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Summary of Investigation by the CFTC's Division of Enforcement FY1998

United States: Commodity Futures Trading Commission (CFTC)

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Division of Enforcement

The Division of Enforcement (Division) investigates and prosecutes alleged violations of the Commodity Exchange Act (CEA or Act) and Commission regulations. The Division takes enforcement actions against individuals and firms registered with the Commission, those who are engaged in commodity futures and option trading on designated domestic exchanges, and those who improperly market futures and option contracts.

The Division bases investigations on information it develops independently, as well as information referred by other Commission divisions; industry self-regulatory associations; state, Federal, and international authorities; and members of the public. At the conclusion of an investigation, the Division may recommend that the Commission initiate administrative proceedings or seek injunctive and ancillary relief on behalf of the Commission in Federal court. Administrative sanctions may include orders suspending, denying, revoking or restricting registration and exchange trading privileges and imposing civil monetary penalties, cease and desist orders, and orders of restitution. The Commission also may obtain temporary restraining orders and preliminary and permanent injunctions in Federal court to halt ongoing violations, as well as civil monetary penalties. Other relief may include appointment of a receiver, the freezing of assets, restitution, and disgorgement of unlawfully acquired benefits. The CEA also provides that the Commission may obtain certain temporary relief on an *ex parte* basis (that is, without notice to the other party) including restraining orders preserving books and records, freezing assets, and appointing a receiver. When those enjoined violate court orders, the Division may seek to have the offenders held in contempt.

When the Division obtains evidence that criminal violations of the CEA have occurred, it may refer the matter to the Department of Justice for prosecution. Criminal activity involving commodity-related instruments can result in prosecution for criminal violations of the CEA and for violations of other Federal criminal statutes, including mail fraud, wire fraud and conspiracy.

The Division provides expert help and technical assistance with case development and trials to U.S. Attorneys' Offices, other Federal and state law enforcement agencies, and international authorities. The Commission and individual states may join as co-plaintiffs in civil injunctive actions brought to enforce the CEA.

During FY 1998, the Commission instituted 18 injunctive actions and 23 administrative proceedings, which included seven statutory disqualification actions. Permanent injunctions were entered against 53 individuals or firms; preliminary injunctions were entered against 71 individuals or firms; and eight *ex parte* temporary restraining orders were obtained. Five equity receivers were appointed this fiscal year, with approximately \$3.9 million of customer funds and other assets placed under their protection. In all, the United States District Courts imposed civil monetary penalties totaling over \$5 million against 12 individuals or firms.

Administrative litigation resulted in the entry of cease and desist orders against 61 individuals or firms: 37 by the Commission; 16 by Administrative Law Judges (ALJs); and eight affirmed on appeal by the U.S. Circuit Courts of Appeals. Forty-three individuals or firms were prohibited from trading on or subject to the rules of any Commission-designated contract market: 23 by the Commission; 12 by ALJs; and eight on appeal by the U.S. Circuit Courts of Appeals. Forty-three registrations with the Commission were denied, suspended, revoked, conditioned or restricted: 22 by the Commission; 13 by ALJs; and eight on appeal by the U.S. Circuit Courts of Appeals. Civil monetary penalties totaling over \$19 million were imposed by ALJs on 14 individuals or firms. Civil monetary penalties totaling over \$129.5 million were imposed by the Commission on 28 individuals or firms. Of the civil monetary penalties imposed, \$125 million was assessed in *In re Sumitomo Corp.*, CFTC Docket No. 98-14 (filed May 11, 1998). The U.S. Circuit Courts of Appeals affirmed

on appeal civil monetary penalties totaling \$450,000 on four individuals or firms.

Manipulation

Among the core provisions of the Act is a prohibition against price manipulation. Because price manipulation can undermine the hedging and price discovery functions of, and diminish public confidence in, these markets, the Commission, when necessary, focuses its enforcement resources on responding to potentially manipulative activity. During FY 1998, for example, the Division pursued the following major case.

In re Sumitomo Corp.

The Division's ongoing investigation into events in the copper market resulted in the filing and settlement of manipulation charges against Sumitomo Corporation of Japan (Sumitomo). In May 1998, the CFTC issued an order instituting proceedings, making findings, and imposing sanctions on Sumitomo. In the order, which accepted an offer of settlement in which Sumitomo neither admitted nor denied the findings, the CFTC found that Sumitomo engaged in a scheme to manipulate the price of copper. In the wake of accumulating large losses from speculative trading, the principal copper trader for Sumitomo engaged in a scheme, in conjunction with an entity operating in the United States, with the intent of manipulating the price of copper. In particular, during 1995 and 1996, Sumitomo, acting through its agent or agents, held large and dominating futures positions in copper metal on the London Metals Exchange (LME). In the fall of 1995, Sumitomo stood for delivery on a significant percentage of its maturing futures contracts. In doing so, it acquired a dominant and controlling cash and futures market position that caused copper prices, including prices on the United States cash and futures markets, to reach artificially high absolute prices. This position also created a large "backwardation" in which the price of the commodity for near-term delivery stood at a premium to the price of the commodity for deferred delivery. Sumitomo intentionally exploited these artificially high prices in order to profit on the liquidations of its large portfolio of futures contracts and holdings of LME warrants. Through these actions, Sumitomo manipulated the price of copper and copper futures in violation of the Act.

The CFTC ordered Sumitomo to cease and desist from further violations of the cited provisions of the Act and to pay a total of \$150 million, a penalty believed to be the largest ever imposed by an agency of the U.S. government. Of the \$150 million, \$125 million was paid immediately as a civil monetary penalty. The remaining \$25 million was placed in escrow for a period of up to four years, during which period the money may be used to provide restitution to persons injured by Sumitomo's unlawful conduct. Money not paid for restitution by the end of four years will become part of the civil monetary penalty and will be paid to the U.S. Treasury. In September 1998, the Commission approved disbursement of \$18 million from the escrow account to pay restitution in *In re Sumitomo Copper Litigation*, No. 96 Civ. 4584 (MP) (S.D.N.Y.). The settlement also requires Sumitomo to cooperate with the CFTC in related investigations and proceedings. The settlement benefited from extensive international cooperation between the CFTC, United Kingdom (U.K.) Financial Services Authority (formerly the SIB and SFA) and the Japanese government. *In re Sumitomo Corp.*, CFTC Docket No. 98-14 (filed May 11, 1998).

Trading Ahead

In furtherance of its commitment to protect market participants and the integrity of the markets, the Commission pursues actions against those persons who violate the anti-fraud provisions of the Act by using misappropriated confidential information to trade ahead. During FY 1998, for example, the Division pursued the following action.

CFTC v. Rhee, et al.

In July 1998, the Commission filed a two-count civil injunctive complaint against Thomas Edward Kelly, Andrew David Rhee and Reflex Asset Management Corporation (Reflex). Reflex is registered with the

Commission as a commodity pool operator (CPO) and commodity trading advisor (CTA). The complaint alleged that, since 1995, Kelly, Rhee, and Reflex cheated, defrauded and willfully deceived Kelly's employer, John W. Henry and Co. (JWH), a registered CTA and CPO. Specifically the complaint alleged that Kelly stole material, confidential, non-public, proprietary information concerning JWH's planned futures trading and provided that information to Rhee. Rhee then placed trades ahead of JWH's trades and reaped profits of more than \$2.5 million for himself, Reflex, and Kelly. JWH's trades were sufficiently large to have a short-term effect on the price of the relevant futures contracts. The complaint also alleged that Rhee created a trading performance record that was used to solicit new customers and retain existing customers. However, Rhee failed to reveal to customers that the success reflected in the record was based upon confidential information misappropriated from JWH. *CFTC v. Rhee, et al.*, No. 98CIV5270 (S.D.N.Y. filed July 23, 1998).

Trade Practice Fraud

The Commission has continued to pursue actions that address specific types of fraudulent practices that affect the interests of customers and the integrity of futures markets. During FY 1998, the Division pursued a number of actions.

In re Bilello, et al.

In June 1998, the Commission issued an order making findings and imposing remedial sanctions in accepting Lawrence J. Bilello's offer of settlement in a seven-count administrative proceeding. While Bilello neither admitted nor denied the findings, the order found that Bilello, a registered floor broker (FB) on the Commodity Exchange, Inc., (COMEX) had, among other violations, participated in noncompetitive trades by bucketing customer orders and engaging in fictitious sales, wash sales, or accommodation trades. The Commission's order required Bilello to cease and desist from further violations, revoked his registration, imposed a three-year trading prohibition, required him to comply with his undertaking never to apply for registration with the Commission in any capacity, and imposed a civil monetary penalty in the amount of \$200,000. *In re Bilello, et al.*, CFTC Docket No. 93-5 (CFTC June 26, 1998).

In re Mazzara, et al.

In June 1998, the Commission issued an order making findings and imposing remedial sanctions in accepting an offer of settlement from Frank J. Mazzara to resolve this administrative action filed on October 19, 1992. While Mazzara neither admitted nor denied the findings, the order found that Mazzara, a registered FB on the COMEX, had violated the Act and Commission regulations by engaging in noncompetitive trades by bucketing customer orders and by engaging in fictitious sales, wash sales, or accommodation trades. The order required Mazzara to cease and desist from further violations, revoked his registration, imposed a one-year trading ban, and ordered Mazzara to comply with his undertaking not to seek registration with the CFTC in any capacity for one year. *In re Mazzara, et al.*, CFTC Docket No. 93-2 (CFTC June 30, 1998).

Fraud in the Handling of Customer Business and/or Unregistered Activity

This year the Commission continued to devote significant time and attention to matters involving customer fraud and failure to register, cases which reflect the increase in customer funds under management and the public's desire to find profitable trading programs. Certain registered and unregistered CPOs, CTAs and futures commission merchants (FCMs) have taken advantage of this trend by making fraudulent misrepresentations, usually to small retail customers, to induce them to invest. Customer funds have been misappropriated for the personal or business use of those accused of fraud. The Commission's efforts against unregistered activity and/or fraud during the 1998 fiscal year follow.

CFTC v. FTI Financial Group, et al.

In October 1997, the Commission obtained a consent order of preliminary injunction from the U.S. District Court for the Northern District of Illinois against FTI Financial Group (FTI), a general partnership, and its three partners, Samuel H. Foreman, Mark G. Stevens, and Carolyn F. Munn. None of these defendants has ever been registered with the Commission. The court order stems from a five-count civil complaint alleging that the defendants cheated and defrauded commodity pool participants, misappropriated money solicited from FTI participants, and acted as CPOs, or as associated persons (APs) of a CPO, without being registered with the Commission. According to the complaint, since May 1996, the defendants received more than \$1.2 million from approximately 30 investors in three commodity pools. The pools allegedly lost more than \$717,000, and the defendants used approximately \$200,000 of investors' money to pay FTI expenses and fees. The court order, among other things, 1) required the defendants to distribute immediately more than \$271,400 to commodity pool investors; 2) froze other assets of the defendants; 3) required them to make an accounting; and 4) barred them from the futures industry and any other futures-related activity until further order of the court. In January 1998, the Commission amended its injunctive complaint, adding four additional defendants: James R. Crawford, Terry G. Wigton, Randall Williams, and Anthony L. Holt. The amended complaint charged these new defendants with, among other things, fraud in promoting the formation of commodity pools. *CFTC v. FTI Financial Group, et al.*, No. 97 C 7061 (N.D. Ill. filed Oct. 9, 1997, amended Jan. 28, 1998).

In re Koerner, et al.

