THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

Commodity Futures Trading Commission, Plaintiff,	**CIVIL ACTION NO.1:00 CV 0300**
v.	**Judge: Hon. William C. Lee**
Phillip L. Ferguson, individually and doing business as Ferguson Financial, B&F Trading and First Investors Group, Inc., David G. Johnson, Thomas T. Miller, Geoffrey M. Eltzroth, James N. Wilson, individually and as an agent of JNW Management and JNW Management, Defendants.	**Magistrate Judge: Roger B. Cosbey**

CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF AGAINST DEFENDANT THOMAS T. MILLER

I. INTRODUCTION

1. On July 11, 2000, the plaintiff Commodity Futures Trading Commission ("Commission") filed a Complaint against Phillip L. Ferguson ("Ferguson"), individually and doing business as Ferguson Financial, B&F Trading and First Investors Group, Inc., seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2001) and regulations promulgated thereunder, 17 C.F.R. §§ *et seq.* (2001). On February 22, 2002, the Commission filed a First Amended Complaint ("the Amended Complaint") adding new charges against Ferguson and additional defendants,

including Thomas T. Miller ("Miller"). The Amended Complaint charged Miller with engaging in transactions which operated as a fraud upon participants in a commodity futures pool, in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B)(2001).

2. To effect settlement of the matters alleged in the Amended Complaint against Miller without a trial on the merits, Miller and the Commission consent to the entry of this Consent Order of Permanent Injunction and other Equitable Relief Against Thomas T. Miller ("Consent Order"). Miller also: (1) waives service of Summons and the Amended Complaint; (2) admits both personal and subject matter jurisdiction of this Court in this action; (3) admits that venue properly lies with this Court; and (4) generally waives the entry of findings of fact and conclusions of law in this action pursuant to Rule 52 of the Federal Rules of Civil Procedure, except as provided in Part II below.

3. Miller neither admits nor denies the allegations of the Amended Complaint and the Findings of Fact and Conclusions of Law contained in this Consent Order. By this language, Miller agrees that neither Miller nor any employees, agents or representatives of Miller acting under his authority or control shall take any action or make any public statements denying, directly or indirectly, any allegation in the Amended Complaint or creating, or tending to create, the impression that the Amended Complaint is without factual basis; provided, however, that nothing in this provision affects Miller's (i) testimonial obligations, or (ii) Miller's right to take legal positions in other proceedings to which the Commission is not a party. Miller will undertake all steps necessary to assure that all of his agents and employees understand and comply with this agreement.

4. Miller waives: (1) all claims that he may possess under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub.

L. No. 104-121. §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, et seq. (2001), relating to or arising from this action and any right under EAJA to seek costs, fees and other expenses relating to or arising from this proceeding; (2) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and (3) all rights of appeal from this Consent Order.

5. The parties hereto also consent to the continued jurisdiction of the Court for the purpose of enforcing the terms and conditions of this Consent Order and for any other purposes relevant to this case.

6. Miller agrees to cooperate fully with the Commission in its prosecution of the Amended Complaint in this proceeding, in any ongoing investigations related to the subject matter of the Amended Complaint, and in all other proceedings arising from such investigations by, among other things: (1) responding promptly, completely, and truthfully to any inquiries or requests for information and otherwise cooperating fully with respect to discovery; (2) providing authentication of documents; (3) testifying completely and truthfully; and (4) not asserting privileges under the Fifth Amendment of the United States Constitution in connection with any testimony Miller is asked to provide.

7. Miller further affirms that he has read the Consent Order and agrees to entry of this Consent 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 him to consent to this Consent Order, other than as set forth specifically herein.

II.
FINDINGS OF FACT

8. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason to delay. The Court therefore directs the entry of findings of fact, conclusions of law, a permanent injunction and ancillary equitable relief, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), as set forth herein.

9. This Court has subject matter jurisdiction over this action and the allegations in the Amended Complaint pursuant to Section 6c of the Act.

10. This Court has personal jurisdiction over Miller and Miller has waived service of Summons and the Amended Complaint and consented to the Court's jurisdiction over him.

11. The Commission and Miller have agreed that this Court shall retain jurisdiction over each of them for the purpose of enforcing the terms of this Consent Order.

The Parties

12. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency charged with the responsibility for administering and enforcing the provisions of the Act and Regulations promulgated under it.

