

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIVIL ACTION NO 01-8350

COMMODITY FUTURES TRADING :
COMMISSION, :
 Plaintiff :
 vs. :
INTERNATIONAL CURRENCY :
STRATEGIES, INC., :
STRATEGIC TRADING GROUP, INC., :
FAIRFIELD CURRENCY GROUP, INC., :
VALENTIN FERNANDEZ, :
DANIEL J. PHILLIPS, and :
MANNY G. KAVEKOS, :
 Defendants, :
FINANCIAL CLEARING CORP., LTD., :
(A BRITISH VIRGIN ISLANDS CORP.) :
 Relief Defendant. : FILED UNDER SEAL

COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF

I.

SUMMARY

1. Since July 2000 and possibly earlier, the defendants have fraudulently telemarketed foreign currency options contracts to individuals nationwide. The defendants operated their scheme through three corporate entities -- International Currency Strategies, Inc. (“ICS”), Strategic Trading Group, Inc. (“Strategic”), and Fairfield Currency Group, Inc. (“Fairfield”) – which share sales scripts, account documentation, and telemarketers, and also commingle funds. (The corporate defendants are hereinafter referred to as the “ICS Common Enterprise”).

2. Defendants’ telemarketers initiate cold calls in which they claim to offer an extraordinary opportunity in the foreign currency market. Typically, they claim that because of the weakening U.S. dollar or other market news, the value of the Euro (which they sometimes refer to as the Eurodollar) or the Japanese Yen is poised to skyrocket, allowing quick-acting customers to make huge profits in a matter of a few weeks or months through the purchase of foreign currency options. At the same time, telemarketers assure customers that they will eliminate the risk by watching the market closely for just the right time to sell. The sales pitch is replete with high-pressure tactics, which include sending account documentation by FedEx or fax, sometimes to be completed while a FedEx delivery truck waits. Shortly after the initial purchase, telemarketers generally tell customers that their account has been reassigned to another broker, including defendant Manny G. Kavekos (“Kavekos”), who solicits even larger investments based on similar claims.

3. The span of each customer’s dealings with the defendants is brief. Once customers refuse to make additional purchases, or ask their salesman to sell them out of a

position, or seek to liquidate their accounts, the customer service is quickly over. Telemarketers refuse to honor customer instructions, promise to effect the sale requested by the customer but announce later that they have not taken care of it, or in many cases, fail to return repeated phone call messages – even to the point of allowing options that theoretically could be exercised to expire worthless. While defendants claim to use a firm located in the Bahamas as a clearing firm, bank records show that only a fraction of the funds that should be applied to the purchase of options are wired to the clearing firm, and customer funds are being misappropriated and used for personal expenses.

4. These materially false representations concerning the likelihood that customers will profit from purchasing foreign currency options from the defendants, the false representations concerning the risk of loss and the misappropriation of customer funds violate Section 4c(b) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6c(b) (1994) (“Section 4c(b)”), and Commission Regulation 32.9, 17 C.F.R. §32.9 (2000). Additionally, because the options sold by the defendants are not consummated on or subject to the rules of a contract market designated by the Commodity Futures Trading Commission (the “Commission”), the defendants have violated Section 4c(b) of the Act and Commission Regulations 32.11 and 33.3(a) thereunder, 17 C.F.R. §§32.11 and 33.3(a)(2000). The defendants also have violated Section 4c(b) of the Act and Commission Regulation 32.5, 17 C.F.R. §32.5 (2000), by failing to provide prospective customers with a disclosure document containing such key information as the duration of the option, a list of elements comprising the purchase price, a description of all costs that may be incurred if the option is exercised, and an explanation concerning the necessary fall or rise in the price of the contract underlying the option in order for the customer to profit.

5. Defendants Valentin Fernandez (“Fernandez”) and Daniel Phillips (“Phillips”), as controlling persons of the ICS Common Enterprise, are liable for its violations of Section 4c(b) and Commission Regulations 32.5, 32.9, 32.11, and 33.3, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) ("Section 13(b)"). As a telemarketer, Defendant Kavekos is directly liable for violating Section 4c(b) and Commission Regulations 32.5, 32.9, 32.11, and 33.3.

