

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

OFFICE OF THE ATTORNEY
GENERAL, DEPARTMENT OF LEGAL
AFFAIRS, STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO. 51-2010-CA-2912-WS/G

BOTFLY L.L.C., DAVID R. LEWALSKI,
JON J. HAMMILL, and JON J.
HAMMILL, P.A.,

Defendants.

_____/

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST
DEFENDANTS BOTFLY, L.L.C. AND DAVID R. LEWALSKI
AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff, Office of the Attorney General, Department of Legal Affairs, State of Florida, by and through its undersigned attorneys, hereby files this Motion for Partial Summary Judgment against Defendants Botfly, L.L.C. and David R. Lewalski and Incorporated Memorandum of Law, and states as follows:

Introduction

Defendants Botfly, L.L.C. ("Botfly") and David R. Lewalski ("Lewalski") along with the substantial participation of the other Defendants operated an illegal Ponzi scheme by soliciting more than 500 investors to invest approximately \$29.9 million in Botfly. Defendants represented to investors that money received for investment in Botfly would be traded on the Foreign Exchange ("Forex") market for currency trading. However, Defendants failed to invest most of

the money received from investors and instead enriched themselves at the expense of investors. Defendants invested only a miniscule percentage of the money received for investment, and Defendants' abysmal Forex trading results failed to support the exorbitant rates of return promised by Defendants to investors. Defendants Botfly and Lewalski have violated the Florida Securities and Investor Protection Act ("FSIPA") by operating a scheme to defraud, concealing material facts from investors, and making false statements of material facts to investors. Plaintiff hereby moves for a Partial Summary Judgment as to liability against Botfly and Lewalski based upon their violations of FSIPA.

Statement of Facts

A. The Fraudulent Scheme

Beginning in 2005, the Botfly Ponzi scheme led by Defendant David R. Lewalski ("Lewalski") sought to purloin money from investors on the false premise that Botfly was a legitimate investment company that traded currency on the Forex market and earned significant profits. Lewalski is the principal member and President of Botfly. (PFG 33; WAC 6928 BOTFLY 1-2; BOA 7434 22; BOA 5586 1868; DB 3108 3-8, 16-23; FCB 4). Lewalski represented himself as an expert Forex trader. In reality, however, Botfly through Lewalski failed to invest most of the money received for investment and instead spent the money or diverted the money to Lewalski, Defendant Jon J. Hammill ("Hammill"), and Defendant Jon J. Hammill, P.A. The small percentage of funds Botfly invested lost significant sums of money in the Forex market.

In 2008, Hammill began working for Botfly to assist Lewalski in recruiting persons to invest in Botfly and handle the preparation of monthly statements and promissory notes provided to investors. (Deposition of DG ("DG Dep."), 93, 97-98, 106; Affidavit of JD ("JD Aff."), ¶ 9

and Exhibit C). Thereafter, Hammill became a chief promoter of the Botfly investment program.

Lewalski and Hammill lured persons into investing in Botfly by promising to pay a rate of return of as much as 10% per month on any investment in Botfly. (Affidavit of GLP (“GLP Aff.”), ¶¶ 7-8; JD Aff., ¶¶ 3-5).¹ Botfly attempted to substantiate its ability to pay such a high rate of return by touting the Forex trading acumen of its principal, David Lewalski. (JD Aff., ¶¶ 3-4). Hammill told one investor on March 20, 2009, that Botfly through Lewalski earned an average of 20% per month on its Forex trading and therefore could afford to pay investors a rate of return of 10% per month. (Deposition of JG (“JG Dep.”), 81). Eight months later, Hammill told this same investor that Botfly was earning an average of 35% per month on its Forex trading activity for the past twelve months. (JG Dep. 81). In reality, however, Lewalski proved to be a poor Forex trader.

Upon investing in Botfly, investors received from Botfly a promissory note. (GLP Aff., ¶10 and Exhibit D; JD Aff., ¶ 5 and Exhibits A, C). Botfly’s typical promissory note contained representations that investors would receive 10% interest per month on their investments. (GLP Aff., ¶11 and Exhibit D; JD Aff., ¶¶ 6, 9 and Exhibit A). This equates to an interest rate of 120% per year using simple interest and much more if the interest is compounded. Further, in the promissory note, Botfly through Lewalski and Hammill represented to investors that the principal amount of the investment was to be held by Botfly for “investment and margin purposes only.” (GLP Aff., ¶11 and Exhibit D; JD Aff., ¶ 6 and Exhibit A).

Botfly sent account statements to investors indicating that investors’ funds were accruing interest at the rate of as much as 10% per month. (GLP Aff., ¶ 13 and Exhibits F, H; JD Aff., ¶ 7 and Exhibit B). These investor account statements were sent by mail or email to investors until

¹ For a period of time, Botfly promised to pay fifty percent of its profits to a select few investors of large amounts of money. (JD Aff., ¶¶ 8-11).

the summer of 2009, when Defendants began providing investors with statements via the internet website of www.botflyllc.com. (Affidavit of FW (“FW Aff.”), ¶ 9 and Exhibit C; GLP Aff., ¶ 13, 15, Exhibits F, H). These investor account statements indicated that investors had been credited with a 10% rate of return, which was the typical rate of return promised by Botfly. (FW Aff., ¶ 9 and Exhibit C; GLP Aff., ¶ 13, 15, Exhibits F, H).

In order to increase the flow of money into Botfly, Defendants Lewalski and Hammill promised to pay referral fees of 10% of the new investment amount to almost anyone who would bring in a new investor. (GLP Aff., ¶ 21 and Exhibit H; JG Dep. 34-35; DG Dep. 60-61). These referral fees helped fuel the rapid growth of Botfly from just a few investors in 2005 to a huge operation with more than 500 investors in early 2010. However, the rapid growth of Botfly was based on false statements and omissions.

The returns paid to early investors were not the result of legitimate Forex trading by Botfly or Lewalski. Instead, the supposed “returns” paid to investors were simply new investor funds being provided to existing investors. (Second Affidavit of William T. “Tim” Bivens, II (Second Bivens Aff.), ¶ 11d). Botfly paid investors approximately \$15,587,105.18 million of money received from other investors. (Second Bivens Aff., ¶ 11c). These Ponzi payments created the illusion that Botfly was a legitimate investment company earning high returns, which attracted more investors. Botfly did not pay investors with money derived from legitimate investment activity.

