

Judge Casey

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

05 CV 8446

U.S. Commodity Futures Trading Commission,

Plaintiff,

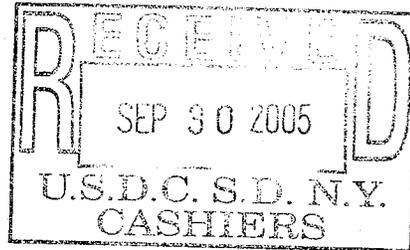
v.

International Currency Exchange, Inc., Michael  
Cottec, John Aucella, Eugene Aucella, and  
Worldwide Clearing, LLC,

Defendants.

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COMPLAINT FOR  
INJUNCTIVE AND OTHER  
EQUITABLE RELIEF AND  
FOR PENALTIES UNDER  
THE COMMODITY  
EXCHANGE ACT



**I. SUMMARY**

1. From in or about November 2004 through July 2005 (the “relevant period”), International Currency Exchange, Inc. (“ICE”), by and through its employees, fraudulently solicited at least \$900,000 from at least 117 customers to invest in options on foreign currency (“forex options”).

2. ICE, by and through its employees, knowingly misrepresented and failed to disclose material facts to customers concerning, among other things, (i) the likelihood that a customer would realize large profits trading forex options, (ii) the risk of loss involved in trading forex options, and (iii) its actual track record trading forex options on behalf of customers, all in violation of the anti-fraud provisions of Section 4c(b) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6c(b) (2002), and Section 32.9(a) and (c) of the Commodity Futures Trading Commission’s (the “Commission”) Regulations, 17 C.F.R. §§ 32.9(a) and (c) (2004).

3. ICE is liable for its employees' violations of Section 4c(b) of the Act and Commission Regulations 32.9(a) and (c), pursuant to Section 2(a)(1)(B) of the Act.

4. During the relevant period, Michael Cottec ("Cottec"), John Aucella ("J. Aucella") and Eugene Aucella a/k/a Gene Aucella ("G. Aucella") were controlling persons of ICE.

5. Cottec, J. Aucella and G. Aucella knowingly induced, directly or indirectly, those violative acts described herein or failed to act in good faith, and are liable for ICE's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

6. J. Aucella and G. Aucella aided and abetted ICE's violative acts described herein and are liable for ICE's violations pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(b) (2002).

7. During the relevant period, ICE has acted as an agent exclusively for Worldwide Clearing, LLC ("Worldwide"), a registered futures commission merchant ("FCM"), in introducing forex option trading accounts to Worldwide.

8. As ICE's principal, Worldwide is liable for ICE's violative acts described herein pursuant to Section (2)(a)(1)(B) of the Act and Commission Regulation 1.2.

9. Unless enjoined by this Court, ICE, Cottec, J. Aucella, and G. Aucella (collectively the "Injunctive Defendants") are likely to continue to engage in the acts and practices alleged in this Complaint, as more fully described below.

10. Pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the Commission brings this action to enjoin the Injunctive Defendants from soliciting new customers and additional customer funds, and to enjoin all Defendants from committing any unlawful acts and practices, and to compel their compliance with the Act.

## **II. JURISDICTION AND VENUE**

11. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), in that Defendants transacted business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

## **III. THE PARTIES**

### **The Plaintiff**

13. Plaintiff, the Commission, is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2004).

### **The Defendants**

14. International Currency Exchange, Inc. is a Florida corporation and had offices located at 1280 SW 36<sup>th</sup> Avenue, Suite 303, Pompano Beach, Florida 33069. It was an introducing broker to Worldwide, a registered FCM. ICE was never registered with the Commission.

15. Michael Cottec resides in Pompano Beach, Florida and is the President of ICE. He has never been registered with the Commission.

16. J. Aucella resides in Pompano Beach, Florida. He was, until at least April 2005, the Vice President of ICE. J. Aucella is not currently registered with the Commission.