6. A substantial amount of the funds that the ICS Common Enterprise has received from customers has been transferred to relief defendant, Financial Clearing Corp., Ltd. (“FCC”). FCC purports to serve as a clearing firm, but receives funds in amounts far smaller than the amount paid by customers for the purchase of options. FCC therefore holds funds and assets in constructive trust for the benefit of the ICS Common Enterprise customers.

7. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), the Commission brings this action to enjoin the unlawful acts and practices of the defendants and to compel their compliance with the Act. In addition, the Commission seeks disgorgement of the defendants’ and the relief defendant’s ill-gotten gains, restitution to customers, the appointment of an equity receiver, and such other relief as this Court may deem necessary or appropriate. The Commission further seeks disgorgement of the funds and assets of the ICS Common Enterprise or its customers that have been transferred to FCC.

8. Unless enjoined by this Court, the defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

II.

JURISDICTION AND VENUE

9. Section 2(c)(2)(B) of the Act, as amended by the Commodity Futures Modernization Act of 2000 (“CFMA”), Appendix E, to Public L. No. 106-554, 114 Stat. 2763 (2000), grants the Commission jurisdiction over certain retail currency options. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), 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 the defendants are found in, inhabit, or transact 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

A. The Plaintiff

11. **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1, et seq., and the regulations promulgated thereunder, 17 C.F.R. §§ 1, et seq. (2000).

B. The Defendants

12. **International Currency Strategies, Inc.** whose principal place of business is 515 N. Flagler Drive, Suite 703, West Palm Beach, Florida 33401, was incorporated in Florida on July 6, 2000. ICS has never been registered with the Commission in any capacity nor has it been

designated by the Commission as a contract market for the trading of options on foreign currency or options on foreign currency futures contracts.

13. **Fairfield Currency Group, Inc.** whose principal place of business is 5341 W. Atlantic Avenue, Suite 303, Delray Beach, Florida 33484, was incorporated in Florida on August 17, 2000. Fairfield has never been registered with the Commission in any capacity nor has it been designated by the Commission as a contract market for the trading of options on foreign currency or options on foreign currency futures contracts.

14. **Strategic Trading Group, Inc.** whose principal place of business located at 2655 N. Ocean Drive, Suite 401, West Palm Beach, Florida 33404, was incorporated in Florida on December 13, 2000. Strategic has never been registered with the Commission in any capacity nor has it been designated by the Commission as a contract market for the trading of options on foreign currency or options on foreign currency futures contracts.

15. **Valentin Fernandez** resides at 2386 Bay Village Court, West Palm Beach, Florida 33410. He is the registered agent and sole director of Strategic. He is also a signatory on at least two of Strategic's bank accounts, and arranged for a lease of the ICS office in West Palm Beach. Business cards identify Fernandez as the "Director of Compliance and Personnel" at ICS, and he and others at ICS identify him as the manager. Fernandez also periodically solicits and fends off disgruntled customers. Fernandez has never been registered with the Commission in any capacity.

16. **Daniel J. Phillips** resides at 5629 S.E. Horseshoe Point, Stuart, Florida 34997. He is the registered agent and sole director of ICS. He was a joint signatory on two ICS accounts, and the sole signatory on three others. Phillips signed an ICS business lease agreement, dated March 1, 2000, which lists him as the president of the company. He also

signed an application filed on behalf of ICS with the Internal Revenue Service, seeking an employer identification number. On that application, Phillips identifies himself as “CEO” of the company. Phillips also solicits customers and, in at least one instance, identified himself as supervisor at ICS. Phillips has never been registered with the Commission in any capacity.

17. **Manny Kavekos** resides at 1170 Gator Trail, West Palm Beach, Florida 33409. Kavekos identifies himself to customers as a “senior trader” and routinely solicits customers who have already invested with ICS and Strategic to purchase additional foreign currency options contracts. Defendant Kavekos has never been registered with the Commission in any capacity.

