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Attorneys for Defendant
Profit Partners Inc.

FILED
CLERK, U.S. DISTRICT COURT
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CENTRAL DISTRICT OF CALIFORNIA
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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COMMODITY FUTURES
TRADING COMMISSION

Plaintiff,

v.

PROFIT PARTNERS, INC.,

Defendant

Case No. 03-9190 LGB (VBKx)

~~PROPOSED~~ CONSENT ORDER OF
PERMANENT INJUNCTION AND
ANCILLARY RELIEF AGAINST
DEFENDANT

On December 16, 2003, plaintiff Commodity Futures Trading Commission ("CFTC" or "Commission") filed a complaint against defendant Profit Partners Inc., ("PPI" or "Defendant") seeking injunctive and other ancillary relief for violations of the Commodity Exchange Act, as amended ("the Act"), 7 U.S.C. §§ 1 et seq. (2001) and the Regulations promulgated thereunder, 17 C. F. R. §§ 1 et seq. (2002).

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I.

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the complaint against PPI without a trial on the merits or any further judicial proceedings, PPI:

- 1.) Consents to the entry of this Consent Order of Permanent Injunction and Other Ancillary Relief Against PPI (“Order”);
- 2.) Affirms that it has agreed to this Order voluntarily, and that no promise or threat has been made by the CFTC or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than specifically set forth herein;
- 3.) Acknowledges service of the summons and complaint;
- 4.) Admits jurisdiction of this Court over it and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;
- 5.) Admits venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;
- 6.) Waives:
 - a. all claims which it may possess under the Equal Access to Justice Act, 5 U.S.C. §504 (2000) and 28 U.S.C. § 2412 (2000) 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.* to seek costs, fees and other expenses relating to, or arising from, this action;
 - b. any claim of double jeopardy based on the institution of this proceeding or any order imposing civil monetary penalties or any other relief; and
 - c. all rights of appeal from this Order;

- 1 7.) Consents to the continued jurisdiction of this Court for the purpose
2 of enforcing the terms and conditions of this Order and for any other
3 purpose relevant to this matter;
- 4 8.) Neither admits nor denies the allegations of the Complaint and the
5 findings and conclusions of this Order, except as to jurisdiction and
6 venue; and
- 7 9.) Agrees it shall not take any action or make any public statements
8 denying, directly or indirectly, any allegation of the Complaint or
9 findings in this Order, or creating or tending to create the impression
10 that the Complaint and this Order are without factual basis; provided,
11 however, that nothing in this provision affects PPI's (i) testimonial
12 obligations, or (ii) its right to take legal positions in other
13 proceedings to which the CFTC is not a party.

14 II.

15 FINDINGS

16 Being fully advised in the premises and finding that there is just cause for
17 entry of this Order that fully disposes of all issues in this matter, THE COURT
18 FINDS THAT:

- 19 10.) Plaintiff Commission is an independent federal regulatory agency
20 that is charged with responsibility for administering and enforcing
21 the provisions of the Commodity Exchange Act, 7 U.S.C. §§ 1 *et*
22 *seq.* (2001).
- 23 11.) PPI, incorporated in the state of Nevada, is doing business in the
24 state of California. PPI maintains its principal place of business in
25 Chicago, Illinois, but also maintains offices in California at 5301
26 Beethoven Street, Los Angeles, California. PPI is engaged in the
27 business of marketing and selling commodity futures and options
28

1 trading systems to the retail public. PPI has never been registered
2 with the Commission in any capacity.

3 12.) As part of its marketing efforts, Defendant on one occasion failed to
4 directly accompany certain email communications to prospective
5 customers with a hypothetical trading performance disclosure
6 warning when representing the results of a certain trading system.

7 13.) Specifically, Defendant represented to a prospective customer in an
8 email that the offered trading program produced certain specific,
9 highly profitable, results but failed to disclose in the text of the email
10 that the projected performance was based on a hypothetical, back-
11 tested modeling system. Instead, Defendant only made the required
12 disclosure in a separate, linked program order form attachment to the
13 email.

14 14.) In another instance, in offering a trading program to a prospective
15 customer, a PPI employee made profit claims that exceeded the
16 hypothetical profit potential performance verified by the program
17 developer and those claims exaggerated the profit potential of that
18 system.

19 15.) In another instance, a former employee of PPI stated to a prospective
20 customer on the telephone that the trading program being offered to
21 the customer was "CFTC approved", when in fact such was not true
22 and was misleading.

23 16.) The CFTC does not verify, endorse or otherwise pass upon the
24 adequacy, accuracy or success of any trading advice, system or
25 methodology and has not done so with respect to PPI, the trading
26 activities of any of PPI's alleged customers, or any of PPI's trading
27 advice, systems or methodologies. The CFTC does not pass upon
28 the truthfulness or accuracy of any advertisements for commodity

1 trading advice, systems or methodologies and has not done so with
2 respect to any of PPI's representations. The CFTC also does not
3 recommend or approve CTAs or otherwise pass upon their abilities
4 or qualifications and has not done so in connection with PPI.

