

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 04-80562-CIV-RYSKAMP/VITUNAC

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

NEXT FINANCIAL SERVICES UNLIMITED, INC.,  
NEW WORLD TRADING, LLC, AARON ETTINGER,  
ROBERT LAROCCA, RUSSELL DIAZ, and  
SHAD THOMAS HAYNES

Defendants.

**CONSENT ORDER OF PERMANENT INJUNCTION AND  
OTHER EQUITABLE RELIEF AGAINST DEFENDANTS  
NEXT FINANCIAL SERVICES UNLIMITED, INC., NEW  
WORLD TRADING, LLC, ROBERT LAROCCA, RUSSELL  
DIAZ, AND SHAD THOMAS HAYNES AND  
ORDER CLOSING CASE**

**I. BACKGROUND**

On June 21, 2004, the Commission filed its original Complaint in this case against Next Financial Services Unlimited, Inc. ("Next Financial"), New World Trading, LLC ("New World"), Robert LaRocca ("LaRocca"), and Aaron Ettinger ("Ettinger"). On June 23, 2004, this Court issued an *Ex Parte* Statutory Restraining Order against defendants Next Financial, New World, LaRocca, and Ettinger. On December 22, 2004, this Court entered an order of preliminary injunction, enjoining Next Financial, New World, LaRocca, and Ettinger from engaging in

conduct violative of Section 4c(b) of the Commodity Exchange Act and Sections 32.9(a) and (c) of the Commission Regulations.

On June 20, 2005, the Commission filed its Second Amended Complaint ("Complaint"), adding Russell Diaz ("Diaz") and Shad Thomas Haynes ("Haynes") as defendants and charging them with liability for the fraud committed by the firms which each pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002) and with failing to supervise their respective companies diligently in violation of Section 166.3 of the Commission Regulations, 17 C.F.R. § 166.3 (2004).

On February 8, 2006, the Commission filed a Motion for Partial Summary Judgment against LaRocca, Next Financial, and Diaz. On March 30, 2006, this Court granted the Commission's Motion for Partial Summary Judgment. In the Order granting the Commission's Motion, the Court made findings of fact and conclusions of law concerning LaRocca, Ettinger, Next Financial and Diaz. The findings of fact and conclusions of law in the Court's March 30, 2006 Order Granting the Commission's Motion for Partial Summary Judgment are incorporated by reference herein as if fully set forth.

## **II. CONSENT AND AGREEMENT**

To effect settlement of the matters alleged in the Complaint in this action without a trial on the merits or any further judicial proceedings or presentation of additional evidence,

Defendants:

1. Consent to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief ("Order").

2. Affirm that they have read and agreed to this Order voluntarily and that no threat or promise has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.

3. Acknowledge service of the Summons and Complaint.

4. Admit that this Court has jurisdiction over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

5. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

6. Waive:

a. All claims which may be available under the Equal Access to Justice Act, 5 U.S.C. § 504 (2002) and 28 U.S.C. § 2412 (2002) 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 relief; and.

c. Any rights of appeal from this Order.

7. By consenting to the entry of this Order, Defendants neither admit nor deny the allegations of the Complaint or the Findings of Fact and Conclusions of Law contained in this Order, except as to jurisdiction and venue. Defendants do not consent to the use of this Order, or the findings of fact or conclusions of law, as the sole basis for any other proceeding brought by, or involving, the Commission, other than in a proceeding to revoke, restrict, or condition the

current registration of Defendants pursuant to Section 8a of the Act and Part 3 of the Commission Regulations, or in bankruptcy relating to Defendants, or to enforce the terms of this Order.

8. Solely with respect to any bankruptcy proceeding relating to Defendants or any proceeding to enforce this Order, Defendants agree that the allegations of the Complaint and the findings in this Order shall be taken as true and correct and be given preclusive effect, without further proof. Furthermore, Defendants agree to provide immediate notice to this Court and the Commission by certified mail of any bankruptcy proceeding filed by, on behalf of, or against them, individually or collectively.

9. Defendants agree that neither they nor any of their agents, servants, employees, contractors or attorneys shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or contained in this Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect defendants' (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendants shall take all necessary steps to ensure that all of their agents, servants, employees, contractors and attorneys understand and comply with this agreement.

10. Defendants consent to the continued jurisdiction of this Court in order to implement and carry out the terms of all orders and decrees that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and to assure compliance with the Order.