C. Relief Defendant

18. **Financial Clearing Corporation, Ltd.** (“FCC”) is a British Virgin Islands corporation that receives correspondence at Marlborough House, Marlborough Street and Cumberland Street, Nassau, Bahamas. FCC is a custodian of funds and/or assets of the ICS Common Enterprise and/or its customers and holds customer funds in constructive trust for the benefit of customers.

IV.

FACTUAL BACKGROUND

A. The Defendants Misrepresent the Profitability Associated with Their Futures Contracts, Fail to Disclose the Risk of Near-Certain Losses and are Misappropriating Customer Funds

19. Since at least as early as July 6, 2000, when ICS was incorporated, and continuing to the present, the common enterprise led by Defendants Fernandez and Phillips has sold foreign currency options contracts through telemarketing directed nationwide.

20. The sales pitch begins with a cold call in which telemarketers, relying on scripted sales pitches, urge prospective customers to purchase options, usually in the Euro or Eurodollars,

in order to capitalize on a market that is supposedly poised to skyrocket. If the customer wavers about the decision, telemarketers will repeatedly call back over the next few days to push them into a decision. The purported urgency is so great, telemarketers say, that they will fax account opening and risk disclosure documentation, along with wire instructions, or they dispatch FedEx to deliver the documents and either wait for the customer to sign the materials on the spot or return to retrieve them after a short period. In other instances, telemarketers claim that they will purchase the options immediately based on the promise of immediate payment.

21. On January 31, 2001, the Federal Bureau of Investigation (“FBI”) executed federal search warrants on the corporate offices of Defendants ICS and Fairfield and seized, along with many other documents, sales scripts used to solicit customers to open foreign currency options contracts. Those scripts allow telemarketers to tailor their pitch toward specific customers, while always assuring the customer – regardless of when the call was made -- that prevailing market conditions made for a spectacular opportunity, but only if the customer acted quickly. For example, one script left blanks for the salesmen to insert figures and the customer’s name:

...THERE IS NO DOUBT THE EURO IS TREMENDOUSLY UNDERVALUED AND WE FEEL WE HAVE A SHOT AT A MAJOR SCORE.
I’M GOING INTO THE MARKET AND BUYING _____ OPTIONS NETTING \$ _____ PER CONTRACT. DOLLARS AND CENTS _____, IF THE EURO MOVES UP JUST _____ CENTS, A \$10K INVESTMENT IS WORTH OVER \$50K! AT THIS LEVEL, LET’S GET THE BALL ROLLING, SET UP AN ACCOUNT FOR YOU, AND GO AFTER _____ CONTRACTS.

22. At the same time, telemarketers drastically downplay the potential risk of loss by promising to use their many years of experience to watch the markets closely and alert the customer to get out of the market at just the appropriate time. Identical scripts seized from ICS and Fairfield state: “95% of my business is repeat business. Never do another trade with me

until I can show you some percentages on this one. I've done my homework [sic] trust me. At ___ work with ___ contracts.” A Fairfield script for telemarketers to overcome a customer's request for time to read over the information, states: “The information your [sic] going to read was written by lawyers for lawyers. All it explains is that you can only lose what you invest, nothing over that amount. It tells you the world is coming to an end and you can lose your entire investment. It gives you a worse case scenario, for your protection and mine.” Customers are also told that their investment is “100% secure” and are urged to liquidate stocks and mutual funds to avail themselves of this opportunity.

23. If a customer hesitates about whether to purchase the options, defendants' telemarketers make a barrage of calls over the ensuing days to persuade the customer to invest. Telemarketers' efforts to overcome various kinds of reservations are also scripted. For example, one script reads as follows:

I'll definitely get you some information out on currency trading but the timing on this issue is now. There is nothing on a piece of paper that's going to tell you to do the trade. Anything in print talks about the past. I'm buying the future.

24. Defendants' telemarketers persuade prospective customers that the proper timing of this investment is so critical (and the time of the call is always the proper time) that the defendants will arrange for FedEx to go to the prospects' homes or businesses to drop off account documentation and wait while the customer signs the agreement and wire instructions. On other occasions, defendants' telemarketers fax the account documentation, and also request immediate return of the documents. At times, telemarketers promise to purchase the options in advance of receiving customer funds, so the fleeting opportunity will not be lost.