In January 1998, the Commission entered an order instituting proceedings, making findings, and imposing remedial sanctions against William Koerner and IV Great River Corporation (GRC). Koerner has not been registered with the Commission in any capacity for the past 15 years. GRC has never been registered. While Koerner and GRC consented to the entry of the order, respondents neither admitted nor denied the findings in the order. The Commission found that Koerner, through GRC, defrauded at least one customer by making material misrepresentations and omissions regarding the probability and magnitude of profits and risk of loss associated with futures and option trading. The Commission ordered Koerner and GRC to cease and desist from committing similar violations in the future and imposed permanent trading bans on both of them. The Commission did not impose restitution or a civil monetary penalty because of respondents' impoverished financial condition. *In re Koerner, et al.*, CFTC Docket No. 98-5 (filed Jan. 23, 1998).

CFTC v. Bonney

In January 1998, the Commission filed a five-count civil injunctive complaint against James F. Bonney in the U.S. District Court for the Western District of Wisconsin. Bonney simultaneously consented to permanent relief enjoining him from further commodity-related activity and reserving the issue of restitution to investors until after a court-ordered accounting. The complaint alleged that, from September 1993 through June 1997, Bonney defrauded at least seven investors who had invested at least \$540,000 in a commodity pool he operated. The complaint charged that in operating this pool, Bonney violated the anti-fraud provisions of the Act because the defendant: 1) misappropriated funds received from investors; 2) misrepresented to investors that their funds would be used only to trade commodity futures when they were not; 3) fraudulently guaranteed trading profits to investors; 4) falsely represented to investors the profitability of his trading activity; 5) falsely informed investors that their funds had been frozen by the U.S. Internal Revenue Service in order to conceal from investors that their funds were gone; and 6) issued altered account statements to investors misrepresenting the value of pool assets. Finally the complaint alleged that Bonney acted as a CPO without being registered as such with the Commission and that he illegally commingled pool assets with his own funds. In February, the court entered a consent order of permanent injunction that contained detailed findings of the fraudulent activity. The order permanently enjoined Bonney from further violations as charged, prohibited Bonney from any futures trading and any other futures-related activity, and required him to provide a complete accounting of his finances to the court. The court reserved the issues of restitution to investors and civil penalties until after the mandated accounting and the completion of discovery. In the

interim, Bonney's assets are frozen, and he is prohibited from destroying any of his books and records. *CFTC v. Bonney*, No. 98 C0087C (W.D. Wisc. filed Jan. 29, 1998).

CFTC v. Lamar

In February 1998, the Commission filed a five-count civil injunctive action against Thomas W. Lamar who has never been registered with the Commission. The complaint charged that from 1989 to 1996, Lamar defrauded at least 85 investors who had invested at least \$2 million in Lamar Investments Group (LIG), a commodity pool that Lamar operated in Michigan and three other states. The complaint alleged that Lamar lost at least \$1.3 million of the funds that had been invested in the pool by trading commodity futures contracts and misappropriated an additional \$560,000 for his own personal use. In addition, Lamar allegedly defrauded participants by concealing trading losses and issuing false monthly account statements. He also was charged with violating the registration requirements for CTAs and CPOs. The complaint sought a permanent injunction, disgorgement of ill-gotten gains, and restitution to investors. *CFTC v. Lamar*, No. 98-70619 (E.D. Mich. filed Feb. 13, 1998).

CFTC v. Cullen

In February 1998, the Commission filed a four-count civil injunctive complaint against Jack Dwight Cullen alleging that Cullen defrauded investors in a commodity pool that he operated. The complaint charged that, in operating this pool, Cullen violated the anti-fraud provisions of the Act because the defendant: 1) misappropriated funds received from investors; 2) misrepresented to investors that their funds would be used only to trade commodity futures; 3) falsely represented to investors the profitability of his trading activity; and 4) falsely advertised that trading profits were guaranteed. The complaint also charged that Cullen violated Commission regulations by failing to operate his commodity pool as a legal entity separate from himself, accepting funds in his own name and not in the name of a commodity pool, commingling pool assets with his own, and engaging in false advertising. At the time the complaint was filed, the court entered an *ex parte* restraining order freezing Cullen's assets, prohibiting him from destroying any of his books and records, and requiring him to make the books and records available for inspection and copying by the Commission. In July 1998, the court entered an order of permanent injunction against Cullen enjoining him from further violations of the Act, as charged; requiring him to pay restitution of \$149,000; and requiring him to pay a civil monetary penalty of \$447,000. *CFTC v. Cullen*, No. 4-98-CV-0140A (N.D. Tex. filed Feb. 13, 1998).

In re Abraham and Sons Capital, Inc., et al.

In March 1998, the Commission filed a six-count administrative complaint against Abraham and Sons Capital, Inc. (ASC), and its president and sole officer, Brett G. Brubaker. According to the complaint, ASC and Brubaker, while acting as unregistered CPOs, defrauded investors in Abraham and Sons, Limited Partnership, a commodity pool that operated as a hedge fund. From late 1994 through the end of 1995, the value of the pool declined from approximately \$12 million to \$6.7 million, and the pool suffered \$3.2 million in losses as a result of trading in commodity futures contracts. ASC and Brubaker allegedly defrauded participants in the pool by misrepresenting the nature and extent of futures trading that would be done for the pool, engaging in speculative futures trading not allowed by the partnership agreement, issuing false reports to the pool participants, and misrepresenting the amount of money that Brubaker personally had invested in the pool. ASC and Brubaker also were charged with violating the registration, recordkeeping and reporting requirements for CPOs. *In re Abraham and Sons Capital, Inc., et al.*, CFTC Docket No. 98-7 (filed Mar. 5, 1998).

In re Antonacci

In March 1998, the Commission entered an order instituting proceedings, making findings, and imposing remedial sanctions against Gary S. Antonacci. Antonacci was registered as a CPO and CTA from July 1982 to

April 1990 when the Commission revoked his registrations. The Commission found that Antonacci violated the Act by acting as an unregistered CTA and that Antonacci held himself out generally to the public as a CTA by entering into a fee-sharing agreement with one of his existing clients who was to be compensated for introducing new clients to Antonacci. Because of this fee-sharing agreement, Antonacci failed to qualify for exemption from registration as a CTA. The Commission's order required Antonacci to cease and desist from further violating the Act and Commission regulations, imposed a permanent trading ban, and prohibited Antonacci from acting in any capacity as a CTA or CPO or as an agent or officer of any person registered or required to be registered as a CTA or CPO. *In re Antonacci*, CFTC Docket No. 98-8 (filed Mar. 5, 1998).

In re Bradshaw

In March 1998, the Commission filed a four-count administrative complaint against James William Bradshaw, who had been conducting business as Neural-Tech Capital Management, alleging that Bradshaw committed fraud in the solicitation and trading of client accounts. Bradshaw has been registered with the Commission as a CTA since July 20, 1995. The Commission complaint alleged that from November 1995 through August 1997, Bradshaw defrauded several clients by misrepresenting the probability and magnitude of profits and risk of loss associated with trading futures using a computer trading program and his own system. Specifically, the complaint alleged that once Bradshaw had successfully solicited managed accounts, he churned those accounts and traded for clients without authorization. In addition, the complaint alleged that Bradshaw failed to disclose the actual trading results he had previously obtained for his clients and that he failed to keep and produce documents as required. *In re Bradshaw*, CFTC Docket No. 98-6 (filed Mar. 5, 1998).

CFTC v. Schenk, et al.

In March 1998, the Commission filed a six-count civil injunctive complaint against eight defendants for violating the anti-fraud provisions of the Act and Commission regulations. On the day the complaint was filed, the court entered an *ex parte* statutory restraining order freezing the assets of all defendants, prohibiting them from destroying any of their books and records, and requiring them to make their books and records available for inspection by the Commission. The defendants named in the enforcement action are John Larry Schenk; his sons, Mark Schenk and Steve Schenk; Sam Gray; Douglas Foster; Robert Moncur; Brian Tobler; and Fidelity Traders Group. The complaint alleged that the defendants defrauded more than 50 customers in Idaho and Utah who had invested over \$700,000 in at least three commodity pools during a four-year period. The complaint charged that in operating these pools, the defendants violated the Act because they 1) misappropriated funds received from investors; 2) represented to investors that their funds would be used only to trade commodities when they were used for non-authorized expenses of the pools; 3) issued false account statements to customers that showed that their investments were profitable when they were not; 4) misrepresented the trading experience and track record of the individual who made the investment decisions for the pools; and 5) failed to disclose the fees and commissions the customers would be charged. In addition, the complaint charged that the defendants violated Commission regulations by accepting customer funds in the names of entities other than the commodity pools in which the customers intended to invest, commingling assets of some of the pools with assets of others, and failing to provide proper disclosures to customers before they invested in the pools. Four of the defendants also were charged with operating commodity pools without being registered with the Commission. In April 1998, the Commission filed a motion for a preliminary injunction against all defendants, and three of the eight have agreed to the entry of consent preliminary injunctions against them. The court entered consent orders of preliminary injunction against defendants Robert Moncur, Brian Tobler and Douglas Forster in June 1998. The court entered orders of preliminary injunction against defendants Mark and Steve Schenk in July 1998 and against defendants John Schenk, Fidelity Traders Group, Inc. and Sam Grey in September 1998. *CFTC v. Schenk, et al.*, No. 2:98CV00216J (D. Utah filed Mar. 27, 1998).

In re Sterling Investments of America, Inc., et al.

In March 1998, the Commission filed a three-count administrative complaint against John A. Ackermann and three introducing brokers (IBs) for which he is principal and co-founder: Sterling Investments of America, Inc., an Oregon corporation; Sterling Investments of America, Inc., a Florida corporation; and Sterling Investments of America A/K/A Sterling Investments (collectively known as Sterling Investments). The registrations of Ackermann and Sterling Investments with the Commission have been suspended since September 1996 as a result of unpaid reparations awards. The complaint alleged that Ackermann and the employees of Sterling Investments committed fraud in the solicitation and trading of client accounts. According to the allegations of the complaint, from January 1994 through May 1995, Ackermann and Sterling Investments defrauded clients by materially misrepresenting the probability and magnitude of profits and risk of loss associated with trading futures and options. Among other things, the complaint alleged that Ackermann and Sterling Investments told customers that they used a trading strategy known as writing strangles, which is the writing of a call option at a strike price above the futures price and a put option at a strike price below the futures price, and they fraudulently misrepresented strangles as a conservative strategy. The complaint further alleged that once the employees of Ackermann and Sterling Investments had successfully solicited accounts, Ackermann engaged in unauthorized trading in the management of some accounts. It is also alleged that Sterling Investments employed unregistered persons to solicit accounts by means of telemarketing via an entity called Sterling Marketing Research. In June 1998, an ALJ entered a default order against respondents Ackermann and Sterling Investments. As sanctions, the default order required respondents to cease and desist from violations of the Act, as charged; revoked their registrations; ordered permanent trading bans; and imposed a \$700,000 civil monetary penalty. *In re Sterling Investments of America, Inc., et al.*, CFTC Docket No. 98-9 (filed Mar. 31, 1998).

In re CMB Capital Management Corp., et al.

