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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

-----X	
SECURITIES AND EXCHANGE COMMISSION,	:
	:
Plaintiff,	:
	:
-against-	:
	:
SCOTT I. KUPERSMITH and	:
FREDERICK C. CHELLY,	:
	:
Defendants.	:
-----X	

11 Civ. _____

COMPLAINT

ECF CASE

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Defendants Scott I. Kupersmith (who, upon information and belief, currently resides at 5499 North Federal Highway, Suite F, Boca Raton, Florida 33487) and Frederick C. Chelly (who, upon information and belief, currently resides at 2001 Meridian Avenue, Miami Beach, Florida 33139), alleges as follows:

SUMMARY

1. This action involves an illegal “free-riding” scheme perpetrated by Kupersmith and Chelly during 2009 and 2010 that caused over \$2 million in losses to broker-dealers, while allowing Kupersmith and Chelly to reap over \$600,000 in illicit trading profits.

2. Holding themselves out as money managers for hedge funds or private investors, Kupersmith and Chelly opened numerous brokerage accounts for corporate entities they controlled and bought and sold (or *vice versa*) the same quantity of the same stock in different accounts, frequently on the same day, intending to profit on swings up or down in the stock price. Kupersmith and Chelly ordered the separate legs of these corresponding or offsetting trades in different brokerage accounts to avoid detection. When their trades were profitable, Kupersmith and Chelly took the profits. But when the trades threatened to result in substantial losses, Kupersmith and Chelly failed to cover the sales they had ordered, and left the broker-dealers to settle the trades at significant cost to the broker-dealers.

3. Critical to the scheme, Kupersmith and Chelly opened and traded through accounts known as a Delivery Versus Payment/Receipt Versus Payment, or “DVP” accounts at various broker-dealers. The broker-dealers offered the DVP accounts to Kupersmith and Chelly with the understanding that they held sufficient securities and cash with a third party custodial bank to cover the trades they executed in the DVP accounts.

4. Kupersmith and Chelly falsely represented to broker-dealers or otherwise led them to believe that they held securities and other assets in a custodial account with a third-party custody bank, when, in fact, they did not own the stock that they sold and had insufficient funds to pay for the stock that they purchased when they placed orders in many instances. Instead, they used the proceeds from sales of shares to pay for the purchase of those same shares. Kupersmith and Chelly never disclosed this fact to broker-dealers.

5. By virtue of the conduct alleged in this Complaint, Defendants, directly or indirectly, singly or in concert, have engaged in acts, practices, and courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 (the “Securities Act”), 15

U.S.C. § 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, and Rule 10b-21, 17 C.F.R. § 240.10b-21, thereunder.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

6. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d)(1) of the Exchange Act, 15 U.S.C. § 78u(d)(1), seeking a final judgment: (i) permanently restraining and enjoining Defendants from engaging in the acts, practices and courses of business alleged herein; (ii) requiring Defendants to disgorge their ill-gotten gains and to pay prejudgment interest thereon; and (iii) imposing civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action, pursuant to Sections 20(b) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b) and 77v(a), and Sections 21(d) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d) and 78aa.

8. Venue lies in this District pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa. The Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein. Certain of the acts, practices, courses of business and transactions constituting the violations alleged herein occurred within the District of New Jersey, including that Defendant Kupersmith conducted the fraudulent scheme while residing in the District and multiple offices of one of the defrauded broker-dealers were located in the District.

DEFENDANTS

9. **Frederick Chelly**, age 42, resides in Florida, but resided in either Miami Beach, Florida or New York, New York during the conduct of the scheme alleged herein. He is the President and owner of Antibe Arbitrage Group, Inc. (“Antibe”), the corporate entity through which he opened the DVP accounts through which he conducted the fraudulent scheme.

10. **Scott Kupersmith**, age 46, resides in Florida, but resided in Alpine, New Jersey, during the conduct of the scheme alleged herein. He is the President and owner of Atlantic Southern Capital Group (“Atlantic Southern”), the corporate entity through which he opened the DVP accounts through which he conducted the fraudulent scheme. He also controlled Fullerton Capital Group, Inc. (“Fullerton”), and Northbrea Capital Group, Inc. (“Northbrea”), two other corporate entities he used to open additional DVP accounts through which he conducted the fraudulent scheme.

