

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

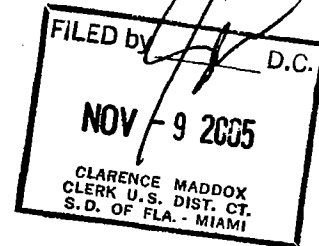
No. 05-60328-CIV-Altonaga

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

MERCURY PARTNERS, INC., a Bahamian
corporation, MERCURY FINANCIAL PARTNERS,
INC., a Florida corporation, MERCURY
MANAGEMENT, L.C., a Florida limited liability
company, ANDREW BARTOS, an individual,
BRUCE N. CROWN, an individual, and MICHAEL
MORGAN, an individual,
Defendants.



**ORDER OF DEFAULT JUDGMENT, PERMANENT INJUNCTION AND ANCILLARY
RELIEF AGAINST DEFENDANT MERCURY FINANCIAL PARTNERS, INC.**

On March 7, 2005, the Commission filed the Complaint in this matter alleging fraud in violation of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 1 (2002) *et seq.* The Complaint seeks injunctive relief, restitution in the amount invested by customers of the firm and civil monetary penalties. *See* Declaration of William L. Small (Small Decl.), Exhibit 1.

On March 24, 2005, pursuant to Federal Rule of Civil Procedure 4(h)(1), a process server served the Complaint, the Summons and other papers in this matter at the home of Andrew Bartos, the president and registered agent of Mercury Financial Partners. *See* Small Decl. Exhibits 2 and 3.

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On March 30, 2005, the Commission filed an Amended Complaint. Small Decl., Exhibit 4. On May 14, pursuant to Federal Rule of Civil Procedure 4(d), Andrew Bartos waived service on behalf of Mercury Financial Partners, Inc. Small Decl., Exhibit 5.

To date, Mercury Financial Partners has failed to file an answer or other responsive pleading in this matter. On September 14, 2005, the Clerk entered a default against Mercury Partners, Inc. On September 23, 2005, this Court entered an order directing the Commission to file a motion for default judgment. On October 17, 2005, the Commission filed a Motion for Entry of Default Judgment, Permanent Injunction, and Ancillary Relief against Mercury Financial Partners (“Motion for Default”) and the Declarations of William L. Small (“Small Decl.”) and , Exhibit 6 to the Small Declaration, the Declaration of Lacey Dingman.

II. ENTRY OF DEFAULT JUDGMENT

The Court has carefully considered the Complaint, the allegations of which are well-pleaded and taken as true, the Motion for Default and the accompanying declarations., and the entire record in this case. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. Therefore, this Court directs the entry of findings of fact, conclusions of law, a permanent injunction, and other equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 and hereby **GRANTS** the Commission’s Motion for Default and enters findings of fact and conclusions of law finding Mercury Partners liable as to all violations alleged against it in the Complaint. Accordingly, the Court now issues the following Order for Default Judgment, Permanent Injunction, and Ancillary Relief against Defendant Mercury Partners (“Order”).

III. FINDINGS OF FACT

A. Jurisdiction and Venue

This Court has jurisdiction over this action pursuant to Sections 2(c)(2)(B) and 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person 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 pursuant to the Act.

Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e), because Mercury Partners was found in, inhabited, or transacted business in this District, and the acts and practices in violation of the Act occurred within this District.

B. Party to this Order

Defendant Mercury Financial Partners is a Florida corporation. Mercury Financial Partners does not maintain an office anywhere in the state of Florida. The address provided to the Florida Department of State, 2240 N.E. 40th Street, Pompano Beach, Florida, 33064, does not exist. Mercury Financial Partners has never been registered with the Commission in any capacity.

C. Mercury Financial Partners Fraudulently Misappropriated Mercury Partners Customer

Between August 2004 and November 2004, Mercury Partners, Inc. ("Mercury Partners"), Mercury Financial Partners and Mercury Management engaged in a scheme to misappropriate \$148,756. To achieve the misappropriation, a scheme was designed whereby brokers solicited customers by telephone from its office in Boca Raton to purportedly purchase foreign currency options. To entice prospective customers to send their money to Mercury Partners, the firm's brokers made false promises about the benefits of purchasing foreign currency options. Mercury

Partners fraudulently solicited at least nine prospective customers. Mercury Partners' brokers told these customers that they would earn high profits with little or no risk. These brokers also omitted to disclose the risk of loss involved with purchasing foreign currency options. In some cases, the brokers falsely promised their customers that they would place stop-loss orders on their accounts and guaranteed that the customers would not lose more than a certain percentage of their option premium. As a result of these misrepresentations and omissions, nine customers sent \$148,756 to Mercury Partners to purchase foreign currency options. Further, Mercury Partners brokers discussed with their prospective customers the idea of paying an "option premium" to enter into the foreign currency options at issue.