In March 1998, the Commission filed a three-count administrative complaint against CMB Capital Management Corporation (CMB); its president, Grace Hsu; and Allen Tsui, alleging violations of the anti-fraud provisions of the Act and Commission regulations. CMB is registered with the Commission as an IB, and both Hsu and Tsui are currently registered as APs. Specifically the complaint charged the respondents with fraud for failing to disclose material information about margin calls, misrepresenting the reasons the customers were required to change their clearing FCM, failing to disclose the risks of futures trading, and trading customer accounts without authorization. According to the complaint, from December 1996 through June 1997, CMB, Hsu, and Tsui solicited customers either without providing them the required risk disclosures or by providing the required risk disclosure documents in a language that they knew that the customers could not read. Further, the Commission complaint alleged that, in 1997, Hsu and CMB engaged in a series of unauthorized trades, resulting in losses to CMB clients of more than \$145,000. *In re CMB Capital Management Corp., et al.*, CFTC Docket No. 98-10 (filed Mar. 31, 1998).

CFTC v. O'Connell

In April 1998, the Commission filed an eight-count civil injunctive complaint against **Thomas B. O'Connell**, alleging that O'Connell operated a multi-million dollar commodity pool Ponzi scheme in violation of the Act and Commission regulations. The complaint alleged that between 1989 and 1995, O'Connell defrauded more than 50 investing limited partners out of funds in excess of \$14 million through two limited partnerships he operated. According to the complaint, O'Connell mailed false monthly reports to investors and created a fictitious FCM to help him conceal from auditors his fraud, theft and actual trading losses. The complaint also alleged that O'Connell misappropriated investors' funds to pay personal living expenses and to purchase luxury homes and private aircraft. Finally, the complaint alleged that O'Connell violated the registration provisions of the Act by operating as an unregistered CPO, and violated Commission regulations by commingling funds of the pool with his own funds and by failing to make proper disclosures to pool participants. Simultaneous with the filing, O'Connell admitted to the allegations in the complaint and consented to the entry of a permanent injunction and other relief. The consent order prohibited O'Connell

from engaging in further violations of the Act and regulations and from engaging in any futures-related activity, including soliciting customers or customer funds or trading for himself or on behalf of other persons. O'Connell is currently serving a 52-month prison sentence for conviction on Federal criminal charges stemming from his activities as sole general and managing partner of the two limited partnerships. *CFTC v. O'Connell*, No. 98CV104 (D. Vt. filed Apr. 8, 1998).

In re Albino

In April 1998, the Commission issued an order accepting an offer of settlement from Gloria Albino in a one-count administrative action filed in 1995. While Albino neither admitted nor denied the findings, the order found that she defrauded investors in options on commodity futures contracts. Specifically the order found that Albino, as an AP of Commonwealth Financial Group, Inc., of Fort Lauderdale, Florida, willfully misrepresented the profit potential of the options she recommended; failed to disclose that her statements regarding profit potential were not representative of her trading history and experience or that of Commonwealth; and willfully misrepresented, and/or omitted and failed to disclose, the true risks associated with trading commodity options, the experience and expertise of Albino and Commonwealth in recommending commodity option trades, the amount of commissions to be charged, and the effect commissions would have on option profitability. From August 1991 through December 1994, Albino's 276 customers lost \$2,413,764 while they generated \$1,089,209 in commissions and fees for Albino and Commonwealth. As sanctions, the CFTC order: (1) revoked Albino's AP registration; (2) prohibited her from ever seeking registration with the CFTC in any capacity, or from acting in any capacity that would require registration; (3) ordered her to cease and desist from further violations as alleged; and (4) ordered her to pay a civil monetary penalty of \$25,000. *In re Albino*, CFTC Docket No. 95-11 (Apr. 23, 1998).

CFTC v. Friedman, et al.

In May 1998, the Commission obtained a sealed consent order of permanent injunction against S. David Friedman, Intercap International, Inc. (Intercap), and The Whitehall Trust. Friedman is registered with the Commission as an AP of Intercap, which is itself registered as a CTA. The Whitehall Trust has never been registered. The order, which was unsealed on June 4, 1998, permanently enjoined the defendants from, among other things, accepting new investors' funds and engaging in violations of the Act and Commission regulations. The order also required the defendants to bring all funds located outside of the United States back into the country. In addition, the court entered an *ex parte* order freezing the defendants' assets and property and prohibiting them from destroying their books and records. The injunctive order of the court stems from a five-count complaint, filed under seal on April 24, 1998, charging the defendants with fraud and conversion of investor funds in connection with the operation of a commodity pool. The complaint also charged Intercap with recordkeeping violations. The defendants allegedly committed these violations by failing to provide customers with account statements of their allegedly profitable equity trading balances and by failing to return money to customers upon request or demand. *CFTC v. Friedman, et al.*, No. 98 Civ. 2908 (S.D.N.Y. filed under seal Apr. 24, 1998).

In re Thomas

In April 1998, the Commission filed a one-count administrative complaint alleging that Todd Alan Thomas violated the anti-fraud provisions of the Act and Commission regulations by fraudulently soliciting customers to purchase commodity futures options. Specifically, the complaint alleged that Thomas made false, deceptive, and misleading statements in radio and/or television infomercials and in telephone solicitations of customers. It also alleged that Thomas fraudulently misrepresented that customers who purchase options on futures contracts will profit from seasonal and other existing and known supply and demand forces that affect the prices of certain commodities in the cash market. The complaint further alleged that Thomas exaggerated the likelihood of profit from trading commodity futures options, minimized the risk of loss involved in trading

commodity futures options, and overstated his performance record in trading commodity futures options. Finally, the complaint alleged that at least 90 percent of the accounts opened by Thomas since late 1992 lost money and that losses in Thomas' unprofitable accounts totaled approximately \$1.3 million, while Thomas received at least \$871,000 in commissions. *In re Thomas*, CFTC Docket No. 98-13 (filed Apr. 27, 1998).

CFTC v. Hudkins, et al.

In May 1998, the Commission filed an eight-count civil injunctive complaint against six defendants charged with violating the anti-fraud provisions of the Act and Commission regulations. The defendants named in the complaint are Steven D. Hudkins; Carmen J. Field; Mona L. Smith; Market Capital Growth, Inc.; Bart BeMiller; and Robert J. Riethman. Hudkins, Field, and Smith are alleged to have done business under the name HFI. The Commission complaint alleged that defendants defrauded more than 135 investors in Indiana and elsewhere who had invested more than \$2.28 million in two commodity pools during a six-year period. The complaint charged, among other things, that in operating the pools the defendants: 1) misappropriated funds received from investors; 2) represented to investors that their funds would be used only to trade commodities, when, in fact, they were used for non-authorized expenses of the pools; 3) misrepresented the trading experience of the individual who made the investment decisions for the pools and the trading record of the pools; and 4) issued false account statements to investors that showed that their investments were profitable when they were not. Hudkins was charged with acting as an unregistered CTA; Hudkins, Field, BeMiller and Market Capital Growth, Inc. were charged with operating an unregistered commodity pool; and Smith and Riethman were charged with operating as unregistered APs of CPOs. In June, the court entered a restraining order freezing the assets of defendants Hudkins, Field, Smith, and Market Capital Growth, Inc. The court also entered an order prohibiting all of the defendants from destroying any of their books and records and requiring them to make their books and records available for inspection and copying by the Commission. In July 1998, the Commission entered preliminary injunctions against all defendants. *CFTC v. Hudkins, et al.*, No. 3:98CV0281AS (N.D. Ind. filed May 29, 1998).

CFTC v. Marchiano, et al.

In June 1998, the Commission filed a three-count civil injunctive complaint against Joseph J. Marchiano, Hartford Financial Group, Inc. (Hartford), Keri L. Stewart, Glenn R. Taubman, and Gary V. Valletta. The action sought to enforce a November 22, 1996, Commission order that, among other things, required Marchiano to pay a civil monetary penalty and alleged violations of the Commission order and various registration requirements. The three-count complaint alleged that Marchiano had been acting as an AP and as a principal of Hartford, a registered IB, without being registered. Marchiano, who was a respondent in an earlier Commission enforcement proceeding, *In the Matter of American Futures Group, Inc., George J. Perk, Thomas G. Reeves and Joseph J. Marchiano*, CFTC Docket No. 95-15 (filed July 31, 1995), entered into a settlement in which he agreed, among other things, to revocation of his registration with the understanding that he would not reapply for one year; imposition of a \$10,000 civil monetary penalty; prohibition from acting as a principal of a registrant; and imposition of conditions on any future registration he might obtain. At the time the present action was filed, Marchiano had not paid the \$10,000 civil monetary penalty and was alleged to have further violated the Commission order by acting as an AP and as a principal of Hartford. The complaint alleged that the listed principals of Hartford knew, or acted in a manner to avoid knowing, that Marchiano was prohibited from acting as an AP or as a principal of a registrant by the Commission order. Furthermore, by enabling Marchiano to control Hartford without registration, the Hartford principals aided and abetted Marchiano and Hartford's registration violations. Accordingly, the Commission filed the complaint in Federal district court charging Marchiano, Hartford, Stewart, Taubman, and Valletta with registration violations. In addition, the complaint charged Marchiano with violating the Commission order by failing to pay his civil monetary penalty and acting as an AP and principal of Hartford. *CFTC v. Marchiano, et al.*, No. 98-6564 (S.D. Fla. filed June 1, 1998).

CFTC v. Schafer

In June 1998, the Commission filed a two-count civil injunctive complaint against Christopher C. Schafer alleging that he violated the anti-fraud and registration provisions of the Act. Specifically the complaint alleged that Schafer solicited, accepted, and received at least \$253,785 from at least 12 investors to trade commodity futures. The complaint charged that Schafer violated the Act's anti-fraud provisions by fraudulently reporting and issuing false statements to investors, reporting that accounts traded on behalf of investors had earned profits when, in fact, the accounts had incurred significant losses. The complaint also alleged that Schafer acted as a FCM without being registered with the Commission and commingled customer funds provided to him for trading commodity futures with his personal funds. Under the terms of a consent order of permanent injunction entered by the court, Schafer admitted liability and agreed to make restitution to customers. The order permanently enjoins Schafer from committing further violations of the CEA and CFTC regulations, as charged; seeking CFTC registration; from acting in any capacity that requires registration; or engaging in any futures-related activity. The order directs Schafer to make continuing repayments of all customer losses based upon his income. *CFTC v. Schafer*, No. 1 98-CV-1594 (N.D. GA filed June 4, 1998).

Illegal Instruments

The Commission continues to address conduct involving the sale of illegal futures contracts. During the past year, activity in this area was focused primarily on three types of instruments: hedge-to-arrive grain contracts; contracts involving the purported sale of physical commodities such as agricultural products, energy products and precious metals; and contracts involving foreign currencies marketed to the general public. The cases filed in FY 1998 that generally involved fraudulent retail sales of illegal futures contracts follow.

Hedge-to-Arrive Cases

In re Competitive Strategies for Agriculture, Inc., et al.

In December 1997, the Commission filed a six-count administrative complaint alleging that, from mid-1993 through mid-1995, Competitive Strategies for Agriculture, Ltd. (CSA-Iowa) and CSA Investor Services, Inc. (CSA-IB), a registered IB, operating together and through their consultants and APs, Lee D. Amundson, Jeffrey J. Wichmann, and William E. Arnold (CSA Respondents), committed fraud in connection with providing market consulting and advisory services to agricultural producers in Nebraska. According to the Commission complaint, Amundson was a co-owner and principal of both CSA-Iowa and CSA-IB, and Wichmann and Arnold did business together under the name of CSA of Nebraska, a branch office of CSA-IB. The Commission complaint alleged that the CSA Respondents, together with Herman Gerdes and Great Plains Coop, offered and sold HTAs that were illegal futures contracts. The complaint also alleged that the CSA Respondents, while acting as CTAs, promoted and recommended HTAs that permitted rolling HTA positions between crop years and fraudulently represented to producers that such contracts were risk-free. It is further alleged that they did not disclose either the possible money-losing scenarios in which the producers might not be able to "roll out" of the HTAs profitably or the risk that the elevator would be financially unwilling or unable to continue to allow the producers to roll the HTAs. The CSA Respondents as well as Gerdes, Great Plains, and Terry A. Dirksen (who was a co-owner and principal of CSA-Iowa and CSA-IB together with Amundson) are charged individually and in various combinations with various violations of the Act and Commission regulations including fraud, the offer and sale of illegal contracts, aiding and abetting these violations, and failing to supervise diligently APs.

