

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

02-60769

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff

v.

OFFSHORE FINANCIAL
CONSULTANTS OF FLORIDA, INC.,
INTERNATIONAL CURRENCY
MERCHANTS, INC.,
OFFSHORE FINANCIAL
CONSULTANTS OF GEORGIA, INC.,
GLOBAL FINANCIAL
CONSULTANTS, INC.,
JUAN CARLOS GOMEZ,
MARSHALL SHELDON,
ELAINE KAZANAS,
THOMAS DESTASIO, and
WILLIAM AUGELLO,

Defendants.

TDD ENTERPRISES, COIN BANK,
ANTHONY RUSSO,
LIBERTY FOREIGN INVESTMENTS
GROUP INC., DANIEL FASCIANA,
AFFILIATED PAYROLL
SERVICES INC., JAMES SEXTON,
JBA LIMITED INC., PICO
INVESTMENTS AND CONSULTING
INC., and STEPHEN DELONG

Relief Defendants.

CIVIL ACTION NO.

CIV - FERGUSON

MAGISTRATE JUDGE
SNOW

FILED UNDER SEAL

COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF

I. SUMMARY

1. Since April 2001, the defendants, operating through a series of companies that open for a short period of time then close and relocate, have solicited more than \$1,000,000 from customers primarily through high-pressure telemarketing that promises extraordinary profits through the purchase of 30-day foreign currency option contracts. In their sales solicitations, defendants fraudulently guarantee profits, fail to disclose the true risk of loss, and make other blatant misrepresentations. As a result, customers lose most, if not all, of their entire investment.

2. The corporate defendants comprise a series of at least four interrelated companies, Offshore Financial Consultants of Florida, Inc. ("Offshore Florida"), International Currency Merchants, Inc. ("ICM"), Offshore Financial Consultants of Georgia, Inc. ("Offshore Georgia"), and Global Financial Consultants Inc. ("Global"). The combined entities constitute a common enterprise ("Offshore Common Enterprise"). Individual defendants Marshall Sheldon ("Sheldon"), Thomas Destasio ("Destasio"), Elaine Kazanas ("Kazanas"), Juan Gomez ("Gomez"), and William Augello ("Augello") are five primary telemarketers for the Offshore Common Enterprise.

3. Defendants' scheme involves telemarketing cold calls and newspaper advertisements boasting of tremendous profits that can be made in a short period of time through the purchase of foreign currency options. Telemarketers claim with great enthusiasm that the market conditions for a particular foreign currency option (typically the Yen or the Euro) are excellent, such that customers can double, triple, or quadruple their money by investing immediately. Telemarketers assure prospective customers that they will closely watch the market and recommend exactly the right time to sell, thereby avoiding any

losses. At the same time, defendants fail to adequately disclose the risks involved in options trading.

4. Once a customer does invest, defendants then seek additional funds. Customers are advised that the additional funds are needed either to increase already profitable positions or to recover unexpected losses. Customers discouraged from ever liquidating their accounts.

5. Ultimately, customers learn that most, if not all, of their money is gone. Most customers are encouraged to invest again in order to recoup their losses. If a customer does not make an additional investment, the relationship with the Offshore Common Enterprise becomes unavailable to the customers with telephone messages from customers going unreturned. In many instances customers are unable to contact the firm because it has shut down.

6. To create an illusion of legitimate trading, customer funds are funneled through accounts held by foreign banks, and purportedly paid to "Coin Bank" in Yugoslavia. In any event, funds are returned to various domestic bank accounts held by the defendants and relief defendants TDD Enterprises ("TDD") and Tony Russo, Affiliated Payroll Inc. ("Affiliated") and James Sexton, Liberty Foreign Investments Inc. ("Liberty") and Daniel Fasciana, Pico Investments and Consultants Inc. ("Pico"), and JBA Limited Inc. ("JBA"). Once victim funds are transferred into the relief defendant accounts, they are passed on to telemarketers, transferred to firms and entities unrelated to commodity options trading, and used for personal goods and services.

7. The defendants have violated 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), by making materially false representations concerning the likelihood that customers will profit from purchasing foreign currency options from the corporate defendants, and by making false representations and material omissions concerning the risk of loss.

8. Because the options sold by the defendants are not consummated on or subject to the rules of a contract market or a derivatives transaction execution facility designated by the Commodity Futures Trading Commission (the "Commission"), the corporate 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)(2001).

9. The defendants have also violated Section 4c(b) of the Act and Commission Regulation 32.5, 17 C.F.R. §32.5 (2001), by failing to provide prospective commodity options customers with required disclosures regarding important information such 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.

