

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 05-60328

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, and
BRUCE N. CROWN, an individual, and MICHAEL
MORGAN, an individual,
Defendants.

CIV - ALTONAGA

MAGISTRATE JUDGE
BANDSTRA

FILED BY: _____
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D.C.

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF UNDER THE
COMMODITY EXCHANGE ACT, 7 U.S.C. § 1 ET SEQ.**

By and for its complaint, the Commodity Futures Trading Commission alleges as
follows:

I. SUMMARY

1. Since at least August 18, 2004, Mercury Partners, Inc. ("Mercury Partners"), as well as its associated entities, Mercury Financial Partners, Inc. ("Mercury Financial Partners") and Mercury Management, L.C. ("Mercury Management"), by and through Andrew Bartos ("Bartos") and Michael Morgan ("Morgan"), respectively, have misappropriated at least \$140,000 in customer money that was sent to Mercury Partners to trade options on foreign currency futures ("foreign currency options").

2. In soliciting customers, Mercury Partners brokers, including Bruce N. Crown (“Crown”), misrepresent the profit potential and risk of loss associated with trading foreign currency options.

3. Furthermore, Crown solicited at least one Mercury Partners customer after he left Mercury Partners. Crown induced this customer to give him \$50,000 by misrepresenting that the money was to facilitate the transfer of NYMEX crude oil options from his father’s purported commodity trading account at Goldman Sachs & Co (“Goldman Sachs”) to Crown’s commodity trading account at Goldman Sachs. However, neither Crown nor his father had a commodity trading account at Goldman Sachs. Crown deposited the customer’s money into his personal bank account, and failed to use the customer’s money to purchase any NYMEX crude oil options.

II. JURISDICTION AND VENUE

4. The Commodity Exchange Act establishes a comprehensive system for regulating the purchase and sale of foreign currency options, including the foreign currency options offered by Mercury Partners. This Court possesses jurisdiction over this action pursuant to Section 6c of the Commodity Exchange Act (“Act”), as amended, 7 U.S.C. § 13a-1 (2002), which provides that, whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act. Sections 2(c)(2)(B) and (C) and 4c(b) of the Act, 7 U.S.C. §§ 2(c)(2)(B) and (C) and 6c(b), grant the Commission jurisdiction, in particular anti-fraud jurisdiction, over foreign currency options.

5. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because defendants transact business in this District and violations of the Act have occurred, are occurring, or are about to occur within this District, among other places. In particular, Mercury Partners, Mercury Financial Partners and Mercury Management each maintain an office in this District.

III. THE PARTIES

A. **Plaintiff**

6. The Commodity Futures Trading Commission is an independent federal agency of the United States government charged with the administration and enforcement of the Act and Commission Regulations (“Regulations”), 17 C.F.R. § 1.1 *et. seq.* (2004).

B. **Defendants**

7. Mercury Partners, Inc. is a Bahamian corporation whose last known address was 5295 Town Center Road, 3rd Floor, Boca Raton, Florida 33486. As of approximately November 1, 2004, Mercury Partners moved to an undisclosed location. Mercury Partners is not registered with the Commission.

8. Mercury Financial Partners, Inc. is a Florida corporation whose principal place of business is 2240 N.E 40th Street, Pompano Beach, Florida, 33064. Mercury Financial Partners is not registered with the Commission.

9. Mercury Management, L.C. is a Florida limited liability company whose principal place of business is 9835-16 Lake Worth Road #308, Lake Worth, Florida, 33467. Mercury Management is not registered with the Commission.

10. Andrew Bartos's last known address was 19380 Collins Avenue, Sunny Isles Beach, Florida, 33160. Bartos is the president of Mercury Financial Partners. Bartos is not registered with the Commission.

11. Bruce N. Crown's last known address was 17140 S.W. 39th Court, Miramar, Florida, 33026. During August and September 2004, Crown worked at Mercury Partners as a foreign currency broker.