RELEVANT ENTITIES

11. **Antibe Arbitrage Group, Inc.** is a Delaware corporation with its purported principal place of business in New York City. Antibe purports to be an investment fund. Chelly is the President and owner of Antibe, which was incorporated on or around July 20, 2009.

12. **Atlantic Southern Capital Group, Inc.** is a Delaware corporation with its purported principal place of business in northern New Jersey. Atlantic Southern purports to be an investment fund. Kupersmith is the President and owner of Atlantic Southern, which was incorporated on or around April 23, 2009.

13. **Fullerton Capital Group, Inc.** is a Delaware corporation with its purported principal place of business in northern New Jersey. Fullerton purports to be an investment fund. Fullerton was incorporated on or around January 15, 2010. Kupersmith identified a family

member as the President and owner of Fullerton, while Kupersmith controlled Fullerton at all times during the conduct of the scheme alleged herein.

14. **Northbrea Capital Group, Inc.** is a Delaware corporation with its purported principal place of business in New York, New York. Northbrea purports to be an investment fund. Northbrea was incorporated on or around August 4, 2010. Kupersmith identified an acquaintance as the President and owner of Northbrea, while Kupersmith controlled Northbrea at all times during the conduct of the scheme alleged herein.

FACTS

15. From May 2009 until December 2009, Kupersmith, joined by Chelly in July 2009, engaged in the free-riding scheme, trading through DVP accounts at several broker dealers. A DVP account is a type of cash brokerage account that allows an investor to custody securities and other assets with a third-party custodian bank. The brokerage firm where the DVP account is held is known as the “executing” broker. By setting up a DVP account, Kupersmith and Chelly could purchase and sell securities without sufficient capital as long as they led their executing brokers to believe that they held funds sufficient to pay for securities they purchased in their custodial account with another financial institution and that the securities they sold were held in that custodial account.

16. By trading on a DVP basis without actually owning the securities that they sold and without sufficient cash to pay for securities that they purchased, Kupersmith and Chelly induced the executing brokers to “float” them the securities and cash during the settlement period and allowed them to trade risk-free. Settlement is the process by which securities are delivered in exchange for cash payment to complete a trade. The settlement date for the purchase or sale of stock usually is three business days after a trade is made.

17. The scheme unraveled when Kupersmith and Chelly began to fail to deliver shares to settle sales in various brokerage accounts. In engaging in their corresponding or offsetting trades, Kupersmith and Chelly had intended to profit from either (i) an increase in stock price by purchasing and then reselling shares at a higher price or (ii) a drop in stock price by selling shares and then purchasing them or covering the sale at a lower price. But when certain of the stocks that they had sold rose in price, Kupersmith and Chelly would have been forced to purchase shares at the higher price to settle the sale transactions. Rather than purchasing the shares to cover the sales, and to avoid the resulting losses, Kupersmith and Chelly simply failed to deliver those securities and their sales “failed.”

18. When Kupersmith and Chelly failed to deliver shares to cover their sales, the broker-dealers were forced to “buy-in” or to purchase replacement shares to cover or settle the sale transactions. Because broker-dealers frequently had to buy-in at higher prices than the shares were sold, the broker-dealers suffered losses equivalent to the amount by which their “buy-in” costs exceeded the proceeds from the sale.

19. After the executing brokers halted trading in the Atlantic Southern and Antibe accounts, Kupersmith, without Chelly, embarked on a second round of free-riding through Fullerton and Northbrea from July 2010 through October 2010.

Free-Riding Trading and Failed Sales Between May 2009 and December 2009

20. Between May 2009 and October 2009, Kupersmith opened DVP brokerage accounts through Atlantic Southern, while Chelly opened DVP brokerage accounts through Antibe in furtherance of the scheme.

