

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Civil Action No. _____

04-60744

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

FIRST AMERICAN INVESTMENT SERVICES, INC.,
STEVE KNOWLES,
MICHAEL SAVITSKY,
ADAM MILLS,
GREG ALLOTTA,
and JAMES EULO,

Defendants.

CIV. HURLEY

W. HOPKINS

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U.S. DISTRICT COURT
S.D. OF FLA - FTL

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

I.

SUMMARY

1. During at least December 2002 through August 2003 (the "relevant time period"), First American Investment Services, Inc. ("First American") and several of its employees, including, but not limited to, Michael Savitsky ("Savitsky"), Adam Mills ("Mills"), Greg Allotta ("Allotta") and James Eulo ("Eulo") fraudulently solicited members of the public with high pressure sales pitches to open accounts to trade options on commodity futures contracts ("options") by misrepresenting, and failing to disclose, material facts concerning, among other things: (i) the likelihood that a customer would realize large profits from options trading; (ii) the

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Clarification of work.
By *[Signature]*
Date 6/7/04

risk involved in trading options; and (iii) the poor performance record of First American customers trading options.

2. First American, Savitsky, Mills, Allotta, and Eulo have engaged, are engaged or are about to engage in acts and practices that violate certain anti-fraud provisions of the Commodity Exchange Act, as amended ("Act"), and the Regulations promulgated thereunder ("Regulations") relating to fraud in the purchase and sale of options, i.e., Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) (2003).

3. During the relevant time period, defendant Steve Knowles ("Knowles") (First American, Savitsky, Mills, Allotta, Eulo and Knowles are hereinafter collectively referred to as the "defendants"), was a principal of, president of, and controlled the operations of, First American and its associated persons ("APs"). Further, Knowles did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations. Knowles is thus liable as a controlling person for First American's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") brings this action to enjoin defendants' unlawful acts and practices and to compel their compliance with the Act and Regulations. In addition, the Commission seeks civil monetary penalties, restitution to customers for losses proximately caused by defendants' fraud, disgorgement of defendants' ill-gotten gains, and such other relief as this Court may deem necessary or appropriate.

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

II.

JURISDICTION AND VENUE

6. The Act establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts and options on commodity futures. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that, whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

7. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because defendants are found in, inhabit, or transact business in this District or the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places. In particular, First American was a Florida corporation with its principal business address in Deerfield Beach, Florida which defendant Knowles managed. Defendants Savitsky, Mills, Allotta and Eulo solicited customers from First American's Deerfield Beach business office.

III.

THE PARTIES

8. Plaintiff Commission is a federal independent regulatory agency charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 et seq., and the Regulations promulgated thereunder.

9. Defendant First American Investment Services, Inc. was throughout the relevant time period a Florida corporation with its principal place of business at 771 Siesta Key Tr., #1014, Deerfield Beach, Florida, 33441. First American has been registered with the Commission as an introducing broker ("IB") from February 4, 2002 through the present.

10. Defendant Steve Knowles, age 44, who resides in Deerfield Beach, Florida, was the president and a principal of First American from September 11, 2002 to August 25, 2003. Knowles was also registered as an AP of First American from September 5, 2002 to August 25, 2003. Knowles is currently a registered principal and president of Safeguard Financial Holdings, a registered futures commission merchant ("FCM"), and a principal of U.S. Capital Management, Inc., a registered IB.

11. Defendant Michael Savitsky, age 24, who resides in Coconut Creek, Florida, was registered as an associated person ("AP") of First American from September 5, 2002 to August 11, 2003. He is currently registered as an AP of United Investors Group, Inc., a registered IB located in Boca Raton, Florida.

12. Defendant Adam Mills, age 22, who resides in Pompano Beach, Florida, was registered as an AP of First American from September 5, 2002 to July 21, 2003. He is currently registered as an AP of Futurctech Trading Group, Inc., a registered IB located in Delray Beach, Florida.

13. Defendant Greg Allotta, age 47, who resides in Boca Raton, Florida, was registered as an AP of First American from September 5, 2002 to August 11, 2003. He is currently registered as an AP of United Investors Group, Inc. in Boca Raton, Florida.

