

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE No: 04-60744-CIV-HURLEY/HOPKINS

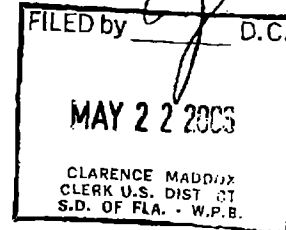
COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

FIRST AMERICAN INVESTMENT
SERVICES, INC., STEVE KNOWLES,
MICHAEL SAVITSKY, ADAM MILLS,
GREG ALLOTTA, and JAMES EULO,

Defendants.



Final ~~CONFIDENTIAL~~ **CONSENT ORDER OF PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF AGAINST FIRST AMERICAN
INVESTMENT SERVICES, INC., STEVE KNOWLES,
MICHAEL SAVITSKY III, ADAM MILLS, GREG ALLOTTA AND JAMES EULO**

On June 7, 2004, Plaintiff, Commodity Futures Trading Commission ("CFTC" or "Commission"), filed its Complaint in the above-captioned action seeking to enjoin the defendants First American Investment Services, Inc. ("First American"), Steve Knowles ("Knowles"), Michael Savitsky III ("Savitsky"), Adam Mills ("Mills"), Greg Allotta ("Allotta") and James Eulo ("Eulo") (collectively "Defendants"), seeking injunctive and other equitable relief for violations for of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.* (2004), and Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2005).

III/RB

I.

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint in this action Defendants:

1. Consent to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief against First American Investment Services, Inc., Steve Knowles, Michael Savitsky III, Adam Mills, Greg Allotta and James Eulo ("Consent Order");
2. Affirm that Defendants have agreed to this Consent Order voluntarily, and that no threat, or promise other than as contained herein, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledge service of the summonses and Complaint.
4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).
5. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).
6. Waive:
 - a. all claims which they may possess under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), relating to, or arising from, this action and any right under EAJA to seek costs, fees and other expenses relating to, or arising from this action;
 - b. any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and

c. all rights of appeal from this Consent Order.

7. Consent to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Consent Order and for any other purposes relevant to this case, even if Defendants now or in the future reside outside the jurisdiction;

8. Agree that neither Defendants nor any of their agents, employees or representatives acting under their authority or control, shall take any action or make any public statement denying, directly or indirectly, any allegations of the Complaint or stipulations in this Consent Order, or creating or tending to create the impression that the Complaint and this Consent Order are without a factual basis; provided, however, that nothing in this provision shall affect Defendants' (i) testimonial obligations, or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Defendants will undertake all steps necessary to assure that their agents, employees and representatives understand and comply with this agreement.

9. By consenting to the entry of this Order, defendants neither admit nor deny the allegations of the Complaint nor any of the Stipulated Facts and Conclusions of Law as contained in Part II of this Consent Order, except as to jurisdiction and venue, which they admit. Defendants do not consent to the use of this Order, or the Stipulated Facts and Conclusions of Law as contained in Part II of this Consent Order, as the sole basis for any other proceeding brought by the CFTC, other than a proceeding in bankruptcy relating to any of them, or to enforce the terms of this Order. Solely with respect to any bankruptcy proceeding relating to any defendant, or any proceeding to enforce this Order, defendants agree that the allegations of the Complaint and all of the Stipulated Facts and Conclusions of Law as contained in Part II of this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof. Furthermore, defendants agree to provide immediate notice to this Court and the CFTC

by certified mail, in the manner required by Part IV of this Order, of any bankruptcy proceeding filed by, on behalf of, or against it.

10. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason to delay. The Court – without making any findings as to the Stipulated Facts and Conclusions of Law set forth herein – directs the entry of the Stipulated Facts and Conclusions of Law and a permanent injunction and equitable relief, pursuant to § 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

11. This Consent Order shall not bind any party who is not a signatory hereto.

II.

STIPULATED FACTS AND CONCLUSIONS OF LAW

Defendants consent to the entry of this Consent Order solely for purposes of settling this case. Further, Defendants consent to the Stipulated Facts and Conclusions of Law set forth in Part II herein only for purposes set forth in Paragraph 9, above. The Court makes no findings with respect to the Stipulated Facts and Conclusions of Law set forth in Part II herein.

