

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

COMMODITY FUTURES TRADING)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
PRESIDENTIAL FX, INC., ADAM LÉON,)
AND JOSEPH MARCHIANO,)
)
Defendants.)

Civil Action No. 1:05cv492 (CMH/LO)

Report and Recommendation

This matter comes before the Court on Plaintiff's Motion for Entry of Default as to Defendants Presidential FX, Inc. and Adam Léon, to which these defendants later stipulated, and Plaintiff's Motion for Entry of Default as to Defendant Joseph Marchiano, who failed to appear or otherwise defend in this matter. Plaintiff's Complaint was filed on May 2, 2005. (Otten Aff. in Supp. of Request for Entry of Default ¶ 1.)

Defendant Presidential FX was served with the Complaint and Summons in this case on May 6, 2005. (Otten Aff. in Supp. of Request for Entry of Default ¶ 3.) Defendant Marchiano was served with the Complaint and Summons in this case on May 11, 2005. (Otten Aff. in Supp. of Request for Entry of Default ¶ 2.) Defendant Léon was served with the Complaint and Summons in this case on May 31, 2005. (Otten Aff. in Supp. of Request for Entry of Default ¶ 4.)

Defendant Presidential FX moved for and was granted an extension of time in which to answer the Complaint, which was due on June 27, 2005. (Otten Aff. in Supp. of Request for

Entry of Default ¶ 3.) Presidential FX did not answer by June 27, 2005, but instead moved to dismiss the complaint on June 29, 2005. (Dkt. 12; Otten Aff. in Supp. of Request for Entry of Default ¶ 3.) That motion was denied on August 19, 2006. (Dkt. 28; Otten Aff. in Supp. of Request for Entry of Default ¶ 3.) On September 7, 2005, the Court ordered that Presidential FX answer the Complaint no later than October 7, 2005, but Presidential FX did not file an answer. (Dkt. 33; Otten Aff. in Supp. of Request for Entry of Default ¶ 3.)

Defendant Léon moved to dismiss the Complaint on June 10, 2005, and the motion was denied on August 19, 2005. (Otten Aff. in Supp. of Request for Entry of Default ¶ 4.) At that time, the Court ordered that Léon answer the Complaint no later than October 7, 2005, but Léon did not answer. (*Id.*)

On December 22, 2005, Plaintiff moved the Court to compel the Defendants to respond to Plaintiff's unanswered discovery requests, with which Plaintiff had served Defendants on August 26, 2005. (Pltf.'s Mem. in Supp. of Mot. to Compel Discovery/Mot. for Entry of Default ¶ 1; Mot. to Compel Discovery 1.) On January 6, 2006, the Court entered an order granting the motion to compel and ordering Defendants Presidential FX and Léon to respond to the discovery propounded no later than January 17, 2006. (Pltf.'s Mem. in Supp. of Mot. to Compel Discovery/Mot. for Entry of Default ¶¶ 1, 2.) The order also required both Defendant Presidential FX and Defendant Léon to appear for deposition. (Pltf.'s Mem. in Supp. of Mot. to Compel Discovery/Mot. for Entry of Default ¶ 2.) Defendants Presidential FX and Léon did not produce the ordered discovery, nor did they appear for deposition. Instead, both defendants, through counsel, stipulated to default in a pleading filed with the Court on February 17, 2006 (Dkt. 68).

Defendant Joseph Marchiano never entered an appearance in this case and failed entirely to answer or otherwise respond to the Complaint. Plaintiff requested entry of default against him pursuant to Fed. R. Civ. P. 55(a) on February 7, 2006, and the Clerk of the Court entered default on February 14, 2006.

Parties

Plaintiff Commodity Futures Trading Commission is an independent federal agency that administers and enforces the provisions of Commodity Exchange Act (“the Act”), as amended, 7 U.S.C. §§ 1 *et seq.* (2002), and the regulations promulgated pursuant to the Act, 17 C.F.R. §§ 1 *et seq.* (2003). Plaintiff maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. (Compl. ¶ 9.)

Defendant Presidential FX, Inc. (“Presidential FX”) is an entity that was incorporated pursuant to the laws of the State of Florida on November 10, 200, and has that its principal place of business at 4000 Hollywood Boulevard, Suite 525-S, Hollywood, Florida 33021. At the time Plaintiff filed its complaint, Presidential FX maintained an active website at www.PresidentialFX.com, from which the company solicited customers.¹ Presidential FX was registered with Plaintiff agency as an introducing broker from December 29, 2003 to April 9, 2004. Presidential FX was not registered with Plaintiff in any capacity at the time Plaintiff initiated this lawsuit. (Compl. ¶ 10.)

¹ The Magistrate Judge has attempted to access this website, but it is apparently no longer operational.

Defendant Adam Léon is a principal of Presidential FX, responsible for supervising all of the activities of Presidential FX's employees, including solicitation of prospective customers and management of customer accounts. Léon was registered with Plaintiff as an associated person of two registered introducing brokers—Protrade Futures & Options and Royce Capital Futures and Options, Inc—at the time Plaintiff instituted this action. He has never been registered in any capacity regarding his position at Presidential FX, however. (Compl. ¶ 11.)

Defendant Joseph Marchiano resides in Pembroke Pines, Florida. He solicited customers for Presidential FX by telephone on at least 20 occasions from December 2003 to January 2004, but he was never registered with Plaintiff agency in any capacity while working at Presidential FX. He was, however, registered with various entities intermittently from 1988 to 2000. (Compl. ¶ 12.)

Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action pursuant to Section 6c of the Commodity Exchange Act, 7 U.S.C. § 13a-1, which states that “[w]henver it shall appear to the Commission that any registered entity or other 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, ... the Commission may bring an action in the proper district court of the United States ... to enjoin such act or practice, or to enforce compliance with this chapter, or any rule, regulation or order thereunder, and said courts shall have jurisdiction to entertain such actions.” (Compl. ¶ 6.)

