



STATE OF MISSOURI
OFFICE OF THE SECRETARY OF STATE

IN THE MATTER OF:

FACT FINANCIAL, LLC;
MICHAEL W. MALOTT,
MARY HOGUE, and
JONATHAN STYERS.

Respondents.

Case No: AP-04-96

Serve Fact Financial, LLC, Michael W. Malott, and Mary Hogue at:
c/o Trademark Financial Group, LLC
904 East North Street
Crown Point, IN 46307

Serve Jonathan Styers at:
3314 Parkside Drive
Portage, IN 46368

CONSENT ORDER

On the 7th day of December 2004, Enforcement Counsel for the Securities Division submitted a petition for a cease and desist order. After reviewing the petition, on the 9th day of December 2004, the Commissioner of Securities issued a summary order ("Order") containing findings of fact and conclusions of law. This Order prohibited the Respondents from the following:

- A. violating § 409.803, RSMo 2000, by offering or selling a commodity under any commodity contract in Missouri without qualifying for an applicable exemption;
B. violating § 409.808, RSMo 2000, by acting as a commodities merchant while not registered or temporarily licensed with the Commodity Futures Trading Commission ("CFTC");
C. violating § 409.810, RSMo 2000, engaging in any transaction, act, practice or course of business, including, without limitation, any form of advertising or solicitation which operates or would operate as a fraud or deceit upon any person.

1 In the State of Missouri, a "commodity contract" is defined as "any account, agreement or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities . . ." Section 409.800(5), RSMo 2000. A "commodity" includes "any foreign currency." Section 409.800(4), RSMo 2000.

1. The Securities Division and Respondents Malott and Hogue desire to settle the allegations and the matters raised by the Securities Division staff relating to the alleged violations by Respondents Malott and Hogue.
2. The Securities Division and Respondents Malott and Hogue consent to the issuance of this Consent Order. Respondent Styers is not a party to this Consent Order.
3. Respondents Malott and Hogue stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions herein.
4. Respondents Malott and Hogue stipulate and agree to the following:
 - a. Respondents Malott and Hogue waive any rights they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Consent Order; and
 - b. Respondents Malott and Hogue forever release and hold harmless the Missouri Office of Secretary of State, the Secretary of State, the Commissioner of Securities, and their respective representatives and agents from any liability and claims arising out of, pertaining to, or relating to this matter.
5. The Securities Division and Respondents Malott and Hogue stipulate and agree to the following Stipulations of Fact:

STIPULATIONS OF FACT

6. Fact Financial, LLC ("Fact Financial"), was a company operating in the State of Indiana with a mailing address of 904 East North Street, Crown Point, IN 46307. Fact Financial purportedly engaged in the business of currency trading.
7. Michael W. Malott was the CEO of Fact Financial during the relevant period. Mr. Malott has a business address of 904 East North Street, Crown Point, IN 46307.
8. Mary Hogue was an agent of Fact Financial during the relevant period and has a business address of 904 East North Street, Crown Point, Indiana 46307.
9. Jonathan Styers was an agent of Fact Financial during the relevant period.
10. Gain Capital is an independent provider of foreign exchange services, including direct-access trading and asset management for Fact Financial.
11. On or about January 20, 2004, a Missouri resident ("MR") received a phone call from Mr. Styers. In the ensuing conversation, Mr. Styers did the following:
 - a. introduced Fact Financial to MR, telling MR that the home office of Fact Financial was in San Diego, California;
 - b. stated that Mr. Myers represented a branch of Fact Financial that was

- c. located in Crown Point, Indiana;
 - c. told MR about currency investments;
 - d. suggested that MR invest Fact Financial and that, if he did, MR's money would be used for investing in foreign currency contracts that would include Euro dollars and Japanese yen; and
 - e. informed MR that the investment risk would be high.
12. MR agreed to have Fact Financial send MR a package outlining the investment.
 13. On or about January 23, 2004, MR received a follow-up call from Ms. Hogue. MR asked Ms. Hogue how she had obtained MR's name and phone number. Ms. Hogue responded she "wasn't sure, but there are different sources available."
 14. On or about January 27, 2004, MR completed a customer account application with Gain Capital. On that application, MR wrote "\$2000.00 stop order."
 15. On or about January 27, 2004, MR transmitted \$10,500 to Gain Capital by wire transfer. Gain Capital Client Services sent MR a letter that acknowledged receipt of the funds into MR's account. The letter also provided a website address to Gain Capital along with a user ID and password that would enable MR to check on his account status.
 16. During the month of February, Ms. Hogue called MR to urge him to invest more money. Ms. Hogue told MR that, given the market conditions, he needed to reinvest in order to recoup his losses. MR declined to do so.
 17. During several February 2004 phone conversations, MR requested from Fact Financial a copy of MR's contract as well as verification of his account, transactions, and evidence of his investment. Ms. Hogue informed MR, "I'll check on it and get back to you." Neither Ms. Hogue nor Fact Financial ever contacted MR regarding MR's requests.
 18. On or about March 6, 2004, MR contacted Ms. Hogue at Fact Financial to check on MR's account balance. Ms. Hogue instructed MR to check his account at Gain Capital.
 19. On or about March 7, 2004, MR accessed his account on Gain Capital's website. MR's account balance was \$79.49. MR's account sustained an \$8,432.06 loss and an additional loss of \$1,988.45 in commission fees. The account sustained losses in excess of MR's requested \$2000.00 stop-loss order.
 20. A check of the records maintained by the Commissioner confirmed no granted exemption for the commodity contracts offered and sold in Missouri by Fact Financial, Messrs. Malott and Styer, and Ms. Hogue.
 21. Ms. Hogue and Messrs. Hogue and Styers are not registered with the State of

Missouri to sell commodities under commodity contracts.

