

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

COMMODITY FUTURES TRADING)
COMMISSION,)
)
)
) Plaintiff,)
) CIVIL ACTION)
) v.)
) NO. 01-CV-1107)
) INFINITE TRADING GROUP L.L.C., a)
) Georgia Company,)
)
) SHAWN CHRISTIE,)
)
) EDWARD CAMERON LINDSEY,)
)
) and)
) FILED UNDER SEAL)
) ANTHONY GARCIA,)
)
)
) Defendants.)
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)

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

I.

SUMMARY

1. From at least December 1999 to the present, Infinite Trading Group, L.L.C. ("ITG"), Shawn Christie ("Christie"), Edward Cameron Lindsey ("Lindsey"), and Anthony Garcia ("Garcia") (collectively, the "Defendants") have solicited and accepted funds from investors purportedly to trade foreign currency options and, since at least December 21, 2000, violated the Commodity Exchange Act's prohibitions against fraud, illegal options, improper disclosures, and failure to secure prompt executions of options orders.

2. At least since December 21, 2000, Defendants defrauded ITG customers by making exaggerated claims of profits, minimizing risk of loss, and by misappropriating at least \$100,000 of customer funds, which had been solicited for the purchase of foreign currency options, but instead were used for personal expenses, such as payments to adult entertainment locations and restaurants, and for maid services and video rentals.

3. In addition, at least since December 21, 2000, Defendants have solicited investors to enter into transactions in retail foreign currency options, in violation of provisions

forbidding the offer or sale of illegal options. Specifically, Defendants have solicited and accepted orders and accepted money for the purchase or sale of foreign currency options which were not: 1) traded on or subject to the rules of a contract market which has been designated to trade commodity options, and 2) traded by or through a member of a designated contract market.

4. In addition, at least since December 21, 2000, Defendants have failed to provide prospective customers with a summary 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. In addition, at least since December 21, 2000, Defendants have failed to secure execution of any customer options orders for those customers identified by the Commodity Futures Trading Commission ("Commission") during this investigation. Typically, ITG first represented that it had purchased foreign currency options on behalf of its customers

when it had not done so. Then, when ITG customers requested that ITG sell the customers' positions, ITG either flatly refused to do so or verbally informed the customers that they sold the position and then later verbally informed the customers that ITG did not sell the position.

6. The materially false representations concerning the likelihood that ITG customers will profit from purchasing foreign currency options from 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 offered for sale by Defendants are not consummated on or subject to the rules of a contract market designated by the Commodity Futures Trading Commission (the "Commission"), Defendants have violated Section 4c(b) of the Act and Commission Regulations 32.11 and 33.3(a) promulgated thereunder, 17 C.F.R. §§32.11 and 33.3(a) (2000). 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

key information. Finally, Defendants have violated Section 4c(b) of the Act and Commission Regulation 32.8(c), 17 C.F.R. §32.8(c) (2000), by unreasonably failing to secure prompt execution of ITG customers' options orders.

7. Christie, as a controlling person of ITG, is liable for its violations of Section 4c(b) and Commission Regulations 32.5, 32.8(c), 32.9, 32.11, and 33.3, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) ("Section 13(b)").

8. 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 Defendants and bar them from engaging in any commodity-related activity, including soliciting new customers or customers' funds. In addition, the Commission seeks civil monetary penalties in the amount of not more than the higher of \$120,000 for each violation or triple the monetary gain to Defendants for each violation of the Act and Commission Regulations, disgorgement of Defendants' ill-gotten gains, restitution to customers, the appointment of an equity receiver, prejudgment interest and such other relief as this Court may deem necessary or appropriate.

9. Unless enjoined by this Court, 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

10. Section 2(c)(2)(B)(ii) 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, (December 12, 2000), 7 U.S.C. § 2, expressly grants the Commission jurisdiction over certain retail foreign currency options. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 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.

11. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (1994), in that Defendants are found in, inhabit, or transact business in this District, and the acts and practices in violation of the Act

and the Commission Regulations have occurred, are occurring, or are about to occur within this District, among other places.

III.

THE PARTIES

Plaintiff

12. Commodity Futures Trading 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.* (1994), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2000).

Defendants

13. Infinite Trading Group, L.L.C. is a Georgia limited liability company organized on January 21, 1999, and located at 2000 Monroe Place NE, Atlanta, Georgia 30324. ITG purports to conduct its business from a mail drop located at 6050 Peachtree Parkway, Suite 240-160, Norcross, Georgia 30092-3336. ITG has never been registered with the Commission in any capacity.

14. Shawn Christie resides at 2000 Monroe Place NE, Apartment 6109, Atlanta, Georgia 30324. Christie is an ITG

account representative and is not registered with the Commission.

15. Edward Cameron Lindsey resides at 2000 Monroe Place NE, Apartment 6211, Atlanta, Georgia 30324. Lindsey is the Vice President of Operations for ITG and is not registered with the Commission.

