered into with, a person that is not an eligible contract participant;" and 2) "the counterparty, or the person offering to be the counterparty," is not one of the regulated entities enumerated in Section 2(c)(2)(B)(ii)(I-VI), including futures commission merchants ("FCMs")

and certain statutorily defined “affiliated” persons of FCMs as to whom an FCM is required under the Act and Commission Regulations to make and keep records.

3. All of the foreign currency transactions alleged herein were offered to or entered into with retail customers who did not qualify as “eligible contract participants” as defined in Section 1a(12)(A)(xi) of the Act.

4. Solely for purposes of this Order, during the relevant period, the counterparty to the retail futures forex transactions entered into by WFTC’s customers was COES FX, a registered futures commission merchant, which was an appropriate counterparty to retail futures forex transactions. However, Section 2(c)(2)(C) of the Act provides that the Commission has jurisdiction over retail futures forex transactions entered into by FCMs if the transaction involves fraud pursuant to Section 4b(a) of the Act (subject to certain exceptions not present in this case).

5. Solely for purposes of this Order, by the conduct described in Section IIA above, Defendants WFTC and Frisone committed fraudulent acts in connection with forex transactions, and, therefore violated Section 4b(a) of the Act, 7 U.S.C. §§ 6b(a) (2002), and Regulation 1.2 of the Commission’s Regulations, 17 CFR §1.2 (2005).

6. Solely for purposes of this Order, WFTC acted as COES FX’s agent pursuant to Section 2(a)(1)(B) of the Act in violating Section 4b(a).

7. Solely for purposes of this Order, by the conduct described in Section IIA above, and pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2004), COES FX is liable for the violations of defendant WFTC of Section 4b(a) of the Act, 7 U.S.C. §§ 6b(a) (2002).

8. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), in that Defendant is found in, inhabits, or transacts 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.

9. This Court has personal jurisdiction over COES FX.

III. ORDER FOR PERMANENT INJUNCTION

NOW THEREFORE, IT IS ORDERED THAT:

A. COES FX is permanently restrained, enjoined and prohibited from directly or indirectly cheating or defrauding or attempting to cheat or defraud and willfully deceiving or attempting to deceive other persons in or in connection with any order to make, or the making of, any contract or sale of any commodity for future delivery, made or to be made, for or on behalf of any person if such contract for future delivery is or may be used for (i) hedging any transaction in interstate commerce in such commodity or the products or by products thereof; (ii) determining the price basis of any transaction in interstate commerce in such commodity; or (iii) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii)(2002), and Section 1.1(b)(1)-(3) of the Commission Regulations, 17 C.F.R. § 1.1(b)(1) and (3) (2004), including, but not limited to acting as a counterparty to retail futures forex transactions that involve fraudulent conduct for which COES FX is legally liable.

B. The injunctive provision of this Order shall be binding upon COES FX, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of COES FX and upon any person who receives actual notice of this Consent Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with COES FX.

IV. ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

A. COES FX shall pay restitution in the amount of \$246,601.92, plus post-judgment interest, after the date of this Order until the restitution is paid in full to the Monitor consistent with Part IV, paragraph C, below. Post-judgment interest shall be paid at the interest rate set forth in 28 U.S.C. §1961. Attachment A to this Order includes the names of the customers to whom restitution shall be made, together with the amount of restitution payable to each of them (not including required interest) and the *pro rata* distribution percentage by which each investor shall be paid.

B. COES FX's obligation to pay restitution under this paragraph shall be reduced on a dollar-for-dollar basis by any amounts actually paid to the customers listed in Attachment A pursuant to any restitution ordered in any other legal proceeding, any collateral agreement or pursuant to any payment of any kind by any party to this action, including without limitation, Frisone, WFTC, WFTC AEs, or their agents, assigns, or persons or entities otherwise affiliated with them, subject to the conditions as set forth in Part IV, paragraph F below.

C. Restitution payments shall be sent to the National Futures Association ("Monitor"), which will monitor the distribution of any restitution payments to customers. Payments shall be sent to the following address: National Futures Association, 200 W. Madison Street, #1600, Chicago, Illinois 60606, Attn: Dan Driscoll, and made payable to the WFTC Settlement Fund. The Monitor shall distribute restitution payments to customers on a *pro rata* basis unless, at its sole discretion, based upon the amount of funds available for distribution, the Monitor decides to defer distribution. In the event that any unclaimed funds remain following

distribution of restitution funds, such unclaimed funds shall be paid to the United States Treasury.

The Monitor shall have no liability for his actions in this capacity, other than for fraud.

D. Any acceptance by the Commission of partial payment from COES FX of its restitution obligation shall not be deemed a waiver of COES FX's obligation to make further payment pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

E. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the customers identified in Attachment A is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution amount which has not been paid by COES FX, to ensure continued compliance with any provision of this Order and to hold COES FX in contempt for any violations of any provision of this Order.