13. Defendant Thomas T. Miller, whose address is 911 Sydney Lane, Marion, Indiana 46952, was registered with the Commission as an IB, doing business as TTM Futures, from March 5, 1996 until December 10, 2000. Miller was registered as an AP of TTM Futures from March 14, 1996 until December 10, 2000. He has been registered as an AP of Trademaster since January 8, 1996. From at least 1997 until July 2000, Miller worked with Ferguson on a daily basis at the offices of Ferguson Financial located at 241 W. Third Street, Marion Indiana. Miller has been employed as a broker in the futures industry since 1970. At the time of the events

herein, Miller had approximately thirty years experience in the futures industry and had been an NFA member and Commission registrant for nearly twenty years.

The Fraudulent Transactions

14. At various times between at least 1997 and July 2000, Miller, while working at Ferguson Financial, solicited at least 246 participants who invested over $8 million in a commodity futures pool operated by Ferguson. During this period, Miller received nearly $780,000 from Ferguson.

15. In the course of these solicitations, Miller advised pool participants and prospective participants that Ferguson was a successful commodity trader and that other pool participants had profited from investment in the pool. None of these statements were true. Miller also used the mails and other means and instrumentalities of interstate commerce, directly or indirectly, to provide pool participants and prospective participants with copies of a Disclosure Document for the pool and account statements and trade logs for the pool that were false, misleading and fraudulent and presented the information therein as true and accurate. The Disclosure Document misrepresented Ferguson's ability as a commodity futures trader. The account statements and trade logs misrepresented the past performance of the pool, the profits and losses for the pool, the amount of money invested in the pool, and the value of participant' investments in the pool.

III.
CONCLUSIONS OF LAW

16. At various times between 1997 and July 2000, through the acts found above, Miller used the mails and other means and instrumentalities of interstate commerce, directly or indirectly, to engage in a transaction, practice, or course of business which operated as a fraud

and deceit upon participants and prospective participants of the pool, in violation of Section 4o(1)(B) of the Act.

IV.
ORDER FOR PERMANENT INJUNCTION

NOW THEREFORE, IT IS ORDERED THAT:

17. Miller is permanently restrained, enjoined and prohibited from directly or indirectly, using the mails and other means and instruments of interstate commerce, directly or in directly, to engage in a transaction, practice, or course of business which operates as a fraud and deceit upon participants and prospective participants of a commodity futures pool, in violation of Section 4o(1)(B) of the Act.

18. Miller is further permanently restrained, enjoined and prohibited from directly or indirectly:

a. Engaging in, controlling or directing the trading for any futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;

b. Entering into any futures or options transactions for his own account, for any account in which he has a direct or indirect interest and/or having any futures or options traded on his behalf; 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, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9), or acting as a principal, agent officer or employee of any person registered, exempted from registration, or required to be registered with the Commission unless such exemption is pursuant to Commission Regulation 4.14(a)(9).

19. The injunctive provisions of this Consent Order shall be binding upon Miller, upon any person insofar as he or she is acting in the capacity of officer, agent, servant or employee of Miller, and upon any person who receives actual notice of this Consent Order, by

personal service or otherwise, insofar as he or she is acting in active concert or participation with Miller.

V.
ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

20. RESTITUTION:

a. Restitution Obligation: Miller is jointly and severally liable with Ferguson for $8,000,000 (Eight Million Dollars) in restitution, plus pre-judgment interest thereon from June 30, 2000, to the date of this order in the amount of $244,655 ("Restitution Obligation"). Pre-judgment interest is calculated at the underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. § 662(a)(2). The Restitution Obligation represents the total amount of restitution needed to make whole the pool participants solicited by Miller. Miller shall pay post-judgment interest from the date of this Order until his Restitution Obligation is paid in full, at the Treasury Bill rate prevailing on the date of this Order, pursuant to 28 U.S.C. § 1961(a).

b. Offset: Miller's Restitution Obligation shall be offset by any receivership distribution or payments made by Ferguson or any other person in this matter on behalf of any pool participant solicited by Miller.

c. Pool Participants: Attachment A, attached hereto and incorporated by reference, is a listing of the pool participants solicited by Miller. The amount of restitution to be paid to any individual investor under this Order will be determined by the Court upon the Court's receipt of a distribution plan recommended by the Receiver appointed by the Court in this matter. Omission from Attachment A shall in no way limit the ability of any participant to seek recovery from Miller or any other person or entity. Restitution payments shall be paid in accordance with the provisions of Paragraph 22 below.