STIPULATED FACTS

A. The Commodity Exchange Act

The Commodity Exchange Act (the “Act”), as amended, 7 U.S.C. § 1 *et seq.* (2002), and the Commodity Futures Trading Commission’s Regulations (“Regulations”), 17 C.F.R. § 1.1 *et seq.* (2005), establish a comprehensive system for regulating the purchase and sale of commodity futures contracts and options on commodity futures contracts (options). One of the primary purposes of the Act and Regulations is consumer protection.

B. First American Investment Services, Inc.

First American was a Florida corporation with its principal place of business in Deerfield Beach, Florida. First American has been registered with the Commission as an Introducing Broker ("IB") since February 4, 2002. Under the Act, an IB is "any person ... engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market ... who does not accept any money, securities, or property." Section 1a(23) of the Act, 7 U.S.C. § 1a(23). The term "person" is defined under the Act to include corporations. Section 1a(28) of the Act, 7 U.S.C. § 1a(28).

First American's primary business was to solicit customers to purchase options through Universal Financial Holding Corporation ("UFHC"), a Futures Commission Merchant ("FCM"). First American employed Associated Persons ("APs") to conduct its business. An AP is any natural person associated with an FCM or IB, who (i) solicits or accepts customers' or options customers' orders; or (ii) supervises any person or persons so engaged. *See Regulation 1.3(aa)(1) & (2), 17 C.F.R. § 1.3(aa) (1) & (2).*

C. Greg P. Allotta

Allotta is an individual residing in Boca Raton, Florida. Allotta first registered with the Commission in 1993 as an AP. Allotta worked as an AP for First American from September 5, 2002 through August 11, 2003. Before registering as a First American AP, Allotta worked at five different firms, including four firms disciplined for sales solicitation fraud by the Business Conduct Committee of the National Futures Association ("NFA"), the commodity industry's self-regulatory authority. Individually, Allotta has been a subject of two regulatory actions, one of which resulted in the NFA's assessment against him of a \$12,000 fine and a one-year period

of enhanced supervisory procedures. As a result of his sales solicitations at First American, Allotta made at least \$373,110 in salary and commissions.

D. Michael H. Savitsky III

Savitsky is an individual residing in Boca Raton, Florida. He first registered with the Commission in 2000. Since 2000, Savitsky has been registered with five firms. Savitsky was registered as an AP with First American from September 5, 2002 to August 11, 2003. As a result of his sales solicitations at First American, Savitsky made at least \$142,280 in salary and commissions.

E. Adam Mills

Mills is an individual residing in Pompano Beach, Florida. He first registered with the Commission in July 2001. Since 2001, Mills has been registered with five firms. He was registered as an AP of First American from September 5, 2002 to July 21, 2003. As a result of his sales solicitations at First American, Mills made at least \$64,301 in salary and commissions.

F. James Eulo

Eulo is an individual residing in Deerfield Beach, Florida. He first registered with the Commission in March 2000. Since 2000, Eulo has been registered with six firms. He was registered as an AP of First American from September 5, 2002 to July 1, 2003. Eulo has been registered as an AP at FutureTech Trading Group, Inc., since November 21, 2003. As a result of his sales solicitations at First American, Eulo made at least \$69,216 in salary and commissions.

G. Steve Knowles

Knowles is an individual residing at Deerfield Beach, Florida. Knowles first registered as an AP and was listed as a principal with the Commission in early 2000. Since 2000, he has been a principal at five different firms. Knowles was president and a principal of First American

from September 11, 2002 to August 25, 2003. Knowles was also registered as an AP of First American from September 5, 2002 to August 25, 2003. Knowles was responsible for the hiring, firing, supervision, and discipline of First American APs. In addition, Knowles was responsible for obtaining, reviewing, responding to, and resolving First American customer complaints.

Knowles made at least \$300,000 in salary and commissions.

H. Fraudulent Sales Solicitations

Between January 2002 and August 2003, First American opened approximately 700 new options trading accounts. Over 97% of these accounts lost money. First American customers realized combined losses of approximately \$11,204,234. Starting in late 2002, First American APs including but not limited to Allotta, Savitsky, Mills and Eulo, solicited members of the general public to open accounts to trade options through First American. To induce customers to trade, Allotta, Savitsky, Mills, and Eulo misrepresented the risks and rewards of trading options. In telephone calls, Allotta, Savitsky, Mills, and Eulo engaged in fraudulent sales solicitations by knowingly misrepresenting and failing to disclose material facts concerning, among other things: (i) the profit potential of options; (ii) the risk involved in trading options; and (iii) the poor performance record of First American customers trading options.

