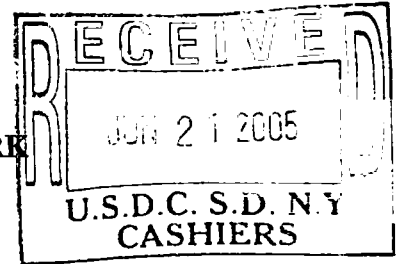


UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



COMMODITY FUTURES TRADING COMMISSION, :

Plaintiff, :

v. :

Commodity Investment Group, Inc., Linda Kuhney
a/k/a Linda Reinman Enzinna, Michael Kuhney a/k/a
Michael Kirkney, National Commodities Corporation,
Inc., and International Commodity Clearing, LLC, :

Defendants. :

JUDGE BAER

CIVIL ACTION

05 No. **CV 5741**

ECF CASE

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF
AND CIVIL MONETARY PENALTIES PURSUANT TO THE COMMODITY
EXCHANGE ACT, 7 U.S.C. § 1 *ET SEQ.***

By and for its complaint, Plaintiff Commodity Futures Trading Commission alleges as follows:

I. SUMMARY

1. From February 2001 through the present, Commodity Investment Group ("CIG"), by and through its employees, have fraudulently solicited members of the general public to open accounts to trade commodity options such as crude and heating oil options, which are traded on the New York Mercantile Exchange ("NYMEX"); gold options, which are traded on the COMEX Division of the NYMEX; and foreign currency options, which are traded on the Chicago Mercantile Exchange.

2. CIG, by its employees, knowingly misrepresented and failed to disclose material facts to prospective and existing customers concerning, among other things, (i) the likelihood of

realizing large profits trading commodity options; (ii) the risk of loss in trading commodity options; and (iii) the fact, in light of the profit representations made, that nearly all of CIG's customers lost money trading commodity options, 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 33.10(a) and (c) of the Commission's Regulations, 17 C.F.R. §§ 33.10(a) and (c) (2004).

3. At all relevant times, Linda Kuhney a/k/a Linda Reinman Enzinna ("L. Kuhney"), and Michael Kuhney a/k/a Michael Kirkney ("M. Kuhney") (collectively, the "Kuhneys"), directly or indirectly controlled CIG.

4. M. Kuhney aided and abetted CIG's violations of the Act.

5. National Commodities Corporation, Inc. ("NCCI") had a guaranteed introducing broker agreement with CIG ("NCCI agreement") from January 23, 2001 through May 31, 2004. The terms of the NCCI agreement make NCCI jointly and severally liable with CIG for CIG's violations of the Act.

6. International Commodity Clearing, LLC ("ICC") has had a guaranteed introducing broker agreement with CIG ("ICC agreement") from June 1, 2004 through the present. The terms of the ICC agreement make ICC jointly and severally liable with CIG for CIG's violations of the Act.

7. Unless enjoined by this Court, CIG, L. Kuhney and M. Kuhney (collectively, the "injunctive defendants") are likely to continue to engage in the acts and practices alleged in this Complaint, as more fully described below.

8. Pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the Commodity Futures Trading Commission ("Commission") brings this action to enjoin the injunctive defendants from

soliciting new customers and additional customer funds, from committing any unlawful acts and practices, and to compel their compliance with the Act.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), 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.

10. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because defendants transact business in this District and violations of the Act have occurred, are occurring, or are about to occur within this District, among other places.

III. THE PARTIES

The Plaintiff

11. The Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with the responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations, 17 C.F.R. §§ 1 *et seq.*

The Defendants

12. CIG is a Florida corporation and has offices in Ft. Lauderdale, Florida. CIG has been a guaranteed Introducing Broker (“IB”) of ICC since June 1, 2004. CIG was previously a guaranteed IB of NCCI from January 23, 2001 through May 31, 2004. CIG has been registered with the Commission as an IB since February 2001.