25. While the account documentation contains some warnings of the risks of investing in options transactions, customers have very little time to review the documentation,

and the warnings it contains are inconsistent with and overwhelmed by the barrage of promises made by the telemarketer. Telemarketers have told customers that the document is nothing more than legal verbiage of no practical consequence to their investment decision. Also, the account opening documentation includes a brochure claiming that “ICS is one of the fastest growing and most reputable Foreign Currency options trading firms in the financial world.” Moreover, the account documentation utterly confuses the issue as to what the customer is actually purchasing by warning simultaneously of the risks of trading outside of designated exchanges, the risk of open outcry (which is conducted on designated exchanges), and the risks of electronic trading facilities.

26. After customers make their initial purchases, the ICS Common Enterprise transfer the handling of the account to another telemarketer, who solicits additional orders for foreign currency options by touting big profits and increasingly favorable market conditions. Kavekos’s personal sales script, confiscated from his desk at the ICS office during the execution of the federal search warrant, targets recent investors, stating as follows:

I’m the senior trader here for the firm and I wanted to get back to you because I just broke out of a major research meeting on the Euro. First of all, we’ve seen the Euro move up over 10 points in the last 30-45 days which is exactly what we anticipated would happen, so we’re right on track. Now on top of that analysts are expecting another 10-15 points in the first quarter of this year, which puts us right where we need to be. So what I’m doing right now is, I am calling each and every one of our clients to make sure they get as much leverage as possible while the Euro is still at these levels. You right now have _____ options. If I can still get these options at \$1,000 a piece, what I would like to see you do is pick up another _____ options and get up to a block of _____. I definitely feel, short term, this is going to come back to us in a BIG! BIG! way.

Another script states:

This is extremely short term. Two weeks, max, that’s all I need. So let’s step to the plate here and pick up _____. I’m telling you, it’s the best move to make.

And yet another:

This _____ (name of currency) is in its most dramatic growth stage and our timing couldn't be better. At _____ take _____ contracts.

27. The defendants' claims concerning extraordinary profits and minimal risk are false. Customers routinely lose all or the bulk of their investment. Though customers are told by telemarketers to monitor their foreign currency options markets at Bloomberg.com, customers discover that even when the market has moved in their favor, telemarketers, including Kavekos, flatly refuse to or say they will agree to honor the customers' instructions only if they can coax additional purchases of forex options. In other instances, when telemarketers appear to relent to repeated requests to sell an option, the customer is informed later that the sale of his or her position never occurred. In some cases, customers call repeatedly in an effort to exercise call options where the market price exceeded their strike price (which would allow them to make a profit) only to have their calls go unreturned until the option expired worthless. When it becomes clear that a customer intends to close his or her account, telemarketers also fail to return phone messages. Day after day, defendants' phone representatives tell customers that a particular broker or all the brokers are out of the office, in meetings, or talking with other customers.

28. Defendants' telemarketers fail to disclose the risk of near-certain loss associated with the purchase of their foreign currency options.

29. Defendants make claims of high profits and fail to disclose risks associated with their options contracts with knowledge of their falsity or with reckless disregard for their truth or falsity.

30. Records for sixteen of the corporate defendants' bank accounts and one Bahamian account maintained by FCC -- covering the period from October 2000 through January 2001 -- show defendants receiving over \$3 million. For that same period, the records show no purchases

of foreign currency options and only two disbursements to customers. Additionally, the corporate defendants have disbursed funds from accounts containing customers' investments to purchase jewelry, marketing leads, and for other personal expenses. Defendants thus are misappropriating customer funds.

31. The ICS Common Enterprise masks its misappropriation by failing to send initial or periodic account statements until a customer insists on receiving one. When a customer finally obtains a statement, it does not indicate accrued interest, commissions, the amount of funds received by the proposed defendants, or the value of the customer's account.

