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HAROLD BAER
U.S. DISTRICT JUDGE
S. D. N.Y.

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COMMODITY FUTURES TRADING COMMISSION, :
 :
 : Plaintiff. :
 : v. :
 : COMMODITY INVESTMENT GROUP, INC., et al. :
 : Defendants. :
----- X

No. 05-CV-5741 (HB)
ECF Case

**[proposed] CONSENT ORDER OF PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF AGAINST COMMODITY INVESTMENT
GROUP, INC., LINDA KUHNEY, MICHAEL KUHNEY, NATIONAL COMMODITIES
CORP., INC. AND INTERNATIONAL COMMODITY CLEARING LLC**

On June 21, 2005, the Commodity Futures Trading Commission ("Commission" or "CFTC") filed its Complaint in the above-captioned action against defendants Commodity Investment Group, Inc. ("CIG"), Linda Kuhney a/k/a Linda Reinman Enzinna ("Linda Kuhney"), Michael Kuhney a/k/a Michael Kirkney ("Michael Kuhney"), International Commodity Clearing, LLC ("ICC") and National Commodities Corporation, Inc. ("NCCI") (collectively the "Defendants"), seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.* (2004), and the Commission's Regulations promulgated thereunder ("Commission Regulations" or "Regulation"), 17 C.F.R. §§ 1 *et seq.* (2005).

I.

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint in this action, Defendants:

1. Consent to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief against CIG, Linda Kuhney, Michael Kuhney, National Commodities Corp., Inc. and International Commodity Clearing LLC ("Consent Order" or "Order");

2. Affirm that Defendants have agreed to this Consent Order voluntarily, and that no threats, or promises other than as contained herein, have been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;

3. Acknowledge service of the summonses and Complaint;

4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;

5. Admit that venue properly lies with this Court pursuant to Section 6e of the Act, 7 U.S.C. § 13a-1;

6. Waive:

- a. all claims which they may possess under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), relating to, or arising from, this action and any right under EAJA to seek costs, fees and other expenses relating to, or arising from this action;
- b. any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and,
- c. all rights of appeal from this Consent Order;

7. Consent to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Consent Order and for any other purposes relevant to this case, even if Defendants now or in the future reside outside the jurisdiction:

8. Agree that neither Defendants nor any of their agents, employees or representatives acting under their authority or control, shall take any action or make any public statement denying, directly or indirectly, any allegations of the Complaint or stipulations in this Consent Order, or creating or tending to create the impression that the Complaint and this Consent Order are without a factual basis; provided, however, that nothing in this provision shall affect Defendants' (i) testimonial obligations, or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Defendants will undertake all steps necessary to assure that their agents, employees and representatives understand and comply with this agreement;

9. By consenting to the entry of this Order, Defendants neither admit nor deny the allegations of the Complaint nor any of the Stipulated Facts or Conclusions of Law as contained in Part II of this Consent Order, except as to jurisdiction and venue, which they admit. Defendants do not consent to the use of this Order, or the Stipulated Facts and Conclusions of Law as contained in Part II of this Consent Order as the sole basis for any other proceeding brought by the CFTC other than a proceeding to enforce the terms of this Order. Solely with respect to any bankruptcy proceeding relating to any Defendant, or any proceeding to enforce this Order, Defendants agree that the allegations of the Complaint and all of the Stipulated Facts and Conclusions of Law as contained in Part II of this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof. Furthermore, each Defendant agrees to provide immediate notice to this Court and the CFTC by certified mail, in the manner

it:

10. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason to delay. The Court, without making any findings or conclusions as to the stipulated facts and conclusions of law set forth herein, directs the entry of the Stipulated Facts and Conclusions of Law, a permanent injunction, civil monetary penalties, and other equitable relief, pursuant to § 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein; and

11. Except as set forth in paragraph 8 above, this Consent Order shall not bind any party who is not a signatory hereto.

II.