Investors provided approximately \$29,926,178.34 to Botfly for investment. (Second Bivens Aff., ¶ 11b). Lewalski and Hammill received checks for investment in Botfly and signed promissory notes for Botfly. (JD Aff., ¶¶ 5, 9 and Exhibits A, C; Affidavit of CM (“CM Aff.”), ¶¶ 8, 9 and Exhibit A). More than 500 persons and entities invested in Botfly. (Second Bivens

Aff., ¶ 7). Defendants solicited and received money from individuals, corporations, and churches. Further, Defendants illicitly skimmed investor money for themselves or have spent the money on their own personal purchases. (Second Bivens Aff., ¶¶ 11e-11k).

B. Representations to Investors

1. Representations to Investor DG

When DG first heard about Botfly's investment program paying a 10% per month return on an investment through investments in foreign currency exchange, he thought it was too good to be true. (DG Dep. 8). Therefore, he traveled to Gainesville, Florida, to meet with David Lewalski to discuss the Botfly investment. (DG Dep. 8-9). In February or March 2009, Lewalski represented to investor DG at Lewalski's apartment in Gainesville, Florida, that Lewalski earned between 19-30% per month trading foreign currency. (DG Dep. 89-90). Lewalski specifically told DG that Lewalski traded the British pound and the Japanese yen. (DG Dep. 90). After meeting with Lewalski, DG spoke to Jon Hammill about the Botfly investment program. (DG Dep. 93-94). Soon thereafter, Hammill represented to DG by telephone that neither he nor Lewalski were registered to trade foreign currency and that it was not necessary for Lewalski or Hammill to be registered to trade foreign currency. (DG Dep. 95). Hammill also told DG that Lewalski had been investigated by the Division of Homeland Security and had been given "a clean bill of health." (DG Dep. 14-15). Investor DG relied upon Lewalski's representations when DG decided to invest in Botfly. (DG Dep. 96). Investor DG also relied upon Hammill's representations when DG decided to invest in Botfly. (Dep. 96).

2. Representations to Investor JG

Similarly, investor JG met with Jon Hammill on March 20, 2009, before investing in Botfly. (Deposition of JG ("JG Dep."), 79). Hammill promised JG that he would receive a

guaranteed rate of return of 10% per month on his investment in Botfly. (JG Dep. 79). Hammill then showed JG some charts on his computer in order to justify the promised rate of return. (JG Dep. 79-80). At this meeting, Hammill told JG that Botfly earned 20% per month on its investments in the foreign currency market trading the pound and the yen. (JG Dep. 81). Eight months later, Hammill stated to JG that Botfly had earned an average of 35% per month over the last twelve months in foreign currency trading. (JG Dep. 81). Hammill informed JG that Botfly performed its trading at Deutsche Bank. (JG Dep. 82). Investor JG would not have invested in Botfly if he had known it was a Ponzi scheme. (JG Dep. 25).

Investor JG received a promissory note from Botfly in exchange for investing the sum of \$410,000 in Botfly. (JG Dep. 27-28 and Exhibit 1). Hammill signed the promissory note provided to JG. (JG Dep. 85). The promissory note states that JG was to receive a return of 10% per month on JG's investment in Botfly. (JG Dep. 85 and Exhibit 1). Further, the promissory note states that JG's investment is to be used for investment and margin purposes only. (JG Dep. 85 and Exhibit 1). He also received account statements that indicated he was earning the return promised by Hammill on JG's investment in Botfly. (JG Dep. 82-83). Further, investor JG was credited money on his account statement for referring other investors to Botfly. (JG Dep. 34-35). Hammill told JG that the referral fee was 10% of the amount any new investor placed in Botfly. (JG Dep. 35). Based upon Botfly's promises of returns, JG planned to have \$2 million by the end of 2010 in his Botfly account. (JG Dep. 36).

3. Representations to Investor JD

Hammill told JD in 2008 that Lewalski had a software program for trading currency on the foreign exchange market. (JD Aff., ¶ 3). JD then traveled to Gainesville, Florida to meet with Lewalski to gather additional information about the Botfly investment program in June or

July, 2008. (JD Aff., ¶ 4). At the meeting, Lewalski showed JD Lewalski's Forex trading software and stated that he had modified the trading indicators on the software. (JD Aff., ¶ 4). Lewalski claimed that he traded the yen and the pound on the Forex market and promised JD that he would receive a return of 10% per month if JD invested in the Botfly investment program. (JD Aff., ¶ 4). Based upon the representations of Lewalski and Hammill including the promised 10% return per month and representations of conducting Forex trading, JD decided to invest \$20,000 in Botfly. (JD Aff., ¶ 5).

In approximately November, 2008, Lewalski told JD that if he increased his account balance to more than \$100,000, then Lewalski would give JD a special deal for investors that would provide him with a fifty percent share of the profits earned on his investment amount. (JD Aff., ¶ 8). In reliance upon Lewalski's representation, JD invested an additional \$71,000 on or about November 18, 2008. (JD Aff., ¶ 9). JD received a second promissory note dated December 1, 2008, and signed by Hammill. (JD Aff., ¶ 9). The second promissory note also stated that JD's money was to be held for "investment and margin purposes only." (JD Aff., ¶ 10).

Lewalski had informed JD that once his account exceeded \$100,000, JD's money would be traded separately from other investors' funds. (JD Aff., ¶ 12). Therefore, JD requested to view Lewalski's trading records for JD's account. (JD Aff., ¶ 13). Lewalski provided JD with three Deutsche Bank trading statements covering the periods of December 31, 2008 through February 1, 2009, April 6, 2009 through May 8, 2009, and May 6, 2009 through June 3, 2009. (JD Aff., ¶¶ 13-15 and Exhibits E-G). These statements indicated Lewalski had earned profits of \$41,815.71, \$37,258.66, and 52,578.49, respectively on JD's investment. (JD Aff., ¶¶ 13-15 and Exhibits E-G). One of these trading statements indicates that it is linked with an account number

ending in 3108, which is a Botfly account number at Deutsche Bank. As discussed below, Botfly failed to generate the type of profits in Forex trading that were represented on these trading records to investor JD. JD's review of these statements led JD to believe that Botfly was a legitimate investment company. (JD Aff., ¶ 16). JD invested a total of \$91,000 in Botfly. (JD Aff., ¶¶ 5, 9). Neither Hammill nor Lewalski informed JD of any risks associated with JD's investment in Botfly. (JD Aff., ¶ 17). In fact, they assured JD that his initial investment in Botfly would not be lost. (JD Aff., ¶ 17).

C. Trading Activity

1. Botfly

Botfly invested only approximately 4.7% of the money received from investors and fared poorly in its trading on the Forex market. Botfly transferred \$1,290,000.00 of investor funds from the Bank of America account numbers ending in 5586 and 5540 to the Deutsche Bank Forex trading accounts held by Botfly ending in 3108 and 3177. As of August 25, 2010, these Deutsche Bank accounts contained only \$384,374.04. Botfly lost the sum of \$905,625.96 in trading losses and fees. This represents a loss of at least 70% of the money invested by Botfly in Deutsche Bank Forex trading.

