UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

COMMODITY FUTURES TRADING COMMISSION, Plaintiff, -against- INTERNATIONAL FOREIGN CURRENCY, INC., a New York corporation, d/b/a INTERNATIONAL FOREIGN CURRENCY EXCHANGE, and I.F.C. TRADING, INC.; THOMAS QUALLS, an individual; and MICHAEL KOURMOLIS, an individual, Defendants.	**MEMORANDUM AND ORDER** 03-CV-3577 (DLI) (ARL)

DORA L. IRIZARRY, United States District Judge:

BACKGROUND[1]

On July, 23, 2003, Plaintiff Commodity Futures Trading Commission (the "Commission" or "Plaintiff"), commenced this civil enforcement action against International Foreign Currency, Inc. d/b/a International Foreign Currency Exchange, I.F.C. Trading, Inc. (collectively "IFC"), Thomas Qualls ("Qualls"), and Michael Kourmolis (collectively,

[1] The facts and procedural history in this case are incorporated by reference herein from *CFTC v. International Foreign Currency, Inc*., 334 F. Supp. 2d 305, 308 (E.D.N.Y. 2004), defendant Qualls' companion criminal case, *U.S. v. Thomas Qualls*, 07-CR-14 (the "criminal case"), and the Commission's memorandum in support of summary judgment. (*See* Docket Entry ("DE") No. 73, Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment ("Pl.'s Mem.").) Accordingly, familiarity with the facts and procedural history are assumed and are only set forth where necessary herein.

"Defendants"),[2] alleging Defendants violated the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq.* (2001) (the "Act") and Commission Regulations (the "Regulations") promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2001), by fraudulently soliciting customers to invest in foreign currency futures contracts, misappropriating investor funds, and offering and selling illegal off-exchange foreign currency futures contracts to the retail public. (Pl.'s Mem. at 1.) The Commission now moves for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure based on collateral estoppel arising from a jury verdict of guilty against Qualls in the parallel criminal case.[3] The Commission also seeks to permanently enjoin Defendants from committing further violations of the Act and Regulations, restitution, and other penalties, fees, and costs. Qualls has not opposed the Commission's summary judgment motion. Qualls fled the United States on the eve of summation in his criminal trial and is currently fighting extradition from Canada. (Pl.'s 56.1 Stmt. ¶ 18; *see also* Dkt # 07-CR-14, DE Nos. 161, 170.)

For the reasons set forth below, the Commission's motion for summary judgment is granted.

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[2] On November 10, 2009, the court entered a Consent Order of Permanent Injunction and Other Equitable Relief against Michael Kourmolis. (*See* DE No. 70.) As a result, the Commission does not move for summary judgment against him.

[3] On November 5, 2008, following a two-week trial over which this court presided, the jury returned a guilty verdict against Qualls *in absentia* as to sixteen (16) of the nineteen (19) counts in the Superseding Indictment for: one (1) count of Conspiracy to Commit Mail and Wire Fraud (18 U.S.C. § 1349); one (1) count of Mail Fraud (18 U.S.C. § 1341); twelve (12) counts of Wire Fraud (18 U.S.C. § 1343); and two (2) counts of Obstruction of Justice (18 U.S.C. § 1512(c)(1)). (Dkt # 07-CR-14, DE No. 153.) On November 6, 2008, the jury also returned a verdict on forfeiture charges, finding, by a preponderance of the evidence, that Qualls received proceeds from the conspiracy and fraud offenses for which he was convicted, in the amount of $922,382. (*Id.*, DE No. 155.) Notably, Qualls is a fugitive from justice having absconded immediately prior to closing arguments. (*Id.*, DE No. 148.) Qualls currently is fighting extradition from Canada.

LEGAL STANDARD

Summary judgment is appropriate where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). The court must view all facts in the light most favorable to the nonmoving party, but "only if there is a 'genuine' dispute as to those facts." *Scott v. Harris*, 550 U.S. 372, 380 (2007). "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Id*. A genuine issue of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

If a motion for summary judgment is unopposed, "the district court may not grant the motion without first examining the moving party's submission to determine if it has met its burden of demonstrating that no material issue of fact remains for trial." *Vt. Teddy Bear Co. v. 1-800 Beargram Co.*, 373 F. 3d 241, 244 (2d Cir. 2004) (quoting *Amaker v. Foley*, 274 F. 3d 677, 681 (2d Cir. 2001)). Further, in determining whether the moving party has met this burden, "the district court may not rely solely on the statement of undisputed facts contained in the moving party's Rule 56.1 statement. It must be satisfied that the citation to evidence in the record supports the assertion." *Id*. (citation omitted).

