

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

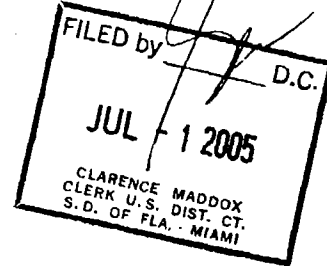
No. 05-60328-CIV-Altonaga

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

MERCURY PARTNERS, INC., a Bahamian
corporation, MERCURY FINANCIAL PARTNERS,
INC., a Florida corporation, MERCURY
MANAGEMENT, L.C., a Florida limited liability
company, ANDREW BARTOS, an individual,
BRUCE N. CROWN, an individual, and MICHAEL
MORGAN, an individual,
Defendants.



**ORDER OF DEFAULT JUDGEMENT, PERMANENT INJUNCTION AND
ANCILLARY RELIEF AGAINST DEFENDANT MERCURY PARTNERS, INC.**

I. BACKGROUND

On March 7, 2005, Plaintiff, Commodity Futures Trading Commission ("Commission"), filed a complaint in this Court against Mercury Partners, Inc. ("Mercury Partners") alleging fraud in violation of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 4c(b) (2002) and Commission Regulation 32.9, 17 C.F.R. § 32.9 (2005).

On March 30, 2005, pursuant to Federal Rule of Civil Procedure 4(f)(1) and 4(h)(2), Uel Johnson of the Royal Bahamas Police Force served the Complaint, the Summons and other papers in this matter on Peter Armstrong, the registered agent of Mercury Partners, at the offices of Mercury Partners in the Bahamas. As detailed in the affidavit of Estelle Gray-Evans, the service of the Complaint, Summons and other documents on Mercury Partners's authorized signatory conformed with the law and practice of the Bahamas Supreme Court, which regulates

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the service of legal process in the Bahamas. Therefore, the Commission's service was proper pursuant to Article 5(a)(2) of the Hague Convention and Federal Rules of Civil Procedure 4(f)(1).

On March 30, 2005, the Commission filed an Amended Complaint. On April 12, 2005, the Clerk of Courts mailed, via certified mail, a copy of the Amended Complaint and Summons to the offices of Mercury Partners in the Bahamas. On April 18, 2005, the package containing the Amended Complaint and Summons was delivered to the offices of Mercury Partners in the Bahamas. International mail service conforms with Article 10(a) of the Hague Convention, and is, therefore, proper service pursuant to Federal Rule of Civil Procedure 4(f)(2)(C)(ii). *See Brockmeyer v. May*, 383 F.3d 798, 804 (9th Cir. 2002) (citing *Ackermann v. Levine*, 788 F.2d 830, 838 (2d Cir. 1986)).

To date, Mercury Partners has failed to file an answer or other responsive pleading in this matter. On June 8, 2005, the Clerk entered a default against Mercury Partners, Inc. On June 9, 2005, this Court entered an order directing the Commission to file a motion for default judgment. On June 22, 2005, the Commission filed a Motion for Entry of Default Judgment, Permanent Injunction, and Ancillary Relief against Mercury Partners ("Motion for Default") and the Declaration of Jed M. Silversmith ("Silversmith Decl.").

II. ENTRY OF DEFAULT JUDGMENT

The Court has carefully considered the Complaint, the allegations of which are well-pleaded and taken as true, the Motion for Default and Silversmith Decl., and the entire record in this case, and being fully advised in the premises, hereby **GRANTS** the Commission's Motion for Default and enters findings of fact and conclusions of law finding Mercury Partners liable as to all violations alleged against it in the Complaint. Accordingly, the Court now issues the

following Order for Default Judgment, Permanent Injunction, and Ancillary Relief against Defendant Mercury Partners ("Order").

This Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. Therefore, this Court directs the entry of findings of fact, conclusions of law, a permanent injunction, and other equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

III. FINDINGS OF FACT

A. Jurisdiction and Venue

This Court has jurisdiction over this action 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 to the Commission that such person 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 pursuant to the Act.

Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e), because Mercury Partners was found in, inhabited, or transacted business in this District, and the acts and practices in violation of the Act occurred within this District.

B. Party to this Order

Defendant Mercury Partners is a Bahamian corporation. Its principal place of business is 31 Seaview Drive, Nassau, Bahamas. Mercury Partners also maintained an office at 5295 Town Center Road, Suite 301, Boca Raton, Florida, 33486, from August 2004 until November 2004. Mercury Partners has never been registered with the Commission in any capacity.

C. Mercury Partners Fraudulently Misrepresented and Omitted to Disclose Material Facts Concerning the Profitability and Risk of Loss Involved with Trading Foreign Currency Options

Between August 2004 and November 2004, Mercury Partners brokers solicited customers by telephone from its office in Boca Raton to purportedly purchase foreign currency options. To entice prospective customers to send their money to Mercury Partners, the firm's brokers made false promises about the benefits of purchasing foreign currency options. Mercury Partners fraudulently solicited at least nine prospective customers; eight of whom actually purchased foreign currency options. Mercury Partners brokers told these customers that they would earn high profits with little or no risk. These brokers also omitted to disclose the risk of loss involved with purchasing foreign currency options. In some cases, the brokers falsely promised their customers that they would place stop-loss orders on their accounts and guaranteed that the customers would not lose more than a certain percentage of their option premium. As a result of these misrepresentations and omissions, customers sent \$148,756 to Mercury Partners to purchase foreign currency options.

D. Mercury Partners Misappropriated Its Customers' Money

Rather than using its customers' money to purchase options, Mercury Partners simply misappropriated its customer funds. In many cases, Mercury Partners misappropriated the money by depositing the funds into its bank account located in Isle of Man. In other cases, Mercury Partners's customer money was deposited into U.S. bank accounts belonging to its associated entities, Mercury Financial Partners, Inc. ("Mercury Financial Partners") and Mercury Management, L.C. ("Mercury Management").

In each case, Mercury Partners customers made their checks payable to Mercury Partners and sent their checks to the firm's office in Boca Raton. Soon after, Mercury Partners prepared trading statements, which it mailed to some of its customers from its office in the Bahamas.

These statements indicated that the customers purchased foreign currency options and that these foreign currency options expired worthless. Mercury Partners accepted customers' money, but failed to purchase foreign currency options for its customers. Instead, it deposited its customers' funds as follows:

- a. On August 18, 2004, Linda Talbot-Keith sent a check for \$10,000 to Mercury Partners's offices in Boca Raton. The money was deposited into Mercury Partners's bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners employees.
- b. On August 19, 2004, Noel Newman sent a check for \$3,000 to Mercury Partners's offices in Boca Raton. The money was deposited into Mercury Partners's bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners employees.
- c. On August 19, 2004, Doug Jones sent a check for \$3,000 to Mercury Partners's offices in Boca Raton. The money was deposited into Mercury Partners's bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners employees.
- d. On August 20, 2004, Asako Ebata sent a check for \$20,146 to Mercury Partners's offices in Boca Raton. The money was deposited into Mercury Management's bank account at Wachovia and then used to pay the personal expenses of a Mercury Partners employee.
- e. On August 23, 2004, Newman sent a second check for \$6,310 to Mercury Partners's offices in Boca Raton. The money was deposited into Mercury

Partners's bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners employees.