14. Defendant James Eulo, age 28, who resides in Deerfield Beach, Florida, was registered as an AP of First American from September 5, 2002 to July 1, 2003. He is currently registered as an AP of Futuretech Trading Group, Inc. in Delray Beach, Florida.

IV.

FACTUAL STATEMENT

A. Statutory Background

15. 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), with certain qualifications, 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, on or subject to the rules of any contract market or derivatives transaction execution facility 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.

16. 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), with certain qualifications, as any person who, 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 or derivatives transaction execution facility who does not accept any money,

securities or property to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

17. 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), with certain qualifications, as a natural person associated with any FCM or IB, as a partner, officer, employee (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. First American's Operations

18. Between at least December 2002 and August 2003, First American, by and through its APs, including but not limited to Savitsky, Mills, Allotta and Eulo, solicited members of the general public to open commodity trading accounts at Universal Financial Holding Corporation ("Universal"), a registered FCM, to trade options through First American. Once a member of the public became a First American customer, most of the trades made by the customer in their Universal accounts were based on the recommendations of the First American APs. First American and its APs earned commissions on those options trades. In 2002 and 2003 combined, the firm and its APs earned more than \$6 million in commissions on those options trades.

19. In telephone sales calls, Savitsky, Mills, Allotta and Eulo and other First American APs made fraudulent and materially misleading sales solicitations by:

- (1) misrepresenting the likelihood that customers will profit from the purchase of options;
- (2) misrepresenting the risk of trading options and (3) failing to disclose, in light of the profit

representations they were making, the firm's dismal performance record trading options for customers.

20. Knowles was president of First American and was responsible for First American's overall operations. He was the office manager and made the day-to-day decisions necessary to run First American. Knowles also oversaw floor operations and the verbal solicitations of First American's customers and is the custodian of its records. He participated in all policy decisions at First American.

21. Knowles directly or indirectly controlled First American and its APs and did not prevent or correct First American's AP's fraudulent solicitations of customers.

C. Misrepresentations Exaggerating the Likelihood of Profit

22. First American, through its APs, including but not limited to, Savitsky, Mills, Allotta and Eulo, commonly used misleading investment advice based on well known public information to entice customers to trade with First American. Neither First American nor its APs disclosed the fact that efficient markets, such as commodity markets, factor into the price of their contracts publicly known information.

23. For example, First American, through its APs, including but not limited to, Savitsky, Mills, Allotta and Eulo, told customers that certain world events such as the crisis in the Middle East virtually guarantee a profit for customers. These statements included the following:

(a) Savitsky represented to at least one customer that he could double his money trading heating oil options due to the potential war in the Middle East, or words to that effect;

(b) Mills represented to at least one customer that his customers were making money in unleaded gas options because of the impending war with Iraq, or words to that effect;

(c) Eulo represented to at least one customer that the situation with Iraq and the possibility of war made it likely that the customer's investment in crude oil would be profitable and should make between 50% and 300%, or words to that effect; and

(d) A First American AP represented to at least one customer that the pre-war situation made it an opportune time to invest and that a \$3,000 investment should make at least \$25,000 and possibly as much as \$100,000, or words to that effect.

24. First American, through its APs, including, but not limited to, Savitsky, Mills, Allotta and Eulo, told customers to expect to make large returns on their investments quickly. Neither First American nor its APs disclosed the fact that an overwhelming majority of First American customers sustained severe losses trading through First American. For example:

(a) Savitsky represented to at least one customer that he should make \$14,000 or more on a \$5,000 account at First American within a couple of months, or words to that effect, yet failed to disclose the fact that the vast majority of First American customers sustained severe losses trading through First American;

(b) Savitsky represented to at least one customer that all his customers were making money trading heating oil options and that some were making 500%, or words to that effect, yet failed to disclose the fact that most of his customers sustained severe losses trading through him and First American;

(c) Mills represented to at least one customer that he would make a 50% profit within a couple of weeks if the customer opened an account with First American,

or words to that effect, yet failed to disclose the fact that the vast majority of First American customers sustained severe losses trading through First American;

(d) Mills represented to at least one customer that his customers were making a lot of money and some would soon be millionaires and that the customer could not lose if he invested with First American, or words to that effect, yet failed to disclose the fact that most of his customers sustained severe losses trading through him and First American;