DISCUSSION

I. Collateral Estoppel

A. Standard of Law

The doctrine of offensive collateral estoppel permits a plaintiff to preclude a defendant from relitigating an issue that the defendant has previously litigated and lost to another plaintiff.

Faulkner v. National Geographic Enterprises Inc., 409 F. 3d 26, 37 (2d Cir. 2005) (citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329, (1979)). Collateral estoppel is applicable where:

> (1) the identical issue was raised in a previous proceeding; (2) the issue was actually litigated and decided in the previous proceeding; (3) the party had a full and fair opportunity to litigate the issue; and (4) the resolution of the issue was necessary to support a valid and final judgment on the merits.

Overview Books, LLC v. U.S., 755 F. Supp. 2d 409, 420 (E.D.N.Y. 2010) (citations omitted). The Second Circuit has long held that "a criminal conviction, whether by jury verdict or guilty plea, constitutes estoppel in favor of the United States in a subsequent civil proceeding as to those matters determined by the judgment in the criminal case." *U.S. v. U.S. Currency in Amount of $119,984.00, More or Less*, 304 F. 3d 165, 172 (2d Cir. 2002) (citing *U.S. v. Podell*, 572 F. 2d 31, 35 (2d Cir. 1978)). This is so because:

> [t]he Government bears a higher burden of proof in the criminal than in the civil context and consequently may rely on the collateral estoppel effect of a criminal conviction in a subsequent civil case. Because mutuality of estoppel is no longer an absolute requirement under federal law, a party other than the Government may assert collateral estoppel based on a criminal conviction. The criminal defendant is barred from relitigating any issue determined adversely to him in the criminal proceeding, provided that he had a full and fair opportunity to litigate the issue.

Gelb v. Royal Globe Ins. Co., 798 F. 2d 38, 43 (2d Cir. 1986) (internal citations omitted).

B. Analysis

Here, the Commission seeks to collaterally estop Qualls from relitigating the underlying facts of his criminal fraud convictions as they relate to the allegations of fraudulent solicitation in the instant civil enforcement action. The court agrees with the Commission that collateral estoppel is applicable here, as each of the four factors enumerated above has been met.

As detailed below, in the parallel criminal case, the government raised the identical issues, which were litigated and decided on the merits by a jury trial; Qualls had ample opportunity to litigate the issue; and the conclusion was necessary to support a finding in favor of the United States, the prevailing party.

i. Identity of Issues

The facts alleged in the Complaint ("Compl.") in this civil enforcement action are identical to the facts alleged in the Superseding Indictment ("Indict.") that led to Qualls' convictions. For example, the Complaint and the Superseding Indictment each allege that between November 2001 and July 2003, IFC and Qualls fraudulently solicited investors, through the telephone and through written marketing materials, to engage in speculative trading of foreign currency futures contracts. (Compl. ¶¶ 3, 8, 12; Indict. ¶ 2, 11.) Both documents allege that IFC told investors that they would be given individual accounts at Chase Manhattan Bank that would be insured against loss up to $25 million. (Compl. ¶¶ 12, 32; Indict. ¶ 26.) The documents further allege that, despite IFC's and Qualls' representations, individual customer accounts were never created. (Compl. ¶ 18; Indict. ¶ 27.) The documents also allege that IFC sent customers account statements falsely showing individual trades and profits on those trades. (Compl. ¶ 16; Indict. ¶ 24.) The documents further allege that, instead of trading funds on behalf of investors, Qualls used the investor funds for his own personal expenses. (Compl. ¶ 18; Indict. ¶ 29.) Accordingly, the court finds that there is identity of issues in this civil enforcement action and the parallel criminal case.

ii. Actually Litigated and Decided

After a two-week trial, the jury rendered a guilty verdict on sixteen (16) counts in the parallel criminal case, thus the parallel criminal case was actually litigated and decided. *See supra* note 3.

