

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

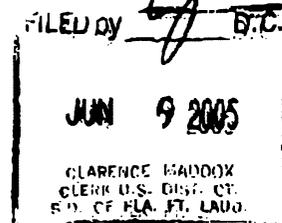
CASE NO. 05-80002-CIV-HURLEY/HOPKINS

COMMODITY FUTURES
TRADING COMMISSION,
Plaintiff,

v.

UNITED INVESTORS GROUP, INC.;
GREG P. ALLOTTA; JAY M. LEVY;
PAUL F. PLUNKETT; ANDREW D. ROSS;
MICHAEL H. SAVITSKY III,
Defendants.

GREG ALLOTTA ENTERPRISES, INC. and
MICHAEL SAVITSKY, INC.,
Relief Defendants.



**ORDER ADOPTING MAGISTRATE'S REPORT &
ENTERING PRELIMINARY INJUNCTION &
ASSET FREEZE AGAINST ALL DEFENDANTS**

THIS CAUSE is before the court upon Plaintiffs' Motion for Preliminary Injunction filed January 3, 2005 [DE # 4]. On that same date this matter was referred to United States Magistrate Judge James Hopkins pursuant to 28 U.S.C. §§ 636-39 and Rule 72 of the Federal Rules of Civil Procedure for a recommended disposition. [DE# 12].

Following evidentiary hearing held January 31, 2005, Magistrate Judge Hopkins filed his February 25, 2005 Report and Recommendation upon the motion [DE# 33], followed by a Supplement to Report and Recommendation filed March 16, 2005. [DE# 38]. Defendants filed objections to the original report on March 15, 2005 [DE#36], to which plaintiff filed response on March 24, 2005.[DE# 40]. Plaintiff filed objections to the report on March 15, 2005 [DE#35], to

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which the defendant filed response on April 1, 2005 [DE#43]. On March 31, 2005 Defendants filed further objection to the supplemental report [DE# 41], together with a further reply to the plaintiff's response to their original objections [DE# 42].

The court has carefully reviewed all of the submissions and objections of both parties, and pursuant to 28 U.S.C. § 636(b)(1)(C), the court has made a *de novo* determination with respect to those portions of the Magistrate Judge's report and supplemental report to which objection has been lodged. Having done so, for reasons more particularly discussed *infra*, the court sustains the plaintiff's objection to the proposed scope of the asset freeze and the reservation for legal and living expenses as recommended by the Magistrate Judge, and overrules the defendants' objections to the Magistrate Judge's reports.

Further finding all of the underlying findings of fact and conclusions of law filed set forth in the February 25, 2005 Report and March 16, 2005 Supplemental Report of Magistrate Judge Hopkins to be sound and well-reasoned, the court approves and adopts them here.

It is accordingly **ORDERED** and **ADJUDGED**:

1. Magistrate Judge James Hopkins' Findings of Fact and Conclusions of Law, as set forth in the February 25, 2005 Report and March 16, 2005 Supplemental Report of the Magistrate Judge [DE # 33,38] are herewith **ADOPTED** and **INCORPORATED** in full¹, and the

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While adopting the Magistrate's ultimate recommendation for issuance of a preliminary injunction and asset freeze, the court at this juncture declines to limit or qualify the asset freeze in the manner recommended by the Magistrate Judge, i.e., the court declines to here fashion a freeze which would "permit[] the release of certain funds to defendants upon showing that there is no nexus between the asset and the alleged violation, or that the funds are necessary to pay living or legal expenses." The court finds that continuance of a temporary freeze over *all* assets of the defendant commodities company and individually named defendants is warranted at this point to preserve the *status quo* while the court seeks to determine the amount of unlawful proceeds retained by defendants and amounts due to customers as a result of the alleged violations, as further directed

plaintiff's motion for preliminary injunction [DE# 4] is **GRANTED**.