21. DISGORGEMENT: Miller is ordered to disgorge $780,000 (Seven Hundred Thousand Dollars), representing Miller's personal gain from the conduct alleged in the Amended Complaint. Payments made by Miller towards his Restitution Obligation shall reduce the amount of disgorgement dollar for dollar.

22. PAYMENT OF RESTITUTION AND DISGORGEMENT: Restitution and disgorgement shall be made as follows:

a. Miller shall make an initial restitution payment to the Receiver in this matter of $4,396 (Four Thousand Three Hundred Ninety-Six Dollars) within 30 days of entry of this Order and shall make an annual restitution obligation/disgorgement payment ("Annual Restitution/Disgorgement Payment") to an account designated by the Monitor of: (1) a percentage of his adjusted gross income (as defined by the Internal Revenue Code) earned or received by him during the previous calendar year, plus (2) all other cash receipts, cash entitlements or proceeds of non-cash assets received by him during the previous calendar year pursuant to the payment plan in Paragraph 24 below. The Annual Restitution/Disgorgement Payment shall be made on or before July 31 of each calendar year starting in calendar year 2003 and continuing for ten years or until the Restitution Obligation and Disgorgement is paid in full from any source or discharged, whichever occurs sooner. The ten-year period for determining the Annual Restitution/Disgorgement Payments shall run from January 1, 2002 through December 31, 2011. Annual Restitution/Disgorgement Payments for a calendar year shall take place by July 31 of the following year. Therefore, the final annual payment for the year 2011 will occur on or before July 31, 2012.

b. Miller agrees that the National Futures Association is hereby designated as the Monitor for a period of eleven years commencing January 1, 2002. Notice to the Monitor shall be made to Daniel A. Driscoll, Esq., Executive Vice President, Chief Compliance Officer, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, Illinois 60606.

c. Miller shall provide a sworn financial statement to the Monitor on June 30 and December 31 of each calendar year, starting December 31, 2002 and continuing through and including December 31, 2011. The financial statement shall provide:

i) a true and complete itemization of all of his rights, title and interest in (or claimed in) any asset, wherever located, however and by whomever held;

ii) an itemization, description and explanation of all transfers of assets with a value of $1,000 or more made by or on behalf of him over the preceding six-month interval; and

iii) a detailed description of the source and amount of all his income or earnings, however generated.

Miller shall also provide the Monitor with complete copies of his signed federal income tax returns, including all schedules and attachments thereto (*e.g.*, IRS Forms W-2) and Forms 1099, as well as any filings he is required to submit to any state tax or revenue authority, for the preceding calendar year, on or before June 30 of each calendar year, or as soon thereafter as the same are filed, starting in calendar year 2003 and continuing for ten years or until all amounts due under this agreement are paid in full or discharged, whichever occurs first.

d. Based on the information contained in Miller's tax returns, Miller's sworn Financial Disclosure Statement and other financial records provided to the Commission, the Monitor shall calculate the Annual Restitution/Disgorgement Payment to be paid by Miller for that year. Thereafter, the Monitor shall distribute the payment in accordance with Attachment A and a distribution plan determined by the Court under Paragraph 20 above. On or before July 15 of each year and starting in calendar year 2003, the Monitor shall send written notice to Miller with instructions to pay the Annual Restitution/Disgorgement Payment on or before July 31 of that year to an account designated by the Monitor, or, if Miller's Restitution Obligation and/or disgorgement has been satisfied or discharged, the amount of civil monetary penalty to be paid in accordance with the payment instructions in Paragraphs 23 and 24 below. If the Monitor determines that an Annual Restitution/Disgorgement Payment is due, then the Monitor will increase the amount of the remaining Annual Restitution/Disgorgement Payment by post-judgment interest calculated to the date of the payment based on the total remaining Restitution Obligation and Disgorgement, pursuant to 28 U.S.C. § 1961. The Monitor shall then disburse any payment by Miller in accordance with Attachment A and a distribution plan determined by the Court. Based upon the amount of funds available, or if the Court has not entered a distribution plan, the Monitor may decide to defer distribution. If at the end of the ten year payment period, any amount of the Annual Restitution/Disgorgement Payments has not been distributed, that amount shall instead be paid and applied as payment to the civil monetary penalty obligation, as provided in Paragraph 23 below.

e. Pursuant to Rule 71of the Federal Rules of Civil Procedure, the pool participants listed in Attachment A to this Consent Order are explicitly made intended third party beneficiaries of this Consent Order and, after the date the last Restitution/Disgorgement Payment is due, may enforce obedience to this Consent Order to obtain satisfaction of any portion of the Restitution Obligation which has not been paid, to ensure continued compliance with any provision of this Consent Order and to hold Miller in default and/or contempt for any past violations of this Consent Order.