21. Kupersmith usually applied for accounts over the phone, providing brokers with account opening documentation and information by telephone, facsimile and/or e-mail. From

late May 2009 through early September 2009, Kupersmith opened at least six such brokerage accounts in the name of Atlantic Southern at the following broker-dealers on or around these dates:

Broker-Dealer	Account Number	Date Opened
Broker A (Short Hills, NJ)	614-109877-140	May 29, 2009
Broker B (NY, NY)	4XY-101441	June 2, 2009
Broker C (NY, NY)	220-33807	July 28, 2009
Broker D (NY, NY)	831-15647	August 3, 2009
Broker E (Jersey City, NJ)	3AQ-01227	August 19, 2009
Broker A (Purchase, NY)	386-74609-11547	Sept. 22, 2009

22. In applying for each of these Atlantic Southern accounts, and in order to qualify for a DVP account, Kupersmith provided settlement instructions that represented that he would settle trades through a custodial account that he held, directly or through Atlantic Southern, at “Custody Bank,” a private bank based in New York, New York. In doing so, Kupersmith, intentionally, knowingly or recklessly, represented that he held the securities that he sold and had cash sufficient to pay for securities that he purchased in the custodial account when he ordered the trades. However, Kupersmith, intentionally, knowingly or recklessly, failed to disclose to brokers that he did not in fact hold the securities that he sold and that he did not have sufficient cash to pay for the securities that he purchased in the custodial account when he ordered the trades.

23. Like Kupersmith, Chelly usually provided the brokers with account opening documentation and information by telephone, facsimile and/or e-mail.

24. From late July 2009 through the middle of October 2009, Chelly opened at least nine DVP brokerage accounts in the name of Antibe at the following broker-dealers on or around these dates:

Broker-Dealer (Office)	Account Number	Date Opened
Broker F (NY, NY)	TS 33911	July 29, 2009
Broker G (Florham Park, NJ)	FP 10 3924-1182	July 29, 2009
Broker H (Charlotte, NC)	311-81240	August 4, 2009
Broker I (NY, NY)	40340278	August 20, 2009
Broker A (Morristown, NJ)	379-74176-19 544	September 9, 2009
Broker C (Chicago, IL)	026-01439	September 14, 2009
Broker D (Washington, DC)	840-50053	October 1, 2009
Broker A (San Francisco, CA)	101-118-356-571	October 8, 2009
Broker J (Milwaukee, WI)	1168-1504	November 18, 2009

25. In applying for each of the Antibe accounts, and in order to qualify for a DVP account, Chelly provided settlement instructions that represented that he would settle trades through a custodial account that he held, directly or through Antibe, at Custody Bank. Chelly identified the same custodial account at Custody Bank as did Kupersmith. In doing so, Chelly, intentionally, knowingly or recklessly, represented that he held the securities that he sold and had cash sufficient to pay for securities that he purchased in the custodial account when he ordered trades. However, Chelly, intentionally, knowingly or recklessly, failed to disclose to brokers that he did not in fact hold the securities that he sold and that he did not have sufficient cash to pay for the securities that he purchased in the custodial account when he ordered the trades.

26. The custodial account that Kupersmith and Chelly identified for broker-dealers when applying for each of the Atlantic Southern and Antibe accounts was an omnibus account held by "Swiss Bank A," a large Swiss financial services institution that provides securities

settlement and custody services for its own customers, including many large European banks. As part of the scheme, Kupersmith controlled a bank or brokerage account at “Swiss Bank B,” a bank based in Switzerland. Swiss Bank B was a customer of Swiss Bank A. Swiss Bank A had an omnibus account for its clients, including Swiss Bank B, at Custody Bank. The Swiss Bank A omnibus account included a subaccount for Swiss Bank B’s clients.

27. In furtherance of the scheme, Kupersmith and Chelly traded heavily in BIDU.com, Inc. (NASDAQ: BIDU) and CME Group, Inc. (NASDAQ: CME) in the Atlantic Southern and Antibe accounts.

