

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,
Plaintiff,**

vs.

CASE NO. 8:03-CV-54-T-17TGW

**INVESTORS FREEDOM CLUB, INC.,
etc., et al.,
Defendants.**

**ORDER OF PERMANENT INJUNCTION
AND ANCILLARY EQUITABLE RELIEF**

This cause is before the Court on the Plaintiff Commodity Futures Trading Commission's (CFTC) Complaint alleging defendants Investors Freedom Club LC (IFC), William A. Folino (Folino) and George Belanger (Belanger) solicited and accepted funds from retail investors to engage in speculative trading of foreign currency futures contracts in violation of the Commodity Exchange Act's prohibitions against fraud and the offer and sale of illegal off-exchange foreign currency futures contracts. (Docket No. 1). In its Complaint, the CFTC seeks permanent injunctive relief enjoining the defendants' unlawful acts and practices, barring them from engaging in any commodity-related activity, and compelling their compliance with the Act and the Regulations. In addition, the CFTC seeks civil monetary penalties, restitution, disgorgement, and prejudgment and post judgment interest.

On April 8, 2004, the Court issued an order granting Plaintiff's Motions for Partial Summary Judgment on liability against all defendants. (Docket No. 49). The issue of damages was referred to Magistrate Judge Thomas G. Wilson. (Docket No. 51). After a hearing on October 20, 2004, Judge Wilson filed a Report and Recommendation addressing civil monetary penalties, restitution, disgorgement, and prejudgment and post judgment interest. (Docket No. 69). The Court adopted the Report and Recommendation in an order issued March 30, 2005. (Docket No. 70). The issues now remaining are Plaintiff's requests for permanent injunction and ancillary equitable relief.

I.

PERMANENT INJUNCTION

At the October 20, 2005, damages hearing, defendant Folino agreed to the imposition of a permanent injunction against him. (Docket No. 64). Defendants IFC and Belanger, who did not appear at the October 20, 2005, hearing, have not challenged the CFTC's requests.

STANDARD OF REVIEW

To issue a permanent injunction prohibiting future violations of the Act and regulations, the Court must find (1) illegal activity has occurred and (2) there is a reasonable likelihood that the wrong will be repeated. *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1322 (11th Cir. 1982). *See also CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 454 (D.N.J. 2000); *Kelley v. Carr*, 567 F. Supp. 831, 839-40 (W.D. Mich. 1983); *CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669, 676-77 (S.D.N.Y. 1979) ("Unlike private injunctive actions, which require a showing of irreparable harm or the lack of an adequate remedy at law, statutory injunctive actions brought by the Commission require merely that there is a reasonable likelihood of future violations of the law by the defendant."). The Court has already found, in its order granting the CFTC's Motions for

Partial Summary Judgment, that the defendants violated the Act as charged in the Complaint. (Docket No. 49).

A reasonable likelihood that the wrong will be repeated is shown "when the inferences that flow from a defendant's prior illegal conduct, viewed in light of present circumstances, betoken a 'reasonable likelihood' of future transgressions." *SEC v. Zale Corp.*, 650 F.2d 718, 720 (5th Cir. 1981). To make this determination, courts in the Eleventh Circuit look at such factors as: "the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations." *Carriba Air, Inc.*, 681 F.2d at 1322 (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (11th Cir. 1978)).

Here, the defendants' actions were egregious and there was a high degree of scienter. They collected approximately \$3 million dollars from 215 investors by marketing illicit futures transactions. (Docket No. 54, Att.1, ¶7). The IFC website misrepresented how the funds were being used, the profits that could be expected and the profits that were being earned. (Docket No. 49, pp.4-5). The defendants were aware that the representations they made in the IFC website, in customer account statements and in telephone and email conversations were false. (Docket No. 49, pp.4-5).

The defendants' sales of illegal futures contracts were not isolated incidents. The defendants' scheme carried on for over two years prior to the filing of this lawsuit. (Docket No. 36, Ex. 17, pp. 15-17). The defendants stopped operating the IFC website in October 2003 only because of a disagreement about the use of the funds for their own endeavors. (Docket No. 36, Ex. 6); (Docket No. 36, Ex. 17, pp. 154-155). However, Belanger and Folino expressed intentions to continue the investment scheme up through the filing of this lawsuit. (Docket 36, Ex. 17, p. 200).

Finally, Belanger and Folino continue to deny any wrongdoing in this matter. (Docket 16, 22, 38, 67). These facts show that it is likely that Folino, Belanger and IFC will in the future engage in a similar scheme related to soliciting customers to trade in foreign currency futures contracts. Accordingly, there is sufficient evidence to warrant the entry of permanent injunctions against defendants Folino, Belanger and IFC to prevent illegal activity and additional injury to the public. Accordingly, it is

ORDERED that:

1. Defendants IFC, Folino and Belanger, their agents, servants, employees, successors, assigns, attorneys-in-fact, and any other person or entity in active concert or participation with defendants IFC, Folino and Belanger who receives actual notice of this Order, by personal service or otherwise, are permanently enjoined, restrained and prohibited from directly or indirectly offering to enter into, entering into, executing, confirming the execution of, or conducting any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when:

- a. such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the CFTC as a contract market or derivatives transaction execution facility for such commodity future, and
- b. such contracts have not been executed or consummated by or through a member of such contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001).