5 III.

6 ORDER

7 17.) Based upon, and in connection with, the foregoing conduct,
8 Defendant PPI is permanently restrained, enjoined and prohibited
9 from directly or indirectly:

- 10 a) Employing any device, scheme, or artifice to defraud any
11 client or prospective client, or engaging in any transaction,
12 practice, or course of business which operates as a fraud or
13 deceit upon any client or prospective client, by use of the
14 mails or any means or instrumentality of interstate commerce,
15 in violation of Section 40(1) of the Act, 7 U.S.C. § 60(1);
- 16 b) Representing or implying in any manner whatsoever that the
17 Commission, the Federal government or any agency thereof
18 has sponsored, recommended or approved, or in any respect
19 passed upon, PPI, or any of its trading systems, in violation of
20 Regulation 4.16, 17 C.F.R. § 4.16; and
- 21 c) Advertising in a manner which: (1) employs any device,
22 scheme, or artifice to defraud any client or prospective client;
23 or (2) involves any transaction, practice or course of business
24 which operates as a fraud or deceit upon any client or
25 prospective client, in violation of Regulation 4.41 (a), 17
26 C.F.R. § 4.41(a).
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IV.

ORDER FOR ANCILLARY RELIEF

IT IS FURTHER ORDERED THAT:

18.) CIVIL MONETARY PENALTY: Defendant PPI shall pay a civil monetary penalty in the amount of thirty thousand dollars (\$30,000.00). The civil monetary penalty shall be paid within ten business days of the date of this Order, and such payment shall be made by electronic funds transfer to the account of the CFTC at the U.S. Treasury, or by certified check or bank cashier's check made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, CFTC, 1155 21st St., NW, Washington DC 20581, under cover of letter that identifies PPI and the name and docket number of this proceeding. PPI shall simultaneously transmit a copy of the letter and the form of payment to the Director, Division of Enforcement, at the same address.

V.

MISCELLANEOUS PROVISIONS

19.) Entire Agreement, Amendments, and Severability: This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties, and (3) approved by order of the Court. If any provision of this Order or the application of any provision or circumstances is held invalid, the remainder of the Order shall not be affected by the holding.

20.) Successors and Assigns: This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries, and administrators.

21.) 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

1 of this Order. No waiver in one or more instances of the breach of any
2 provision shall be deemed to be or construed as waiver of the breach of any
3 other provision of this Order.

4 22.) Jurisdiction: This Court shall retain jurisdiction of this cause to
5 assure compliance with this Order and for all other purposes related to this
6 action.

7 The Clerk of the Court is hereby directed to enter this Consent Order of
8 Permanent Injunction and Other Ancillary Relief Against Defendant Profit
9 Partners, Inc.

10
11 IT IS SO ORDERED.

12
13
14 Dated: _____

15
16 _____
17 Honorable Lourdes Baird
United States District Court Judge

18 Consented to and Approved as to Form:

19
20 _____
21 Joseph Schillmoeller for
Defendant Profit Partners, Inc.

22
23 _____
24 John W. Cotton, Cotton & Gundzik LLP
Attorney for Defendant Profit Partners, Inc.

25
26 
27 James H. Holl, III, Senior Trial Counsel for
Plaintiff Commodity Futures Trading Commission

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22.) Jurisdiction: This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

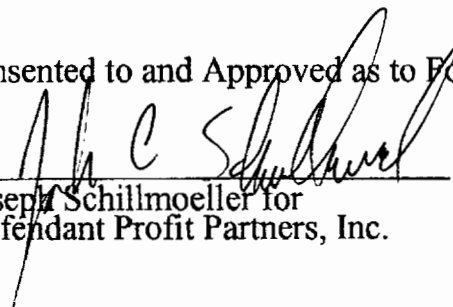
The Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Ancillary Relief Against Defendant Profit Partners, Inc.

IT IS SO ORDERED.

Dated: 1 2005

LOURDES G. BAIRD
Honorable Lourdes Baird
United States District Court Judge

Consented to and Approved as to Form:


Joseph Schillmoeller for
Defendant Profit Partners, Inc.

John W. Cotton, Cotton & Gundzik LLP
For Defendant Profit Partners, Inc.

James Holl, Senior Trial Counsel for
Plaintiff Commodity Futures Trading Commission

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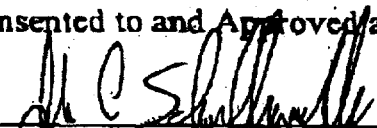
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Dated: _____

Honorable Lourdes Baird
United States District Court Judge

Consented to and Approved as to Form:



Joseph Schillmoeller for
Defendant Profit Partners, Inc.



John W. Cotton, Cotton & Gundzik LLP
For Defendant Profit Partners, Inc.

James Holl, Senior Trial Counsel for
Plaintiff Commodity Futures Trading Commission

ORDER FOR PERMANENT INJUNCTION