13. **Linda Kuhney** resides in Coral Springs, Florida. L. Kuhney is the owner, principal, and was until at least January 2005, the President of CIG. She was registered as an Associated Person (“AP”) of CIG from February 2001 through June 2004.

14. **Michael Kuhney** resides in Coral Springs, Florida with his wife, L. Kuhney. M. Kuhney was, until at least January 2005, Vice-President of CIG. He was a Principal and was registered as an AP of CIG from February 2001 through June 2004.

15. **NCCI** is a Virginia Corporation located in Fort Lauderdale, Florida. NCCI signed the NCCI agreement with CIG in January 2001. NCCI has been registered with the Commission as a Futures Commission Merchant (“FCM”) since April 1997.

16. **ICC** is a Florida corporation. ICC signed the ICC agreement with CIG on April 28, 2004. ICC has been registered with the Commission as an FCM since April 2004.

IV. FACTS

17. From February 2001 through the present, CIG, through its employees, has fraudulently solicited members of the general public to open commodity options accounts at NCCI and ICC.

18. CIG employees falsely claim that CIG customers make large profits trading commodity options. In fact, the overwhelming majority of CIG’s customers have lost money trading commodity options.

19. In sales solicitation telephone calls to prospective customers, CIG employees made and continue to make fraudulent and materially misleading statements by knowingly, or with reckless disregard for the truth: (1) misrepresenting the likelihood of profiting from trading commodity options; (2) minimizing the risk of loss; and (3) in light of the profit representations they made, failing to disclose that the vast majority of CIG customer accounts lost money.

20. From February 2001 through the present, CIG, through its employees, has commonly misrepresented the profit-making potential of trading commodity options with CIG. For instance, CIG, through its employees, knowingly or with reckless disregard for the truth, told prospective customers that :

- they could expect 50% returns in a short period of time; and
- they could double or triple their returns in a short period of time.

21. Several CIG employees knowingly or with reckless disregard for the truth made explicit remarks to prospective customers minimizing the risk of trading commodity options.

22. Even though prospective customers had been sent risk disclosure documents and sometimes had been given verbal risk advisories, such documents and pro forma warnings are wholly negated by the totality of the circumstances surrounding the solicitations. The true picture of profitability and minimal risk that defendants paint serves to minimize the risk in a materially misleading way.

23. Another portion of the fraudulent scheme employed by CIG is the “loading scheme,” whereby existing customers are referred by their initial broker to a “loader,” who then solicits the customer for additional funds.

24. Examples of statements made knowingly or with reckless disregard for the truth by “loaders” are:

- a customer could double his money in sixty days;
- they could easily make 30% returns in a relatively short period of time; and
- a customer could expect 50% returns in a short period of time.

25. CIG's trading strategy is geared to ensure maximum commissions for CIG and its brokers with a total disregard for the profitability to the customers.

26. For the period from February 2001 through December 2004, CIG customers lost a total of at least \$9 million. Out of approximately 1,000 customers, at least 90% had net losses in their accounts.

27. L.Kuhney and M.Kuhney are controlling persons of CIG, and each exercises control, directly or indirectly, over CIG and its brokers. Further, each has failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations alleged herein.

28. L. Kuhney and M. Kuhney exercise control over the daily activities that transpire at CIG. They were both original signatories on the CIG bank account opened at First Union (now Wachovia Bank), and both write checks for the business. L. Kuhney was responsible for hiring the CIG brokers and for signing contracts and agreements with CIG's guarantors.

29. L. Kuhney instructed the brokers that in the event that the National Futures Association ("NFA") or the Commission ever conduct an audit, the employees were to hide the written sales script, which they used to lure customers to invest with CIG, in their desks. In fact, the NFA did audit CIG and L.Kuhney rushed into the office to warn the brokers to hide the sales scripts.