This Court has personal jurisdiction over Defendants because Defendants have transacted business in this district. Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), provides that “[a]ny action under [the Act] may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or in the district where the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.” Fed. R. Civ. P. 4(k)(1)(D) states that “[s]ervice of a summons ... is effective to establish jurisdiction over the person of a defendant ... when authorized by a statute of the United States.” Therefore, the Commodity Exchange Act, coupled with Rule 4(k)(1)(D), authorizes nationwide service of process in this case.²

Venue is likewise proper in this district pursuant to Section 6c(e) of the Act, because Defendants have transacted business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or will occur within this district. (Compl. ¶ 8.)

Factual Background

Upon consideration of the Complaint, the Magistrate Judge finds as facts the following of Plaintiff’s critical assertions.

² The Court’s exercise of personal jurisdiction over Defendants under Rule 4(k)(2)(D) in this case comports with the requirements of the Fifth Amendment. The Court may, when a federal statute authorizes, exercise personal jurisdiction over a defendant by virtue of the defendant’s overall contacts with the United States, provided the defendant has sufficient contacts with the nation as a whole. *See Board of Trustees, Sheet Metal Workers’ National Pension Fund, et al. v. McD Metals, Inc.*, 964 F.Supp. 1040 (E.D.Va. 1997). In this case, Defendant Presidential FX is a Florida corporation with a principal place of business in Hollywood, Florida, Defendant Léon is a principal of the Florida corporation, Presidential FX, and Defendant Marchiano resides in Pembroke Pines, Florida and has solicited customers on Presidential FX’s behalf on numerous occasions. (Compl. ¶¶ 10-12.) All three Defendants have substantial ties to the State of Florida and have transacted business both there and in this district. Thus, Defendants satisfy the demands of both the Act and the Fifth Amendment and may be sued in this Court.

Through its employees, including Defendant Marchiano, Presidential FX solicited customers to open trading accounts for the purpose of trading forex options³ contracts during the time period at issue. Presidential FX also solicited customers to invest in other types of commodities, including off-exchange metals, such as gold options. (Compl. ¶ 13.) Presidential FX solicited prospective customers nationwide by telephone, promotional literature, word-of-mouth, and the website www.PresidentialFX.com. (Compl. ¶ 14.)

Presidential FX consistently used high-pressure sales tactics to encourage customers to invest, including calling customers and potential customers daily—sometimes multiple times in one day—with requests for money. Presidential FX’s employees also routinely told customers and potential customers that they must send money immediately in order to make high profits. (Compl. ¶ 15.) In these calls, Presidential FX’s employees claimed high-profit, low-risk trading and prior successful trading experiences, in order to create the impression that Presidential FX had a successful trading record. (Compl. ¶ 16.) Presidential FX employees then gave potential customers account opening documents by mail and at the company’s website. (Compl. ¶ 17.)

If a potential customer chose to open an account, the soliciting employee told him to send checks or transfer money electronically first to NCCI FX, and then to Worldwide Clearing, LLC (“Worldwide”). NCCI FX was not registered with Plaintiff in any capacity, including as a futures commission merchant (“FCM”), and was not affiliated with any FCM registered under the Act or with any other type of regulated financial entity recognized under the Act. Worldwide Clearing, LLC was registered with Plaintiff as an FCM at the time Plaintiff filed suit, and was registered as such throughout the relevant time period. (Compl. ¶ 18.)

³ That is, foreign currency options contracts, from “foreign exchange” options.

During the relevant time period, Presidential FX, through its employees, including Defendant Marchiano, solicited approximately \$1.9 million from at least 120 customers. Most of those customers were retail customers and were not eligible contract participants within the meaning of Section 1a(12) of the Act. (Compl. ¶ 20.) Of those 120 customers, 116 lost all or almost all of their investment. (Compl. ¶ 21.) During that time period, however, Presidential FX charged commissions ranging from 9% to 86% on the trading in each customer's account. (Compl. ¶ 22.)

Throughout the relevant period, Presidential FX, through its employees, including Defendant Marchiano, frequently exaggerated to customers the likelihood of profiting from trading forex options. (Compl. ¶ 23.) Defendant Marchiano, in particular, made the following claims: (1) that he “would double or triple [a customer's] money;” (2) that if a customer “invested over \$100,000, [the customer] would make really big money;” (3) that a customer would make a “quick profit” by investing \$50,000 with Presidential FX; (4) that he “guaranteed” a customer would make profits; (5) that the customer “would make money” by investing with Presidential FX; and (6) that a customer “would make profits within three months” of investing with Presidential FX. (Compl. ¶ 24.) Other Presidential FX employees also made exaggerated claims of profits, including: (1) that customers “would make a 20% profit within three months;” (2) that “within 90 days [the customer] would see a huge return;” (3) that the employee “would double [the customer's] money” in three months; (4) that Presidential FX employees “would fix [the customer's] account,” so that the customer “would make a profit;” (5) that “another investment would bring [the customer's] account back up” to the amount of the original investment, and then the customer's money would “double or triple;” and (6) that a customer had

to “send money right away to earn quadruple profits.” (Compl. ¶ 25.) Presidential FX gave its employees a written script for use in soliciting customers. Using this script, Presidential FX’s employees falsely represented to customers that they stood to make 25%, 50%, or even 100% profit in 60 to 90 days of trading forex options. (Compl. ¶ 26.)

Furthermore, Presidential FX and its employees, including Defendant Marchiano, routinely failed to disclose the risk inherent in forex options trading. Defendants’ occasional references to risk of loss were effectively negated by the tactics Defendants used to pressure customers to invest immediately and by false representations made by Defendants that, while customers could possibly lose money, trading with Presidential FX was virtually risk-free. During the relevant time period, Defendant Marchiano told customers that: (1) it was “absolutely impossible” to lose money investing with Presidential FX; (2) an investment with Presidential FX “was a sure thing;” and (3) an investment with Presidential FX was “a sure bet.” Other Presidential FX employees made similar statements, including that: (1) “investing in Euro options was a sure bet;” (2) the customer’s investment “could not go wrong;” (3) “there was no way [the customer] could lose money” on an investment in forex options; (4) Presidential FX employees were making “very safe” investments that involved “very minimal risk;” (5) there “was no chance of the market going bad;” (6) the customer should not “worry about anything the [account opening] documents said about risk” because the risk was so low; and (7) Presidential FX employees used a trading strategy that would prevent customers from losing money. (Compl. ¶ 28.)

