

ORIGINAL

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>1/5/17</u>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
JOSEPH DEANGELIS, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	Civil Action No. 11-cv-7866
	:	(VM) (JCF) (USCFTC)
-against-	:	
	:	
JON S. CORZINE, <i>et al.</i> ,	:	
	:	
Defendants.	:	
-----	X	
U.S. COMMODITY FUTURES TRADING COMMISSION,	:	
Plaintiff,	:	
	:	
-against-	:	
	:	
MF GLOBAL HOLDINGS LTD.,	:	
JON S. CORZINE, and EDITH O'BRIEN,	:	
	:	
Defendants.	:	
	:	
-----	X	

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTY
AND OTHER EQUITABLE RELIEF AGAINST DEFENDANT JON S. CORZINE**

I. INTRODUCTION

On June 27, 2013, Plaintiff U.S. Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint against MF Global Holdings Ltd. ("MFGH"), MF Global Inc. ("MFGI"), Jon S. Corzine ("Corzine"), and Edith O'Brien ("O'Brien") (collectively, "Defendants") seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1-26, and the Commission's Regulations ("Regulations") promulgated thereunder, 17 C.F.R. § 1.1 *et seq.* On November 8, 2013, this Court approved a settlement of all of the Commission's claims against

MFGI. On December 6, 2013, the Commission filed an amended Complaint against MFGH, Corzine, and O'Brien. On December 23, 2014, the Court approved a settlement of all of the Commission's claims against MFGH.

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the amended Complaint in this action against Defendant Corzine without a trial on the merits or any further judicial proceedings, Defendant Corzine:

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendant Jon S. Corzine ("Consent Order");
2. Affirms that he has read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledges service of the summons and the Complaint and amended Complaint;
4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012);
5. Admits the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1-26 (2012);
6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012);

7. Waives:

(a) Any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. § 148.1 *et seq.* (2015), relating to, or arising from, this action;

(b) Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

(c) Any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

(d) Any and all rights of appeal from this action;

8. Consents to the continued jurisdiction of this Court over him for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Corzine now or in the future resides outside the jurisdiction of this Court;

9. Agrees that he will not oppose enforcement of this Consent Order on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and hereby waives any objection based thereon;

10. Agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the amended Complaint or the Findings of Fact or Conclusions of Law in this

Consent Order, or creating or tending to create the impression that the amended Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect his: (a) testimonial obligations or (b) right to take legal positions in other proceedings to which the Commission is not a party. Corzine shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement;

11. By consenting to the entry of this Consent Order, Corzine neither admits nor denies the allegations of the amended Complaint or the Findings of Fact and Conclusions of Law in this Consent Order, except as to jurisdiction and venue, which he admits. Further, Corzine agrees and intends that the allegations contained in the amended Complaint and all of the Findings of Fact and Conclusions of Law contained in this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Corzine as a debtor; (b) any proceeding pursuant to Section 8a of the Act, 7 U.S.C. § 12a (2012), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 – 3.75 (2015); and/or (c) any proceeding to enforce the terms of this Consent Order. Defendant does not consent to the use of this Consent Order, or the Findings of Fact and Conclusions of Law in this Consent Order, as the sole basis for any other proceeding brought by the Commission;

12. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 36 of Part VII of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him as a debtor, whether inside or outside the United States; and

13. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Corzine in any other proceeding, nor does any provision of this Consent Order render this Consent Order admissible in any proceeding not involving the Commission.

III. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), as set forth herein. The findings and conclusions in this Consent Order are not binding on any other party to this action.

THE COMMISSION AND CORZINE, THE PARTIES TO THIS CONSENT ORDER, AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

The Parties to This Consent Order

14. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, 7 U.S.C. §§ 1-26 (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 - 190.10 (2015).

15. Defendant Corzine was the CEO and Chairman of the Board of Directors of MFGH from March 2010 through the commencement of MFGH's bankruptcy proceedings on October 31, 2011. Corzine was also the CEO of MFGI from September 1, 2010 through the commencement of MFGI's liquidation proceedings on October 31, 2011. In addition, Corzine was a member of the Board of Directors of MFGI. Corzine was registered with the CFTC as an

Associated Person of MFGI from August 2010 to November 2011 and was listed as a Principal of MFGI from May 2010 to November 2011.

Background

16. MFGI was a futures commission merchant ("FCM") registered with the Commission and was a subsidiary of MFGH. MFGH was the holding company and parent of almost fifty separate direct or indirect subsidiaries, including MFGI, and their subsidiaries and affiliates (collectively referred to herein as the "Firm").

MFGI's and MFGH's Violations of Section 4d(a)(2) of the Act, 7 U.S.C. § 6d(a)(2) and CFTC Regulations 1.20, 1.22, and 1.23, 17 C.F.R. §§ 1.20, 1.22, and 1.23.

17. During the last week of October 2011, in violation of U.S. commodity laws, MFGI unlawfully used nearly one billion dollars of customer segregated funds to support its own proprietary operations and the operations of its affiliates and to pay broker-dealer securities customers and pay FCM customers for withdrawals of secured customer funds. On October 31, 2011, MFGH and certain other affiliated companies filed for bankruptcy protection.