STIPULATED FACTS

Defendants consent to the entry of this Consent Order solely for purposes of settling this case. Further, Defendants neither admit nor deny the Stipulated Facts and Conclusions of Law set forth herein. The Court makes no findings or conclusions with respect to the Stipulated Facts and Conclusions of Law set forth herein. Further, Defendants consent to the use of the Stipulated Facts and Conclusions of Law set forth herein solely for purposes set forth in paragraph 9 above.

A. The Commodity Exchange Act

The Act and the Regulations establish a comprehensive system for regulating the purchase and sale of commodity futures contracts and commodity options. One of the primary purposes of the Act and Regulations is consumer protection.

Commodity Investment Group Inc. was a Florida corporation and had offices in Ft. Lauderdale, Florida. CIG was a guaranteed Introducing Broker ("IB") of ICC from June 1, 2004 through at least August 2005. CIG was previously a guaranteed IB of NCCI from January 23, 2001 through May 31, 2004. CIG has been registered with the Commission as an IB since February, 2001.

C. **Linda Kuhney**

Linda Kuhney a/k/a Linda Reinman Enzinna is an individual who resides in Coral Springs, FL. Linda Kuhney was, until at least January 2005, the President of CIG and has been listed with the National Futures Association ("NFA") as a principal and owner of CIG since June 14, 2004. She was registered as an Associated Person ("AP") of CIG from February 2001 until June 14, 2004.

D. **Michael Kuhney**

Michael Kuhney a/k/a Michael Kirkney is an individual who resides in Coral Springs, FL with his wife, Linda Kuhney. Michael Kuhney was, until at least January 2005, the Vice-President of CIG. Michael Kuhney has been a member of NFA since 1985 and was listed as a principal and registered as an AP of CIG from February 2001 through June 14, 2004.

E. **International Commodity Clearing LLC**

International Commodity Clearing LLC is a Florida corporation incorporated on November 14, 2003. ICC signed a Guarantee Agreement and an Introducing Agreement with CIG on April 28, 2004¹ and May 14, 2004, respectively. ICC was located at 1700 NW 64th Street, Suite 100, Ft. Lauderdale, FL 33309, and has been registered with the Commission as an Futures Commission Merchant ("FCM") since April 29, 2004.

¹ The agreement stated that it would be effective June 1, 2004.

National Commodities Corp. Inc. is a Virginia Corporation incorporated on February 7, 1997. NCCI signed a Guarantee Agreement with CIG in January 2001. NCCI was located at 1700 NW 64th Street, Suite 100, Fort Lauderdale, FL 33309 and has been registered an FCM since April 1997.

G. Fraudulent Sales Solicitations

From at least February 2001, CIG, through its employees, fraudulently solicited members of the general public to open commodity options accounts at NCCI and ICC. CIG employees falsely claimed that CIG customers made large profits trading commodity options. In fact, the overwhelming majority of CIG's customers lost money trading commodity options. In sales solicitation telephone calls to prospective customers, CIG employees made fraudulent and materially misleading statements by knowingly, or with reckless disregard for the truth: (1) misrepresenting the likelihood of profiting from trading commodity options; (2) minimizing the risk of loss; and (3) in light of the profit representations they made, failing to disclose that the vast majority of CIG customer accounts lost money.

1. Misrepresentations of Potential Profits

From at least February 2001, CIG, through its employees, commonly misrepresented the profit-making potential of trading commodity options with CIG. For instance, CIG, through its employees, knowingly or with reckless disregard for the truth, falsely told prospective customers that:

- they could expect 50% returns in a short period of time; and
- they could double or triple their returns in a short period of time.

whereby existing customers were referred by their initial broker to a "loader," who then solicited the customer for additional funds. Examples of misleading statements made knowingly or with reckless disregard for the truth by "loaders" are:

- a customer could double his money in sixty days;
- they could easily make 30% returns in a relatively short period of time; and
- a customer could expect 50% returns in a short period of time.

