Sealed

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA 06 - 20979

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

FIRST INTERNATIONAL GROUP, INC., MICHAEL MESA, and TOM KEESEE,

Defendants.

CIV - JORDAN
MAG KLEIN

Case No.:

FILED BY _____ D.C.
2006 APR 17 PM 1:34
CLARENCE MADDOX
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COMPLAINT FOR PERMANENT INJUNCTION OTHER EQUITABLE RELIEF AND CIVIL MONETARY PENALTIES

The U.S. Commodity Futures Trading Commission ("Commission"), by and through its attorneys, hereby alleges as follows:

I.

SUMMARY

1. First International Group, Inc. ("FIG") is a Florida corporation that employs telemarketers to solicit funds from retail customers for the purchase of foreign currency options contracts.

2. From approximately June 2004 through the present, FIG employees, including, but not limited to Michael Mesa ("Mesa") and Tom Keesee ("Keesee"), knowingly or with reckless disregard for the truth made false and misleading sales solicitations and statements to actual and prospective customers by: (1) falsely claiming that the customer was actually making money in

an effort to lull them into investing more funds; (2) claiming customers were likely to make profits while not disclosing the fact that a substantial majority of customers had in fact lost money trading through FIG; (3) falsely minimizing the risk associated with trading options; (4) claiming that the customer had to act soon to benefit from some publicly known information, while not disclosing the fact that efficient markets already factor such information into the price of options; and (5) falsely telling customers that the funds in their account had been depleted in an effort to induce them to invest more money to recoup their losses.

3. By reason of their conduct, the defendants have engaged, are engaging, or are about to engage in acts and practices which violate Section 4c(b) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6c(b) (2002), and Commission Regulations ("Regulations") 1.1(b)(1), 1.1(b)(3), and 32.9(a) & (c), 17 C.F.R. §§ 1.1(b)(1), 1.1(b)(3) and 32.9(a) & (c) (2005).

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the Commission brings this action to enjoin the defendants from soliciting new customers and customer funds and to enjoin the defendants from any other unlawful acts and practices, and to compel their compliance with the Act. In addition, the Commission seeks civil monetary penalties, an accounting, disgorgement of defendants' ill-gotten gains and such other relief as this Court may deem necessary or appropriate.

5. Unless enjoined by this Court, defendants are likely to continue to engage in the acts and practices alleged in this Complaint, as more fully described below.

II.

JURISDICTION AND VENUE

Statutory Background

6. The term "futures commission merchant" ("FCM") is defined in Section 1a(20) of the Act, 7 U.S.C. § 1a(20), and is further defined in CFTC Regulation 1.3(p), 17 C.F.R. § 1.3(p), which together define an FCM is an individual, association, partnership, corporation, or trust that is engaged in soliciting or accepting orders for the purchase or sale of any commodity for future delivery, or option on a commodity futures contract, on or subject to the rules of any contract market or derivatives transaction execution facility, and in or in connection with such solicitation or acceptance of orders, accepts any money, securities or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

7. The National Futures Association ("NFA") is a self-regulatory organization for the commodity futures industry. The NFA conducts audits and investigations of NFA member firms to ensure compliance with NFA rules and CFTC regulations.

8. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

9. Under Section 2(c)(2)(B)(i) and (ii) and 2(c)(2)(C) of the Act, the Commission has jurisdiction over foreign currency transactions if (1) the transactions at issue are futures or options contracts; (2) the futures or options contracts were offered to, or entered into with, a

person that is not an eligible contact participant, *i.e.*, retail customers; and (3) if the counterparty to the transaction is an improper counterparty, or if the counterparty is an FCM or a certain FCM affiliate and fraud or manipulation is alleged in the transaction.

10. In this case, FIG is offering foreign currency options contracts through oral solicitations. Thus, the first element to establish jurisdiction is satisfied. As to the second element, Section 1a(12)(A)(xi) of the Act defines an eligible contract participant as either (1) an individual who has total assets in excess of ten million dollars ($10,000,000) or (2) an individual who has total assets in excess of five million dollars ($5,000,000) and who enters the transaction to manage the risk associated with the asset he owns or liability incurred. No the customers who have signed declarations or have been interviewed are eligible contract participants.