Furthermore, Botfly also had an account with IFX Markets. This account held in the name of Botfly was opened on October 13, 2005. Botfly deposited a total of \$65,000 in this account from its accounts at Wachovia ending in 6925 and Bank of America ending in 5586. Botfly withdrew a total of \$22,000 from IFX Markets. The balance in this account as of July 10, 2010, was a meager \$997.99.

Moreover, Botfly also maintained an account with PFG Best Financial Group ("PFG"), which was opened on July 3, 2008. This account was funded from the Bank of America Botfly

account ending in 5586 in the amount of \$50,000 and by a \$10,055.13 transfer from Lewalski's personal PFG account ending in 8187 on July 28, 2008. The remaining balance in this account was a mere \$9,929.53.

Of the total amount Botfly received from investors of approximately \$30,090,293.24, only \$1,405,000 was invested by Botfly in trading accounts held in the name of Botfly. These investments lost approximately more than \$997,637.00 in value from trading losses and fees. Thus, Botfly lost approximately 71% of the money Botfly actually invested.

2. Lewalski

Lewalski also performed poorly in his own personal Forex trading accounts. Lewalski placed \$1,550,000.00 of Botfly investor funds in the Swiss Forex trading account called Dukascopy (Suisse) SA ("Dukascopy") held by UBS AG in the name of David Lewalski. Lewalski withdrew \$300,000.00 from the Dukascopy account and placed this money in his personal account at Bank of America. Of the \$1,250,000.00 remaining in the Dukascopy account after the withdrawals, Lewalski lost \$530,288.94 of investor money through trading losses and various fees charged to the account. As of August 19, 2010, only the sum of \$719,711.06 remained in the Dukascopy account. Excluding withdrawals, this represents a loss of approximately 57% of the money invested by Lewalski in Dukascopy Forex trading.

Lewalski's trading woes continued. Lewalski transferred \$220,000.00 from his Bank of America account to his Deutsche Bank account held in his own name ending in 1771. As of August 25, 2010, Lewalski's Deutsche Bank account contained only \$46,020.84. Lewalski lost the sum of \$173,979.16 in trading losses and fees. This represents a loss of at least 79% of the money invested by Lewalski in his personal Deutsche Bank Forex trading account.

Additionally, Lewalski lost money in two trading accounts held with Gain Capital Group,

LLC (“Gain Capital”). Lewalski transferred \$7,500 from his Bank of America account to his Gain Capital account held in his own name ending in 3427. As of November, 30, 2007, the date the account was closed, Lewalski’s Gain Capital account contained only \$1,527.09. Lewalski transferred this amount into a second Gain Capital trading account ending in 3337, which was also funded with \$14,000 from Lewalski’s Bank of America account. Lewalski withdrew the sum of \$2,475 from this account. As of May 30, 2008, only the sum of \$13.11 remained in this account. Lewalski lost approximately 88% of the money invested in the Gain Capital Forex trading accounts.

3. Hammill

Hammill fared worse than Botfly and Lewalski in his own Forex trading. Hammill transferred \$283,500 from his Bank of America account to Deutsche Bank account number ending in 2962 held in the name of Jon Hammill. As of August 25, 2010, Hammill’s Deutsche Bank account contained only \$29,046.58. Hammill withdrew the sum of \$1,800 from this account. Hammill lost the sum of \$252,653.42 in trading losses and fees. This represents a loss of approximately 89% of the money invested by Hammill in his personal Deutsche Bank Forex trading account.

D. Misappropriation of Investor Funds

Botfly through Lewalski and Hammill solicited and received approximately \$29,926,178.34 from investors. (Second Bivens Aff., ¶ 11b). Instead of actually investing all of the money received, Lewalski used investor funds for his own personal use. Lewalski spent approximately \$766,000 of investor funds on high end automobiles. (Second Bivens Aff., ¶ 11g). Lewalski spent approximately \$852,000 of investor funds on private jet services. (Second Bivens Aff., ¶ 11h). Lewalski spent approximately \$1.1 million of investor funds on items such

as lavish hotels, high end retailers, cosmetic and dental procedures, and restaurants. (Second Bivens Aff., ¶ 11j). Lewalski spent approximately \$337,000 of investor funds on motor bikes, high end bicycles, and cycling equipment. (Second Bivens Aff., ¶ 11i). Lewalski's extravagant purchases gave at least one investor a false impression that Lewalski was a highly successful Forex trader. (JG Dep. 61). Indeed, at one point, Lewalski purchased a Ferrari with Botfly funds and told investor JG that when the market hit a certain point "the Ferrari is paid for." (JG Dep. 87).

Additionally, Botfly through Defendants Lewalski and Hammill actually diverted investor funds to Hammill, Jon J. Hammill, P.A., and Lewalski. Botfly paid approximately \$1.3 million of investor money to Hammill's company, Jon J. Hammill, P.A. (Second Bivens Aff., ¶ 11f). Further, Botfly gave Hammill \$111,000 of investor money. (Second Bivens Aff., ¶ 11e). Lewalski received approximately \$912,509.23 from Botfly accounts holding investor funds. (Second Bivens Aff., ¶ 11k).

E. Unanswered Request for Admissions

Plaintiff served Botfly with its First Request for Admissions on or about November 16, 2010. (Exhibit A). Also, Plaintiff served David R. Lewalski with its First Request for Admissions on or about November 16, 2010. (Exhibit B). Counsel for Botfly and David R. Lewalski at the time, Michael Brown of Alston & Bird LLP, and counsel for Plaintiff agreed that Botfly and Lewalski's responses to the Request for Admissions were due on or before January 18, 2011. To date, Botfly and Lewalski have failed to respond or object to the First Request for Admissions, and the time for Botfly and Lewalski to respond or object has expired.