2. Misrepresentations of Risk

Several CIG employees knowingly or with reckless disregard for the truth made explicit remarks to prospective customers minimizing the risk of trading commodity options. Even though prospective customers had been sent risk disclosure documents and sometimes had been given verbal risk advisories, such documents and pro forma warnings are negated by the totality of the circumstances surrounding the solicitations. The picture of profitability and minimal risk that defendants painted served to minimize the risk in a materially misleading way.

3. CIG Failed to Disclose its Actual Track Record and Customer Losses

CIG's trading strategy was geared to ensure maximum commissions for CIG and its brokers with a total disregard for the profitability to the customers. For the period from February 2001 through December 2005, CIG customers lost over \$11 million. Out of approximately 1,200 customers, over 90% had net losses in their accounts.

H. Linda and Michael Kuhney were Controlling Persons of CIG

Linda Kuhney and Michael Kuhney were controlling persons of CIG, and each exercised control, directly or indirectly, over CIG and its brokers. Further, each failed to act in good faith to prevent the violative acts. Linda Kuhney and Michael Kuhney exercised control over the daily

opened at First Union (now Wachovia Bank), and both wrote checks for the business. Linda Kuhney and Michael Kuhney were responsible for hiring and training the CIG brokers and Linda Kuhney signed the contracts and agreements with CIG's guarantors.

Michael Kuhney held daily meetings in which he trained all the brokers on how to conduct sales solicitations, and made trading recommendations for the whole firm. He also reviewed trading equity runs to identify positions for the brokers to trade, and directed brokers to trade.

I. Michael Kuhney Aided and Abetted CIG

Michael Kuhney aided and abetted the conduct by CIG's brokers described in the Complaint.

J. NCCI and ICC are Each Jointly and Severally Liable for any Financial Obligation of CIG During Their Respective Guarantee Periods

From January 23, 2001 until May 31, 2004, NCCI was CIG's guarantor pursuant to the NCCI agreement. From June 1, 2004 to at least September 2005, ICC has been CIG's guarantor pursuant to the ICC agreement.

Pursuant to their respective guarantee agreements, NCCI and ICC are jointly and severally liable for any financial obligation of CIG as set forth herein during their respective guarantee periods.

STIPULATED CONCLUSIONS OF LAW

A. Liability

CIG, and Linda Kuhney and Michael Kuhney as control persons, are liable for violations of Section 4e(b) of the Act, 7 U.S.C. § 6e(b), and Section 33.10 (a) and (c) of the Regulations, 17 C.F.R. § 33.10 (a) and (c). Defendant CIG induced its customers to invest by means of false statements, fraudulent representations about CIG's performance record, and misleading them into believing that easy, low-risk profits could be reaped from trading commodity options. Linda Kuhney and Michael Kuhney were controlling persons of CIG and Michael Kuhney aided and abetted the conduct by CIG's brokers described in the Complaint. Pursuant to their respective guarantee agreements, NCCI and ICC are jointly and severally liable for any financial obligation of CIG as set forth herein during their respective guarantee periods.

1. **Violations of Section 4e(b) of the Act and Commission Regulation 33.10(a) and (c)**

Section 4e(b) of the Act, 7 U.S.C. § 6e(b), and Commission Regulation 33.10(a) and (c) make it unlawful to cheat or defraud or to deceive, or attempt to cheat or defraud or to deceive, any person 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.

Liability for solicitation fraud involving commodity options is established when a person or entity 1) makes a misrepresentation, misleading statement, or a deceptive omission; 2) acts with scienter; and 3) the misrepresentation is material. *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002) ("*RJFCO*"); *CFTC v. Rosenberger*, 85 F. Supp.2d 424, 446-47 (D.N.J. 2000).

