

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

No. 05-60328-CIV –Altonaga/Turnoff



COMMODITY FUTURES TRADING )  
COMMISSION, )

Plaintiff, )

v. )

MERCURY PARTNERS, INC., a )  
Bahamian corporation, MERCURY )  
FINANCIAL PARTNERS, INC., a )  
Florida corporation, MERCURY )  
MANAGEMENT, L.C., a Florida )  
limited liability company, ANDREW )  
BARTOS, an individual, BRUCE N. )  
CROWN, an individual, and )  
MICHAEL MORGAN, an individual, )

Defendants. )

Consent Order of Permanent  
Injunction and Other Equitable Relief  
Against Defendants Andrew Bartos,  
Michael Morgan and Mercury  
Management, L.C.

**CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER EQUITABLE  
RELIEF AGAINST DEFENDANTS ANDREW BARTOS, MICHAEL MORGAN AND  
MERCURY MANAGEMENT, L.C.**

I.

**INTRODUCTION**

On March 30, 2005, Plaintiff Commodity Futures Trading Commission (“Commission,” “CFTC,” or “Plaintiff”) filed an Amended Complaint against Andrew Bartos (“Bartos”), Bruce N. Crown (“Crown”), Michael Morgan (“Morgan”), Mercury Partners, Inc. (“Mercury Partners”), Mercury Financial Partners, Inc. (“Mercury Financial”), and Mercury Management LC (“Mercury Management”) seeking injunctive and other equitable relief for violations of the Commodity Exchange Act (“Act”) 7 U.S.C. §§ 1 *et seq.* (2002), and various Commission

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Regulations ("Regulations"), 17 C.F.R. §§ 1.1 *et seq.* (2004). Morgan and Mercury Management filed Answers on May 3, 2005; Bartos Answered on July 11, 2005 and requested a trial by jury.

II.

**CONSENTS AND AGREEMENTS**

To effect settlement of the matters alleged in the Amended Complaint in this action without a trial on the merits or further judicial proceedings, Defendants Bartos, Morgan and Mercury Management:

1. Consent to entry of this Consent Order of Permanent Injunction and Other Equitable Relief Against Defendants Bartos, Morgan and Mercury Management, L.C. ("Order");
2. Affirm that they have read and agreed to this Order voluntarily, and that no threat, or promise other than as contained herein, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein;
3. Acknowledge service upon them of the summons and complaint in this action;
4. Admit that this Court possesses personal and subject matter jurisdiction over each of them and this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;
5. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;
6. Waive:
  - a. All claims that they may possess pursuant to the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000) relating to or arising from this action;
  - b. Any claim of double jeopardy based on the institution of this

proceeding or the entry in this proceeding of any order imposing injunctions, a civil monetary penalty or any other relief; and

c. All rights of appeal from this Order.

7. Consent to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purpose relevant to this matter, even if Bartos, Morgan or Mercury Management, now or in the future, resides outside the jurisdiction.

8. By consenting to the entry of this Order, Bartos, Morgan and Mercury Management neither admit nor deny the allegations contained in the CFTC's Complaint, Amended Complaint or the Findings of Fact and Conclusions of Law made by this Court and contained in this Order, except as to jurisdiction and venue, which they admit.

9. Agree that neither Bartos, Morgan and Mercury Management nor their agents, employees or representatives acting under their control shall take any action or make any public statements denying, directly or indirectly, any allegations in the Complaint, the Amended Complaint or findings in this Order, or creating or tending to create the impression that the Complaint, the Amended Complaint and this Order are without factual basis; provided, however, that nothing in this provision shall affect Bartos', Morgan's, and Mercury Management's (i) testimonial obligations, or (ii) their right to take legal positions in other proceedings to which the Commission is not a party. Bartos, Morgan and Mercury Management will each undertake all steps necessary to assure that their agents, employees and representatives understand and comply with this agreement.

10. Bartos, Morgan and Mercury Management each agree and intend that the allegations of the Complaint, Amended Complaint, and all of the Findings of Fact and Conclusions of Law made by this Court and contained in Part III of this Order shall be taken as

true and correct and be given preclusive effect, without further proof, in the course of any current or subsequent bankruptcy proceeding filed by, on behalf of, or against each of them. Bartos, Morgan and Mercury Management each agree to provide immediate notice of any bankruptcy filed by, on behalf of, or against each or any of them and shall provide immediate notice of any change of address, phone number, or contact information in the manner required by this Order. No provision of this Order shall in any way limit or impair the ability of any person to seek any legal or equitable remedy against Bartos, Morgan, Mercury Management or any other person in any other proceeding.

11. Bartos, Morgan and Mercury Management each agrees to cooperate with Commission staff in the continuing litigation of this matter against any Defendant not a party to this Order. As part of such cooperation, Bartos, Morgan and Mercury Management each agrees, subject to all applicable privileges, to comply fully, promptly and truthfully to any inquires or requests for information or testimony, including but not limited to, testifying completely and truthfully in this action and producing statements or trial declarations to the Commission related to any trial of the subject matter of this proceeding.

