

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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U.S. Commodity Futures Trading Commission,

Plaintiff,

v.

Madison Deane & Associates, Inc., Madison  
Deane Asia Corporation, New York Capital  
Assets, Inc., ISB Clearing Corporation, Free Star  
Capital, Inc., William, Holbrook & Associates  
LLC, Oxford Capital Group LLC, Vito  
Napoletano, Leonard Basman, Matthew Salinas,  
Ian Bursztyn, George Omeste, Damon Ripley,  
and Mazen Abdeldayem

Defendants.

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03 CV 9128 (GBD)

**Order For Entry of  
Injunctive Relief, Damages and  
Ancillary Equitable Relief Against  
Ian Bursztyn**

On November 18, 2003, the U.S. Commodity Futures Trading Commission (the "Commission") filed a Complaint charging Ian Bursztyn ("Bursztyn" or "Defendant") and others with fraud in violation of Sections 4b(a)(2)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (ii) and (iii) (2002) and Commission Regulations 1.1(b)(i) (ii) and (iii), 17 C.F.R. §§ 1.1(b) (1), (2) and (3) (2001). Defendant was further charged, as a controlling person, with both fraud and selling illegal foreign currency futures contracts in violation of Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2001), Section 4(a) of the Act, 7 U.S.C. §§ 6(a) (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).

On November 19, 2003, Bursztyn was properly served pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). Bursztyn failed to answer or otherwise defend the Complaint within the time permitted by Rule 12(a)(1) of the Fed. R. Civ. P.

Accordingly, on September 16, 2004, the Clerk of this Court entered a certificate of default against Bursztyn, and on January 13, 2005, this Court entered a default judgment against Bursztyn.

The Commission has now submitted its Application for Entry of Injunctive Relief, Damages and Ancillary Equitable Relief (“Application”) against Bursztyn pursuant to Fed. R. Civ. P. 55(b)(2) and Local Rule 55.2(b). The Court has carefully considered the Complaint, the 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. The Court further grants the Commission's request for injunctive relief, damages, restitution, and disgorgement. 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, and 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 was the president of ISB Clearing Corporation (“ISB”), a firm that was registered with the Commission as a futures commission merchant (“FCM”). Bursztyn also was registered with the Commission as an associated person and principal of ISB. Bursztyn assisted others in running ISB, Madison Deane & Associates, Inc., Madison Deane Asia Corporation, Free Star Capital, Inc., William, Holbrook & Associates LLC, Oxford Capital Group LLC (hereafter collectively called the “Free Star Companies”) and actively participated in these firms’ various schemes to defraud customers and misappropriate their investments.

Bursztyn participated in a scheme in which funds were fraudulently solicited from the retail public for the purpose of trading managed foreign currency accounts which were, in fact, off-exchange foreign currency futures contracts. Bursztyn and his co-conspirators then misappropriated these funds. The scheme was perpetrated as follows:

1. Account executives working for the money-raising arms of the Free Star Companies called unsophisticated investors and, using well-honed high-pressure sales techniques, touted the desirability of using foreign currency trading as a safe investment choice offering high returns.
2. With Bursztyn’s knowledge and consent, the Free Star Companies then sent prospective investors promotional materials including brochures that inflated profit potential while downplaying the risks associated with investments in foreign currency. Periodically, investors also received fabricated account statements that reflected fictitious trading in their accounts. Some prospective customers also received a “track record” purporting to show profitable customer

trading by the Free Star Companies. The track record did not reflect the actual trading of any of the Free Star Companies' customers.

3. After receiving the initial money from investors and with Bursztyn's knowledge and consent, the Free Star Companies' account executives solicited additional funds by forwarding falsified account statements or by falsely informing customers of profitable trading activity in the targeted customer's account. In this connection, the Free Star Companies, through Bursztyn and others, created fictitious trades and chose the customer or group of customers to be assigned the trades with the expectation of securing additional investor money.
4. Once it was determined that an investor would not, or was not able to, commit additional funds to foreign currency investments, the investor's account was substantially depleted by fictitious trades. Customer accounts were depleted when Bursztyn and others determined that they needed cash to meet operating costs, including rent and salaries, or they wanted to reward themselves with extra cash or luxury items.
5. Free Star Companies' customers were contacted through "cold calls" by account executives working off purchased leads. With Bursztyn's knowledge and consent, account executives would typically downplay the risk of foreign currency trading, telling prospective customers that foreign currency trading was an attractive, safe alternative to the stock market.
6. Other deceptive representations made by the Free Star Companies' account executives with Bursztyn's knowledge and consent included making the false assertion that they were compensated solely on performance and that no

commissions were charged. Also, promotional material, including material that appeared on Free Star Companies' websites, failed to inform prospective investors that little or no money entrusted to the Defendants for foreign currency trading would actually be traded.

