

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

03 4999

U.S. Commodity Futures Trading Commission,

Plaintiff,

v.

A.S. Templeton Group, Inc.,  
Michael Vitebsky, and  
Boris Shuster, a/k/a/ Robert Shuster

Defendants, and

Chariot Consulting, Inc.,  
Shuster, Shuster & Shuster, Ltd., and  
Winn Industries Division of Ontario, Limited,

Relief  
Defendants.

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COMPLAINT FOR  
INJUNCTIVE AND OTHER  
EQUITABLE RELIEF AND  
FOR PENALTIES UNDER  
THE COMMODITY  
EXCHANGE ACT, AS  
AMENDED, 7 U.S.C. §§ 1-27f

GLASSER,  
GO, M.J.

FILED  
U.S. DISTRICT COURT E.D.N.Y.  
OCT - 1 2003  
★ BROOKLYN OFFICE ★

I.

SUMMARY

1. From at least December 2000 to at least February 2002 ("relevant time period"), A.S. Templeton Group, Inc. ("AST"), Michael Vitebsky ("Vitebsky"), and Boris Shuster a/k/a Robert Shuster ("Shuster") (collectively, the "Defendants") fraudulently solicited and obtained approximately \$10 million from more than 300 customers for the purpose of trading foreign currency contracts which were, in fact, illegal off-exchange foreign currency futures contracts. Instead of actually trading their clients' funds, a substantial portion of these funds were diverted without any investment

made in foreign currency contracts. At the same time, Defendants misled investors with false monthly account statements showing considerable profits. Defendants then abruptly notified customers that alleged catastrophic trading losses had wiped out their funds.

2. Defendants presented AST to the retail public as a legitimate entity, sometimes implying that it was associated with the investment firm Franklin Templeton, a multi-national investment management organization. In the literature provided to prospective investors, AST represented that it traded in the 24-hour spot foreign exchange market and would place all customer funds with a legitimate counterparty, but this was a fabrication. In fact, AST was a sham operation, and the transactions the Defendants offered were illegal off-exchange futures contracts.

3. In the course of soliciting customers to invest in contracts in foreign currency, Defendants defrauded customers by making exaggerated claims of profits, minimizing the risk of loss, and misappropriating the majority of customer funds.

4. AST has engaged, is engaging, or is about to engage in acts and practices which violate Sections 4(a) and 4b(a)(2) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 6(a) and 6b(a)(2) (2001), and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002).

5. Vitebsky and Shuster have engaged, are engaging, or are about to engage in acts and practices which violate Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2001), and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002). Furthermore, Vitebsky and Shuster knowingly induced or did not act in good faith and, as such, were controlling persons of AST within the meaning of Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001) and, as alleged herein, are liable for the violations of AST.

6. From at least December 2000 to at least March 2002, Chariot Consulting, Inc. ("Chariot"), Shuster, Shuster, & Shuster, Ltd. ("SSS"), and the Winn Industries Division of Ontario Limited ("Winn/Ontario") (collectively, the "Relief Defendants") received the fraudulently obtained funds of AST customers.

7. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), Plaintiff U.S. Commodity Futures Trading Commission ("Commission" or "CFTC") brings this action to enjoin the unlawful acts and practices of Defendants to compel their compliance with the provisions of the Act and Regulations thereunder. In addition, the Commission seeks civil penalties, an *ex parte* statutory restraining order, an order freezing the assets of the Defendants and Relief Defendants, a preliminary injunction, and the appointment of a receiver over any funds frozen to maintain the status quo for the victims of AST. Furthermore, the proposed action will ultimately seek permanent injunctive relief and other relief, including restitution, disgorgement, and civil monetary penalties.

8. Unless enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices as more fully described below.

II.

**JURISDICTION AND VENUE**

9. The Act prohibits fraud in connection with the trading of commodity futures contracts and establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), 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. In addition, Section 2(c)(2)(B)(i) and (ii) of the Act, 7 U.S.C. § 2(c)(2)(B) (i) and (ii) (2001), corresponding to the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106-554, 114 Stat. 2763, clarifies the jurisdiction of Plaintiff, the CFTC, over certain transactions in foreign currency that are contracts for the sale of a commodity for future delivery, including the transactions alleged in this Complaint.

10. AST, the counterparty to the foreign currency futures transactions entered into by investors as described above is not a proper counterparty for retail foreign currency transactions, and therefore the CFTC has jurisdiction over the transactions in retail foreign currency alleged herein.

11. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2001), in that Defendants are found in, inhabit, or transact 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.

### III.

#### THE PARTIES

##### Plaintiff

12. Plaintiff, United States Commodity Futures Trading Commission, is an independent federal regulatory agency that is charged with responsibility for

administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2001), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2002).

**Defendants**

13. A.S. Templeton Group, Inc. is a Delaware corporation incorporated in 2000 with offices in Staten Island, New York. It has never been registered with the Commission in any capacity. AST is not a financial institution, a futures commission merchant ("FCM"), an affiliate of a FCM, a broker or dealer, an associated person of a broker or dealer, an insurance company, a regulated subsidiary of an insurance company, a financial holding company, or an investment bank holding company.

14. Michael Vitebsky resides in Bayside, New York upon information and belief. Since AST's formation in 2000, Vitebsky has been AST's President and Treasurer and signatory on all AST bank accounts. Vitebsky has never been registered with the Commission.

15. Boris Shuster, a/k/a Robert Shuster resides in Brooklyn, New York and Huntingdon Valley, Pennsylvania upon information and belief. Shuster was the principal solicitor at AST and signatory on one AST bank account. Shuster is also the Chief Executive Officer ("CEO") of Relief Defendant SSS and the sole signatory on SSS's bank account. Shuster has never been registered with the Commission.

**Relief Defendants**

16. Chariot Consulting, Inc. is a New York corporation incorporated in 2001 with offices located at 1232 Bay 26<sup>th</sup> St., Apartment 1A, Brooklyn, New York 11214 and 4911 Frankford Avenue, Philadelphia, Pennsylvania 19124. Chariot has never been registered with the Commission.

17. Shuster, Shuster & Shuster, Ltd. is a New York corporation incorporated in 1999 with offices at 1 74<sup>th</sup> St., Apartment 4A, Brooklyn, New York 11209. Shuster is the CEO of SSS and the sole signatory on SSS's bank account. SSS has never been registered with the Commission.

18. Winn Industries Division of Ontario Limited or 1430214 Ontario, Limited is a Canadian corporation with offices located at 7 Mary Gapper Crescent, Richmond Hill, Ontario, Canada L4C 7LB. Winn/Ontario has never been registered with the Commission.

#### IV.

#### STATUTORY BACKGROUND

19. Section 2(c)(2)(B)(i)-(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)-(ii) (2001), provides that the CFTC shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, and is "offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is" a regulated entity, as defined therein. Section 2(c)(2)(B)(i)-(ii) of the Act was enacted by Congress as part of the Commodity Futures Modernization Act of 2000 ("CFMA") in an effort "to clarify the jurisdiction of the Commodity Futures Trading Commission over certain retail foreign exchange transactions and bucket shops that may not be otherwise regulated." CFMA § 2(5), Pub. L. No. 106-554, 114 Stat. 2763 (2000).

20. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2001), defines an "eligible contract participant" as an individual with total assets exceeding \$10 million or exceeding \$5 million "and who enters into the agreement, contract, or transaction in

order to manage the risk with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.”

21. Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001) provides that unless exempted by the Commission, it shall be unlawful for any person to offer to enter into, execute, confirm the execution of, or conduct 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 when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity; (b) such contracts have not been executed or consummated by or through such contract market; and (c) such contract is not evidenced by a written record showing the date, parties, property covered, price, and terms of delivery.

22. Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a) (2001) provides in pertinent part that it is unlawful for any person in or in connection with any futures contract of sale 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 (i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made any false report or statement thereof, or to enter or cause to be entered any false record, to or for such other person; (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract; or (iv) to bucket such order, or to fill such order by offset against the order of any other person.

## V.

FACTUAL BACKGROUND

23. AST's scheme operated in the following manner: (1) AST's account executives first cold called unsophisticated investors and powerfully delivered AST's hard sales pitches, (2) AST then sent these prospective customers their promotional materials, including AST's brochures, which inflated profit potential while deflating risks associated with investments in foreign currencies, and fabricated account statements of other AST customers, (3) after receiving customers' investments, AST's account executives solicited more funds after sending them fabricated account statements reflecting large profits in their accounts, and (4) AST's account executives advised customers that the company placed large trades in their accounts and the market moved against them, depleting their accounts by more than eighty percent.

24. AST obtained approximately \$10 million from more than 300 customers in fifteen months. Less than one third of that money was returned to customers.