### **III. FINDINGS AND CONCLUSIONS**

Defendants consent to the entry of this Consent Order solely for the purpose of settling this case. Defendants neither admit nor deny the allegations in the Complaint or the Findings of Fact and Conclusions of Law set forth below, except jurisdiction and venue which they admit for the purpose of settling this case. 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 for delay. The Court therefore directs, without presentation of additional evidence, the entry of findings of fact, conclusions of law, and a permanent injunction and ancillary equitable relief pursuant to § 6c of the Act, 7 U.S.C. § 13a-1 (2002), as set forth herein and in this Court's March 30, 2006 Order Granting the Commission's Motion for Partial Summary Judgment.

#### **A. Findings of Fact**

##### **Solicitation Fraud of Next Financial, New World and LaRocca**

1. From at least September 2003 through at least June 2004 ("the relevant period"), Next Financial and New World, through its employees, including but not limited to LaRocca and Ettinger, solicited members of the retail public to buy and sell off-exchange options on foreign currency.

2. During the relevant period, Next Financial solicited, by means of telephone solicitations, approximately \$2.1 million from at least 101 customers.

3. Ninety-three percent of Next Financial's customers lost substantially all of their investments. Losses to customers of Next Financial totaled at least \$1.8 million.

4. During the relevant period, New World solicited, by means of telephone solicitations, approximately \$1.3 million from at least 98 customers.

5. Ninety-three percent of New World customers lost substantially all of their investments. Losses to customers of New World totaled at least \$1.2 million.

6. Next Financial and New World, through their employees, including but not limited to LaRocca and Ettinger, induced customers to invest with them by making false and misleading material representations during sales solicitation telephone calls to customers and potential customers.

7. Next Financial and New World employees, including but not limited to LaRocca and Ettinger, made materially false claims 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 Next and New World employees.

8. For example, in soliciting a prospective customer to invest in foreign currency options contracts with Next Financial, LaRocca misrepresented that a return of 300-400% could be earned, that there was "limited risk" in the foreign currency options market, that he had a bachelors and masters degree when in fact he had only a high school degree, and that he and other employees at Next Financial were the top brokers in the Palm Beach area and got together to form Next Financial when in fact LaRocca's prior job was at Starbucks and this was his first foray into trading of foreign currency options contracts.

9. Next Financial and New World employees, including but not limited to LaRocca, intentionally made these material misrepresentations in order to induce individuals to invest

funds for purposes of trading foreign currency options and to obtain commissions from the trading of those funds.

10. Next Financial and New World investors relied on the material misrepresentations of the Next Financial and New World employees in making their decision to invest with Next Financial and New World.

11. The fraud by Next Financial and New World employees resulted directly in substantial losses to investors and ill-gotten gains to Next Financial and New World. Based on its overwhelmingly unprofitable trading for customers, Next Financial earned commissions which totaled \$845,311.51. Based on its overwhelmingly unprofitable trading for customers, New World earned commissions which totaled \$473,593.46.

**Diaz and Haynes Were Controlling Persons of Next Financial and New World, Respectively, and Failed to Diligently Supervise Employees' Handling of Customer Accounts**

12. Diaz was the sole owner of Next Financial and was its President. He was responsible for supervising the overall day-to-day operations of Next Financial. He was responsible for hiring, training and supervising of employees, monitoring employees' telephone sales solicitation, supervising the management of customer accounts, handling customer complaints, and determining allocations of commission revenue to employees. He was routinely at the Next Financial office and did not leave the office during work hours.

13. Diaz did not maintain an adequate system of supervision designed to detect or deter wrongdoing by Next Financial employees, including their acts of fraudulent solicitation.

14. Based on Diaz's active involvement in the operations of and presence at Next Financial, Diaz had actual or constructive knowledge of the fraudulent solicitation practices of Next Financial employees

15. In acting as a controlling person of Next Financial, Diaz either failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations found herein.

16 Haynes was the sole owner of New World and was its President. He was responsible for the overall day-to-day operations of New World. He hired and trained as well as supervised employees, monitored employees' in their telephone sales solicitation, supervised the management of customer accounts, handled customer complaints, and determined allocations of commission revenue to employees. Haynes was routinely present at the New World office.

17. Haynes did not maintain an adequate system of supervision designed to detect or deter wrongdoing by New World employees, including their acts of fraudulent solicitation.