7. Bursztyn and his co-conspirators, through the Free Star Companies, misappropriated customer monies in order to meet salaries, fund other operating costs, and to pay for parties, gifts, and other personal items. The misappropriation was accomplished, in large part, through the creation of fictitious trades. Most of the trades reported to customers of the Free Star Companies never actually took place. Instead, winning and losing trades were fabricated after a discussion amongst Bursztyn and others about the financial needs of the Free Star Companies. Losing trades were assigned to customer accounts targeted for depletion. Losses incurred by customers with respect to these fictitious trades resulted in equivalent gains for the Free Star Companies since they were the counterparties to these trades.

The foreign currency contracts that Bursztyn purported to offer and sell through the Free Star Companies 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 calculated to avoid delivery.

Bursztyn, through the Free Star Companies, marketed these 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.

Investors did not anticipate taking – and did not take – delivery of the foreign currencies they purchased as a consequence of these investments. The Free Star Companies did not require investors to set up banking relationships in order to facilitate delivery of the foreign currencies.

The Free Star Companies' customer account agreements made reference to the margining and settlement of transactions in the customer accounts, and language in the customer agreements defined settlement procedures whereby all profits and losses were reflected in customer account statements the following month.

The Free Star Companies were not financial institutions, brokers or dealers, associated persons of a broker or dealer, insurance companies, regulated subsidiaries of an insurance company, financial holding companies or investment bank holding companies. In addition the Free Star Companies (except for ISB after March 17, 2003) were not futures commission merchants ("FCMs") or affiliated persons of FCMs. The Free Star Companies did not conduct transactions on a facility designated as a contract market or registered as a derivatives transaction execution facility.

Also, the Free Star Companies (except for ISB after March 17, 2003) 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 Commission as a contract market, nor were their transactions executed or consummated by or through a member of such contract market. The Free Star Companies did not conduct transactions on a facility registered as a derivatives execution facility.

As a result of the fraud perpetrated by Bursztyn and his co-conspirators, customers were defrauded in the amount of \$12,059,480 and Bursztyn received ill-gotten gains in the amount of \$202,547.30.

**C. Conclusions of Law**

**1. The Free Star Companies' Transactions Were Futures Contracts**

The foreign currency contracts offered and sold by Bursztyn through the Free Star Companies were futures contracts. The contracts involved the purchase and sale of foreign currency for future -- as opposed to immediate or deferred -- delivery. The contracts provided for delivery of a specific type of foreign currency at an unspecified point in the future at a price or pricing formula that was determined at the time the contract is entered. The Free Star Companies (except for ISB Clearing Corporation after March 17, 2003) were never proper counterparties or affiliates of proper counterparties authorized under the Act or Regulations to engage in foreign currency future transactions with retail customers.

**2. Violations of Section 4b(a)(2) of the Commodity Exchange Act and Commission Regulation 1.1(b)**

Bursztyn cheated or defrauded or attempted to cheat or defraud customers or prospective customers of the Free Star Companies and willfully deceived or attempted to deceive customers or prospective customers by, among other things, making material misrepresentations to investors regarding the profitability of their accounts, failing to disclose the fraudulent withdrawal of funds from the investors' accounts and misappropriating customer funds, all in violation of Sections 4b(a)(2)(C)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(C)(i), (ii) and (iii), and Regulations 1.1(b)(1), (2) and (3), 17 C.F.R. §§ 1.1(b)(1), (2) and (3). Bursztyn's 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 Sections 4b(a)(2)(C)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(C)(i), (ii) and (iii).

Bursztyn, as an owner and/or operator of the Free Star Companies, directly or indirectly controlled the Free star Companies and their schemes and did not act in good faith or knowingly induced, directly or indirectly, the acts of the Free Star Companies constituting violations of Sections 4b(a)(2)(C)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(C)(i), (ii) and (iii), and Regulations 1.1(b)(1), (2) and (3), 17 C.F.R. §§ 1.1(b)(1), (2) and (3). Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), Bursztyn is liable for the violations of Sections 4b(a)(2)(C)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(C)(i), (ii) and (iii), and Regulations 1.1(b)(1), (2) and (3), 17 C.F.R. §§ 1.1(b)(1), (2) and (3) to the same extent as the Free Star Companies.