2. The defendants **UNITED INVESTORS GROUP, INC., GREG P. ALLOTTA; JAY M. LEVY; PAUL F. PLUNKETT; ANDREW D. ROSS; and MICHAEL H. SAVITSKY** their agents, servants, employees, attorneys and all persons in active concert or participation with them, and each of them are hereby **RESTRAINED AND ENJOINED** from directly or indirectly violating the Commodity Exchange Act (CEA), 7 U.S.C. 6c(b) and Regulation 33.10(a) and (c) of the Commission Regulations, 17 C.F.R. 33.10(a) and (c), and are specifically prohibited and restrained from directly or indirectly:
 - (a) entering into or confirming the execution of any transaction involving any commodity regulated under the Act which is 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, and
 - (b) 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:
 - (I) cheating or defrauding or attempting to cheat or defraud any other person; or
 - (ii) deceiving or attempting to deceive any other person by any means whatsoever.

by this order. See e.g. *Commodity Futures Trading Commission v American Metals Exchange Corp.*, 991 F.2d 71 (3d Cir. 1993); *Commodity Futures Trading Commission v Pyne Commodities Corp.*, 502 F. Supp. 194 (S.D. N.Y. 1980); *Commodity Futures Trading Commission v Co Petro Marketing Group, Inc.*, 502 F. Supp. 806 (C.D. Cal. 1980). Further, the court has discretion to limit or forbid payment of attorney fees out of frozen assets, *CTFC v Noble Metals, Inc.* 67 F.3d 766 (9th Cir. 1995); *SEC v Comcoa Ltd.*, 887 F. Supp. 1521 (S.D. Fla. 1995), and finds this issue appropriately reserved for resolution upon motion for modification of the freeze order, which is reserved to the parties.

3. The defendants **UNITED INVESTORS GROUP, INC., GREG P. ALLOTTA; JAY M. LEVY; PAUL F. PLUNKETT; ANDREW D. ROSS; and MICHAEL H. SAVITSKY**, their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive notice of this order by personal service, mail, facsimile transmission or otherwise, are hereby preliminarily **RESTRAINED and ENJOINED** from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, and/or property pledged or hypothecated as collateral for loans, owned by, controlled by, or in the possession of defendants **UNITED INVESTORS GROUP, INC., GREG P. ALLOTTA; JAY M. LEVY; PAUL F. PLUNKETT; ANDREW D. ROSS; and MICHAEL H. SAVITSKY**. The defendants retain the right to file a motion to seek modification of the asset freeze ordered herein for the purpose of asking for reasonable living expenses, and the Commission retains the right to object, for any reason, to a motion for modification of the asset freeze directed herein.

Any financial or brokerage institution or other person or entity located within the territorial jurisdiction of the United States courts and holding any such funds or other assets, in the name, for the benefit or under the control of **UNITED INVESTORS GROUP, INC., GREG P. ALLOTTA; JAY M. LEVY; PAUL F. PLUNKETT; ANDREW D. ROSS; and MICHAEL H. SAVITSKY** and which receives actual notice of this order by personal service or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets.

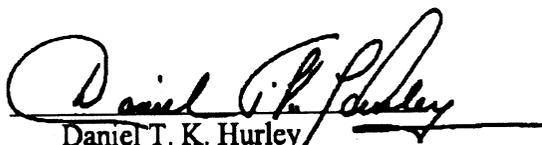
In order to ultimately limit the scope of the asset freeze to those assets traceable to illegal commodity options sale activity, the court concludes it may be appropriate to appoint a temporary receiver for the limited purpose of clarifying the source of various funds subject to the freeze and reporting to the court on the financial assets and liabilities of all defendants. See e.g. *Commodity Futures Trading Commission v. Muller*, 570 F.2d 1296 (5th Cir. 1978); *Commodity Futures Trading Commission v Morgan, Harris & Scott*, 484 F. Supp. 669 (S.D.N.Y. 1979). It accordingly shall grant leave to the plaintiff CTFC to file motion seeking appointment of a temporary receiver

within **FIFTEEN (15) DAYS** from the date of this order, and directs that any such motion include the name of a responsible person willing to investigate and report to the court in this capacity, and to further state whether the parties are able to reach agreement on the proposed receiver. Failure to file such motion within the specified time frame may result in dissolution of this asset freeze without further notice from the court.

4. The order of preliminary injunction directed herein shall remain in full force and effect until further order of this Court.
5. The Court shall retain jurisdiction of this matter for all purposes, including, but not limited to entering an order of permanent injunction; determining the appropriate amount, if any, of disgorgement; entertaining any applications for additional relief; and implementing and enforcing this order.

DONE and SIGNED in Chambers at West Palm Beach, Florida this 9th day of June,

2005.


Daniel T. K. Hurley
United States District Judge

cc. United States Magistrate Judge James Hopkins
R. Lawrence Bonner, Esq.
Charles Marvine, Esq.