

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA

Civil Action No.

~~04-80132~~

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

GIBRALTAR MONETARY CORP., INC.,  
CHARLES I. FREMER,  
JAYSON S. KLINE,  
THOMAS J. CLANCY,  
EDWARD T. JOHNSON, and  
FOREX CAPITAL MARKETS, LLC.,

Defendants.

**CIV-PAINE**

**MAGISTRATE JUDGE  
JOHNSON**

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

1. Plaintiff, Commodity Futures Trading Commission ("CFTC" or "Commission"), an independent federal regulatory agency of the United States, brings this action to enjoin violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.* (2001), and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2003), and for its complaint against defendants Jayson Kline ("Kline"), Charles Fremer ("Fremer"), Thomas Clancy ("Clancy"), Edward Johnson ("Johnson"), Gibraltar Monetary Corporation ("Gibraltar") and Forex Capital Markets ("FXCM"), alleges as follows:

**I. SUMMARY**

2. Gibraltar is a South Florida foreign currency options boiler room, run by former associated persons ("APs") of South Florida introducing brokers ("IBs") with dubious disciplinary histories. Indeed, one of the controlling persons of Gibraltar was enjoined from

engaging in virtually identical acts of fraud as a result of a legal action brought by the Commission in the Southern District of Florida in 1992, and an administrative action brought by the Commission in 1993. Since at least May 2002 through August 2003, if not later (“the relevant time period”), Gibraltar generated at least \$879,379.50 in commissions from at least 267 members of the retail public, who invested \$3,022,998.39 to engage in trading of foreign currency option contracts through FXCM, a registered futures commission merchant (“FCM”). FXCM charged Gibraltar’s customers \$50 per round turn on trades and it received at least \$200,000 in commissions.

3. Gibraltar held itself out to the public as a full service “introducing agent” that advised investors who were unfamiliar with foreign currency trading. Gibraltar fraudulently solicited the investors through aggressive, high-pressure sales tactics, including promises of large profits and material omissions about its trading practices, the inherent risks associated with trading foreign currency options, and the disciplinary history of Kline, its president and one of its controlling persons.

4. Defendants have engaged, are engaging, or are about to engage in acts and practices that violate Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 32.9(a) and (c), 17 C.F.R. §§ 32.9(a) and (c).

5. During the relevant time period, Kline, Fremer and Clancy were Gibraltar’s president, vice-president and compliance manager, respectively, and controlled the operations of Gibraltar and its account executives (“AEs”). Kline, Fremer and Clancy knowingly induced or did not act in good faith respecting the acts of Gibraltar and its AEs and are thus liable as controlling persons for their acts and practices, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

6. Kline, Fremer and Clancy performed their actions and omissions described in the Complaint as officials and agents of Gibraltar. Therefore, Gibraltar is liable as a principal for their violations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2.

7. Gibraltar performed its actions and omissions described in the Complaint as agent of and within the scope of its business of soliciting and introducing accounts to FXCM. Therefore, FXCM is liable as a principal for Gibraltar's violations pursuant to Section 2(a)(1)(B) of the Act, and Commission Regulation 1.2.

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

9. Accordingly, pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), Plaintiff brings this action to enjoin the unlawful acts and practices of the defendants, and to compel their compliance with the provisions of the Act and regulations thereunder. In addition, the Commission seeks civil penalties, an accounting, disgorgement, restitution and such other equitable relief as the Court may deem necessary or appropriate under the circumstances.

## **II. JURISDICTION AND VENUE**

10. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission 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), in that the defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act and Commission Regulations have occurred, are occurring, or are about to occur within this district, among other places.

### **III. THE PARTIES**

#### **A. THE PLAINTIFF**

12. Plaintiff Commission is an independent federal regulatory agency that is charged with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 et seq., and regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq.