- f. On August 23, 2004, Talbot-Keith sent a second check for \$29,750 to Mercury Partners offices in Boca Raton. The money was deposited into Mercury Partners bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners employees.
- g. On August 26, 2004, Newman sent a third and fourth check for \$2183 and \$2507 to Mercury Partners offices in Boca Raton. The money was deposited into Mercury Partners's bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners employees.
- h. On September 1, 2004, Asako Ebata sent a check for \$20,146 to Mercury Partners's offices in Boca Raton. The money was deposited into Mercury Partners's bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners employees.
- i. On September 6, 2004, Mike Schulz sent a check for \$37,000 to Mercury Partners's offices in Boca Raton. The money was deposited into Mercury Partners's bank account in Isle of Man, repatriated to the United States, and then paid out to Mercury Partners employees.
- j. On September 2, 2004, Benton Gatewood sent a check for \$10,000 to Mercury Partners's offices in Boca Raton. The money was deposited into Mercury Management's bank account at Wachovia and then used to pay the personal expenses of a Mercury Partners employee.

- k. On September 12, 2004, Leonard Salzman sent a check for \$3,000 000 to Mercury Partners's offices in Boca Raton. The money was deposited into a personal bank account at Bank Atlantic titled under the name "Mercury Financial" and used to pay Mercury Partners employees.
- l. On October 8, 2004, Mike Schulz sent a check for \$7,860 to Mercury Partners's offices in Boca Raton. The money was deposited into a Mercury Financial Partners's bank account at BankAtlantic and then paid directly to Mercury Partners employees.
- m. On October 16, 2004, Bob Martin sent a check for \$4,000 to Mercury Partners offices in Boca Raton. The money was deposited into Mercury Financial Partners's bank account at SunTrust and then paid directly to Mercury Partners employees.

After the customer money was deposited into these bank accounts, the money was used either for personal expenses of the employees of Mercury Partners, Mercury Management, or Mercury Financial Partners, or the money was paid directly to Mercury Partners employees. Customer money was never used to purchase foreign currency options.

Mercury Partners sent some customers, Ebata, Gatewood, Newman, Schulz, and Talbot-Keith, trading statements indicating that they had purchased options and subsequent trading statements indicating that their options had expired worthless. These trading statements were fraudulent because the firm never purchased foreign currency options on their behalf. The other customers, Martin, Salzman, and Jones never heard from Mercury Partners after sending their money to the firm.

IV. CONCLUSIONS OF LAW

A. **The Commission Possesses Jurisdiction over these Transactions**

Pursuant to the Act, the Commission possesses jurisdiction “over, an agreement, contract, or transaction in foreign currency that is a contract of sale of a commodity for future delivery (or an option on such a contract), or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934) . . .” Section 2(c)(2)(B)(i) of the Act, 7 U.S.C. § 2(c)(2)(B)(i) (emphasis added).

Here, Mercury Partners clearly solicited its customers to purchase foreign currency options. Further, Mercury Partners brokers discussed with their prospective customers the idea of paying an “option premium” to enter into the foreign currency options at issue. Those customers, by electing to enter into these transactions with Mercury Partners, clearly intended to purchase foreign currency options and believed that they had purchased foreign currency options. Indeed, Mercury Partners provided statements to some their customers deceiving them into believing that they had actually purchased foreign currency options, and other statements informing them that those foreign currency options had expired worthless. Because Mercury Partners offered foreign currency options to its customers and the customers believed they were purchasing foreign currency options, pursuant to Section 2(c)(2)(B)(i), 7 U.S.C. § 2(c)(2)(B)(i), Mercury Partners’s transactions are governed by the Act.

Pursuant to section 2(c)(2)(B)(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(ii), the Commission shall have jurisdiction over any agreement, contract, or transaction in foreign currency . . . so long as the contract is “offered to, or entered into with, a person that is not an eligible contract participant,” (meaning the person is a retail customer) unless the counterparty, or the person offering to be the counterparty, is a regulated entity, as enumerated therein, *i.e.*: (1) a financial

institution; (II) a registered securities broker or dealer or a registered futures commission merchant; (III) an associated person of a registered broker or dealer or an affiliated person of a registered futures commission merchant, concerning the financial or securities activities of which the registered person makes and keeps records under section 4f(c)(2)(B) of the Act; (IV) an insurance company; (V) a financial holding company; or (VI) an investment bank holding company. Pursuant to Section 1a(12)(A)(xi) of the Act, 7 U.S.C. §1a, an eligible contract participant is an individual who has total assets in excess of: a) \$10 million; or b) \$5 million and who enters the transaction "to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual."