On August 24, 1998, the Commission issued an order accepting an offer of settlement from CSA-Iowa, CSA-IB, and Amundson in which the settling respondents neither admitted nor denied the facts alleged in the complaint or found in the order. The order found that CSA-Iowa, CSA-IB, and Amundson had violated the anti-fraud provisions of the Act and further found that Amundson was liable as a controlling person and for

aiding and abetting. The order also found that CSA-Iowa, CSA-IB, and Amundson had participated in the offer and sale of illegal contracts in violation of Section 4(a) of the Act. Pursuant to the settlement, CSA-Iowa, CSA-IB, and Amundson were ordered to cease and desist from violations of the Act and Commission regulations, as charged; CSA-IB's introducing broker registration was revoked; CSA-Iowa, CSA-IB and Amundson were ordered to pay a \$20,000 civil monetary penalty for which they are jointly and severally liable; and Amundson agreed not to seek registration with the Commission for a period of six years. On September 28, 1998, the Commission issued an order accepting Dirksen's offer of settlement. While Dirksen neither admitted nor denied the findings in the order, the Commission order found that Dirksen aided and abetted the fraud violations and was further liable as a control person of CSA-Iowa and CSA-IB. Dirksen was ordered to cease and desist from further violations; pay a \$10,000 civil monetary penalty; and comply with his undertaking not seek CFTC registration for a period of three years. The case against non-settling respondents, Gerdes, Great Plains, Wichmann and Arnold, is pending before a Commission ALJ. *In re Competitive Strategies for Agriculture, Inc., et al.*, CFTC Docket No. 98-4 (filed Dec. 22, 1997).

Physical Commodity Cases

The Commission continues to pursue cases against those involved in the sale of illegal futures contracts while purporting to be making sales of physical commodities such as agricultural products, energy products and precious metals. Examples of these actions during the preceding fiscal year include the following.

CFTC v. Midland Rare Coin Exchange, Inc., et al.

In November 1997, the Commission filed a two-count civil injunctive complaint against Midland Rare Coin Exchange, Inc., Globex Bullion and Financial Services Corporation, Global Asset Management, Inc., and several officers of Midland and Globex. The complaint was amended in August 1998. The amended complaint charged that Midland telemarketers fraudulently sold illegal futures contracts in various commodities and that Globex and Global claimed to provide financing for these illegal instruments and to store the purchased commodities for Midland customers. According to the complaint, Midland telemarketers falsely claimed that customers would reap substantial profits from only slight increases in the cash prices of commodities such as heating oil, unleaded gasoline, natural gas, various precious metals, and agricultural commodities. The complaint also alleged that Midland telemarketers failed to disclose the amount of commissions, interest, and fees charged to customers' accounts. Customers consistently lost the bulk of their investments, according to the complaint. *CFTC v. Midland Rare Coin Exchange, Inc., et al.*, No. 97-7422 (S.D. Fla. filed Nov. 20, 1997, amended Aug. 12, 1998).

CFTC v. Hanover Trading Corp., et al.

In February 1998, the Commission filed a three-count civil injunctive complaint against Hanover Trading Corp. (Hanover); Dupont Group, Inc. (Dupont); Michael Singer, who is president of both firms; and William Droge, a telemarketer for Hanover. On the day the complaint was filed, the court entered an *ex parte* order freezing the assets of the defendants and seven relief defendants who were alleged to have received funds directly traceable to the fraud charged in the complaint. Subsequently an order of preliminary injunction was issued against Hanover, Dupont, Singer, and Droge. The complaint alleged that Hanover, Dupont, and Droge sold illegal futures contracts involving heating oil, unleaded gasoline and other commodities. The defendants were also alleged to have defrauded prospective customers by making false claims concerning the likelihood of profit and risk of loss associated with such contracts, including representations that, as a result of seasonal demands for the purchased commodity, price movements in the futures markets can be predicted. In addition, the complaint charged that Hanover, Dupont, and Singer misappropriated customer funds and that, in order to hide the misappropriation, Hanover and Dupont issued false reports to customers. *CFTC v. Hanover Trading Corp., et al.*, No. 98 Civ. 1365 (S.D.N.Y., filed Feb. 24, 1998).

CFTC v. C.O.M. Consultants, Inc., d/b/a Golden State Bullion, et al.

In February 1998, the U.S. District Court for the Central District of California entered consent orders of permanent injunction against defendants C.O.M. Consultants, d/b/a/ Golden State Bullion (Golden State); Richard David Otto, Golden State's president and owner; and Bruce Michael Paine, Golden State's telemarketer. The court's orders were entered to settle with the defendants this two-count civil injunctive complaint filed on June 18, 1998. While Golden State neither admitted nor denied the findings, the court found that Golden State had engaged in fraudulent telemarketing of illegal, off-exchange futures contracts purportedly involving platinum, gold, silver and palladium. Under the terms of the consent order, Golden State, Otto and Paine are permanently enjoined from committing further violations of the Act; Golden State was ordered to pay restitution in the amount of \$10,300,000; Otto was ordered to pay restitution in the amount of \$9,245 and an additional 25 percent of his taxable income for the years 1997 through 2001; and Golden State, Otto, and Paine are permanently barred from ever seeking registration with the Commission. In December 1997, the court entered a default judgment against Golden State telemarketer Fred Roland Williams that permanently barred him from soliciting customers or funds in connection with futures trading and ordered him to pay restitution in the amount of \$2,459,117. This action remains pending against defendants Paine and Linton Samaru, another Golden State telemarketer. As to defendant Samaru, the only issue that remains is the award of a specific amount for restitution. *CFTC v. C.O.M. Consultants, Inc., d/b/a Golden State Bullion, et al.*, Civ. No. 97-4443 WMB, Consent Orders Of Permanent Injunction (C.D. Cal. Feb. 12, 1998).

Foreign Currency Cases

The Commission continues to pursue cases against those involved in the sale of illegal futures contracts in foreign currency to retail customers. During FY 1998, the Division pursued the following cases that involved this type of violative conduct.

In re Global Link Miami Corp., et al.

In October 1997, the Commission filed a nine-count administrative complaint charging Global Link Miami Corporation and its three principals, Leung Ka Shung, King Keung Chan, and Grant Lawton, with fraudulently selling illegal foreign currency futures contracts to the general public. The complaint charged that between May and October 1996, Global Link, Leung, and Lawton offered and sold illegal foreign currency futures contracts, cheated and defrauded customers in connection with the offer and sale of such contracts, misappropriated and converted customer funds, and commingled customer funds with Global Link funds. In addition, respondents were charged with violating Commission registration requirements by acting as unregistered FCMs. Chan was charged with aiding and abetting certain of the alleged fraudulent conduct and with failing to register with the Commission. The matter is currently on appeal to the Commission. *In re Global Link Miami Corp., et al.*, CFTC Docket No. 98-1 (filed Oct. 22, 1997).

CFTC v. New York Currency Exchange Corp., et al.

In August 1998, the Commission filed a seven-count civil injunctive complaint against New York Currency Exchange Corporation (NYCE), New York Currency Research Corporation (NYCR), and Michael Thomas Matejka, president of both corporations. NYCR was registered with the Commission as a CTA and CPO from January 1996 until April 1997. NYCE has never been registered, and Matejka was registered during the period in which NYCR was registered as its AP and listed as its principal. The Commission's complaint alleged that from March 1995 through the present, the defendants violated the anti-fraud, registration, and various other provisions of the Act and Commission regulations by cheating and defrauding customers, offering and selling illegal foreign currency futures contracts, commingling and converting customer funds, bucketing orders, and operating as an unregistered FCM. The complaint alleged that defendants defrauded customers of \$3.5 million by making misrepresentations of material fact to prospective customers, including

misrepresenting the likelihood of profit and the risk of loss in purchasing commodity futures contracts. For example, according to the complaint, the defendants made false promises of monthly profits of \$200,000 to \$500,000 or of 30 to 40 percent per year when, in fact, none of the defendants' customers made such profits and most have been unable to recoup any of the money given to the defendants. The defendants were also charged with making false or misleading representations to customers that their money would be safeguarded and that their accounts faced very little risk of loss. At the time the complaint was filed, the court issued an *ex parte* restraining order freezing the assets of the defendants, prohibiting the defendants from destroying any of their books and records, and requiring them to make their books and records available for inspection and copying by the CFTC. In September, the court granted the Division's request for a preliminary injunction. *CFTC v. New York Currency Exchange Corp., et al.*, No. 98 CIV 5588 (S.D.N.Y. filed Aug. 6, 1998).

Quick Strike Cases

The Commission's Division of Enforcement has continued to meet its commitment to respond quickly in investigations that uncover ongoing fraud. This "quick strike" ability enables the Commission to stop fraud soon after it is uncovered and to attempt to preserve customer funds. In addition, sanctions are imposed on wrongdoers in an expedited time period, sending a strong deterrent message to other potential wrongdoers. During FY 1998, for example, the Commission filed the following "quick strike" cases within four months of the opening of an underlying investigation.

CFTC v. Sullivan

In October 1997, the Commission filed a five-count injunctive complaint against Brien Sullivan (doing business as Brien Sullivan Capital Management and Lava Trading). The complaint alleged that Sullivan induced his friends and acquaintances to become investors by falsely representing that he would trade in accounts with legitimate FCMs either in the investors' individual names or through a commodity pool. The complaint further alleged that Sullivan did not open any FCM accounts in customers' names. Rather, he pooled a small portion of the approximately \$450,000 he collected from at least 15 customers and opened an account at an FCM in his own name. The complaint further alleged that Sullivan mailed account statements to his customers on the letterhead of Lava Trading showing profitable but fictitious futures trading. Trading records from Sullivan's personal accounts allegedly show that he used very little of his pool participants' money in futures trading and that his actual trading bore no relationship to the trading reflected on the false account statements of Lava Trading. In January 1998, the court entered a preliminary injunction that, among other things, restrained Sullivan from acting in any capacity for which registration with the Commission is required; froze his assets; prohibited the destruction, and provided for the inspection, of his books and records by the Commission; and ordered that an accounting be made by Sullivan of all assets held in his name. *CFTC v. Sullivan*, No. 97 0147 (D. Haw. filed Oct. 23, 1997).

CFTC v. Zoller, et al.

In November 1997, the Commission filed a six-count civil injunctive complaint that resulted in the entry of a preliminary injunction by consent against James M. Zoller and Tech-Comm Limited Partnerships, a series of 29 Minnesota limited partnerships operated by Zoller as commodity pools. The complaint alleged that since 1984, Zoller and the Tech-Comm pools had accepted more than \$13 million from at least 219 investors throughout the country and fraudulently misrepresented that they would use all of the investors' funds to trade commodity futures on the investors' behalf. The complaint alleged that Zoller used less than ten percent of investors' funds to trade futures. Zoller misrepresented to investors, both orally and in writing, that they were earning profits from the futures trading he conducted when, in fact, Zoller consistently lost money. According to the complaint, Zoller misappropriated approximately \$3.6 million of investors' funds for his personal use. The consent preliminary injunction froze the defendants' assets, prohibited the destruction of books and records, required the defendants to make an accounting to the court, and barred them from any futures-

related activity until further order of the court. The court order also appointed an equity receiver to administer the terms of the order. *CFTC v. Zoller, et al.*, No. 97-5691 (D. Minn. filed Nov. 21, 1997).