“Whether a misrepresentation has been made depends on the ‘overall message’ and the ‘common understanding of the information conveyed.’” *RJFCO*, 310 F.3d at 1328 (citing *Hammond v. Smith Barney Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) 24,617 (CFTC Mar.1, 1990)). The court in *RJFCO* found solicitation fraudulent where it “overemphasizes profit potential and downplays risk of loss, presenting an unbalanced image of the two.” *Id.* at 1329. As examples, the Court specifically cited language “suggesting to potential customers that they should not pass up such a tremendous chance to make money,” and urging customers to invest “‘now’ because there may ‘never’ be such an opportunity . . . again.” *Id.*

Such language was commonplace in CIG’s pitches to customers. CIG brokers made bold statements of potential profits and misrepresentations and guarantees of no more than limited loss. More generally, CIG brokers habitually overemphasized the likelihood and the magnitude of profits as against any possibility of losses. They held out to customers the alluring prospect of profits, while discounting downside risk despite providing customers with risk disclosure forms containing boilerplate language. “Any guarantee of profit and assurance against loss in the context of futures trading is inherently a fraudulent misrepresentation because investments in futures transactions necessarily depend on speculative predictions about an unpredictable future and risk is unavoidable.” *CFTC v. Standard Forex, Inc.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,063 at 41,462 (E.D.N.Y. Aug. 9, 1993).

CIG’s misrepresentations about profit potential contrast starkly with the reality of the account performance of its customers. Over 90% of the customers had net losses in their accounts, a fact that CIG, through its brokers, knowingly or recklessly failed to mention in

well, and making money for its customers. As the court noted in *RIFCO*, the omissions, notwithstanding the lies, are fraudulent.

"Given the extremely rosy picture painted by [defendants], a reasonable investor *surely* would want to know-- before committing money to a broker --that 95% or more of [the firm's] investors lost money... It is misleading and deceptive to speak of 'limited risk' ... without also telling the reasonable listener that the overwhelming bulk of firm customers lose money."

RIFCO, 310 F.3d at 1332-33 (emphasis in original); *See also Munnell v. Paine Webber Jackson & Curtis*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,313 at 32,862-63 (CFTC Oct. 8, 1986) (internal citation omitted). CIG brokers assured their customers that the risk of loss was minimal, or they sought to undercut any *pro forma* notification of risk as something they were legally required to do, but not a reflection of any real threat to the investment they were pitching.

Although CIG's brokers sent the standard risk disclosure to customers, such disclosures were negated by the hard sales pitches that contradicted those disclosures. Indeed, misrepresentations about profit prospects cannot be cured by required risk disclosures. *RIFCO*, 310 F.3d at 1329 (highly alluring statements overstating profit potential accompanied by only boilerplate risk disclosure creates an overall message that is deceptive and misleading); *CFTC v. Sidoti*, 178 F.3d 1132, 1136 (11th Cir. 1999) ("We seriously doubt whether boilerplate risk disclosure language could ever render an earlier material misrepresentation immaterial."); *Clayton Brokerage Co. v. CFTC*, 794 F.2d 573, 580 (11th Cir. 1986) (per curiam) (holding that "oral statements may effectively nullify the warnings in the statement by discounting its general significance and its relevance to the customer's particular situation.").

Scienter “refers to a mental state embracing an intent to deceive, manipulate, or defraud.” *Rosenberger*, 85 F.Supp.2d at 448 (citing *Ernst & Ernst v Hochfelder*, 425 U.S. 185, 193 (1976)). The Commission “need not show that defendants acted with an evil motive or an intent to injure rather, recklessness is sufficient to satisfy the scienter requirement.” *Id.* (internal quotations omitted). Thus, by making representations that have no reasonable basis, or that mark “an extreme departure from the standards of reasonable care,” a person acts with scienter. *RJFCO*, 310 F.3d at 1328.