#### **B. THE DEFENDANTS**

13. Gibraltar Monetary Corporation is a Florida corporation established in May 2002 and maintains its principal place of business at 4700 NW 2<sup>nd</sup> Ave. Ste. 303, Boca Raton, Florida 33431. Gibraltar purports to be an introducing agent in foreign currency option contracts and has never been registered with the Commission in any capacity.

14. Jayson Kline resides in Boca Raton, Florida, and is the president of Gibraltar. Kline was registered as an AP with the following firms from 1987 to 1993: Multivest Options, Inc. (“Multivest”); Bachus & Stratton Commodities, Inc. (“Bachus & Stratton”); Commonwealth Financial Group, Inc. (“Commonwealth”); and Cromwell Financial Services, Inc. In addition to his duties as a registered AP, Kline was a principal, vice-president and manager of Bachus & Stratton, and a principal of Commonwealth. Kline is not currently registered with the Commission in any capacity.

15. On November 17, 1993, the U.S. District Court for the Southern District of Florida entered an order of permanent injunction against Kline that restrained and enjoined him from,

among other things, violating Section 4c(b) of the Act by committing fraud in connection with commodity options, and from failing to diligently supervise his employees and agents' handling of commodity interest accounts. *CFTC v. Bachus & Stratton Commodities, Inc. et al.*, 92-6427-CIV-PAINE (S.D. Florida November 17, 1993).

16. On December 9, 1993, the Commission filed and settled an administrative action against Kline for his actions while acting in the capacity of principal, vice-president and manager for Bachus & Stratton. The resulting Commission order contained findings that Kline supervised Bachus & Stratton's APs who engaged in fraudulent activity in connection with trading foreign currency option contracts, including making false, deceptive, or misleading representations of material fact and by failing to disclose material facts during the course of soliciting customers, all in violation of Sections 4b(a), 4c(b) and 4d of the Act, 7 U.S.C. §§ 6b(a), 6c(b) and 6d, and Sections 4.31(g), 4.41(a), 33.7(f), 33.10 and 166.3 of the Commission Regulations, 17 C.F.R. §§ 4.31(g), 4.41(a), 33.7(f), 33.10 and 166.3. *In the Matter of: Jayson Scott Kline*, Docket No. 94-8 (CFTC December 9, 1993). The Order required Kline, among other things, to cease and desist committing those violations of the Act and Commission regulations.

17. Charles Fremer resides in Coral Springs, Florida. Fremer is the vice-president of Gibraltar. From December 17, 1983 until February 5, 1990, Fremer was registered with the Commission as an AP. Fremer worked with Kline at Multivest and Bachus & Stratton. In addition to being a registered AP for Bachus & Stratton, Fremer was also a principal. Fremer is currently not registered with the Commission in any capacity.

18. Thomas Clancy resides in Sunrise, Florida. Clancy is an officer and compliance manager for Gibraltar. From August 27, 1980 until January 13, 1993, Clancy was registered with the Commission as an AP. Clancy worked with Kline at Bachus & Stratton and Commonwealth.

Clancy was also a principal of Bachus & Stratton. In addition to being registered as an AP, Clancy registered as a commodity trading advisor on October 8, 1980, and he remains registered in that capacity.

19. Edward Johnson resides in Wellington, Florida. Johnson was the primary trader at Gibraltar and made the majority of trading recommendations for customer accounts during his employment there. From August 1999 until September 2003, Johnson was registered with the Commission as an AP. Johnson is currently not registered with the Commission in any capacity.

20. Forex Capital Markets LLC is a New York corporation organized on July 14, 1999. FXCM's principal place of business is located at 32 Old Slip, 10<sup>th</sup> Floor, New York, New York. FXCM is registered as an FCM with the Commission and is a member of the National Futures Association ("NFA"), a not-for-profit self-regulatory organization for the futures industry.

