

NATIONAL FUTURES ASSOCIATION  
BEFORE THE BUSINESS CONDUCT COMMITTEE

In the Matter of: )  
)  
UNIVERSAL COMMODITY CORP. )  
(NFA ID #244735), )  
)  
COMTRUST, INC. )  
(NFA ID #346967), )  
)  
STUART A. MEHLER )  
(NFA ID #205587), )  
)  
MELISSA S. KAISER )  
(NFA ID #265753), )  
)  
PETER F. SANTOVITO )  
(NFA ID #61549), )  
)  
DENNIS R. GEE )  
(NFA ID #183816), )  
)  
RANDY J. BURSTEIN )  
(NFA ID #204981), )  
)  
ALBERT GONZALEZ )  
(NFA ID #220229), )  
)  
RANDI G. LEVINE )  
(NFA ID #195829), )  
)  
ILEANA R. MARCHETTO )  
(NFA ID #341752), )  
)  
SCOTT E. RAUTBORD )  
(NFA ID #201649), )  
)  
STEPHEN M. SMITH )  
(NFA ID #239238), )  
)  
and )  
)  
FRANK M. VECCHIO )  
(NFA ID #80172), )  
)  
Respondents. )

**FILED**

DEC - 5 2007

NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

NFA Case No. 07-BCC-047

## **COMPLAINT**

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having reason to believe that NFA Requirements are being, have been, or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee ("Committee") issues this Complaint against Universal Commodity Corp. ("UCC"), Comtrust, Inc. ("Comtrust"), Stuart A. Mehler ("Mehler"), Melissa S. Kaiser ("Kaiser"), Peter F. Santovito ("Santovito"), Dennis R. Gee ("Gee"), Ileana R. Marchetto ("Marchetto"), Albert Gonzalez ("Gonzalez"), Scott E. Rautbord ("Rautbord"), Frank M. Vecchio ("Vecchio"), Stephen M. Smith ("S. Smith"), Randy J. Burstein ("Burstein") and Randi G. Levine ("Levine").

## **ALLEGATIONS**

### **JURISDICTION**

1. At all times relevant to this Complaint, UCC was registered as an introducing broker ("IB") Member of NFA. As such, UCC was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.
2. At all times relevant to this Complaint, Comtrust was registered as a futures commission merchant Member of NFA. As such, Comtrust was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.
3. Mehler has been registered as an associated person ("AP") and as an NFA Associate in accordance with NFA Bylaw 301(b), of Comtrust since April 2005 and was registered as an AP and NFA Associate of UCC from January 29, 2003

through August 15, 2006. As such, Mehler was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. Mehler is also a principal and owner of ten percent or more of both Comtrust and UCC. Comtrust and UCC are liable for violations of NFA Requirements committed by Mehler in the course of his activities on behalf of Comtrust and UCC.

4. At all times relevant to this Complaint, Kaiser, Santovito, Gee, Burstein, Gonzalez, Levine, Marchetto, Rautbord, S. Smith, Vecchio and Goudarz Safinya ("Safinya") were registered as APs of UCC and as NFA Associates in accordance with NFA Bylaw 301(b). Each of these individuals was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. UCC is liable for violations of NFA Requirements committed by them during the course of their activities on behalf of UCC.

#### **BACKGROUND**

5. UCC was a registered IB and NFA Member from 1993 until 1999, when it withdrew its registration and NFA membership in 1999 after settling a sales practice-based Complaint issued by the Committee by, among other things, agreeing to tape record conversations with the public for two years. Mehler subsequently purchased UCC from its previous owners for \$1, reapplied for NFA membership and began operating UCC in January 2003. Mehler was an AP of the original incarnation of UCC from 1993 through 1999 and was a principal of that firm from March through December 1998.
6. UCC has been operating as an independent IB since May 2003. Mehler is its

sole owner. In addition to its main office in Aventura, Florida, UCC also operates a branch office in Aventura, as well as one in Fort Lauderdale and a one-person branch in West Bloomfield, Michigan. Mehler is UCC's president and he is the only individual located in the firm's main office. He has been a listed principal of UCC since the time that it reinitiated operations in January 2003 and was registered as an AP and NFA Associate of UCC from late January 2003 until mid-August 2006.