16. Anthony Garcia a/k/a Antony Garcia resides at 514 Brookhaven Way, Atlanta, Georgia 30319. On separate occasions, Garcia has represented himself to be the President of ITG and "Senior Commercial Account Director" of ITG. Garcia is not registered with the Commission.

IV.

FACTUAL BACKGROUND

17. From at least December 1999 to the present, Defendants have solicited investors to trade foreign currency options.

18. Defendants reach potential customers through advertisements, telephone calls, and mass mailings. Defendants use high-pressure sales tactics to obtain customer funds by exaggerating the profit potential of investing in foreign currency options.

19. Defendants fail to adequately discuss the risks associated with foreign currency option investments. Lindsey told at least one customer that he was "99% sure" that the value of the Japanese yen was going to increase in the next few days. Lindsey also told at least one customer that the profit potential for investing in Japanese yen was much greater than the risk. Christie told at least one customer that he would personally take care of putting a stop-loss on his investment to limit the risk and then failed to do so. Garcia informed at least one customer that he was "very confident" that the Euro dollar was going to rise in value.

20. Even though ITG furnishes customers with a "Foreign Currency Options Risk Disclosure" ("Risk Disclosure Document") containing warnings regarding the risk of speculating in foreign currencies, this document does not disclose, among other things, a brief description of the commodity option transaction being offered, its duration, the total quantity and quality of the commodities that may be purchased or sold upon exercise of the options being offered or which underlie the contracts of sale for future delivery which may be purchased or sold upon exercise of such commodity options, a listing of the elements comprising the purchase price to be

charged, including the premium, mark-ups on the premium, costs, fees, and other charges, the method by which the premium is established, the services to be provided for the separate elements comprising the purchase price, the method by which the strike price is established, a description of any and all costs in addition to the purchase price which may be incurred by an option customer if the commodity option is exercised, including, but not limited to, the amount of storage, interest, commissions (whether denominated as sales commissions or otherwise) and all similar fees and charges which may be incurred.

21. The Risk Disclosure Document does not contain the specific boldfaced statements on the first page of the summary disclosure statement as required by Commission Regulation 32.5(a)(5), 17 C.F.R. § 32.5(a)(5).

22. Prior to the entry of a commodity option transaction, Defendants did not inform each option customer or prospective option customer of the actual amount of the premium, markups on the premium, costs, fees and other charges comprising the purchase price or the strike price and all costs to be incurred by the option customer if the commodity option is exercised.

23. Defendants did not furnish, by mail or other generally accepted means of communication, not more than twenty-four hours after the execution of a commodity option transaction, each option customer with a written confirmation statement containing the actual amount of the purchase price, the strike price, the total quantity and quality of the commodity which may be purchased or sold, the final trading date on such contract or the date the commodity option was executed.

24. The Risk Disclosure Document does not disclose that ITG representatives will use customers' money for personal expenses or that ITG representatives will refuse to honor customers' investment instructions.

25. Defendants inform prospective customers verbally and through written documentation that their funds will be used to purchase foreign currency options contracts on the Interbank market through an international clearing firm.

26. At least since December 21, 2000 and through March 2001, ITG customers were instructed to wire transfer their funds to a designated ITG account at First Union National Bank ("First Union"). Throughout that period, ITG has maintained

the First Union bank account for the receipt of ITG customer funds.

27. At all times between December 21, 2000 and through March 2001, Christie maintained sole signatory authority to ITG's First Union account.

28. At no time since at least December 21, 2000 were funds from ITG's First Union bank account transferred or wired to Ammnero, Ltd. ("Ammnero"), purportedly Defendants' off-shore clearing firm in Nassau, Bahamas.

29. On or about February 1, 2001, Garcia signed an agreement, as "President" of ITG, with USA Today for the purpose of placing advertisements for ITG in USA Today between February 5, 2001 and May 6, 2001.

30. Defendants gave ITG customers verbal confirmation of the execution of foreign currency option orders made by ITG on the customers' behalf. Customers who made several demands for written confirmations received statements on Ammnero letterhead indicating only the purported cost of the option purchased and the commissions and fees charged. None of the statements disclosed the market price at which each transaction was purportedly executed.

31. The Ammnero statements that were sent to ITG customers appeared on Ammnero letterhead and in an envelope bearing United States Post Office domestic postage with a United States Post Office cancellation stamp from Atlanta, Georgia.

32. On information and belief, at least since December 21, 2000, ITG has had at least eleven investors with investments totaling at least \$100,000.

33. On information and belief, at least since December 21, 2000, at least approximately \$100,000 is owed to investors as of March 30, 2001.

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**

34. Paragraphs 1 through 33 are re-alleged and incorporated herein.

35. Section 4c(b) of the Act provides that "no person shall offer to enter into or confirm the execution of, any

transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an 'option," ... contrary to any rule, regulation or order of the Commission prohibiting any such transaction..."

36. Commission Regulation 32.9 makes it unlawful for any person directly or indirectly:

(a) to cheat or defraud or attempt to cheat or defraud any other person;

(b) to make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof;

(c) to deceive or attempt to deceive any other person by any means whatsoever;

in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction.