F. Summary Judgment Evidence

In this Motion for Partial Summary Judgment, Plaintiff relies upon the Depositions of DG, JG, and the two depositions of Jon Hammill. Plaintiff also relies upon the Affidavits of JD, CM, CW, GLP, FW, KK, and the Second Affidavit of William T. “Tim” Bivens, II. Plaintiff also relies upon records produced by Bank of America for accounts ending in numbers 5586, 5540, 7434, and 7098 in the name of Botfly, 6691 in the name of Lewalski, and 5458 and 2851 in the name of Hammill. Plaintiff relies upon records produced by Wachovia Bank n/k/a Wells Fargo Bank for accounts ending in numbers 6928 in the name of Botfly, 2128 in the name of Hammill, and 5195 in the name of Jon J. Hammill, P.A.; Florida Citizens Bank for the account ending in number 4192 in the name of Botfly; VyStar Credit Union for the accounts ending in numbers 5861 and 1392 in the name of Botfly and 1388 in the name of Lewalski; Fifth Third Bank for the account ending in 2101 in the name of Botfly; Deutsche Bank for accounts ending in numbers 3108 and 3177 in the name of Botfly, 1771 in the name of Lewalski, and 2962 in the name of Hammill; Dukascopy (Suisse) SA records produced by Botfly; PFG Best Financial Group for accounts ending in numbers 5619 in the name of Botfly and 8187 in the name of Lewalski; Gain Capital for accounts in the name of Lewalski; and IFX Markets for the account ending in number 5800 in the name of Botfly. Plaintiff also relies upon the unanswered Request for Admissions served upon Botfly and the unanswered Request for Admissions served upon Lewalski.

Standard for Summary Judgment

Rule 1.510, Florida Rules of Civil Procedure, provides that a court shall enter a summary judgment when “the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials as would be admissible in evidence on file show that there is no genuine

issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” “A movant for summary judgment has the initial burden of demonstrating the nonexistence of any genuine issue of material fact. But once he tenders competent evidence to support his motion, the opposing party must come forward with counterevidence sufficient to reveal a genuine issue. It is not enough for the opposing party merely to assert that an issue does exist.” *Landers v. Milton*, 370 So. 2d 368, 370 (Fla. 1979); *see also Fisel v. Wynns*, 667 So. 2d 761, 764 (Fla. 1996) (stating “it is never enough ‘for the opposing party merely to assert that an issue does exist.’”) (quoting *Landers*, 370 So. 2d at 370).³

Argument

A. Plaintiff Is Entitled to a Summary Judgment on Its FSIPA Claim.

FSIPA prohibits a person in connection with the sale of a security from operating a scheme to defraud, concealing material information from an investor, and making any fraudulent statement or representation to an investor. The purpose of FSIPA is to “protect the public from fraudulent and deceptive practices in the sale and marketing of securities.” *Mesher v. Combs*, 685 So. 2d 1391, 1392 (Fla. 4th DCA 1997) (citations omitted). The Supreme Court has advised, “The legislature enacted chapters 517... to protect the public from fraud and deceit in the investment of securities. The laws are especially concerned with inexperienced investors who may be duped by unscrupulous brokers. Because of the statutes’ public importance, the state should not be unduly restricted in its attempt to enforce them.” *State v. Beeler*, 530 So. 2d 932, 934 (Fla.1988).

Plaintiff is specifically authorized by FSIPA to obtain “injunctive relief, restitution, civil

³ When a motion for summary judgment is filed before the filing of an answer, then the movant must show that “defendant could not raise any genuine issues of material fact if the defendant were permitted to answer the complaint.” *Sandoro v. HSBC Bank, USA*, 55 So. 3d 730, 732 (Fla. 2d DCA 2011) (citations omitted).

penalties, and any remedies provided for in this section” when it “has reason to believe that a person has engaged or is engaged in any act or practice constituting a violation of s. 517.275, s. 517.301, s. 517.311, or s. 517.312, or any rule or order issued under such sections.” Fla. Stat. § 517.191(5) (2009) (emphasis added). Section 517.191 has been described as “broadly worded” and it has been recognized that chapter 517 “is to be given a liberal construction.” *Smith v. State*, 570 So. 2d 1315, 1318 (Fla. 2d DCA 1990). Sections 517.301(1)(a) and (c), Florida Statutes, provide in part:

It is unlawful and a violation of the provisions of this chapter for a person:

(a) In connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any investment or security, including any security exempted under the provisions of s. 517.051 and including any security sold in a transaction exempted under the provisions of s. 517.061, directly or indirectly:

1. To employ any device, scheme, or artifice to defraud...

(c) In any matter within the jurisdiction of the office, to knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

The undisputed facts demonstrate that Defendants Botfly and Lewalski have engaged in violations of FSIPA by the following acts:

- Employing a Ponzi scheme to defraud investors;
- Concealing from investors the material fact that the Botfly investment program was a Ponzi scheme;
- Concealing from investors the material fact that Botfly was not actually investing most of the money that Defendants were receiving from investors;
- Concealing from investors the material fact that Botfly used money from new

investors to pay any returns to existing investors;

- Misrepresenting to investors that money invested in Botfly would be used for investment and margin purposes only; and
- Misrepresenting to investors that Botfly earned returns from trading on the Forex market sufficient to allow Botfly to pay investors a return of 10% per month.

Each of the above acts constitutes a violation of FSIPA and is sufficient for a finding of liability against Botfly and Lewalski.

1. Botfly and Lewalski have violated FSIPA by employing a Ponzi scheme to defraud investors.

Section 517.301(1)(a), Florida Statutes, declares that it is unlawful for any person to “employ any device, scheme, or artifice to defraud” in connection with the offer or sale “of any investment or security.” Defendant Lewalski as the President and member of Botfly led the Botfly investment program. (WAC 6928 BOTFLY 1-2; BOA 7434 22; BOA 5586 1868; DB 3108 3-8, 16-23; GLP Aff., ¶ 23 and Exhibit K). Defendants Lewalski and Hammill enticed investors to invest in Botfly by promising extravagant returns of 10% per month on their investment. (GLP Aff., ¶¶ 7-8; JD Aff., ¶¶ 3-5; JG Dep. 79). In return for investors’ money, Defendants provided investors with a Botfly promissory note typically promising the investor a rate of return of 10% per month on the investment. (GLP Aff., ¶11 and Exhibit D; JD Aff., ¶¶ 6, 9 and Exhibit A). The promissory note constitutes a security under Florida law because it is a note, an evidence of indebtedness, and/or an investment contract. Fla. Stat. §§ 517.021(21)(a), (f), (q); *see also Bookhardt v. State*, 710 So. 2d 700, 701 (Fla. 5th DCA 1998) (holding that the sale of unsecured promissory notes constitutes the sale of a security under Fla. Stat. § 517.021(18)). Lewalski and Hammill falsely represented to investors that money invested in

Botfly would be traded on the Forex market, where Defendants allegedly earned high returns. (JD Aff., ¶¶ 3-4; JG Dep. 81). In reality, however, very little investor money was invested, and most of the money invested was lost in trading. (Second Bivens Aff., ¶ 11a-k). Thus, Lewalski and Botfly employed a scheme to defraud investors in connection with the offer or sale of an investment or security.