18. MFGI violated Section 4d(a)(2) of the Act, 7 U.S.C. § 6d(a)(2), and Regulations 1.20, 1.22, and 1.23, 17 C.F.R. §§ 1.20, 1.22, and 1.23, by failing to treat, deal with, and account for its FCM customers' segregated funds as belonging to such customers; failing to account separately for, properly segregate, and treat its FCM customers' segregated funds as belonging to such customers; commingling its FCM customers' segregated funds with the funds of any other person; using its FCM customers' segregated funds to fund the operations of MFGI and its affiliates, thereby using or permitting the use of the funds of one futures customer for the benefit of a person other than such futures customer; and withdrawing from its FCM customer segregated funds beyond MFGI's actual interest therein.

19. MFGH was the parent company of MFGI and controlled the operations of MFGI and is liable as a principal for MFGI's violations of the Act and the Regulations.

Corzine's Violation of CFTC Regulation 166.3 – Failure to Supervise Diligently and Liability for MFGI's Violations as a Controlling Person Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b)

20. As CEO for both MFGH and MFGI, Defendant Corzine, among other things:

- a. directly and indirectly controlled the employees responsible for making wire transfers involving its accounts;
- b. made management and hiring decisions;
- c. influenced how proprietary funds were invested;
- d. made and influenced corporate policy; and
- e. directly and indirectly supervised the activities of MFGI's officers, employees, and agents, including those individuals and groups responsible for liquidity, cash management, and protection of customer funds.

21. Defendant Corzine was aware that the Firm, through its officers, employees and agents, was transferring funds from MFGI's customer segregated accounts, which held both customer funds and Firm funds.

22. At the time of the transfers described in Paragraph 21, Defendant Corzine was also aware that: (a) MFGI was experiencing a liquidity crisis, which had worsened during the last week of October; (b) JP Morgan had sought written assurances that a transfer of \$175 million to the bank from MFGI was in compliance with CFTC Regulations; and (c) MFGI had a policy to maintain a positive amount of FCM excess cash in the customer segregated and customer secured accounts and, on a number of days, MFGI used more than the available positive FCM excess cash to satisfy the Firm's proprietary liquidity needs.

23. From at least August 2011 through October 31, 2011, Defendant Corzine failed to supervise diligently the activities of the officers, employees, and agents of the Firm. By this conduct, Corzine violated CFTC Regulation 166.3, 17 C.F.R. § 166.3.

24. During the last week of October 2011, Defendant Corzine directly and indirectly controlled MFGI and its employees. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Defendant Corzine is liable for MFGI's violations of Section 4d(a)(2) of the Act and CFTC Regulations 1.20, 1.22, and 1.23.

B. Conclusions of Law

Jurisdiction and Venue

25. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), which provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

26. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Corzine was present in this District during the last week of October 2011 and the acts and practices in violation of the Act and CFTC Regulations occurred within this District.

Failure to Supervise Diligently

27. By the conduct described in paragraphs 1 through 23 above, Corzine failed to supervise diligently the activities of the officers, employees, and agents of MFGH, MFGI, and

their subsidiaries and affiliates. Therefore, Corzine violated CFTC Regulation 166.3, 17 C.F.R. § 166.3.

Liability for MFGI's Violations as a Controlling Person

28. By the conduct described in paragraphs 1 through 24 above, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Defendant Corzine is liable for MFGI's violations of Section 4d(a)(2) of the Act and CFTC Regulations 1.20, 1.22, and 1.23.

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

29. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), Corzine is permanently restrained, enjoined, and prohibited from directly or indirectly:

(a) While acting as a control person of an FCM, failing to treat, deal with, and account for FCM customer segregated funds as belonging to such customers; failing to account separately for, properly segregate, and treat FCM customer segregated funds as belonging to such customers; commingling FCM customer segregated funds with the funds of another person; using or permitting the use of the funds of one futures customer for the benefit of a person other than such futures customer; and withdrawing FCM customer segregated funds beyond the FCM's actual interest therein, in violation of Section 4d(a)(2) of the Act, 7 U.S.C. § 6d(a)(2) (2012), and CFTC Regulations 1.20, 1.22, and 1.23, 17 C.F.R. §§ 1.20, 1.22, and 1.23 (2015); and

(b) Failing to supervise diligently the handling of all commodity interest accounts carried, operated, advised, or introduced by any registrant and all other activities of any such registrant's partners, officers, employees, and agents (or other persons occupying a similar status

or performing a similar function) relating to its business as a Commission registrant, in violation of CFTC Regulation 166.3, 17 C.F.R. § 166.3 (2015).