Knowles was President of First American and was responsible for First American's overall operations. He was the office manager and made the day-to-day decisions necessary to run First American. Knowles also oversaw floor operations and the verbal solicitations of First American's customers and is the custodian of its records. He participated in all policy decisions at First American. Knowles directly or indirectly controlled First American and its APs and did not prevent or correct First American's AP's fraudulent solicitations of customers.

1. Misrepresentations Exaggerating the Likelihood of Profit

First American, through Savitsky, Mills, Allotta and Eulo, commonly used misleading investment advice based on well known public information to entice customers to trade with First American. Specifically, the Defendants represented that customers could reap substantial profits by trading upon publicly known information. For example, Defendants told customers that certain world events such as the crisis in the Middle East virtually guarantee a profit for customers. Because efficient markets quickly factor publicly known information into the price of contracts, one can not earn substantial profits based upon such publicly known information. Therefore, Defendants statements were misleading. Further, Defendants failed to disclose the fact that efficient markets, such as commodity markets, factor into the price of their contracts publicly known information. Customers of First American relied upon these statements. Defendants knew that such statements were misleading or were reckless in making such statements.

Defendants also told actual and prospective customers to expect to make large returns on their investments quickly. These statements were false because First American customers were not making large returns on their investments. Rather, they sustained severe losses. Further, Defendants failed to disclose the fact that an overwhelming majority of First American customers sustained severe losses trading through First American. For example:

- (a) Savitsky represented to at least one customer that he should make \$14,000 or more on a \$5,000 account at First American within a couple of months, or words to that effect, yet failed to disclose the fact that the vast majority of First American customers sustained severe losses trading through First American;

(b) Savitsky represented to at least one customer that all his customers were making money trading heating oil options and that some were making 500%, or words to that effect, yet failed to disclose the fact that most of his customers sustained severe losses trading through him and First American;

(c) Mills represented to at least one customer that he would make a 50% profit within a couple of weeks if the customer opened an account with First American, or words to that effect, yet failed to disclose the fact that the vast majority of First American customers sustained severe losses trading through First American;

(d) Mills represented to at least one customer that his customers were making a lot of money and some would soon be millionaires and that the customer could not lose if he invested with First American, or words to that effect, yet failed to disclose the fact that most of his customers sustained severe losses trading through him and First American;

(e) Allotta represented to at least one customer that an investment with First American could make \$1,000,000 on a \$100,000 account, or words to that effect, yet failed to disclose the fact that the vast majority of First American customers sustained severe losses trading through First American;

(f) Eulo represented to at least one customer that she would double her money in 30 days, or words to that effect, yet failed to disclose the fact that the vast majority of First American customers sustained severe losses trading through First American; and

(g) Eulo represented to another customer that the high commissions charged by First American would be negligible in comparison to the large profit the customer's

investment would make, or words to that effect, yet failed to disclose the fact that the vast majority of First American customers sustained severe losses trading through First American.

Customers of First American relied upon these statements. Defendants knew that such statements were misleading, were reckless in making such statements, or knew or were reckless in not disclosing First American's trading record to actual and prospective customers after claiming that substantial profits were attainable.

2. Misrepresentations and Omissions Minimizing the Risk of Loss

During the course of their telephone sales solicitations, Defendants routinely failed to disclose adequately the risk of loss inherent in trading options. Among other things, the Defendants fraudulently led customers and potential customers to believe that risk of loss was, or could be limited, and their disclosures of risk, to the extent made, were vitiated by the unbalanced, high-pressure sales presentations which falsely conveyed that trading options with First American was highly profitable and virtually risk free. For example:

(a) Savitsky represented to at least one potential customer that he would not lose more than 25% of his investment, or words to that effect;

(b) Savitsky represented to at least one potential customer that he could take him out of the market if he started to lose money, or words to that effect;

(c) Allotta represented to a potential customer that risk would be limited to only half of the customer's investment by use of stop loss orders, or words to that effect;

(d) Eulo represented to one potential customer that he was an expert options trader and that hundreds of his customers were making lots of money and that he could limit risk, or words to that effect; and

(e) Eulo represented to at least one potential customer that commodity options were risky, but that Eulo was a good trader and could use stop loss orders to limit risk, or words to that effect.