Botfly possesses the prima facie elements of a Ponzi scheme. A Ponzi scheme “is one in which funds obtained from new investors are used to satisfy interest and principal obligations due on earlier investors’ notes (and usually to line the pockets of the scheme's perpetrators). Such a scheme requires an ever-larger circle of new investors to keep it afloat, and thus almost invariably ends in disaster.” *Harrison v. Dean Witter Reynolds, Inc.*, 79 F.3d 609, 613 n. 3 (7th Cir. 1996); *see also In re Forex Fidelity Intern.*, 222 Fed. Appx. 810, 814 (11th Cir. 2007) (“[A] Ponzi scheme is a phony investment plan in which monies paid by later investors are used to pay artificially high returns to the initial investors, with the goal of attracting more investors.”) (citations omitted). Here, Botfly used money from new investors to pay supposed returns to existing investors. (Second Bivens Aff., ¶ 11d).

Moreover, most of the investor funds received by Botfly were not even invested, which is further evidence that Defendants operated a Ponzi scheme. (Second Bivens Aff., ¶ 11a); *see, e.g., U.S. v. Treadwell*, 593 F.3d 990, 994 n. 3 (9th Cir. 2010) (stating that “it is the absence of evidence of any investment of investor funds that makes ‘Ponzi scheme’ an apt characterization of the defendants’ fraud”) (citations omitted). Botfly invested only approximately 4.7% of the money it received for investment in accounts held in the name of Botfly. Moreover, no income from any Forex trading from the Botfly Deutsche Bank accounts, the Lewalski Deutsche Bank accounts, or the Lewalski Dukascopy account was ever distributed back to an investor. (Second

Bivens Aff., ¶¶ 9-11a).

In addition, Ponzi schemes typically promise high rates of return on investments. In one case involving a Ponzi scheme, the defendant “displayed a 27.4% return for 1997 and a 12.4% return for 1998.” *In re Manhattan Inv. Fund Ltd.*, 397 B.R. 1, 12 (S.D.N.Y. 2007). The Court concluded that “[s]uch representations are consistent with the existence of a Ponzi scheme.” *Id.* Here, Defendants promised extraordinarily high investment returns of 10% per month, which absent compounding interest, equates to a return of 120% per year. (GLP Aff., ¶¶ 7-8; JD Aff., ¶¶ 3-5; JG Dep. 79). Such a promised return is indicative of a Ponzi scheme.

Further, Ponzi schemes include investor funds being “skimmed off for personal use by the members of the scheme.” *U.S. v. Silvestri*, 409 F.3d 1311, 1317 (11th Cir. 2005). Here, Lewalski spent approximately \$766,000 of investor funds on luxury automobiles. (Second Bivens Aff., ¶ 11g). Further, Lewalski spent approximately \$852,000 of investor funds on private jet services. (Second Bivens Aff., ¶ 11h). In addition, Lewalski funded a lavish lifestyle at the expense of investors by spending approximately \$1.1 million on hotels, high end retailers, cosmetic and dental procedures, and restaurants. (Second Bivens Aff., ¶ 11j). Lewalski also funded his hobby of cycling at investors’ expense by spending approximately \$337,000 of investor funds on motor bikes, high end bicycles, and cycling equipment. (Second Bivens Aff., ¶ 11i). Lewalski personally received approximately \$912,509.23 of investor funds from Botfly accounts. (Second Bivens Aff., ¶ 11k). Botfly and Lewalski have violated FSIPA through employing a scheme to defraud, and a partial summary judgment should be entered in favor of Plaintiff and against Botfly and Lewalski. *See, e.g., SEC v. Fraser*, 2009 WL 2450508, at *9 (D. Ariz. Aug. 11, 2009) (holding scheme liability is a valid theory for the SEC to bring a civil enforcement action under Federal Rule 10(b)).

2. Botfly and Lewalski have violated FSIPA through willfully concealing material facts from investors.

Section 517.301(1)(c), Florida Statutes, declares that it is unlawful for a person to “knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact...” In this case, Botfly and Lewalski have concealed from investors the following material facts in connection with their sale of securities:

- The Botfly investment program was a Ponzi scheme;
- Botfly was not actually investing most of the money that Defendants were receiving from investors (Second Bivens Aff., ¶ 11a); and
- Botfly used money from new investors to pay returns to existing investors (Second Bivens Aff., ¶ 11d).

These omissions are actionable under FSIPA and are properly the subject of claims for restitution and injunctive relief. Fla. Stat. § 517.191(5).

The Supreme Court of the United States, when analyzing a provision in Rule 10b-5, which is similar to Section 517.301(1)(c), Florida Statutes, has held that proof of reliance is not required where, as here, material facts are omitted from investors. *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 153, 92 S. Ct. 1456, 1472 (1972) (“Under the circumstances of this case, involving primarily a failure to disclose, positive proof of reliance is not a prerequisite to recovery.”).⁴ The materiality of the information concealed is demonstrated where there is “a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made

⁴ “With few exceptions, a securities fraud claim under said act [FSIPA] is nearly identical to a securities fraud claim under Rule 10b 5 of the related federal law. As this is the case, Florida courts will look to interpretations of the federal securities laws for guidance in interpreting Florida's securities laws. *Ward v. Atlantic Sec. Bank*, 777 So.2d 1144, 1147 (Fla. 3d DCA 2001) (citing *Messer v. E.F. Hutton & Co.*, 847 F.2d 673, 676 (11th Cir.1988)).

available.” *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309, 1318 (2011) (citations omitted). In this case, a reasonable investor would have considered the omissions described above as important in the decision to invest. Indeed, investor JG indicated that he would not have invested in Botfly if he had known that Botfly was a Ponzi scheme. (JG Dep. 25).

Moreover, the actions of Lewalski and Botfly were knowing and willful. Lewalski was the primary signer on all Botfly bank accounts and Forex trading accounts. (DB 3108 6; DB 3177 5; PFG 33, 43; BOA 5540 4; BOA 5586 1868; BOA 7098 220; BOA 7434 22; FCB 2-4; VYS 18; WAC 6928 BOTFLY 1; FTB 3). For many of these accounts, Lewalski was the sole person with signatory authority. (DB 3108 6; DB 3177 5; PFG 33, 43; BOA 5540 4; BOA 5586 1868; BOA 7434 22; FCB 2-4; VYS 18). Lewalski knew the income and disbursements made by Botfly and deliberately withheld this material information from investors. Lewalski knew that he was losing money in the Forex trading conducted for Botfly and himself, but he concealed this information from investors. Accordingly, Botfly and Lewalski’s failure to disclose each of the facts detailed above to an investor is a violation of FSIPA.