iii. Full and Fair Opportunity to Litigate

Qualls had a full and fair opportunity to litigate his claims during the criminal case. The fact that he voluntarily absented himself on the eve of summations is of no moment because he was there for presentation of the evidence and selection of the jury. Indeed, Qualls was represented by competent defense counsel who, throughout the two-week trial, zealously represented Qualls' interests by challenging the admissibility of evidence, calling witnesses, and cross-examining them.

iv. Necessary to a Valid and Final Judgment on the Merits

This factor grants preclusive effect only to those findings which were necessary to a prior judgment, but does not allow preclusion of collateral or extrinsic issues, because these are "less likely to receive close judicial attention and the parties may well have only limited incentive to litigate the issue fully since it is not determinative." *Overview Books, LLC*, 755 F. Supp. 2d at 421 (quoting *U.S. v. Hussein*, 178 F. 3d 125, 129 (2d Cir. 1999)). Here, the issues the Commission seeks to collaterally estop Qualls from relitigating are the underlying factual conclusions that the jury relied upon in convicting him of the fraud charges in the criminal case. These factual determinations were necessary for a final judgment in the criminal case because they were the basis upon which the jury found Qualls guilty beyond a reasonable doubt.

Accordingly, the court finds that all four factors are satisfied, and, therefore, Qualls is estopped from relitigating the factual issues leading to his criminal convictions as they relate to the fraudulent solicitation allegations in the Commission's civil complaint.

II. Violations of Sections 4b(a)(2)(i)-(iii) of the Act and Regulations 1.1(b)(1) and (3)

The Commission alleges in the civil complaint that Qualls defrauded investors in violation of Sections 4b(a)(2)(i)-(iii) of the Act[4] and Regulations 1.1(b)(1) and (3). For the reasons set forth below, the court agrees with the Commission.

A. Fraudulent Solicitation

Pursuant to sections 4b(a)(2)(i) and (iii) of the Act it is unlawful:

> for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used . . . (i) to cheat or defraud or attempt to cheat or defraud such other person;. . .[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 disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person.

Further, Regulations 1.1(b)(1) and (3) similarly make it unlawful:

> for any person, directly or indirectly, in or in connection with any account, agreement, contract or transaction that is subject to [the Commission's jurisdiction] (1) To cheat or defraud or attempt to cheat or defraud any person;…or (3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

[4] On June 18, 2008, Congress enacted Section 4b(a)(1)(A)-(C), 7 U.S.C. §§ 6b(a)(2)(A)-(C), with the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act ("CRA")), §§ 13101-13204, 122 Stat. 1651, which modified and re-designated what was Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2). The CRA's modifications to that Section of the Act do not apply and have no substantive effect on the facts of this case.

To show Defendants violated Sections 4b(a)(2)(i) and (iii) of the Act and Regulations 1.1(b)(1) and (3), the Commission must prove: (1) the making of a misrepresentation, misleading statement, or a deceptive omission; (2) scienter; and (3) materiality. *See CFTC v. Musorofiti*, 2007 WL 2089388, at *5 (E.D.N.Y. July 17, 2007) (citing *CFTC v. International Financial Services (New York), Inc.*, 323 F. Supp. 2d 482, 499 (S.D.N.Y. 2004)).

The trial jury, by returning a verdict of guilty on the wire and mail fraud criminal charges, necessarily unanimously found Qualls and IFC guilty of defrauding investors. Moreover, the court, having presided over the criminal trial and, therefore, being intimately familiar with the record, concludes that the factual determinations necessarily made by the jury in convicting Qualls for wire and mail fraud also establish the violations of Sections 4b(a)(2)(i)-(iii) of the Act and Regulations 1.1(b)(1) and (3) as alleged here. During the criminal trial, the court specifically instructed the jury that, in order to find Qualls guilty of mail and/or wire fraud, it must find, in pertinent part, that: (1) there was a scheme or artifice to defraud or to obtain money or property from investors by false and fraudulent pretenses, representations or promises, as alleged in the indictment; and (2) the defendant knowingly and willfully participated in the scheme or artifice to defraud, with knowledge of its fraudulent nature and with specific intent to defraud. (*See* Dkt # 07-CR-14, DE No. 145 at 30, 42.) The court further instructed the jury that "[t]he false or fraudulent representation must relate to a material fact or matter." (*Id.* at 32, 43.)