Customers relied upon these statements. Defendants knowingly or recklessly made these misrepresentations and failed to disclose the risk of loss associated with trading commodity option contracts.

3. Failure to Disclose First American's Losing Performance Record

Although Defendants urged customers to invest immediately with promises of large profits with little or no risk, they never disclosed that the firm's investment strategy resulted in millions of dollars in customer losses causing overwhelming majority of First American customers to lose most, if not all, of their investment. Defendants knew that First American customers sustained severe losses trading through their firm.

STIPULATED CONCLUSIONS OF LAW

A. Liability

First American, Knowles, Allotta, Savitsky, Mills and Eulo are liable for violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Section 33.10 of the Regulations, 17 C.F.R. § 33.10.

1. Allotta, Savitsky, Mills, and Eulo Committed Sales Solicitation Fraud

Section 4c(b), 7 U.S.C. § 6c(b), provides: "No person shall . . . enter into or confirm the execution of any transaction involving any . . . option . . . contrary to any . . . regulation of the Commission." Regulation 33.10, 17 C.F.R. § 33.10, provides:

It shall be unlawful for any person directly or indirectly—(a) to cheat or defraud or attempt to cheat or defraud any other person . . . (c) to deceive or attempt to deceive any other person by any means whatsoever in connection with an offer to enter into, the entry into,

the confirmation of the execution of, or the maintenance of, any commodity option transaction.

Under these provisions, liability for solicitation fraud involving options based upon affirmative representations is established when a person (1) makes a misrepresentation or misleading statement; (2) acts with scienter; and (3) the misrepresentation is material. *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328 (11th Cir. 2002), *cert. denied*, 125 S.Ct. 808 (2004); *CFTC v. Rosenberg*, 85 F.Supp.2d 424, 446-47 (D.N.J. 2000). Alternatively, liability for solicitation fraud involving options based upon material omissions is established when a person omits a material fact that he should disclose because he has made an affirmative statement that would tend mislead someone unless the full truth is disclosed. *R.J. Fitzgerald*, 310 F.3d at 1333; *Ziemba v. Cascade Int'l, Inc.* 256 F.3d 1194, 1206 (11th Cir. 2001) (duty to disclose arises where a "defendant's failure to speak would render the defendant's *own* prior speech misleading or deceptive") (emphasis in original); *see also Modlin v. Cane*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) 28,059, 49,550, 2000 WL 33678421 (CFTC March 15, 2000) ("a reasonable investor who hires a broker ... would clearly find it material to learn that that broker had never closed an account with a profit.")

As set forth below, these three requirements are fully satisfied in the case at hand.

a. **Allotta, Savitsky, Mills, and Eulo, Made Material Misrepresentations or Omitted Material Information Regarding Profit Potential and Risks of Trading Options**

A representation or omission is "material" if a reasonable investor would consider it important in deciding whether or not to make an investment. *R.J. Fitzgerald & Co.*, 310 F.2d at 1329; *Saxe v. E. F. Hutton & Co., Inc.*, 789 F.2d 105, 109 (2nd Cir. 1986). A fact is material if a reasonable person would view the information as important in making a trading decision – in

other words, as including facts significantly altering the total mix of information already in his possession. *Madel v. Anspacher & Associates, Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,412 at 35,813 (CFTC Mar. 14, 1989), citing *Sudol v. Shearson Loeb Rhoades, Inc.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,748 (CFTC Sept. 30, 1985). Such actionable misrepresentations include those made to customers when soliciting their funds.

Allotta, Savitsky, Mills, and Eulo made material misrepresentations when they misrepresented the likelihood and extent of profits to be made trading options. For example, Allotta, Savitsky, Mills, and Eulo made material misrepresentations when they claimed that well-known public information, such as seasonal trends or events in the Middle East, will yield enormous profits with little or no risk. Claims that customers may capitalize upon these events are material and misleading because well-developed markets already reflect all publicly available information. *Bishop v. First Investors Group of the Palm Beaches, Inc.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,004 at 44,841 (CFTC Mar. 26, 1997); see also *In re Staryk*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,206 (CFTC Dec. 18, 1997). Similarly, well-known public information also already is factored into the price of a commodity, and hence the price of an option on that commodity. *Basic Inc. v. Levinson*, 485 U.S. 224, 241-42 (1988) (finding that well-developed markets reflect all publicly available information); see also *In re LTV Sec. Litig.*, 88 F.R.D. 134, 143 (N.D. Tex. 1980) (“The market [acts] as the unpaid agent of the investor, informing him that given all the information available to it, the value of the stock is worth the market price.”)