28. Kupersmith frequently purchased BIDU or CME stock in an Atlantic Southern account and sold the same quantity of BIDU or CME stock in another Atlantic Southern account, frequently on the same day, between June 29, 2009 and July 31, 2009 and between September 14, 2009 and December 10, 2009. Likewise, Chelly engaged in the same pattern of corresponding or offsetting trading activity in the Antibe accounts between September 16, 2009 and December 9, 2009.

29. Kupersmith and Chelly engaged in approximately 90 corresponding or offsetting trades in BIDU stock and approximately 45 corresponding or offsetting trades in CME stock in or between Atlantic Southern and Antibe accounts, with each trade typically involving hundreds of thousands of dollars to over one million dollars worth of stock. All of the trades in BIDU and CME stock placed by Kupersmith and Chelly in the Atlantic Southern and Antibe accounts settled or otherwise flowed through the Swiss Bank A omnibus account and its related Swiss Bank B subaccount at Custody Bank.

30. Kupersmith and Chelly did not own the securities that they sold in the designated Swiss Bank A custodial account at Custody Bank when they placed these corresponding or

offsetting trades in the Atlantic Southern and Antibe accounts. Instead, Kupersmith and Chelly used the proceeds from the sale of the securities to pay for the securities that they purchased in these corresponding or offsetting trades. However, neither Kupersmith nor Chelly ever disclosed to broker-dealers that they did not own the securities in the designated Swiss Bank A custodial account at Custody Bank to cover the trades.

31. Beginning in early November 2009, Kupersmith began to fail to deliver shares to settle sales in the Atlantic Southern accounts, leaving broker-dealers with substantial losses. There were at least 13 failed sales in Atlantic Southern accounts between November 3, 2009 and November 20, 2009 across four different accounts, including multiple accounts at Broker A, on the following dates:

Trade Dates	Buy-In Date	Broker	Stk	Qty	Sale Proceeds	Buy-In Cost	Loss
11/3/09 11/10/09	11/23/09	Broker A (Purchase, NY)	BIDU	3,000 3,000	\$2,420,014	\$2,603,220	\$183,206
11/6/09 11/11/09	11/25/09	Broker A (Short Hills, NJ)	BIDU	3,500 3,500	\$2,868,234	\$3,079,424	\$211,190
11/11/09	11/25/09	Broker A (Short Hills, NJ)	CME	3,500	\$1,083,044	\$1,144,877	\$61,833
11/10/09 11/16/09 11/17/09 11/19/09 11/20/09 11/20/09	12/1/09	Broker B	BIDU	3,500 4,000 3,500 3,500 4,200 4,000	\$9,726,843	\$9,965,557	\$238,714
11/11/09 11/17/09	12/1/09	Broker B	CME	800 (net)	\$304,619	\$262,659	\$41,960
11/3/09	11/18/09	Broker D	BIDU	3,000	\$1,127,280	\$1,310,369	\$183,089
TOTAL							\$919,992

32. As a result of the failed sales, broker-dealers were forced to “buy-in” or make open market purchases to cover or settle the open sales trades. Broker A, Broker B and Broker D experienced cumulative losses of approximately \$900,000 as a result of those failed trades.

33. Likewise, Chelly also began to fail to deliver shares to settle sales in the Antibe accounts during the same period. From October 27, 2009 to November 13, 2009, there were at least four failed sales in three different Antibe accounts on the following dates:

Trade Date	Buy-In Date	Broker	Stk	Qty	Sale Proceeds	Buy-In Cost	Loss
10/27/09	11/5/09	Broker I	BIDU	2,500	\$889,150	\$992,097	\$102,947
11/5/09	11/24/09	Broker A (Morristown, NJ)	BIDU	6,000	\$2,344,499	\$2,611,586	\$266,086
11/5/09	11/24/09	Broker A (Morristown, NJ)	CME	3,000	\$900,908	\$967,498	\$66,589
11/13/09	11/30/09	Broker F	BIDU	4,000	\$1,711,696	\$1,732,932	\$21,236
TOTAL							\$456,858

34. The failed sales in the Antibe accounts resulted in cumulative losses of more than \$450,000 to Broker A, Broker I and Broker F. Thus, Kupersmith and Chelly left broker-dealers with over \$1.35 million in cumulative losses relating to their trading activity in BIDU and CME stock in the Atlantic Southern and Antibe accounts. In the wake of those failed sales, the broker-dealers halted trading in the Atlantic Southern and Antibe accounts.