Rather than using its customers' money to purchase options, Mercury Partners simply misappropriated its customer funds. In furtherance of the scheme, Mercury Partners provided statements to some their customers deceiving them into believing that they had actually purchased foreign currency options, and other statements informing them that those foreign currency options had expired worthless. In three cases, Mercury Partners' customer money was deposited into U.S. bank accounts belonging to Mercury Financial Partners, one of its associated entities. In each case, Mercury Partners customers made their checks payable to Mercury Partners and sent their checks to Mercury Partners's office in Boca Raton, Florida. Mercury Partners accepted customers' money, but failed to purchase foreign currency options for its customers. Instead, it passed the money onto various associated entities including Mercury Financial Partners, and deposited its customers' funds as follows:

- a. On October 16, 2004, Bob Martin sent a check for \$4,000 to Mercury Partners offices in Boca Raton, Florida. The money was deposited into Mercury Financial

Partners' bank account at SunTrust and then paid directly to Mercury Partners employees.

- b. On October 8, 2004, Mike Schulz sent a check for \$7,860 to Mercury Partners' offices in Boca Raton, Florida. The money was deposited into a Mercury Financial Partners' bank account at BankAtlantic and then paid directly to Mercury Partners' employees.
- c. On October 8, 2004, Mike Schulz sent a check for \$7,860 to Mercury Partners' offices in Boca Raton, Florida. The money was deposited into a Mercury Financial Partners's bank account at BankAtlantic and then paid directly to Mercury Partners' employees.
- d. On September 12, 2004, Leonard Salzman sent a check for \$3,000 000 to Mercury Partners' offices in Boca Raton, Florida. The money was deposited into a personal bank account at Bank Atlantic titled under the name "Mercury Financial" and used to pay Mercury Partners' employees.
- e. On September 2, 2004, Benton Gatewood sent a check for \$10,000 to Mercury Partners' offices in Boca Raton, Florida. The money was deposited into Mercury Management's bank account at Wachovia and then used to pay the personal expenses of a Mercury Partners' employee.
- f. On September 6, 2004, Mike Schulz sent a check for \$37,000 to Mercury Partners' offices in Boca Raton, Florida. The money was deposited into Mercury Partners' bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners' employees.

- g. On September 1, 2004, Asako Ebata sent a check for \$20,146 to Mercury Partners' offices in Boca Raton, Florida. The money was deposited into Mercury Partners' bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners' employees.
- h. On August 26, 2004, Newman sent a third and fourth check for \$2183 and \$2507 to Mercury Partners offices in Boca Raton, Florida. The money was deposited into Mercury Partners' bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners' employees.
- i. On August 23, 2004, Talbot-Keith sent a second check for \$29,750 to Mercury Partners' offices in Boca Raton, Florida. The money was deposited into Mercury Partners' bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners' employees.
- j. On August 23, 2004, Newman sent a second check for \$6,310 to Mercury Partners' offices in Boca Raton, Florida. The money was deposited into Mercury Partners' bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners employees.
- k. On August 20, 2004, Asako Ebata sent a check for \$20,146 to Mercury Partners' offices in Boca Raton, Florida. The money was deposited into Mercury Management's bank account at Wachovia and then used to pay the personal expenses of a Mercury Partners employee.
- l. On August 19, 2004, Doug Jones sent a check for \$3,000 to Mercury Partners' offices in Boca Raton, Florida. The money was deposited into Mercury Partners'

bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners employees.

- m. On August 19, 2004, Noel Newman sent a check for \$3,000 to Mercury Partners' offices in Boca Raton. The money was deposited into Mercury Partners' bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners employees.
- n. On August 18, 2004, Linda Talbot-Keith sent a check for \$10,000 to Mercury Partners' offices in Boca Raton, Florida. The money was deposited into Mercury Partners' bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners employees.