All of Mercury Partners' foreign currency options transactions were offered to or entered into with persons who are not eligible contract participants; rather, they are members of the retail investing public. Moreover, the transactions did not involve any of the enumerated counterparties. Because Mercury Partners, a non-enumerated counterparty, was offering foreign currency option contracts to members of the retail public, the Commission possesses jurisdiction to regulate these transactions.

B. Mercury Partners Violated Section 4c(b) and Regulation 32.9

Defendants have committed telephone sales solicitation fraud and misappropriated customer funds in violation of the Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Regulation 32.9, 17 C.F.R. § 32.9. Section 4c(b) of the Act, states:

No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", 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.

Regulation 32.9 states that in connection with all option transactions, "It shall be unlawful for any person directly or indirectly... (a) To cheat or defraud or attempt to cheat or defraud any other person... (b) To make or cause to be made to any other person any false report or statement ... (c) To deceive or attempt to deceive any other person by any means whatsoever; in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction."

1. Mercury Partners Committed Fraud by Misrepresenting and Omitting to Disclose Material Facts Concerning the Profitability and Risk of Loss Involved with Trading Foreign Currency Options

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).

Mercury Partners brokers defrauded customers when they misrepresented the likelihood and extent of profits to be made purchasing commodity options. "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); In *Walker v. Rosenthal & Co.*, Comm. Fut. L. Rep. (CCH) [1980-1982 Transfer Binder] ¶ 21,168 at 24, 774 (CFTC Mar. 25, 1981) ("[S]tatements which lead a customer to purchase an option and to believe that it is a low risk or risk free vehicle yielding high profits, as a matter of certainty violates Section 32.9 regardless of any pro forma disclosure of risk that is

made." In *RJFCO*, 310 F.3d at 1329, the court found that promises of 200 or 300 percent profit constituted fraud. See also *CFTC v. Commonwealth Fin. Group, Inc.*, 874 F. Supp. 1345, 1352 (S.D. Fla. 1994), *rev'd on other grounds*.

Here, Mercury Partners brokers repeatedly urged prospective customers to purchase foreign currency options and further promised customers that they would double or triple their money in the few months following their investment. These statements about profit potential are fraudulent misrepresentations because Mercury Partners did not use customer money to purchase foreign currency options. Rather, Mercury Partners diverted customer funds to bank accounts belonging to itself and its associated entities, and then and used the funds to pay the personal expenses of the employees of Mercury Partners, Mercury Financial Partners, and Mercury Management. Of course, even if the customer money were used to purchase foreign currency options, the statements would still have been fraudulent because guarantees that customers will double or triple their money (i.e., earn 100 or 200 percent profit) in futures trading constitute fraud. *RJFCO*, 310 F.3d at 1328-29; *Standard Forex, Inc.*, ¶ 26,063 at 41,462.

Next, Mercury Partners brokers defrauded customers when they omitted to disclose the potential risks of purchasing commodity options. "In light of the uncertainties of the marketplace, statements that losses can be limited to a particular amount are almost always fraudulent." *Munnell v. Paine Webber Jackson & Curtis*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,313 at 32,863 (CFTC Oct. 8, 1986) (internal citation omitted). Mercury Partners brokers repeatedly reassured their customers that the risk of loss is minimal.