25. Suddenly, after many purportedly profitable months of trading activity in their accounts, AST customers received account statements from AST reflecting that their accounts had had suffered substantial losses depleting their accounts by eighty to eighty-five percent. AST customers received phone calls from AST representatives alleging that the market had moved against them and that all AST customers, including AST employees, had "lost their shirts" and would have to close all customer accounts and shut down operations.

26. Only about \$1.45 million (approximately fifteen percent) of the approximately \$10 million in funds obtained from AST went to an entity with the facility



to trade foreign currency contracts. Of that \$1.45 million, approximately \$550,000 was transferred back to AST from that firm. Transfers of customer funds from AST to its purported clearing firm were made only during the months of December 2000 and January, February, March, May, and June 2001. No records have been produced to the Commission to show that even this small amount of AST money was ever traded on behalf of AST customers in the foreign currency market.

### **Solicitations and Misrepresentations**

27. AST customers were initially contacted through a cold call by an AST account executive. Many AST customers were contacted by Shuster. AST account executives, like Shuster, would typically tell people that since the stock market was not doing well, investments in the foreign currency market offered a safer and more lucrative earning potential. They would then suggest that investors review AST's brochures and consider an investment in a managed currency trading account at AST.

28. Account executives told prospective customers that AST customers generally made between a three and twenty-five percent monthly rate of return on their investments. Some customers were told that they could expect to double their principal investments in less than a year. Defendants then sent purported account statements of other AST customers to substantiate account activity and profitability of AST accounts.

### **Promotional Materials**

29. Defendants misrepresented and/or omitted at least three key pieces of information in the promotional materials sent to prospective customers: (1) AST brochures misrepresented the background, experience, and training of AST and its staff and exaggerated the profit potential while minimizing the risks associated with

investments in foreign currencies; (2) purported trading records of other AST customers included with the brochures misrepresented the trading and profits in those customer accounts; and (3) the brochures and trading records omitted the previously-discussed fact that little or no money entrusted to AST for trading foreign currencies would actually be traded.

30. Prospective customers were sent AST brochures and other literature, the business cards of the individuals who contacted them, and purported past AST customer account statements.

31. The brochure stated that: "All account executives and support staff of A.S. Templeton Group are fully trained in the working of the foreign exchange market." The brochure claimed that stop-losses are placed on all trades so that a customer could never lose more than his or her principal in the AST managed currency-trading account. The brochure also asserted that AST's traders operate 24 hours a day to ensure the best possible returns.

32. According to the business cards included with the promotional literature, AST account executives were Senior Vice Presidents. Across the bottom of the business cards were listed four cities: "New York, Tokyo, London, and Zurich." At least one customer was told that AST had offices in all four cities, while another customer was told that AST traded in all four cities. Upon information and belief, AST neither had offices nor traded in those locations.

33. Prospective AST customers were sent purported "actual" customer account statements with names and other identifying information blacked out. Two stamps appeared on each page of the statements: "Confidential" and "Past Performance

Does Not Guarantee Future Results.” These statements always showed monthly profits reflecting between a three and twenty-five percent rate of return, even for months when actual AST customers had lost money.

#### Customer Account Agreement

34. Once prospective customers agreed to open accounts at AST, they were sent account opening agreements, which affirmed that all funds deposited with AST would be used for currency trading.

#### Handling of Customer Accounts

35. Customers were sent monthly account statements entitled “Client Statements” printed on AST letterhead. These statements were printed on AST letterhead and included the account number, the account holder’s social security number, the account title, the name of the account executive, and a list of the monthly account activity. Client Statements for almost every month always showed profits except for the last month of the customer’s account when they almost always showed losses of more than eighty percent of the customer’s account.

36. AST account executives routinely called clients to discuss the profitability of their accounts and to encourage them to invest more money.

#### Purported Trading Losses

37. On February 25 and 26, 2002, AST customers purportedly sustained substantial trading losses that depleted their accounts by about eighty percent. AST account executives alleged that AST traders had made trades on February 25 and 26, 2002 and that the market had moved against them. The amount traded in each of the four purported losing trades reflected on Client Statements on those dates was substantially

larger than other trades purportedly executed in AST customer accounts. Customers were told that all trading had been suspended and advised to close their accounts. Upon information and belief, AST ceased its operations within the next one to two months.

38. There were no transfers of any funds between AST and its purported clearing firm during February 2002 or any other time thereafter.

