

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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, ANTHONY GARCIA aka
MARSHALL SHELDON aka PETER
MITCHELL aka MICHAEL JACOBS,
ELAINE KAZANAS, JAMES SEXTON,
TEDDY CONNALL aka ANTHONY
RUSSO, STEPHEN DELONG, DANIEL
FASCIANA, THOMAS DESTASIO, and
WILLIAM AUGELLO,

Defendants.

TDD ENTERPRISES, COIN BANK,
COIN FINANCIAL, AMEROGROUP
LIMITED, AFFILIATED PAYROLL
SERVICES INC., PICO INVESTMENTS
AND CONSULTING INC.,
LIBERTY FOREIGN INVESTMENTS
GROUP INC., CAPITAL RECOVERY
SYSTEMS INC., JBA LIMITED INC.,
and PDT INTERNATIONAL INC.

Relief Defendants.

CIVIL ACTION NO.

02-60769-CIV- FERGUSON

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FIRST AMENDED COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF

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I. SUMMARY

1. Since January 2001, the defendants, operating through a series of companies that open for a short period of time then close and relocate, have solicited close to \$2,000,000 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 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 Daniel Fasciana ("Fasciana") and Teddy Connal aka Anthony Russo ("Russo") own and control the Offshore Common Enterprise. Individual defendants Anthony Garcia ("Garcia"), Thomas Destasio ("Destasio"), Elaine Kazanas ("Kazanas"), Juan Gomez ("Gomez"), and William Augello ("Augello") are five primary telemarketers for the Offshore Common Enterprise. Defendants James Sexton and Stephen Delong assisted in the management and operation of 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 in a short period of time 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 are 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 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 flow through an account in the name of Coin Bank and into various bank accounts held by the defendants and/or corporations they control, including relief defendants TDD Enterprises ("TDD"), Affiliated Payroll Inc. ("Affiliated"), Liberty Foreign Investments Inc. ("Liberty"), Pico Investments and Consultants Inc. ("Pico"), JBA Limited Inc. ("JBA"), Coin Financial, AmeroGroup Limited, PDT International ("PDT"), and Capital Recovery Systems ("CRS"). Once victim funds are transferred into the relief

defendants' 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. Defendants Offshore Florida, Offshore Georgia, ICM, Global, Kazanas, Garcia, Destasio, Augello and Gomez have violated Section 4c(b) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 6c(b) (2001) ("Section 4c(b)"), and Commission Regulation 1.1 and 32.9, 17 C.F.R. §§ 1.1 and 32.9 (2002), 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"), defendants Offshore Florida, Offshore Georgia, ICM, Global, Kazanas, Garcia, Destasio, Augello and Gomez 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) (2002).

9. Defendants Offshore Florida, Offshore Georgia, ICM, Global, Kazanas, Garcia, Destasio, Augello and Gomez have also violated Section 4c(b) of the Act and Commission Regulation 32.5, 17 C.F.R. §32.5 (2002), 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. Fasciana and Russo controlled every aspect of the Offshore Common Enterprise, financially and otherwise. Fasciana and Russo recruited, hired, and coached telemarketers to offer and sell foreign currency options, and determined how the telemarketers were paid. Fasciana and Russo made all decisions regarding the movement of funds after they were solicited from Offshore Common Enterprise customers. Fasciana and Russo's active involvement in leading the Offshore Common Enterprise shows that they had actual knowledge of the firm's core activities, and not only allowed them to continue, but encouraged it. Accordingly, Fasciana and Russo are liable for controlling person liability by operation of Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), for violations of Section 4c(b) of the Act and Commission Regulations 1.1, 32.5, 32.9, 32.11, and 33.3 (2002).

11. Sexton and Delong were deeply involved with the Offshore Common Enterprise and intentionally assisted the fraudulent scheme. Sexton managed defendant Offshore Florida, was involved with the establishment of Coin Bank, and sent at least one email to a customer purporting to be "Tomas Pepaj" of Coin Bank customer service. Delong incorporated defendants Global, Offshore Georgia, and ICM, and is listed as company president and sole signatory on the bank account applications for each of these firms. Delong was responsible for keeping track of customer funds solicited, and for issuing the account statements and trade confirmations to customers of Global, Offshore Georgia, and ICM. Therefore, Sexton and Delong are liable, by operation of Section 13(a) of the Act, 7 U.S.C. §13c(a), for aiding and abetting violations of Section 4c(b) of the Act (2001) and Commission Regulations 1.1, 32.5, 32.9, 32.11 and 33.3 (2002).