10. The Commission brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), to enjoin the unlawful acts and practices of defendants and to compel their compliance with the Act. 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 set forth below. The Commission also seeks civil monetary penalties, a freeze of defendants' and relief defendants' assets, restitution to

customers, disgorgement of defendants' and relief defendants' ill-gotten gains, and such other relief as this Court may deem necessary or appropriate.

II. JURISDICTION AND VENUE

11. 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), provides that the Commission has 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.

12. 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. Plaintiff

13. **Commodity Futures Trading Commission** (the "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. Individual Defendants

14. **Thomas Destasio** (“Destasio”) is a Florida resident who resides in Wilton Manors. Destasio fraudulently solicited customers on behalf of ICM and Offshore Georgia. He has never been registered with the Commission in any capacity.

15. **Juan Carlos Gomez** (“Gomez”) is a Florida resident who resides in Pembroke Pines. Gomez fraudulently solicited customers on behalf of ICM and Offshore Georgia. He has never been registered with the Commission in any capacity. Gomez is the President of Pico, a relief defendant corporation.

16. **William Augello** (“Augello”) is a Florida resident who resides in Jacksonville. Augello fraudulently solicited customers on behalf of ICM and Offshore Georgia. He has never been registered with the Commission in any capacity. Augello is the President of JBA Limited, a relief defendant corporation.

17. **Elaine Kazanas** (“Kazanas”) is a Florida resident who resides in Oakland Park. Kazanas fraudulently solicited customers on behalf of Global and Offshore Florida. While at Offshore Florida she used the alias “Lauren Roswell,” and with Global she used the alias “Joan Bennett.” She has never been registered with the Commission in any capacity. An account at First Union bank in Kazanas’s name received approximately \$57,200 from the Offshore Common Enterprise between July 12, 2001 and October 26, 2001.

18. **Marshall Sheldon** (“Sheldon”) fraudulently solicited customers on behalf of ICM and Offshore Georgia. The Commission does not have an address for Sheldon and believes that the name may be an alias. Sheldon has never been registered with the Commission in any capacity.

C. Corporate Defendants

19. **Offshore Financial Consultants of Florida, Inc.** (“Offshore Florida”) is a Florida corporation that designates, in its certificate of incorporation, its principal place of business as 5581 North Winston Park Boulevard, # 205, Coconut Creek, Florida 33073. Offshore Florida 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. Offshore Florida solicited customers from on or about April 2001 to June 2001.

20. **Offshore Financial Consultants of Georgia, Inc.** (“Offshore Georgia”) is a Georgia corporation that designates in its certificate of incorporation, its principal place of business as 6840 Roswell Rd., Suite 1A, Atlanta, Georgia 30328. Offshore Georgia’s incorporator and sole board member is relief defendant DeLong. Augello, Sheldon, and Destasio are telemarketers that solicited customers on behalf of Offshore Georgia. Offshore Georgia maintained a web address at www.offshoreclts.com. Offshore Georgia 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. Offshore Georgia began soliciting customers on or about May 2001, and on or about November 2001 Offshore ceased operations at the 6840 Roswell Rd. address.

21. **Global Financial Consultants Inc.** (“Global”) is a Louisiana corporation, which designates in its certificate of incorporation, its principal place of business as 4041 Williams Boulevard, Suite A-9 #299, Kenner, Louisiana 70065. The Williams Boulevard address is a mail drop at a Mailboxes Etc. Global’s actual place of business is 2002 20th

Street, Suite A202, Kenner, Louisiana, 70062. Global's registered director is relief defendant DeLong. Global's web address is www.globalfinancialclts.com. Global 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. Global began soliciting customers on or about January 2002, and is currently operational.

22. **International Currency Merchants, Inc.** ("ICM") is a Georgia corporation that designates, in its certificate of incorporation, its principal place of business as 5683 Stonewood Court, Apt. B, Norcross, Georgia 30093. ICM's actual place of business was 6840 Roswell Rd., Roswell, Georgia, 30328. ICM's incorporator and sole board member is relief defendant DeLong. ICM 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. ICM ceased soliciting customers under that name in June 2001. ICM was incorporated on February 20, 2001, and dissolved on September 27, 2001.

D. Relief Defendants

23. **JBA Limited Inc.** ("JBA") is a Georgia corporation, which designates, in its certificate of incorporation, its principal place of business as 4212 West Park Road, Alpharetta, Georgia 30004. JBA was incorporated on January 25, 2001. Augello is JBA's president and registered agent. JBA 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. Between

June 12, 2001 and November 8, 2001, JBA received approximately \$13,748.68 from the Offshore Common Enterprise.