B. The Corporate Defendants Constitute a Common Enterprise

32. Defendants have conducted their activities through the three, interrelated corporate defendants – ICS, Fairfield, and Strategic. The corporate defendants have common managers and telemarketers, used the same sales scripts and account documentation, commingle funds, and have engaged in a common scheme. Some of the same individuals are signers on bank accounts for more than one corporate defendant.

33. ICS, Fairfield, and Strategic send customers identical or virtually identical account opening documents, including the same customer account application, customer agreement, and customer signature form. Even the graphics on the covers of the brochures and account-opening documents are the same, except for insertion of a different corporate logo.

34. ICS, Fairfield, and Strategic purport to clear from the same firm with an office in the Bahamas, FCC. When customers ask for account statements, telemarketers furnish statements that bear the name, FCC. In at least one instance, a Strategic customer received a statement that was purportedly from FCC and on which appeared the name and address of ICS.

V.

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

COUNT I

**VIOLATION OF SECTION 4c(b) OF THE ACT, 7 U.S.C. § 6c(b), and COMMISSION
REGULATION 32.9, 17 C.F.R. § 32.9: FRAUD AND MISAPPROPRIATION OF
CUSTOMER FUNDS**

35. Paragraphs 1 through 34 are re-alleged and incorporated herein.

36. From December 21, 2000, and continuing through the present, the ICS Common Enterprise and Kavekos, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, commodity option transactions, have cheated, defrauded or deceived, or attempted to cheat, defraud, or deceive other persons by making false, deceptive, or misleading representations of material facts and by failing to disclose material facts, in soliciting customers or potential customers, including, but not limited to:

- (a) false representations that customers will reap substantial profits in a short period;
- (b) false representations that ICS Common Enterprise's investment scheme involves little or no risk; and
- (c) failure to disclose the substantial risks associated with purchasing defendants' options.

37. From December 21, 2000, and continuing through the present, the ICS Common Enterprise has misappropriated customer funds in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 32.9, 17 C.F.R. § 32.9. The ICS Common Enterprise has failed to apply customer funds for the purchase of foreign currency options, in the manner represented, and has misappropriated and used customer funds for personal expenses.

38. From December 21, 2000 and continuing to the present, Fernandez and Phillips, as principals and directors of the ICS Common Enterprise, directly or indirectly controlled the ICS Common Enterprise; and they did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count One. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (1994), Fernandez and Phillips are liable for the violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 32.9, 17 C.F.R. § 32.9, as described in this Count I, to the same extent as the ICS Common Enterprise.

39. Each misrepresentation, omission, willful deception, and misappropriation made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) and Commission Regulation 32.9.

COUNT II

VIOLATIONS OF SECTION 4c(b) OF THE ACT, 7 U.S.C. § 6c(b), AND COMMISSION REGULATIONS 32.11 AND 33.3(a), 17 C.F.R. §§32.11 and 33.3(a)(2000): OFFER AND SALE OF COMMODITY OPTIONS NOT CONDUCTED ON A BOARD OF TRADE WHICH HAS BEEN DESIGNATED BY THE COMMISSION AS A CONTRACT MARKET

40. Paragraphs 1 through 39 are re-alleged and incorporated herein.

41. Section 2(c)(2)(B)(ii) of the CFMA, Appendix E, to Public L. No. 106-554, 114 Stat. 2763 (2000), provides that the Commission shall have jurisdiction over options contracts on foreign currency, so long as the option is “offered to, or entered into with, a person that is not an eligible contract participant” and the counter-party to the option, or the person offering to be the counter-party, is a regulated entity, as defined in the CFMA.

42. Section 1a(12)(A)(xi) of the CFMA defines an eligible contract participant as an individual who has total assets in excess of: a) \$10 million; or b) \$5 million and who enters the

transaction to manage the risk associated with the asset he owns. Most, if not, all of the customers solicited by the ICS Common Enterprise were not eligible contract participants.