Because CIG’s employees knew that CIG’s customer account performance was poor, there is no question that CIG made the misleading representations with scienter. Brokers were given daily equity runs that reflected the profits and losses in their customers’ accounts. CIG brokers knew exactly how their customers were doing and how their customers did when the accounts were closed. In addition, Linda and Michael Kuhney reviewed equity runs for the entire firm and thus were able to know how all customers’ accounts were performing. Thus, CIG employees knew it was very unlikely that CIG customers would make the kinds of profits that CIG brokers touted to prospective customers.

c. The Sales Misrepresentations and Omissions Were Material

A statement is material if “it is substantially likely that a reasonable investor would consider the matter important in making an investment decision.” *RJFCO*, 310 F.3d at 1328 (internal quotation omitted); *Rosenberger*, 85 F.Supp.2d at 447. Any fact that enables customers to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. *In re Commodities International Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943 at 44,563-64 (CFTC Jan. 14, 1997).

CIG's misrepresentations regarding the profitability of trading commodity options, the likelihood of reaping profits in a short timeframe, the seasonality claims, the high-pressure sales approach, and above all, the distortions and omissions regarding the customers' performance record all went to the heart of the decision-making process. *See RJFCO*, 310 F.3d at 1332. Accordingly, the misrepresentations and omissions were material.

CIG is liable for the fraud committed by its employees pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), which provides that the "act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person."

2. NCCI and ICC are Jointly and Severally Liable for any Financial Obligation of CIG During Their Respective Guarantee Periods

Pursuant to their respective guarantee agreements, NCCI, as CIG's guarantor from January 23, 2001 until May 31, 2004, and ICC, as CIG's guarantor from June 1, 2004 through at least September 2005, are jointly and severally liable for any financial obligation of CIG as set forth herein.

3. Linda and Michael Kuhney are Liable under the Act as Controlling Persons

Linda and Michael Kuhney are liable for the conduct by CIG and its brokers alleged in the Complaint because they were controlling persons pursuant to Section 13(b) of the Act, 7 U.S.C. § 13e(b). "A fundamental purpose of section 13(b) is to allow the Commission to reach behind a corporate entity to the controlling individuals of the corporation and to impose liability for violations of the Act directly on such individuals as well as on the corporation itself." *In re*

May 12, 1994) (Commission found principals of company liable because they were officers of corporation who were involved in monitoring sales activities), *aff'd*, 63 F.3d 1557 (11th Cir. 1995).

Pursuant to the Act, a controlling person is defined as “[a]ny person who, directly or indirectly, controls any person who has violated any provision of the Act [if that controlling person] did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.” Section 13(b) of the Act, 7 U.S.C. § 13c(b). To establish the “knowing inducement” element of the controlling person violation, the Commission must show that “the controlling person had actual or constructive knowledge of the core activities that constitute the violation at issue and allowed them to continue.” *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103 at 34,767 (CFTC Jan. 12, 1988). Controlling persons cannot avoid liability by deliberately or recklessly avoiding knowledge about potential wrongdoing. *Id.* Indeed, constructive knowledge of wrongdoing is sufficient for a finding of knowing inducement. *JCC*, 63 F.3d at 1568.

Linda and Michael Kuhney were the co-owners of CIG and were responsible for hiring and training employees. Linda Kuhney was the President and Michael Kuhney was the Vice-President of CIG (at least until June 2004). They oversaw the sales solicitations that were being made by CIG brokers. Michael Kuhney actively reviewed CIG’s customers’ equity runs.

In addition to her controlling authority and day-to-day administration of the firm, Linda Kuhney occasionally reviewed the firm’s equity runs, participated in training, oversaw the sales solicitations of CIG’s brokers, and handled customer complaints.

Michael Kuhney aided and abetted CIG in the conduct alleged in the Complaint. Aiding and abetting liability is demonstrated when

(1) the Act was violated (the case law often refers to the violation as the “unlawful venture” that the alleged aider and abettor knowingly joins), (2) the named respondent had knowledge of the wrongdoing underlying the violation, and (3) the named respondent intentionally assisted the primary wrongdoer.