12. Michael Morgan ("Morgan") resides at 14214 Stroller Way, West Palm Beach, Florida, 33414. Morgan is the manager of and a member of Mercury Management. Morgan is not registered with the Commission.

IV. STATUTORY BACKGROUND

13. The Commission has the authority to regulate the foreign currency option transactions entered into between Mercury Partners and its customers.

14. Pursuant to Section 2(c)(2)(B)(i) of the Act, 7 U.S.C. § 2(c)(2)(B)(i), "the Commission shall have 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)"

15. 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.*: (I) 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.

16. 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.”

V. FACTS

A. **Defendants’ Foreign Currency Options Transactions**

17. Since at least August 2004, Mercury Partners has been soliciting customers from its office in Boca Raton to purportedly trade foreign currency options. During this time, Mercury Partners solicited at least \$ 140,000 in option premiums from retail customers to trade foreign currency options.

18. Defendants are not enumerated counterparties pursuant to Section 2(c)(2)(B)(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(ii).

19. Defendants’ customers are not eligible contract participants pursuant to Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi).

B. Mercury Partners's Brokers Fraudulently Solicit Customers To Purchase Foreign Currency Options

20. Mercury Partners fraudulently solicits customers to purchase foreign currency options, accepts customer money to purchase such options, but fails to use the customer money to purchase foreign currency options.

21. Further, to entice prospective customers to send their money to Mercury Partners, its brokers make material misrepresentations and omissions about the risks and rewards of trading foreign currency options. In making these misrepresentations and omissions, Mercury Partners brokers knew or recklessly disregarded the truth of the statements.

22. To date, at least seven customers sent Mercury Partners money to purchase foreign currency options.

23. Mercury Partners brokers told these customers that they would earn high profits if they purchased foreign currency options.

24. For example, in August 2004, Crown told one customer that she would earn a large profit if she purchased foreign currency options on the Euro dollar. Crown also told two other customers that they would earn a substantial profit if they purchased foreign currency options. Crown told yet another customer that if he invested \$10,000 with Mercury, the broker would guarantee him a return of \$100,000 in as little as a week.

25. In early September 2004, another Mercury Partners broker told another customer that he would earn approximately \$4,500 for every \$1,000 foreign currency option contract that he purchased.

26. During these telephone solicitations, Mercury Partners brokers, including Crown, also failed to disclose the risk of loss involved with trading foreign currency options.

27. In August 2004, Crown specifically told two customers in separate conversations that foreign currency options trading involved little or no risk.

28. In some cases, Mercury Partners 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 foreign currency option premium. In fact, Mercury Partners failed to use any customer money to purchase foreign currency options, much less place stop loss orders on the non-existent foreign currency option contracts.

2. Mercury Partners, Mercury Financial Partners, Mercury Management, Morgan, and Bartos Fraudulently Misappropriate Customer Funds

29. Despite representations to its customers that Mercury Partners would purchase foreign currency options for its customers, the firm did not purchase any foreign currency options with its customers' money. Since at least August 2004, defendants fraudulently misappropriated at least \$140,000 of customer funds.

30. During August and September 2004, four customers sent over \$100,000 to Mercury Partners for the purpose of purchasing foreign currency options. There is no evidence that Mercury Partners used any of that money to purchase foreign currency options. Rather, Mercury Partners deposited that money into its account at Singer and Friedlander in the Isle of Man.

31. In addition, Mercury Partners forwarded some of the checks it received from customers to two associated entities, Mercury Management and Mercury Financial Partners. The principals of these associated entities -- Morgan, the manager of Mercury Management and Bartos, the president of Mercury Financial Partners -- deposited Mercury Partners customer funds into the bank accounts of Mercury Management and Mercury Financial Partners, respectively.