### III.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law and a permanent injunction and equitable relief, pursuant to § 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

12. This Court has subject matter jurisdiction over this action and the allegations in the Complaint and Amended Complaint pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

13. This Court has personal jurisdiction over Bartos, Morgan and Mercury Management pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

14. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, because during the time of the acts complained of, Bartos, Morgan and Mercury Management resided in and transacted business in the Southern District of Florida.

15. The Court retains jurisdiction over Bartos, Morgan and Mercury Management for the purpose of enforcing the terms of this Order.

16. The **Commodity Futures Trading Commission** is an independent federal agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.*

17. **Andrew Bartos** is an individual who lives in Houston, Texas. He was President of Mercury Financial Partners. Bartos is not registered with the Commission.

18. **Michael Morgan** resides in West Palm Beach, Florida. During the relevant time period, Morgan was the manager of and a member of Mercury Management. Morgan is not registered with the Commission.

19. **Mercury Management, L.C.** is a Florida limited liability company whose principal place of business is in Lake Worth, Florida. Mercury Management is not registered with the Commission.

20. From at least August 18, 2004 through approximately November 10, 2004, others fraudulently solicited customers to purchase options on foreign currency contracts ("foreign currency options"), accepted approximately \$148,756 of customer money to purchase such options, but failed to use the customer money to purchase foreign currency options.

21. To entice prospective customers to send money to Mercury Partners, Bartos, along with Mercury Partners' employees, made material misrepresentations about the profit potential and risk of loss associated with purchasing foreign currency options. For example, they represented that customers would make large returns on their investments over a short period of time and that purchasing foreign currency options involved minimal risk.

22. The money solicited by Defendants was not used to purchase foreign currency options; rather, Mercury Partners forwarded some of the funds it received from customers to two associated entities, Mercury Management and Mercury Financial. The principals of these entities -- Morgan, the manager of Mercury Management, and Bartos, the president of Mercury Financial -- deposited Mercury Partners' customer funds into the bank accounts of Mercury Management and Mercury Financial Partners, respectively, and used the funds for personal expenses.

23. For example, Morgan used some of the customer money for private education, automobile expenses, credit card purchases, homeowners' association fees, a purchase at Cartier, and cash for himself.

24. Bartos also deposited customer funds into a Mercury Financial bank account and distributed the customer money to himself and other Mercury Financial employees.

25. Morgan and Bartos violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9 (a) and (c), 17 C.F.R. § 32.9 (a) and (c), by fraudulently soliciting customers to purchase foreign currency options and misappropriating customer funds for personal uses.

26. Morgan misappropriated these funds within the scope of his employment as manager of Mercury Management. Mercury Management is therefore liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. §2(a)(1)(B).

27. Plaintiff has demonstrated good cause why equitable remedies, including restitution, civil money penalties, and trading bans, should be imposed on various Defendants as set forth below.

**IV.**

**ORDER OF PERMANENT INJUNCTION**

Based upon and in connection with the foregoing conduct:

**IT IS HEREBY ORDERED THAT:**

28. Bartos, Morgan and Mercury Management are permanently restrained, enjoined, and prohibited from cheating or defrauding or attempting to cheat or defraud other persons; and willfully deceiving or attempting to deceive other persons in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of any commodity option transaction, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Regulations 33.9(a) and (c), C.F.R. § 33.9(a) and (c), including but not limited to engaging in any commodity related activity that:

- a. solicits customers for funds;
- b. misappropriates customer funds;
- c. misrepresents the existence of a commodities trading account; and
- d. misrepresents the risks and rewards of commodities trading;

**IT IS FURTHER ORDERED THAT:**

29. Bartos, Morgan and Mercury Management permanently restrained, enjoined and prohibited from directly or indirectly:

- a. engaging in, controlling or directing the trading for any commodity futures, security futures, options, options on futures, or foreign currency options account,

in any markets or on any entity regulated by the Commission for themselves or on behalf of any other person or entity, whether by power of attorney or otherwise; and

b. applying for registration or seeking exemption from registration with the Commission in any capacity or engaging in any activity requiring registration or exemption from registration, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9), and acting, directly or indirectly, as a principal, officer, director, supervisor, agent or employee of any person registered, required to be registered or exempted from registration, unless such exemption is pursuant to Commission Regulation 4.14(a)(9). This includes, but is not limited to, soliciting, accepting or receiving any funds, revenue or other property from any person, giving commodity trading advice for compensation or soliciting prospective customers related to the purchase or sale of any commodity futures, security futures, options, options on futures, or foreign currency futures, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9).

V.

**ORDER FOR OTHER EQUITABLE RELIEF**

**IT IS FURTHER ORDERED That:**

30. Payment of Restitution: Bartos is jointly and severally liable with all named Defendants for the amount of \$8,885 as restitution, for which a judgment is due and owing upon entry of this Order. Defendants Morgan and Mercury Management are severally liable to pay \$110,000.00 for restitution, divided as follows: Defendant Morgan shall pay a total of \$95,000 as restitution and Defendant Mercury Management shall pay a total of \$15,000 as restitution, which is immediately due and owing.