23. <u>CIVIL MONETARY PENALTY:</u> Miller shall pay a contingent civil monetary penalty in an amount up to $780,000 (Seven Hundred Eighty Thousand Dollars) pursuant to the

payment plan in Paragraph 25 below, commencing upon Miller's fulfillment or discharge of his Annual Restitution/Disgorgement Payment obligation as set forth in Paragraphs 21 through 23 above. Miller shall make an annual civil monetary penalty payment ("Annual CPM Payment") following Miller's satisfaction or discharge of his Restitution/Disgorgement Obligation, and continuing until July 31, 2012 (or until the CMP is paid in full, if that happens first).[1] Miller shall make each such Annual CMP Payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashiers check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, D.C. 20581, under cover of a letter that identifies Miller and the name and docket number of the proceeding. Miller shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor and to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, NW, Washington, D.C. 20581.

24. ANNUAL PAYMENT: The Annual Payments (the Annual Restitution/ Disgorgement Payment followed by the Annual CMP Payment) shall be calculated as follows:

Where Adjusted Gross Income Plus Net Cash Receipts Total:	Percent of total to be paid by Miller in accordance with Attachment A is:
Under $25,000.00	0%
$25,000.00 up to and including $50,000.00	20% of the amount between $25,000.00 and $50,000

[1] Should the amount due under the payment plan for any Annual Restitution/Disgorgement Payment be greater than the balance due on Miller's restitution/disgorgement obligation, the amount due under the payment plan not paid as restitution/disgorgement will constitute Miller's first Annual CMP Payment and be paid as specified above.

$50,000.00 up to and including $100,000	$5,000.00 (which represents 20% of the amount between $25,000.00 and $50,000.00) plus 30% of the amount between $50,000.00 and $100,000.
Above $100,000	$20,000.00 (which represents 20% of the amount between $25,000.00 and $50,000.00 plus 30% of the amount between $50,000.00 and $100,000) plus 40% of the amount above $100,000.

25. COOPERATION: Miller shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all duties with respect to his Annual Restitution/Disgorgement Payments and Annual CMP Payments. He shall cooperate fully with the Monitor and the Commission in explaining his financial income and earnings, status of assets, financial statements, asset transfers and tax returns, and shall provide any information concerning himself as may be required by the Commission and/or the Monitor. Furthermore, Miller shall provide such additional information and documents with respect thereto as may be requested by the Commission and/or the Monitor.

26. COLLATERAL AGREEMENTS: Miller shall immediately notify the Commission if he makes or has previously made any agreement with any pool participant obligating him to make payments outside of this order. Miller shall also provide immediate notice of any payments made pursuant to such agreement in the manner required by Paragraph 32. Upon being notified of any payments made by Miller to pool participants outside of this Order, the Commission and the Monitor will have the right to reduce and offset Miller's obligation to specified pool participants, on an annual basis, and to make any other changes in the restitution distribution that they deem appropriate.

27. DEFAULT: Any failure by Miller to carry out any of the terms, conditions or obligations under any paragraph of this Consent Order shall constitute an Event of Default. If any Event of Default occurs the Commission (or its designee) shall be entitled to:

a. an order requiring immediate payment of any unpaid Restitution/Disgorgement Payment and/or Annual CMP Payments, or, at the Commission's option, the entire unpaid balance, or any unpaid portion, of the Restitution Obligation, the Disgorgement amount and/or civil monetary penalty set forth in Paragraphs 20 through 24 above; and/or

b. move the Court for imposition of all other available remedies, including, but not limited to, an order holding Miller in contempt for violation of this Order.