Defendants also misrepresented and overstated Presidential FX’s past performance to customers and potential customers in the course of soliciting money for investment. While

exaggerating their profit claims and understating the risks associated with trading, Presidential FX employees made misleading references to Presidential FX's performance record, creating the impression that Presidential FX had a record of successful trading. During the relevant period, employees claimed that: (1) Presidential had been getting 100% return on profits for its customers; (2) Presidential FX's gross fund made 35% returns for customers; and (3) Presidential FX had turned a \$4,000 investment into a \$20,000 investment within one month. (Compl. ¶ 29.) From December 2003 to June 2004, however, Presidential FX did not have a single profitable month of trading. During that time, Presidential FX customers realized losses of roughly \$1.9 million, including commissions paid. (Compl. ¶ 30.) From December 2003 to June 2004, 99.1% of Presidential FX's customers lost money by investing with Defendants. (Compl. ¶ 31.)

At the time Plaintiff filed suit, Defendant Léon was a controlling individual at Presidential FX, responsible for the general day-to-day operations of the company. These operations included hiring new employees and supervising their training and solicitations. (Compl. ¶ 32.) On a daily basis, Defendant Léon was responsible for supervising employees' management of customer accounts, solicitation of prospective customers, and employee sales presentations. (Compl. ¶ 33.)

Standard of Review for Default Judgment

Where a defendant has defaulted, the facts set forth in the plaintiff's complaint are deemed admitted. Before entering default judgment, however, the Court must evaluate the plaintiff's complaint to ensure that the complaint properly states a claim. *GlobalSantaFe Corp. v. Globalsantafe.com*, 250 F. Supp. 2d 610, 612 n.3 (E.D.Va. 2003) (citing *Anderson v. Found.*

for Advancement, Educ. And Employment of Indians, 1999 WL 598860 (4th Cir. 1999)). Thus, in issuing this report and recommendation, the Magistrate Judge must evaluate Plaintiff's claim of Violations of Section 4c(b) of the Act and Sections 1.1(b)(1) and 32.9(a) of the Regulations, Fraud by Misrepresentation and Omission of Material Facts in Connection with the Solicitation and Maintenance of Forex Options Transactions (Count I) against the standards of Fed. R. Civ. P. 12(b)(6).

Plaintiff's Administrative Jurisdiction over the Transactions at Issue

In 1997, the United States Supreme Court held in *Dunn v. Commodity Futures Trading Comm'n*, 519 U.S. 465, 469-70, 117 S.Ct. 913, 915-16, 137 L.Ed.2d 93 (1997), that the market in foreign currency options was beyond the scope of the regulatory authority delegated to Plaintiff by Congress in the Act. In 2000, Congress responded to the decision by passing the Commodity Futures Modernization Act, Pub. L. No. 106-554, 114 Stat. 2763 (2000) (codified as amended at 7 U.S.C. § 1), which granted the agency jurisdiction over forex transactions involving certain types of parties. See *Commodity Futures Trading Comm'n v. Zelener*, 373 F.3d 861, 862 (7th Cir. 2004) ("today [the Commission] may pursue claims that currency futures have been marketed deceitfully, unless the parties to the contract are 'eligible contract participants'"). Now, pursuant to the 2000 amendment, Plaintiff Commission must establish as a threshold matter that it has regulatory jurisdiction over the transactions at issue in order to prevail on its claims against Defendants.

Sections 2(c)(2)(B)(i) and (ii) of the Act state that Plaintiff, the Commodity Futures Trading Commission, "shall have jurisdiction over an agreement, contract, or transaction ... that (i) is a contract of sale of a commodity for future delivery (or an option on such a contract) or an

option ... and (ii) is offered to, or entered into with, a person that is not an eligible contract participant,” provided the counterparty or the individual or entity offering to be the counterparty of the person is not one of the regulated entities listed in § 2(c)(2)(B)(ii)(I)-(VI) of the Act. 7 U.S.C. § 2(c)(2)(B)(i) and (ii).

Section 1a(12)(A)(xi) of the Act defines an eligible contract participant as an individual “who has total assets in an amount in excess of (I) \$10,000,000; or (II) \$5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.” 7 U.S.C. § 1a(12)(A)(xi).⁴ Most, if not all, of the forex options transactions alleged in the Complaint were offered to or entered into with persons who did not qualify as eligible contract participants. (Compl. ¶ 35.) Thus, those from whom Presidential FX solicited money for investments in the transactions at issue were merely retail customers, casual investors whose transactions fall within the ambit of § 2(c)(2)(B)(ii)(I)-(VI).

Section 2(c)(2)(B)(ii)(I)-(VI) lists regulated entities that are proper counterparties to forex transactions with retail customers.⁵ These entities are generally those whose operations are

⁴ “‘Eligible contract participants’ under the Commodity Exchange Act are the equivalent of ‘accredited investors’ in securities markets: wealthy persons who can look out for themselves directly or by hiring experts.” *Commodity Futures Trading Comm’n v. Zelener*, 373 F.3d 861, 862 -863 (7th Cir. 2004).

⁵ “This chapter applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that ... is offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is ... (I) a financial institution; (II) a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 or a futures commission merchant registered under this chapter; (III) an associated person of a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934, or an affiliated person of a futures commission merchant registered under this chapter, concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 or section 6f(c)(2)(B) of this title; (IV) an insurance company described in section 1a(12)(A)(ii) of this title, or a regulated subsidiary or affiliate of such an insurance company; (V) a financial holding company (as defined in section 1841 of Title 12); or (VI) an investment bank holding company (as defined in section 17(i) of the Securities

regulated under the Act or the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.*, such as registered FCMs, financial institutions, securities brokers or dealers, insurance companies, financial holding companies, and investment bank holding companies. *See* 7 U.S.C. § 2(c)(2)(B)(ii)(I), (II), (IV), (V), (VI). In addition, certain entities affiliated with a registered FCM may qualify under the Act as a proper counterparty to a forex transaction with a retail customer. Qualifying affiliates are those as to whom the FCMs are required under the Act and regulations to make and keep records regarding their financial or securities activities. *See* 7 U.S.C. § 2(c)(2)(B)(ii)(III).