(e) Allotta represented to at least one customer that an investment with First American could make \$1,000,000 on a \$100,000 account, or words to that effect, yet failed to disclose the fact that the vast majority of First American customers sustained severe losses trading through First American;

(f) Eulo represented to at least one customer that she would double her money in 30 days, or words to that effect, yet failed to disclose the fact that the vast majority of First American customers sustained severe losses trading through First American;

(g) Eulo represented to another customer that the high commissions charged by First American would be negligible in comparison to the large profit the customer's investment would make, or words to that effect, yet failed to disclose the fact that the vast majority of First American customers sustained severe losses trading through First American; and

(h) A First American AP represented to a customer that if the customer had invested \$2,000, his investment could be worth as much as \$45,000 in just eight months,

or words to that effect, yet failed to disclose the fact that the vast majority of First American customers sustained severe losses trading through First American.

25. In their sales solicitations, First American through its APs, including, but not limited to, Savitsky, Mills, Allotta and Eulo, deliberately misrepresented the urgency of the investment opportunity and tried to convince potential customers and existing customers to invest immediately so as not to miss what they indicated was a fleeting opportunity to make a substantial profits. If potential customers hesitated about investing, defendants increased the frequency of their calls and the urgency of their sales pitches, urging them to invest immediately in order to maximize their profits. For example:

(a) Savitsky represented to a potential customer that any delay in investing would affect the customer's profit, or words to that effect;

(b) Allotta represented to a potential customer that there had never been a better chance to make a killing in crude oil options and that this was a once-in-a-lifetime opportunity, or words to that effect;

(c) Eulo told a potential customer to send in his investment right away because the terrorism alert level was orange and the price of heating oil could move any day, or words to that effect; and

(d) Eulo represented to a potential customer that this was a once-in-a-lifetime opportunity and that the customer should use her savings or home equity to make an investment, or words to that effect.

D. Misrepresentations and Omissions Minimizing the Risk of Loss

26. During the course of their telephone sales solicitations, First American, through its APs, including, but not limited to Savitsky, Mills, Allotta and Eulo, routinely failed to

disclose adequately the risk of loss inherent in trading options. Among other things, the defendants fraudulently led customers and potential customers to believe that risk of loss was or could be limited, and their disclosures of risk, to the extent made, were vitiated by the unbalanced, high-pressure sales presentations which falsely conveyed that trading options with First American was highly profitable and virtually risk free. For example:

(a) Savitsky represented to at least one potential customer that he would not lose more than 25% of his investment, or words to that effect;

(b) Savitsky represented to at least one potential customer that he could take him out of the market if he started to lose money, or words to that effect;

(c) Allotta represented to a potential customer that risk would be limited to only half of the customer's investment by use of stop loss orders, or words to that effect;

(d) Eulo represented to one potential customer that he was an expert options trader and that hundreds of his customers were making lots of money and that he could limit risk, or words to that effect; and

(e) Eulo represented to at least one potential customer that commodity options were risky, but that Eulo was a good trader and could use stop loss orders to limit risk, or words to that effect.

27. Defendants also knowingly or recklessly made misrepresentations and omissions of material fact to encourage customers to invest additional funds once the initial investment funds were lost. For example:

(a) Mills represented to one customer that if he sent in another \$3,000 to \$5,000 for trading he was guaranteed to recoup his earlier losses, or words to that effect;

(b) Allotta represented to at least one customer that the customer had not invested enough to be profitable, but if the customer would invest an additional \$50,000 the customer would make back earlier losses and make a \$35,000 profit, or words to that effect.

E. First American's Losing Performance Record

28. Despite their grandiose profit claims and minimization of risk, defendants never disclosed the actual, overall losing trading record sustained by their customers trading options. In fact, the overwhelming majority of First American's customers lost money trading options through First American.

29. In 2002, 398 out of 416 (96%) First American customers experienced realized losses trading options. Net customer losses in 2002 totaled \$5,213,510.

30. Between January 1, 2003 and August 2003, First American had 381 customers. Only 20 customers (5%) experienced realized gains. Conversely, 358 customers (95%) experienced realized losses. Net customer losses trading options during this period totaled \$5,990,725.