7. In addition to his position with UCC, Mehler is a listed principal, director and owner of Comtrust. Mehler has been an AP of Comtrust continuously since April 2005. UCC is one of Comtrust's most active IBs and Comtrust receives a clearing fee on each contract purchased and sold by UCC's customers. Both UCC's main office and Comtrust's office are located in the same sixth floor suite of the building where UCC's Aventura branch office occupies the eighth floor.
8. Mehler's activities on behalf of UCC include, among others, dealing with complaints, reviewing account applications, participating in hiring APs, circulating directives to the branch office managers ("BOMs") regarding compliance and conducting visits to the branch offices. His activities on behalf of Comtrust include, among others, dealing with compliance matters, including reviewing account applications and dealing with customer complaints and with regulators.
9. UCC's customers trade primarily in commodity options. Eighty-five percent of UCC's customers lost money overall during 2005 and 80% of them lost money overall in 2006. Aggregate customer losses totaled more than \$1.75 million in 2005 and soared to over \$5.7 million in 2006. Meanwhile, UCC generated approximately \$9 million in commissions during those two years. UCC's

customers were routinely charged fees and commissions ranging from \$150 to \$210 per contract.

10. UCC typically solicits customers to trade bull-call spreads. These spreads involve the simultaneous purchase of an out-of-the-money call option and the sale of an even further out-of-the-money call option on the same underlying futures contract. Engaging in these spreads enables UCC to purchase additional positions at double the commission rates since commissions are charged on the buy side as well as the sell side. Since the customer receives a premium on the sell side of the transaction, UCC is able to solicit and purchase additional positions and generate even more commissions, while limiting the customer's profit potential. The combination of high commissions and the purchase of significantly out-of-the-money options results in a substantial hurdle for customers to overcome just to break even. This is compounded by the fact that options are wasting assets that face time value decay. In addition to spread transactions, UCC solicits customers to purchase out-of-the money options. Given the nature of these options and the high commissions charged on these transactions, the customers had to overcome a significant hurdle in order to achieve a trading profit.
11. Even if UCC's customers are lucky enough to overcome the high commission hurdle and make a profit on an early trade, the firm's APs work to get them to use the profit to make an additional investment. Ultimately, every one of the nine customers who are identified in this Complaint suffered substantial losses even though, if commissions were taken out of the equation, taken together they had a gross trading profit of almost \$85,000. The nine customers invested

approximately \$620,000 altogether and suffered overall losses of almost \$520,000. They paid more than \$604,000 in commissions and fees. The commissions that the nine customers paid represent 97% of their total investments. Most of their accounts traded for only five or six months.

12. NFA's investigation of UCC and Comtrust found that UCC's APs routinely engaged in misleading and deceptive sales solicitations and that, in at least one instance, compounded the dishonest telephone solicitation by providing the customer with misleading promotional material as well. The pervasive nature of the dishonesty in UCC's solicitations to the public evidences a serious failure to supervise by the firm and its supervisory personnel. In addition, Mehler's unique dual role as the owner of UCC and as an owner and an active executive of Comtrust establish that Comtrust had actual knowledge through Mehler that fraudulent sales tactics were used by UCC's APs to open accounts at Comtrust which would generate revenues for that firm.

#### **APPLICABLE RULES**

13. NFA Compliance Rule 2-2(a) provides that no Member or Associate shall cheat, defraud or deceive, or attempt to cheat, defraud or deceive, any commodity futures customer.
14. NFA Compliance Rule 2-4 provides that Members and Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business.
15. NFA Compliance Rule 2-9(a) provides that each Member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member. Each Associate who has supervisory

duties shall diligently exercise such duties in the conduct of that Associate's commodity futures activities on behalf of the Member.

16. NFA Compliance Rule 2-29(a)(1) provides that no Member or Associate shall make any communication with the public which operates as a fraud or deceit.
17. NFA Compliance Rule 2-29(b)(1) provides that no Member or Associate shall use any promotional material which is likely to deceive the public.
18. NFA Compliance Rule 2-29(b)(2) provides that no Member or Associate shall use any promotional material which contains any material misstatement of fact or which the Member or Associate knows omits a fact if the omission makes the promotional material misleading.
19. NFA Compliance Rule 2-30(a) provides that each Member or Associate shall, in accordance with the provisions of this Rule, obtain information about its futures customers who are individuals and provide such customers with disclosure of the risks of futures trading.
20. NFA Bylaw 301(b) provides, in pertinent part, that no person may be associated with a Member of NFA unless the person is registered with NFA as an Associate or is an NFA Member.