31. The National Futures Association (the "Monitor") is designated as the Monitor to oversee the distribution of any restitution payment made to the Commission by any Defendant.

32. Any restitution paid to the Commission shall be by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, under a cover letter that identifies the Defendant and the name and docket number of the proceedings. Defendant shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor and to Gregory Mocek, or his successor, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581.

33. The Monitor will distribute funds obtained from defendants in an equitable fashion as determined by the Monitor to all persons who gave funds, either directly or indirectly, to defendants as a result of their course of illegal conduct as alleged in the complaint.

34. The funds escrowed with counsel for Morgan and Mercury Management ("Counsel") pursuant to the Court's order of May 16, 2005, are hereby released; Counsel is directed to immediately forward to the Monitor, in accordance with the provisions of this Order, the amount of \$95,000 representing the restitution owed by Morgan.

35. The funds in accounts 2000011012108 and 2000016529739 at Wachovia Bank are hereby released. Wachovia Bank is directed to immediately forward to the Monitor, in accordance with the provisions of this Order, all amounts in accounts 2000011012108 and 2000016529739. If the funds in the designated accounts fall short of the \$15,000 restitution due

from Mercury Management, plaintiff shall notify Counsel and any shortfall shall be sent to the Monitor within ten (10) calendar days of notice.

36. Civil Monetary Penalty: Bartos shall pay a civil monetary penalty in the amount of \$26,655.00, for which a judgment is due and owing upon entry of this Order. Morgan and the Mercury Management shall each pay immediately a \$120,000 civil money penalty. Payment of the civil monetary penalty is due upon full payment of the restitution amount. Morgan and Mercury Management shall make such civil monetary penalty payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, under a cover letter that identifies Morgan and/or Mercury Management and the name and docket number of the proceedings. Morgan and/or Mercury Management shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor and to Gregory Mocek, or his successor, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581.

## VI.

### OTHER PROVISIONS

37. Continuing Jurisdiction of This Court: This Court shall retain jurisdiction over defendants to assure compliance with this Order and for all other purposes related to this action.

38. Waiver: The failure of any party to this Order 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 of this Order. No waiver in one or more

instances of the breach of any provision contained in this Order shall be deemed or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Order.

39. Successors and Assigns: This Order shall inure to the benefit of and be binding upon the successors, assigns, heirs, beneficiaries, and administrators of all parties to this Order.

40. Acknowledgments: Upon being served with a copy of this Order after entry by this Court, defendants shall sign an acknowledgment of service and serve such acknowledgment on this Court and the CFTC within seven (7) calendar days.

41. Invalidation: If any provision or the application of any provision of this Order is held invalid, the remainder of the Order and the application of the provision to any other person shall not be affected by the holding.

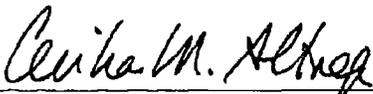
42. Authority : Morgan hereby warrants that this Consent Order has been duly authorized by Mercury Management and he has been duly empowered to sign and submit it on behalf of Mercury Management.

43. Entire Agreement and Amendments: This Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto, and (3) approved by further order of this Court.

44. Notices: All notices required to be given by any provision in this Order shall be sent certified mail, return receipt requested, as follows: Notice to any defendant- to Counsel of Record at the address listed herein; Notice to the Commission: Attention, Director of Enforcement, Commodity Futures Trading Commission, Division of Enforcement, 1155 21<sup>st</sup> Street, N.W., Washington, DC 20581.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order.

Done and **ORDERED** in Chambers at Miami, Florida, this 18 day of August, 2006.

  
HONORABLE CECILIA ALTONAGA  
UNITED STATES DISTRICT JUDGE

\_\_\_\_\_  
Michael Morgan

Date: \_\_\_\_\_

\_\_\_\_\_  
Mercury Management, L.C.  
by: Michael Morgan

Date: \_\_\_\_\_

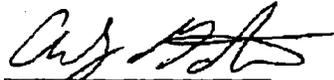
Consented to and  
Approved as to Form:

\_\_\_\_\_  
Allan M. Lerner, Esq.  
Counsel for Michael Morgan and  
Mercury Management, L.C.  
2888 East Oakland Park Boulevard  
Fort Lauderdale, FL 33306

Date: \_\_\_\_\_

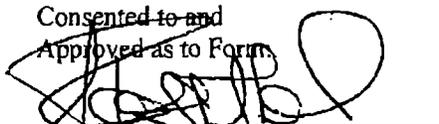
  
William L. Small, Esq. (pro hac vice)



  
Andrew Bartos

Date: 7/22/06

Consented to and  
Approved as to Form:

  
Jonathan H. Rosenthal, Esq.  
Counsel for Andrew Bartos  
Malman, Malman & Rosenthal  
4040 Sheridan Street  
Hollywood, FL 33021

Date: 4-28-06

Attorney for Plaintiff  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581  
(202) 418-5579 (telephone)  
(202) 418-5531 (fax)

Date: August 17, 2006