#### **IV. FACTS**

##### **A. Statutory Background**

21. The term "futures commission merchant" is defined in Section 1a(20) of the Act, 7 U.S.C. § 1a(20), and is further defined in Commission Regulation 1.3(p), 17 C.F.R. § 1.3(p) as an individual, association, partnership, corporation, or trust that is engaged in the business of soliciting or accepting orders for the purchase or sale of any commodity for future delivery, or option on commodity futures contract, on or subject to the rules of any contract market and that, in or in connection with such solicitation or acceptance of orders, accepts money, securities or property to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

22. The term "introducing broker" is defined in Section 1a(23) of the Act, 7 U.S.C. 1a(23), and Commission Regulation 1.3(mm), 17 C.F.R. § 1.3(mm), as any person who, for

compensation or profit, whether directly or indirectly, is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities or property to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

23. The term “associated person” is defined in Commission Regulation 1.3(aa)(1) and (2), 17 C.F.R. § 1.3(aa)(1) and (2) as a natural person associated with any FCM or IB, as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves: (i) the solicitation or acceptance of customers’ or options customers’ orders; or (ii) the supervision of any person or persons so engaged.

#### **B. The Mechanics of Gibraltar’s Operations**

24. During the relevant time period, Gibraltar fraudulently solicited customers to trade foreign currency options in accounts managed by Gibraltar at FXCM. Customers gave the authority to trade on their behalf by completing limited power-of-attorney forms identifying “Gibraltar Monetary Corporation” as the trading agent. Gibraltar’s relationship with FXCM was exclusive in that Gibraltar agreed in writing that all of its customers’ trades would be placed and cleared through FXCM.

25. Once the customers agreed to invest, they sent their money directly to FXCM and opened an investment account. Gibraltar encouraged customers to invest at least \$5,000.

26. Gibraltar’s clients executed powers of attorney that granted Gibraltar discretion in trading their accounts. Although the power of attorney indicated that the “Trader should be diligent to closely scrutinize what transpires in the account,” Gibraltar’s APs generally applied the customers’ entire investment to the first trade.

### **C. Gibraltar's Controlling Persons and Primary Trader**

27. Kline, the President of Gibraltar, and Fremer, the Vice-President of Gibraltar, control and are responsible for Gibraltar's overall operations. They are responsible for corporate credit card accounts, overseeing payroll, hiring and firing of its employees, advertising in local newspapers, distributing promotional materials and verbal solicitations of customers. They participate in all policy decisions and implement the procedures used at Gibraltar. They train Gibraltar's AEs in customer solicitation and sales techniques.

28. During the relevant time period, neither Kline nor Fremer implemented or maintained an adequate system of internal supervision or control that monitored, assessed, or corrected Gibraltar's AEs' fraudulent solicitations of customers, fraudulent trade recommendations to customers, or fraudulent trading of customer accounts.

29. Clancy is the Compliance Manager and an officer of Gibraltar. In addition to Kline and Fremer, Clancy taught Gibraltar's AEs how to solicit customers using various sales techniques. He was also responsible for issuing verbal risk disclosures to customers after the primary trader told them what trade he would place on their behalf. He administered Gibraltar's compliance program and provided instruction to all of Gibraltar's AEs regarding compliance issues.

30. Johnson is the primary trader at Gibraltar. Johnson makes the majority of trading recommendations on behalf of customer accounts and he is responsible for soliciting customers to invest more money.

31. Johnson recommended trades to customers without explaining the inherent risks associated with buying foreign currency options. Johnson would tell customers that he was going to place them into a trade then instruct them that he or she would speak with a "floor trader" to place the trade. He also told customers that they needed to acknowledge a verbal risk



disclosure, which he characterized as “only a formality.” Actually, Clancy who was not a “floor trader” would then come onto the telephone line and give verbal risk disclosures that the customer was required to acknowledge in order to have the trade placed. After the customer acknowledgment, Johnson submitted the customer’s trade to FXCM.

**D. Gibraltar Hired Inexperienced Sales People**

32. Gibraltar solicited prospective customers by operating a foreign currency options boiler-room. Gibraltar hired AEs through local newspaper ads to engage in nationwide telephone solicitations by making cold-calls to potential customers identified on lead lists.