17. G. Aucella resides in Fort Lauderdale, Florida and is the Secretary of ICE. G. Aucella is not currently registered with the Commission.

18. Worldwide, a Florida corporation located in Fort Lauderdale, Florida, has been a registered FCM since July 14, 2004. ICE entered into an Introducing Agreement with Worldwide on November 10, 2004 and the agreement was terminated on July 8, 2005.

#### IV. FACTS

19. During the relevant period, ICE, by and through its employees, has fraudulently solicited members of the general public to open forex options accounts at Worldwide.

##### **Misrepresentations or Omissions Concerning Likelihood of Profit**

20. During the relevant period, ICE, by and through its employees, knowingly or with reckless disregard for the truth, made materially misleading statements to prospective and existing customers regarding the likelihood of making profits, including the following:

21. ICE, by and through its employees, promised customers that they would make profits and falsely stated to customers that current customers were achieving profits in their accounts.

22. ICE, by and through its employees, misrepresented to at least one customer that there was a unique opportunity to double and triple the customer's money by investing in Euros.

23. ICE, by and through its employees, misrepresented that ICE had made money for its customers and that ICE was making upward of 100% returns for its customers.

24. ICE, by and through its employees, misrepresented to at least one customer that he would at least make \$7000-\$8000 in profits by investing \$10,000 with ICE.

#### **Misrepresentations or Omissions Concerning Risk of Trading Options**

25. ICE, by and through its employees, knowingly or with reckless disregard for the truth, understated the risks of investing in forex options.

26. ICE, by and through its employees, repeatedly assured at least one customer that there was no way he could lose money.

27. ICE, by and through its employees, assured at least one customer that he was going to make money and that the Euro market was so strong that nothing could go wrong.

#### **Misrepresentations or Omissions Concerning Track Record**

28. In the course of their solicitations of customers, ICE, by and through its employees, materially misrepresented, or omitted to provide, in light of profit representations made, ICE's negative performance record.

29. During the relevant period, ICE customers lost a total of at least \$900,000. Virtually all of ICE's 117 customers had net losses in their accounts.

30. Cottec, J. Aucella, and G. Aucella were controlling persons of ICE, and each failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting ICE's violations alleged herein.

31. Cottec was the President of ICE.

32. Cottec, among other things, was one of the original signatories on the ICE bank account at Wachovia Bank, signed the Introducing Agreement with Worldwide on behalf of ICE, and monitored the ICE brokers during their solicitations.

33. J. Aucella was the Vice President of ICE.

34. J. Aucella, among other things, secured the office space, recruited and interviewed applicants, made hiring and firing decisions, negotiated ICE's Introducing Agreement with Worldwide, and supervised the sales calls made by ICE employees.

35. G. Aucella was the Secretary and Treasurer of ICE.

36. G. Aucella, among other things, was a signatory to ICE's bank account at Wachovia Bank, interviewed applicants, made hiring and firing decisions, and supervised ICE employees that solicited customers.

37. J. Aucella and G. Aucella ran the morning meetings of ICE employees, which entailed discussing the daily trading strategy.

38. J. Aucella and G. Aucella conducted bi-weekly training sessions for ICE employees that included how to conduct their sales solicitation and presentation.

39. J. Aucella and G. Aucella supervised ICE employees during their calls to customers, to ensure they were presenting the company as directed.

40. During the relevant period, ICE introduced at least 117 customers to Worldwide on an exclusive basis.

41. ICE used Worldwide's account opening documents, its risk disclosure forms, and other documentation that customers needed to trade forex options with Worldwide.

42. ICE agreed with Worldwide to ensure that customers had read and fully understood Worldwide's contract and risk disclaimers.

43. ICE agreed to notify Worldwide, in writing, of any customer complaints, or pending or threatened action or proceeding, in respect of any matters, relating to the customer's account. ICE also agreed to notify Worldwide in writing, of the institution against Worldwide, of any action, investigation, or proceeding by a regulatory agency, exchange, or board of trade.