Mercury Partners also committed fraud when its brokers told customers that they intended to use stop-loss orders, which will insure that the customer only loses a certain percentage of their investment. Such statements are misleading. A stop-loss order is a "market

order which may or may not be executed at the requested price, and therefore, cannot guarantee protection against losses." *Commonwealth Fin. Group, Inc.*, 874 F. Supp. at 1350. Promises that a stop-loss order will eliminate the risk of loss are *per se* fraudulent because such statements are simply untrue. *Id.* Hence, Mercury Partners brokers' claims about the use of stop-loss orders to limit the risk of loss were fraudulent.

Mercury Partners brokers acted with scienter. In order to establish solicitation fraud in violation of the Act and Regulations, the Commission must demonstrate that a false statement was made with scienter. 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). Specifically, the Commission can establish scienter by showing that Mercury Partners brokers made an extreme departure from the standards of ordinary care. *RJFCO*, 310 F.3d 1328.

Here, Mercury Partners brokers acted recklessly with regard to the statements made to customers regarding the profit potential and risks involved in purchasing foreign currency options. "This recklessness is premised on the fact that this Court and the [Commission] have previously condemned attempts to attract customers by," among other things, "suggesting that the commodities market can be correctly timed to generate large profits and substantially inflating option profit expectations while downplaying risk of loss." *RJFCO*, 310 F.3d at 1332. By holding themselves out as foreign currency options brokers, Mercury Partners brokers were or should have been "knowledgeable in the nuances and complexities of the industry." *Id.* As such their statements "deviated in an extreme manner from the standards of ordinary care."

Accordingly, Mercury Partners brokers either acted recklessly by holding themselves out as foreign currency brokers when they were not, or, if they had previous industry experience, they knew their statements were false. Regardless, they possessed the requisite scienter required to establish a violation of the anti-fraud provisions of the Act. *See id.*

Finally, the misrepresentations and omissions regarding profit and risk of loss 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); *Commonwealth Fin. Group*, 874 F. Supp. at 1353-54. 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). Each of the misrepresentations regarding the profitability and risk of loss of foreign currency options went to the heart of the customers' decision-making process. Each misrepresentation and omission directly affected the profitability of the trade as well as the risk of loss involved. Accordingly, the misrepresentations and omissions are plainly material. As such, Mercury Partners brokers committed sales solicitation fraud because their statements were fraudulent, made with scienter, and were material.

Mercury Partners is liable under the Act for the acts of its brokers. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), "[t]he 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." Mercury Partners brokers made fraudulent misrepresentations and omissions

regarding purchasing foreign currency options while attempting to solicit customers to purchase foreign currency options through Mercury Partners. Because this misconduct occurred within the scope of the brokers' employment, Mercury Partners is liable for their acts.

2. Mercury Partners Committed Fraud by Misappropriating its Customers Money

Mercury Partners misappropriated customer funds in violation of the Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Regulation 32.9, 17 C.F.R § 32.9. As detailed above, Mercury Partners brokers solicited at least nine members of the public to purchase foreign currency options, and eight of those customers sent money to Mercury Partners' Boca Raton office to purchase those options. Mercury Partners did not use their money to purchase foreign currency options. Mercury Partners's used the money for the personal expenses of its employees, or in some cases it paid the money directly to its employees. Despite that, Mercury Partners sent several of its customers trading statements, confirming the purchase of these foreign currency options and informing them that their foreign currency options expired worthless.

Mercury Partners's misappropriation of funds entrusted to it for trading purposes is "willful and blatant fraudulent activity," *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978), that clearly violates Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9, 17 C.F.R. § 32.9(a). *CFTC v. Noble Wealth Data Info. Serv., Inc.*, 90 F. Supp. 2d at 687 (defendants defrauded investors by diverting investor funds for operating expenses and personal use); *CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (defendant misappropriated customer funds entrusted to her by soliciting investor funds for trading , trading only small percentage of those funds, while disbursing the rest of funds to other investors, herself, and her family); *In re Lincolnwood Commodities, Inc.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶

21,986 at 28,255 (1984) (Commission affirmed holding that defendant violated Act when he “diverted to his own use funds entrusted to him by or on behalf of his customers”).

