

U.S. District Court
Northern District of Ohio
Case No. 5:01CV1496
Consent Order of Permanent
Injunction

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

**COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

**INTERNATIONAL MONETARY
GROUP, et al.,**

Defendants.

CASE NO. 5:01CV1496

**CONSENT ORDER OF PERMANENT
INJUNCTION AGAINST DEFENDANT
CURRENCY MANAGEMENT GROUP,
INC.**

I

INTRODUCTION

1. On June 18, 2001, plaintiff, Commodity Futures Trading Commission ("Commission"), filed a complaint against defendant Currency Management Group, Inc., and others, alleging violations of the Commodity Exchange Act ("Act"), 7 U.S.C. § 1 *et seq.*, as amended by the Commodity Futures Modernization Act of 2000 ("CFMA"), Pub. L. No. 106-

554, 114 Stat. 2763 (2000), and the regulations promulgated thereunder (“Regulations”), 17 C.F.R. § 1.1 *et seq.*, relating to commodity options transactions. On June 27, 2001, this Court entered a *Consent Order of Preliminary Injunction And Other Equitable Relief Against Currency Management Group*.

2. To effect settlement of this action without a trial on the merits or further judicial proceedings, Currency Management Group, Inc. through its duly authorized agent Anthony Dellarciprete (“CMG”), consents to this *Consent Order Of Permanent Injunction And Other Equitable Relief Against Defendant International Monetary Group* (“Order”). CMG also: (1) acknowledges service upon it of the summons and complaint in this action; (2) admits this Court's personal and subject matter jurisdiction over it and this action; (3) admits that venue properly lies with this Court; and (4) waives the entry of findings of fact and conclusions of law in this action pursuant to Fed. R. Civ. P. 52, except the findings of fact contained in Part II of this Order which shall be taken as true and correct and be given preclusive effect without further proof for use in any bankruptcy proceeding filed by, on behalf of, or against CMG, as further described in paragraph 3 below.

3. By consenting to the entry of this Order, CMG neither admits nor denies the allegations of the Commission's complaint or the findings of fact made by this Court and contained in Part II of this Order, except as to jurisdiction and venue. However, CMG agrees and the parties to this Order intend that the allegations of the Commission's complaint and all of the findings of fact made by this Court and contained in Part II of this Order shall be taken as true and correct and be given preclusive effect without further proof in any bankruptcy proceeding filed by, on behalf of, or against CMG for the purpose of determining whether its restitution obligation and/or other payments ordered herein are excepted from discharge. CMG also shall

provide immediate notice of any bankruptcy proceeding filed by, on behalf of, or against it in the manner required by paragraph 2 of Part IV of this Order.

4. CMG agrees that: (1) it will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or finding or conclusion contained in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; and (2) no agent or employee of CMG acting under its authority or control shall take any action or make or permit to be made any public statement denying, directly or indirectly, any of the findings or conclusions in this Order or creating, or tending to create, the impression that any allegation in the Complaint or this Order is without factual basis, and CMG shall undertake all steps necessary to ensure that all of its agents and employees understand and comply with this agreement. Nothing in this provision shall affect CMG's: (1) testimonial obligations; or (2) right to take legal positions in other proceedings to which the Commission is not a party.

5. CMG consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order.

6. CMG affirms that it has read this Order and agrees to this Order voluntarily, and that no promise or threat of any kind has been made by the Commission or any member, officer, agent, or representative thereof, or by any other person, to induce its consent to this Order, other than as set forth specifically herein.

7. Defendant CMG affirms that this Consent to Order has been authorized and approved by its officers and board of directors and that such approval and authorization has been delegated to Anthony Dellarciprete to sign this Consent to Order on its behalf.

8. This Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. This Court therefore directs the entry of findings of fact and a permanent injunction, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

II

FINDINGS OF FACT

A. Operation Of IMG As An Unregistered Forex Firm

1. Since at least December 1999 to the present, defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Jason Lemmon (“Lemmon”), or individuals under their supervision and control, solicited individuals throughout the United States to invest in options on foreign currency traded on the foreign currency exchange markets (“Forex”).