24. **TDD Enterprises** (“TDD”) is a Georgia corporation, which designates, in its certificate of incorporation, its principal place of business as 4780 Ashford Dunwoody Road, Suite 141A, Atlanta, Georgia 30338. This address is mail drop at a “Mailboxes Etc.” Anthony Russo (“Russo”) is TDD’s president and sole board member. TDD 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. Between August 14, 2001 and October 11, 2001, TDD received approximately \$100,000 from the Offshore Common Enterprise.

25. **Affiliated Payroll Services Inc.** (“Affiliated”) is a Florida corporation, which designates, in its certificate of incorporation, its principal place of business as 1001 Sample Road, Suite 10E, Pompano Beach, Florida 34952. Affiliated also uses an address at RA 7000 Oakland Blvd., Sunrise, Florida 33313. James Sexton is Affiliated’s president and registered director. Affiliated 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. Affiliated was incorporated on August 14, 2001. Between August 17, 2001 and October 3, 2001, Affiliated received approximately \$86,000 from the Offshore Common Enterprise.

26. **Pico Investments and Consulting Inc.** (“Pico”) is a Georgia corporation, which designates, in its certificate of incorporation, its principal place of business as 615 Eagle Crest Village Lane, Suite 3, Roswell, Georgia 30076. Defendant Gomez is Pico’s president, and Gomez incorporated Pico on March 23, 2001. Pico 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. Between June 12, 2001 and July 17, 2001, Pico received approximately \$13,100 from the Offshore Common Enterprise.

27. **Liberty Foreign Investments** (“Liberty”) is a Georgia corporation, which designates, in its certificate of incorporation, its principal place of business as 66 Shadowlawn Road, Marietta, Georgia 30067. Liberty also uses the address of 80 Mount Vernon Circle, Dunwoody, Georgia, 30338. Daniel Fasciana (“Fasciana”) is Liberty’s president. Liberty maintains a bank account in Georgia for which statements are mailed to Fasciana in Fort Lauderdale, Florida. Liberty 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. Between August 17, 2001 and October 3, 2001, Liberty received approximately \$130,500 from the Offshore Common Enterprise.

28. **Coin Bank SC** (“Coin Bank”) is an “offshore company” established by the Offshore Common Enterprise in Montenegro, Yugoslavia. Between March 2001 and November 2001, more than \$1,000,000 in customer funds were deposited in correspondent accounts with “further credit” to Coin Bank. Coin Bank 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.

29. **Dan Fasciana** (“Fasciana”) is a Florida resident who resides in Fort Lauderdale, Florida. According to a former Offshore Florida telemarketer, Fasciana

established and ran the Offshore Common Enterprise with Russo. Fasciana paid to establish the Coin Bank website and his name is on the user profile for the default email account that receives all messages sent to the website. Fasciana has never been registered with the Commission in any capacity. Fasciana is the president of relief defendant Liberty.

30. **James Sexton** (“Sexton”) is a Florida resident who resides in Port Saint Lucie, Florida. According to a former Offshore Florida telemarketer, Sexton worked for Fasciana and Russo, ran the Offshore Florida operation, and was involved with the establishment of Coin Bank. Sexton has access to the Coin Bank email account and has responded to at least one customer email using the alias “Tomas Pepaj” of Coin Bank customer service. He has never been registered with the Commission in any capacity. Sexton is the president of relief defendant Affiliated.

31. **Anthony Russo** (“Russo”) aka **Teddy Connal** is a Florida resident who resides in Fort Lauderdale, Florida. According to a former Offshore Florida telemarketer, Russo established and ran the Offshore Common Enterprise with Fasciana. Russo is the president of relief defendant TDD. He has never been registered with the Commission in any capacity.

32. **Stephen Delong** (“Delong”) is a Louisiana resident who resides in Kenner Louisiana. Delong incorporated Global, Offshore Georgia, and ICM. DeLong is listed as company president on the bank account applications for Global, Offshore Georgia, and ICM and is the sole signatory on all checks written from the accounts. Delong has never been registered with the Commission in any capacity. Delong received approximately \$125,501 from the Offshore Common Enterprise between March 2001 and April 2002.

IV. FACTUAL BACKGROUND

A. The Offshore Common Enterprise Solicitation Fraud

33. The Offshore Common Enterprise engages in a common scheme, sharing common telemarketers and directors, using similar or identical account documentation, using similar or identical websites designed and monitored by the same web manager, and commingling funds. The Offshore Common Enterprise companies each operate for only a few months, close, and then reappear in a new location under a new name. The latest incarnation of the Offshore Common Enterprise is Global, which is currently active in Louisiana, and has solicited more than \$500,000 since February 2002.