In re Nikkah, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,129 at 49,888 n.28 (CFTC May 12, 2000) (citing *In re R&W Technical Services, Ltd.*, [1998 - 1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582 at 47,746 (CFTC Mar. 16, 1999)).

The facts stated above establish all three prongs required to establish aiding and abetting liability. Accordingly, Michael Kuhney is liable pursuant to Section 13(a) of the Act, 7 U.S.C. § 13(a), for aiding and abetting CIG’s violations of the Act.

IV.

ORDER FOR PERMANENT INJUNCTION

With the parties’ consent, the Court **HEREBY ORDERS**

A. That Defendants CIG, Linda Kuhney and Michael Kuhney are permanently enjoined and prohibited from, directly or indirectly, cheating or defrauding or attempting to cheat or defraud other persons and willfully deceiving or attempting to deceive other persons by making false, deceptive or misleading misrepresentations of material facts, by failing to disclose material facts, 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 Section 4c(b) of the Act, 7 U.S.C. § 6c(b).

any commodity sales solicitations of customers that:

- (i) misrepresent the profit potential in commodities trading;
- (ii) omit that the market factors into the price of commodities seasonal trends and well-known market events;
- (iii) omit the actual track record of the broker or firm;
- (iv) omit or downplay the risk involved in commodity trading; and
- (v) omit any material fact necessary to make other facts disclosed not misleading;

B. Defendants CIG, Linda Kuhney and Michael Kuhney are permanently restrained, enjoined, and prohibited from, directly or indirectly, engaging in any trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29), in any account:

- (i) that is held in the name of CIG, Linda Kuhney or Michael Kuhney; or
- (ii) in which CIG, Linda Kuhney or Michael Kuhney has a direct or indirect financial interest; or
- (iii) that is held in the name of any other person.

C. Defendants CIG, Linda Kuhney and Michael Kuhney are permanently restrained, enjoined, and prohibited from applying for registration or seeking exemption from registration with the Commission in any capacity or engaging in any activity requiring registration or exemption from registration, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9), and acting, directly or indirectly, as a principal, officer, director, supervisor, agent or employee of any person registered, required to be registered or exempted from registration, unless such exemption is pursuant to Commission Regulation 4.14(a)(9). This

includes, but is not limited to, soliciting, accepting or receiving any funds, revenue or other property from any person, giving commodity trading advice for compensation or soliciting prospective customers related to the purchase or sale of any commodity futures, or options, except as provided for in Commission Regulation 4.14(a)(9).

D. The injunctive provisions of this Consent Order shall be binding upon Defendants CIG, Linda Kuhney, and Michael Kuhney and any person who is acting as an officer, agent, employee, servant, or attorney on their behalf, and any person acting in active concert or participating with CIG, Linda Kuhney, and Michael Kuhney who receives actual notice of this Consent Order by personal service or otherwise.

V.

ORDER FOR RESTITUTION, CIVIL MONETARY PENALTY AND OTHER EQUITABLE RELIEF

A. Restitution

With the parties' consent, the Court **HEREBY ORDERS THAT**

Defendants are liable for restitution to customers in the following amounts, provided that the joint and several liability of each such person or entity is capped at the amount of restitution listed for that person or entity below:

CIG - \$11,819,785; of that amount NCCI is jointly and severally liable for \$8,445,428 and ICC is jointly and severally liable for \$3,374,357.

Linda Kuhney - \$1,250,000; and

Michael Kuhney - \$1,250,000.

All restitution payments are immediately due and owing.

The foregoing caps are separate and not cumulative. Should the specified restitution cap amount be satisfied for any individual Defendant, that individual Defendant is thereafter released fully from making any further restitution. However, satisfaction of the restitution cap by one individual Defendant will not be credited toward satisfaction of the restitution obligation of any other individual Defendant.