CFTC v. Schlossmacher, et al.

In March 1998, the Commission filed a two-count civil injunctive complaint against Shaun Schlossmacher, an unregistered individual who is alleged to have solicited and received more than \$1.1 million from investors. According to the complaint, the investors were told that their funds would be deposited into a pool known as the Chloris Fund and used to trade securities and Standard & Poor's 500 Index futures contracts. Instead, Schlossmacher is alleged to have misappropriated pool funds and to have falsely told pool participants who were seeking information about the status of their investments or demanding the return of their funds that their money was safe and that they were earning large returns. To further perpetuate this fraud, Schlossmacher issued false statements to investors which purported to show that the Chloris Fund owned an account with equity exceeding \$21 million. It is alleged that no such account existed. When the complaint against Schlossmacher was filed, the court issued an *ex parte* order which, among other things, froze the assets of Schlossmacher, the Chloris Fund and one other relief defendant who was alleged to have improperly received investors' funds. *CFTC v. Schlossmacher, et al.*, No. 98 Civ. 1682 (S.D.N.Y. filed Mar. 6, 1998).

CFTC v. Hanover Trading Corp., et al.

The *Hanover* complaint involves allegations that the defendants sold illegal futures contracts in heating oil, unleaded gasoline and other commodities and that they defrauded prospective customers by making false claims concerning the likelihood of profit and risk of loss from trading the contracts. On the day the Commission filed its complaint, the court entered an *ex parte* order freezing the assets of the defendants and seven relief defendants who were alleged to have received funds directly traceable to the fraud charged in the complaint. *CFTC v. Hanover Trading Corp., et al.*, No. 98 Civ. 1365 (S.D.N.Y., filed Feb. 24, 1998).

CFTC v. ChateauForte Consortium, Inc., et al.

In July 1998, the Commission filed a five-count civil injunctive complaint against seven defendants charged with running a fraudulent commodity pool scheme in violation of the anti-fraud, registration, and recordkeeping provisions of the Act and Commission regulations. The Commission complaint alleged that defendants defrauded at least eight investors who had invested more than \$3.4 million in a purported offshore commodity pool called the Millennium Fund. Defendants included ChateauForte Consortium, Inc., a Panamanian firm doing business in the United States; its directors, John La Tourette, William E. Amos, and Dr. Richard E. Busch; WorldEx, S.A., a Panamanian firm owned by Dr. Busch doing business in the United States; and Financial Planning Alliance International and its owner, James Michael Hanks. The complaint charged the defendants with misappropriating funds received from investors; commingling commodity pool funds with non-pool funds in accounts under their control; misrepresenting their ability to operate a commodity pool in the United States; misrepresenting the potential for profit and risk of loss associated with participating in a commodity pool; failing to register as a CPO and APs of a CPO; and failing to provide required reports to investors and the Commission. Immediately after the Commission filed its complaint, the court entered an *ex parte* order freezing the assets of defendants, prohibiting them from destroying any of their books and records, and requiring them to make their books and records available to the Commission for inspection and copying. *CFTC v. ChateauForte Consortium, Inc., et al.*, No. CV-98-1755-S (N.D. Ala. filed July 7, 1998).

Supervision, Compliance and/or Audit Cases

During FY 1998, the Commission continued its efforts to enforce the important requirement that firms handling customer business diligently supervise their employees and other agents and maintain the customer protection benefits of sound supervisory systems. To that end, the Commission continues to investigate and

take action against registrants for failing to supervise diligently the handling of customer accounts and for failing to establish adequate compliance systems. The Commission also investigates and takes action against auditors who fail to adhere to the requirements of Commission regulations, including the requirement, where applicable, to adhere to Generally Accepted Auditing Standards (GAAS). During FY 1998, the Division pursued a number of actions.

In re Reifler Trading Corp., et al.

In December 1997, the Commission filed a four-count administrative complaint against Reifler Trading Corp. (Reifler Trading); Bradley C. Reifler, president and sole shareholder of Reifler Trading; Liberty Futures, Inc. (Liberty); Hany Labib, president of Liberty; and Syed Hussain, an unregistered individual. Reifler Trading and Liberty, formerly known as Noble Wealth Investments, Ltd., are registered as IBs. Both Reifler and Labib are currently registered as APs. The complaint alleged, in part, that from October 1993 to December 1994, Liberty operated as a *de facto* branch office of Reifler Trading through a "Correspondent Agreement" entered into by Reifler and Labib even though Reifler Trading never listed Liberty as a branch office. The complaint further alleged that since Labib and Hussain solicited accounts on behalf of Reifler Trading, accounts that were introduced to FCMs with whom Reifler Trading had a clearing agreement, Reifler Trading was required to ensure that Labib and Hussain were registered as Reifler Trading APs. According to the complaint, Reifler Trading did not do so. The complaint also alleged that Liberty Futures employed unregistered individuals to solicit accounts on its behalf, failed to open accounts with a carrying FCM, accepted checks from customers made payable to FCMs without the FCMs' permission, and engaged in recordkeeping violations. Finally, the complaint alleged that Reifler Trading failed to supervise diligently both Liberty Futures and Labib. In February 1998, an ALJ entered a Notice of Default against respondents Liberty, Labib and Hussain. The action remains pending against respondents Reifler and Reifler Trading. *In re Reifler Trading Corp., et al.*, CFTC Docket No. 98-2 (filed Dec. 17, 1997).

In re FSI Futures, Inc., et al., and In re Techno Trading, Inc., et al.

In January 1998, the Commission issued an order accepting respondents' offers of settlement in a four-count administrative action that was filed on March 21, 1995. The allegations in *In re FSI Futures, Inc.*, revolved around a scheme by a Germany-based brokerage firm, American Trading & Consulting, GmbH (ATCO), that defrauded customers by placing matched buy and sell orders for futures contracts on U.S. futures exchanges. It then assigned trades to particular accounts to create a desired pattern of profits and losses. While respondents neither admitted nor denied the findings, the Commission order found that an American IB, Grandview Holdings Corporation, and its president, J. Michael King, an AP of the IB, aided and abetted ATCO's fraud by directly transmitting its orders to an American clearing broker, FSI Futures, Inc. (FSI), in a manner intended to disguise the scheme. The Commission's order focused on the respondents' willingness to accommodate the unusual and suspicious conduct of the German firm. Findings of a failure to supervise were supported by the fact that respondents ignored numerous irregularities in the handling of the German accounts.

In *In re Techno Trading, Inc.*, another Germany-based brokerage firm, HOSSE GmbH (HOSSE); an American IB, Techno Trading, Inc. (Techno); and Techno's CTA/AP, Michael Hjalmer Thomas, allegedly defrauded customers through a butterfly spread strategy that was designed to generate commission income. While the respondents neither admitted nor denied the findings, the Commission found that this strategy caused customers to lose \$4.3 million, \$3.7 million of which was attributable to commissions. The order found that Thomas and Techno were liable for fraud and that they were also liable for failure to supervise diligently their employees who handled the HOSSE accounts. Further, the Commission found liable the FCM carrying both the HOSSE and ATCO customer accounts, FSI, and its president and AP, Robin Rodriguez, for failure to supervise diligently the accounts because, among other things, they ignored numerous irregularities.

As sanctions, the Commission ordered FSI to pay a total civil monetary penalty of \$450,000; FSI, Rodriguez,

Techno, Thomas, Grandview and King to cease and desist from further violations of the Act and Commission regulations, as charged; FSI and Rodriguez to withdraw their registrations; Grandview and King to cease and desist from further violations; the revocation of the registrations of Grandview and King with the agreement that they would never apply for registration again; the revocation of the registrations of both Techno and Thomas with the agreement that they would not reapply for five years; and the imposition of a \$548,000 civil monetary penalty on Thomas, with all but \$10,000 waived because of Thomas' demonstrated inability to pay more. Thomas agreed not to reapply for registration at the end of five years unless the remaining \$538,000 of the penalty had been paid. The Commission's Division of Enforcement and German police authorities cooperated extensively in both the *Techno* and *FSI* matters. *In re Techno Trading, Inc., et al.*, CFTC Docket No. 95-8 (Jan. 8, 1998), and *In re FSI Futures, Inc., et al.*, CFTC Docket No. 95-9, (Jan. 8, 1998).

In re Henry & Horne, PLC

In April 1998, in cases related to the *O'Connell* case (see case description under the "Fraud in the Handling of Customer Business and/or Unregistered Activity" section, above), the Commission filed a one-count administrative complaint against **Henry & Horne, PLC**, a public accounting firm, and **Sherald Griffin** and **Donna Laubscher, Certified Public Accountants**. The complaints alleged that from March 1992 through September 1995, Henry & Horne performed four separate annual audits of O'Connell & Associates (OCA), a limited partnership operated by Thomas O'Connell as a commodity pool. According to the complaint, the audit reports of OCA, which Henry & Horne distributed to the OCA limited partners and which were prepared by Griffin and Laubscher in the course of their employment at Henry & Horne, failed to adhere to GAAS requirements in numerous material respects. Henry & Horne had represented in their audit opinions for OCA that they had adhered to GAAS. As a result of the GAAS failures, Henry & Horne engaged in "improper unprofessional conduct" within the meaning of Section 14.8(c) of Commission regulations. The complaint alleged that, in part as a result of the audit reports, O'Connell was able to perpetuate OCA's criminal activity for an additional three-and-a-half years, during which time he defrauded investors of an additional \$6,000,000. *In re Henry & Horne, PLC*, CFTC Docket No. 98-11 (filed Apr. 8, 1998).

In re Griffin and Laubscher

At the time the *Henry & Horne* action was filed, the Commission also filed a one-count administrative complaint against, and accepted offers of settlement tendered by, Griffin, a partner with the firm, and Laubscher, an audit manager. While Griffin and Laubscher neither admitted nor denied the facts alleged in the complaint or found in the order, the Commission, based on findings that parallel the allegations contained in its complaint against Henry & Horne, found that Griffin and Laubscher engaged in "improper unprofessional conduct" within the meaning of Section 14.8(c) of Commission regulations. Under the terms of the settlement, Griffin and Laubscher were denied the privilege of appearing or practicing before the Commission and agreed not to apply for reinstatement for five years from the date of the order. If Griffin or Laubscher applies to the Commission for reinstatement after that date, the Commission will grant such application if it finds, upon consideration of their professional performance and disciplinary records and any other relevant information, no grounds to warrant denying them the privilege of appearing or practicing before it. *In re Griffin and Laubscher*, CFTC Docket No. 98-12 (filed Apr. 8, 1998).

In re International Futures Corp., et al.

In August 1998, the Commission filed a five-count administrative complaint alleging that International Futures Corporation (IFC), a registered IB, violated the anti-fraud provisions of the Act and Commission regulations by fraudulently soliciting clients to trade a computerized S&P 500-day trading program. The complaint alleged that in soliciting and trading the program, IFC acted as an unregistered CTA and violated various disclosure, recordkeeping, and false advertising provisions of the Commission regulations applicable to CTAs. Finally, the complaint alleged that LIT Division of First Options of Chicago, a registered FCM that

guaranteed IFC as an IB, is liable for IFC's statutory and regulatory violations and also failed to supervise diligently its guaranteed IB as required by Commission regulations. *In re International Futures Corp., et al.*, CFTC Docket No. 98-16 (filed Aug. 17, 1998).