If an entity is a proper counterparty to the forex transactions at issue, then Plaintiff does not have jurisdiction over the transactions, as the Act expressly provides Plaintiff Commission with jurisdiction over transactions with retail customers only if there is no proper counterparty to the transaction. *See* 7 U.S.C. § 2(c)(2)(B)(ii). In this case, NCCI FX, the first party to whom customers of Presidential FX are instructed to send money, is not one of the regulated entities listed in section 2(c)(2)(B)(ii)(I)-(VI). (*See* Compl. ¶ 18.) NCCI FX is not registered with Plaintiff as an FCM and is not a statutorily-defined affiliate of a registered FCM, as no registered FCMs are required under the Act or regulations to make and keep records concerning the business or activities of NCCI FX. (Compl. ¶ 38.) Thus, NCCI FX is not a proper counterparty to the transactions alleged.

Worldwide, the second entity to whom Presidential FX instructed customers to send money, is registered with Plaintiff as an FCM and therefore is a proper counterparty to

Exchange Act of 1934).” 7 U.S.C. § 2(c)(2)(B)(ii).

transactions with customers who are not eligible contract participants. (Compl. ¶ 39.) Plaintiff retains jurisdiction, however, over alleged fraud cases pursuant to section 2(c)(2)(c) of the Act, which states that: “[n]otwithstanding subclauses (II) and (III) of subparagraph (B)(ii), agreements, contracts, or transactions described in subparagraph (B) shall be subject to sections 6b, 6c(b), 15 and 13b ... , 13a-1, 13a-2, and 12(a) of this title if they are entered into by a futures commission merchant or an affiliate of a futures commission merchant that is not also an entity described in subparagraph (B)(ii) of this paragraph.” 7 U.S.C. 2(c)(2)(c). Section 6b of the Act makes it unlawful for a registered entity to enter into a contract for the sale of a commodity to be delivered on a future date if the contract is designed “(i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made to such other person any false report or statement thereof ...; [or] (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract” 7 U.S.C. § 6b(a)(c). Thus, transactions with retail customers involving a proper counterparty—a registered entity under section 2(c)(2)(B)(I) or (II)—remain subject to Plaintiff’s regulatory jurisdiction and the provisions penalizing fraudulent and misleading solicitation of contracts found in section 6b. In this case, Plaintiff has alleged fraudulent and misleading conduct by Defendants, including overstating past profits, overstating the potential for future profits, and understating the potential risk of investing with Presidential FX. Therefore, even though Worldwide—the second entity to which customers were instructed to send money in order to invest in forex options through Presidential FX—is a registered entity, Plaintiff has regulatory jurisdiction over the transactions alleged in its Complaint, including jurisdiction to seek the remedies it now seeks in court.

Count I—Fraud by Misrepresentation and Omission of Material Facts in Connection with the Solicitation and Maintenance of Forex Options Transactions in Violation of the Act

Liability of Defendants Presidential FX and Marchiano

Plaintiff alleges that from at least December 2003 to the time Plaintiff filed its Complaint, Presidential FX, through its employees, including Defendant Marchiano, cheated, defrauded, or deceived customers or attempted to cheat, defraud, or deceive customers by making false, deceptive, or misleading representations or omissions of facts material to customers' decisions to invest with Presidential FX. Plaintiff further alleges that this conduct violated section 4c(b) of the Act,⁶ 17 C.F.R. §§ 1.1(b)(1) and (3), and 17 C.F.R. §§ 32.9(a) and (c) (2004).

Section 4c(b) of the Act, 7 U.S.C. § 6c(b), states that “[n]o 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’... contrary to any rule, regulation, or order of the Commission prohibiting any such transaction” Plaintiff has promulgated regulations, at 17 C.F.R. §§ 1.1(b)(1) and (3) and §§ 32.9(a) and (c), that prohibit fraud in transactions in foreign currency and in commodity options transactions. 17 C.F.R. §§ 1.1(b)(1) and (1) make it unlawful “[t]o cheat or defraud or attempt to cheat or defraud any person [or] ... [w]illfully to deceive or attempt to deceive any person by any means whatsoever” in connection with any transaction in foreign currency of the kind regulated by the Act.⁷ Likewise, 17 C.F.R. §§ 32.9(a) and (c) make it unlawful “[t]o cheat or defraud or

⁶ 7 U.S.C. § 6c(b).

⁷ 17 C.F.R. § 1.1(a) exempts from the prohibitions of 17 C.F.R. § 1.1(b) “persons described in section 2(c)(2)(B)(ii)(II) or 2(c)(2)(B)(ii)(III) of the Act.” As noted above, those provisions name as proper counterparties to a transaction in foreign currency involving a person who is not an eligible contract participant

attempt to cheat or defraud any other person ... [or] [t]o deceive or attempt to deceive any other person by any means whatsoever” in connection with commodity option transactions, generally.

The Complaint alleges misleading statements by Presidential FX’s employees, including Defendant Marchiano, of Presidential FX’s past trading record, of the profitmaking potential of investment with Presidential FX, and of the risk inherent in transacting with Presidential FX, and that Presidential FX’s employees made these misleading statements in an attempt to create a false impression of the likelihood of investment success with Presidential FX and to solicit business for the company. The Court must accept these factual assertions as true, in light of the default posture of this case, and therefore find that Presidential FX⁸ and Marchiano, individually, have violated the Act and implementing regulations.

registered FCMs, among others: “(II) a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 or a futures commission merchant registered under [section 2]; [and] (III) an associated person of a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934, or an affiliated person of a futures commission merchant registered under this chapter, concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 or section 6f(c)(2)(B) of this title” To the extent the transactions at issue did not involve proper counterparties, i.e., were carried out by NCCI FX, they come within the scope of 17 C.F.R. § 1.1. To the extent they did involve a proper counterparty, i.e., Worldwide, a registered FCM, they would appear to fall without the reach of 17 C.F.R. § 1.1. Again, however, Plaintiff retains its anti-fraud jurisdiction over such transactions involving a registered FCM under 7 U.S.C. 2(c)(2)(c) and 7 U.S.C. § 6c(b). Furthermore, the prohibition on fraud in commodity option contracts contains no such limitation, so 17 C.F.R. §§ 32.9(a) and (c) would apply unqualifiedly to all of the transactions at issue.