33. Gibraltar typically hired AEs who had little or no experience trading in the foreign exchange markets. On information and belief, several of Gibraltar’s AEs were convicted felons and/or individuals who had been expelled from membership in the NFA for previous violations of the Act, Commission regulations or NFA rules. Gibraltar offered little or no training to its AEs about the nature of, or trading in, commodity markets or foreign exchange options.

34. Gibraltar’s only requirement of its AEs was the ability to read from a script and sell. Kline, Fremer and Clancy instructed the AEs in customer solicitation and sales techniques. Kline, Fremer and Clancy held daily staff meetings encouraging the AEs to sign up customers, send as much money as possible to FXCM, and approve trades.

35. During the relevant time period, Gibraltar compensated its AEs on a weekly basis, paying them \$300 per week as a base salary and, depending upon the number of customer accounts that they generated, an extra 8% of the funds the customer sent to FXCM.

**E. Gibraltar and Its AEs Downplayed Trading Risks to Customers**

36. Gibraltar represented to prospective customers through its promotional materials, verbal solicitations and spam e-mails that it was a full-service brokerage firm that specialized in trading

foreign currency options. Gibraltar's AEs represented to its customers that its advice came from experienced experts in trading foreign currency, which was its purported justification for charging a \$200 per round turn commission on each trade that a customer had executed.

37. Gibraltar typically encouraged its customers to invest in options positions that generated the greatest amount of commissions. Gibraltar did not try to minimize customer losses and consistently recommended trades involving out of the money options that were so close to expiration that the probability of making a profit was virtually non-existent.

38. Gibraltar did not provide its customers or prospective customers with written disclosure documentation and minimized the verbal disclosures that customers received when they agreed to trades Gibraltar entered on their behalf.

39. Gibraltar has solicited and encouraged at least 267 customers to open accounts with FXCM. These customers collectively invested approximately \$3,000,000 in their FXCM accounts. The majority of Gibraltar's customers lost all or most of their investments during the same time that Gibraltar made at least \$879,379 in commissions trading their funds.

#### **F. Gibraltar's Misrepresentations and Deceptive Omissions**

40. The majority of Gibraltar's customers were unsophisticated investors who had never traded foreign currency option contracts. Defendants and its AEs fraudulently promoted Gibraltar by promising to educate customers on the fundamental and technical aspects of trading foreign currency options. AEs referred to political commentaries as being indicators of the manner in which foreign currency prices would fluctuate. AEs explained the principles of supply and demand and how it affected the foreign currency markets. This led the customers to believe that Gibraltar's AEs were experts in the markets and induced them to sign up to trade foreign currency options.

41. Gibraltar's AEs solicited additional funds from their customers by fraudulently representing to their customers that they were making profits and that they would receive even greater profits if they deposited additional funds in order to purchase more foreign currency option contracts.

42. Gibraltar's AEs made numerous false and misleading verbal representations to customers, including the following:

- a. Gibraltar could generate a double or triple return on their investment in a short period of time.
- b. Gibraltar had been in business for a very long time, when in fact, Gibraltar had only been in business since May 2002.
- c. Gibraltar's AEs were experienced traders in foreign currency options markets, when in fact Gibraltar's AEs had little or no experience in trading foreign currency option contracts.
- d. Clients would be able to check their account balances through FXCM's website, when in fact many customers were not allowed access to the website.
- e. Gibraltar had existing customers who were realizing between 180% to 300% return on their investments, when in fact the majority of its customers were losing their entire investment.
- f. For every \$.01 movement in the foreign currency market that they could make \$1,000 in profit, when in fact, AEs did not explain to customers the enormous risk associated with trying to achieve a \$1,000 profit from a one-cent movement in the market. Customers were not told the enormous capital that they would need to invest in order to achieve that result, the amount of contracts they needed to purchase or the volatility in the market that needed to be present.