V. CIVIL MONETARY PENALTY

IT IS HEREBY ORDERED THAT:

A. Civil Monetary Penalty

30. Corzine shall pay a civil monetary penalty in the amount of five million U.S. dollars (\$5,000,000) ("CMP Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning ten business days from the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

31. Corzine shall pay his CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment by electronic funds transfer is chosen, Corzine shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Corzine shall accompany payment of the CMP Obligation with a cover letter that identifies Corzine and the name and docket number of this proceeding. Corzine shall

simultaneously transmit copies of the cover letter and the form of payment to (1) the Chief Financial Officer, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581 and (2) Manal M. Sultan, Deputy Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005.

B. Provision Related to Monetary Sanctions

32. Partial Satisfaction: Acceptance by the Commission of any partial payment of Corzine's CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

VI. UNDERTAKINGS

IT IS HEREBY ORDERED THAT CORZINE SHALL COMPLY WITH THE FOLLOWING UNDERTAKING:

33. Corzine agrees that he shall never, directly or indirectly, act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2015)), agent or other officer, director, or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38)), registered, exempted from registration, or required to be registered with the Commission as a Futures Commission Merchant as that term is defined in Section 1a(28) of the Act, 7 U.S.C. § 1a(28).

34. Corzine agrees that he shall never apply for registration with the Commission in any capacity or engage in any activity requiring such registration with the Commission.

35. Corzine agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification, including but not limited to payment made pursuant to any

insurance policy, with regard to the penalty amount that Corzine shall pay pursuant to Part V. of this Consent Order.

VII. MISCELLANEOUS PROVISIONS

36. Cooperation: Corzine agrees that he shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any investigation, civil litigation, or administrative matter related to this Consent Order or the Amended Complaint, or any current or future Commission investigation related thereto. Corzine's counsel designated in paragraph 36 of this Part VII of this Consent Order is hereby designated as his agent for service of any subpoena issued by the Commission in connection with this action, and Corzine agrees that he will comply with such a subpoena.

37. Notice: All notices required to be given by any provision in this Consent Order shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

Manal M. Sultan
Deputy Director
Division of Enforcement
U.S. Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005

Notice to Defendant Corzine:

Jon S. Corzine
c/o Andrew J. Levander
Dechert, LLP
1095 Avenue of the Americas
New York, NY 10036-6797

All such notices to the Commission shall reference the name and docket number of this action.

38. Change of Address/Phone: Until such time as Corzine satisfies in full his CMP Obligation as set forth in this Consent Order, Corzine shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

39. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the Commission and Corzine (the "Parties") hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by the Parties hereto; and (c) approved by order of this Court.

40. Invalidation: If any provision of this Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of this Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

41. Waiver: The failure of any party to this Consent Order or of any at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

42. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Corzine to modify or for relief from the terms of this Consent Order.

43. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Corzine, upon any person under his authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Corzine.

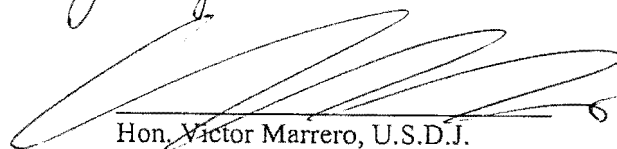
44. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that the Parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

45. Contempt: Corzine understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Consent Order.

46. Agreements and Undertakings: Corzine shall comply with all of the undertakings and agreements set forth in this Consent Order.

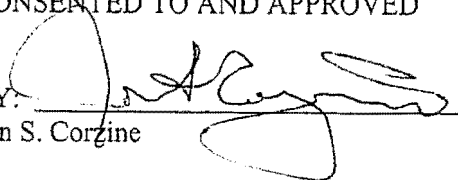
There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this
Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief
Against Defendant Jon S. Corzine forthwith and without further notice.

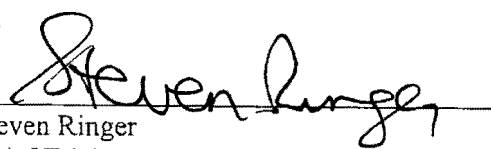
IT IS SO ORDERED on this 5th day of January 2017,

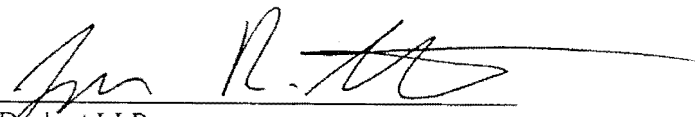


Hon. Victor Marrero, U.S.D.J.

CONSENTED TO AND APPROVED

BY: 
Jon S. Corzine


Steven Ringer
Chief Trial Attorney
K. Brent Tomer
Chief Trial Attorney
Manal Sultan
Deputy Director
U.S. COMMODITY FUTURES TRADING
COMMISSION
140 Broadway, 19th Floor
New York, NY 10005
(646) 746-9700
(646) 746-9940 (facsimile)
Attorneys for Plaintiff


Dechert LLP
Andrew J. Levander
Jonathan Streeter
1095 Avenue of the Americas
New York, New York 10036
(212) 698-3500
(212) 698-3599 (facsimile)
Attorneys for Defendant Jon S. Corzine

Date: 10/3/16

Date: 1/4/17