12. The Commission brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), 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

13. Section 2(c)(2)(B) of the Act, as added 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. 7 U.S.C. § This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), 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.

14. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2001), 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

15. **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. (2001), and the regulations promulgated thereunder, 17 C.F.R. §§ 1, et seq. (2002).

B. Individual Defendants

16. **Daniel Fasciana** resides in Fort Lauderdale, Florida. Fasciana, along with Russo, established and ran the Offshore Common Enterprise. Fasciana is a president and/or owner of relief defendants Liberty, Coin Bank, AmeroGroup, Coin Financial and Capital Recovery Systems. Fasciana has never been registered with the Commission in any capacity.

17. **Anthony Russo aka Teddy Connal** ("Russo") resides in Lighthouse Point, Florida. Russo, along with Fasciana, established and ran the Offshore Common Enterprise. Russo is the president and/or owner of relief defendant TDD, AmeroGroup and PDT, and has the power of attorney relief defendant AmeroGroup's bank account. He has never been registered with the Commission in any capacity.

18. **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.

19. **Juan Carlos Gomez** ("Gomez") is a Florida resident who resides in Pembroke Pines. Gomez 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.

20. **William Augello** ("Augello") is a Florida resident who resides in Jacksonville. Augello 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.

21. **Elaine Kazanas** ("Kazanas") is a Florida resident who resides in Oakland Park. Kazanas solicited customers on behalf of Global and Offshore Florida. While at Offshore Florida she used the alias "Lauren Roswell," at ICM she used the alias "Anne McCall," and with Global she used the alias "Joan Bennett." She has never been registered with the Commission in any capacity.

22. **Anthony Garcia aka Marshall Sheldon aka Michael Jacobs aka Peter Mitchell** ("Garcia") is a resident of Fort Lauderdale, Florida. Garcia, using the alias Michael Jacobs, solicited customers on behalf of defendant Global, and also solicited customers on behalf of defendants ICM and Offshore Georgia using the aliases Peter Mitchell and Marshall Sheldon. Garcia has never been registered with the Commission in any capacity.

23. **James Sexton** ("Sexton") resides in Port Saint Luci, Florida. Sexton worked directly for Fasciana and Russo, was responsible for the day-to-day operations of defendant Offshore Florida, 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.

24. **Stephen DeLong** (“DeLong”) resides in North Lauderdale, Florida. 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 was hired by Fasciana, and managed the day-to-day operations of these firms. DeLong has never been registered with the Commission in any capacity.

C. Corporate Defendants

25. **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.

26. **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 defendant DeLong. Augello, Sheldon, Garcia 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.

27. **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 defendant DeLong. Kazanas and Garcia solicited customers on behalf of Global. 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.

28. **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 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

29. **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.

30. **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." 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.

31. **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. 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.

32. **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.

33. **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. 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.

34. **AmeroGroup Limited** ("AmeroGroup") is a company organized under the laws of Belize with a registered office in Belize City, Belize. Fasciana is the beneficial owner of AmeroGroup, and Fasciana and Russo are co-signatories on AmeroGroup's bank account in Belize. AmeroGroup 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. More than \$1,000,000 in customer funds fraudulently obtained from the Offshore Common Enterprise flowed through relief defendant Coin Bank and into the AmeroGroup account in Belize. The account, which was frozen in relation to the SRO, currently has more than \$600,000 on deposit.

35. **PDT International** ("PDT") is a Florida corporation that designates, in its certificate of incorporation, its principal place of business as 3131 NW 68th Street, Fort Lauderdale, FL 33309. Proposed defendant Fasciana is PDT's registered director. PDT 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. PDT has a bank account at Southtrust Bank in Atlanta Georgia for which proposed defendant Russo is the signatory. More than \$85,000 in funds traceable to the Offshore Common Enterprise were deposited in the PDT account. These funds were used to purchase automobiles, jewelry, and adult entertainment.

36. **Capital Recovery Systems Inc.** ("CRS") is a Florida corporation that designates, in its certificate of incorporation, its principal place of business as 2501 E. Commercial Blvd., Suite 201, Fort Lauderdale FL 33308. Proposed Defendant Fasciana

is CRS's registered Director. CRS 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. CRS maintained a bank account at Podgoricka Banka in Montenegro, Yugoslavia. More than \$526,924 in Offshore Common Enterprise funds flowed through this account.

37. **Coin Financial** is a Florida corporation that designates, in its certificate of incorporation, its principal place of business as 3131 NW 68th Street, Fort Lauderdale, FL 33309. Proposed Defendant Fasciana is Coin Financial's registered Director. Coin Financial 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. Coin Financial also opened a bank account at Podgoricka Banka in Montenegro, Yugoslavia.