As a result, the claims made by Allotta, Savitsky, Mills, and Eulo that claimed that profits on commodity options to well-known public information were material and fraudulent. *R.J. Fitzgerald*, 310 F.3d at 1330. Defendants’ representations to actual and prospective customers

that they could expect to make large returns on their investments quickly are also material and fraudulent. Promises and guarantees of profit, in light of the uncertainties of the marketplace, are inherently fraudulent. *Munnell v. Paine Webber, Jackson & Curtis*, [1986-87 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,313 at 32,863 (CFTC Oct. 8, 1986). Further, representations that profits are likely are material and fraudulent. *In re JCC, Inc.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,080 at 41,576 n.23 (CFTC May 12, 1994) (“When the language of a solicitation obscures the important distinction between the possibility of substantial profit and the probability that it will be earned, it is likely to be materially misleading to customers”) *aff’d sub nom JCC v. CFTC*, 63 F.3d 1557 (11th Cir. 1995).

The failure by Allotta, Savitsky, Mills, and Eulo to disclose the risk of loss associated with trading commodity options was also material and misleading. “It is misleading and deceptive to speak of ‘limited risk’ and [high] profits without also telling the reasonable listener that the overwhelming bulk of firm customers lose money.” *R.J. Fitzgerald*, 310 F.3d at 1333; *see also Munnell v. Paine Webber Jackson & Curtis*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,313 at 32,862-63 (CFTC Oct. 8, 1986) (internal citation omitted).

To the extent that Allotta, Savitsky, Mills and Eulo claim that they provided their customers with the Commission’s standard risk disclosure under Regulation 33.7, 17 C.F.R. § 33.7, such statements are no defense to their misconduct. It is well settled that wildly unrealistic predictions of profit cannot be cured by the Commission’s mandated risk disclosures. *R.J. Fitzgerald*, 310 F.3d at 1329 (providing that highly alluring statements overstating profit potential accompanied by only boilerplate risk disclosure creates an overall message that is deceptive and misleading); *CFTC v. Sidoti*, 178 F.3d 1132, 1136 (11th Cir. 1999) (“We seriously doubt whether boilerplate risk disclosure language could ever render an earlier material

misrepresentation immaterial.”); *Clayton Brokerage Co. v. CFTC*, 794 F.2d 573, 580 (11th Cir. 1986) (per curiam) (holding that “[o]ral representations may effectively nullify the warnings in the statement by discounting its general significance and its relevance to the customer’s particular situation.”) Here, Allotta’s, Savitsky’s, Mills’, and Eulo’s conduct nullified any standard disclosures that their customers received about risk. By making countless representations in violation of the Act, a subsequent risk disclosure does not absolve him of his wrongdoings.

**b. Allotta, Savitsky, Mills, Eulo and Other First American APs
Acted with Scienter**

Scienter “refers to a mental state embracing an intent to deceive, manipulate, or defraud.” *Rosenberg*, 85 F.Supp.2d at 448 (citing *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976)). The Commission “need not show that defendants acted with an evil motive or an intent to injure[;] rather, recklessness is sufficient to satisfy the scienter requirement.” *Id.* (internal quotations and citation omitted); see also *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988). “Knowledge, of course, exists when one acts in careless disregard of whether his acts amount to cheating That is, the element of knowledge cannot be precluded by ignorance brought about by willfully or carelessly ignoring the truth.” *CFTC v. Savage*, 611 F.2d 270, 283 (9th Cir. 1979). Even absent direct evidence regarding the intent of a firm’s principals and brokers, the Southern District of Florida has held that the requirements of scienter are satisfied where the principals and brokers of a firm are aware of the significant losses suffered by their clients. *CFTC v. Commonwealth Financial Group, Inc.*, 874 F. Supp. 1345, 1354-55 (S.D. Fla. Dec. 28, 1994), *vacated on other grounds*, 79 F.3d 1159 (11th Cir. Feb 21, 1996) (“Commonwealth salespeople have also improperly failed to disclose material facts about the trading experience and past successes of themselves and Commonwealth . . . [including]