In re Rubel

Simultaneous with the filing of its administrative action against IFC, the Commission filed and settled an action against **Robert J. Rubel**, IFC's former Chief Executive Officer and President. Rubel was registered with the CFTC as a CTA and as an AP of IFC. Without admitting or denying the findings, Rubel consented to the entry of the order in which the Commission found that Rubel violated the anti-fraud provisions of the Act and Commission regulations by fraudulently soliciting clients to trade IFC's trading program in radio advertisements, written promotional literature, and oral representations. The order also found that Rubel aided and abetted the IB's fraud, registration, and regulatory violations and that Rubel also is liable for those violations as a controlling person of the company. The Commission directed Rubel to cease and desist from further violations, revoked his registrations, imposed a five-year trading ban on him, and ordered him to pay a \$15,000 civil monetary penalty. The Order stated that a more substantial monetary sanction would have been appropriate but for Rubel's financial condition. *In re Rubel*, CFTC Docket No. 98-15 (filed Aug. 17, 1998).

Recordkeeping Violations

Recordkeeping cases involve registrants' failure to maintain or produce records as required by the Commission's statutory and regulatory inspection powers. These cases demonstrate how seriously the Commission takes violations of these requirements, particularly when they impede the ability of the Division of Enforcement to investigate possible wrongdoing.

In re New York Currency Research Corp.

In December 1997, the Commission filed a one-count administrative complaint against New York Currency Research Corporation which was registered as a CTA and CPO from January 16, 1996 until April 3, 1997. The complaint alleged that it failed to comply with the repeated requests of the Enforcement program for access to the books and records required to be kept and made available for inspection upon demand to any Commission representative. Given the limited nature of the issues to be decided, the Commission complaint provided for expedited procedures. A one-day hearing was held December 29, 1997, and an initial decision was issued on January 12, 1998. On February 6, 1998, following the filing of exceptions, the Commission issued an order and opinion finding the company liable for failing to comply with the access requests of program staff. The Commission imposed a cease and desist order and assessed a civil monetary penalty of \$110,000. Following the respondent's motion for reconsideration, the Commission modified and affirmed its finding of liability. The respondent has appealed to the United States Court of Appeals for the Second Circuit. *In re New York Currency Research Corp.*, CFTC Docket No. 98-3 (filed Dec. 17, 1997).

Permanent Injunctions and Other Ancillary Relief

In FY 1998, the Division achieved success in injunctive actions pending in United States District Courts. During the past fiscal year, permanent injunctions and other ancillary relief were entered against some or all of the defendants in the following cases: *CFTC v. Maseri, et al.*, Civ. No. 95-6970-CIV-DAVIS (S.D. Fla. filed Oct. 14, 1997) (magistrate judge); *CFTC v. Rutman*, Civ. No. 97-CV-3141 (E.D. Pa. filed Oct. 30, 1997); *CFTC v. O'Shaughnessey, et al.*, Civ. No. 96-CV-10421-BC (E.D. Mich. filed Nov. 5, 1997); *CFTC v. Willey*, Civ. No. CS-96-0200-WFN (E.D. Wash. filed Nov. 5, 1997); *CFTC v. Allied Financial Group, et al.*, Civ. No. C2-94-981 (S.D. Ohio filed Nov. 19, 1997); *CFTC v. AC Trading Group, Inc., et al.*, Civ. No. C 97-1360 MMC (N.D. Cal. filed Nov. 21, 1997); *CFTC v. C.O.M. Consultants, Inc., et al.*, Civ. No. 97-4443 WMB (C.D. Cal. filed Dec. 9, 1997 and Feb. 11, 1998); *CFTC v. United Metals Trading Corp., et al.*, Civ.

No. 96-2185-PHX-RGS (D. Ariz. filed Feb. 2, 1998); *CFTC v. Pacific Bullion, et al.*, Civ. No. 92 MISC. 259 (DSH) (E.D.N.Y. filed Jan. 27, 1998); *CFTC v. Allied Financial Group, Inc., et al.*, Civ. No. C2-94-981 (S.D. Ohio filed Jan. 27, 1998); *CFTC v. Bonney*, Civ. No. 98 C. 0087 C (W.D. Wis. filed Feb. 2, 1998); *CFTC v. Titlis Int'l, Inc., et al.*, Civ. No. 95 Civ. 5416 (MP) (S.D.N.Y. filed Feb. 20, 1998); *CFTC v. Deniz*, Civ. No. 97 6800 R (Anx) (E.D. Cal. filed Feb. 26, 1998); *CFTC v. L.A. Forex, et al.*, Civ. No. 97 6800 R (Anx) (C.D. Cal. filed March 2 and May 4, 1998); *CFTC v. Barback*, Civ. No. 3:97CV638 (E.D. Tenn. filed March 25, 1998); *CFTC v. O'Connell*, Civ. No. 2:98CV104 (D. Vt. April 17, 1998); *CFTC v. Friedman*, Civ. No. 98 Civ. 2908 (LAP) (S.D. N.Y. filed May 8, 1998); *CFTC v. Berus, et al.*, Civ. No. 96-CIV-74525 (E.D. Mich. filed May 20, 1998); *CFTC v. Schafer, et al.*, Civ. No. H-96-1213 (S.D. Tex. filed June 8, 1998); *CFTC v. Cullen*, Civ. No. 4-98-CV-0140-A (N.D. Tex. Filed July 15, 1998); *CFTC v. Berkshire Int'l Hedge Fund, L.P. II, et al.*, Civ. No. 97-838 KI (D. Or. filed July 22, 1998); *CFTC v. Avco Financial Corp, et al.*, Civ. No. 97 CIV 3119 (JFK) (S.D. N.Y. filed August 21, 1998); and *CFTC v. Sullivan*, Civ. No. 97-01478 Ack (D. Haw. filed Sept. 28, 1998).

Statutory Disqualifications

Although the Commission has now delegated the bulk of the responsibility for handling statutory disqualification matters to the National Futures Association (NFA), the Commission still expects to address these matters directly in some circumstances. This year, the Division brought the following cases.

In re Fleishman, et al.

In November 1997, the Commission filed a registration action against Alan Fleishman, a registered AP, and First Futures Group, Inc. (FFG), a registered IB and CPO of which Fleishman was the president and sole principal. The CFTC Notice of Intent to Suspend, Revoke, or Restrict registrations of Fleishman and FFG alleged, among other things, that Fleishman had been the subject of two separate disciplinary actions, one by the NFA and one by the Chicago Mercantile Exchange (CME). The CME action involved allegations that Fleishman failed to disclose certain required information to an exchange clearing firm and resulted in a \$50,000 fine. The NFA action involved allegations that Fleishman guaranteed or agreed to protect a customer account against loss below a stated limit and was settled. The Notice further alleged that Fleishman had published false and deceptive advertisements and had failed to disclose accurately the state of his finances to the NFA and CME in registration and application documents. In April, a Commission ALJ issued an initial decision granting the Division's motion for summary disposition, finding that because of Fleishman's past exchange disciplinary actions, his failure to complete mandatory ethics training and his demonstrated lack of financial responsibility, Fleishman's registration as an AP should be revoked. As a consequence of the revocation of Fleishman's registration, the ALJ also revoked the registration of its principal, FFG, as an IB and CPO. *In re Fleishman, et al.*, CFTC Docket No. SD 98-1 (filed Nov. 19, 1997).

In re Vignola

In December 1997, the Commission filed a Notice of Intent to Suspend, Revoke, or Restrict Registration against, and accepted the settlement offer of, Angelo Vignola, a floor trader (FT) applicant. The CFTC alleged that Vignola was subject to statutory disqualification because he was disciplined by the Chicago Board of Options Exchange (CBOE) for accepting a trade in which he did not participate and for failing to honor a trade in which he did participate, in violation of exchange rules. The Notice also alleged that the Chicago Board of Trade (CBT) disciplined Vignola for failing to disclose the CBOE disciplinary proceeding and fine in his application for membership as an associate member delegate. Under the terms of the settlement with the Commission, Vignola's FT application was granted subject to certain conditions, including that his activities as an FT are subject to a sponsor certification statement executed and submitted to the Commission by a registered officer of his clearing FCM. Additionally, Vignola is prohibited from directly or indirectly acting as a principal, partner, officer or branch office manager of any entity that is registered or required to be

registered; directly or indirectly acting in any supervisory capacity over anyone required to be registered with the Commission; exercising, directly or indirectly, discretionary authority over any customer account; and serving on any disciplinary committee of any self-regulatory organization (SRO). The conditions set forth in the order remain effective for two years. *In re Vignola*, CFTC Docket No. SD 98-2 (filed Dec. 3, 1997).

In re Thaler

In March 1998, the Commission filed a Notice of Intent to Suspend, Revoke, or Restrict Registration against, and accepted the settlement offer of, Michael Thaler, a registered FB. The CFTC alleged that Thaler was subject to statutory disqualification because he was the subject of a NYMEX disciplinary action in which he was alleged to have continued trading after being informed that he had inadequate capital to do so; trading after his FB qualification had been revoked by the exchange; inducing another broker to record trades made by Thaler as his own; and misrepresenting his actions to exchange investigators. Thaler settled the exchange action by agreeing to the entry of an order imposing a cease and desist order, an \$8,000 fine, and a two-week suspension. Under the terms of his settlement with the Commission, Thaler is prohibited from acting as an FT or FB unless his activities are subject to a sponsor certification statement executed and submitted to the Commission by another FB (so long as he is self-employed) or by his employer (if he becomes employed). Thaler is also prohibited from acting, directly or indirectly, as a principal, partner, officer or branch officer manager of any entity that is registered or required to be registered; directly or indirectly supervising anyone required to be registered with the Commission; and serving on any disciplinary committee of any SRO. The conditions set forth in the order remain effective for two years. *In re Thaler*, CFTC Docket No. SD 98-3 (filed Mar. 4, 1998).

In re Riley

In May 1998, the Commission filed a registration action against Daniel Riley. Riley was granted no-action FT status in April 1993, and has a pending application for registration as a FB. The CFTC Notice of Intent to Suspend, Revoke, or Restrict Riley's registration alleged that Riley was the subject of one disciplinary action by the CBT and several by the CME. The exchange actions included allegations that Riley acted beyond the scope of his clerical capacity by providing trading advice to customers, engaged in a physical altercation on the floor of the CME, and induced traders to prearrange a trade. The CFTC notice also alleged a number of misdemeanor and felony arrests and one felony conviction. It was also alleged that Riley willfully failed to disclose his history of disciplinary actions and the felony arrests and conviction in his FB application. Finally, the CFTC notice alleged that Riley's past conduct constitutes grounds for statutory disqualification. *In re Riley*, CFTC Docket No. SD 98-4 (filed May 1, 1998).

In re Kessler

In May 1998, the Commission simultaneously filed and settled a registration action against Irwin Kessler, a registered FB. The CFTC Notice of Intent to Suspend, Revoke, or Restrict Registration alleged that Kessler was subject to statutory disqualification because the Business Conduct Committee (BCC) of the CBOE accepted offers of settlement from Kessler on nine different occasions for exceeding position limits in violation of exchange rules. The Notice also alleged that Kessler settled five other disciplinary actions with the BCC for alleged violations of exchange rules, including failure to comply with short sale rules and failure to cooperate with an exchange investigation. Under the settlement, Kessler was prohibited from acting as an FT or FB unless his activities were subject to a sponsor certification statement executed and submitted to the Commission by an officer of the firm that clears his trades or the chief operating officer of a contract market on which Kessler has trading privileges. Additionally, Kessler may not serve on any disciplinary committee, arbitration panel, oversight panel or governing board of any SRO subject to regulation by the Commission. The conditions set forth in the order remain in effect for two years. *In re Kessler*, CFTC Docket No. SD 98-5 (filed May 29, 1998).

