



allegations of which are well-pleaded and hereby taken as true, the Application, and other written submissions of the Commission filed with the Court, and being fully advised, hereby:

**GRANTS** the Commission's Application against Bursztyn and enters findings of fact and conclusions of law relevant to the allegations in the Complaint. Accordingly, the Court now issues the following Order ("Order") against Bursztyn.

## **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. Jurisdiction and Venue**

This Court has jurisdiction over the subject matter of this action and Bursztyn pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, 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.

Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1, in that Bursztyn was found in, inhabited, or transacted business in this district, the acts and practices in violation of the Act occurred within this district, among other places, and Bursztyn benefited from these acts and practices.

### **B. Findings of Fact**

Bursztyn owned, operated, and was the President of ISB Clearing Corporation ("ISB"), a futures commission merchant ("FCM") registered with the Commission. Bursztyn was listed as an associated person and principal of ISB.

From at least May to November 2003, Bursztyn knowingly aided and abetted in a scheme with other co-conspirators to defraud and deceive banks. This scheme was called the "knowledgeable trades" scheme. Through these knowledgeable trades, Bursztyn helped to

defraud and deceive banks by knowingly and willfully engaging in illegal foreign currency futures transactions at ISB to convert bank funds and conceal this conversion from the banks.

The knowledgeable trade scheme operated as follows. In Step 1, in order to convert 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 a retail foreign currency dealer. Bank #2 is on the losing side of these transactions. In Step 3, the retail foreign currency dealer engages in illegal foreign currency futures transactions in which it loses money to a retail customer who maintains accounts at ISB and at a retail foreign currency dealer. In Step 4, the retail customer who holds the account at either ISB or at the retail foreign currency dealer 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.

Bursztyn facilitated this knowledgeable trades scheme by knowingly permitting the retail customer to maintain an account at ISB for the purpose of engaging in illegal foreign currency futures transactions in order to convert bank funds and conceal this conversion from the banks.

The contracts in the knowledgeable trades scheme involved the purchase and sale of foreign currency for future as opposed to immediate or deferred delivery. The parties involved in these transactions did not have any business or personal need for the foreign currency. These parties did not intend to, and did not, take or make delivery of the foreign currencies as a consequence of these transactions. No accounts were maintained at any foreign financial

institution to take or make delivery of foreign currency for any of the parties involved in these transactions. There was never any conversion from U.S. dollars to another currency. All trades were 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 these contracts were standardized.

The transactions involved in the knowledgeable trades scheme were not conducted on or subject to the rules of a board of trade that has been designated by the Commission as a contract market, nor were these transactions executed or consummated by or through a contract market or on a facility registered as a derivatives transaction execution facility. The parties involved in these foreign currency futures transactions were not eligible contract participants or enumerated regulated counterparties. None of the parties was a financial institution, a broker or dealer, an associated person of a broker or dealer, an insurance company, a financial holding company, or an investment bank holding company. In addition, none of the parties was a FCM or an affiliate of a FCM.

## **C. Conclusions of Law**

### **1. Commission Regulation 1.1(b)**

From at least May 2003 to November 2003, Bursztyn cheated or defrauded or attempted to cheat or defraud banks and willfully deceived or attempted to deceive banks by, among other things, intentionally aiding and abetting in the conversion of funds that had been misappropriated from banks in violation of Regulation 1.1(b), 17 C.F.R. § 1.1(b) pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2001).

## **2. The Knowledgeable Trades Transactions Were Futures Contracts**

The Commission has jurisdiction over the knowledgeable trades transactions because these transactions were foreign currency futures contracts. These foreign currency futures transactions were offered to or entered into with customers who were not eligible contract participants pursuant to Section 1a(12) of the Act, 7 U.S.C. § 1a(12). The counterparty to the customers was not a proper counterparty or an affiliate of a proper counterparty pursuant to Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B). Accordingly, the Commission has jurisdiction over these knowledgeable trades transactions.

## **3. Appropriate Relief**

Permanent injunctive relief is warranted in light of the egregious nature of Bursztyn's conduct in aiding and abetting the conversion of funds from banks through the sale of illegal foreign currency futures contracts from May to November 2003 as well as his high level of scienter in participating in this well-planned scheme to systematically defraud banks. These facts demonstrate a reasonable likelihood of future violations.

Imposition of a civil monetary penalty is appropriate in this case as Bursztyn's violations of the Act were intentional.

## **II. ORDER FOR RELIEF**

### **A. Permanent Injunction**

**IT IS HEREBY ORDERED** that Bursztyn is permanently restrained, enjoined and prohibited from directly or indirectly:

1) cheating or defrauding or attempting to cheat or defraud any person; or willfully making or causing to be made to any person any false report or statement or causing to be entered for any person any false record; or willfully deceiving or attempting to deceive any

person by any means whatsoever for any foreign currency transaction within the Commission's jurisdiction;

- 2) trading on or subject to the rules of any registered entity;
- 3) soliciting funds for, engaging in, controlling, or directing the trading of any commodity futures or options accounts for any other person or entity, whether by power of attorney or otherwise; and
- 4) applying for registration or seeking exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration, except as provided in Regulation 4.14(a)(9) or acting as an agent or officer of any person registered, exempted from registration or required to be registered with the Commission, except as provided in Regulation 4.14(a)(9).

**B. Civil Monetary Penalty**

**IT IS FURTHER ORDERED** that as of the date of this Order, Bursztyn shall pay a civil monetary penalty in the amount of \$120,000 plus post-judgment interest. Post-judgment interest shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961. Post-judgment interest shall accrue beginning on the date of entry of this Order.

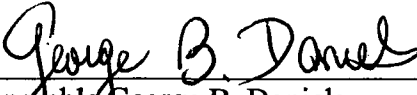
Bursztyn shall pay such civil monetary penalty by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check or bank money order, made payable to the U.S. Commodity Futures Trading Commission, and sent to Marie Bateman, or her successor, U.S. Commodity Futures Trading Commission, Division of Enforcement, ATTN: Marie Bateman, AMZ-300, DOT/FAA/MMAC, 6500 S. Macarthur Blvd., Oklahoma City, OK 73169,

**E. Jurisdiction**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

**SO ORDERED**, at \_\_\_\_\_, New York on this \_\_\_ day of \_\_\_\_\_, 2006.

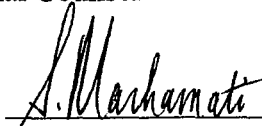
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Honorable George B. Daniels  
UNITED STATES DISTRICT JUDGE

HON. GEORGE B. DANIELS

Respectfully submitted,  
U.S. COMMODITY FUTURES TRADING  
COMMISSION  
Stephen J. Obie  
Regional Counsel

By:



Sheila L. Marhamati [SM-8016]

Trial Attorney

Steven Ringer [SR-9491]

Chief Trial Attorney

U.S. COMMODITY FUTURES TRADING  
COMMISSION

140 Broadway, 19<sup>th</sup> Floor

New York, New York 10005

(646) 746-9743

(646) 746-9939 (facsimile)

smarhamati@cftc.gov