3. Botfly and Lewalski have violated FSIPA through willfully making false statements to investors.

Section 517.301(1)(c), Florida Statutes, declares that it is unlawful for a person to “knowingly and willfully...make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.” In this case, Botfly and Lewalski have falsely represented to investors the following material facts in connection with their sale of securities:

- Misrepresenting to investors that money invested in Botfly would be used for investment and margin purposes only; and

- Misrepresenting to investors that Botfly earned returns from trading on the Forex market sufficient to allow Botfly to pay investors a return of 10% per month.

The promissory notes provided by Botfly to investors contained affirmative misrepresentations. The promissory notes were signed by Lewalski or Hammill. (GLP Aff., ¶11 and Exhibit D; JD Aff., ¶ 6 and Exhibit A; JG Dep. 85 and Exhibit 1). The promissory notes stated falsely that investors' funds would be used for "investment and margin purposes only." (GLP Aff., ¶11 and Exhibit D; JD Aff., ¶ 6 and Exhibit A; JG Dep. 85 and Exhibit 1). This representation was false because Defendants failed to invest most of the money received from investors. (Second Bivens Aff., ¶ 11a-j). In addition, Botfly used new investor funds to pay returns to existing investors. (Second Bivens Aff., ¶ 11d).

Further, Botfly and Lewalski misrepresented to investors that Botfly earned returns from trading on the Forex market sufficient to allow Botfly to pay investors a return of 10% per month. Botfly through Lewalski represented to investor DG that Lewalski earned between 19-30% per month trading foreign currency. (DG Dep. 89-90). Botfly through Hammill represented to JG that Botfly earned 20% per month on its investments in the foreign currency market trading the pound and the yen. (JG Dep. 81). As demonstrated previously, only a small percentage of money was actually invested. Further, Botfly, Lewalski, and Hammill all lost substantial sums of money in their Forex trading and could not support the payment of 10% per month to investors.

In a government enforcement action, proof of individual reliance is not required to establish liability for a violation of FSIPA. *See, e.g., SEC v. Trabulse*, 526 F. Supp.2d 1001, 1005 (N.D. Cal. 2007) ("The SEC does not have to plead reliance in an action seeking injunctive relief for alleged violations of Section 10(b) and Rule 10b-5.") (citations omitted); *SEC v.*

Wolfson, 539 F.3d 1249, 1260 (10th Cir. 2008) (“recognizing that the SEC need not plead and prove reliance in a § 10(b) case”) (citations omitted). Nevertheless, investor DG relied upon the representations of David Lewalski when he decided to invest in Botfly. (DG Dep. 96). Further, DG also relied upon the representations of Jon Hammill when he decided to invest in Botfly. (DG Dep. 96). Accordingly, Defendants have violated FSIPA, and partial summary judgment should be entered against Botfly and Lewalski and in favor of Plaintiff.

4. Botfly and Lewalski’s unanswered Request for Admissions establish FSIPA liability.

Botfly has failed to respond to the Plaintiff’s First Set of Request for Admissions served on Botfly on or about November 16, 2010. In addition, Lewalski has failed to respond to the Plaintiff’s First Set of Request for Admissions served on Lewalski on or about November 16, 2010. These responses were due on or before January 18, 2011, by agreement of counsel. Accordingly, by operation of law pursuant to Rule 1.370, Florida Rules of Civil Procedure, each request contained in the Request for Admissions is deemed admitted by Botfly and Lewalski in this action. The facts admitted also support the finding of liability under FSIPA. Further, “[a]ny matter admitted under this rule is conclusively established” unless the Court permits withdrawal of the admission. Florida Rule of Civil Procedure 1.370(b).

B. This Court Should Award Restitution to Victims.

Plaintiff requests that this Court order that Defendants Botfly and Lewalski make restitution to investor victims of the scheme. Plaintiff requests that this Court reserve jurisdiction to determine the appropriate amount of restitution that Botfly and Lewalski, jointly and severally, should pay back to investor victims. Restitution is an authorized remedy for Botfly and Lewalski’s violation of FSIPA. Fla. Stat. § 517.191(5). The total amount of money

collected by Defendants from investors is approximately \$29,926,178.34. (Second Bivens Aff., ¶ 11b). Defendants made payments from the Botfly Ponzi scheme to investors in the approximate amount of \$15,587,105.18. (Second Bivens Aff., ¶ 11c). Therefore, the restitution amount to be paid by Defendants Botfly and Lewalski should be no less than the sum of \$14,339,073.16. Accordingly, Plaintiff requests that this Court retain jurisdiction of this case to determine the appropriate amount of restitution, determine a plan for payment of restitution to victims of Botfly and Lewalski from the assets collected by the Receiver and any assets which may be collected in the future, and continue to supervise the work of the Receiver in this case.

C. This Court Should Enter a Permanent Injunction.

Additionally, Plaintiff requests that this Court retain jurisdiction to enter a permanent injunction against Botfly and Lewalski. Plaintiff seeks the entry of a permanent injunction against Botfly and Lewalski to prevent Botfly and Lewalski from soliciting money or goods from any person or company in the State of Florida. Plaintiff is specifically authorized to obtain injunctive relief for violations of FSIPA. Fla. Stat. § 517.191(5). “To obtain a permanent injunction, the petitioner must ‘establish a clear legal right, an inadequate remedy at law and that irreparable harm will arise absent injunctive relief.’” *Liberty Counsel v. Florida Bar Bd. Of Governors*, 12 So. 3d 183, 186 n. 7 (Fla. 2009) (quoting *K.W. Brown & Co. v. McCutchen*, 819 So. 2d 977, 979 (Fla. 4th DCA 2002)). In this case, Botfly and Lewalski have defrauded hundreds of consumers out of millions of dollars by operating a Ponzi scheme. One is hard pressed to conceive of better candidates for permanent injunctive relief.

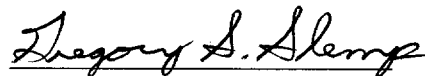
Conclusion

The uncontroverted evidence demonstrates that Defendants Botfly, L.L.C. and David R. Lewalski have violated FSIPA by employing a Ponzi scheme to defraud investors, concealing material information from investors, and misrepresenting the Botfly investment program to investors. There is no genuine issue of any material fact, and Plaintiff is entitled to a judgment as a matter of law. Defendants cannot show a genuine issue of any material fact in this case. Accordingly, Plaintiff requests that this Court enter a Partial Summary Judgment in favor of Plaintiff and against Defendants Botfly, L.L.C. and David R. Lewalski as to the liability of Defendants Botfly, L.L.C. and David R. Lewalski. Additionally, Plaintiff requests that this Court retain jurisdiction of this matter to determine and award restitution to victims of Botfly and Lewalski in a plan to be determined and approved by the Court. Further, Plaintiff requests that this Court reserve jurisdiction of this matter to determine the plan for distributing the assets of Botfly, L.L.C. and David R. Lewalski to the investor victims and to supervise the work of the Court appointed Receiver in this case.

