

1998R02818

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Crim. No. 06-_____

v. : Title 18, United States Code,

JOSEPH VALKO : Section 371

INFORMATION

The defendant having waived in open court prosecution by indictment, and any defense based on an argument relating to statute of limitations, the United States Attorney for the District of New Jersey charges:

BACKGROUND

At all times relevant to this Information:

The Defendant and His Company

1. Risk Capital Management International ("Risk Capital") was a brokerage firm that sold options to purchase or sell foreign currencies to individual clients throughout the United States. Risk Capital maintained its headquarters and a sales office in Red Bank, New Jersey. It had affiliate sales offices in Chicago, Houston, and Hoboken, New Jersey. Risk Capital also maintained an administrative office in Pompano Beach, Florida that serviced the sales offices.

2. Defendant **JOSEPH VALKO** was an owner and operator of Risk Capital. Defendant **JOSEPH VALKO** also trained Risk Capital's salespeople.

Risk Capital's Marketing of Foreign Currency Options

3. Risk Capital primarily sold options to purchase or sell the Japanese yen, the British pound, the German deutschemark and the Swiss franc. A client purchasing such an option essentially purchased the right to purchase or sell a specified currency at a set price, known as the "strike price," for a limited period of time.

4. An option to purchase a foreign currency, also known as a "call" option, is "out of the money" if its strike price is above the current market price for that currency. An "out of the money" call option has relatively little value because the subject currency can be purchased directly at the lower market price.

5. Risk Capital would not refund a client's purchase price if the client failed to exercise the option before it expired. Risk Capital's options generally cost a client \$1000 each and clients were encouraged to buy at least five options in each transaction. Risk Capital charged a commission of \$250 per option.

6. Risk Capital and its affiliates marketed its options primarily through placing interstate telephone calls to potential clients. Risk Capital's salespeople obtained lists of potential clients, or "leads," to call from various sources. Risk Capital bought leads from lead brokers. Another source of leads was television commercials that invited individuals to provide their names, addresses and telephone numbers in order to receive information regarding investment opportunities in foreign

currencies.

7. Risk Capital and its salespeople promoted the foreign currency options through investment brochures and sales scripts. These promotional materials stated that Risk Capital provided individuals with the opportunity to invest in the "interbank foreign exchange market" that had previously been "the exclusive domain of larger, international banks." The materials also stated that the prices of Risk Capital products were competitive with "interbank market prices" regardless of the size of the transaction. The promotional materials emphasized that clients could realize substantial gains with managed risk by investing in foreign currencies under Risk Capital's guidance.

Risk Capital's Execution of its Option Trades

8. Risk Capital and its affiliates executed its sales of options to purchase or sell foreign currencies through Nassau Bay Trading ("Nassau Bay"), a firm located in Nassau, Bahamas. Risk Capital told clients that Nassau Bay executed their trades by buying option contracts from banks or other institutions in the foreign currency market. Risk Capital sent the "premiums," meaning the funds it received from its clients less its commissions, to Nassau Bay on a weekly basis. Nassau Bay sent statements confirming each trade to Risk Capital, which Risk Capital then mailed to its clients.

The Co-Conspirators

9. R.R., who is named as a co-conspirator but not as a defendant herein, operated Risk Capital.

10. C.H., who is named as a co-conspirator but not as a defendant herein, owned, operated and controlled Nassau Bay.

THE CONSPIRACY

11. From at least as early as July 1997 through in or about December 1998, in the District of New Jersey and elsewhere, defendant

JOSEPH VALKO

did knowingly and willfully conspire and agree with R.R., C.H. and others to commit an offense against the United States, that is, to devise a scheme and artifice to defraud and to obtain money and property of investors in Risk Capital by means of materially false and fraudulent pretenses, representations and promises, which scheme and artifice was in substance as set forth herein, and to do so by means of the U.S. mails, contrary to Title 18, United States Code, Section 1341.

Object of the Conspiracy

12. The object of the conspiracy was to defraud investors in Risk Capital foreign currency options by failing to disclose that Risk Capital's principals received payments from Nassau Bay based on the number of options it sold that expired without being exercised and that Risk Capital's and Nassau Bay's sales and trade execution practices were designed to maximize the amount of these undisclosed payments.

Means and Methods of the Conspiracy

13. It was part of the conspiracy that Risk Capital, through defendant **JOSEPH VALKO** and others, failed to disclose to

its clients that the options they were purchasing often were "out of the money." Many of Risk Capital's call options were four cents "out of the money," meaning that the strike price was four cents above the market price for the subject currency.

14. It was further part of the conspiracy that Risk Capital, through defendant **JOSEPH VALKO** and others, falsely told its clients that their trades were executed at competitive prices with banks or other institutions in the foreign currency market. The options sold by Risk Capital generally were not available in the foreign currency market or would be prohibitively expensive because of their relatively small size. Instead, Nassau Bay often created its own options and usually acted as the other party to Risk Capital's trades instead of executing all of Risk Capital's trades at arm's length in the foreign currency market. When these "out of the money" options expired without being exercised, Nassau Bay retained Risk Capital's clients' premiums.

15. It was further part of the conspiracy that the principals of Nassau Bay, including C.H. and others, shared the premiums it retained from these unexercised options with the principals of Risk Capital on a regular basis.

16. As a result, Risk Capital's principals, including defendant **JOSEPH VALKO** and others, profited when their firm's clients lost money on "out of the money" options. Despite this substantial conflict of interest between the principals and its clients, Risk Capital, through defendant **VALKO** and others, failed to disclose the payments or the conflict of interest resulting

from the payments to its clients.

17. From in or about October 1997 through in or about December 1998, Risk Capital sold foreign currency options with a total face value of approximately \$5 million.

Overt Acts

18. In furtherance of the conspiracy and to accomplish its unlawful object, defendant **JOSEPH VALKO** and his co-conspirators committed and caused the commission of the following overt acts in the District of New Jersey and elsewhere:

a. On or about April 28, 1998, an employee of Risk Capital, sent a package from Red Bank, New Jersey to Ocala, Florida via Federal Express, which included a sales brochure from Risk Capital promoting the investment of call options and soliciting money from a customer identified as A.P. for that purpose.

b. On or about April 30, 1998, a bank cashier's check from SouthTrust Bank of Florida, N.A., drawn from the account of A.P. in the amount of \$3,000, was sent via Federal Express to Risk Capital for the purpose of investing through Risk Capital.

c. On or about May 1, 1998, an employee of Risk Capital sent a confirmation statement, via U.S. mail, to R.P. in Ocala, Florida, relating to an investment of call options of Japanese Yen.

d. On or about May 27, 1998, an employee of Risk Capital sent a confirmation statement, via U.S. mail, to R.P. in

Ocala, Florida, relating to an investment of call options of Japanese Yen.

e. On or about June 16, 1998, an employee of Capital Management sent a letter, with an enclosed check for \$300, via U.S. mail from Nassau, Bahamas to R.P. in Ocala, Florida.

All in violation of Title 18, United States Code, Section 371.

CHRISTOPHER J. CHRISTIE
United States Attorney