In re Asher

In May 1998, the Commission simultaneously filed and settled a registration action against Daniel Asher, a registered FB. The Notice of Intent to Suspend, Revoke, or Restrict Registration alleged that the BCC of the CBOE accepted offers of settlement from Asher on 11 different occasions for exceeding position limits in violation of exchange rules. The Notice also alleged that Asher settled three other disciplinary actions with the BCC for alleged violations of exchange rules, including failing to comply with short sale rules and failing to report a trade. Under the terms of his settlement with the Commission, Asher is prohibited from acting as an FT or FB unless his activities are subject to a sponsor certification statement executed and submitted to the Commission by an officer of the firm that clears his trades or the chief operating officer of a contract market on which Asher has trading privileges. Additionally, Asher may not serve on any disciplinary committee, arbitration panel, oversight panel or governing board of any SRO subject to regulation by the Commission. The conditions set forth in the order remain effective for two years. *In re Asher*, CFTC Docket No. SD 98-6 (filed May 29, 1998).

In re Gravitt

In June 1998, the Commission filed a Notice of Intent to Refuse or Condition the Registration of John Lee Gravitt who applied for registration as an FT in October 1997. Gravitt has never been registered with the Commission although while employed as a general securities representative by several firms, he previously had been registered with the National Association of Securities Dealers (NASD). The Notice alleged that in 1990, while employed by a securities broker-dealer, \$10,000 was mistakenly credited to an account in Gravitt's control. When the mistake was discovered, Gravitt was instructed to leave the \$10,000 in his account until the true owner of the funds was identified. Instead, Gravitt transferred the funds into a personal account and used a portion of the funds to pay personal expenses. The funds were eventually transferred to an account under the broker-dealer's control, Gravitt's employment was terminated by the broker-dealer, and he was investigated by the NASD. In settlement of a subsequent disciplinary action by the NASD, without admitting or denying the NASD's findings, Gravitt was censured and fined \$3,000. The Notice alleged that two more NASD disciplinary actions followed, the first involving Gravitt's execution of transactions in a customer's non-discretionary account without the customer's prior knowledge. That action resulted in censure and a \$15,000 fine. In the other action, Gravitt's registration was revoked as a result of his failure to pay the \$15,000 fine. The revocation was rescinded in 1996 after Gravitt paid the fine. According to the notice, the various NASD disciplinary actions constitute grounds for refusal or conditioning of Gravitt's application for registration. *In re Gravitt*, CFTC Docket No. SD 98-7 (filed June 16, 1998).

Internet Activities

The Division maintains an Internet surveillance program to monitor commodity option and futures-related websites on the Worldwide Web as well as messages posted on Internet bulletin boards and newsgroups. Internet monitoring has generated dozens of enforcement inquiries concerning possible registration violations, misrepresentations of the success of trading programs, and offers of potentially illegal futures and option products.

In addition to its usual surveillance program, the Division also participated in an "Internet Surf Day" with the Federal Trade Commission and Securities and Exchange Commission on October 16, 1997. On that day, Division staff, in conjunction with staff from the other participating agencies, conducted a comprehensive search of Internet web pages and newsgroups for firms and/or individuals that were engaged in possible illegal activity.

The Division has also used the Internet to disseminate information to the general public. For example, in March 1998, the Commission released its Consumer Advisory on Foreign Trading Fraud. Consumers were warned about the rising number of financial fraud schemes involving so-called "foreign currency trading."

This advisory, listing "warning signs" and recommending specific precautions consumers should take before placing funds with any currency trading company, is currently posted on the Division's page on the CFTC's Internet website, www.cftc.gov.

Cooperative Enforcement

Domestic

Cooperative enforcement efforts enhance the Division of Enforcement's ability to promote compliance with, and to deter violations of, Federal commodities laws. During FY 1998, the Division coordinated enforcement efforts with numerous local, state and Federal law enforcement and regulatory authorities and agencies. This cooperation has resulted in the filing of several administrative and injunctive actions. The Division's cooperation with law enforcement agencies has also resulted in the filing of criminal charges by those agencies. Examples of this type of domestic cooperative effort during FY 1998 follow.

United States v. Besner

In October 1997, the U.S. Attorney for the Northern District of Illinois filed a criminal information against Robert A. Besner alleging that the defendant engaged in a Ponzi scheme in which he fraudulently obtained more than \$2.5 million from eight investors and charging him with one count of mail fraud. *United States v. Besner*, No. 97 CR 731 (N.D. Ill. filed Oct. 30, 1997). The filing of an injunctive complaint preceded the filing of the criminal information by the CFTC. *CFTC v. Besner*, Civ. No. 96-0076 (N.D. Ill. filed Jan. 4, 1996). In 1996, the court entered a consent order of permanent injunction against Besner. As part of its ongoing cooperation, the Division provided the FBI and U.S. Attorney with access to its investigative files.

United States v. Chancey

In October 1997, a Federal grand jury in the Middle District of Georgia returned a nine-count indictment against Donald Brent Chancey charging, among other things, mail fraud and the fraudulent solicitation of customers through his operation of a commodity pool known as Southeastern Venture Partners Group. The CFTC and the DOJ cooperatively investigated the matter. *United States v. Chancey*, No. 7:97 CR 44-HL (M.D. Ga. filed Oct. 22, 1997). The indictment was preceded by the CFTC's July 1996 six-count civil injunctive complaint in which the court granted an *ex parte* order against Chancey and SVPG freezing their assets and appointing a receiver. *CFTC v. Chancey*, No. 7:96-CV-61 (M.D. Ga. filed July 1, 1996).

United States v. Dominick

In December 1997, Keith W. Dominick, after pleading guilty to commodities fraud, received a sentence of 37 months of incarceration, followed by two years of supervised release; 100 hours of community service; and payment of \$4,528,237 in restitution and \$100 in costs. *United States v. Dominick*, No. 97-111-CR Orl-19 (M.D. Fla. filed Dec. 17, 1997). The criminal prosecution was a result of a referral made by the Commission to the U.S. Attorney's Office following a Division investigation into the financial activities of Dominick.

United States v. Rhee

In February 1998, the U.S. Attorney for the Southern District of New York filed a one-count criminal complaint against Thomas Edward Kelly and Andrew David Rhee charging them with wire fraud in connection with a "front running" scheme in which they misappropriated confidential proprietary trading information from Henry & Co., a registered CPO. *United States v. Rhee* (S.D.N.Y. filed Feb. 2, 1998). On July 23, 1998, both Kelly and Rhee pled guilty to one felony count of conspiracy to commit wire fraud. The filing of the complaint followed a cooperative investigative effort by the Commission, the U.S. Attorney and the U.S. Postal Inspection Service. The Commission subsequently filed a two-count civil injunctive action

against Rhee and Kelly concerning these same matters. *CFTC v. Rhee, et al.*, No. 98CIV5270 (S.D.N.Y. filed July 23, 1998) (discussed above, "Trading Ahead" section).

United States v. Lamar

In February 1998, a seven-count criminal indictment against Thomas W. Lamar was returned by a Federal grand jury in the Eastern District of Michigan. The indictment charged Lamar with criminal violations of the Act, money laundering, and mail and wire fraud in connection with his operating Lamar Investments Group, a commodity futures trading pool. *United States v. Lamar*, No. 98-809173 (E.D. Mich. filed Feb. 12, 1998). The following day the Commission filed a five-count civil injunctive complaint against Lamar based upon the same underlying conduct. *CFTC v. Lamar*, No. 98-70619 (E.D. Mich. filed Feb. 13, 1998) (discussed above, "Fraud in the Handling of Customer Business and/or Unregistered Activity" section).

United States v. Singer

On February 24, 1998, the Commission filed a three-count civil injunctive complaint against Singer and Droge, among others. *CFTC v. Hanover Trading Corp.*, et al., No. 98 Civ. 1365 (S.D.N.Y., filed Feb. 24, 1998) (discussed above, "Illegal Instruments" section). The following day, the Federal Bureau of Investigation obtained a search warrant for Hanover Trading Corporation's offices. In February 1998, the United States Attorney for the Southern District of New York filed one-count criminal informations against Singer and Droge alleging that they committed mail fraud in connection with the fraudulent sale of illegal futures contracts involving heating oil, unleaded gasoline and other commodities. Singer pled guilty in June 1998. *United States v. Singer*, No. 98 CR 551 (HB) (S.D.N.Y. filed June 17, 1998).

United States v. Andrews

On June 26, 1998, in the United States District Court District of Arizona, Anthony F. Andrews waived indictment and entered a plea of guilty to a four-count information charging him with mail fraud. Marvin Pendergraft entered a plea of guilty to one count of mail fraud in the same action on April 28, 1998. Both are charged with being co-owners, officers and directors of United Metals Trading Corp., which offered investments in commodity futures contracts and commodity pools. The CFTC and the Arizona State Securities Office jointly investigated the matter. The criminal proceeding was preceded by a joint civil injunctive action filed by the CFTC and the State of Arizona in September 1996. *CFTC v. United Metals Trading Corp.*, No. 96-2185-PHX-RGS (D. Ariz. filed Sept. 23, 1996).

People v. Urban

In August 1998, Gabor Urban and Marta Ban were arrested and charged by the District Attorney of Los Angeles County with fraud in connection with the operation of an unregistered commodity pool. Urban and Ban sent out false statements showing that the pool was making profits, when in fact it was incurring losses. On September 12, 1997, the Commission filed a civil injunctive action against Urban, Ban and L.A. Forex in the United States District Court of the Central District of California. *CFTC v. L.A. Forex*, No. 97-6800R(ANx) (C.D. Cal., Sept. 12, 1997). In September 1998, Urban and Ban waived the preliminary hearing and pleaded guilty to felony fraud charges in the Superior Court of Los Angeles County. The Commission jointly investigated this matter with the Redondo Beach California Police Department.

Other U.S. Initiatives

The Division also plays a role in other domestic initiatives designed to promote cooperation among U.S. authorities. The Asset Forfeiture-Money Laundering Section of the Criminal Division of the U.S. Department of Justice and the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of Treasury chair the Money Laundering Working Group (MLWG), a gathering of U.S. law enforcement authorities and

financial regulators that meets on a quarterly basis and serves as a forum to discuss the prevention, detection and prosecution of money laundering through financial markets. At these meetings Division staff are apprised of domestic and international initiatives undertaken by Federal agencies and international organizations that may have relevance to the CFTC's regulatory and enforcement programs. During the fiscal year, Commission staff conferred with FinCEN regarding voluntary suspicious activity reporting by CFTC registrants. In the context of the MLWG, Commission staff lent advice to FinCEN on certain initiatives of the Financial Action Task Force (FATF), an international organization created by the G-7 to formulate recommendations for combating money laundering. Staff provided advice on how the comprehensive regulatory scheme established by the CEA and CFTC regulations implements requirements that are consistent with FATF recommendations regarding customer identification, reporting and recordkeeping by financial institutions.