Mercury Partners’ failure to use its customers’ funds to purchase foreign currency options as the firm’s brokers represented to their customers, as well as its providing false statements purporting to show that the customers’ money was used to purchase foreign currency options, constituted fraud in violation of Section 4c(b) of the Act and Regulation 32.9.

V. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

Mercury Partners, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Mercury Partners, and all persons insofar as they are acting in active concert or participation with Mercury Partners who receive actual notice of this order by personal service or otherwise are permanently restrained, enjoined, and prohibited, directly or indirectly:

(a) from cheating or defrauding or attempting to cheat or defraud any other person; (b) from making or causing to be made to any other person any false report or statement thereof or causing to be entered for any person any false record thereof; (c) from deceiving or attempting to deceive any other person by any means whatsoever; in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction.

IT IS HEREBY FURTHER ORDERED THAT:

Mercury Partners, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Mercury Partners, and all persons insofar as they are acting in active concert or participation with Mercury Partners who receive

actual notice of this order by personal service or otherwise are permanently restrained, enjoined, and prohibited from directly or indirectly:

1. soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest contract;
2. placing orders or giving advice or price quotations, or other information in connection with the purchase or sale of commodity interest contracts for themselves and others;
3. introducing customers to any other person engaged in the business of commodity interest trading;
4. issuing statements or reports to others concerning commodity interest trading; and
5. otherwise engaging in any business activities related to commodity interest trading in any capacity requiring registration with the Commission or exemption from registration.

V. RESTITUTION AND CIVIL MONETARY PENALTY

IT IS HEREBY FURTHER ORDERED:

A. Restitution

Mercury Partners shall make full restitution of \$148,756 plus pre- and post-judgment interest, to all persons who gave funds, either directly or indirectly, to Defendants as a result of their course of illegal conduct alleged in the Complaint. Mercury Partners's restitution obligation will be reduced by any amount of restitution payments made by any other defendant in this action, whether made voluntarily or pursuant to order of this Court.

Pre-judgment interest shall be determined by using the underpayment rate established quarterly by the Internal Revenue Service ("IRS") pursuant to 26 U.S.C. § 662(a)(2) from

August 2001 to the date of this Order. Post-judgment interest shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961(a).

Mercury Partners shall pay its restitution obligation set forth above to the National Futures Association (“NFA”), which shall be designated as the “Monitor” for the purpose of distributing any funds paid as restitution, for the period beginning with the date of entry of this Order and continuing until distribution of the complete restitution obligation called for by this Order. The Commission shall provide the Monitor with a list of persons (“Mercury Partners Customer List”), attached hereto as Exhibit A, to whom restitution shall be made. Omission from the Mercury Partners Customer List shall in no way limit the ability of any customer to seek recovery from Mercury Partners, or any other person or entity. Further, the amounts contained in the Mercury Partners Customer List shall not limit the ability of any customer to prove that a greater amount is owed from Mercury Partners, or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law. The Monitor shall make periodic distributions of funds obtained from Mercury Partners, as restitution payments to customers. Restitution payments shall be made in an equitable fashion as determined by the Monitor to individuals contained on the Mercury Partners Customer List and to any other Mercury Partners Customer List upon sufficient proof of his or her purchase of options from Defendants. Mercury Partners shall submit restitution payments to the National Futures Association, 200 W. Madison Street, Chicago, IL 60606, Attention: Daniel A. Driscoll.