2. Defendants IFC, Folino and Belanger, in or in connection with orders to make, or the making of, contracts of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other persons, are permanently enjoined, restrained and prohibited from, directly or indirectly violating Section 4b(a) of the Act, 7 U.S.C. § 6b(a) (2001) and Commission Regulations 1.1(b)(1)-(3), 17 C.F.R. §1.1(b)(1)-(3) by:

- a. cheating or defrauding or attempting to cheat or defraud other persons;
- b. willfully making or causing to be made materially false reports or statements thereof by preparing and issuing false trading statements to investors;
- c. deceiving or attempting to deceive other persons by any means whatsoever;

3. Defendants IFC, Folino and Belanger, and any other person, insofar as he or she is acting in the capacity of officer, agent, servant, employer, or attorney of defendants, and any person insofar as he or she is acting in active concert or participation with defendants and receives actual notice of this Order by personal service or otherwise, are permanently enjoined, restrained and prohibited from, directly or indirectly:

- a. trading on or subject to the rules of any registered entity as that term is defined by Section 1(a)(29) of the Act, as amended, 7 U.S.C. § 1a(29)(2001);
- b. soliciting, receiving, or accepting any funds in connection with the purchase or sale of any commodity futures contract or option on a futures contract;
- c. engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, directly or indirectly, whether by power of attorney or otherwise;
- d. applying for registration or seeking exemption from registration with the Commission in any capacity, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2001), and engaging in any activity requiring such registration or exemption from registration, 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). This prohibition includes, but is not limited to soliciting, accepting, or receiving any funds, revenue, or other property from any person, giving advice for compensation, or soliciting prospective customers, related to the purchase or sale of any commodity futures or options on commodity futures contracts, except as provided for in regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2001); and

- e. filing a petition in bankruptcy without providing the CFTC with prompt notice by Certified Mail of such filing.

II.
ANCILLARY EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

4. POST JUDGMENT INTEREST: Post judgment interest shall accrue on the unpaid balance of the restitution judgment against the defendants and the disgorgement judgment against the relief defendant from the date of this Order until the restitution judgment is paid in full, at the Treasury Bill rate prevailing on the date of this Order, pursuant to 28 U.S.C. § 1961(a).

5. PAYMENT OF RESTITUTION AND DISGORGEMENT: The defendants shall pay funds in satisfaction of the restitution judgment against them and relief defendant Tina N. Folino shall pay funds in satisfaction of the disgorgement judgment against her by electronic funds transfer to a bank account designated by the National Futures Association or by U.S. postal money order, certified check, bank cashier's check, or bank money order made payable to the "the National Futures Association" and sent to the following address: The National Futures Association, Attention: Daniel A. Driscoll, 200 W. Madison Street, Chicago, IL 60606. Simultaneously with each payment, the defendant or relief defendant making a payment shall transmit a letter to the National Futures Association that identifies the defendant or relief defendant making the payment, the name and docket number of this proceeding and the amount and method of payment. The defendant or relief defendant making a payment shall simultaneously transmit a copy of the letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581;

6. The National Futures Association is designated as the Monitor for a period beginning with the date of entry of this Order and continuing until final distribution of full amount of the restitution judgment against the defendants plus prejudgment and post-judgment interest. The Monitor is authorized to collect and distribute funds for purposes of restitution to identifiable IFC customers. The Monitor shall hold all funds collected pursuant to this Order in an interest-bearing account. The restitution shall be paid to customers in accordance with the provisions of Paragraphs 7-14, *infra*.

7. Exhibit A to this Order, which is filed *in camera*, is a list of IFC customers currently identified by the CFTC as having deposited funds into the bank accounts of Folino and/or IFC during the period of January 2001 through January 2003, their last-known addresses, the amounts of their identified deposits and withdrawals and the estimated restitution owed by the defendants to each of them. Exhibit A may be incomplete for various reasons including that records have not been provided to the CFTC or records are missing, are illegible, or have been destroyed. The entry of this Order shall not limit the ability of any IFC customer not currently listed in Exhibit A from offering proof to the Monitor and/or the CFTC that the customer belongs on Exhibit A. The Monitor shall have discretion to amend Exhibit A for the sole purpose of adding customers, based on such documentation and proof as the Monitor in its sole discretion shall deem sufficient, whose identity can be traced to funds deposited in the IFC account during the period of January 2001 through January 2003, and whose funds are accordingly included in the restitution amount awarded by this order, but whose investment is not currently identified in Exhibit A.