11. Safeguard FX LLC ("Safeguard"), the clearing firm for FIG from June 2004 until January 2005, was not a proper counterparty under the Act. Section 2(c)(2)(B)(ii) identifies regulated entities that are proper counterparties to foreign currency transactions with retail customers, which include registered FCMs and certain statutorily defined affiliates of registered FCMs for whom the FCMs are required under the Act and Regulations to make and keep records. From June 2004 to January 2005, Safeguard was listed with the NFA as a "principal" of Safeguard Financial Holdings, LLC, a registered FCM, and claimed the status of an affiliate of an FCM. However, Safeguard did not qualify as an affiliate under Section 2(c)(2)(B)(ii)(III), because Safeguard Financial Holdings, LLC, did not hold sufficient amounts of customer segregated funds and did not have a sufficient amount of adjusted net capital, so as to be required to make and keep records pursuant to Section 4f(c)(2)(B) of the Act. Thus, Safeguard is not an affiliate within the meaning of Section 2(c)(2)(B)(ii) and the entire Act applies to these transactions.

12. Even if Safeguard were a proper affiliate of an FCM, the CFTC would still retain anti-fraud jurisdiction over transactions conducted with it, just as it does with respect to the transactions conducted with United Clearing (described below), by operation of Section 2(c)(2)(C), which gives the Commission anti-fraud jurisdiction under Section 4c(b) and Regulation 32.9 for the options transactions of FCMs and their proper affiliates.

13. From January 2005 until the present, FIG has been clearing through United Clearing LLC ("United Clearing"), a registered FCM. By operation of Section 2(c)(2)(C), the Commission retains anti-fraud jurisdiction over the FIG/United Clearing options transactions under Section 4c(b) and Regulation 32.9, which prohibit fraudulent solicitation of option customers.

14. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because the defendants are found in, inhabit, or transact business, among other places, in this District, or the acts, practices and omissions in violation of the Act have occurred, are occurring, or are about to occur, within this District, among other places.

III.

THE PARTIES

THE PLAINTIFF

15. The Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with the responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.*

THE DEFENDANTS

16. **First International Group Inc.** is a Florida corporation organized on June 15, 2004. Its principal place of business is 1001 Brickell Bay Drive #2110, Miami, Florida 33131. First International Group has never been registered with the Commission.

17. **Michael Mesa,** an individual, resides in Miami, FL. Mesa has been registered with the Commission as an Associated Person ("AP") with various companies since 1989. Mesa has been a respondent in 10 reparations cases before the Commission. In 2004, Mesa was the subject of an NFA disciplinary action and was ordered to pay a $20,000.00 fine.

18. **Tom Keesee,** an individual, resides in Hialeah, FL. Keesee has never been registered with the Commission.

IV.

FACTS

19. Since at least June 2004, and continuing through the present, the defendants, operating through FIG, have solicited and accepted funds from retail customers to purchase and sell foreign currency options contracts.

20. FIG sales representatives solicit customers by making false and misleading statements claiming FIG has a successful and highly profitable trading record. Representatives also tell customers that they can make quick and substantial profits with no risk.

21. FIG operates as the soliciting or introducing firm, and currently United Clearing operates as the counterparty to retail foreign currency option transactions. Customers are told to send their funds to United Clearing, but are not told the exact relationship between FIG and United Clearing. United Clearing became a registered futures commission merchant in January 2005. As noted above, FIG previously operated as the soliciting firm for Safeguard.

22. The FIG sales fraud consists of three stages: the initial sales pitch, the "reload," and the customer's inevitable loss. FIG solicits customers primarily through telemarketing cold calls.

23. In the initial cold call, FIG telemarketers claim that FIG specializes in foreign currency options and that by acting quickly customers can take advantage of current market conditions and make substantial profits. The specific promises of potential profit vary by customer.