35. The corresponding or offsetting trades in BIDU and CME were profitable for Kupersmith and Chelly. The BIDU trades generated a profit of approximately \$425,000, while the CME trades yielded a profit of approximately \$14,000, for a total profit of approximately \$440,000. The proceeds from the illicit trading activity were wired from the Swiss Bank B account into a corporate bank account that Kupersmith opened at a New Jersey branch office of Bank A.

Free-Riding Trading and Failed Sales Between July 2010 and October 2010

36. Kupersmith continued the scheme in the summer of 2010 from July 2010 until October 2010. To distance himself from the previous trading activity, Kupersmith established two new corporations called Fullerton and Northbrea. In furtherance of the scheme, Kupersmith disguised his own identity from brokers by using the names of a family member and

acquaintance to open a series of new DVP brokerage accounts on behalf of Fullerton and Northbrea in July and August 2010. Kupersmith continued his fraudulent trading activity through the Fullerton and Northbrea accounts from around July 2010 until October 2010.

37. When applying for accounts for Fullerton, Kupersmith, using a family member's identity, held himself out as a money manager to brokers, claiming at times to run a small firm with approximately \$50 million in assets under management. When applying for accounts for Northbrea, Kupersmith, using an acquaintance's identity, also held himself out as a money manager to brokers, claiming at times to be a portfolio manager in the hedge fund industry. Kupersmith usually applied for the Fullerton and Northbrea DVP accounts over the phone and provided brokers with account opening documentation and information by telephone, facsimile and/or e-mail.

38. More specifically, in July 2010, Kupersmith opened at least eight DVP accounts in the name of Fullerton with the following broker-dealers on or around these dates:

Broker-Dealer (Office)	Account Number	Date Opened
Broker K (NY, NY)	875 12529	July 1, 2010
Broker L (Greenwich, CT)	3VN-03P22	July 2, 2010
Broker M (Chicago, IL)	113-52890	July 6, 2010
Broker C (Los Angeles, CA)	720-17389	July 12, 2010
Broker N (NY, NY)	137-77864 477	July 15, 2010
Broker O (Newport Beach, CA)	713-48214-90 RR XQ4	July 19, 2010
Broker P (San Francisco, CA)	NB2-750892	July 20, 2010
Broker Q (NY, NY)	1822-7959	July 23, 2010

39. Meanwhile, in August 2010, Kupersmith opened at least another six DVP brokerage accounts in the name of Northbrea with the following broker-dealers on the following dates:

Broker-Dealer (Office)	Account Number	Date Opened
Broker A (Boise, Idaho)	858-90379	August 9, 2010
Broker R (Memphis, TN)	51329456	August 9, 2010
Broker J (Roseville, CA)	6316-4399	August 10, 2010
Broker S (Ft. Lauderdale, FL)	6268-1964	August 10, 2010
Broker T (NY, NY)	421-05660	August 18, 2010
Broker C (Chicago, IL)	028-03251	September 15, 2010

40. As he had for the Atlantic Southern DVP accounts, Kupersmith provided settlement instructions for each of the Fullerton and Northbrea DVP accounts that represented that he would settle trades through a custodial account that he held, directly or through Fullerton or Northbrea, at Custody Bank. In doing so, Kupersmith, intentionally, knowingly or recklessly, represented that he held the securities that he sold and had cash sufficient to pay for securities that he purchased in the custodial account when he ordered the trades. However, Kupersmith, intentionally, knowingly or recklessly, failed to disclose to brokers that the custodial account did not in fact hold the securities that he sold or that it did not have sufficient cash to pay for the securities that he purchased when he ordered the trades.