34. Defendants fraudulently solicit customers by boasting of anticipated profits through foreign currency options, usually in the Yen or Euro. Customers are solicited through telemarketing cold calls and advertisements in newspapers such as USA Today and the Investors Business Daily that boast of significant profits in offshore banking. Telemarketers, claiming to be “offshore banking consultants,” focus their sales pitches on the purchase of foreign currency options. Unbeknownst to customers the Offshore Common Enterprise controls every aspect of the purported foreign currency option transactions and, as such, operates as the counterparty to the purported transactions.

35. The Offshore Common Enterprise solicitation fraud typically consists of three general stages – the initial sales pitch, the reload, and the customer’s inevitable loss.

36. In the initial sales pitch, telemarketers claim with great enthusiasm that the market conditions for a particular foreign currency are excellent, and that a customer can profit significantly by investing immediately. Customers often receive repeated telephone

calls, sometimes several times a day, replete with claims of tremendous profits that can be made in a very short period of time.

37. Telemarketers seize on well-known current events to convince customers that quick and substantial returns can be achieved by investing without delay. The telemarketers often seek to create a sense of urgency, telling customers that they will lose out on the opportunity if they do not invest immediately.

38. Once customers invest, defendants target them again seeking additional funds. Customers are advised that another investment could increase already profitable positions, or is necessary to recover unexpected losses. At the same time, liquidation of positions is discouraged. Instead, telemarketers claim that the “big move” is still poised to happen, or that the customer needs to be “patient,” even if the expiration date of the options is only days away. Other customers are led to believe that they are unable to withdraw or take money from their accounts until after the expiration date, or are told that telemarketers are unable to assist them because they are not in the office or have left the firm.

39. Ultimately, customers learn that all or almost all of their money is gone. Angry and worried customers often find their telephone calls answered by voicemail and never returned. Other customers cannot contact the firm because it has ceased operating.

B. Defendants Provide Inadequate Risk Disclosure

40. Defendants’ sales solicitation fails to adequately advise customers of risk. Any discussion of risk in the telemarketing sales pitch is either overshadowed by guaranteed returns and outrageous profit claims, or by representations that defendants’

experience, expertise, and use of certain trading strategies will minimize the risk of loss. Telemarketers often “guarantee” that the investments will be profitable.

41. Defendants’ brochures and account opening documentation also fail because they drown any mention of risk with dramatic statements concerning the huge profits that can be made by investing in foreign currency options. One brochure provided by the defendants entitled “Plain Language: A question and answer guide to buying foreign currency options” generally refers to the risk disclosure statements in the account opening documentation. However, the only risk statement is found in one paragraph on the second page of one of five separate account opening forms.

C. Defendants Fail To Provide Customers With Adequate Account Information

42. Prior to entering the purported foreign currency options transactions, defendants fail to provide customers with required information concerning the elements comprising the purchase price of the options including commission and a detailed explanation of the strike price. The strike price is the price at which the buyer of a call option can purchase the underlying commodity or the price at which the buyer of a put option can sell the underlying commodity.

43. Defendants know that their customers have limited experience trading options. Yet the solicitations fail to explain key terminology or the mechanics of options trading. For example, some customers believed they were purchasing the actual currency rather than an option. Other solicitations never use the term “option,” or explain the strike price for the option. Some customers are told that the strike price could not be negotiated prior to purchase. Subsequent documents sent to customers include a strike

price so far away from the current market price of the underlying commodity, or “out of the money,” that the options have virtually no chance of being profitable.

44. Defendants fail to disclose their true commission structure. Defendants inform customers that their only income is by payment of a separate \$375 consulting fee. As such, defendants represent that no commission was deducted for the option price, usually set at \$1000. However, Offshore Florida telemarketers were paid 20% of the total amount of each customer investment in cash the first Friday after defendants received the customer funds. Customers were not told anything about the 20% commission, or for that matter, the fact that most of the funds invested by customers flow back to defendants and relief defendants.

D. Defendants Use Coin Bank as a Front

45. Defendants established a Yugoslavian bank-corporation, “Coin Bank,” in furtherance of their fraud. Defendants claim in their solicitations that they are “consultants” for Coin Bank customers interested in trading foreign currency options. For example, defendants claimed in a letter to a customer dated April 10, 2002, that “we [Global] neither write options nor do we hold interest, shares or partnership in any bank, foreign or domestic...if you wish to discuss a refund from your trading account, you must then contact your bank directly at www.coinbanksc.com...” In reality, any attempt to contact Coin Bank through the specified web page is directed to the Offshore Common Enterprise.

