

Civil Action No. **04-80562**

MAGISTRATE JUDGE
VITUNAC

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

NEXT FINANCIAL SERVICES UNLIMITED, INC.,
NEW WORLD TRADING, LLC, AARON ETTINGER,
and ROBERT LAROCCA,

Defendants.

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2004 JUN 21 11:12:40

**Complaint for Injunctive And Other Equitable Relief And For Civil Penalties Under The
Commodity Exchange Act, As Amended, 7 U.S.C. §§ 1-25**

I. SUMMARY

1. Since at least September 2003 and continuing to the present, Next Financial Services Unlimited, Inc., and Associated Persons Aaron Ettinger and Robert LaRocca have fraudulently solicited, at a minimum, \$344,000 from at least five retail customers in the United States and Canada to invest in foreign currency options contracts. During the course of their solicitations, Defendants engaged in fraudulent sales solicitations by: (1) misrepresenting the profit potential of foreign currency options contracts; (2) misrepresenting the risk involved in trading foreign currency options contracts; (3) misleading customers by citing and relying upon well-known public information that was already factored into the options prices; (4) misrepresenting the current trading record of at least one customer's account; and (5) misrepresenting the level of trading experience of its employees. Since at least March, 2004, Ettinger has also solicited funds on behalf of New World Trading, and Ettinger notified one

customer that Next Financial Services Unlimited, Inc. had changed its name to New World Trading.

2. By making such material misrepresentations and omissions, Defendants have engaged, are engaging, or are about to engage in acts and practices which violate the anti-fraud provisions of Section 4c(b) of the Commodity Exchange Act, as amended, 7 U.S.C. §§ 6c(b)(2001) and Commission Regulation § 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c)(2002).

3. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, Plaintiff Commodity Futures Trading Commission (“Commission”) brings this action to enjoin Defendants’ unlawful acts and practices and to compel their compliance with the Act and Commission Regulations (“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.

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

II.

JURISDICTION AND VENUE

5. The Commodity Exchange Act, 7 U.S.C. § 1 et seq. (2001) (the “Act”) establishes a comprehensive system for regulating the purchase and sale of commodity options contracts. This Court has jurisdiction over this action pursuant to Sections 6c and 6d of the Act, 7 U.S.C. § 13a-1 and § 13a-2 (2001).

6. Section 6c of the Act provides that whenever it shall appear to the Commodity Futures Trading 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) (2001), in that Defendants transact business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur, within this District, among other places.

III.

THE PARTIES

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

9. Defendant **Next Financial Services Unlimited Inc.** (“Next Financial”), is a Florida corporation with its principal place of business at 110 East Atlantic Avenue, Suite 310, Delray Beach, Florida 33444. Next Financial has been registered with the Commission as an Introducing Broker¹ from December 5, 2003 to the present.

¹ The term “introducing broker” (“IB”) 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, 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.

10. Defendant **New World Trading LLC** (“New World”), is a Florida corporation with its principal place of business at 110 East Atlantic Avenue, Suite 310, Delray Beach, Florida 33444. New World has been registered with the Commission as an Introducing Broker from March 26, 2004 to the present.

11. Defendant **Aaron Ettinger**, a resident of Boca Raton, Florida 33431, was a registered Associated Person² of Executive Commodity Corporation (February 2001-June 2003), Millennium Commodity Corporation (June-August 2003), and Bentley Trading Group (withdrew pending status September 2003). Ettinger is not registered at this time.

12. Defendant **Robert LaRocca**, a resident of Delray Beach, Florida 33483, is a registered Associated Person of Futuretech Trading Group Inc. as of March 2, 2004. Futuretech Trading Group maintains its principal place of business at the same address as Next Financial and New World.

V. STATEMENT OF FACTS

A. The Next Financial And New World Investment

13. Since on or about September 2003 and continuing to the present (“the relevant time period”), Next Financial and New World, by and through their employees, including, but not limited to Ettinger and LaRocca, solicited prospective customers to open options trading

² The term “associated person” (“AP”) 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, 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.

accounts at Qix, Inc. (“Qix”) or at FCM One Forex, Inc. (“One Forex”), which are registered futures commission merchants³ (“FCM”) with the Commission.

14. Qix originally maintained all of Next Financial customers’ accounts. However, Ettinger told at least one Next Financial customer that, due to some confusion with a company in Texas, Next Financial had to change its name to New World. Operating as New World, the Defendants solicited prospective customers to open options trading accounts at One Forex rather than Qix.

15. Although Qix or One Forex maintained the Next Financial or New World customer accounts, Next Financial and subsequently New World APs traded and managed the customer accounts.

16. During the relevant time period, Defendants and other Next Financial and New World employees solicited prospective customers through unsolicited telephone calls and promotional literature. As of March 1, 2004, Next Financial also was soliciting prospective customers through its website located at www.nextfinancialservices.com, created on or about September 4, 2003. The website was shut down some time between March 2 and April 17, 2004.

17. After the initial unsolicited telephone solicitation, Defendants provided customers with account opening documents via the mail, including Federal Express, and facsimile.

³ The term “futures commission merchant” is defined in Section 1a(20) of the Act, 7 U.S.C. § 1a(2), 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, 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.