WHEREFORE, Plaintiff, Office of the Attorney General, Department of Legal Affairs, State of Florida, prays this Court enter an Order granting its Motion for Partial Summary Judgment Against Defendants Botfly L.L.C. and David R. Lewalski, enter a Partial Summary Judgment in favor of Plaintiff and against Defendants Botfly L.L.C. and David R. Lewalski as to the liability of Defendants, ordering restitution to be paid by Botfly L.L.C. and David R. Lewalski to investor victims in an amount to be determined by the Court, reserving jurisdiction to determine the amount of restitution, reserving jurisdiction to enter a permanent injunction against Botfly and Lewalski, reserving jurisdiction to approve a plan to distribute the assets of Botfly and Lewalski to victims and supervise the work of the Receiver in this case, and for such

other and further relief that this Court deems just and proper.

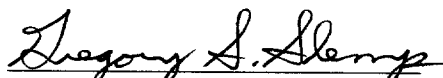
PAMELA JO BONDI
Attorney General



R. Scott Palmer
Special Counsel
Florida Bar No. 220353
Gregory S. Slemp
Assistant Attorney General
Florida Bar No. 478865
Office of the Attorney General
PL-01; The Capitol
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300
Facsimile: (850) 488-9134
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Jeffrey W. Warren and Karen Cox, Bush Ross, P.A., P.O. Box 3913, Tampa, FL 33601-3913; David R. Lewalski, Pinellas County Jail, Cell Location/Status: CEN-6C1-UN01-08-003, 14400 49th St. N., Clearwater, FL 33762; Steve D. Tran, 2285 First Avenue North, Suite A, Saint Petersburg, FL 33713; Jon J. Hammill, 6232 Fifth Avenue North, Saint Petersburg, FL 33710; and Gabriel Mazzeo, 285 Ocklawaha Circle, Quincy, FL 32351 on this 11th day of May, 2011.


Gregory S. Slemp

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

OFFICE OF THE ATTORNEY
GENERAL, DEPARTMENT OF LEGAL
AFFAIRS, STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO. 51-2010-CA-2912-WS/G

BOTFLY L.L.C., DAVID R. LEWALSKI,
JON J. HAMMILL, and JON J.
HAMMILL, P.A.,

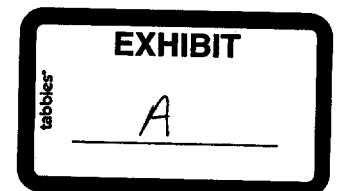
Defendants.

PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS
TO DEFENDANT BOTFLY L.L.C.

Plaintiff Office of the Attorney General, Department of Legal Affairs, State of Florida, by and through its undersigned attorneys, pursuant to Rule 1.370, Florida Rules of Civil Procedure, hereby propounds the following First Request for Admissions to Defendant Botfly L.L.C. to be answered within thirty (30) days from the date of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. "You" and "your" refer to the defendant Botfly L.L.C. ("Botfly") and its members, officers, directors, employees, agents, any other persons acting, or purporting to act on its behalf.
2. The term "relevant period" means January 1, 2004 to the present.
3. The term "Ponzi scheme" means an investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors.



REQUEST FOR ADMISSIONS

Please admit the following:

1. The managing member of Botfly is David R. Lewalski.

ANSWER: Admitted _____ Denied _____

2. Botfly solicited and received money from investors.

ANSWER: Admitted _____ Denied _____

3. Botfly represented to investors that they would receive up to a 10% return per month on their money invested with Botfly.

ANSWER: Admitted _____ Denied _____

4. Botfly knew that the communication identified in number 3 was false at the time it was made.

ANSWER: Admitted _____ Denied _____

5. Botfly represented to investors that their money invested in Botfly would be used for trading in foreign currency.

ANSWER: Admitted _____ Denied _____

6. Botfly knew that the communication identified in number 5 was false at the time it was made.

ANSWER: Admitted _____ Denied _____

7. Botfly told investors that Botfly earned 10% or more return per month by trading in foreign currency.

ANSWER: Admitted _____ Denied _____

8. Botfly knew that the communication identified in number 7 was false at the time it was made.

ANSWER: Admitted _____ Denied _____

9. Investors in Botfly relied upon Botfly's representations identified in numbers 3, 5, and 7 when deciding whether to invest in Botfly.

ANSWER: Admitted _____ Denied _____

10. Botfly failed to invest at least 87% or more of the money it received for investment.

ANSWER: Admitted _____ Denied _____

11. Botfly investors were credited with a 10% per month interest rate of return on their investments in Botfly.

ANSWER: Admitted _____ Denied _____

12. Botfly investors' account statements were false.

ANSWER: Admitted _____ Denied _____

13. Botfly paid more than \$883,000 of investor funds to David R. Lewalski.

ANSWER: Admitted _____ Denied _____

14. Botfly paid more than \$82,000 of investor funds to Jon J. Hammill.

ANSWER: Admitted _____ Denied _____

15. Botfly paid more than \$1,284,000 of investor funds to Jon J. Hammill, P.A.

ANSWER: Admitted _____ Denied _____

16. Botfly did not earn a 10% return per month or more return by trading in foreign currency.

ANSWER: Admitted _____ Denied _____

17. Botfly did not earn a 10% return per month or more return through any investment activity.

ANSWER: Admitted _____ Denied _____

18. Botfly represented to at least one investor that if he invested \$100,000 in Botfly, that the investor would have \$1 million in 25 months.

ANSWER: Admitted _____ Denied _____

19. Botfly represented to at least one investor that if he invested \$25,000 in Botfly, that the investor would have \$78,460 in 13 months.

ANSWER: Admitted _____ Denied _____

20. Botfly is not licensed or registered to invest any monies, including trading or pooling investments, in foreign currency with any local, state, or federal regulatory agency.

ANSWER: Admitted _____ Denied _____

21. David R. Lewalski is not licensed or registered to invest any monies, including trading or pooling investments, in foreign currency with any local, state, or federal regulatory agency.

ANSWER: Admitted _____ Denied _____

22. Jon Hammill is not licensed or registered to invest any monies, including trading or pooling investments, in foreign currency with any local, state, or federal regulatory agency.