31. Despite these mounting losses to its customers, First American, through its APs, including, but not limited to Savitsky, Mills, Allotta and Eulo, continued to solicit new customers by stressing the profit potential of commodity options trading without disclosing the fact that a vast majority of their customers lost most, if not all, of their investment.

F. Continuing Fraud

32. First American has stopped soliciting customers, although it remains a registered IB. Defendants Savitsky, Mills, Allotta and Eulo are now employed by other registered IBs, and are in a position to continue to cheat, defraud and deceive, or attempt to cheat, defraud or deceive other persons by making false, deceptive or misleading representations of material facts similar to those discussed above, including giving investment advice based on seasonal trends and other well known public information already factored in by the commodity markets, and thus unlikely to affect the value of an options position in the related commodity, and by failing to disclose material facts necessary to make other facts they disclose not misleading.

IV.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND COMMISSION REGULATIONS**

COUNT ONE

**VIOLATIONS OF SECTION 4c(b) OF
THE ACT AND SECTION 33.10(a) AND (c)
OF THE REGULATIONS: OPTIONS FRAUD**

33. Paragraphs 1 through 32 above are re-alleged and incorporated by reference.

34. Savitsky, Mills, Allotta and Eulo knew or recklessly disregarded the fact that the representations identified in Paragraphs 1, 2, 19, 22 through 28, above were false and misleading. Further, they knew or should have known that their telephone sales solicitations failed to disclose to customers material facts necessary to make their other statements not misleading.

35. In or in connection with an offer to enter into, the entry into, the confirmation of, the execution of, or the maintenance of commodity options transactions, Savitsky, Mills, Allotta and Eulo 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, including but not limited to those statements and omissions identified in paragraphs 1 through 32 above, all in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) (2003).

36. The foregoing acts, misrepresentations, omissions and failures of Savitsky, Mills, Allotta and Eulo occurred within the scope of each such person's employment, agency or office with First American during at least December 2002 through August 2003. First American is, therefore, liable for these acts, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

37. Each material misrepresentation or omission, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2001), and Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) (2003).

38. Defendant Knowles as principal, president and manager of First American, directly or indirectly controlled First American, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count. Pursuant to 13(b) of the Act, 7 U.S.C. § 13c(b), Defendant Knowles is liable for First American's violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulations 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) (2003).

VI.

RELIEF REQUESTED

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

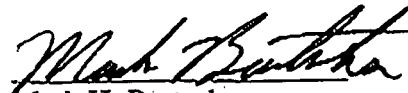
- a) an order finding that the defendants violated Section 4c(b) of the Act and Section 33.10(a) and (c) of the Regulations;

- b) a statutory restraining order restraining and enjoining defendants and all persons insofar as they are acting in the capacity of their agents, servants, 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. 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; and
 2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, 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;
- c) an order of preliminary injunction prohibiting the defendants from engaging in conduct violative of Section 4c(b) of the Act and Section 33.10(a) and (c) of the Regulations and from engaging in any commodity-related activity, including soliciting new customers, giving advice or other information in connection with the purchase or sale of commodity interest contracts for others, and introducing customers to any other persons engaged in the business of commodity interest trading; and from withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, 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, defendants;
- d) an order of permanent injunction prohibiting the defendants from engaging in conduct violative of Section 4c(b) of the Act and Section 33.10(a) and (c) of the Regulations and from engaging in any commodity-related activity, including soliciting new customers, giving advice or other information in connection with the purchase or sale of commodity interest contracts for others, and introducing customers to any other persons engaged in the business of commodity interest trading;
- e) an order directing the defendants to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or Regulations, as described herein, and interest thereon from the date of such violations;
- f) an order directing the defendants to make full restitution, pursuant to such procedure as the Court may order, to every customer whose funds were received

by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;

- g) 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
- h) such other and further remedial ancillary relief as the Court may deem appropriate.

Respectfully submitted,



Mark H. Bretscher
Florida Bar ID Number A5500810
Senior Trial Attorney
Commodity Futures Trading Commission
Division of Enforcement
525 West Monroe Street, Suite 1100
Chicago, Illinois 60661
(312) 596-0529
(312) 596-0714 (facsimile)