2. Since at least December 1999 to the present, defendants International Monetary Group, Inc., (“IMG”), Anthony Dellarciprete, Emido Dellarciprete, and Lemmon, or individuals under their supervision and control, solicited members of the public to purchase options on foreign currencies that were not being traded on or subject to the rules, or through a member, of a designated contract market and were not registered with the Commission as they are required to do so. In addition, these defendants failed to provide investors with required disclosure documents, failed to provide investors with statements of account and certain reports, and failed to file a disclosure documents with the Commission

3. Defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon, or individuals under their supervision and control, represented to some individuals that their funds would be pooled with the funds of other investors to purchase Forex options.

4. As part of their solicitation, defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon, or individuals under their supervision and control, provided prospective investors with a Client Account Agreement (“Agreement”). The Agreement provides that IMG will act as the customer’s agent for the “purchases and sales of Foreign Currency Options by and through a United Kingdom Corporation engaged in the business of foreign currency transactions.” The Agreement also provides that the United Kingdom Corporation is located in London, England and that it has no assets or place of business in the United States.

5. The Agreement states that the customer may purchase a foreign currency option and may thereafter “sell the Foreign Currency Option back to [the United Kingdom Corporation] at any time prior to the expiration date for the price [the United Kingdom Corporation] is then quoting.” It also states that the United Kingdom Corporation may act as the counterparty to transactions for a customer’s account, and may sell foreign currencies and/or options to the customer from its own account or may buy foreign currencies from the customer for its own account.

6. Notwithstanding the clear authority of the Commission to regulate the sale of foreign currency options to members of the public, the Agreement states, “there is no federal or state nor banking authority which regulates foreign currency options, subject to [the Agreement].”

7. Pursuant to the terms of the Agreement, individuals who purchase foreign currency options are directed either to wire funds to an account in the name of IMG at FirstMerit Bank N/A in Akron, Ohio (“IMG FirstMerit Account”), or to mail checks made payable to IMG to IMG’s office in Barberton, Ohio.

8. From December 1999 to June 18, 2001, defendants Anthony Dellarciprete and Emido Dellarciprete were the only authorized signatories for the IMG FirstMerit Account. During this time, over \$3.4 million was deposited in the IMG FirstMerit Account.

9. Between October 25, 1999, and December 16, 1999, defendants made eight transfers totaling \$76,444 from IMG to IFX, Ltd. (“IFX”) located in London, England. To the extent that any of these funds were used to trade options of foreign currency on behalf of persons residing in the United States, those trades were illegal because defendants were not registered with the Commission.

10. From January 2000 to June 18, 2001, no funds sent to IMG by persons for the purpose of trading options on foreign currency were transferred from the IMG FirstMerit Account to any United Kingdom corporation for that purpose. Moreover, during that time, no funds were transferred from the IMG FirstMerit Account to a federally registered financial institution, a broker or securities dealer or futures commission merchant, an associated person of a broker or dealer, an insurance company, a financial holding company, or an investment bank holding company acting as a counterparty to purported options transactions by IMG customers. Furthermore, none of the funds sent by individuals to IMG for the purpose of trading options on foreign currency were used to trade such options during that time. As described below, those funds were misappropriated by defendants.

B. The Fraudulent Solicitation of Individuals to Invest in Forex Options with IMG

11. At various times from December 1999 to June 18, 2001, defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon, or persons under their supervision and control, solicited individuals to send funds to IMG for the purpose of investing in options on foreign currencies.

12. As part of these solicitations, defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon, or other persons under their supervision and control, stated that they were offering investors an opportunity to make large profits on the rise in the value of foreign currencies relative to the dollar. They claimed that they would double a customer's investment in less than a month and that IMG had customers who invested hundreds of thousands of dollars and more than doubled their investments. In addition, they represented that IMG had expert Forex currency market analysts who were highly successful traders.

13. After initial telephone calls to prospective customers, defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon, or other persons under their supervision and control, sent prospective customers by mail or facsimile copies of the Agreement, an account information and customer profile statement, and an authorization to purchase and promise to pay. These defendants instructed customers to sign and return the documents to IMG for the purpose of opening an account at IMG. Pursuant to their instructions, individuals signed these documents and sent them to the IMG office in Barberton, Ohio.

