

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

_____	)	
In the Matter of	)	
	)	
INDIGO INVESTMENT SYSTEMS, INC.	)	FILE NO. 002-3015
a corporation, and	)	
	)	
FRANK ALFONSO, individually and as an	)	AGREEMENT CONTAINING
officer of the corporation.	)	CONSENT ORDER
_____	)	

The Federal Trade Commission has conducted an investigation of certain acts and practices of Indigo Investment Systems, Inc., a corporation, and Frank Alfonso, individually and as an officer of the corporation ("proposed respondents"). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

**IT IS HEREBY AGREED** by and between Indigo Investment Systems, Inc., by its duly authorized officer, and, Frank Alfonso individually and as an officer of the corporation, and counsel for the Federal Trade Commission that:

1. a. Proposed respondent Indigo Investment Systems, Inc. is a Florida corporation with its principal office or place of business at 8302 S. Tamiami Trail, Sarasota, Florida 34238.

1. b. Proposed respondent Frank Alfonso is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation. His principal office or place of business is the same as that of Indigo Investment Systems, Inc.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

3. Proposed respondents waive:

a. Any further procedural steps;

- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and decision and order to proposed respondents' address as stated in the agreement by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

6. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

## ORDER

### DEFINITIONS

For purposes of this order, the following definitions shall apply:

- 1. "Clearly and conspicuously" shall mean as follows:

- A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. *Provided, however,* that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.
- B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
- C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

2. In the case of advertisements disseminated by means of an interactive electronic medium such as the Internet or online services, "in close proximity" shall mean on the same Web page, online service page, or other electronic page, and proximate to the triggering representation, and shall not include disclosures accessed or displayed through hyperlinks, pop-ups, interstitials or other means.

3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

4. "Trading program" shall mean any program, service, course, instruction, system, training, manual, computer software, or other materials involving the purchase or sale of stocks, mutual funds, currencies, commodity futures, options, or other financial instruments or investments.

5. Unless otherwise specified, "respondents" shall mean Indigo Investment Systems, Inc.; a corporation, its successors and assigns and its officers; Frank Alfonso, individually and as an officer of the corporation; and each of the above's agents, representatives, and employees.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program, in or affecting commerce, shall not represent, in any manner, expressly or by implication:

- A. The amount of earnings, income, or profit, or the rate of return, that a user of such trading program could reasonably expect to attain;
- B. The usual or typical earnings, income, profit, or rate of return, achieved by users of such trading program or any part thereof; or
- C. Any financial benefit or other benefit of any kind from the purchase or use of such trading program;

unless respondents possess and rely upon a reasonable basis substantiating the representation at the time it is made.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication,

- A. That hypothetical or simulated earnings data represent actual trading results;
- B. That users of such trading program can reasonably expect to trade with little risk; or
- C. The extent of risk to which users of the trading program are exposed.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of Indigo Investment Software or any other trading program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the financial benefits of such program, unless they disclose, clearly and

conspicuously, and in close proximity to the representation,

**“STOCK [or CURRENCY, OPTIONS, ETC., as applicable] TRADING  
involves high risks and YOU can LOSE a significant amount of money”**

*Provided*, the disclosure required by this Part is in addition to, and not in lieu of, any other disclosure that respondents may be required to make, including but not limited to any disclosure required by state or federal law or by a self-regulatory organization. The requirements of this Part are not intended to, and shall not be interpreted to, exempt respondents from making from any other disclosure.

IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user, testimonial or endorsement of the trading program represents the typical or ordinary experience of members of the public who use the trading program unless:

- A. Respondents possess and rely upon a reasonable basis substantiating the representation at the time it is made; or
- B. Respondents disclose, clearly and conspicuously, and in close proximity to the endorsement or testimonial, either:
  - 1. what the generally expected results would be for users of the trading program, or
  - 2. the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

V.

IT IS FURTHER ORDERED that respondent Indigo Investment Services, Inc., and its successors and assigns, and respondent Frank Alfonso shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make

available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials (including packaging) containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent Indigo Investment Services, Inc, and its successors and assigns, and respondent Frank Alfonso shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondents shall maintain and upon request make available to the Commission for inspection and copying each such signed and dated statement for a period of three (3) years after creation.

VII.

IT IS FURTHER ORDERED that respondent Indigo Investment Services, Inc, and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.

VIII.

IT IS FURTHER ORDERED that respondent Frank Alfonso, for a period of seven (7) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment that involves investment trading programs or training. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities.

IX.

IT IS FURTHER ORDERED that respondent Indigo Investment Services, Inc., and its successors and assigns shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

X.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not effect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

*Provided further*, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XI.

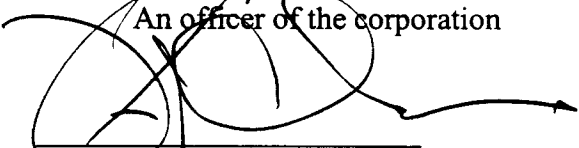
All notices required to be sent to the Commission pursuant to this Order shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 601 Pennsylvania Avenue, N.W., Washington, D.C. 20580. ATTN: In the Matter of Indigo Investment Services, Inc.

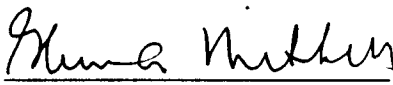
Signed this 8<sup>th</sup> day of September, 2000

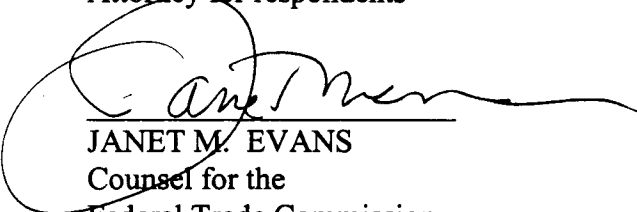
INDIGO INVESTMENT SERVICES, INC,

By:

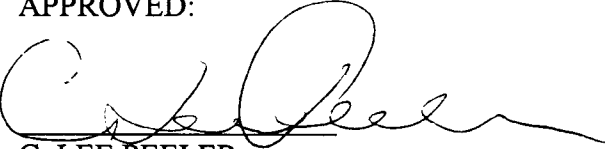
  
FRANK ALFONSO  
An officer of the corporation

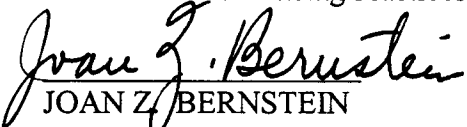
  
FRANK ALFONSO, individually  
and as an officer of the corporation

  
GLENN A. MITCHELL  
Attorney for respondents

  
JANET M. EVANS  
Counsel for the  
Federal Trade Commission

APPROVED:

  
C. LEE PEELER  
Associate Director  
Division of Advertising Practices

  
JOAN Z. BERNSTEIN  
Director  
Bureau of Consumer Protection