18. According to Defendants' instructions, customers executed the account opening documents and sent their investment funds directly to Qix, Inc, and more recently, to One Forex.

19. Once a member of the public became a Next Financial or New World customer, trades made by the customer were based upon the recommendations of Next Financial and New World APs.

20. During the course of these solicitations, and as provided in more detail below, Ettinger and LaRocca and the other Next Financial and New World APs engaged in fraudulent sales solicitations by: (1) misrepresenting the profit potential of foreign currency options contracts; (2) misrepresenting the risk involved in trading foreign currency options contracts; (3) misleading customers by citing well-known public information that was already factored into the options prices; (4) misrepresenting the current trading record of at least one customer's account; and (5) misrepresenting the level of trading experience of its employees.

B. Defendants' Fraudulent Solicitation of Prospective Customers

1. Defendants' Fraudulent Misrepresentations Guaranteeing Profits

21. Next Financial and New World, through its APs, including but not limited to Ettinger and LaRocca, told customers that certain world events would virtually guarantee a profit for customers. Next Financial and New World, through their APs, including but not limited to Ettinger and LaRocca, commonly used misleading investment advice based upon public information to entice customers to trade with Next Financial and New World. Most if not all of this information was already factored into the existing market pricing of the related commodities by the commodity markets, and thus was unlikely to affect the value of an options position.

22. For example, Ettinger represented to at least one customer that investing in the Euro was "a sure thing" and that he had "a hot tip" that the Euro was going to go up in the "next

day or so.” Another Next Financial AP represented to a second customer that due to the potential for full acceptance by the European Union, the Euro was about to “explode” and investments in the Euro would reap great profits for investors.

23. Ettinger also represented to a third customer that the Euro was about to “explode” and that the customer could be “in on it.” Ettinger said that he was so sure of this fact that he had invested six figures of his own money in the market. In the same solicitation, Ettinger told the customer that he could generate huge profits, but that he needed more leverage. Ettinger said that he did not care how the customer got the money, because the customer would get the money back within seven days.

2. Defendants’ Misrepresentations Concerning the Risk of Loss

24. During the course of the sales solicitations, Next Financial and New World, through their APs, including but not limited to Ettinger and LaRocca, routinely failed to disclose adequately the risk of loss inherent in trading options, and instead made dismissive references to the risk involved in trading. For example, LaRocca represented to at least one customer that there is “limited risk” in the Euro foreign currency market. LaRocca also represented to at least one customer that there is “really, no risk” in trading options, because “unlike futures, you know, after I get you back your initial investment, yes, that money is yours.”

3. Defendants’ Misrepresentations Concerning The Status Of Customer Accounts

25. Defendants reassured at least one customer that his trading account was profitable and doing well, when, in fact, his account was losing money.

26. On September 26, 2003, this customer opened an account with Qix, Inc., and invested \$5000 through Next Financial. During the next few weeks, Defendants repeatedly called the customer, telling him that his account was doing great, and asking him to invest more

money. Based upon these representations, the customer invested a total of \$23,300 over the next several weeks. When the customer asked to see a financial statement of all his transactions on October 14, 2003, Defendants told him that he had only a little over \$5000 of his total investment.

4. Defendants' Misrepresentations Regarding Their Trading Experience

27. Next Financial and New World APs also misrepresented their level of education and trading experience to solicited customers. For example, LaRocca represented to a customer that he has a master's degree, when in fact LaRocca graduated from high school in June 2000.

28. One Next Financial employee represented to a customer that Ettinger was very experienced and had been a broker in Europe for several years, when in fact Ettinger graduated from high school in 1997 and was a community college student in the United States until 2000. Ettinger himself represented to a different customer that he had twenty years' of trading experience. Ettinger is twenty-five years old.

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

COUNT ONE

A. Section 4c(b) of the Act and Section 32.9(a) and (c) of the Regulations: Fraud and Deceit in the Solicitation and Sales of Commodity Options

29. Plaintiff re-alleges paragraphs 1 through 28 above and incorporates these allegations herein by reference.

30. From at least September 2003 and continuing through the present, Defendants Next Financial, New World, Ettinger, and LaRocca cheated, defrauded, or deceived other persons by making false, deceptive, or misleading representations of material facts and by failing to disclose necessary material facts, including, but not limited to, those statements and omissions

identified in paragraphs 13 through 28 above, all 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).

31. Each commodity option transaction solicited and executed since September 2003, 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), and Regulation 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c).

RELIEF REQUESTED

WHEREFORE, the Plaintiff Commodity Futures Trading Commission respectfully requests that this Court, as authorized by Section 6c of the Act, and pursuant to its own equitable powers, enter:

- (a) an order finding that the Defendants violated Section 4c(b) of the Act and Sections 32.9(a) and (c) of the Regulations;
- (b) an ex parte statutory restraining order 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 book 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, 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

3. 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;

(c) orders of preliminary and permanent injunction prohibiting the Defendants from engaging in conduct violative of Section 4c(b) of the Act and Sections 32.9(a) and 32.9(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 options contracts for others, and introducing customers to any other persons engaged in the business of commodity options trading;

(d) 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 of Regulations, as described herein, and interest thereon from the date of such violations;

(e) 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;

(f) 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

(g) such orders and further remedial ancillary relief as the Court may deem appropriate.

Respectfully submitted,

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