Commonwealth's 80% or greater failure rate on its trading recommendations. . . and that the majority of Commonwealth customers have lost all or substantially all of the money that they invested.");

The misrepresentations and omissions made by Allotta, Savitsky, Mills, and Eulo demonstrate that they acted with the requisite scienter. Allotta, Savitsky, Mills, and Eulo each knew that First American customers sustained severe losses trading through their firm. Given the firm's losing trading record, Allotta, Savitsky, Mills and Eulo obviously knew that customers' earning enormous profits on options was highly unlikely. They also knew that publicly known information would not lead to substantial profits as none of their customers had profited from this type of well-known information. Further, they knew that there was risk associated with trading commodity option contracts and were required to disclose such risks. As such, Allotta, Savitsky, Mills and Eulo acted with scienter.

2. First American Is Liable for the Unlawful Conduct of Its APs

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), provides that the "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." The fraud of Allotta, Savitsky, Mills, and Eulo, as described above, occurred within the scope of their employment with First American; thus, First American is liable for their unlawful conduct pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

3. Knowles is Liable Under the Act as a Controlling Person

Knowles is liable for the solicitation fraud of Allotta, Savitsky, Mills, and Eulo because he is a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b). “A fundamental purpose of section 13(b) is to allow the Commission to reach behind a corporate entity to the controlling individuals of the corporation and to impose liability for violations of the Act directly on such individuals as well as on the corporation itself.” *In re JCC*, ¶ 26,080 at 41,578 (finding principals of company liable because they were officers of corporation who were involved in monitoring sales activities). Pursuant to the Act, a controlling person is defined as “[a]ny person who, directly or indirectly, controls any person who has violated any provision of the Act [if that controlling person] did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.” Section 13(b) of the Act, 7 U.S.C. §13c(b).

To establish the “knowing inducement” element of the controlling-person violation, the Commission must show that the “the controlling person had actual or constructive knowledge of the core activities that constitute the violation at issue and allowed them to continue.” *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103 at 34,767 (CFTC Jan. 12, 1988). Controlling persons cannot avoid liability by deliberately or recklessly avoiding knowledge about potential wrongdoing. *Id.* Indeed, constructive knowledge of wrongdoing is sufficient for a finding of knowing inducement. *JCC*, 63 F.3d at 1568. To support a finding of constructive knowledge, the Commission must show that Knowles “lack[ed] actual knowledge only because [they] consciously avoided it.” *Id.* (citations omitted).

Under this standard, Knowles is a controlling person. As president, principal and a compliance officer of First American from September 11, 2002 to August 25, 2003, Knowles

played a central role in the operation of the company. Knowles was responsible for the hiring and firing of First American APs, as well as any disciplinary action taken against them.

Knowles' office at First American was located near the room used by First American APs to telephone customers. Knowles routinely observed the APs' solicitation activities. In addition, Knowles claimed responsibility for obtaining, reviewing, responding to, and resolving First American customer complaints. In this regard, Knowles spoke to some First American customers regarding complaints about First American APs.

III. SANCTIONS

1. Permanent Injunction

With the parties' consent, the Court **ORDERS THAT** Defendants are permanently enjoined from engaging in any conduct that violates Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c), and from engaging in any commodity-related activity including:

- a) Making sales solicitations to customers that:
 - i. misrepresent the profit potential in commodities trading;
 - ii. omit that the market factors into the price of commodities seasonal trends and well-known market events;
 - iii. omit the actual track record of the broker or firm;
 - iv. omit or downplay the risk involved in commodity trading; and
 - v. omit any material fact necessary to make other facts disclosed not misleading;

b) Engaging in, controlling or directing the trading for any commodity account, in any markets or on any entity regulated by the Commission, on their own behalf or on behalf of any other person or entity, whether by power of attorney or otherwise; and

c) Applying for registration or seeking exemption from registration with the Commission in any capacity or engaging in any activity requiring registration or exemption from registration, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9), and acting, directly or indirectly, as a principal, officer, director, supervisor, agent or employee of any person registered, required to be registered or exempted from registration, unless such exemption is pursuant to Commission Regulation 4.14(a)(9). This includes, but is not limited to, soliciting, accepting or receiving any funds, revenue or other property from any person, giving commodity trading advice for compensation or soliciting prospective customers related to the purchase or sale of any commodity futures, or options, except as provided for in Commission Regulation 4.14(a)(9).