In each case, after the customer money was deposited into these bank accounts, the money was paid directly to Mercury Partners employees. Customer money was never used to purchase foreign currency options.

IV. CONCLUSIONS OF LAW

A. The Commission Possesses Jurisdiction over these Transactions

The Court finds that:

Pursuant to the Act, the Commission possesses jurisdiction "over, an agreement, contract, or transaction in foreign currency that is a contract of sale of a commodity for future delivery (or an option on such a contract), or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934) . . ." Section 2(c)(2)(B)(i) of the Act, 7 U.S.C. § 2(c)(2)(B)(i) (emphasis added).

In the instant case, Mercury Partners clearly solicited its customers to purchase foreign currency options. Further, Mercury Partners brokers discussed with their prospective customers

the idea of paying an “option premium” to enter into the foreign currency options at issue. Those customers, by electing to enter into these transactions with Mercury Partners, clearly intended to purchase foreign currency options and believed that they had purchased foreign currency options. Indeed, Mercury Partners provided statements to some their customers deceiving them into believing that they had actually purchased foreign currency options, and other statements informing them that those foreign currency options had expired worthless. Because Mercury Partners offered foreign currency options to its customers and the customers believed they were purchasing foreign currency options, pursuant to Section 2(c)(2)(B)(i), 7 U.S.C. § 2(c)(2)(B)(i), Mercury Partners transactions are governed by the Act.

Pursuant to section 2(c)(2)(B)(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(ii), the Commission shall have jurisdiction over any agreement, contract, or transaction in foreign currency . . . so long as the contract is “offered to, or entered into with, a person that is not an eligible contract participant,” (meaning the person is a retail customer) unless the counterparty, or the person offering to be the counterparty, is a regulated entity, as enumerated therein, *i.e.*: (I) a financial institution; (II) a registered securities broker or dealer or a registered futures commission merchant; (III) an associated person of a registered broker or dealer or an affiliated person of a registered futures commission merchant, concerning the financial or securities activities of which the registered person makes and keeps records under section 4f(c)(2)(B) of the Act; (IV) an insurance company; (V) a financial holding company; or (VI) an investment bank holding company. Pursuant to Section 1a(12)(A)(xi) of the Act, 7 U.S.C. §1a, an eligible contract participant is an individual who has total assets in excess of: a) \$10 million; or b) \$5 million and who enters the transaction “to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.”

All of Mercury Partners' foreign currency options transactions were offered to or entered into with persons who are not eligible contract participants; rather, they are members of the retail investing public. Moreover, the transactions did not involve any of the enumerated counterparties. Because Mercury Partners, a non-enumerated counterparty, was offering foreign currency option contracts to members of the retail public, the Commission possesses jurisdiction to regulate these transactions.

B. Mercury Financial Partners Violated Section 4c(b) and Regulation 32.9 By Misappropriating Customer Money

Mercury Financial Partners misappropriated customer funds in violation of the Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Regulation 32.9, 17 C.F.R. § 32.9. Section 4c(b) of the Act, states:

No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.

Regulation 32.9 states that in connection with all option transactions,

It shall be unlawful for any person directly or indirectly... (a) To cheat or defraud or attempt to cheat or defraud any other person...

(b) To make or cause to be made to any other person any false

report or statement ... (c) To deceive or attempt to deceive any other person by any means whatsoever; in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction.

Mercury Financial Partners misappropriated customer funds in violation of the Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Regulation 32.9, 17 C.F.R § 32.9. As detailed above, Mercury Financial Partners obtained customer money from Mercury Partners, and deposited the money into a Mercury Financial or Mercury Financial Partners account, and then paid the money directly to Mercury Partners employees.

Mercury Financial Partners's misappropriation of funds entrusted to it for trading purposes is "willful and blatant fraudulent activity," *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978), that clearly violates Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9, 17 C.F.R. § 32.9(a). *CFTC v. Noble Wealth Data Info. Serv., Inc.*, 90 F. Supp. 2d at 687 (defendants defrauded investors by diverting investor funds for operating expenses and personal use); *CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (defendant misappropriated customer funds entrusted to her by soliciting investor funds for trading , trading only small percentage of those funds, while disbursing the rest of funds to other investors, herself, and her family); *In re Lincolnwood Commodities, Inc.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,986 at 28,255 (1984) (Commission affirmed holding that defendant violated Act when he "diverted to his own use funds entrusted to him by or on behalf of his customers").