46. Coin Bank is used to funnel customer funds back to the defendants and relief defendants. Out of the more than \$1,000,000 of customer funds sent to Coin Bank for the alleged purpose of trading options, more than \$700,000 was returned to the defendant and

relief defendant accounts in the United States. Only 3.4% of the more than 1,000,000 was returned to customers.

**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 REGULATIONS 1.1 and 32.9, 17 C.F.R. § § 1.1 and 32.9 (2001):
FRAUD

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

48. Since at least April 2001, the 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) false representations that customers will reap substantial profits in a short period;
- (b) false representations that the investment scheme involves little or no risk;
- (c) false of profitability based on well-known current events;
- (d) failure to disclose the substantial risks associated with the purchase of the corporate defendants' options;
- (e) false representations that they are consultants for an offshore bank; and
- (f) false representations regarding the commission structure of the transactions.

49. Each misrepresentation, omission, and willful deception made since April 2001, including but not limited to those specifically alleged herein, is alleged as a

separate and distinct violation of Section 4c(b) and Commission Regulations 1.1 and 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)(2001): OFFER AND SALE OF COMMODITY OPTIONS NOT
CONDUCTED ON A BOARD OF TRADE WHICH HAS BEEN DESIGNATED
BY THE COMMISSION AS A CONTRACT MARKET

50. Paragraphs 1 through 49 are re-alleged and incorporated herein.

51. 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 not a regulated entity, as defined in the CFMA.

52. In the case of an individual, 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) in excess of \$5 million if hedging a risk associated with an asset or liability. Most, if not, all of the customers solicited by defendants were not eligible contract participants. By controlling every aspect of the fraudulent retail option transactions from solicitation through possession of the invested funds, the Offshore Common Enterprise is acting as the counterparty to the transactions. The Offshore Common Enterprise is not a regulated entity as defined in the CFMA and is subject to the Commission’s jurisdiction under the Act.

53. Sections 32.11 and 33.3 of the Regulations, 17 C.F.R. §§32.11, 33.3, together provide that it shall be unlawful for any person to solicit, accept orders for, or

accept funds in connection with, the purchase or sale of any commodity option, or supervise any person or persons so engaged, unless the commodity option is conducted (1) on or subject to the rules of a contract market which has been designated by the Commission to trade options and (2) by or through a member thereof in accordance with the Act and Regulations.

54. Since April 2001, and continuing to the present, the 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 executed, (b) such transactions, if executed, 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 (c) such contracts, if executed, 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).

55. Each foreign exchange commodity option transaction not conducted on a designated contract market made since at least April 2001, 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 (2001):
FAILURE TO MAKE PROPER DISCLOSURES**

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

57. 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 prior to the entry into a commodity option transaction. The 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, including commissions, 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 the effect of commissions and fees on potential profit, and a specific, boldfaced statement concerning the risk of loss. This information does not appear in the documentation that the corporate defendants furnish to customers in connection with the sale of foreign currency options.

58. Defendants failed 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.

59. Each failure to provide a required disclosure statement since at least April 2001, 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.

VI. RELIEF

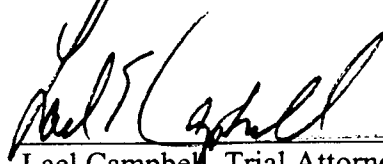
Wherefore, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), and pursuant to its own equitable powers, enter:

- a. a 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 as alleged in this Complaint, and from engaging in any activity relating to commodity interest trading, including but not limited to, soliciting, accepting or receiving funds, revenue or other property from any person, giving advice for compensation, or soliciting prospective customers, related to the purchase and sale of any commodity futures or options on commodity futures contracts;
- b. an order directing the defendants, relief 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, 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;

- d. an order directing the defendants to pay a civil monetary penalty in the amount of not more than the higher of \$120,000 or triple the monetary gain to each defendant for each violation of the Act or Regulations; and
- e. such other and further remedial ancillary relief as the Court may deem appropriate.

Date: June 4, 2002

Respectfully submitted by,



Lael Campbell, Trial Attorney
Michael Lee, Senior Trial Attorney
Vincent McGonagle, Acting Associate Director
Gregory George Mocek, Director of Enforcement
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
(202) 418-5397 telephone
(202) 418-5523 facsimile