39. AST customers who purportedly lost the majority of their investments before February 2002 were told similar tales, except that they were typically solicited to invest more money with AST, rather than advised to close their accounts, so that their losses could be recouped as quickly as possible.

40. Customers were usually sent checks for the small amounts left in their accounts after the losses had occurred. By March 2002, of the approximately \$10 million obtained from customers, less than one third was returned.

#### Illegal Futures Contracts

41. The foreign currency contracts that Defendants purported to offer and sell were futures. The contracts 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 to avoid delivery.

42. AST's contracts had no delivery date and could have been held open indefinitely, assuming the customer could pay any interest charges accruing on the position.

43. AST marketed its managed 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.

44. Investors did not anticipate taking – and did not take – delivery of the foreign currencies they purchased as a consequence of these investments. AST did not require its clients to set up banking relationships to facilitate delivery of the foreign currencies. Once the market moved in a favorable direction, investors expected, based on the representations made to them, AST to liquidate their investments by authorizing the sale of the contract and taking the profits.

45. AST was not a proper counterparty or an affiliate of a proper counterparty under the Act authorized to engage in foreign currency futures transactions with retail customers. AST was not a financial institution, a broker or dealer, or an associated person of a broker or dealer. AST was not a FCM, or an affiliate of a FCM. AST did not conduct transactions on a facility designated as a contract market or registered as a derivatives transaction execution facility.

46. Defendants 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 CFTC as a contract market, nor were Defendants' transactions executed or consummated by or through a member of such a contract market. Defendants did not conduct transactions on a facility registered as a derivatives transaction execution facility.

**Diversion of Customer Money**

47. Chariot received approximately \$2.35 million of fraudulently obtained customer money from AST. Chariot then wired almost all of this money to offshore banks. There is no record that any money flowed from Chariot back to AST customers or AST's bank accounts. Upon information and belief, Chariot's New York commercial address does not even exist.

48. SSS received approximately \$1.25 million of fraudulently obtained money from AST. Of that, SSS transferred back to AST accounts approximately \$190,000. SSS's CEO and the signatory on its bank account is Shuster. Upon information and belief, SSS's New York commercial address is, in fact, Shuster's residential address.

49. Winn/Ontario received approximately \$419,000 of fraudulently obtained customer money from AST. Upon information and belief, Winn/Ontario is a construction company based in Ontario, Canada. There is no record that any money flowed back from Winn/Ontario to AST customers or AST's accounts.

**VI.****VIOLATIONS OF THE COMMODITY EXCHANGE ACT  
AND COMMISSION REGULATIONS****COUNT I - Violations of Section 4b(a)(2) of the Act and Commission Regulation  
1.1(b): Fraud in the Sale of Futures Contracts**

50. Paragraphs 1 through 49 are re-alleged and incorporated herein.

51. During the relevant time period, Defendants cheated or defrauded or attempted to cheat or defraud investors or prospective investors of AST, willfully made or caused to be made false reports or statements, and willfully deceived or attempted to deceive investors or prospective investors by, among other things: misappropriating

funds received from investors and making false statements regarding trading losses, the risks of trading foreign currencies, the legitimacy of their operation, and the safety of investor funds, all in violation of Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2001), and Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002). Defendants' 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 Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a) (2001).

52. From at least December 2000 and continuing to at least March 2002, Vitebsky and Shuster, as the owners and operators of AST, directly or indirectly controlled AST and its schemes and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count I. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), as described in this Count I, Vitebsky and Shuster are liable for the violations described in this Count I, to the same extent as AST.

53. 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), AST is liable for any violations of Section 4b(a)(2) of the Act by its officers, directors, managers, employees, and agents, in that all such violations were within the scope of their office or employment with AST.

54. Each material misrepresentation or omission, false statement, misappropriation of investor funds, and willful deception made during the relevant period, including but not limited to those specifically alleged herein, is alleged as a

separate and distinct violation of Section 4b(a)(2) of the Act and Commission Regulation 1.1(b).

**COUNT II – Violations of Section 4(a) of the Act: Sale of Illegal Off-Exchange Futures Contracts**

55. Paragraphs 1 through 49 are re-alleged and incorporated herein.

56. Since at least December 2000 and continuing to at least March 2002, AST 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 for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions were not conducted on or subject to the rules of a board of trade which was designated or registered by the CFTC 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).

57. From at least December 2000 and continuing to at least March 2002, Vitebsky and Shuster, as the owners and operators of AST, directly or indirectly controlled AST and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count II. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), Vitebsky and Shuster are liable for the violations of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001), described in this Count II, to the same extent as AST.