24. FIG representatives tell actual and prospective customers that they can make quick and substantial profits with no risk. These claims falsely convey that FIG customers will likely make profits. For example, claims made by representatives to prospective customers include the following:

- Timothy Lohrfink falsely stated to a prospective customer that with regard to trading foreign currency options there is "No easier, faster way to make money;"
- Tom Keesee told a prospective customer that he "Can't fail method to make money" by trading foreign currency options through FIG;
- Tom Keesee told a prospective customer that he could "Easily double money in trading through FIG;"
- Michael Mesa stated to another customer that "This is a good time to buy the Euro because it was about to go up and there was no way to lose money because even if it goes down we make money;"
- Mesa and/or Keesee stated to customers that "There is no risk" trading foreign currency options;
- Mesa stated to another customer that he "could not lose with FIG's trading strategy."

Contrary to the message conveyed by the above cited claims, approximately 93% of FIG's customers lost money and approximately two-thirds lost over 95% of their investment. Keesee

and Mesa, and the other FIG representatives, had access to customer accounts and therefore had knowledge that customers were not profiting from trading through FIG.

25. Other FIG representatives falsely told prospective customers that FIG was, in fact, generating profits for their customers. These statements included claims that "they (the firm and their customers) were doing well." In addition, Mesa stated that by using a "strangle" or "straddle" trading strategy, there was no way to lose money. Given the amount of losses sustained by FIG customers, these statements also were false and misleading.

26. The minimization of risk by FIG brokers is a component of the initial sales pitch. For example, Keesee told one customer that the Eurodollar was predictable, unlike the stock market, and that there was very little risk. Keesee told another customer that this was a "can't fail" method to make money.

27. Another FIG sales representative told a customer that the "risk of loss was nil."

28. Shortly after customers invest, sometimes within a matter of days, FIG telemarketers call customers back and enthusiastically recommend investing more funds to take advantage of the market. This is the "reload" stage of the fraudulent scheme employed by FIG and its agents.

29. If a customer hesitates during the "reload" solicitation to send more funds, he/she is typically transferred to Mesa. FIG brokers introduced Mesa as the "Lead Trader" at FIG and someone who had years of experience and success in trading. Mesa told one customer that you could make "lots of money trading in foreign currency if you know how" and that he had been trading for a long time. Mesa then told the customer that "now is a good time to buy the euro because it has no where to go but up" and also stated that "there is no way to lose money because he would put 'strangles'" on the trades.

30. In another example, Mesa advised another customer that there was no way to lose money because "even if the market goes down, we make money." Mesa continuously stressed there was no risk with the trades he recommended. According to the customer, Mesa stated that any other discussion of risk was mentioned because it was "something the law says we have to say." Mesa told another customer that he would protect her investment by using "straddles."

31. While prospective customers are told of the great profit potential if they invest with FIG, prospective customers are never told that the vast majority of FIG's customers close their accounts at a loss. Approximately 93% of FIG's customers lost money and approximately two-thirds lost over 95% of their investment trading through FIG. From June 2004 through January 2005, approximately 204 FIG customers invested $3,741,429.31, with 190 of the 204 customers closing their accounts at a loss. Customers relied almost exclusively upon the recommendations of FIG employees when investing. FIG earned commissions on these options trades.

32. Keesee knew his statements to actual and prospective customers regarding actual profits or likely profits, and his statements minimizing risk, were false, or he made them with reckless disregard for the truth, because he had access to customers' accounts and knew that an overwhelming majority of FIG customers closed their account at a loss. Further, Keesee's failure to disclose the material fact that an overwhelming majority of FIG customers closed their accounts at a loss was a material omission given that he made claims to actual and prospective customers that conveyed that profits were possible.

33. Mesa knew his statements to actual and prospective customers regarding actual profits or likely profits, and his statements minimizing risk, were false, or he made them with reckless disregard for the truth, because he had access to customers' accounts and knew that an

overwhelming majority of FIG customers closed their account at a loss. Further, Keesee's failure to disclose the material fact that an overwhelming majority of FIG customers closed their accounts at a loss was a material omission given that he made claims to actual and prospective customers that conveyed that profits were possible.

34. Keesee and Mesa lacked any reasonable basis upon which to believe their extraordinary claims of profits or profit potential were in fact truthful.