⁸ While Defendant Marchiano is liable for his direct violations of the Act, Presidential FX is vicariously liable for Marchiano’s acts and the acts of other employees. Section 2(a)(1)(B) of the Act states that “[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.” 7 U.S.C. § 2(a)(1)(B). The acts and omissions violating the Act and implementing regulations committed by Presidential’s employees, including Defendants Léon and Marchiano, were within the scope of the employees’ employment with Presidential FX, as alleged in the Complaint. (Compl. ¶ 44.) Therefore, any conduct violating the Act and implementing regulations committed by employees of Presidential FX must be deemed within the scope of their employment and is attributable to Presidential FX.

Liability of Defendant Léon as a Controlling Person in Presidential FX

The Complaint alleges that Defendant Léon controlled Presidential FX either directly or indirectly, and that he did not act in good faith, but knowingly induced the acts Presidential FX committed in violation of the Act and implementing regulations. (Compl. ¶ 43.) Section 13(b) of the act, 17 U.S.C. § 13c(b), provides that: “[a]ny person who, directly or indirectly, controls any person who has violated any provision of this chapter or any of the rules, regulations, or orders issued pursuant to this chapter may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person.” In proving the culpability of the controlling person, Plaintiff Commission must prove that the person “did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.” *Id.* Plaintiff has pleaded both that Defendant Léon was a controlling person and that he did not act in good faith and knowingly induced the violative acts committed by Presidential FX. The Court must accept these facts as established because Defendant Léon has stipulated to the entry of default and find that Defendant Léon is also liable for the violations committed by Presidential FX.

Damages

Plaintiff prays in the Complaint for: (1) an order finding that Defendants violated sections 4c(b) of the Act and sections 1.1(b)(1) and (3) and 32.9(a) and (c) of the regulations; (2) a permanent injunction prohibiting Defendants from engaging in conduct in violation of the Act and its implementing regulations and from engaging in any commodity-related activity, including soliciting new customers or customer funds; (3) an order directing Defendants to disgorge all benefits from the acts or practices which constitute violations of the above provisions by such

procedure as the Court deems appropriate and to pay interest on those violations;⁹ (4) an order directing Defendants to make full restitution to every customer whose funds were received by them as a result of acts and practices which violate the above provisions by such procedure as the Court deems appropriate and to pay interest on those amounts; and (5) an order directing Defendants each to pay a civil monetary penalty in the amount of not more than the greater of \$120,000.00 for violations occurring before October 24, 2004 and \$130,000.00 for violations occurring after October 24, 2004, or triple the monetary gain to Defendants for each violation of the above provisions.¹⁰

Section 6c of the Act, 7 U.S.C. § 13a-1, empowers Plaintiff Commission to seek relief for acts committed by defendants in violation of the Act and implementing regulations. These remedies may include injunctive relief when “any registered entity or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule, regulation, or order thereunder, or is restraining trading in any

⁹ In Plaintiff’s final pleading in support of its request for damages, Plaintiff omits reference to its initial request for disgorgement of profits and requests only the civil monetary penalty, restitution, and injunctive relief. (*See* Brief in Supp. of Claim for Civil Monetary Penalty, Restitution, and Injunctive Relief.) Because Plaintiff seeks full restitution of all money lost by Presidential FX’s customers, including money paid in commissions, *id.* at 7, however, such an order would have the effect of requiring Defendants to disgorge any profits. Therefore, the Magistrate Judge does not recommend an additional disgorgement order. Furthermore, some courts are reticent to impose both disgorgement and restitution orders in similar cases—cases in which the requested restitution is greater than or equal to the amount of disgorgement requested—because such a judgment would require a defendant to make a double payment for the injury he caused. *See Commodity Futures Trading Comm’n v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d 676, 692 (D.Md. 2000), *aff’d in part and vacated in part on other grounds*, 278 F.3d 319 (4th Cir. 2000) (“The familiar principle of *damages* law is that the remedy should not provide more than one full compensation. The analogous principle of *restitution* law is that restitution should not force disgorgement of more than the unjust enrichment.”).

¹⁰ Plaintiff, in its Brief in Support of Claim for Civil Monetary Penalty, Restitution, and Injunctive Relief, seeks only \$120,000.00 per violation, rather than proving which violations occurred after October 21, 2004 and seeking \$130,000.00 for each of those violations. (Brief in Supp. of Claim for Civil Monetary Penalty, Restitution, and Injunctive Relief 2-4.) Therefore, the Magistrate Judge recommends calculating any civil monetary penalty on the basis of \$120,000.00 per violation for all violations alleged.

commodity for future delivery.” 7 U.S.C. § 13a-1(a) (2000). Permanent or temporary injunctive relief may be granted “upon a proper showing ... [and] without bond.” 7 U.S.C. § 13a-1(b). If a person is “found ... to have committed any violation [of the Act or implementing regulations, the court may order] a civil penalty in the amount of not more than the higher of \$100,000 or triple the monetary gain to the person for each violation.” 7 U.S.C. § 13a-1(d)(1). The provision for award of a civil monetary penalty was supplemented by 17 C.F.R. § 143.8, which set an inflation-adjusted maximum civil monetary penalty for each violation at \$120,000.00 per violation for violations committed between October 23, 2000 and October 22, 2004 and \$130,000.00 per violation for violations committed on or after October 23, 2004. 17 C.F.R. § 143.8(a)(1)(ii) and (iii) (2004).¹¹