22. A check of the records maintained by the National Futures Association ("NFA") confirmed that Ms. Hogue and Mr. Styers were not registered to sell commodity contracts as of January 20, 2004.
23. On June 18, 2004, the Division sent a letter of inquiry via certified mail to Fact Financial in Crown Point, Indiana. That letter requested a claim of exemption from registration or exception from definition of a commodity upon which the Respondents relied in offering or selling commodity contracts in or from the State of Missouri. The letter also requested additional information about the offers, and advised the Respondents that failure to respond constituted grounds for the entry of an order by the Commissioner.
24. On June 23, 2004, the Division received a phone call from Mr. Malott, who identified himself as the owner of Trademark Financial Group. Among other things, Mr. Malott stated the following:
 - a. He was previously the CEO of Fact Financial and that his business was not affiliated with the offices located in San Diego, California.
 - b. Mr. Malott "never personally solicited on behalf of Fact Financial, but staff members did."
 - b. Fact Financial purchased lead lists from a third party provider. Mr. Malott verified that representatives of Fact Financial made calls from those list.
25. The Respondents were not registered with the State of Missouri pursuant to § 409.850, RSMo 2000, to offer or sell or purchase any commodity² under any commodity contract in this State.
26. The Respondents offered and sold or purchased³ commodities under a commodity contract with MR, a Missouri resident.
27. The commodities under the commodity contracts offered and sold by the Respondents were not regulated by the CFTC.
28. Respondents Malott and Hogue stipulate and agree that, should the facts contained herein prove to be false or incomplete, the Missouri Division of Securities preserves the right to pursue any and all legal or administrative remedies at its disposal.
29. This Consent Order is in the public interest.

² As to the definition of a "commodity" in the State of Missouri, see above note 1.

³ In the State of Missouri, an "offer" or "offer to sell" is defined as "every offer, every attempt to offer to dispose of, or solicitation of an offer to buy, to purchase or to acquire, for value." Section 409.800(11), RSMo 2000. "'Sale' or 'sell' includes every sale, contract of sale, contract to sell, or disposition, for value." Section 409.800(14), RSMo 2000.

JURISDICTIONAL BASIS

30. Respondents and the Securities Division stipulate and agree that the Commissioner has jurisdiction over these matters pursuant to Chapter 409, et al. of the Revised Statutes of Missouri.
31. Respondents and the Securities Division stipulate and agree that the Commissioner has authority to enter this Consent Order pursuant to § 409.836 RSMo 2000, which provides that the commissioner may make, amend, and rescind rules, forms and orders as are necessary to carry out the provisions of §§ 409.800 to 409.863.

ORDER

WHEREAS, the Commissioner, after consideration of the stipulations set forth above and on the consent of Respondents and the Securities Division, finds the following Order to be in the public interest, necessary for the protection of public investors and consistent with the provisions of § 409.836, RSMo 2000.

NOW, THEREFORE, it is hereby Ordered that:

1. Respondents Malott and Hogue, their agents, employees and servants are prohibited from:
 - a. Violating § 409.803, RSMo 2000, by offering or selling a commodity under any commodity contract in Missouri without qualifying for an applicable exemption.
 - b. Violating § 409.810, RSMo 2000, by engaging in any transaction, act, practice or course of business, including, without limitation, any form of advertising or solicitation which operates or would operate as a fraud or deceit upon any person.
2. Respondent Malott shall pay \$3,500 restitution. Respondent Malott shall make monthly installment payments of \$583 for five months, such payments being due and payable on the fifteenth day of each month beginning on May 15, 2005. On October 15, 2005, Respondent Malott's payment shall be \$585.
3. Respondent Hogue shall pay \$500 restitution. Respondent Hogue shall make monthly installment payments of \$83 for five months, such payments being due and payable on the fifth day of each month beginning on May 5, 2005. On October 5, 2005, Respondent Hogue's payment shall be \$85.
4. Respondents Malott's and Hogue's payments shall be by cashier's check or money order payable to The Missouri Secretary of State Investor Restitution Fund (the "Fund"). Respondents Malott and Hogue shall deliver their payments to the Division of Securities, 600 W. Main Street, Jefferson City, Missouri 65102. These payments do not constitute a civil penalty or fine.

- 6. If Respondents Malott or Hogue miss any of their respective payments, that Respondent's remaining amount shall be due and payable immediately.
- 7. It is the duty of the Division of Securities to distribute the monies distributed in the Fund to the MR referenced in the above Stipulations of Fact. If the funds are not claimed within sixty days and the Division is unable, after reasonable efforts to find that person, the unpaid amount will be paid to the Secretary of State's Investor Education and Protection Fund.
- 8. Respondents will pay their own costs and attorneys fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 5th DAY OF April, 2005.



ROBIN CARNAHAN
 SECRETARY OF STATE
David B. Cosgrove
 DAVID B. COSGROVE
 COMMISSIONER OF SECURITIES

Consented to by:
MISSOURI SECURITIES DIVISION

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Respondents:

Michael W. Malott
 Michael W. Malott

Mary C. Hogue
 Mary C. Hogue