Appointment of a Monitor: To effect payment by Defendants and distribution of restitution to Defendants' customers, the Court appoints Daniel Driscoll of the National Futures Association as Monitor ("Monitor"). The Monitor shall collect restitution payments from Defendants and compute pro rata allocations to injured customers identified in Appendix A to this Consent Order. As the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, he shall not be liable for any action or inaction arising from his appointment as Monitor, other than actions involving fraud.

Restitution payments under this Order shall be made in the name of the "CIG Settlement Fund" and sent by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, to:

Daniel Driscoll, Monitor
National Futures Association
200 W. Madison St., #1600
Chicago, IL 60606-3447

under a cover letter that identifies the Defendant and the name and docket number of the proceeding. Defendants shall simultaneously transmit a copy of the cover letter and the form of payment to:

Office of Cooperative Enforcement
Division of Enforcement
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

The NFA shall oversee Defendants' restitution obligation and shall make periodic distributions of funds to investors as appropriate. Based upon the amount of funds available, the NFA may defer distribution until such time as it deems appropriate. Restitution payments shall be made in an equitable fashion as determined by the NFA to the persons identified on Exhibit A, attached hereto and incorporated by reference.

B. Civil Monetary Penalties

With parties' consent, the Court **FURTHER ORDERS THAT** the following civil monetary penalties are assessed and immediately due and owing:

CIG - \$7,000,000;

Linda Kuhney - \$250,000;

Michael Kuhney - \$250,000.

Defendants shall make their CMP payments 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, under a cover letter that identifies them and the name and docket number of the proceeding, sent to

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman - AMZ-300
DOFFAA/MMAC
6500 S. Macarthur Blvd.
Oklahoma City, OK 73169

instructions.

Each Defendant shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor and to:

Office of Cooperative Enforcement
Division of Enforcement
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

C. Interest

With the consent of the Parties, the Court further ORDERS that pre-judgment interest from June 21, 2005 until the entry of this Order on the restitution amount shall be paid at the then prevailing underpayment rate established by the Internal Revenue Service pursuant to 26 U.S.C. § 6621 and post-judgment interest on the restitution and civil monetary penalty amounts beginning with the date of the entry of this Order be paid at the then prevailing Treasury Bill rate pursuant to 28 U.S.C. § 1961.

VI.

MISCELLANEOUS PROVISIONS

Notification of Financial Institutions: The parties stipulate that upon the issuance of this Consent Order, the Commission shall promptly provide each of the financial institutions identified in this paragraph with a copy of this Order. Within thirty (30) days of receiving a copy of this Consent Order, each of the financial institutions identified in this paragraph are specifically directed to liquidate and release any and all funds held by CIG in any account as of the date of the entry of this Consent Order, whether the account is held singly or jointly with

another Defendant identified herein, or in any other capacity, and to convey by wire transfer to an account designated by the Monitor, any and all funds contained in those accounts, less any amounts required to cover the banks' outstanding administrative or wire transfer fees. The transfer of such funds represents an offset to Defendants' aggregate joint and several restitution. At no time during the liquidation, release and/or wire transfer of these funds pursuant to this Consent Order shall Defendants be afforded any access to, or be provided with, any funds from these accounts. Defendants, as well as all banks and financial institutions listed in this Consent Order, shall cooperate fully and expeditiously with the Commission and Monitor in the liquidation, release and wire. The accounts to be liquidated, released and transferred are held at the following financial institutions:

Commodity Investment Group, Inc.; and

Wachovia National Bank

Equitable Relief: The equitable relief provisions of this Consent Order shall be binding upon Defendants and any person who is acting in the capacity of officer, agent, employee, servant, or attorney of Defendants, and any person acting in active concert or participation with Defendants and those equitable relief provisions that relate to restitution shall be binding on any financial institutions listed above or holding frozen funds or assets of the Defendants, who receives actual notice of this Consent Order by personal service or otherwise.