44. ICE agreed to cooperate with Worldwide by furnishing all documents necessary to conduct an investigation and defend a claim involving them.

45. Worldwide agreed to collect and pay trading commissions to ICE and in return ICE provided Worldwide's account opening documents to prospective customers and fulfilled Worldwide's risk disclosure responsibilities.

46. ICE customers sent their funds directly to Worldwide.

**VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT  
AND COMMISSION REGULATIONS**

**COUNT I - Violation of Section 4c(b) of the Act and Section 32.9(a) and (c) of the  
Regulations: Options Fraud**

47. Paragraphs 1 through 46 are re-alleged and incorporated herein.

48. Section 4c(b) of the Act, 7 U.S.C. § 6c(b), makes it unlawful to offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under the Act which is of the character of, or is commonly known

to the trade as, an “option,” “privilege,” “indemnity,” “bid,” “offer,” “put,” “call,” “advance guaranty,” or “decline guaranty,” contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.

49. Commission Regulation 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c), makes it unlawful for any person, directly or indirectly (a) to cheat or defraud or attempt to cheat or defraud any person; (c) to deceive any other person by any means whatsoever, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction.

50. ICE, by and through its employees, in connection with offers to enter into, the entry of, the confirmation of the execution of forex options transactions, cheated or defrauded or attempted to cheat or defraud customers, and deceived or attempted to deceive customers, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Section 32.9(a) and (c) of the Commission’s Regulations, 17 C.F.R. §§ 32.9(a) and (c).

51. Cottec, J. Aucella, and G. Aucella directly or indirectly controlled ICE, and did not act in good faith or knowingly induced, directly or indirectly, ICE’s violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c) alleged as to ICE. Cottec, J. Aucella, and G. Aucella therefore are controlling persons and are liable for these violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

52. J. Aucella and G. Aucella willfully aided and abetted ICE’s violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 32.9(a) and (c),

17 C.F.R. § 32.9(a) and (c) alleged as to ICE. J. Aucella and G. Aucella are liable for these violations pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a).

53. ICE was acting as the agent of Worldwide when it fraudulently solicited customers, and therefore Worldwide is liable for ICE's violations of the Act pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2004).

54. Each material misrepresentation or omission, false statement or misappropriation of investor funds made during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act.

## VII. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), and pursuant to the Court's own equitable powers, enter:

- a. an order finding that all Defendants violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c);
- b. an *ex parte* statutory restraining order freezing the funds, assets, and other property of the Injunctive Defendants and an Order of preliminary injunction restraining and enjoining the Injunctive Defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:
  1. destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of the Injunctive Defendants, wherever located, including all such records concerning the Injunctive Defendants' business operations;
  2. refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of the Injunctive Defendants,

wherever located, including all such records concerning the Injunctive Defendants' business operations; and

3. withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of any of the Injunctive Defendants;

- c. preliminary and permanent injunctions prohibiting Injunctive Defendants from engaging in conduct in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c) and prohibiting the Injunctive Defendants from engaging in any commodity-related activity, including soliciting customers or trading commodity-related accounts on behalf of any customer;

- d. an order directing Defendants to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or of the Commission Regulations, as described herein, and interest thereon from the date of such violations;

- e. an order directing Defendants to make full restitution, pursuant to such procedure as the Court may order, to every customer whose funds were received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;

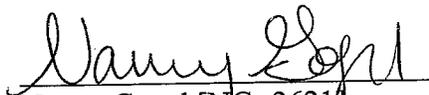
f. an order assessing a civil monetary penalty against each Defendant in the amount of not more than the higher of \$130,000 or triple the monetary gain to the defendant for each violation by the defendant of the Act and Commission Regulations;

g. such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: New York, New York  
September 30, 2005

U.S. COMMODITY FUTURES TRADING COMMISSION

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Regional Counsel/Associate Director



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