#### COUNT I

**VIOLATION OF NFA COMPLIANCE RULES 2-2(a), 2-29(a)(1) AND 2-30: MAKING DECEPTIVE AND MISLEADING SALES SOLICITATIONS AND ENCOURAGING AN INDIVIDUAL TO SUPPLY INACCURATE FINANCIAL INFORMATION.**

21. The allegations set forth paragraphs 1, 4, 9 through 11, 13, 16, and 19 are realleged as paragraph 21.

22. Marchetto and Gonzalez made misleading and deceptive statements during solicitations on behalf of UCC to customer John Brock ("Brock") during 2005. For example, their solicitations to Brock included the following deficiencies:

- Marchetto told Brock that she knew the markets and that she was the best broker in the industry because she had better information than the average broker. Marchetto also guaranteed Brock returns of 30-35% every two months and claimed that was her track record.
- Marchetto told Brock that if he sent in another \$125,000, she could guarantee that Brock would have \$1 million to \$1.5 million in a week because the markets were getting ready to shoot up.
- Marchetto encouraged Brock to invest additional funds by telling him she could make him \$500,000 in two weeks. Marchetto added that, if she made him that type of return, he'd better start investing some real money with her.
- UCC recorded some conversations with Brock during which the UCC interviewer asked him if he had ever been guaranteed profits. When Brock answered "yes" to some of the questions, UCC stopped the taping so that he could answer the questions differently. Marchetto or Gonzalez would then coach him on how to answer correctly after he had answered a question wrong. Marchetto told Brock not to worry, as it was just a procedural thing.
- When Brock told Gonzalez and Marchetto that he did not understand his account statements, they both told him not to pay attention to them and to call Marchetto to find out how his account was doing. Marchetto told Brock repeatedly that his account was making money and, on one occasion, she told him that his account was over \$400,000 and that it would be at \$750,000 by the end of the week. In reality, Brock's account was only positive at the end of January 2006 and it never approached a value of \$400,000.
- Marchetto told Brock that they could really make some money if Brock could get 20 people to each invest \$250,000 into copper to control the copper markets. Marchetto told Brock that if they all bought copper they would control the market causing it to rise, which would guarantee profits.
- Gonzalez told Brock to send him \$300,000 and he would have \$1.5 million in a week.

- Gonzalez and Marchetto both told Brock that they had purchased a computer program for about \$15,000 that was 95% accurate.

23. The statements set forth in paragraph 22 above, as well as Marchetto's and Gonzalez's overall solicitation to Brock, constituted cheating, fraud or deception or an attempt to cheat, defraud or deceive, in that they contained patent fabrications and gave a distorted and misleading impression of the profit potential and risk of loss associated with options and made it appear that large profits were easily attainable trading options through UCC.

24. Marchetto made misleading and deceptive statements during her solicitation on behalf of UCC to customer Scott Clark ("Clark") during the spring of 2006. For example, her solicitation of Clark included the following misleading statements:

- Marchetto told Clark that she would guarantee him 30 to 35% returns.
- Marchetto told Clark that he could trust her because she was making 30 to 35% returns for Brock. In fact, Brock's account was suffering substantial losses at the time that Marchetto was soliciting Clark.

In addition, Marchetto never discussed risk of loss or the rate of commissions with Clark.

25. The statements set forth in paragraph 24 above, as well as Marchetto's overall solicitation to Clark, constituted cheating, fraud or deception or an attempt to cheat, defraud or deceive, in that it contained patent fabrications and gave a distorted and misleading impression of the profit potential and risk of loss associated with options and made it appear that large profits were easily attainable trading options through UCC.