2. Restitution

With the consent of the Parties, the Court **FURTHER ORDERS THAT** all Defendants are jointly and severally liable for restitution to customers in the following amounts, provided that the joint and several liability of each such person or entity is capped at the amount of restitution listed for that person or entity below:

First American	\$7,983,388
Knowles	\$1,600,000
Allotta	\$1,137,000
Savitsky	\$660,000

Mills \$250,000

Eulo \$200,000

All restitution payments are immediately due and owing.

To effect payment by Defendants and distribution of restitution to Defendants' customers, the Court appoints Daniel Driscoll of the National Futures Association as Monitor (Monitor). The Monitor shall collect restitution payments from Defendants and compute pro rata allocations to injured customers identified in Appendix A to this Consent Order. As the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, he shall not be liable for any action or inaction arising from his appointment as Monitor, other than actions involving fraud.

The Monitor will distribute restitution funds obtained from Defendants in an equitable fashion as determined by the Monitor to each of the customers identified in Attachment A to this Consent Order. Nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under federal, state, or common law to assert a claim for recovery against Defendants subject to any offset or credit that Defendants may be entitled to claim under the law governing that customer's claim. Subsequent to the entry of this Consent Order, each Defendant shall provide the Commission and the Monitor with immediate notice of any filing or compromise and settlement of any private or governmental actions relating to the subject matter of this Order in the manner required by Part IV of this Consent Order.

3. Civil Monetary Penalties

With the parties' consent, the Court **FURTHER ORDERS THAT** the following civil monetary penalties are assessed and immediately due and owing:

First American	\$1,000,000
Knowles	\$400,000
Allotta	\$373,000
Savitsky	\$140,000
Mills	\$75,000
Eulo	\$75,000

Defendants shall make their CMP payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under a cover letter that identifies them and the name and docket number of the proceeding. Each Defendant shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor and to Gregory Mocek, or his successor, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

4. Interest

With the consent of the Parties, the Court further ORDERS that pre and post-judgment interest on the restitution amount shall be paid at the then prevailing underpayment rate established by the Internal Revenue Service pursuant to 26 U.S.C. § 6621 and post-judgment interest be paid at the then prevailing Treasury Bill rate pursuant to 28 U.S.C. § 1961.

IV. MISCELLANEOUS PROVISIONS

Notification of Financial Institutions: The parties stipulate that upon the issuance of this Consent Order, the Commission shall promptly provide each of the financial institutions identified in this paragraph with a copy of this Order. Within thirty (30) days of receiving a copy of this Consent Order, each of the financial institutions identified in this paragraph are specifically directed to liquidate and release any and all funds held by Defendants in any account as of the date of the entry of this Consent Order, whether the account is held singly or jointly with another Defendant identified herein, or in any other capacity, and to convey by wire transfer to an account designated by the Monitor, any and all funds contained in those accounts, less any amounts required to cover the banks' outstanding administrative or wire transfer fees. The transfer of such funds represents an offset to Defendants' aggregate joint and several restitution. At no time during the liquidation, release and/or wire transfer of these funds pursuant to this Consent Order shall Defendants be afforded any access to, or be provided with, any funds from these accounts. Defendants, as well as all banks and financial institutions listed in this Consent Order, shall cooperate fully and expeditiously with the Commission and Monitor in the liquidation, release and wire. The accounts to be liquidated, released and transferred are held at the following financial institutions:

Allotta	Bank of America Washington Mutual Smith Barney
Savitsky	Bank of America American Express Financial
Mills	Bank of America
Eulo	Wachovia National Bank

Equitable Relief: The equitable relief provisions of this Consent Order shall be binding upon Defendants and any person who is acting in the capacity of officer, agent, employee, servant, or attorney of Defendants, and any person acting in active concert or participation with Defendants and those equitable relief provisions that relate to restitution shall be binding on any financial institutions listed above or holding frozen funds or assets of the Defendants, who receives actual notice of this Consent Order by personal service or otherwise.

Notices: All notices required to be given by any provision in this Consent Order shall be sent certified mail, return receipt requested, as follows: Notice to Commission: Attention - Director of Enforcement, Commodity Futures Trading Commission, Division of Enforcement, 1155 21st Street N.W., Washington, DC 20581; Notice to NFA – Daniel Driscoll, National Futures Association, 200 W. Madison St., #1600, Chicago, IL 60606-3447.

Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

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

Waiver: The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of

the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

Acknowledgements: Upon being served with copies of this Consent Order after entry by the Court, Defendants shall sign acknowledgments of such service and serve such acknowledgments on the Court and the Commission within seven (7) calendar days.

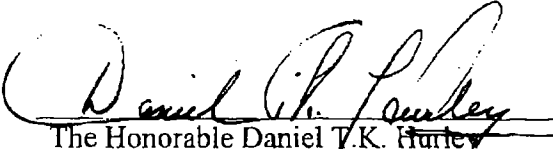
Defendants understand and acknowledge that this Consent Order must be accepted and ratified by the Commission before it becomes final. However, the Defendants understand and agree that by their signatures they are bound by the terms and conditions of this Consent Order, unless the Commission refuses to accept and ratify the Consent Order.

Continuing Jurisdiction of this Court: Upon entry of this Consent Order, this case shall be dismissed with prejudice as to all Settling Defendants, and the Court shall retain jurisdiction of this cause only to assure compliance with this Consent Order.

Authority: Knowles hereby warrants that he is the President of First American, and that this Consent Order has been duly authorized by First American and he has been duly empowered to sign and submit it on behalf of First American.

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

SO ORDERED.


The Honorable Daniel J.K. Hurley
United States District Court Judge

Dated: May 22, 2006

CONSENTED TO AND APPROVED BY:



Steve Knowles, Individually and on behalf of First American Investment Services, Inc.

Date: 4/8/06

Greg Allotta, Individually

Date: _____

Michael Savitsky, III, Individually

Date: _____

Adam Mills, Individually

Date: _____

James Eulo, Individually

Date: _____

Approved for Entry:

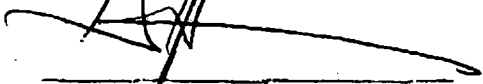
R. Lawrence Bonner
Francisco O. Sanchez
HOMER & BONNER, P.A.
The Four Seasons Tower
1441 Brickell Avenue
Suite 1200
Miami, Florida 33131
Facsimile: (305) 982-0060
fsanchez@homerbonner.com

Date: _____

CONSENTED TO AND APPROVED BY:

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behalf of First American Investment
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Date: _____



Greg Allotta, Individually

Date: 4/8/06

Michael Savitsky, III, Individually

Date: _____

Adam Mills, Individually

Date: _____

James Eulo, Individually

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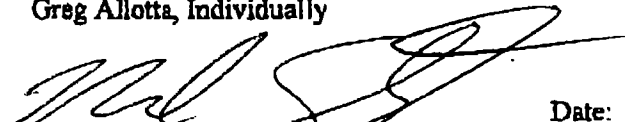
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Date: _____

Greg Allotta, Individually

Date: _____



Michael Savitsky, ~~II~~, Individually

Date: _____

Adam Mills, Individually

Date: _____

James Eulo, Individually

Date: _____

Approved for Entry:

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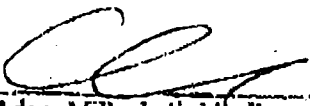
Date: _____

Greg Allotta, Individually

Date: _____

Michael Savitsky, III, Individually

Date: _____


Adam Mills, Individually

Date: 4-8-06

James Eulo, Individually

Date: _____

Approved for Entry:

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Date: _____

Greg Allotta, Individually

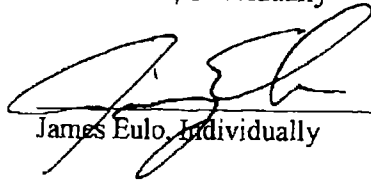
Date: _____

Michael Savitsky, III, Individually

Date: _____

Adam Mills, Individually

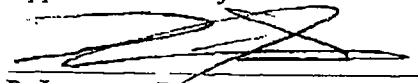
Date: _____



James Eulo, Individually

Date: 4/10/06

Approved for Entry:



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Date: 4/10/06

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Date: _____

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fsanchez@homerbonner.com

Date: 21 / 10 / 06

Attorneys for Defendants

A handwritten signature in cursive script, reading "Mark Bretscher", with a horizontal line drawn underneath it.

Attorneys for Plaintiff

Mark H. Bretscher
Division of Enforcement
Commodity Futures Trading Commission
525 W. Monroe Street
Suite 1100
Chicago, Illinois 60661
(312) 596-0529