8. Nothing herein shall be construed in any way to limit or abridge the rights of any IFC customer that exist under state or common law. Moreover, pursuant to Fed.R.Civ.P. 71, each IFC customer identified in Exhibit A is explicitly deemed an intended third-party beneficiary of this Order, such that each such IFC customer may seek to enforce any part of the restitution judgment against the defendants, to ensure

continued compliance with any provision of this Order and to hold the defendants in contempt for past violations of any provision of this Order.

9. Except as provided in paragraph 10 below, upon the entry of this Order the provisions of the Court's January 13, 2003 Statutory Restraining Order (SRO) entered against the defendants and relief defendant, imposing a freeze on their assets, shall no longer be in effect.

10. Exhibit B to this Order, which is filed *in camera*, is a list of bank and trading accounts. Each person or entity holding funds in the bank and trading account listed in Exhibit B is hereby authorized and directed to transfer all such funds to the custody of the Monitor immediately upon receipt of written transfer instructions from the Monitor. The defendants and relief defendant shall provide full cooperation in ensuring that the Monitor receives these funds. Any funds transferred to the Monitor by any person or entity holding funds in the bank and trading accounts listed in Exhibit B shall be applied to the restitution judgment against the defendants and the disgorgement judgment of the relief defendant.

11. Upon receipt of funds held in the bank and trading accounts listed in Exhibit B, the Monitor shall attempt to contact those IFC customers listed in Exhibit A. For each customer that the Monitor is able to contact, the Monitor shall verify the customer's current address and obtain from the customer a statement under oath, in a form acceptable to the Monitor, that confirms all deposits and withdrawals by the customer and the resulting "net loss" for the customer. The net loss shall be determined by the simple calculation of deposits after December 31, 2000 minus subsequent withdrawals, without any adjustment for purported trading results or other account activity.

12. Thereafter, if the amount of funds held by the Monitor is sufficient to justify the expense of an immediate distribution, the Monitor shall disburse the available funds among those IFC customers whom the Monitor was able to contact and who provided the requested statement under oath (hereafter referred to as “identifiable customer(s)”), in proportion to each such identifiable customer’s share of the total losses of all identifiable customers plus applicable interest.

13. Upon any subsequent payment of funds to the Monitor in an amount sufficient to justify the expense of a distribution, the Monitor shall make further distributions in the following manner:

- a. The Monitor shall first make a renewed effort to contact all customers listed in Exhibit A, including customers who were not located previously;
- b. For each customer that the Monitor is able to contact, the Monitor shall verify the customer’s current address and obtain from the customer a statement under oath, in a form acceptable to the Monitor, that confirms all deposits and withdrawals by the customer and the resulting net loss for the customer;
- c. The Monitor shall first pay restitution to those identifiable customers located since the previous distribution, so that all identifiable customers receive restitution in an equal percentage of their net losses, or as close thereto as possible, plus interest; and
- d. The Monitor shall then make further proportionate distributions to the remaining currently identifiable customers.

14. The Monitor shall continue to make such distributions until the total amount of the restitution judgment, plus applicable interest, has been paid to identifiable customers. In the event that any unclaimed funds remain following distribution of restitution to customers, such funds shall be paid to the United States Treasury. Any such unclaimed funds shall not be credited to the defendants’ obligations to pay civil monetary penalties.

15. Contemporaneously with each distribution of funds, the Monitor shall notify the CFTC of the names of the customers to whom funds were distributed and the amounts distributed to each.

16. In the event that defendants Folino and/or IFC receive funds in connection with their investment of IFC customer funds with Midland Euro-Exchange, Inc. and/or Cambridge Ventures/Smitty's Investment, defendants Folino and/or IFC shall immediately pay such funds to the Monitor.

17. The defendants shall immediately notify the Monitor and the CFTC of any payments made by any defendant directly to any IFC customer as a result of any lawsuit or settlement agreement arising out of the facts underlying this action. Any payment made by a defendant directly to any IFC customer listed in Exhibit A shall be applied to the restitution judgment against the defendants' and shall reduce dollar for dollar the net loss of that customer.

18. The defendants and relief defendant shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any other person for the purpose of concealing such funds or property from the Court, the Plaintiff, the Monitor, or any officer that may be appointed by the Court.

19. PAYMENT OF CIVIL MONETARY PENALTIES: Payment of the civil monetary penalties shall be made to the Commodity Futures Trading Commission, Division of Enforcement, 1155 21st Street, N.W., Washington, D.C. 20581 to the attention of Ms. Dennese Posey. Payment must be made by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission. The payment(s) shall include a cover letter that identifies the defendant making a payment and the name and docket number of this proceeding. The defendant making a payment shall simultaneously transmit a copy of the cover letter and the form of payment to the

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Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

20. This Court shall retain jurisdiction of this cause to ensure compliance with this Order and for all other purposes related to this action.

DONE AND ORDERED in Chambers, in Tampa, Florida, this 4th day of April, 2005.



ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies to: All Parties and Counsel of Record