ANSWER: Admitted _____ Denied _____

23. Botfly concealed from investors that Botfly used money from new investors to pay returns to existing investors in Botfly.

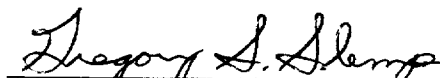
ANSWER: Admitted _____ Denied _____

24. Botfly concealed from investors that the Botfly investment program is a Ponzi scheme.

ANSWER: Admitted _____ Denied _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Jeffrey W. Warren and Karen Cox, Bush Ross, P.A., P.O. Box 3913, Tampa, FL 33601-3913; Kristine McAlister Brown and Michael L. Brown, Alston & Bird LLP, 1201 W. Peachtree Street, Atlanta, Georgia 30309; and by U.S. mail and electronic transmission to Craig Carpenito, Alston & Bird LLP, 90 Park Ave., New York, New York 10016; Erik R. Matheney, Hill, Ward & Henderson, P.A., P.O. Box 2231, Tampa, FL 33601-2231; and by U.S. Mail to Jon J. Hammill, P.O. Box 530181, St. Petersburg, FL 33747 and via electronic transmission at jonhammill@yahoo.com on this 16th day of November, 2010.


Gregory S. Slemp

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

OFFICE OF THE ATTORNEY
GENERAL, DEPARTMENT OF LEGAL
AFFAIRS, STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO. 51-2010-CA-2912-WS/G

BOTFLY L.L.C., DAVID R. LEWALSKI,
JON J. HAMMILL, and JON J.
HAMMILL, P.A.,

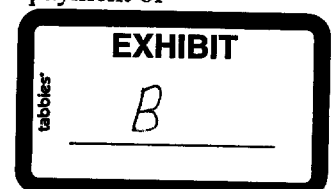
Defendants.

**PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS
TO DEFENDANT DAVID R. LEWALSKI**

Plaintiff Office of the Attorney General, Department of Legal Affairs, State of Florida, by and through its undersigned attorneys, pursuant to Rule 1.370, Florida Rules of Civil Procedure, hereby propounds the following First Request for Admissions to Defendant David R. Lewalski to be answered within thirty (30) days from the date of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. "You" and "your" refer to the defendant David R. Lewalski and his agents and his representatives and any other persons acting, or purporting to act on his behalf.
2. The term "Botfly" means the defendant Botfly L.L.C. and its officers, directors, employees, and agents.
3. The term "relevant period" means January 1, 2004 to the present.
4. The term "Ponzi scheme" means an investment fraud that involves the payment of



purported returns to existing investors from funds contributed by new investors.

REQUEST FOR ADMISSIONS

Please admit the following:

1. You are the managing member of Botfly.

ANSWER: Admitted _____ Denied _____

2. You solicited persons to invest in Botfly.

ANSWER: Admitted _____ Denied _____

3. You told investors that they would receive up to a 10% return per month on their investment with Botfly.

ANSWER: Admitted _____ Denied _____

4. You knew that the communication identified in number 3 was false at the time it was made.

ANSWER: Admitted _____ Denied _____

5. You told investors that their money invested in Botfly would be used for trading in foreign currency.

ANSWER: Admitted _____ Denied _____

6. You knew that the communication identified in number 5 was false at the time it was made.

ANSWER: Admitted _____ Denied _____

7. You told investors that Botfly earned 10% or more return per month by trading in foreign currency.

ANSWER: Admitted _____ Denied _____

8. You knew that the communication identified in number 7 was false at the time it

was made.

ANSWER: Admitted _____ Denied _____

9. Investors in Botfly relied upon your representations identified in numbers 3, 5, and 7 when deciding whether to invest in Botfly.

ANSWER: Admitted _____ Denied _____

10. You credited account statements for some investors in Botfly with a 10% per month interest rate of return on their investments in Botfly.

ANSWER: Admitted _____ Denied _____

11. You knew that the Botfly investors' account statements were false at the time they were made.

ANSWER: Admitted _____ Denied _____

12. You collected money from investors to deposit into the bank accounts of Botfly.

ANSWER: Admitted _____ Denied _____

13. You received more than \$369,000.00 in checks and transfers from Botfly accounts.

ANSWER: Admitted _____ Denied _____

14. You obtained more than \$514,000.00 in cash from Botfly accounts.

ANSWER: Admitted _____ Denied _____

15. The funds you received from Botfly were funds provided by investors to Botfly for investment.

ANSWER: Admitted _____ Denied _____

16. The funds you received from Botfly did not come from profits made from Botfly's investments or trading.

ANSWER: Admitted _____ Denied _____

17. You spent more than \$740,000.00 of investor funds on vehicles.

ANSWER: Admitted _____ Denied _____

18. You spent more than \$852,000.00 of investor funds on private jets.

ANSWER: Admitted _____ Denied _____

19. Botfly did not trade in foreign currency 87% or more of the money Botfly received for investment.

ANSWER: Admitted _____ Denied _____

20. You knew that Botfly was not trading in foreign currency 87% or more of the money Botfly received for investment.

ANSWER: Admitted _____ Denied _____

21. Botfly did not have any margin accounts.

ANSWER: Admitted _____ Denied _____

22. You omitted to tell investors that the Botfly investment program is a Ponzi scheme.

ANSWER: Admitted _____ Denied _____

23. You are not licensed or registered to invest any monies, including trading or pooling investments, in foreign currency with any local, state, or federal regulatory agency.

ANSWER: Admitted _____ Denied _____

24. You omitted to tell investors that you used money from new investors in Botfly to pay returns to existing investors in Botfly.

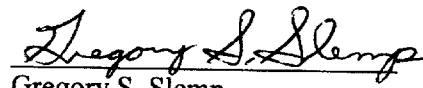
ANSWER: Admitted _____ Denied _____

25. Botfly did not pay investors money derived from any Foreign Exchange currency trading.

ANSWER: Admitted _____ Denied _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Jeffrey W. Warren and Karen Cox, Bush Ross, P.A., P.O. Box 3913, Tampa, FL 33601-3913; Kristine McAlister Brown and Michael L. Brown, Alston & Bird LLP, 1201 W. Peachtree Street, Atlanta, Georgia 30309; and by U.S. mail and electronic transmission to Craig Carpenito, Alston & Bird LLP, 90 Park Ave., New York, New York 10016; Erik R. Matheney, Hill, Ward & Henderson, P.A., P.O. Box 2231, Tampa, FL 33601-2231; and by U.S. Mail to Jon J. Hammill, P.O. Box 530181, St. Petersburg, FL 33747 and via electronic transmission at jonhammill@yahoo.com on this 16th day of November, 2010.


Gregory S. Slemp