30. M. Kuhney aided and abetted CIG's fraudulent solicitation of customers, by among other things, instructing CIG brokers to use a sales script in soliciting customers, knowing that the script contained false or misleading representations, or allowing those representations to be made with reckless disregard for their truth or falsity, and directed CIG brokers to conduct the

loading scheme discussed in paragraphs 23 and 24 above, knowing such scheme included false or misleading representations, or allowing those representations to be made with reckless disregard for their truth or falsity.

31. From January 23, 2001 until May 31, 2004, NCCI was CIG's guarantor pursuant to the NCCI agreement.

32. From June 1, 2004 to the present, ICC has been CIG's guarantor pursuant to the ICC agreement.

33. As stated in both the NCCI agreement and the ICC agreement, the FCM "shall be jointly and severally liable for. all obligations of the introducing broker [CIG] under the Commodities Exchange Act, as it may be amended from time to time. and the rules, regulations and orders which have been or may be promulgated thereunder with respect to the solicitation of and transactions involving all commodity customer, option customer, foreign futures customer and foreign options customer accounts of the introducing broker [CIG] entered into on or after the effective date of this agreement." Therefore NCCI and ICC each are jointly and severally liable with CIG for CIG's violations during the effective dates of the agreements.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT
COUNT ONE: VIOLATIONS OF SECTION 4c(b) OF THE ACT AND SECTION
33.10(a) and (c) OF THE REGULATIONS: OPTIONS FRAUD**

34. Paragraphs 1 through 33 above are re-alleged and incorporated by reference.

35. 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.

36. Commission Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(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.

37. CIG and its employees, in connection with offers to enter into, the entry into, the confirmation of the execution of commodity 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 Commission Regulations 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) and Commission Regulation 1.2, 17 C.F.R. § 1.2 .

38. Linda and Michael Kuhney directly or indirectly controlled CIG, and each did not act in good faith or knowingly induced, directly or indirectly, the violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) alleged as to CIG. Linda and Michael Kuhney therefore are controlling persons of CIG and are liable for these acts pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

39. Michael Kuhney willfully aided and abetted CIG's violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) alleged as to CIG. Michael Kuhney is liable for these acts pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a).

40. NCCI, as CIG's guarantor from January 23, 2001 until May 31, 2004, and ICC, as CIG's guarantor from June 1, 2004 through the present, are jointly and severally liable for CIG's violations of the Act during that time period pursuant to their guarantee agreements. Therefore NCCI and ICC are severally and jointly liable for CIG's violations of Section 4c(b) of the Act and Regulation 33.10(a) and (c).

41. Each material misrepresentation and omission made during the relevant time period by the CIG and its employees, including but not limited to those specifically alleged herein, is a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c).

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, and pursuant to its own equitable powers, enter:

- a. an order finding that CIG, Linda and Michael Kuhney, NCCI and ICC violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c);
- b. a permanent injunction prohibiting CIG, Linda and Michael Kuhney from engaging in conduct in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c), and from engaging in any commodity-related activity, including soliciting new customers or trading commodity-related accounts on behalf of any customer:

- c. an order directing CIG, Linda and Michael Kuhney 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;
- d. an order directing CIG, Linda and Michael Kuhney, NCCI and ICC 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 the Commission Regulations, as described herein, and interest thereon from the date of such violations;
- e. an order directing CIG, Linda and Michael Kuhney, NCCI and ICC to pay a civil monetary penalty in the amount of not more than the higher of \$120,000, or to the extent that any violation took place after October 23, 2004, \$130,000, or triple the monetary gain to each defendant for each violation of the Act or the Commission Regulations; and
- f. such other and further remedial ancillary relief as the Court may deem appropriate.

U.S. COMMODITY FUTURES TRADING
COMMISSION
Stephen J. Obie
Regional Counsel/Associate Director

Respectfully submitted,



Manal Sultan (MS 8068)
Commodity Futures Trading Commission
Division of Enforcement

140 Broadway
New York, NY 10005
(646) 746-9761
(646) 746-9940 (facsimile)

Dated: June 21, 2005.