The Magistrate Judge has examined the Complaint, and finds that Plaintiff is entitled to a civil monetary penalty from Defendant Marchiano in the amount of \$450,000.00, a penalty from Defendant Léon in the amount of \$1,000,000.00, and a penalty from Defendant Presidential FX in the amount of \$1,000,000.00. In addition, the Magistrate Judge is persuaded that Defendant Marchiano should be required to make full restitution to the customers who suffered losses due to his fraudulent inducement of their investments, Defendants Presidential FX and Léon should be required to make full restitution to the Presidential FX customers who suffered losses due to

¹¹ Plaintiff, a regulatory agency, has the authority effectively to amend the civil penalty amount set forth in the Act under the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996). See Adjustment of Civil Monetary Penalties for Inflation, 61 Fed. Reg. 55564, 55564-65 (October 28, 1996) (“The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA), requires the head of each agency to adjust by regulation the maximum amount of civil monetary penalties (CMPs) or, as applicable, the range of minimum and maximum CMPs, provided by law within the jurisdiction of that Federal agency by the cost-of-living adjustment defined in the FCPIAA, as amended”).

the fraudulent inducement of Presidential FX employees other than Defendant Marchiano, and all three Defendants should be enjoined from (1) committing any future violations of the Act and (2) engaging in any commodity-related activity.

Civil Penalties

Defendant Marchiano

Plaintiff's supplemental pleading in support of its claim for relief and the attached affidavits establish that Defendant Marchiano recognized a monetary gain of \$33,049.58 as a result of his fraudulent conduct, as alleged above and admitted in default, and that he committed at least 15 violations of the Act by making fraudulent misrepresentations in his dealings with at least 8 customers of Presidential FX. (Otten Decl. ¶ 3; Brief in Supp. of Claim for Civil Monetary Penalty, Restitution, and Injunctive Relief 3-4; Brief in Supp. of Claim for Civil Monetary Penalty, Restitution, and Injunctive Relief 4 n.5.) 7 U.S.C. § 13a-1(d)(1), as supplemented by 17 C.F.R. § 143.8, entitles Plaintiff to a civil penalty equal to the greater of triple a defendant's monetary gain or \$120,000 per violation. Triple Defendant Marchiano's illicit earnings from all of his violations of the Act would total \$99,148.74; fifteen violations at \$120,000.00 per violation would total \$1,800,000.00. Thus, Defendant Marchiano is liable for up to \$1,800,000.00.

Plaintiff Commission, however, considering the nature and severity of Defendant Marchiano's violations, *see Commodity Futures Trading Comm'n v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d 676, 694 (D.Md. 2000), *aff'd in part and vacated in part on other grounds*, 278 F.3d 319 (4th Cir. 2000), seeks a civil penalty of only \$450,000.00. The Magistrate

Judge therefore recommends that a civil penalty be entered in favor of Plaintiff Commission and against Defendant Marchiano in the amount of \$450,000.00.

Defendants Presidential FX and Léon

Plaintiff's supplemental pleading in support of its claim for relief and the attached affidavits establish that Defendant Presidential FX and Defendant Léon, as a controlling person under the Act, both recognized a monetary gain of \$780,500.00 in fees and commissions as a result of fraudulent conduct on the part of Presidential FX's employees, as alleged above and admitted in default. (Kaminski Decl. ¶¶ 3, 9, Ex. 1, Mem. of Points and Authorities in Supp. of Pltf.'s Mot. for a Preliminary Inj.; Brief in Supp. of Claim for Civil Monetary Penalty, Restitution, and Injunctive Relief at 5.) Furthermore, through the actions of Presidential FX's employees, Defendants Presidential FX and Léon committed at least 311 violations of the Act by making fraudulent misrepresentations in their dealings with at least 120 customers of Presidential FX. (Kaminski Decl. ¶¶ 3, 7, Ex. 1, Mem. of Points and Authorities in Supp. of Pltf.'s Mot. for a Preliminary Inj.; Brief in Supp. of Claim for Civil Monetary Penalty, Restitution, and Injunctive Relief at 5.) Plaintiff Commission argues that the Court should find that every investment by a customer of Presidential FX was made as a result of fraudulent misrepresentation by a Presidential FX employee, in light of Defendants' documented strategy of repeatedly calling customers and making fraudulent misrepresentations in their solicitations. (Brief in Supp. of Claim for Civil Monetary Penalty, Restitution, and Injunctive Relief at 5.) Triple the monetary gain to Presidential FX and Léon would total \$2,341,500.00. 311 violations at \$120,000.00 per violation would total \$37,320,000.00. Thus, Defendants Presidential FX and Léon are each

liable for up to \$37,320,000.00.

Plaintiff Commission, however, considering the nature and severity of Defendants Presidential FX and Léon's violations, seeks a civil penalty of \$1,000,000.00 per Defendant. The Magistrate Judge therefore recommends that a civil penalty be entered in favor of Plaintiff Commission and against Defendant Presidential FX in the amount of \$1,000,000.00 and against Defendant Léon in the amount of \$1,000,000.00.

Restitution

Plaintiff Commission also seeks an order requiring Defendants to reimburse Presidential FX customers who sustained losses as a result of Presidential FX employees' fraudulent misrepresentations. Although 7 U.S.C. § 13a-1 does not expressly grant a remedy of restitution for violations of the Act, courts have recognized their authority under this provision to award ancillary relief "in the exercise of the courts' general equity powers to afford complete relief." *See Commodity Futures Trading Comm'n v. Hunt*, 591 F.2d 1211, 1222 (6th Cir. 1979) (holding that, although the Commodity Exchange Act does not contain an express grant of equitable authority pursuant to which a court may grant disgorgement as a remedy, unlike the Securities Exchange Act, "[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied") (quoting *Porter v. Warner Holding Co.*, 328 U.S. 395, 398, 66 S.Ct. 1086, 1089, 90 L.Ed. 1332 (1946)); *Commodity Futures Trading Comm'n v. Petro Mktg. Group, Inc.*, 680 F.2d 573, 583-84 (9th Cir. 1982) (holding that a court may order restitution to redress violations of the Act because that 7 U.S.C. § 13a-1 "authorizes the Commission to bring an action to