14. During the course of their solicitations, defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon, or other persons under their supervision and control, failed to provide prospective and actual customers with required commodity option disclosure documents

and failed to comply with the reporting and disclosure requirements for commodity pool operators.

15. Pursuant to instructions by defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon, or other persons under their supervision and control, individuals wired funds to an account in the name of IMG at FirstMerit Bank in Akron, Ohio to invest in options on foreign currencies.

16. As the result of the defendants' fraudulent solicitations, at least eighty-two (82) individuals in various parts of the United States sent funds to IMG in amounts ranging from approximately \$7,400 to \$383,845. A list of the persons who sent funds to IMG and the amount of funds each person sent to IMG is reflected accurately in Exhibit A. Between December 1999 to June 18, 2001, customer deposits in that account, and other bank accounts controlled by defendants, totaled approximately \$3,402,000.

C. Misappropriation of Investor Funds

17. From December 1999 to June 18, 2001, defendants accepted funds for the purpose of trading options on foreign currencies and misappropriated those funds for their personal use. Contrary to representations to customers that their funds were being used to purchase Forex options, defendants transferred those funds to various accounts under their personal control and used funds from those accounts to pay expenses unrelated to trading Forex options.

18. Documents for the IMG FirstMerit Bank account, which was controlled by defendants Anthony Dellarciprete and Emido Dellarciprete, show that none of the customer deposits were used for the purchase of foreign currency options between January 2000 and June 18, 2001. Those documents show that funds in the IMG FirstMerit Bank account were used by Anthony Dellarciprete and Emido Dellarciprete to purchase various personal goods and services.

19. FirstMerit Bank documents also show that funds were transferred to a business checking account in the name of CMG at FirstMerit Bank (“CMG FirstMerit Account”). Those documents reveal that Anthony and Emido Dellarciprete controlled the CMG FirstMerit Account and that funds from the IMG FirstMerit Account were transferred to the CMG FirstMerit Account between December 1999 to June 18, 2001. During that time, Anthony and Emido Dellarciprete used funds from the CMG FirstMerit Account to pay for personal goods and services.

20. Defendants IMG, Anthony Dellarciprete, Emido Dellarciprete, and Lemmon, or other persons under their supervision and control, sent false statements and reports to customers showing that their funds were used for trading options on foreign currencies and that virtually all of those funds were lost in trading. These statements and reports summarized fictitious trading transactions because IMG bank records reveal that no customer funds were used to purchase options on foreign currency between January 2000 and June 18, 2001.

III

PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

1. CMG is permanently restrained, enjoined, and prohibited from directly or indirectly:
 - a. cheating or defrauding or attempting to cheat or defraud other persons by making false, deceptive, or misleading representations of material facts and by failing to disclose material facts, in soliciting customers or potential customers, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, commodity option transactions and misappropriating customer funds in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 32.9, 17 C.F.R. § 32.9; acting as a commodity pool operator (“CPO”), directly or indirectly, without being registered under the Act and using the mails

or any means or instrumentality of interstate commerce in connection with business as a CPO in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1);

- b. offering to enter into, entering into, executing, confirming the execution of, or conducting business for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a commodity option when: (a) such transactions are not being conducted on or subject to the rules of a board of trade which has been designated by the Commission as a “contract market” for such commodity; and (b) such contracts are not being executed or consummated by or through a member of such contract market, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Sections 32.11 and 33.3 of the Regulations, 17 C.F.R. §§ 32.11, 33.3;
- c. failing to furnish customers with the disclosure statement required for options transactions in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Section 32.5 of the Regulations, 17 C.F.R. § 32.5;
- d. employing any device, scheme, or artifice to defraud any participant or prospective participant, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any participant or prospective participant, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1);
- e. acting as a commodity pool operator ("CPO"), directly or indirectly, without being registered under the Act and using the mails or any means or instrumentality of interstate commerce in connection with any business as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1);
- f. acting as an associated person of a CPO, directly or indirectly, without being registered under the Act or permitting any person to act as an associated person without being registered under the Act, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2), and Commission Regulation 3.12(a), 17 C.F.R. § 3.12(a); and
- g. failing to provide a Disclosure Document in the form specified by the Commission's Regulations to prospective pool participants, failing to distribute to pool participants monthly account statements and an annual report, and failing to file a Disclosure Document with the Commission, in violation of Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and Commission Regulations 4.21, 4.22, 4.24, 4.25, and 4.26, 17 C.F.R. §§ 4.21, 4.22, 4.24, 4.25, 4.26.