58. 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), AST is liable for any violations



of Section 4(a) of the Act by its officers, directors, managers, employees, and agents, in that all such violations were within the scope of their office or employment with AST.

59. Each foreign currency futures transaction not conducted on a designated contract market or registered derivatives transaction execution facility made during the relevant time period, including but not limited to those conducted by Defendants as specifically alleged herein, is alleged as a separate and distinct violation of Section 4(a) of the Act.

**COUNT III - Unjust Enrichment: Disgorgement of the Assets of the Relief Defendants**

60. Paragraphs 1 through 49 are re-alleged and incorporated herein.

61. AST committed a fraud upon its customers in connection with the purchase and sale of foreign currency contracts as alleged herein.

62. Relief Defendants, Chariot, SSS, and Winn/Ontario, received funds or otherwise benefited from funds that are directly traceable to the funds obtained from AST customers through fraud.

63. Chariot, SSS, and Winn/Ontario will be unjustly enriched if they are not required to disgorge the funds or the value of the benefit they received as a result of AST's fraud. Chariot, SSS, and Winn/Ontario have no legitimate claim to these funds.

64. Chariot, SSS, and Winn/Ontario should be required to disgorge the funds and assets, or the value of the benefit they received from those funds and assets, which are traceable to AST's fraud.

65. By reason of the foregoing, Chariot, SSS, and Winn/Ontario hold funds and assets in constructive trust for the benefit of AST's customers.

## VII.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), and pursuant to the Court's own equitable powers:

A. Find that Defendants violated Sections 4(a) and 4b(a)(2) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2) (2001), and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002);

B. Enter an *ex parte* statutory restraining order and an order of preliminary injunction restraining and enjoining Defendants and Relief Defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;

2. refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;

3. withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of any of the Defendants; and

4. appointing a temporary receiver to take into his or her immediate custody, control, and possession all cash, cashier's checks, funds, assets, and property of Defendants and Relief Defendants, including funds or property of investors wherever found, whether held in the name of any of the Defendants, Relief Defendants, 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, and to prevent further evasions and violations of the federal commodity laws by the Defendants;

C. Enter orders of preliminary and permanent injunctions prohibiting Defendants and any other person or entity associated with them, including any successor thereof, from:

1. engaging in conduct, in violation of Sections 4(a) and 4b(a)(2) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2) (2001), and Regulation 1.1(b), 17 C.F.R. § 1.1(b); and

2. soliciting funds for, engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;

D. Enter an order directing Defendants and Relief Defendants to provide Plaintiff immediate and continuing access to their books and records;

E. Enter an order appointing a permanent equity receiver to take into his or her immediate custody, control, and possession the assets of the Relief Defendants that are traceable to the fraud and all cash, cashier's checks, funds, assets, and property of Defendants, including funds or property of investors wherever found, whether held in the name of any of the Defendants 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, and to prevent further evasions and violations of the federal commodity laws by the Defendants;

F. Enter an order directing Defendants and Relief Defendants to take such steps as are necessary to repatriate to the territory of the United States all funds and assets of AST customers described herein which are held by Defendants and Relief Defendants or are under their direct or indirect control, jointly or singly, and deposit such funds into the Registry of this Court and provide the Commission, equity receiver, and the Court with a written description of the funds and assets so repatriated;

G. Enter an order directing Defendants, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest thereon from the date of such violations;

H. Enter an order directing Defendants to make full restitution to every investor whose funds were received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;

I. Enter an order assessing a civil monetary penalty against each defendant in the amount of not more than the higher of \$120,000 or triple the monetary gain to the defendant for each violation by the defendant of the Act and Commission Regulations;

J. Enter an order directing that Defendants make an accounting to the court of all their assets and liabilities, together with all funds they received from and paid to

clients and other persons in connection with commodity futures transactions or purported commodity futures transactions, and all disbursements for any purpose whatsoever of funds received from commodity transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind, from, but not limited to, December 2000 through and including the date of such accounting;

K. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2001);

L. Find that each of the Relief Defendants received or benefited from funds fraudulently obtained from AST customers, has no legitimate claim to these funds, and was unjustly enriched by these funds.

M. Enter an order directing Relief Defendants, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest thereon from the date of such violations; and

N. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: New York, NY  
September 30, 2003

U.S. COMMODITY FUTURES TRADING COMMISSION

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