The elements on which the court instructed the trial jury in the criminal trial are the same elements the Commission must prove to establish the fraudulent solicitation charges. Because the jury returned a guilty verdict on the mail and wire fraud charges, Qualls is collaterally estopped from relitigating the elements of those charges, and the Commission is entitled to a judgment as a matter of law that Qualls violated Sections 4b(a)(2)(i)-(iii) of the Act and Regulations

1.1(b)(1) and (3). *See S.E.C. v. Shehyn*, 2010 WL 3290977, at *3 (S.D.N.Y. Aug. 9, 2010) (where defendant's guilty plea to mail and wire fraud establish the requisite elements of securities fraud, the defendant is estopped from challenging his liability under the securities fraud statutes).

B. Fraudulent Misappropriation

The Commission also alleges that Qualls misappropriated customer funds by using investor funds for his own personal expenses. Misappropriation of customer funds constitutes "willful and blatant" fraud in violation of Sections 4b(a)(2)(i) and (iii) of the Act and Regulations 1.1(b)(1) and (3). *CFTC v. Baragosh*, 278 F. 3d 319 (4th Cir. 2002), *cert. denied*, 537 U.S. 950 (2002) (defendants violated Section 4b(a)(2)(i) and (iii) by diverting investor funds for operating expenses and personal use); *see also CFTC v. Cloud*, 2011 WL 1157530, at *4 (S.D. Tex. Mar. 24, 2011) (defendants violated Sections 4b(a)(2)(A) and (C) of the Act, as amended by the CRA, by misappropriating customer funds by not depositing a portion of customer funds in any trading account and using customer funds for personal use); *CFTC v. Weinberg*, 287 F. Supp. 2d. 1100, 1106 (C.D. Cal. 2003) (misappropriating investor funds violated Section 4b(a)(2)(i) and (iii) of the Act); *CFTC v. Skorupskas*, 605 F. Supp. 923 (E.D. Mich. 1985) (defendant misappropriated customer funds entrusted to her by soliciting investor funds and then disbursing a portion of the funds to other investors, herself, and to her family). To prove that a defendant misappropriated customer funds in violation of the Act, the Commission must show that the defendant: (i) deposited investor funds in his own accounts; (ii) used significant portions of the investors' funds for his own personal expenditures; and (iii) knew that the funds he was spending were not his own. *CFTC v. Aurifex Commodities Research Co.*, 2008 WL 299002, at *6 (W.D. Mich. Feb. 1, 2008).

The evidence adduced during the criminal trial established that Qualls fraudulently solicited 32 investors to invest a total of $922,382. (Pl.'s 56.1 Stmt. ¶ 14 & Ex. 5 at 1625:3-1703:3.) Indeed, as mentioned, *supra* note 3, the jury found, by a preponderance of the evidence, that Qualls received proceeds from the conspiracy and fraud convictions, in the amount of $922,382. (*See* Dkt # 07-CR-14, DE No. 155.) The evidence further established that, while Qualls told investors that he set up individual investor accounts at Chase Manhattan Bank, Qualls directed investors to send funds to IFC bank accounts. (Pl.'s 56.1 Stmt. ¶¶ 31-33.) Finally, the evidence showed that Qualls withdrew at least $95,000 from the IFC bank accounts and at least $43,000 by endorsing checks made out to "Cash," which funds he used to purchase, *inter alia*, a cruise for his family, jewelry, and veterinary services for his dogs. (*Id.* ¶¶ 38-39.) These facts established at the criminal trial, which Qualls is estopped from relitigating, overwhelmingly support the Commission's allegation that Qualls fraudulently misappropriated investor funds. Accordingly, there is no genuine dispute as to any material fact and the Commission's motion for summary judgment as to Defendants fraudulent misappropriation is granted.

III. Violation of Section 4(a) of the Act, 7 U.S.C. § 6(a)(1)

The Commission further alleges that Qualls and IFC violated Section 4(a) of the Act, 7 U.S.C. § 6(a)(1), which prohibits commodities futures transactions that are not "conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodit[ies]." 7 U.S.C. § 6(a)(1); *see CFTC v. Noble Metals Int'l, Inc.*, 67 F. 3d 766, 772 (9th Cir. 1995); *CFTC v. Standard Forex, Inc.*, 1998 WL 236923, at *5 (E.D.N.Y. Mar. 31, 1998). The court agrees.