g. The falling U.S. dollar caused the Euro to double in its value and that it was the perfect opportunity to make a profit, when in fact, the declining value of the dollar was not the only contributing factor in the movement of the Euro and market conditions. At the time Gibraltar's AEs made representations about the failing American economy, the Euro was not always doing better than the American dollar.

h. The war with Iraq would increase the likelihood of profiting in the foreign currency markets, when in fact the available market information is already reflected in the premium price of an option on a futures contract.

i. An initial investment of \$5,000 for call options can return a profit of \$10,000 to \$20,000 in a matter of a few days, without advising customers as to the highly unlikely event of such profit or Gibraltar's actual experience in trading customer money.

j. Gibraltar would provide its customers with individualized and personalized service, when in fact, Gibraltar instructed, encouraged or allowed their AEs to make identical trading recommendations to the firm's customers without regard to the individual customers' trading objectives or individual risk tolerances.

k. Gibraltar would help educate prospective customers and existing customers about the foreign currency markets, when in fact, they did not explain to customers why they were placing them into trades and how they were protecting their investments.

43. Gibraltar and its AEs omitted to state several matters that would have been material to a customer's or prospective customer's decision to invest funds. These omissions included, but were not limited to, the following:

a. The fact that the majority of its customers lost most if not all of their investment.

b. That some foreign currency options traded by Gibraltar for its customers were “deep-out-of-the money” options for which there would have to be a dramatic price movement in order to achieve the high profits Gibraltar touted.

c. Gibraltar’s AEs were inexperienced sales people and that some of them had criminal backgrounds.

d. That Kline, Gibraltar’s president, had been permanently enjoined from committing commodity options fraud by a federal court.

e. That the Commission had ordered Kline to cease and desist from committing commodity options fraud, and that it prohibited him from seeking to register with the Commission in any capacity or to act in any capacity that required such registration.

44. The majority of Gibraltar’s customers had to rely on their AEs’ representations regarding their account balances and profits. Gibraltar falsely represented the trading status and activity of customer accounts and made numerous misrepresentations to them regarding profits. FXCM sent Gibraltar’s customers account statements only if they called and made a request directly to FXCM.

**G. Gibraltar is an Agent of FXCM**

45. On April 11, 2002, Gibraltar, by its president Kline, entered into an agreement (“Introducing Agreement”) with FXCM. The Introducing Agreement included the following provisions:

- a. Gibraltar agreed to refer prospective customers exclusively to FXCM;
- b. Gibraltar agreed to assess the qualifications of the prospective customers to trade with FXCM according to standards established by FXCM;

- c. Gibraltar agreed to ensure to the best of its ability that customers had read and fully understood the FXCM contract and risk disclaimers;
  - d. Gibraltar agreed to notify FXCM in writing of any customer complaint or pending or threatened action or proceeding in respect of any matters relating to the customer's FXCM account;
  - e. Gibraltar agreed to notify FXCM in writing of the assertion of any material claim against Gibraltar, or of the institution against Gibraltar of any action, investigation or proceeding by a regulatory agency, exchange or board of trade; and
  - f. Gibraltar agreed to cooperate with FXCM by furnishing all documents necessary to conduct an investigation and defend a claim involving Gibraltar.
46. On information and belief, the agreement was a form document drafted by FXCM.
47. Gibraltar directed its customers to send funds directly to FXCM.
48. FXCM, not Gibraltar, generated the account statements.
49. Gibraltar used only account opening forms and disclosures provided by FXCM.
50. FXCM knew or should have known about Kline's disciplinary history because such information was readily available online from the NFA of which FXCM is a member.
51. FXCM was aware that Gibraltar's customers were not receiving regular monthly account statements. Some Gibraltar customers had to contact FXCM to learn the status of their account. Others had to rely on the representations of Gibraltar regarding the status of their account. Gibraltar's customers were supposed to be able to gain access to their accounts via FXCM's website. However, Gibraltar's customers were unable to gain access to their account information because FXCM's website was not functioning properly.