IT IS FURTHER ORDERED THAT:

- 2. CMG is permanently restrained, enjoined, and prohibited from:
 - a. Trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, as amended by the CFMA, 7 U.S.C. § 1a(29) (2001);

- b. Engaging in, controlling, or directing the trading of any futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
- c. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2001), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2001).

The injunctive provisions of this Order shall be binding upon CMG, any person insofar as he or she is acting in the capacity of officer, agent, servant, or attorney of CMG, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in active concert or participation with CMG.

IV

OTHER PROVISIONS

IT IS FURTHER ORDERED THAT:

1. Jurisdiction of this Court: This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.
2. Notices: All notices required by this Order shall be sent by certified mail, return receipt requested, as follows:
 - a. Notice to Commission:

Director, Division of Enforcement
Commodity Futures Trading Commission
1155 21st St. NW
Washington, DC 20581

b. Notice to Monitor:

Vice President, Compliance
National Futures Association
200 West Madison Street
Chicago, IL 60606

c. Notice to defendant Currency Management Group, Inc.:

c/o Blakemore, Meeker & Bowler Co., L.P.A.
19 North High Street
Akron, Ohio 44308

CMG shall provide the Court, the Monitor and the Commission with written notice of all changes to its business telephone number(s) and/or address(es) within ten (10) calendar days of the change(s).

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

4. Successors and Assigns: This Order shall inure to the benefit of and be binding upon the successors, assigns, heirs, beneficiaries, and administrators of all parties to this Order.

5. Acknowledgements: Upon being served with a copy of this Order after entry by this Court, CMG shall sign an acknowledgment of service and serve the acknowledgment on this Court and the Commission within seven (7) calendar days.

Upon being served with a copy of this Order after entry by the Court, the Commission shall serve a copy of the Order upon the Monitor within seven (7) calendar days.

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

7. Integration: This Order incorporates all of the terms and conditions of the settlement of the parties to this Order. Nothing shall serve to amend or modify this Order in any respect, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

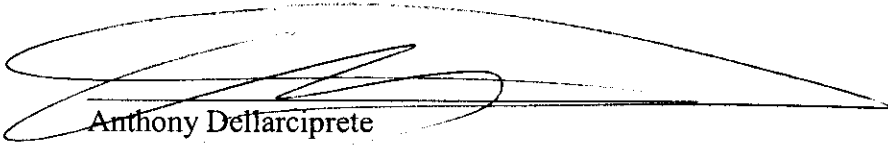
Done and Ordered this 30th day of April 2002, at Akron,

Ohio.



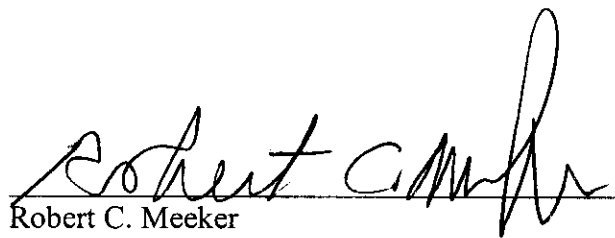
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

Order Of Permanent Injunction And Other Equitable Relief Against Defendant Currency Management Group, Inc. consented to and approved for entry by:



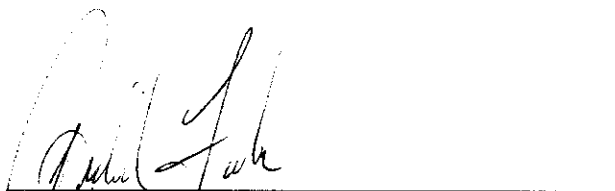
Anthony Dellarciprete

Dated: March 4th, 2002



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Dated: March _____, 2002



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Dated: ~~March~~ ^{APRIL} 26, 2002