

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission,

Plaintiff,

v.

ISB Clearing Corporation, et al.

Defendants.

03 CV 9127 (GBD)

**Order For Entry of  
Injunctive Relief, Damages and  
Ancillary Equitable Relief Against  
ISB Clearing Corporation**

On November 18, 2003, the Commission filed a Complaint charging Defendant ISB Clearing Corporation (“ISB” or “Defendant”) and others with filing materially false reports with the National Futures Association (“NFA”) in violation of Section 9(a)(4) of the Commodity Exchange Act as amended (“Act”), 7 U.S.C. § 13(a)(4) (2002). ISB also was charged with violating Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2002), 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).

On November 19, 2003, ISB was properly served with the summons and Complaint. ISB failed to answer the Complaint within the time permitted by Rule 12(a)(1) of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”). Accordingly, on September 16, 2004, the Clerk of this Court entered a certificate of default against ISB, and on January 13, 2005, this Court entered a default judgment against ISB.

The Commission has now submitted its Application for Entry of Injunctive Relief, Damages, and Ancillary Equitable Relief (“Application”) against ISB 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 ISB 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 ISB.

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

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

This Court has jurisdiction over the subject matter of this action and ISB 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 ISB 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.

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

ISB Clearing Corporation (“ISB”) is a firm which was registered with the Commission as a futures commission merchant (“FCM”).

From April to November 2003, ISB and its co-conspirators willfully and knowingly filed reports with the NFA that contained materially false information. The information was materially false in that it inaccurately stated the amount and location of customer funds on deposit. The customer funds had been fraudulently solicited for the purpose of trading foreign currency contracts (“forex”) which were, in fact, off-exchange foreign currency futures contracts.

As a result of the fraud perpetrated by ISB and its co-conspirators, customers were defrauded in the amount of \$12,059,480 and ISB received ill-gotten gains along with its co-conspirators in the amount of \$11,201,004.86.

ISB and its co-conspirators filed at least 17 weekly reports containing materially false information for at least the following reporting periods: (1) as of 4/25/03; (2) as of 5/2/03; (3) as of 5/9/03; (4) for the period 5/12/03-5/16/03; (5) for the period 5/19/03-5/23/03; (6) as of 5/31/03; (7) for the period 6/2/03-6/6/03; (8) for the period 6/9/03-6/13/03; (9) for the period 6/16/03-6/20/03; (10) for the period 6/23/03-6/27/03; (11) for the period 6/30/03-7/4/03; (12) for the period 7/7/03-7/11/03; (13) for the period 7/14/03-7/18/03; (14) for the period 7/21/03-7/25/03; (15) for the period 8/11/03-8/15/03; (16) as of 8/22/03; and (17) as of 8/29/03.

For example, in the Report for the period as of April 25, 2003, ISB reported that there was \$2,000,000 in ISB customer funds on deposit with Geneva International Bank. In fact, these ISB customer funds were not on deposit in this financial institution.

NFA is a registered futures association acting in furtherance of its official duties under the Act in requiring ISB to file weekly forex reports.

## **C. Conclusions of Law**

### **1. Violation of Section 9(a)(4) of the Act**

From April to November 2003, ISB and its co-conspirators knowingly filed forex reports with the NFA which contained materially false information. In so doing, ISB and its co-conspirators willfully falsified material facts, made false, fictitious, or fraudulent statements or representations, and made and used false writings and documents, knowing the same to contain false, fictitious, or fraudulent statements or entries, to a registered futures association acting in

furtherance of its official duties. By those practices, ISB violated Section 9(a)(4) of the Act, 7 U.S.C. 13(a)(4) (2002).

ISB also was liable for the actions of its officers, directors, managers, employees, and agents in the filing of these materially false reports in that these filings were made within the scope of their office or employment with ISB. Thus, ISB also is liable for violating Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2002), 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),.

## **2. Appropriate Relief**

Permanent injunctive relief is warranted in light of the egregious nature of ISB's conduct in continuously filing at least seventeen materially false reports with the NFA from April to November 2003, as well as its high level of scienter in including materially false information about the amount and location of customer funds on deposit. These facts demonstrate a reasonable likelihood of future violations.

Imposition of a civil monetary penalty, restitution and disgorgement also are appropriate in this case as ISB's violations of the Act were intentional and directly related to the charges filed against it in this matter and in another civil matter, Docket 03 CV 9128, also pending before this Court. In Docket 03 CV 9128, this Court, among other things, has entered a default judgment against ISB and ordered it and its co-conspirators to disgorge its ill-gotten gains in the amount of \$11,201,004.86 and to pay restitution in the amount of \$12,059,480 for the funds it and its co-conspirators fraudulently solicited and misappropriated from its customers.

## II. ORDER FOR RELIEF

### A. Permanent Injunction

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

- 1) falsifying, concealing, or covering up by any trick, scheme, or artifice a material fact, making any false, fictitious, or fraudulent statements or representations, or making or using any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, or futures association designated or registered under the Act acting in furtherance of its official duties under the Act;
- 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. Restitution

**IT IS FURTHER ORDERED** that as of the date of this Order, ISB is jointly and severally liable with its co-conspirators to pay 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 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.

ISB 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.

ISB's restitution obligation coincides with ISB's restitution obligation in CFTC v. Madison Deane and Associates, Inc. et al., Docket 03 CV 9128. Accordingly, satisfaction of any part of ISB's restitution obligation in Docket 03 CV 9128 shall simultaneously result in satisfaction of ISB's restitution obligation in this matter to the same extent.

**C. Disgorgement**

**IT IS FURTHER ORDERED** that as of the date of this Order, ISB is jointly and severally liable with its co-conspirators to disgorge all benefits received, directly or indirectly, from acts or practices which constitute violations of the Act and Regulations as described. ISB is therefore jointly and severally liable with its co-conspirators and shall disgorge its ill-gotten gains in the amount of \$11,201,004.86 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 ISB shall be used to pay restitution to the defrauded customers. ISB's disgorgement obligation coincides with its restitution obligation, such that satisfaction in any part of its disgorgement obligation shall simultaneously result in satisfaction of its restitution obligation to the same extent. Further, ISB's disgorgement obligation in this matter coincides with ISB's disgorgement and restitution obligations in Docket 03 CV 9128. Accordingly, satisfaction in any part of Defendant's restitution or disgorgement obligations in Docket 03 CV 9128 also will result in satisfaction of Defendant's restitution and disgorgement obligations in this matter to the same extent.

Defendant 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 Defendant and the name and Docket

number of the proceeding; Defendant 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.

**D. Civil Monetary Penalty**

**IT IS FURTHER ORDERED** that as of the date of this Order, ISB 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.

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

ISB 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, 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 ISB and the name and Docket number of the proceeding; ISB 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.

**E. Prohibition on Transfer of Funds**

**IT IS FURTHER ORDERED** that ISB 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.

**F. 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 Defendant, including funds or property of investors wherever found, whether held in the name of Defendant 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 Defendant and to satisfy Defendant's obligation to pay restitution and a civil monetary penalty.

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 Defendant of any disgorgement or restitution payment. Such reports shall specify: the amount of funds received from Defendant; the total amount of funds received from Defendant since entry of the Order; and the total amount of disgorgement and restitution paid by the Receiver to victims of Defendant's violations.

**G. 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.

**H. 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 \_\_\_\_\_, 200

*George B. Daniels*

MAR 26 2007

Honorable George B. Daniels HON. GEORGE B. DANIELS  
UNITED STATES DISTRICT JUDGE