32. In August 2004, two customers sent checks totaling \$20,000 to Mercury Partners for the purpose of purchasing foreign currency options. Morgan deposited those two checks into a Mercury Management bank account, and used the money for personal expenses. In particular, Morgan used the \$20,000 for private education, automobile expenses, credit card purchases, homeowners' association fees, a purchase at Cartier, and cash for himself.

33. In October 2004, two customers sent two checks totaling over \$11,000 to Mercury Partners for the purpose of purchasing foreign currency options. Bartos deposited those two checks into a Mercury Financial Partners bank account, and withdrew the money without purchasing any foreign currency options.

34. In October 2004, another customer sent Mercury Partners \$3,000 for the purpose of trading foreign currency options. Mercury Partners deposited that money into a Mercury Financial Partners bank account and never used the customer's money to purchase foreign currency options.

35. Despite these misappropriations, since at least September 2004, Mercury Partners prepared and mailed trading statements to some of its customers from its office in the Bahamas that falsely claimed that the firm purchased foreign currency options for its customers, and that the options expired worthless.

C. Crown Misappropriated Customer Money After Leaving His Employment With Mercury Partners

36. After leaving Mercury Partners, Crown continued to solicit former customers from Mercury Partners.

37. On or about September 30, 2004, Crown told one customer that he needed money to buy out a position that his 96 year-old father had taken in NYMEX crude oil options through

Goldman Sachs. Crown sought this customer's help in purchasing his father's position. In exchange, Crown agreed to share the profits from the option transaction with her.

38. The customer subsequently sent \$50,000 directly to Crown on or about September 30, 2004, to buy out Crown's father's NYMEX crude oil options.

39. In November 2004, Crown sent the customer a handwritten letter allegedly verifying that he indeed purchased these NYMEX crude oil options.

40. Crown did not use the customer's money to purchase NYMEX crude oil options through Goldman Sachs. Crown deposited the customer's check into his personal bank account at BankAtlantic. In early October 2004, Crown withdrew the entire \$50,000.

41. Neither Crown, nor his father, nor the customer maintained a commodity trading account at Goldman Sachs.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE: DEFENDANTS COMMITTED COMMODITY OPTIONS FRAUD IN VIOLATION OF SECTION 4c(b) AND REGULATION 32.9 (7 U.S.C. § 6c(b) AND 17 C.F.R. § 32.9)

42. Paragraphs 1 through 41 above are realleged and incorporated by reference.

43. Pursuant to Section 4c(b) of the Act, 7 U.S.C. § 6c(b), it is unlawful to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under the Act 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.

44. Pursuant to Regulation 32.9, 17 C.F.R. § 32.9, it is unlawful to (a) cheat or defraud or attempt to cheat or defraud any other person; (b) make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; (c) 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, the confirmation of the execution of, or the maintenance of, any option transaction.

45. During the relevant time period, Mercury Partners brokers, including Crown, violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Regulation 32.9, 17 C.F.R. § 32.9, by making material misrepresentations and omissions to customers and/or potential customers regarding the profit potential and risk associated with trading foreign currency options, failing to use customer funds to purchase foreign currency options and by misappropriating customer money, and by mailing trading statement to its customers that falsely show that the customers' money was used to purchase foreign currency options and that those options had expired worthless.

46. Mercury Partners brokers made these misrepresentations and omissions within the scope of their employment with Mercury Partners and, therefore, Mercury Partners is liable for their acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

47. Crown violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9 (a) and (c), 17 C.F.R. § 32.9 (a) and (c), by making material misrepresentations and omissions to customers and/or potential customers regarding profit potential and the risk associated with trading foreign options in order to solicit them to invest with Mercury Partners.

48. Each material misrepresentation, omission, and false statement made during the relevant time period by Mercury Partners brokers, Crown, and Mercury Partners including, but

not limited to those specifically alleged in this complaint, is a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9, 17 C.F.R. § 32.9.