37. From December 21, 2000, and continuing through the present, Defendants, 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) failure to disclose that Defendants will fail to apply customer funds for the purchase of foreign currency options;
- (b) failure to disclose that Defendants will use customers' money for personal expenses;
- (c) false representations that investment in foreign currency options involves little or no risk which can be controlled; and
- (d) false representations that customers will reap substantial profits in a short period.

38. From December 21, 2000, and continuing through the present, Defendants have 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. Defendants have failed to apply customer funds for the purchase of foreign currency options, in the manner represented, and have misappropriated and used customer funds for personal expenses.

39. Christie, directly or indirectly, controlled ITG, and 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), Christie is 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 One, to the same extent as ITG.

40. 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 REGULATION 32.5, 17 C.F.R. § 32.5: FAILURE TO MAKE PROPER DISCLOSURES

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

42. Commission Regulation 32.5 requires that a person soliciting or accepting an order for an option 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 Defendants furnish to customers in connection with the purchase of foreign currency options.

43. Commission Regulation 32.5 also requires that a person soliciting or accepting an order for an option transaction shall inform the customer or prospective customer, prior to the entry into a commodity option transaction, of the actual amount of the premium, markups on the premium, costs, fees, and other charges comprising the purchase price, the strike price, and all costs to be incurred by the option customer if the option is exercised. None of this information appears in the documentation that the Defendants furnish to customers prior to the entry into a commodity option transaction.

44. Commission Regulation 32.5 also requires that a person soliciting or accepting an order for an option transaction shall furnish, by mail or other generally accepted means of communication not more than twenty-four hours after the execution of a commodity option transaction, each option customer with a written confirmation statement containing the

actual amount of the purchase price, the strike price, the total quantity and quality of the commodity which may be purchased or sold, the final trading date on such contract, and the date the commodity option was executed. None of this information appears in the documentation that Defendants furnish to customers prior to the entry into a commodity option transaction.

45. Defendants failed to furnish customers with adequate disclosure statements and written confirmations, in violation of Section 4c(b) of the Act and Commission Regulation 32.5, 17 C.F.R. § 32.5.

46. Christie, directly or indirectly, controlled ITG, 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), Christie is 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 Two, to the same extent as ITG.

47. 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 III

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

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

49. Section 2(c)(2)(B)(ii) of the Act 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" unless the counter-party to the option, or the person offering to be the counter-party, is a regulated entity, as defined in the CFMA.

50. 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. At least some, if not all, of the foreign

currency option transactions were offered to or entered into with persons who were not eligible contract participants.

51. Defendants are not proper counter-parties for retail foreign currency transactions.

52. Beginning on at least December 21, 2000, and continuing to the present, Defendants 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).

53. Christie, directly or indirectly, controlled ITG 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) (1994), as described in this Count Three,

Christie is liable for the violations described in this Count Three, to the same extent as ITG.

54. Each foreign currency 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 IV

**VIOLATIONS OF SECTION 4c(b) OF THE ACT, 7 U.S.C. § 6c(b), AND
COMMISSION REGULATION 32.8(c), 17 C.F.R. § 32.8(c) (2000):
FAILURE TO SECURE PROMPT EXECUTION OF A COMMODITY OPTION ORDER**

55. Paragraphs 1 through 54 are re-alleged and incorporated herein.

56. Commission Regulation 32.8(c) states that it is unlawful for "[a]ny person, upon receipt of an order for a commodity option transaction, unreasonably to fail to secure prompt execution of such order." 17 C.F.R. § 32.8(c).

57. Not one ITG customer order to purchase or to sell a foreign currency option identified in this investigation to date was ever honored by Defendants.

58. Christie, directly or indirectly, controlled ITG, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count Four. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Christie is liable for violations of Section 4c(b), 7 U.S.C. § 6c(b), and Commission Regulation 32.8(c), 17 C.F.R. § 32.8(c), as described in this Count Four, to the same extent as ITG.

59. Each failure to secure prompt execution of a customer's order for a commodity option transaction 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 Regulation 32.8(c).

VI.

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 the Court's own equitable powers, enter:

1. a preliminary and a permanent injunction prohibiting Defendants and any other person or entity associated

with them, including any successor thereof, from engaging in conduct violative of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 32.9, 32.5, 32.8(c), 32.11, and 33.3(a), 17 C.F.R. §§ 32.9, 32.5, 32.8(c), 32.11, and 33.3(a), and from engaging in any commodity-related activity, including soliciting new customers or customer funds;

2. an order directing Defendants 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 and Commission Regulations, as described herein, and interest thereon from the date of such violations;
3. an order directing 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 and Commission Regulations, as described herein, and interest thereon from the date of such violations;

4. an order directing Defendants to pay a civil penalty in the amount of not more than the higher of \$120,000 for each violation or triple the monetary gain to Defendants for each violation of the Act and Commission Regulations;
5. an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2);
and
6. such other and further remedial ancillary relief as the Court may deem appropriate.

Date: April 30, 2001

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