A. The Transactions at Issue Involved Commodities for Future Delivery

This court previously held that the foreign currency contracts that Defendants offered and sold were contracts "of a sale of a commodity for future delivery," as contemplated by the Act. *CFTC v. International Foreign Currency, Inc.*, 334 F. Supp. 2d 305, 314 (E.D.N.Y. 2004).

B. The Transactions did not Occur on a Designated Board of Trade

Here, Defendants brokered the foreign currency futures contracts purportedly through IG Markets. (Pl.'s 51.6 Stmt. ¶ 28.) This court previously found, for jurisdictional purposes, that IFC did transact on a "board of trade." *See CFTC v. International Foreign Currency, Inc.*, 334 F. Supp. 2d 305, 314 (E.D.N.Y. 2004). However, the board of trade has not "been designated or registered by the Commission." (Pl.'s 51.6 Stmt. ¶ 43.) Accordingly, the Commission's evidence establishes that Defendants brokered commodities futures transaction on a board of trade not designated or registered by the Commission, in violation of 7 U.S.C. § 6(a)(1). *See, e.g., CFTC v. International Financial Services (New York), Inc., et. al.*, 323 F. Supp. 2d 482, 499 (S.D.N.Y. 2004) (Commission's evidence establishes a violation of 7 U.S.C. § 6(a)(1) where it is undisputed that the alleged board of trade was not designated or registered by the Commission). Accordingly, the Commission's motion for summary judgment as to Defendants' violation of Section 4(a) of the Act, 7 U.S.C. § 6(a)(1) is granted.

REQUESTED RELIEF

The Commission requests the following relief against IFC and Qualls: (a) permanent injunctive relief prohibiting IFC and Qualls from committing further violations of the Act and Regulations and from engaging in any commodity-related activity; (b) restitution to IFC customers; (c) a civil monetary penalty; and (d) recovery of costs and fees. For the reasons set forth below relief is granted as detailed in the Commission's Proposed Order Granting Plaintiff's

Motion for Summary Judgment (the "Commission's Proposed Order"), which is adopted in its entirety and incorporated herein by reference, except as to the Commission's proposed restitution calculation as discussed below. (*See* DE No. 73, Document 73-5.)

I. Permanent Injunction

Section 6c of the Act, 7 U.S.C. § 13a–1, empowers the Commission to seek a permanent injunction prohibiting a defendant from engaging in conduct that violates any provision of the Act or any rule, regulation, or order thereunder. *See CFTC v. Kim*, 2011 WL 1642772, at *1 (S.D.N.Y. Apr. 15, 2011). To obtain this relief, the Commission need only show that a violation of the Act occurred and that there is a reasonable likelihood that the violation will be repeated. *CFTC v. Commodity Inv. Group, Inc.*, 2006 WL 353466, at *1 (S.D.N.Y. Feb. 11, 2006) (citing *CFTC v. British American Commodity Options*, 560 F. 2d 135, 141 (2d Cir. 1977)). Moreover, a district court may infer the likelihood of future violations from the defendant's past unlawful conduct. *CFTC v. Kelly*, 736 F. Supp. 2d 801, 804 (S.D.N.Y. 2010) (citing *CFTC v. American Bd. of Trade, Inc.*, 803 F. 2d 1242, 1250 -1251 (2d Cir. 1986)). Here, Defendants' past unlawful conduct indicates a likelihood of continued violations absent a permanent injunction. As demonstrated throughout the criminal trial, Qualls and IFC committed numerous systematic and knowing fraudulent acts of solicitation and misappropriation of customer funds over at least a two-year period. Defendants' actions were not isolated occurrences but instead demonstrate a pattern of intentional fraudulent behavior. Moreover, Qualls fled the country on the eve of the end of trial, demonstrating his lack of remorse and indifference to the investors he harmed. In light of this past behavior, the court concludes there is a "reasonable likelihood" of future violations and, accordingly, will grant the permanent injunction in the manner detailed in the

Commission's Proposed Order. *See* 7 U.S.C. § 13a-1(b) ("Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond").