Mercury Financial Partners' failure to use customers' funds to purchase foreign currency options as Mercury Partners brokers represented to its customers constituted fraud in violation of Section 4c(b) of the Act and Regulation 32.9.

V. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

Mercury Financial Partners, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Mercury Financial Partners, and

all persons insofar as they are acting in active concert or participation with Mercury Financial Partners who receive actual notice of this order by personal service or otherwise are permanently restrained, enjoined, and prohibited, directly or indirectly:

(a) from cheating or defrauding or attempting to cheat or defraud any other person; (b) from making or causing to be made to any other person any false report or statement thereof or causing to be entered for any person any false record thereof; (c) from deceiving or attempting to deceive any other person by any means whatsoever; in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction in violation of 4c(b) of the Commodity Exchange Act, as amended and Regulation 32.9, 17 C.F.R. § 32.9..

IT IS HEREBY FURTHER ORDERED THAT:

Mercury Financial Partners, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Mercury Financial Partners, and all persons insofar as they are acting in active concert or participation with Mercury Financial Partners who receive actual notice of this order by personal service or otherwise are permanently restrained, enjoined, and prohibited from directly or indirectly:

1. making sales solicitations to customers that misrepresent or omit material facts regarding the likelihood of potential profits,
2. making sales solicitations to customers that falsely advise customers that they can make large profits based on known or expected events or seasonal trends, or omit to advise customers that such events or trends are already factored into the price of commodity futures and options;

3. making sales solicitations to customers that misrepresent the risk of loss or fail to disclose the actual track record of the broker or firm;
4. misappropriating funds that belong to customers;
5. from committing fraud; and,
6. from engaging in any commodity-related activity, including soliciting new customers.

VI. RESTITUTION AND CIVIL MONETARY PENALTY

IT IS HEREBY FURTHER ORDERED:

A. Restitution

Mercury Financial Partners shall be jointly and severally liable for full restitution of \$148,756.00 plus post-judgment interest to accrue beginning on the date this Order is entered and payable at the interest rate set forth in 28 U.S.C. § 1961, to all persons who gave funds, either directly or indirectly, to Defendants as a result of their course of illegal conduct alleged in the Complaint. Pre-judgment interest shall be determined by using the underpayment rate established quarterly by the Internal Revenue Service ("IRS") pursuant to 26 U.S.C. § 662(a)(2) from August 2001 to the date of this Order.

Mercury Financial Partners shall pay its restitution obligation set forth above to the National Futures Association ("NFA"), which shall be designated as the "Monitor" for the purpose of distributing any funds paid as restitution, for the period beginning with the date of entry of this Order and continuing until distribution of the complete restitution obligation called for by this Order. The Commission shall provide the Monitor with a list of persons ("Mercury Financial Partners Customer List"), attached hereto as Exhibit A, (excluding the \$50,000 paid directly to the Defendant Crown) to whom restitution shall be made. Omission from the

Mercury Financial Partners Customer List shall in no way limit the ability of any customer to seek recovery from Mercury Financial Partners, or any other person or entity. Further, the amounts contained in the Mercury Financial Partners Customer List shall not limit the ability of any customer to prove that a greater amount is owed from Mercury Partners, or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law. The Monitor shall make periodic distributions of funds obtained from Mercury Financial Partners, as restitution payments to customers.

Restitution payments shall be made in an equitable fashion as determined by the Monitor to individuals contained on the Mercury Financial Partners Customer List and to any other Mercury Financial Partners Customer List upon sufficient proof of his or her purchase of options from Defendants. All restitution payments as set forth in this paragraph shall be made by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Daniel Driscoll, Monitor, National Futures Association, 200 W. Madison St., #1600, Chicago, IL 60606-3447 under a cover letter that identifies Chase, LaGorio, Obando, or UFHC and the name and docket number of the proceedings. Defendants shall simultaneously transmit a copy of the cover letter and the form of payment to Gregory Mocek, or his successor, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

B. Civil Monetary Penalty

The Court is assessing a penalty of \$1,080,000. Mercury Financial Partners shall submit payment of the civil monetary penalty to the Commission, Division of Enforcement, 1155 21st Street, N.W., Washington, D.C. 20581 Attention: Ms. Dennese Posey. Payment must be made

by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the U.S. Commodity Futures Trading Commission.