18. Based on Haynes's active involvement in the operations of and presence at New World, Haynes had actual or constructive knowledge of the fraudulent solicitation practices of New World employees.

19. In acting as a controlling person of New World, Haynes either failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations found herein.

## **B. Conclusions of Law**

1. Section 2(c)(2)(B)(i) and (ii) of the Act provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a



commodity for future delivery (or option thereon) or an option, so long as the contract is “offered to, or entered into with, a person that is not an eligible contract participant,” and “the counterparty, or the person offering to be the counterparty,” is not one of the regulated entities enumerated in Section 2(c)(2)(B)(ii)(I-VI).

2. All of the foreign currency transactions alleged herein were offered to or entered into with ordinary retail customers who did not qualify as eligible contract participants. See Section 1a(12)(A)(xi) (an eligible contract participant includes an individual who has total assets in excess of: a) \$10 million; or b) \$5 million and who enters the transaction to manage risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred.)

3. Pursuant to Section 2(c)(2)(B)(ii), a company may legally act as a counterparty to a retail customer in transacting foreign currency business only if the company is specifically identified in Section 2(c)(2)(B)(ii) (I-IV) as an appropriate counterparty, which includes, as set forth in subclause (III), certain statutorily defined affiliates of futures commission merchants (“FCMs”), which, in turn, encompasses only those “affiliated” persons as to whom the FCMs are required under the Act and Commission Regulations to make and keep records.

4. During the relevant period, the counterparty to the retail forex options transactions entered into by Next Financial’s customers was a subsidiary of a registered FCM. The counterparty, however, was not an affiliate of a registered FCM for the purposes of Section 2(c)(2)(B)(ii)(III) of the Act, in that the FCM was not required under the Act or Commission Regulations to make and keep records concerning the business or activities of its subsidiary, the

counterparty to the relevant transactions. The counterparty, therefore was not an appropriate counterparty to retail customer transactions.

5. During the relevant period, the counterparty to the retail forex options transactions entered into by New World's customers was a subsidiary of a registered FCM. The counterparty to these transactions, however, also was not an affiliate of a registered FCM for the purposes of Section 2(c)(2)(B)(ii)(III) of the Act, in that the FCM was not required under the Act or Commission Regulations to make and keep records concerning the business or activities of its subsidiary, the counterparty to the relevant transactions. The counterparty, therefore, was not an appropriate counterparty to retail customer transactions.

6. This Court also has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such 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 thereunder.

7. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, in that the defendants are found in, inhabit, or 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.

8. This Court has personal jurisdiction over defendants, who acknowledge service of the Complaint and consent to the Court's jurisdiction over them.

9. The Commission and defendants have agreed to this Court's continuing jurisdiction over each of them for the purpose of enforcing the terms of this Order.

10. By the conduct found in this Court's March 30, 2006 Order Granting the Commission's Motion for Partial Summary Judgment and by the conduct described in Section III.A above, LaRocca and Next Financial violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 32.9(a) and (c), 17 C.F.R. §§ 32.9(a) and (c).

11. By the conduct described in Section III.A above, New World violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 32.9(a) and (c), 17 C.F.R. §§ 32.9(a) and (c).

12. By the conduct described in this Court's March 30, 2006 Order Granting the Commission's Motion for Partial Summary Judgment and in Section III.A above, defendant Diaz directly or indirectly controlled Next Financial, and failed to act in good faith or knowingly induced, directly or indirectly, the violations of Next Financial. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002), Diaz, is liable for Next Financial's violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 32.9(a) and (c), 17 C.F.R. §§ 32.9(a) and (c).

13. By the conduct described in this Court's March 30, 2006 Order granting the Commission's Motion for Partial Summary Judgment and in Section III.A above, defendant Diaz failed to supervise Next Financial, and as such, violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2004).

14. By the conduct described in Section III.A above, defendant Haynes, directly or indirectly, controlled New World and failed to act in good faith or knowingly induced, directly or indirectly, the violations of New World. Therefore, pursuant to Section 13(b) of the Act, 7

U.S.C. § 13c(b) (2002), Haynes is liable for New World's violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 32.9(a) and (c), 17 C.F.R. §§ 32.9(a) and (c).

15. By the conduct described in Section III.A above, defendant Haynes failed to supervise New World, and as such, violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2004).