B. Civil Monetary Penalty

For violations of Section 4c(b) of the Act and Regulation 32.9 (a), the Court is assessing a penalty of \$1,080,000, including post-judgment interest. This is based on the Commission’s

maximum penalty of \$120,000 per violation of the Act multiplied by the firm's nine customers. Post-judgment interest shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961(a). Mercury Partners shall submit payment of the civil monetary penalty to the Commission, Division of Enforcement, 1155 21st Street, N.W., Washington, D.C. 20581 Attention: Ms. Dennese Posey. Payment must be made by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the U.S. Commodity Futures Trading Commission. Payment(s) shall include a cover letter that identifies the entity on whose behalf payment is made and the name and docket number of this proceeding. Mercury Partners shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

C. Miscellaneous

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

Copies of this Order may be served by any means, including facsimile transmission, upon any financial institution, or any other entity or person that may have possession, custody or control of any documents or assets of Mercury Partners that may be subject to any provision of this Order.

Within seven (7) days after the entry of this Order, Mercury Partners shall serve upon the Commission a signed acknowledgement that it has been served with the Order.

Mercury Partners shall serve any notices or materials required by this Order, and any applicable notices required by the Federal Rules of Civil Procedure, upon the Mercury Partners

by delivering a copy to the Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, D.C. 20581, Attention: Jed M. Silversmith.

Mercury Partners shall prepare and file with the Court, within thirty (30) days of the date of this Order, an accounting for the period August 1, 2004 to the date of such accounting. The accounting shall include the following: (1) all of Mercury Partners's assets and liabilities, identifying their value, nature and location, including but not limited to all real and personal property, and all bank, credit union, checking, commodity or security accounts, either directly or indirectly under the possession or control of Mercury Partners, wherever situated; and (2) transfers of real and personal property; the accounting shall include a detailed explanation of the circumstances under which any documentary evidence (including computer data) which would support the foregoing accounting has been destroyed, lost, misplaced or otherwise become unavailable. The accounting shall be made under oath attesting to a full and complete accounting and shall be signed by an officer of Mercury Partners. A copy of the accounting shall be provided to the Commission.

This Court shall retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of the Court.

All aspects of the Court's Order remain in full force and effect, unless specifically lifted or altered in this Order or any subsequent Order of this Court.

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

SO ORDERED, at Miami, Florida on this 1 day of July, 2005.



THE HONORABLE CECILIA ALTONAGA

Mercury Partners Customer Deposits

<i>Date</i>	<i>Customer</i>	<i>Money deposited</i>	<i>Amount</i>
9/12/2004	Salzman, Leonard	BankAtlantic (Mercury Financial)	\$3,000.00
		BankAtlantic (Mercury Financial) Total	\$3,000.00
10/8/2004	Schulz, Mike	BankAtlantic (Mercury Financial Partners)	\$7,860.00
		BankAtlantic (Mercury Financial Partners) Total	\$7,860.00
8/18/2004	Talbot-Keith, Linda	Singer & Friedlander (Mercury Partners)	\$10,000.00
8/19/2004	Jones, Doug	Singer & Friedlander (Mercury Partners)	\$3,000.00
8/19/2004	Newman, Noel	Singer & Friedlander (Mercury Partners)	\$3,000.00
8/23/2004	Newman, Noel	Singer & Friedlander (Mercury Partners)	\$6,310.00
8/23/2004	Talbot-Keith, Linda	Singer & Friedlander (Mercury Partners)	\$29,750.00
8/26/2004	Newman, Noel	Singer & Friedlander (Mercury Partners)	\$4,690.00
9/1/2004	Ebata, Asako	Singer & Friedlander (Mercury Partners)	\$20,146.00
9/6/2004	Schulz, Mike	Singer & Friedlander (Mercury Partners)	\$37,000.00
		Singer & Friedlander (Mercury Partners) Total	\$113,896.00
10/16/2004	Martin, Bob	SunTrust (Mercury Financial Partners)	\$4,000.00
		SunTrust (Mercury Financial Partners) Total	\$4,000.00
8/20/2004	Ebata, Asako	Wachovia (Mercury Management)	\$10,000.00
9/2/2004	Galewood, Benton	Wachovia (Mercury Management)	\$10,000.00
		Wachovia (Mercury Management) Total	\$20,000.00
		Grand Total	\$148,756.00