F. COES FX shall immediately notify the Commission and Monitor if it makes or has previously made any agreement with any investor identified in Schedule A obligating it to make payments outside this Order. It shall also provide immediate evidence to the Commission and the Monitor of any payments made pursuant to any such agreement of COES FX, or any payments made by any party to this action, including, without limitation, Frisone, WFTC, WFTC AEs, or their agents, assigns, or persons or entities otherwise affiliated with them (provided COES FX is aware of such payments and has received from such party evidence of payment). The Monitor, at any time prior to the full payment by COES FX to the Monitor of its restitution obligation shall, upon being notified of any payments made to customers outside of this Order and receiving, in his sole judgment, satisfactory evidence of such payments, the Monitor shall reduce and offset on a dollar-for-dollar basis COES FX's obligation to specified customers

receiving such payments outside this Order, and make any other changes in the restitution distribution schedule that the Monitor deems appropriate.

V. MISCELLANEOUS PROVISIONS

IT IS FURTHER ORDERED THAT:

A. All notices required by this Order shall be sent by certified mail, return receipt requested, as follows:

1. Notice to Plaintiff Commission:
Director, Division of Enforcement
Commodity Futures Trading Commission
1155 21st St., N.W.
Washington, DC 20581
2. Notice to the Monitor:
Vice President, Compliance
National Futures Association
200 West Madison Street
Chicago, IL 60606
3. Notice to Defendant COES FX Clearing, Inc.:
Scott E. Early
Foley & Lardner LLP
321 N. Clark, Ste. 2800
Chicago, IL 60610

B. This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and (3) approved by order of the Court. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.

C. This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries and administrators.

D. This Court shall retain jurisdiction of this matter to ensure compliance with this Order and for all other purposes related to this action.

E. This agreement shall be signed by an officer of COES FX Clearing Inc. who, by such signature, warrants and represents that he is duly appointed by the board of directors, has full authority to enter into this settlement on behalf of the corporation, and is entering into it with the knowledge and consent of the board.

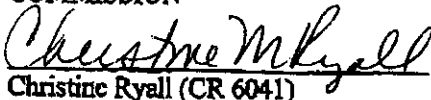
F. There being no just cause for delay, the Clerk of the Court shall enter this Final Judgment against Defendant COES FX Clearing Inc. forthwith and without further notice.

DONE AND ORDERED this 21 day of July 2006.

THOMAS C. PLATT
UNITED STATES DISTRICT JUDGE

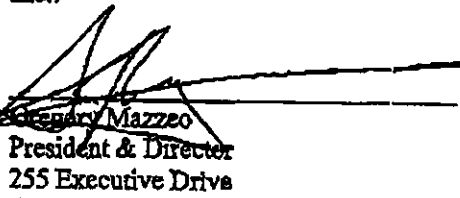
Consented to:

ATTORNEYS FOR PLAINTIFF
COMMODITY FUTURES TRADING
COMMISSION


Christine Ryall (CR 6041)
1155 21st Street, N.W.
Washington, D.C. 20581
(202) 418-5318
(202) 418-5523 (facsimile)

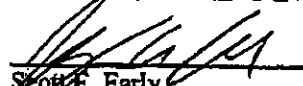
Stephen R. Morris (SM 9515)
Commodity Futures Trading Commission
140 Broadway, New York, New York 10005
(646) 746-9763

On behalf of Defendant COES FX Clearing
Inc.:



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Todd Norbitz (TN5747)
90 Park Avenue
New York, NY 10016
(212) 682-7474
(212) 687-2329 (facsimile)

ATTACHMENT A

East Name	First Name	Restitution Payable	Pro Rata Distribution %
Brown	C	\$9,986.46	4.0496%
Brown	J	\$9,671.09	3.9217%
Christ Trust	Nick Christ	\$786.20	0.3188%
Harmelink	David	\$10,012.90	4.0603%
Lighthouse	Capital	\$69,366.86	28.1291%
Nardella	Anthony	\$19,614.14	7.9538%
Rosati	Alfred	\$4,944.89	2.0052%
Spicher	Raymond	\$9,925.22	4.0248%
Zaccaria	David	\$9,203.79	3.7322%
Lepard	David	\$4,769.40	1.9340%
Stenis	Vaughn	\$2,655.69	1.0769%
Schneider	Dean	\$5,054.00	2.0495%
Lowry	Clay and Gail	\$5,000.00	2.0276%
Lopez	Keith	\$4,653.69	1.8871%
Loss	Dean	\$9,091.42	3.6867%
Watson	Ronald	\$49,767.96	20.1815%
Katz	C	\$9,567.42	3.8797%
Howard	Nancy	\$11,733.00	4.7579%
Pape	Ronald and Lois	\$391.61	0.1588%
Fall	Cassius	\$406.18	0.1647%
		\$246,601.92	100.0000%

Attachment A to
Consent Order of Permanent Injunction and Other Equitable Relief
Against Defendant COES FX Clearing Inc.
CFTC v. Frisone, et al,
Case No.2:05-CV-02547

Certificate of Service

I hereby certify that on July 20, 2006, the foregoing document was served in accordance with the Federal Rules of Civil Procedure, and/or the Eastern District's Local Rules upon the following parties and participants:

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Columbia, MO 65203

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