**IV. ORDER FOR PERMANENT INJUNCTION**

**NOW THEREFORE, IT IS ORDERED THAT:**

1. Defendants are permanently restrained, enjoined and prohibited from directly or indirectly:

a. Offering to enter into, entering into, executing, confirming the execution of, or conducting business for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a commodity option contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe, in violation of Section 4c(b) of the Act; and

b. In or in connection with an offer to enter into, the entry into, or the confirmation of the execution of any commodity option transaction, including options transactions in foreign currency subject to the Commission's jurisdiction set forth herein at Section II.A: cheating or defrauding or attempting to cheat or defraud any persons; or deceiving or attempting to deceive any person by any means whatsoever, in violation of Section 4c(b) of the Act and Commission Regulations 32.9(a) and (c).

2. Defendants are permanently restrained, enjoined and prohibited, from directly or indirectly:
  - a. 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);
  - b. Soliciting, receiving, or accepting any funds in connection with the purchase or sale of any futures contract or option on a futures contract;
  - c. Engaging in, controlling or directing the trading for any commodity futures, security futures, options on futures, foreign currency futures, options on foreign currency futures or options on foreign currency accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
  - d. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2004), or acting as a principal, agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9) (2004). 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, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9) (2004), or soliciting prospective customers, related to the purchase or sale of any commodity futures, security futures, options on futures, foreign currency futures, options on foreign currency futures or options on foreign currency;

2. The injunctive provisions of this Order shall be binding on defendants, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of defendants, and upon any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in active concert or participation with defendants.

**V. RESTITUTION, CIVIL MONETARY PENALTY, AND ANCILLARY RELIEF**

**IT IS HEREBY ORDERED** that Defendants shall comply fully with the following terms, conditions and obligations relating to the payment of restitution, the payment of a civil monetary penalty, and the submission of financial information.

**A.RESTITUTION**

1. **IT IS HEREBY ORDERED THAT** defendant Next Financial shall make restitution in the amount of \$1,833,470, plus pre-judgment interest and post-judgment interest. Defendant Diaz shall be jointly and severally liable for the restitution of Next Financial in the amount of \$350,000, plus pre-judgment interest and post judgment interest. This amount shall include \$4,104.42 currently frozen, held at Wachovia Bank, N.A., and under the control of the Monitor as discussed below. Defendant New World shall make restitution in the amount of \$1,284,855, plus pre-judgment interest and post-judgment interest. Defendant Haynes shall be jointly and severally liable for the restitution of New World in the amount of \$325,000, plus prejudgment interest and post-judgment interest. This amount shall include \$51,449.64 currently frozen, held at Wachovia Bank, N.A., and under the control of the Monitor as discussed below. Restitution shall be paid within ten days of entry of this Order.

2. The amount of restitution represents the amount of funds invested by customers of Defendants as identified in Exhibit A, attached hereto and filed under seal. Omission of any investor from Exhibit A shall in no way limit the ability of such investor from seeking recovery. Further, the amounts payable to each investor identified in Exhibit A shall not limit the ability of any investor from proving that a greater amount is owed from defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any investor that exist under state or common law. Pre-judgment interest from June 2004 to the date of this Order shall be determined by the Internal Revenue Service by using the underpayment rate established quarterly by the Internal Revenue Service pursuant to 26 U.S.C. § 662(a)(2). Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961.

3. Appointment of 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, compute pro rata allocations to injured customers identified in Exhibit A to this Consent Order, and make distributions as set forth below. 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.

4. Restitution payments under this Order shall be made to the National Futures Association ("NFA") by electronic funds transfer, or by U.S. postal money order, certified check, bank

cashier's check, or bank money order, made payable to the Next Financial Settlement Fund and sent to Daniel Driscoll, Monitor, National Futures Association, 200 W. Madison St., #1600, Chicago, IL 60606-3447 under a cover letter that identifies the paying defendants 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 Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 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.