49. Morgan violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9 (a) and (c), 17 C.F.R. § 32.9 (a) and (c), by failing to use Mercury Partners customer funds to purchase foreign currency options and misappropriating those customer funds to pay his personal expenses.

50. Morgan misappropriated these funds within the scope of his employment as manager of Mercury Management. Mercury Management is therefore liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

51. Each misappropriation of customer funds made during the relevant time period by Mercury Management, through Morgan, including but not limited to those specifically alleged in this complaint is a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9 (a) and (c), 17 C.F.R. § 32.9 (a) and (c).

52. Bartos violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9 (a) and (c), 17 C.F.R. § 32.9 (a) and (c), by failing to use Mercury Partners customer funds to purchase foreign currency options and misappropriating those customer funds to pay himself and other Mercury Partners employees.

53. Bartos misappropriated these funds within the scope of his employment as president of Mercury Financial Partners. Mercury Financial Partners is therefore liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

54. Each misappropriation of customer funds made during the relevant time period by Mercury Financial Partners, through Bartos, including, but not limited to those specifically

alleged in this complaint is a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9 (a) and (c), 17 C.F.R. § 32.9 (a) and (c).

**COUNT TWO: CROWN COMMITTED DOMESTIC EXCHANGE TRADED OPTIONS
FRAUD IN VIOLATION OF SECTION 4c(b) OF THE ACT AND REGULATION
33.10 (7 U.S.C. § 6c(b) AND 17 C.F.R. § 33.10)**

55. Paragraphs 1 through 54 above are realleged and incorporated by reference.

56. Pursuant to Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10, 17 C.F.R. § 33.10, it is unlawful to (a) cheat or defraud or attempt to cheat or defraud any other person; (b) make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; (c) 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, the confirmation of the execution of, or the maintenance of, any option transaction traded on a domestic exchange.

57. During the relevant time period, Crown violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10, 17 C.F.R. § 33.10, by soliciting a customer to purchase NYMEX crude oil options, failing to purchase those options, falsely informing her in writing that he purchased such options, and misappropriating her money for other purposes.

58. Each misappropriation of customer funds and related false statement made by Crown during the relevant time period, including but not limited to those specifically alleged in this complaint is a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10, 17 C.F.R. § 33.10.

VII. RELIEF REQUESTED

Wherefore, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers enter:

- A. an order finding that defendants Mercury Partners, Mercury Financial Partners, Mercury Management, Bartos, Morgan, and Crown violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9, 17 C.F.R. § 32.9;
- B. an order finding that defendant Crown violated Regulation 33.10, 17 C.F.R. § 33.10;
- C. a permanent injunction enjoining Mercury Partners, Mercury Financial Partners, Mercury Management, Bartos, Morgan, and Crown and all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of defendants, and all persons insofar as they are acting in active concert or participation with defendants, who receive actual notice of the order, by personal service or otherwise, from directly or indirectly engaging in conduct that violates Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.9, 17 C.F.R. § 32.9, and from engaging in any commodity-related activity, including soliciting new customers;
- D. a permanent injunction enjoining Crown and all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Crown, and all persons insofar as they are acting in active concert or participation with Crown, who receive actual notice of the order, by personal service or otherwise, from directly or indirectly engaging in conduct that violates Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10, 17 C.F.R. § 33.10, and

from engaging in any commodity-related activity, including soliciting new customers;

- E. an order directing defendants and any successors, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest thereon from the date of such violations;
- F. an order directing defendants and any successors to make full restitution to every customer as a result of acts and practices which constitute violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;
- G. an order assessing a civil monetary penalty against each defendant in the amount of not more than the higher of \$120,000 for those violations committed before October 23, 2004, and \$ 130,000 for those violations committed after October 23, 2004, or triple the monetary gain to the defendant for each violation of the Act or Regulations;
- H. an order requiring defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- I. such other and further remedial ancillary relief as the Court may deem appropriate.

Respectfully submitted,

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By: Jan Folena

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