43. Neither the corporate defendants nor FCC are proper counter-parties for retail foreign currency transactions.

44. Beginning on December 21, 2000, and continuing to the present, the ICS Common Enterprise and Kavekos have offered to enter into, entered into, executed, confirmed the execution of, or conducted business for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a commodity option when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated by the Commission as a “contract market” for such commodity, and (b) such contracts have not been executed or consummated by or through a member of such contract market, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and the Commission Regulations 32.11 and 33.3(a), 17 C.F.R. §§ 32.11, 33.3(a).

45. From December 21, 2000, and continuing to the present, Fernandez and Phillips, as principals and directors of the ICS Common Enterprise, directly or indirectly controlled the ICS common scheme and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count Two. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (1994), as described in this Count Two, Fernandez and Phillips are liable for the violations described in this Count Two, to the same extent as the ICS Common Enterprise.

46. Each forex commodity option transaction not conducted on a designated contract market made during the relevant time period, including but not limited to those specifically

alleged herein, is alleged as a separate and distinct violation of Section 4c(b) and Commission Regulations 32.11 and 33.3(a).

COUNT III

**VIOLATIONS OF SECTION 4c(b) OF THE ACT, 7 U.S.C. § 6c(b), and COMMISSION
REGULATION 32.5, 17 C.F.R. § 32.5:
FAILURE TO MAKE PROPER DISCLOSURES**

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

48. Commission Regulation 32.5 requires that a person soliciting or accepting an order for an options transaction shall deliver to the customer or prospective customer a disclosure statement. That statement must include a brief description of the transaction (including the duration of the options offered and a list of elements comprising the purchase price), a description of all costs that may be incurred by the customer if the option is exercised, an explanation concerning the necessary rise or fall in the price of the contract underlying the option in order for the customer to profit, and a specific, boldfaced statement concerning the risk of loss. None of this information appears in the documentation that the proposed defendants furnish to customers in connection with the sale of foreign currency options.

49. The ICS Common Enterprise and Kavekos fail to furnish customers with the disclosure statement, in violation of Section 4c(b) of the Act and Commission Regulation 32.5, 17 C.F.R. § 32.5.

50. Defendants Fernandez and Phillips, as principals and directors of the ICS Common Enterprise, directly or indirectly controlled the ICS common scheme, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count Three. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Fernandez and Phillips are liable for violations of Section 4c(b), 7 U.S.C. § 6c(b), and

Commission Regulation 32.5, 17 C.F.R. § 32.5, as described in this Count Three, to the same extent as the ICS Common Enterprise.

51. Each failure to provide a required disclosure statement during the relevant time 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 and Commission Regulation 32.5.

COUNT IV

DISGORGEMENT OF THE ASSETS OF THE RELIEF DEFENDANTS

52. Paragraphs 1 through 51 of this Complaint are re-alleged and incorporated herein.

53. The ICS Common Enterprise has committed a fraud upon its customers in connection with the purchase and sale of foreign currency options contracts as alleged herein.

54. Relief defendant FCC has received funds or otherwise benefited from funds that are directly traceable to the funds obtained from the ICS Common Enterprise customers through fraud.

55. FCC will be unjustly enriched if it is not required to disgorge the funds or the value of the benefit they received as a result of the ICS Common Enterprise's fraud.

56. FCC should be required to disgorge the funds and assets, or the value of the benefit they received from those funds and assets, which are traceable to the ICS Common Enterprise's fraud.

57. By reason of the foregoing, FCC holds funds and assets in constructive trust for the benefit of the ICS Common Enterprise customers.

VI.

RELIEF

Wherefore, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), and pursuant to its own equitable powers, enter:

- a. a preliminary and a permanent injunction prohibiting the defendants and any other person or entity associated with them, or any successor thereof, from engaging in conduct violative of the provisions of the Act they are alleged to have violated, and from engaging in any commodity-related activity, including soliciting new customers or customer funds;
- b. an order directing the defendants and relief defendant and any successors thereof, to disgorge pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;
- c. an order directing the defendants to make full restitution to every customer whose funds were received by them as a result of acts and practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations; and
- d. such other and further remedial ancillary relief as the Court may deem appropriate.

Respectfully submitted by,

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