38. **Coin Bank SC** ("Coin Bank") is an "offshore company" in Montenegro, Yugoslavia that was established by defendant Fasciana and is owned and controlled by defendants Fasciana and Russo. 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. 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. 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.

IV. FACTUAL BACKGROUND

A. The Offshore Common Enterprise Solicitation Fraud

39. 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.

40. 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.

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

42. 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.

43. 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.

44. 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.

45. 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

46. 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.

47. Defendants' brochures and account opening documentation also fail because they down 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

48. 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.

49. 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.

50. 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 the to defendants and relief defendants.

D. Defendants Use Coin Bank as a Front

51. 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.

52. Coin Bank is used to funnel customer funds back to the defendants and relief defendants. Nearly all of the approximately \$2,000,000 of customer funds sent to Coin Bank for the alleged purpose of trading options, flowed back into accounts controlled by the defendants.

**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**

53. Paragraphs 1 through 52 are re-alleged and incorporated herein.

54. Since at least January 2001, defendants Offshore Florida, Offshore Georgia, ICM, Global, Kazanas, Garcia, Destasio, Augello and Gomez 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 statements of profitability potential 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.

55. Each misrepresentation, omission, and willful deception made since January 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.

56. Fasciana and Russo, directly or indirectly, controlled the Offshore Common Enterprise and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting these violations of Section 4c(b) of the Act, and Commission Regulations 1.1 and 32.9. Fasciana and Russo are therefore liable for these violations by operation of Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

57. Sexton and Delong willfully assisted these violations of Section 4c(b) of the Act, and Commission Regulations 1.1 and 32.9, and are therefore liable for aiding and abetting these violations by operation of Section 13(a) of the Act, 7 U.S.C. §13c(a) (2002).

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

58. Paragraphs 1 through 57 are re-alleged and incorporated herein.

59. Section 2(c)(2)(B)(ii) of the Act, 7 U.S.C. §2(c)(2)(B)(ii) (2001), 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.

60. In the case of an individual, Section 1a(12)(A)(xi) of the Act, 7 U.S.C. §1a(12)(A)(xi) (2001), 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 the Offshore Common Enterprise 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.

61. Sections 32.11 and 33.3 of the Regulations, 17 C.F.R. §§32.11, 33.3 (2002), 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.

62. Since January 2001, and continuing to the present, defendants Offshore Florida, Offshore Georgia, ICM, Global, Kazanas, Garcia, Destasio, Augello and Gomez 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) (2001), and the Commission Regulations 32.11 and 33.3(a), 17 C.F.R. §§ 32.11, 33.3(a) (2002).

63. Each foreign exchange commodity option transaction not conducted on a designated contract market made since at least January 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 Regulations 32.11 and 33.3(a).

64. Fasciana and Russo, directly or indirectly, controlled the Offshore Common Enterprise and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting these violations of Section 4c(b) of the Act, and Commission Regulations 32.11 and 33.3(a). Fasciana and Russo are therefore liable for these violations by operation of Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

65. Sexton and Delong willfully assisted these violations of Section 4c(b) of the Act, and Commission Regulations 32.11 and 33.3(a), and are therefore liable for aiding and abetting these violations by operation of Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2001).

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

66. Paragraphs 1 through 65 are re-alleged and incorporated herein.

67. 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.

68. Defendants Offshore Florida, Offshore Georgia, ICM, Global, Kazanas, Garcia, Destasio, Augello and Gomez 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 (2002).

69. Each failure to provide a required disclosure statement since at least January 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.

70. Fasciana and Russo, directly or indirectly, controlled the Offshore Common Enterprise and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting these violations of Section 4c(b) of the Act, and Commission Regulation 32.5. Fasciana and Russo are therefore liable for these violations by operation of Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

71. Sexton and Delong willfully assisted these violations of Section 4c(b) of the Act, and Commission Regulation 32.5, and are therefore liable for aiding and abetting these violations by operation of Section 13(a) of the Act, 7 U.S.C. §13c(a) (2001).

VI. RELIEF

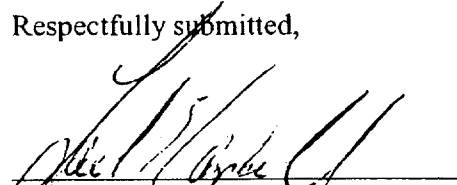
Wherefore, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), and pursuant to its own equitable powers, enter:

- 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: April 4, 2003

Respectfully submitted,



~~Lael Campbell, Trial Attorney~~

Paul Hayeck, 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