#### **B.CIVIL MONETARY PENALTY**

Defendant Next Financial shall pay to the CFTC a civil monetary penalty in the amount of \$1,000,000, plus post-judgment interest pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1. Defendant New World shall pay to the CFTC a civil monetary penalty in the amount of \$1,000,000, plus post-judgment interest pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1. Defendant Diaz shall pay to the CFTC a civil monetary penalty in the amount of \$250,000, plus post-judgment interest pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1. Defendant Haynes shall pay to the CFTC a civil monetary penalty in the amount of \$125,000, plus post-judgment interest pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1. The civil monetary penalty shall be paid within ten days of entry of this Order. All payments by Defendants shall be applied to their respective restitution obligations under this Order until all respective restitution obligations have



been paid in full. Upon full payment of their respective restitution obligations, all payments by defendants will be applied to their respective civil monetary penalty obligations under this Order. The amount of the civil monetary penalty represents the monetary gain defendants received as a result of the course of conduct alleged in the Complaint and this Order. Post-judgment interest shall accrue beginning on the date of entry of this Order. Defendants shall pay this penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order made payable to the CFTC and sent to the attention of the Office of Cooperative Enforcement, Division of Enforcement, CFTC, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581. Defendants shall accompany payment of the penalty with a cover letter that identifies the paying defendant, and the name and docket number of this proceeding. Defendants shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, CFTC, 1155 21<sup>st</sup> N.W., Washington, D.C. 20581.

#### **VI. MISCELLANEOUS PROVISIONS**

**NOTIFICATION OF FINANCIAL INSTITUTIONS.** Within thirty (30) days of receiving this Consent Order, each financial institution listed below shall liquidate and release any and all funds held by Next Financial or New World, and convey the funds, by wire transfer, to an account designated by the Monitor, less any bank wire or administrative fees. The transfer of such funds held by Next Financial represents an offset to the restitution amounts owed both by Next Financial and Diaz pursuant to this Order, and the transfer of such funds held by New World represents an offset to the restitution owed by New World and Haynes pursuant to this Order. At no time during the release, liquidation or wire of the funds shall Defendants be given access to, or be provided with, any funds from these accounts. Defendants and the financial

institutions listed below shall cooperate fully and expeditiously with the Commission and Restitution Monitor in the liquidation and transfer of funds. The accounts to be liquidated, released, and transferred are:

Next Financial Services Unlimited, Inc. Account # 2000020237589,

Wachovia Bank, N.A.

New World Trading, LLC Account # 2000021146789, Wachovia Bank, N.A.

3. NOTICES. All notices required by this Consent Order shall be sent by certified mail, return receipt requested, as follows:

a. Notice to Plaintiff Commission:

Division of Enforcement

Commodity Futures Trading Commission

1155 21<sup>st</sup> Street, NW

Washington, DC 20581

b. Notice to the Restitution Monitor:

Daniel Driscoll

National Futures Association

200 West Madison Street

Chicago, IL 60606

c. Notice to Defendants Next Financial, New World, LaRocca, Diaz, and Haynes

c/o Homer & Bonner, P.A.

1441 Brickell Avenue

12<sup>th</sup> Floor

Miami, FL 33131

4. ENTIRE AGREEMENT, AMENDMENTS AND SEVERABILITY. This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and (3) approved by order of the Court. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.
5. SUCCESSORS AND ASSIGNS. This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries and administrators.
6. COUNTERPARTS. This Order may be executed by the parties in counterparts and by facsimile.
7. JURISDICTION. This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action. Further, upon entry of this Consent Order, the Commission shall dismiss its case against Defendant Ettinger with prejudice and Defendants Next Financial, New World, and LaRocca shall waive any rights to pursue their appeal filed with the Eleventh Circuit Court of Appeals, and to pursue their claim for attorney's fees awarded in this Court's March 13, 2006 Order Denying Defendants' Motion to Strike Plaintiff's Witnesses.
8. AUTHORITY: Diaz warrants that he is the President of Next Financial and that this Consent Order has been duly authorized by Next Financial and he has been duly empowered to sign and submit it on behalf of Next Financial. Haynes warrants that he is the President of New


World, and that this Consent Order has been duly authorized by New World and he has been duly empowered to sign and submit it on behalf of New World.

**VII. CONCLUSION**

THE COURT, upon entering this Consent Order, Order of Permanent Injunction and Order of Equitable Relief, hereby

ORDERS AND ADJUDGES that the above-styled case is CLOSED. The Clerk of Court shall CLOSE this case and DENY any pending motions as MOOT.

DONE AND ORDERED on this 11 day of January, 2007.

  
HON. KENNETH RYSKAMP  
UNITED STATES DISTRICT JUDGE

Copies provided:

All parties and counsel of record