'enforce compliance' with the Act and empowers the court to order 'such action as is necessary to remove the danger of violation,'" yet does not restrict a court's traditional equitable power to grant ancillary relief); *Federal Trade Comm'n v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984); *AT&T Broadband v. Tech. Communications, Inc.*, 381 F.3d 1309, 1318-19 (11th Cir. 2004). Courts have also held that an order of restitution for losses sustained by all of a defendant's customers is appropriate without an individualized showing of injury by each customer where there is evidence of pervasive or systemic fraud in the defendant's dealings with its customers. *See Commodity Futures Trading Comm'n v. Gibraltar Monetary Corp., Inc.*, 2006 U.S. Dist. LEXIS 45129 at *76 (S.D. Fla. 2006); *Federal Trade Comm'n v. Figgie Int'l, Inc.*, 994 F.2d 595, 605 (9th Cir. 1993) (interpreting section 13 of the Federal Trade Commission Act, 7 U.S.C. § 53).

Defendant Marchiano

Eight customers of Presidential FX have stated in their declarations that Defendant Marchiano was the Presidential FX employee who made fraudulent misrepresentations to them while soliciting investments from them on behalf of Presidential FX. Of those eight, four customers sustained losses totaling \$267,660.00.¹² (Brief in Supp. of Claim for Civil Monetary Penalty, Restitution, and Injunctive Relief 7.)

¹² Plaintiff claims that the total losses incurred by customers from whom investments were solicited by Defendant Marchiano was \$262,685.00. In Plaintiff's brief, however, Plaintiff identifies the four customers who sustained losses as a result of Defendant Marchiano's conduct, and the losses averred by those customers totals \$267,660.00. The Magistrate Judge has examined the declarations, and finds \$267,660.00 to be the correct amount.

Therefore, the Magistrate Judge recommends that Defendant Marchiano be ordered to pay restitution as follows:

(1) to John Moore, \$20,400.00 (Moore Decl. ¶¶ 7, 8, Ex. 2, Mem. of Points and Authorities in Supp. of Pltf.'s Mot. for a Preliminary Inj.);

(2) to Oliver Nkwonta, \$5,000.00 (Nkwonta Decl. ¶ 8, Ex. 5, Mem. of Points and Authorities in Supp. of Pltf.'s Mot. for a Preliminary Inj.);

(3) to Michael Wilson, \$20,000.00 (Wilson Decl. ¶¶ 4-11, Ex. 6, Mem. of Points and Authorities in Supp. of Pltf.'s Mot. for a Preliminary Inj.); and

(4) to Ali Filipour, \$242,260.00 (Filipour Decl. ¶¶ 14-42, Ex. 10, Mem. of Points and Authorities in Supp. of Pltf.'s Mot. for a Preliminary Inj.).

All three Defendants are jointly and severally liable for restitution of this amount, as Defendant Marchiano was acting as an agent and employee of Presidential FX when he solicited the investments from which these customers sustained losses, and Presidential FX is liable for the fraudulent misrepresentations of its employees, as discussed above. The customers, of course, may recover their losses only once, from the Defendant of their choice.

Defendants Presidential FX and Léon

The Magistrate Judge is persuaded, upon survey of the declarations of Defendants' customers,¹³ that the fraud perpetrated by Defendant Marchiano and his fellow employees of Presidential FX was indeed pervasive, systemic, and severe, and Defendants Presidential FX and

¹³ Attached as exhibits to Plaintiff's Memorandum of Points and Authorities in Support of Plaintiff's Motion for a Preliminary Injunction (Dkt. 3.)

Léon are jointly and severally liable for all losses sustained by their customers. Plaintiff Commission has established that Presidential FX's customers sustained \$1,596,100.00 in losses from trading with Presidential FX. (Kaminski Supp. Decl. ¶¶ 3, 8, 9; Brief in Supp. of Claim for Civil Monetary Penalty, Restitution, and Injunctive Relief at 7.) Therefore, the Magistrate Judge recommends that Defendants Presidential FX and Léon be ordered to pay restitution in the amount of \$1,596,100.00 to customers who suffered losses as a result of their investments with Presidential FX, to the extent those losses are documented with Plaintiff Commission.

Injunctive Relief

On May 2, 2005, the same day on which Plaintiff instituted this case against Defendants, Plaintiff moved the Court to enter a preliminary injunction against Defendants, barring them from committing any further fraudulent behavior in violation of the Act. (Dkt. 2.) Shortly after all three Defendants were served with a copy of the Complaint and Summons in this case, Defendants Presidential FX and Léon consented to entry of a preliminary injunction prohibiting any fraudulent behavior on their part and on the part of any of their employees or agents. The Court entered the consent order and preliminary injunction on June 17, 2005 (Dkt. 11.) Plaintiffs now ask that the Court permanently enjoin Defendants “from future violations of the [Act] and its Regulations, and ... any commodity-related activity including[,] but not limited to[,] commodity futures and/or options trading, soliciting customers for investments in commodity futures and/or options, and owning, operating, or being employed by any entity that offers or trades commodity futures and/or options.” (Brief in Supp. of Claim for Civil Monetary Penalty, Restitution, and Injunctive Relief at 8.)

7 U.S.C. § 13a-1(a) and (b) empower the Court to enjoin violations of the Act upon a “showing that illegal activity has occurred and that there is a reasonable likelihood that the wrong will be repeated.” See *Noble Wealth Data*, 90 F. Supp. 2d at 692 (“[i]njunctive relief is granted upon a “showing that illegal activity has occurred and that there is a reasonable likelihood that the wrong will be repeated””) (quoting *Kelley v. Carr*, 442 F.Supp. 346, 355 (W.D.Mich.1977), *aff'd in rel. part, rev'd in part*, 691 F.2d 800 (6th Cir.1980)); 7 U.S.C. § 13a-1(b) (“[u]pon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond”). A finding of past violations of the Act raises a presumption of likely future violations, however, absent evidence to the contrary. *Noble Wealth*, 90 F. Supp. 2d at 692.