41. The custodial account that Kupersmith identified for the Fullerton and Northbrea accounts was a different custodial account at Custody Bank than that identified for the Atlantic Southern and Antibe DVP accounts. Prior to opening the DVP accounts for Fullerton and Northbrea, Kupersmith opened an offshore brokerage account through Oxford Smith Advisors, LLC (“Oxford Smith”), another purported investment fund owned by Kupersmith, at “Bahamas Bank,” a private financial institution in Nassau, Bahamas. Bahamas Bank maintained an omnibus custodial account for its customers, including Kupersmith through Oxford Smith, with

Custody Bank. Kupersmith designated this Bahamas Bank custodial account at Custody Bank on the Fullerton and Northbrea settlement instructions that he provided to the broker-dealers.

42. As with the trading activity in the Atlantic Southern and Antibe accounts, Kupersmith engaged in the same pattern of offsetting or corresponding trading in the Fullerton and Northbrea accounts. Kupersmith purchased shares of various stocks, including Blackrock, Inc. (NYSE: BLK), First Solar, Inc. (NASDAQ: FSLR) and Netflix, Inc. (NASDAQ: NFLX), in one of the Fullerton or Northbrea DVP accounts and sold the same number of shares of those stocks in another one of the Fullerton or Northbrea DVP accounts, frequently on the same day.

43. Kupersmith engaged in approximately 175 corresponding or offsetting trades in or between the Fullerton and Northbrea accounts between July 2, 2010 and August 26, 2010. All of these corresponding trades settled or otherwise flowed through the Bahamas Bank omnibus account at Custody Bank.

44. Kupersmith did not hold the securities that he sold through the Fullerton and Northbrea DVP accounts in the designated Bahamas Bank's custodial account at Custody Bank at the time of his trading, a fact he failed to disclose to his executing broker-dealers. Instead, Kupersmith used the proceeds from the sale of the securities to pay for the securities that he purchased in the corresponding or offsetting trades.

45. The Fullerton and Northbrea trading activity continued for approximately three months until Kupersmith began to fail to deliver shares to settle sales. There were at least 14 failed sales across four of the Northbrea accounts, resulting in nearly \$700,000 in losses to various broker-dealers on the following dates:

Trade Date	Buy-In Date	Broker	Stk	Qty	Sale Proceeds	Buy-In Cost	Loss
8/24/10	9/13/10	Broker A (Boise, Idaho)	NFLX	1,800	\$221,767	\$266,701	\$45,238
9/3/10	9/23/10	Broker A (Boise, Idaho)	PCLN	1,000	\$315,186	\$335,378	\$20,192
9/15/10 9/15/10	9/21/10	Broker T	PCLN	5,000 5,000	\$3,324,221	\$3,458,059	\$133,838
9/16/10 9/16/10	9/21/10	Broker T	MA	5,000 5,000	\$2,073,144	\$2,185,767	\$112,623
8/10/10	8/12/10	Broker J (Roseville, CA)	PCLN	1,000	\$291,700	\$304,270	\$12,570
9/13/10 9/14/10	9/22/10	Broker R	PCLN	5,000 5,000	\$3,284,577	\$3,383,674	\$99,097
9/14/10 9/14/10 9/15/10	9/22/10	Broker R	ISRG	5,000 5,000 5,000	\$4,269,587	\$4,543,059	\$273,472
9/15/10 9/15/10	9/22/10	Broker R	CME	5,000 5,000	\$2,687,764	\$2,687,212	\$552
TOTAL							\$697,582

46. There were also at least four failed sales in one of the Fullerton accounts, causing more than \$22,000 in additional losses to Broker K on the following dates.

Trade Date	Buy-In Date	Broker	Stk	Qty	Sale Proceeds	Buy-In Cost	Loss
7/20/10 7/22/10	7/29/10	Broker K	BLK	700 800	\$219,945	\$238,358	\$18,413
7/20/10 7/22/10	7/29/10	Broker K	FSLR	750 700	\$192,515	\$196,723	\$4,208
TOTAL							\$22,621

47. Thus, Kupersmith caused broker-dealers to suffer approximately \$720,000 in losses as a result of the failed sales in the Fullerton and Northbrea accounts. Together with the previous losses of approximately \$1.35 million in the Atlantic Southern and Antibe accounts, the scheme resulted in over \$2 million in losses to broker-dealers. The trading activity in the Fullerton and Northbrea accounts was eventually halted after the failed trades.