Payment(s) shall include a cover letter that identifies the entity on whose behalf payment is made and the name and docket number of this proceeding. Mercury Financial Partners shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

C. Miscellaneous

If any provision of this Order, or the application of any provision or circumstance, is held invalid, the remainder of the Order, and the application of the provision to any other person or circumstance, shall not be affected by the holding.

Copies of this Order may be served by any means, including facsimile transmission, upon any financial institution, or any other entity or person that may have possession, custody or control of any documents or assets of Mercury Financial Partners that may be subject to any provision of this Order.

Within seven (7) days after the entry of this Order, Mercury Partners shall serve upon the Commission a signed acknowledgement that it has been served with the Order.

Mercury Financial Partners shall serve any notices or materials required by this Order, and any applicable notices required by the Federal Rules of Civil Procedure, upon the Mercury Partners by delivering a copy to the Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, D.C. 20581, Attention: William L. Small.

Mercury Financial Partners shall prepare and file with the Court, within thirty (30) days of the date of this Order, an accounting for the period August 1, 2004 to the date of such

accounting. The accounting shall include the following: (1) all of Mercury Financial Partners' assets and liabilities, identifying their value, nature and location, including but not limited to all real and personal property, and all bank, credit union, checking, commodity or security accounts, either directly or indirectly under the possession or control of Mercury Financial Partners, wherever situated; and (2) transfers of real and personal property; the accounting shall include a detailed explanation of the circumstances under which any documentary evidence (including computer data) which would support the foregoing accounting has been destroyed, lost, misplaced or otherwise become unavailable. The accounting shall be made under oath attesting to a full and complete accounting and shall be signed by an officer of Mercury Financial Partners. A copy of the accounting shall be provided to the Commission.

This Court shall retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of the Court.

All aspects of the Court's Order remain in full force and effect, unless specifically lifted or altered in this Order or any subsequent Order of this Court.

WHEREFORE, there being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order.

SO ORDERED, at Miami, Florida on this 9 day of November, 2005.



THE HONORABLE CECILIA ALTONAGA

Exhibit A to Order
Customer Deposits and Withdrawals

<u>Date</u>	<u>Customer</u>	<u>Bank Account Where Funds Were Deposited</u>	<u>Amount</u>
9/30/2004	Talbot-Keith, Linda	BankAtlantic (Bruce Crown)	\$50,000.00
		BankAtlantic (Bruce Crown) Total	\$50,000.00
10/8/2004	Schulz, Mike	BankAtlantic (Mercury Financial Partners)	\$7,860.00
		BankAtlantic (Mercury Financial Partners) Total	\$7,860.00
9/12/2004	Salzman, Leonard	BankAtlantic (Mercury Financial)	\$3,000.00
		BankAtlantic (Mercury Financial) Total	\$3,000.00
8/27/2004	Newman, Noel	Based on Statement from Mercury Partners, Inc.	\$2,507.00
8/20/2004	Jones, Doug	Based on Statement from Mercury Partners Inc.	\$3,000.00
		Based on Statement from Mercury Partners Inc. To	\$3,000.00
8/18/2004	Talbot-Keith, Linda	Singer & Friedlander (Mercury Partners)	\$10,000.00
8/19/2004	Newman, Noel	Singer & Friedlander (Mercury Partners)	\$3,000.00
8/23/2004	Newman, Noel	Singer & Friedlander (Mercury Partners)	\$6,310.00
8/23/2004	Talbot-Keith, Linda	Singer & Friedlander (Mercury Partners)	\$29,750.00
8/26/2004	Newman, Noel	Singer & Friedlander (Mercury Partners)	\$2,183.00
9/1/2004	Ebata, Asako	Singer & Friedlander (Mercury Partners)	\$20,146.00
9/6/2004	Schulz, Mike	Singer & Friedlander (Mercury Partners)	\$37,000.00
		Singer & Friedlander (Mercury Partners) Total	\$108,389.00
10/16/2004	Martin, Bob	SunTrust (Mercury Financial Partners)	\$4,000.00
		SunTrust (Mercury Financial Partners) Total	\$4,000.00
8/20/2004	Ebata, Asako	Wachovia (Mercury Management)	\$10,000.00
9/2/2004	Gatewood, Benton	Wachovia (Mercury Management)	\$10,000.00
		Wachovia (Mercury Management) Total	\$20,000.00
		Grand Total	\$198,756.00