Notices: All notices required to be given by any provision in this Consent Order shall be sent certified mail, return receipt requested, as follows: Notice to Commission: Attention - Director of Enforcement, Commodity Futures Trading Commission, Division of Enforcement, 1155 21st Street N.W., Washington, DC 20581; Notice to NFA – Daniel Driscoll, National Futures Association, 200 W. Madison St., #1600, Chicago, IL 60606-3447.

and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

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

Waiver: The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

Acknowledgements: Upon being served with copies of this Consent Order after entry by the Court, Defendants shall sign acknowledgments of such service and serve such acknowledgments on the Court and the Commission within seven (7) calendar days.

Defendants understand and acknowledge that this Consent Order must be accepted and ratified by the Commission before it becomes final. However, the Defendants understand and agree that by their signatures they are bound by the terms and conditions of this Consent Order, unless the Commission refuses to accept and ratify the Consent Order.

only to assure compliance with this Consent Order and for all other purposes related to this action.

Authority: Janelle Breig-Wright hereby warrants that she is the President of CIG, that this Consent Order has been duly authorized by CIG, and she has been duly empowered to sign and submit it on behalf of CIG. Sulaiman Husain warrants that he is a corporate representative of ICC and NCCL, that this Consent Order has been duly authorized by ICC and NCCL, and he has been duly empowered to sign and submit it on behalf of ICC and NCCL.

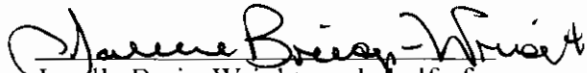
There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order.

SO ORDERED.

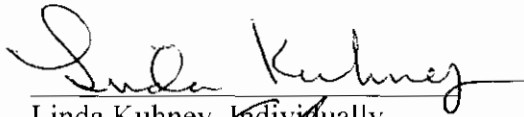
Dated: 2/27, 2007


The Honorable Harold Baer, Jr.
United States District Court Judge

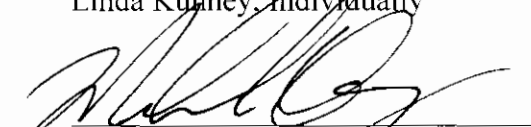
CONSENTED TO AND APPROVED BY:


Janelle Breig-Wright, on behalf of
Commodity Investment Group, Inc.

Date: 12.27.06


Linda Kuhney, Individually

Date: 12-27-06


Michael Kuhney, Individually

Date: 12-27-06

Sulaiman Husain, on behalf of International
Commodity Clearing LLC and National
Commodities Corp., Inc.

Date: _____

Approved for Entry:

R. Lawrence Bonner
Homer & Bonner, P.A.
1200 Four Seasons Tower
1441 Brickell Avenue
Miami, Florida 33131
Facsimile: (305) 379-0918

Date: _____

Vivian R. Drohan
Drohan & Drohan LLP
One Penn Plaza
New York, NY 10155
Facsimile: (212) 644-1691

Date: _____

Attorneys for all Defendants

Janelle Breig-Wright, on behalf of
Commodity Investment Group, Inc.

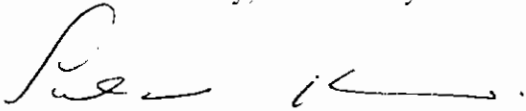
Date: _____

Linda Kuhney, Individually

Date: _____

Michael Kuhney, Individually

Date: _____



Sulaiman Husain, on behalf of International
Commodity Clearing LLC and National
Commodities Corp., Inc.

Date: 12/26/06

Approved for Entry:

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Attorneys for all Defendants

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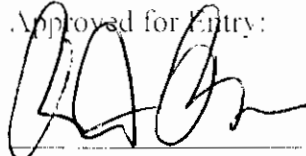
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Date: 12-27-06

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Attorneys for all Defendants

CONSENTED TO AND APPROVED BY:

Janelle Breig-Wright, on behalf of
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Date: 1/3/07

Attorneys for all Defendants