35. After investing additional funds, FIG customers are typically unable to get in touch with Mesa or any other broker at FIG. Customers are told they can access their account statements on line, however, this is rarely true. Even if customers somehow obtain their statements, usually no one is available from FIG to explain how to read the statements. When customers call to ask questions or speak with Mesa regarding their investment they are told Mesa is "busy trading" or is out of the office. On the few occasions that customers called Safeguard or United Clearing regarding their accounts, Safeguard or United Clearing told them they had to speak to their brokers at FIG. Customer messages to FIG went unanswered.

36. In the event a customer reaches a FIG representative regarding his or her account, the options have typically either expired worthless or the customer is told the options are worthless. For example, one customer invested $98,000 in November 2004. The customer tried to call FIG several times to check on his investment. No one returned his calls, and the options all expired worthless in January and February 2005.

37. In another example, one customer invested over $200,000 between September 2, 2004 and December 2, 2004. Shortly after the final investment of $100,000 on December 2, 2004, Keesee placed Euro trades in his account that cost him $66,800 in commissions alone. The customer called FIG and was told that his trades were losing money and that his account was

almost completely depleted. Keesee told him that he needed to invest more money to recoup his losses. Believing his account was worthless, the customer requested that FIG close his account. On December 10, 2004 he received a check for $4235. However, account statements show that the customer still had open positions that did not expire until February 2005. As late as January 11, 2005 those open positions were worth approximately $48,870 and they were allowed to expire worthless.

V.
VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS

COUNT ONE

VIOLATIONS OF SECTION 4c(b) OF THE ACT AND COMMISSION REGULATIONS 1.1(b)(1), 1.1(b)(3) and 32.9 (a) and (c):

38. Paragraphs 1 through 37 are realleged and incorporated herein.

39. During the time period from at least June 2004 through the present, defendants Mesa, and Keesee, and other employees and agents of FIG, violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c) (2005), in that, in or in connection with offers to enter into, the entry into, or the confirmation of the execution of, commodity option transactions, they cheated or defrauded or attempted to cheat or defraud customers or prospective customers and deceived or attempted to deceive customers or prospective customers by, among other things: misrepresenting the likelihood that customers will profit from the trading of foreign currency forex options and misrepresenting, and omitting discussion of, the risks and costs of trading forex options; misrepresenting the urgency of trading forex options; and misrepresenting and failing to disclose, in light of the profit predictions they were making, FIG's customers' performance record trading forex options. Finally, from June

2004 to January 2005 defendants Mesa, and Keesee, and other employees and agents of FIG, also violated Regulations 1.1(b)(1) and 1.1(b)(3).

40. The actions and omissions of Mesa, and Keesee, and other employees and agents of FIG, described in paragraphs 1 through 37 of this Complaint, were done within the scope of their employment and agency with FIG. Therefore, FIG is liable as a principal for each of the violations alleged in this Count, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2005).

41. Each material misrepresentation or omission and each deception made during this time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation.

VI.

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. a preliminary and a permanent injunction prohibiting the defendants and any other person or entity associated with them, or any successor thereof, from engaging in conduct violative of the provisions of the Act as alleged in this Complaint, and from engaging in any activity relating to commodity options, including but not limited to, soliciting, accepting or receiving funds, revenue or other property from any person, giving advice for compensation, or soliciting prospective customers, related to the purchase and sale of any commodity options;

b. an order directing the defendants and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices

which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;

c. an order directing the defendants to make full restitution to every customer whose funds were received by them as a result of acts and practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;

d. an order directing the defendants to pay a civil monetary penalty in the amount of not more than the higher of $120,000 ($130,000 for violations occurring after October 23, 2004) or triple the monetary gain to each defendant for each violation of the Act or Regulations; and

e. such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: APRIL 17, 2006

Respectfully submitted,

ROBERT J. HILDUM
Florida. Bar No. A5500701
rhildum@cftc.gov 202.418.5329
PETER M. HAAS
Florida Bar No.A5500182
phaas@cftc.gov 202.418.5377
ATTORNEYS FOR PLAINTIFF
COMMODITY FUTURES TRADING
COMMISSION
1155 21st Street NW
Washington, DC 20581
Fax. No. 202.418.5523