### **3. Violations of Section 4(a) of the Commodity Exchange Act**

Bursztyn, as an owner and/or operator of the Free Star Companies (excluding ISB), directly or indirectly controlled the Free Star Companies and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting violations of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001). Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), Bursztyn, through the Free Star Companies (excluding ISB) 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, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for futures delivery when: (a) such transactions were not conducted on or subject to the rules of a board of trade which was designated by or registered with the Commission 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).

#### **4. Appropriate Relief**

Permanent injunctive relief is warranted in light of the egregious nature of Bursztyn's conduct in fraudulently soliciting customers and misappropriating their funds over a period of time, as well as Bursztyn's high level of scienter in conducting a well-planned scheme to systematically defraud the public. 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 and directly impacted numerous victims of this fraud. Likewise, the remedies of disgorgement and restitution are appropriate to compensate the victims of Bursztyn's wrongful acts and to deprive Bursztyn of the use of ill-gotten gains.

## **II. ORDER FOR RELIEF**

### **A. Permanent Injunction**

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

1) offering or entering into, executing, confirming the execution of, or conducting 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;

2) cheating or defrauding or attempting to cheat or defraud such other person or willfully deceiving or attempting to deceive such other person by any means whatsoever in regard to any such order or contract in or in connection with any sale of any futures contract 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;

3) 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;

4) trading on or subject to the rules of any registered entity;

5) 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

6) 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. Restitution and Disgorgement**

**1. Restitution**

**IT IS FURTHER ORDERED** that as of the date of this Order, Bursztyn shall pay and be jointly and severally liable with his co-conspirators for restitution to defrauded customers in the amount of \$12,059,480 (twelve million fifty nine thousand four hundred eighty dollars) plus pre-judgment and post-judgment interest. Pre-judgment interest shall accrue from April 1, 2003, to the date of this Order and shall be determined by using the underpayment rate established quarterly by the Internal Revenue Service pursuant to 26 U.S.C. § 6621(a)(2). Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961. Bursztyn is ordered to make such payments to Brian Rosner, Esq., the Court-appointed Receiver, Rosner, Moscow & Napierala, LLP, 26 Broadway, 22<sup>nd</sup> floor, New York, NY 10004-24424 by cashier's check, certified check or postal money order, under cover of a letter that identifies the name and Docket number of this action and the name of this Court, with a copy to the Director and to the Office of Cooperative Enforcement, Division of Enforcement, U.S. Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581, and to the Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at the following address: 140 Broadway, 19<sup>th</sup> floor, New York, NY 10005.

All payments made pursuant to this Order by Defendant shall first be made to the defrauded customers for restitution pursuant to a payment plan that will be determined by the Court until those amounts (including interest) are fully satisfied. All payments after the

restitution and disgorgement obligations have been satisfied shall then be applied to the civil monetary penalty described herein.

Bursztyn's restitution obligation coincides with Bursztyn's restitution obligation in CFTC v. ISB Clearing Corp. et al., Docket 03 CV 9127, as well as with the criminal judgment obligation entered against Bursztyn on April 28, 2006, U.S. District Court for the Southern District of New York in U.S. v. Napoletano, et al., S.D.N.Y. Docket No. 04 Cr. 156. Accordingly, satisfaction of any part of Bursztyn's restitution obligation in Docket 03 CV 9127 or in his criminal judgment obligation shall simultaneously result in satisfaction of Bursztyn's restitution obligation in this matter to the same extent.

## **2. Disgorgement**

**IT IS FURTHER ORDERED** that as of the date of this Order, Bursztyn shall disgorge all benefits received, directly or indirectly, from acts or practices which constitute violations of the Act and Regulations as described. Bursztyn therefore shall disgorge his ill-gotten gains in the amount of \$202,547.30 plus pre-judgment interest and post-judgment interest. Pre-judgment interest from April 1, 2003, to the date of this Order shall be determined by using the underpayment rate established quarterly by the Internal Revenue Service pursuant to 26 U.S.C. § 6621(a)(2). Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961.