The Magistrate Judge has found above that Defendants Marchiano, Presidential FX, and Léon have committed numerous violations of the Act. The Magistrate Judge further finds that there is a likelihood of future violations by Defendants, in light of the past violations established and Defendants’ failure to produce evidence that they are not likely to violate the Act in the future. Therefore, the Magistrate Judge finds that an injunction against future violations of the Act is appropriate, and recommends that the Court enter such an injunction.¹⁴

The Magistrate Judge also finds that an injunction barring Defendants from engaging in any commodity-related activity is warranted in this case. Where a defendant’s violations of the Act are “blatant, brazen, and repeated,” *Gibraltar Monetary Corp., Inc.*, 2006 U.S. Dist. LEXIS

¹⁴ Because the Act not only authorizes the Court to enjoin violators, but effectively requires entry of an injunction upon a showing of past violations and likelihood of future violations, see 7 U.S.C. § 13a-1(b) (“[u]pon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond”), the Magistrate Judge does not address the four factors ordinarily relevant to a court’s consideration of the appropriateness of granting an injunction under its traditional equitable powers. See *Blackwelder Furniture Co. v. Seilig Manufacturing Co., Inc.*, 550 F.2d 189 (4th Cir. 1977).

45129 at *74-75, a more expansive injunction may be appropriate, such as in cases in which a defendant's conduct has involved multiple employees making fraudulent misrepresentations to multiple customers on multiple occasions. *See id.* at 75; *Wilshire Inv. Mgt. Corp.*, 407 F. Supp. 2d at 1314 (enjoining defendants from any commodity-related activity, including soliciting new customers, on the basis of violations of the Act by multiple brokers at multiple times and involving at least nine customers) (*citing Noble Wealth*, 90 F. Supp. 2d 676). In this case, Plaintiff has pleaded, and therefore established, that Defendant Marchiano committed at least 15 violations of the Act involving at least eight customers, and that Defendants Presidential FX and Léon are responsible for at least 311 violations involving at least 120 customers. The violations included “grossly exaggerated profit claims,” “routine[] fail[] to disclose adequately the risk of loss inherent in trading forex options,” and “misrepresent[at]ions and overstate[ment of] Presidential[FX's] performance record to prospective customers.” (Mem. of Points and Authorities in Supp. of Pltf.'s Mot. for a Preliminary Inj. 7, 8, 9.) These misrepresentations occurred in many different conversations with many different customers, twelve of whom attested to Defendants' fraudulent conduct and their resultant losses in affidavits which were attached as exhibits to Plaintiff's Memorandum of Points and Authorities in Support of Plaintiff's Motion for a Preliminary Injunction. (Ex.2-13, Mem. of Points and Authorities in Supp. of Pltf.'s Mot. for a Preliminary Inj.) In light of the frequency and severity of Defendants' violations, including Defendant Marchiano's violations, the Magistrate Judge finds that the broad injunctive relief Plaintiff seeks is appropriate and recommends that Defendants be enjoined permanently from participating in any future commodity-related activity.

Recommendation

In accordance with the above findings, the Magistrate Judge recommends that the Court enter default judgment in favor of Plaintiff, the Commodity Futures Trading Commission, and against Defendants Presidential FX, Inc., Joseph Marchiano, and Adam Léon. Specifically, the Magistrate Judge recommends that: (1) Defendant Marchiano be assessed a civil monetary penalty of \$450,000.00, Defendant Presidential FX be assessed a civil monetary penalty of \$1,000,000.00, and Defendant Léon be assessed a civil monetary penalty of \$1,000,000.00; (2) Defendants Marchiano, Presidential FX, and Léon be held jointly and severally liable for restitution in the amount of \$267,660.00, \$20,400.00 of which is to be paid to John Moore, \$5,000.00 of which is to be paid to Oliver Nkwonta, \$20,000.00 of which is to be paid to Michael Wilson, and \$242,260.00 of which is to be paid to Ali Filipour, for violations committed by Defendant Marchiano, individually, and acting as an agent of Presidential FX; (3) Defendants Presidential FX and Léon be held jointly and severally liable for restitution in the amount of an additional \$1,328,440.00¹⁵ for violations committed by employees of Presidential FX other than Defendant Marchiano and resulting in losses to customers that have been documented with Plaintiff Commission; (4) that Defendants Presidential FX, Marchiano, and Léon be ordered to pay prejudgment interest on the total amount of restitution through the date of the order issued and until the amount is paid in full at the Treasury Bill rate prevailing on the date of the order pursuant to 28 U.S.C. § 1961(a); (5) that Defendants Presidential FX, Marchiano, and Léon be ordered to pay postjudgment interest on both the amount of restitution and the civil monetary

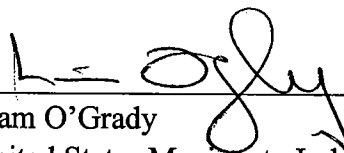
¹⁵ This amount represents the total amount of losses suffered by customers of Presidential FX, less the total amount of losses for which Defendant Marchiano is also jointly and severally liable.

penalties from the date of the order issued at the rate provided in 28 U.S.C. § 1961; and (6) the Court permanently enjoin Defendants Marchiano, Presidential FX, and Léon from committing future violations of the Act and its Regulations, and from any commodity-related activity, including commodity futures and/or options trading, soliciting customers for investments in commodity futures and/or options, and owning, operating, or being employed by any entity that offers or trades commodity futures and/or options.

Notice

By mailing copies of this report and recommendation to the parties at their addresses for service of process, the parties are notified as follows. Objections to this report and recommendation must be filed within ten (10) days of service on you of this report and recommendation. A failure to file timely objections to this report and recommendation waives appellate review of the substance of the report and recommendation and waives appellate review of a judgment based on this report and recommendation.

ENTERED this 18th day of August, 2006.


Liam O'Grady
United States Magistrate Judge

Alexandria, Virginia