II. Restitution

Pursuant to Section 6c of the Act, 7 U.S.C. § 13a–1, a district court has the authority to grant ancillary relief for violations of the Act, including but not limited to, ordering restitution. *See CFTC v. Rolando*, 589 F. Supp. 2d 159, 172-173 (D.Conn. 2008) (citing cases); *see also CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669, 677 (S.D.N.Y. 1979). The Second Circuit has concluded the proper measure of restitution is the benefit unjustly received by a defendant or a defendant's illegally gotten gains. *Rolando*, 589 F. Supp. 2d at 173 (Citing *F.T.C. v. Verity Intern., Ltd.*, 443 F. 3d 48, 68 (2d Cir. 2006)). Here, Defendants fraudulently deposited $922,382 of investor funds into IFC bank accounts but only $107,649 was actually returned to investors.[5] Accordingly, IFC and Qualls are jointly and severally liable for the difference between the amount deposited and amount returned to investors for a total of $814,733 in restitution (the "Restitution Obligation"). Moreover, as set forth in more detail in the Commission's Proposed Order, Defendants are also liable for post-judgment interest on the Restitution Obligation commencing the date of entry of the court's final order, to be paid at the then-prevailing Treasury Bill rate pursuant to 28 U.S.C. § 1961.

[5] The Commission asserts that only approximately $105,000 of that amount was returned to investors. (Pl.'s 56.1 Stmt. ¶ 38 (citing Criminal Trial Transcript ("Crim. Tr.") annexed to Pl.'s Mem. as Ex. 5 at 1648:13-20).) The Commission therefore asks the court to order IFC and Qualls to make restitution in the amount of $817,000. However, a review of the Criminal Trial Transcript reveals that the precise amount of the money returned to investors was actually $107,649. (Crim. Tr. at 1648:12 – 1649:5)

III. Civil Monetary Penalty

Section 6c(d)(1) of the Act, 7 U.S.C. § 13a–1(d)(1), permits the Commission to seek, and gives the court jurisdiction to impose, a civil penalty on any person found in the action to have committed any violation of the Act. The purpose of such sanction is to further the Act's remedial policies, and deter others from committing similar kinds of violations. *See Reddy v. CFTC*, 191 F. 3d 109, 123 (2d Cir. 1999). For the time period at issue in the instant matter, the civil monetary penalty shall be "not more than the greater of $120,000 or triple the monetary gain to such person for each such violation." Regulation 143.8(a)(1)(ii), 17 C.F.R. § 143.8(a)(1)(ii).

The Second Circuit has concluded civil monetary penalties are appropriate where they are commensurate with the gravity of the violations found and where they reflect and seek to deter the betrayal of the public interest caused by a defendant's abuse of customers and a regulated public market. *See Reddy v. CFTC*, 191 F. 3d 109, 128 (2d Cir. 1999). Here, Defendants engaged in a systemic and deliberate scheme to defraud 32 investors, constituting 32 separate violations of the Act. As such, the Commission seeks a penalty of $120,000 per violation for a total of $3,840,000. The court is satisfied that this case warrants a substantial civil monetary penalty as Defendants' multiple violations of the Act and Regulations were intentional and directly impacted numerous victims. *See CFTC v. Kim*, 2011 WL 1642772, at *7 (S.D.N.Y. Apr. 15, 2011) (civil monetary penalty appropriate where violation was intentional and numerous victims were impacted by the fraud); *CFTC v. Bursztyn*, 2006 WL 4050081, at *3 (S.D.N.Y. Nov. 8, 2006) (civil monetary penalty appropriate where violations of the Act were intentional). Accordingly, a civil monetary penalty is imposed on Defendants, jointly and severally, in the amount of $3,840,000 as detailed in the Commission's Proposed Order. Further, post-judgment

interest on this civil monetary penalty should be awarded using the Treasury Bill rate prevailing on the date of the court's final order in this matter, pursuant to 28 U.S.C. § 1961.

IV. Costs and Fees

Finally, the Commission seeks an award of the $150 cost of the filing fee in this action. Pursuant to 28 U.S.C. §§ 2412(a)(1)&(2), certain costs "may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action," and such costs "may include an amount equal to the filing fee prescribed under section 1914(a) of this title." Accordingly, Defendants must pay to Plaintiff the filing fee cost in the amount of $150.

CONCLUSION

For the reasons set forth above, the Commission's motion is granted and summary judgment is entered in favor of the Commission. Additionally, the court grants the Commission the relief as provided in the Commission's Proposed Order, except to the extent that Defendants' Restitution Obligation is $814,733, not $817,000 as propose by the Commission. The Proposed Order with be endorsed and issued separately.

SO ORDERED.

DATED: Brooklyn, New York
January 30, 2012

_____/s/_____

DORA L. IRIZARRY
United States District Judge