26. Rautbord made misleading and deceptive statements during his solicitation on behalf of UCC to customer Lowell Smith ("L. Smith") during late 2005 and early 2006. For example, Rautbord's solicitation of L. Smith included the following deficiencies:

- When L. Smith informed Rautbord that he was not interested in investing because he was saving money for a new tractor, Rautbord told him that, if he would invest with Rautbord, he'd be able to buy a new tractor in two or three months.
- Rautbord told L. Smith that gold had a chance to increase from \$10-12 per contract and that if L. Smith did not invest right away he would miss out on the profits.
- Rautbord told L. Smith that his customers simply did not lose money.
- Rautbord told L. Smith that unleaded gasoline goes up in the summer months and that if a hurricane were to hit the Gulf of Mexico the price could rise \$.10 overnight.
- Rautbord also solicited L. Smith to invest in Japanese Yen and told L. Smith that if the Yen were to increase \$1, L. Smith's account would make \$10,000. However, Rautbord never discussed what would happen if the price decreased by \$1 or remained stagnant.
- While urging L. Smith to keep his funds in his account and to invest additional funds, Rautbord told L. Smith that he could not hit a homerun with a toothpick and added that he would need to start swinging with a baseball bat if he really wanted to make some money.

27. The statements set forth in paragraph 26 above, as well as Rautbord's overall solicitation to L. Smith, constituted cheating, fraud or deception or an attempt to cheat, defraud or deceive, in that it contained patent fabrications and gave a distorted and misleading impression of the profit potential and risk of loss associated with options and made it appear that large profits were easily attainable trading options through UCC.

28. Rautbord made misleading and deceptive statements during his solicitation on behalf of UCC to customer Joe Seed ("Seed") during 2005. For example, his solicitation of Seed included the following deficiencies:
- Rautbord told Seed that demand for unleaded gasoline in the summer months causes the prices to go up, but failed to disclose that seasonal trends were already factored into the price of the option.
  - Rautbord told Seed that he could make \$300,000 if the unleaded gasoline market went up a certain amount. However, Rautbord did not tell Seed that if the market moved against him he could lose his entire investment.
29. The statements set forth in paragraph 28 above, as well as Rautbord's overall solicitation to Seed, constituted cheating, fraud or deception or an attempt to cheat, defraud or deceive, in that they contained patent fabrications and gave a distorted and misleading impression of the profit potential and risk of loss associated with options and made it appear that large profits were easily attainable trading options.
30. Vecchio and S. Smith made misleading and deceptive statements during solicitations on behalf of UCC to customer Charles Watson ("Watson") during 2006. For example, their solicitations of Watson included the following deficiencies:
- S. Smith told Watson that his other customers were making money and it was a good time to invest.
  - Watson asked S. Smith why UCC's commissions were so high and S. Smith responded that he would pay high commissions anywhere and did not disclose what affect the commissions would have on the profitability of his account.
  - Watson lost some money trading with Vecchio and Vecchio told Watson not to die on him because the money would come back. Vecchio continued by telling Watson not to worry because the market could make him more money.

- Vecchio told Watson that based on a \$50,000 investment, his account could grow to \$200,000. Vecchio added that he could make Watson enough money to buy a church.
31. The statements set forth in paragraph 30 above, as well as Vecchio's and S. Smith's overall solicitations to Watson, constituted cheating, fraud or deception or an attempt to cheat, defraud or deceive, in that they contained patent fabrications and gave a distorted and misleading impression of the profit potential and risk of loss associated with options and made it appear that large profits were easily attainable trading options through UCC.
32. Vecchio and S. Smith made misleading and deceptive statements during solicitations on behalf of UCC to customer Jonathon Scruggs ("Scruggs") during 2006. For example, their solicitations of Scruggs included the following deficiencies:
- Vecchio told Scruggs that, although there were risks involved, he would invest if he were Scruggs because it was a once in a lifetime opportunity. Further, Vecchio also made references to Scruggs becoming a millionaire if he invested with UCC.
  - Both Vecchio and S. Smith described investing through UCC as "win-win" and they both told Scruggs that if he invested \$50,000 he could double his investment.
  - S. Smith and Vecchio made references to the war in Iraq and how the situation was going to cause the price of gas to go crazy. Vecchio told Scruggs that crude oil is used to make gasoline and that since gasoline is used more during the summer, crude oil prices would have to go up. Neither S. Smith nor Vecchio ever mentioned to Scruggs that current events or seasonal trends were already factored into the price of options.
33. The statements set forth in paragraph 32 above, as well as Vecchio's and S. Smith's overall solicitations to Scruggs, constituted cheating, fraud or deception or an attempt to cheat, defraud or deceive, in that they contained patent

fabrications and gave a distorted and misleading impression of the profit potential and risk of loss associated with options and made it appear that large profits were easily attainable trading options through UCC.