Another initiative designed to promote cooperation among U.S. authorities is the International Crime Control Strategy (ICCS). The ICCS was developed at the request of the White House by the U.S. Departments of Justice, State and Treasury and sets forth a comprehensive national strategy to combat international crime. The program calls for Federal law enforcement agencies and intelligence officials to coordinate better their bilateral, regional and global efforts to combat international crime, including international financial crime. The Commission participates in a Financial Crime Sub-Group comprised of Division staff and representatives from approximately 15 other U.S. Federal agencies.

International

The enforcement efforts of the Division extend internationally. As the number of financial transactions that cross national borders has continued to grow, the Division and its foreign counterparts have found it increasingly necessary to obtain documents and testimony from foreign sources. In FY 1998, the Enforcement Division made 21 requests for assistance to 13 foreign authorities. In addition, the Division received 43 requests from 25 authorities in foreign jurisdictions. The information exchanged between the Commission and foreign authorities has included registration and disciplinary histories of U.S. and foreign firms and individuals, evidence - including testimony and bank and brokerage account records - for use in investigations and enforcement actions, and details from existing files.

Mutual assistance among regulators and law enforcement authorities is formalized through cooperative law enforcement arrangements. On October 17, 1997, the CFTC entered into such an arrangement with the Bundesaufsichtsamt für den Wertpapierhandel (BAWe), the German Federal securities and futures regulator. The Memorandum of Understanding between the Commission and the BAWe provides a framework for the exchange of assistance to the fullest extent permitted by U.S. and German law. Assistance includes providing access to information in the files of the CFTC and BAWe, taking statements, obtaining information and documents, and conducting compliance inspections and investigations of futures transactions and futures businesses.

The Division also provides and seeks cross-border assistance on a case-by-case basis. This year there was unprecedented cooperation with certain foreign authorities. In the months preceding the CFTC order of May 11, 1998, instituting proceedings, making findings, and imposing remedial sanctions upon Sumitomo Corporation of Japan for manipulation of the price of copper, the CFTC, U.K. Financial Services Authority and the Japanese Government engaged in a unique exchange of information and expertise. *In re Sumitomo Corp.*, CFTC Docket No. 98-14 (filed May 11, 1998) (discussed above, "Manipulation" section). Likewise, the Division's extensive cooperation with German police authorities contributed to the positive results it achieved in both the *Techno* and *FSI* failure to supervise actions. *In re Techno Trading, Inc., et al.*, CFTC Docket No. 95-8 (Jan. 8, 1998); and *In re FSI Futures, Inc., et al.*, CFTC Docket No. 95-9 (Jan. 8, 1998) (discussed above, "Supervision, Compliance and/or Audit" section). Also, for the first time, in August 1998, the Division obtained bank records through the Grand Court of the Cayman Islands pursuant to a request made under the Hague Evidence Convention as part of a civil injunctive action filed in U.S. District Court for

the Southern District of New York. *CFTC v. Schindler, et al.*, 93 Civ. 2765 (MBM).

The Division's cooperative efforts include participation in international organizations and contribution to several international initiatives. In May 1998, the Division attended the Wilton Park Conference, an annual international gathering of futures and securities regulators hosted by Her Majesty's Treasury in the U.K. The conference focused on, among other things, enforcement issues relating to insider dealing, money laundering through securities and futures markets, and supervision and compliance failures by firms handling customer accounts.

During FY 1998, the Division continued to participate in the Working Party on Enforcement and Information-Sharing (Working Party 4) of the International Organization of Securities Commissions' (IOSCO) Technical Committee. Working Party 4 considers issues and formulates recommendations relating to international assistance in the detection, investigation and prosecution of securities and futures violations. In the course of the year, the group completed a review of the self-evaluations undertaken by IOSCO members as required by the IOSCO *Resolution on Commitment to High Regulatory Principles and Mutual Cooperation and Assistance*. The review resulted in the adoption by IOSCO of a new *Resolution on Principles for Recordkeeping, Collection of Information, Enforcement Powers and Mutual Cooperation to Improve the Enforcement of Securities and Futures Laws* intended to further the progress made by regulators in the area of cooperative enforcement. The Working Party is in the process of identifying effective legal and regulatory measures in the detection, investigation and prosecution of suspected manipulation of prices in securities, futures and cash markets. The Working Party is also exploring ways to improve cross-border cooperation between securities and futures regulators and criminal law enforcement authorities.

The Division contributed to a similar initiative put forward by the Heads of State and Government of the Group of Seven Industrialized Nations (G-7). At the June 1997 Denver Economic Summit, the G-7 issued a statement calling for improved international cooperation between law enforcement authorities and financial regulators. In response to this mandate, the G-7 Finance Ministers formed a Financial Crime Working Group (FCWG). The FCWG, which included staff from the Division, met several times during the year and developed a set of key elements for effective international cooperation between regulators and law enforcement authorities. The G-7 Finance Ministers have now asked the delegations that comprise the FCWG to review their laws and procedures concerning such cooperation against the list of key elements. The CFTC and members of the U.S. delegation are conducting the proposed review of U.S. laws and procedures for discussion at a future FCWG meeting.

Table 1
ENFORCEMENT CASES FILED DURING FY 1998
LISTED BY PROGRAM AREA

<i>Name of Case</i>	<i>Press Release No.</i>	<i>Date Filed</i>
Fraud In The Handling Of Customer Business And/Or Unregistered Activity	4063-97	10/09/97
	4103-98	01/28/98
CFTC v. FTI Financial Group, et al. ^(a)	4067-97	10/23/97
CFTC v. Sullivan	4083-97	11/21/97
CFTC v. Zoller, at al.	4104-98	01/23/98
In re Koerner, et al.	4102-98	

CFTC v. Bonney	4108-98	01/29/98
CFTC v. Lamar	4110-98	02/13/98
CFTC v. Cullen	4115-98	02/13/98
In re Abraham & Sons Capital, Inc., et al.	4119-98	03/05/98
In re Antonacci	4120-98	03/05/98
In re Bradshaw	4126-98	03/05/98
CFTC v. Schlossmacher, et al.	4129-98	03/06/98
CFTC v. Schenk, et al.	4131-98	03/27/98
In re Sterling Investments of America, Inc., et al.	4130-98	03/31/98
In re CMB Capital Management Corp., et al.	4133-98	03/31/98
CFTC v. O'Connell	4151-98	04/08/98
CFTC v. Friedman, et al.	4139-98	04/24/98
In re Thomas	4152-98	04/27/98
CFTC v. Hudkins, et al.	4150-98	05/29/98
CFTC v. Marchiano, et al.	4158-98	06/01/98
CFTC v. Schafer	4166-98	06/04/98
CFTC v. ChateauForte Consortium, Inc., et al.		07/07/98
Trading Ahead		
CFTC v. Rhee, et al.	4171-98	07/23/98
Manipulation		
In re Sumitomo Corp.	4144-98	05/11/98

(a) On January 28, 1998, the Commission amended its complaint, charging four additional defendants.

Table 1
ENFORCEMENT CASES FILED DURING FY 1998
LISTED BY PROGRAM AREA

<i>Name of Case</i>	<i>Press</i>	<i>Date Filed</i>
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*Release No.***Recordkeeping**

In re New York Currency Research Corp.	4089-97	12/17/97
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Supervision, Compliance and/or Audit

In re Reifler Trading Corp., et al.	4088-97	12/17/97
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In re Henry & Horne, PLC	4132-98	04/08/98
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In re Griffin, et al.	4132-98	04/08/98
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In re International Futures Corp., et al.	4179-88	08/17/98
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In re Rubel	4179-88	08/17/98
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Illegal Instruments

In re Global Link Miami Corp., et al.	4066-97	10/22/97
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CFTC v. Midland Rare Coin Exchange, Inc., et al.	4082-97	11/20/97
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In re Competitive Strategies for Agriculture, Ltd., et al.	4090-97	12/22/97
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CFTC v. Hanover Trading Corp., et al.	4116-98	02/24/98
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CFTC v. New York Currency Exchange Corp, et al.	4177-98	08/06/98
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Statutory Disqualifications

In re Fleishman, et al.	None	11/19/97
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In re Vignola	None	12/03/97
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In re Thaler	None	03/04/98
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In re Riley	None	05/01/98
In re Kessler	None	05/29/98
In re Asher	None	05/29/98
In re Gravitt	None	06/16/98

Table 2
INJUNCTIVE ACTIONS

<i>Fiscal Year</i>	<i>Actions Initiated</i>	<i>Defendants Named</i>
1989	15	34
1990	11	33
1991	11	18
1992	18	50
1993	11	60
1994	10	34
1995	11	27
1996	17	45
1997	17	43
1998	18	96

Table 3
ADMINISTRATIVE ACTIONS

<i>Fiscal Year</i>	<i>Actions Initiated</i>	<i>Respondents Named</i>
1989	35	106
1990	37	81
1991	31	51
1992	36	79
1993	45	72
1994	33	60
1995	41	72
1996	21	32
1997	23	48
1998	23	47

Table 4
PERFORMANCE STATISTICS - FY 1998

<i>Item</i>	<i>1997</i>		<i>1998</i>	
	<i>Oct-Dec</i>	<i>Jan-Mar</i>	<i>Apr-Jun</i>	<i>Jul-Sep</i>

INVESTIGATIONS

Opened	35	37	19	30
Closed	45	34	29	18
Pending	180	183	173	185

CASES

Opened	13	10	13	5
Closed	13	11	7	10
Pending	104	103	109	104

ADMINISTRATIVE CASES**Persons Subject to Cease and Desist Orders:**

Imposed by ALJs	8	0	4	4
Imposed/Affirmed by Commission	1	25	6	5
Affirmed by Circuit Court of Appeals	0	6	2	0

Persons Subject to Trading**Prohibitions:**

Imposed by ALJs	4	0	4	4
Imposed/Affirmed by Commission	1	16	5	1
Affirmed by Circuit Court of Appeals	0	6	2	0

Persons Subject to Registration**Suspensions, Denials or Revocations:**

Imposed by ALJs	3	2	6	2
Imposed/Affirmed by Commission	2	12	6	2
Affirmed by Circuit Court of Appeals	0	6	2	0

Amount of Civil Monetary Penalties

[\$000] (and number of persons assessed):

Imposed by ALJs	7,575(5)	25 (1)	700(4)	10,770(4)
Imposed/Affirmed by Commission	100(1)	3,420(17)	126,025(5)	45(5)
Affirmed by Circuit Court of Appeals	0(0)	450 (4)	0(0)	0(0)

Amount of Restitution or Disgorgement

Ordered [\$000] (and number of persons assessed):

Imposed by ALJs	0(0)	0(0)	0(0)	0(0)
Imposed/Affirmed by Commission	0(0)	0(0)	25,000(1)	0(0)
Affirmed by Circuit Court of Appeals	0(0)	0(0)	0(0)	0(0)

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CIVIL CASES**Persons Enjoined:***Ex parte* Restraining Orders

6 23 3 10

Preliminary Injunctions

40 14 3 14

Permanent Injunctions

16 17 14 6

Equity Receivers Appointed

3 1 1 0

**Assets Placed Under Receiver's
Protection [\$000]**

3,887 20 0 0

Amount of Civil Monetary Penalties**[\$000] (and number of persons****assessed):**

Imposed by U.S. District Court

320(4) 4,799(5) 10(2) 100(1)

Affirmed by Circuit Court of
Appeals

0(0) 0(0) 0(0) 0(0)

Amount of Restitution or**Disgorgement Ordered [\$000]****(and number of persons assessed):**

Imposed by U.S. District Court

5,987(13) 15,249(15) 1,464(3) 4,950(4)

Affirmed by Circuit Court of
Appeals

0 (0) 0 (0) 0(0) 0(0)

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