Upon the occurrence of an Event of Default based upon a claim or cause of action that Miller failed to make any Annual Restitution/Disgorgement Payments and/or Annual CMP Payments when due, Miller will be barred from asserting any defense, including expiration of any statute of limitations, waiver, estoppel or laches, where such defense is based on the alleged failure of the Commission to pursue such claims or causes of action during the pendency of this civil action, during the negotiation of Miller's consent to this Order or while this Order remains in effect. The only issue that Miller may raise in defense is whether he made the Annual Restitution/Disgorgement Payments and/or Annual CMP Payment as directed by the Monitor. Any motion by the Commission for entry of an order pursuant to this paragraph requiring payment of less than the full amount of the restitution/disgorgement obligation and/or civil monetary penalty, set forth in paragraphs 20 through 24 above, or any acceptance by the Commission of partial payment of the Annual Restitution/Disgorgement Payments and/or Annual CMP Payments made by Miller shall not be deemed a waiver of the Commission's right to require Miller to make further payments pursuant to the payment plans set forth above, or, in the event of a further Event of Default, a waiver of the Commission's right to require immediate payment of the entire remaining balance, or any unpaid portion, of the restitution/disgorgement amount and/or civil monetary penalty set forth in paragraphs 20 through 24 above.

28. RELIANCE ON FINANCIAL DISCLOSURE: Based upon the sworn representations of Miller contained in his Financial Disclosure Statement dated March 11, 2002, and other evidence provided by Miller regarding his financial condition, the Court is not ordering immediate payment of full restitution, disgorgement or the CMP pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 and Rule 143.8 of the Commission's Regulations, 17 C.F.R. § 143.8. The determination not to order immediate payment of the full amount of restitution owed, the disgorgement amount and the CMP is contingent upon the accuracy and completeness of the Financial Disclosure Statement and other evidence provided by Miller regarding his financial condition. If at any time following the entry of this Consent Order, the Commission obtains information indicating that Miller's representations to the Commission concerning his financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may move this Court for an order requiring Miller to make immediate payment of his entire Restitution obligation, disgorgement and/or the CMP, or of any portion thereof, the amount of which shall be determined by the Commission. In connection with any such motion, the only issues shall be whether the financial information provided by Miller was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. In its motion, the Commission may move this Court to consider all available remedies, including, but not limited to ordering Miller to pay funds or transfer assets or directing the forfeiture of any assets and the Commission may also request additional discovery. Miller may not, by way of defense to such motion, challenge the validity of his consent to this Consent Order, or contest any of the

findings of fact or conclusions of law set forth in this Consent Order, assert that payment of the Restitution Obligation, the disgorgement amount, or the CMP amount should not be ordered, or contest the amount of the Restitution Obligation, the disgorgement amount or the CMP amount to be paid. If in such motion the Commission moves for, and the Court orders, payment of less than the full amount of the Restitution Obligation, disgorgement amount or the full amount of the CMP, such motion will not be deemed a waiver of the Commission's right to require Miller to make further payment pursuant to the payment plans set forth above.

29. TRANSFER ASSETS: Miller shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any members of his family or any other person for the purpose of concealing such funds from the Court or the Commission until the total Restitution obligation, disgorgement and CMP are paid in full.

VI.
MISCELLANEOUS PROVISIONS

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

Notice to Commission:
Regional Counsel
Division of Enforcement – Central Region
Commodity Futures Trading Commission
525 W. Monroe, Suite 1100
Chicago, Illinois 60606

Notice to Miller:
Thomas T. Miller
911 Sydney Lane
Marion, Indiana 46952

Notice to Monitor:
Daniel Driscoll
Vice President, Compliance
National Futures Assocation
200 West Madison Street
Chicago, Illinois 60606

In the event that Miller changes his residential or business telephone number(s) and/or address(es) at any time, he shall provide written notice of his new number(s) and/or address(es) to the Commission within ten (10) calendar days thereof.

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

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

33. SUCCESSORS AND ASSIGNS: This Consent Order shall inure to the benefit of and be binding upon the successors, assigns, heirs, beneficiaries and administrators of the parties hereto.

34. ACKNOWLEDGEMENTS: Upon being served with copies of this Consent Order after entry by the Court, Miller shall sign acknowledgements of such service and serve such acknowledgments on this Court and the Commission within seven (7) calendar days.

35. INVALIDATION: If any provision of this Consent Order, or the application of any provisions or circumstances is held invalid, the remainder of the Consent Order and the application of the provision to any other person or circumstance shall not be effected by the holding.

36. JURISDICTION: This Court shall retain jurisdiction of this cause to assure compliance with this Consent Order and for all other purposes related to this action.

ENTERED THIS ~~22 of October, 2002.~~
12TH DAY OF FEBRUARY, 2003

Hon. William C. Lee
United States District Court Judge

Consented to and approved for entry by:

Thomas T. Miller

David A. Terrell

Commodity Futures Trading Commission
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