52. During the relevant time period, Gibraltar introduced at least 267 customers to FXCM. Based on Gibraltar's referrals, FXCM accepted \$3,022,998.39 in customer funds. FXCM received a \$50 per round turn commission from each of Gibraltar's referrals. Gibraltar was paid approximately \$879,379 in commissions during the relevant time period, while the majority of the customers' funds were lost trading or paid to Gibraltar and FXCM in compensation and fees.

## **VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

### **COUNT I**

#### **VIOLATIONS OF SECTION 4c(b) OF THE ACT AND COMMISSION REGULATION 32.9(a) AND (c): COMMODITY OPTIONS FRAUD**

53. Paragraphs 1 through 52 are realleged and incorporated herein.

54. Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Commission Regulation 32.9(a) and (c), 17 C.F.R. § 32.9 (a) and (c) provide that in or in connection with commodity option transactions, it shall be unlawful for any person directly or indirectly to cheat or defraud or attempt to cheat or defraud any other person, or 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 contract.

55. During the relevant time period, Gibraltar, its AEs and Johnson have made false, deceptive or misleading statements or omissions of material fact in connection with the solicitation and trading of customer accounts. Gibraltar, its AEs and Johnson deceived customers in connection with commodity option transactions by falsely overstating profit potential and minimizing the risk of loss associated with their trading in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c).

56. Defendants Kline, Fremer and Clancy, as principals and managers of Gibraltar, directly or indirectly controlled Gibraltar, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Complaint. Pursuant to 13(b) of the Act, 7 U.S.C. § 13c(b), Defendants Kline, Fremer and Clancy are liable for Gibraltar's violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulations 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c).

57. Kline, Fremer and Clancy performed their actions and omissions described in the Complaint as officers and agents of Gibraltar. Therefore, Gibraltar is liable as a principal for their violations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2.

58. Gibraltar engaged in the illegal conduct alleged in this Count within the scope of its office as an agent of FXCM. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2, FXCM is liable as a principal for the illegal conduct of its agent Gibraltar

## COUNT II

### **JAYSON KLINE'S VIOLATION OF SECTION 6(c) OF THE ACT: VIOLATING THE COMMISSION'S CEASE AND DESIST ORDER**

59. The allegations contained in paragraphs 1 through 58 are realleged and incorporated herein by reference.

60. On December 9, 1993, the Commission issued an Order pursuant to Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b and 15. The Order directed Kline to cease and desist from violating Sections 4b(a), 4c(b) and 4o of the Act, and Commission Regulations 4.31(g), 4.41(a), 33.7(f), 33.10 and 166.3.



61. Pursuant to Section 6(c) of the Act, 7 U.S.C. § 9, the Commission may bring an action for violations of a Commission order.

62. Through the conduct described above, Kline has violated the Order in that he acted as a controlling person of Gibraltar and Gibraltar violated Section 4c(b) of the Act.

63. Each act by Kline in violation of the Order, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 6(c) of the Act.

#### **V. RELIEF REQUESTED**

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

A. Find Defendants Gibraltar, Kline, Fremer, Clancy, Johnson and FXCM liable for violating Sections 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c);

B. Find Defendant Kline liable for violating Section 6(c) of the Act, 7 U.S.C. § 9;

C. Enter orders of preliminary and permanent injunction enjoining Defendants Gibraltar, Kline, Fremer, Clancy, Johnson and FXCM and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Cheating or defrauding or attempting to cheat or defraud any other person, or deceiving or attempting to deceive any other person by any means whatsoever in connection with an offer to enter into, the entry of or confirmation of the execution of, any commodity option contract, in violation of Section 4c(b) of the Act and Regulation 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c);
2. Controlling any person who has violated the above Sections of the Act or Regulations, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b); and

3. Acting as a principal of any agent who has violated the above Sections of the Act or Regulations, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