All disgorgement payments made by Bursztyn shall be used to pay restitution to the defrauded customers. Bursztyn's disgorgement obligation coincides with his restitution obligation, such that satisfaction in any part of his disgorgement obligation shall simultaneously result in satisfaction of his restitution obligation to the same extent. Further, Bursztyn's

disgorgement obligation in this matter coincides with Bursztyn's disgorgement and restitution obligations in CFTC v. ISB Clearing Corporation, et al., S.D.N.Y. Docket 03 CV 9127, as well as with Bursztyn's criminal judgment restitution obligation entered against Bursztyn on April 28, 2006 by the U.S. District Court for the Southern District of New York in U.S. v. Napoletano, et al., S.D.N.Y. Docket No. 04 Cr. 156. Accordingly, satisfaction in any part of Bursztyn's criminal judgment obligation shall, to the same extent, simultaneously result in satisfaction of Bursztyn's civil disgorgement obligation in both this matter and in Docket 03 CV 9127. Moreover, satisfaction in any part of Bursztyn's restitution or disgorgement obligations in Docket 03 CV 9127 also will result in satisfaction of Bursztyn's restitution and disgorgement obligations in this matter as well as Bursztyn's criminal judgment restitution obligation to the same extent.

Bursztyn shall pay disgorgement to Brian Rosner, Esq., the Court-appointed Receiver, Rosner, Moscow & Napierala, LLP, 26 Broadway, 22<sup>nd</sup> floor, New York, NY 10004-24424 by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check or bank money order, under cover of a letter that identifies Bursztyn and the name and Docket number of the proceeding; Bursztyn shall simultaneously transmit a copy of the cover letter and the form of payment to the Director and to the Office of Cooperative Enforcement, Division of Enforcement, U.S. Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581, and to the Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at the following address: 140 Broadway, 19<sup>th</sup> floor, New York, NY 10005.

**C. 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 \$240,000, consisting of \$120,000 for each of the two substantive charges of violations of the Act set forth in the Complaint, 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.

All payments made by Bursztyn pursuant to this Order shall be applied first to satisfy Bursztyn's Civil Restitution and Disgorgement obligations and, upon satisfaction of such obligations, shall thereafter be applied to satisfy the civil monetary penalty.

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, under cover of a letter that identifies Bursztyn and the name and Docket number of the proceeding; Bursztyn shall simultaneously transmit a copy of the cover letter and the form of payment to (a) Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581, and (b) Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at 140 Broadway, 19<sup>th</sup> floor, New York, NY 10005.

**D. Prohibition on Transfer of Funds**

**IT IS FURTHER ORDERED** that Bursztyn shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any other person for the purpose of concealing such funds or property from the Court, the Plaintiff, or any officer that may be appointed by the Court.

**E. Permanent Receiver**

**IT IS FURTHER ORDERED** that Brian Rosner, Esq., Rosner, Moscow & Napierala, LLP, 26 Broadway, 22<sup>nd</sup> floor, New York, NY 10004-24424 is appointed as 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 Bursztyn, including funds or property of investors wherever found, whether held in the name of Bursztyn 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, to prevent further evasions and violations of the federal commodity laws by the Bursztyn and to satisfy Bursztyn's obligation to pay restitution, disgorge his ill-gotten gains and

The Receiver shall report the status of collections and distributions of disgorgement and restitution to the Office of Cooperative Enforcement, Division of Enforcement, U.S. Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21<sup>st</sup> Street,

NW, Washington, D.C. 20581. The Receiver shall make such reports within ten days of receipt from Bursztyn of any disgorgement or restitution payment. Such reports shall specify: the amount of funds received from Defendant; the total amount of funds received from Bursztyn since entry of the Order; and the total amount of disgorgement and restitution paid by the Receiver to victims of Bursztyn's violations.

**F. Notices**

**IT IS FURTHER ORDERED** that all notices required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

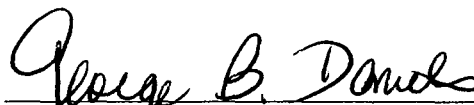
Notice to Commission:      Regional Counsel  
   U.S. Commodity Futures Trading Commission  
   Division of Enforcement - Eastern Regional Office  
   140 Broadway, 19<sup>th</sup> floor  
   New York, New York 10005.

**G. 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~~ New York on this \_\_\_ day of \_\_\_\_\_, 2006.

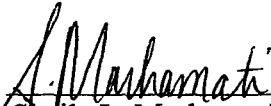
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Honorable George B. Daniels  
UNITED STATES DISTRICT JUDGE



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

By:   
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