48. Notwithstanding the brokers' losses, Kupersmith's trading activity through Fullerton and Northbrea resulted in a total profit for him of over \$200,000. Kupersmith wired the illegal trading proceeds from the brokerage account at Bahamas Bank into a corporate bank

account that Kupersmith opened at a New York City branch office of Bank A. The brokerage account at Bahamas Bank was closed in or around early October 2010.

FIRST CLAIM FOR RELIEF

(Violations of Section 17(a) of the Securities Act)

49. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 48 of this Complaint.

50. By virtue of the foregoing, from at least May 2009 until December 2009 and July 2010 until October 2010, Kupersmith, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in the offer or sale of securities, with scienter: (a) employed devices, schemes and artifices to defraud; (b) obtained money or property by means of untrue statements of material fact, or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices and courses of business which operate or would operate as a fraud or deceit upon broker-dealers.

51. By virtue of the foregoing, from at least July 2009 until December 2009, Chelly, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in the offer or sale of securities, with scienter: (a) employed devices, schemes and artifices to defraud; (b) obtained money or property by means of untrue statements of material fact, or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices and courses of business which operate or would operate as a fraud or deceit upon broker-dealers.

52. By virtue of the foregoing, Defendants, directly or indirectly, singly or in concert, violated, and unless enjoined, will violate again, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SECOND CLAIM FOR RELIEF

(Violations of Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-21)

53. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 48 of this Complaint.

54. By virtue of the foregoing, from at least May 2009 until December 2009 and July 2010 until October 2010, Kupersmith, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in connection with the purchase or sale of securities, with scienter: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements they made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and courses of business which would operate as a fraud or deceit upon broker-dealers.

55. By virtue of the foregoing, from at least July 2009 until December 2009, Chelly, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in connection with the purchase or sale of securities, with scienter: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements they made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and courses of business which would operate as a fraud or deceit upon broker-dealers.

56. By virtue of the foregoing, from at least May 2009 until December 2009 and July 2010 until October 2010, Kupersmith, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in connection with the purchase or sale of securities, with scienter, submitted orders to sell equity securities and deceived a broker or dealer, a participant of a registered clearing agency, or a purchaser about his intention or ability to deliver the securities on or before the settlement dates, and failed to deliver the security on or before the settlement dates. This conduct constitutes a “manipulative or deceptive device or contrivance” as used in Section 10(b) of the Exchange Act.

57. By virtue of the foregoing, from at least July 2009 until December 2009, Chelly, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in connection with the purchase or sale of securities, with scienter, submitted orders to sell equity securities and deceived a broker or dealer, a participant of a registered clearing agency, or a purchaser about his intention or ability to deliver the securities on or before the settlement dates, and failed to deliver the securities on or before the settlement dates. This conduct constitutes a “manipulative or deceptive device or contrivance” as used in Section 10(b) of the Exchange Act.

58. By virtue of the foregoing, Defendants, directly or indirectly, singly or in concert, violated, and unless enjoined, will violate again, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, and Rule 10b-21, 17 C.F.R. § 240.10b-21, thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

I.

Permanently restraining and enjoining each of the Defendants, their agents, servants, employees and attorneys and those persons in active concert or participation with them, who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act, 15 U.S.C. §§ 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, and Rule 10b-21, 17 C.F.R. § 240.10b-21, thereunder.

II.

Ordering each of the Defendants to disgorge their ill-gotten gains received as a result of the conduct alleged in this Complaint, plus prejudgment interest, and such other and further amount as the Court may find appropriate.

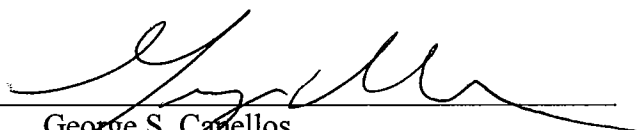
III.

Ordering each of the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d) and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

IV.

Such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 26, 2011

By: 
George S. Canellos
Regional Director

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