

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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.

03 CV 9128 (GBD)

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

On November 18, 2003, the U.S. Commodity Futures Trading Commission (the "Commission") filed a Complaint charging ISB Clearing Corporation ("ISB" or "Defendant") and others with fraud in violation of Section 4b(a)(2)(i), (ii), and (iii) of the Act, 7 U.S.C. § 6b(a)(2) (i), (ii), and (iii) (2001). ISB also was charged with fraud in violation of Section 4b(a)(2)(i), (ii), and (iii) of the Act, 7 U.S.C. § 6b(a)(2) (i), (ii), and (iii) (2001) 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. The Court further grants the Commission’s request for injunctive relief, damages and restitution. 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, and the acts and practices in violation of the Act occurred within this district, among other places.

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

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

Madison Deane & Associates, Inc., Madison Deane Asia Corporation, Free Star Capital, Inc., William, Holbrook & Associates LLC, Oxford Capital Group LLC, Ian Bursztyn, George Omeste and others (collectively called the “co-conspirators”) actively participated with ISB in a scheme to defraud customers and misappropriate their investments. 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. ISB and its co-conspirators then misappropriated these funds. The scheme was perpetrated as follows:

1. Unsophisticated investors were informed that foreign currency trading was a safe investment choice offering high returns.
2. Prospective investors were sent 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. The track record did not reflect the actual trading of any of the customers.
3. After receiving the initial money from investors, additional funds were solicited from customers by forwarding them falsified account statements or falsely informing customers of profitable trading activity in the targeted customer’s account.
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 cash was needed to meet operating costs, including rent and salaries, or ISB and its co-conspirators wanted to reward themselves with extra cash or luxury items.

5. Customers were contacted through “cold calls” by working off purchased leads. Risks of foreign currency trading were downplayed and prospective customers were told that foreign currency trading was an attractive, safe alternative to the stock market.
6. Other deceptive representations to customers 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 websites, failed to inform prospective investors that little or no money entrusted to ISB and its co-conspirators for foreign currency trading would actually be traded.
7. Opening account documents falsely informed customers that customers were dealing with regulated entities.
8. ISB and its co-conspirators 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. Many of the trades reported to customers never actually took place. Instead, winning and losing trades were fabricated in order to meet the financial needs of ISB and its co-conspirators. 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 ISB and its co-conspirators since they were the counterparties to these trades.

The foreign currency contracts that ISB and its co-conspirators purported to offer and sell 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.

ISB and its co-conspirators 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. ISB and its co-conspirators did not require investors to set up banking relationships in order to facilitate delivery of the foreign currencies.

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.

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 and its co-conspirators received ill-gotten gains in the amount of \$11,201,004.86.

## **C. Conclusions of Law**

### **1. The Transactions Were Futures Contracts**

The foreign currency contracts offered and sold by ISB and its co-conspirators 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.

### **2. Fraud Violations**

ISB and its co-conspirators cheated or defrauded or attempted to cheat or defraud customers or prospective customers 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). ISB'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).

ISB was liable for the fraudulent conduct of its officers, directors, managers, employees and agents in cheating or defrauding or attempting to cheat or defraud customers or prospective customers and for willfully deceiving or attempting to deceive customers or prospective customers in that such violative conduct was within the scope of their office or employment. Accordingly, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Commission

Regulation 1.2, 17 C.F.R. § 1.2, ISB is liable for any violations of Section 4b(a)(2)(C)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(C)(i), (ii) and (iii) committed by its officers, directors, managers, employees and agents.

### **3. Appropriate Relief**

Permanent injunctive relief is warranted in light of the egregious nature of ISB's conduct in misappropriating customer funds over a period of time as well as ISB'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 ISB'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 ISB's wrongful acts and to deprive ISB of its ill-gotten gains.

## **II. ORDER FOR RELIEF**

### **A. Permanent Injunction**

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

- 1) 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;
- 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 shall pay and be jointly and severally liable with its 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 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. ISB Clearing Corp. et al., Docket 03 CV 9127. Accordingly, satisfaction of any part of ISB's restitution obligation in Docket 03 CV 9127 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 9127. Accordingly, satisfaction in any part of Defendant's restitution or disgorgement obligations in Docket 03 CV 9127 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 for the charged violation of fraud 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 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 ISB, including funds or property of investors wherever found, whether held in the name of ISB 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 ISB and to satisfy ISB'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**

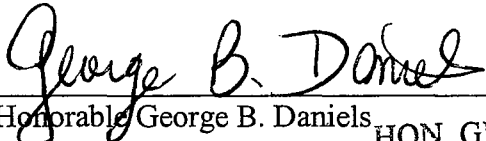
**IT IS FURTHER ORDERED** that all notices required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

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. **MAR 26 2007**

**SO ORDERED**, at \_\_\_\_\_, New York on this \_\_\_ day of \_\_\_\_\_, 200

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