D. Enter a statutory restraining order and an order of preliminary injunction pursuant to Section 6c(a) of the Act restraining Gibraltar, Kline, Fremer, Clancy, Johnson and FXCM and all persons insofar as they are acting in the capacity of their agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;
2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested by those representatives, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations; or

E. Enter a statutory restraining order and an order of preliminary injunction pursuant to Section 6c(a) of the Act restraining Gibraltar, Kline, Fremer, Clancy, and Johnson and all persons insofar as they are acting in the capacity of their agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds

on deposit in any financial institution, bank or savings and loan account held by, under the control of, or in the name of the Defendants.

F. Enter an order directing that Gibraltar, Kline, Fremer, Clancy, Johnson and FXCM provide the Plaintiff immediate and continuing access to their books and records, make an accounting to the Court of all of their assets and liabilities, together with all funds they received from and paid to Gibraltar's commodity options customers, including the names, addresses and telephone numbers of any such persons from whom they received such funds from May 1, 2002 up to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from Gibraltar's commodity option customers, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from May 2002 up to and including the date of such accounting.

G. Enter an order requiring Gibraltar, Kline, Fremer, Clancy and Johnson immediately to identify and provide an accounting for all assets and property that they currently maintain outside the United States, including but not limited to all funds on deposit in any financial institution, futures commission merchants, bank or savings and loan account held by, under the control of, or in the name of the Gibraltar, Kline, Fremer, Clancy and Johnson whether jointly or otherwise, and requiring them to repatriate all funds held in such accounts by paying them to the Clerk of the Court or as otherwise ordered by the Court, for further disposition in this case.

H. Enter an order prohibiting Gibraltar, Kline, Fremer, Clancy and Johnson all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of the Defendants, and all persons insofar as they are acting in active

concert or participation with Defendants who receive actual notice of the Order by personal service or otherwise, from:

1. Directly or indirectly soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity futures, options on commodity futures, foreign currency futures or options on foreign currency futures;
2. Engaging in, controlling, or directing the trading of any commodity futures, options on commodity futures, foreign currency futures or options on foreign currency futures, on their own behalf or for on behalf of any other person or entity, whether by power of attorney or otherwise;
3. Introducing customers to any other person engaged in the business of trading in commodity futures, options on commodity futures, foreign currency futures or options on foreign currency futures;
4. Issuing statements or reports to others concerning the trading of commodity futures, options on commodity futures, foreign currency futures or options on foreign currency futures;
5. Placing orders, giving advice or price quotations or other information in connection with the purchase or sale of commodity futures, options on commodity futures, foreign currency futures or options on foreign currency futures; or
6. Otherwise engaging in any business activities related to commodity futures, options on commodity futures, foreign currency futures or options on foreign currency futures.

I. Enter an order requiring Gibraltar, Kline, Fremer, Clancy, Johnson and FXCM to disgorge to any officer appointed or directed by the Court or directly to their customers all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest.

J. Enter an order requiring Gibraltar, Kline, Fremer, Clancy, Johnson and FXCM to make restitution by making whole each and every customer whose funds were received or

utilized by them in violation of any provisions of the Act or Regulations thereunder as described herein, including pre-judgment interest.

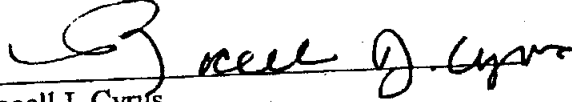
K. Enter an order requiring Gibraltar, Kline, Fremer, Clancy, Johnson and FXCM to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of \$120,000 for each violation or triple the monetary gain to Defendants for each violation of the Act and Regulations described herein.

L. Enter an order requiring Gibraltar, Kline, Fremer, Clancy, Johnson and FXCM to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and

M. Enter an order for such further relief, as this Court may deem necessary and appropriate under the circumstances.

Date: Feb. 10, 2004

Respectfully submitted,

  
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