34. Burstein and S. Smith made misleading and deceptive statements during solicitations on behalf of UCC to customer Winnifred Jones ("Jones") during 2006. For example, their solicitations of Jones included the following deficiencies:

- S. Smith told Jones to invest in oil because it was used to make gas, which is always in greater demand during the summer. S. Smith said that meant that right now (beginning of summer) was the best time to get into the market. However, S. Smith failed to disclose to Jones that seasonal tendencies are already factored into the price of the options.
- Nearly every conversation that S. Smith and Burstein had with Jones was geared towards how much money she was going to make; however, neither S. Smith nor Burstein explained the risks involved in trading to Jones. When Jones expressed reluctance to invest because of a loss that she suffered trading with another firm, Burstein and S. Smith told her that just because she lost one time did not mean that she was going to lose again.
- S. Smith told Jones that, with the housing market crashing and Wal-Mart having problems, the Dow was dropping. S. Smith continued that Jones was in position to make a lot of money in Dow Jones puts, but that she had to invest additional funds right away.

35. The statements set forth in paragraph 34 above, as well as Burstein's and S. Smith's overall solicitations to Jones, constituted cheating, fraud or deception or an attempt to cheat, defraud or deceive, in that they contained patent fabrications and gave a distorted and misleading impression of the profit potential and risk of loss associated with options and made it appear that large profits were easily attainable trading options through UCC.

36. Burstein and Levine made misleading and deceptive statements during solicitations on behalf of UCC to customer Randy Dull ("Dull") during 2006. For example, their solicitations of Dull included the following deficiencies:

- Levine told Dull that sugar was a good investment because Brazil was currently self-sufficient without fossil fuels and that the rest of the world was going to follow suit. Further, Levine told Dull that for every \$.01 sugar went up Dull would make \$1,000 and that if he invested \$5,000 and sugar went up \$.05, Dull would make \$25,000. However, Levine failed to discuss the risk or potential of loss.
- Levine misrepresented the commission structure to Dull as she told him that when he makes money they make money.
- Burstein told Dull that Levine had entered into the sugar contracts prematurely and that Dull should invest in sugar during the late summer months because hurricanes could hit and they would really affect the price of sugar.
- Burstein told Dull that he needed to go to the bank and get a check and UCC would get Dull his money back and get him some profits on top of it.
- When Dull informed Burstein that he was saving money to buy a house, Burstein responded that if he invested \$50,000 with UCC he would have \$250,000 in his pocket and that would buy him a nice house. Burstein constantly called Dull for additional funds and routinely represented that he would be able to afford a nice house and a nice piece of land if he continued to invest.
- When Dull called Burstein to sell out of his positions, Burstein responded that it was the time to buy not to sell. Dull told Burstein that it did not matter and that he just wanted to sell the positions. Then Burstein told Dull that he was in the middle of something and would call Dull later. Dull was unable to reach Burstein for the rest of the day and the positions were not sold. The following business day, Burstein told Dull that there would be a hurricane and he just needed to sit back and wait for the wind to blow.

37. The statements set forth in paragraph 36 above, as well as Burstein's and Levine's overall solicitations to Dull, constituted cheating, fraud or deception or an attempt to cheat, defraud or deceive, in that they contained patent fabrications

and gave a distorted and misleading impression of the profit potential and risk of loss associated with options and made it appear that large profits were easily attainable trading options.

38. Compliance with NFA Compliance Rule 2-30(a) requires Members and Associates to act in good faith when obtaining information about their futures customers who are individuals and providing those customers with disclosures of the risks of futures trading.
39. Levine failed to act in good faith when obtaining information about Dull and making appropriate risk disclosure to him. Before Dull invested with UCC, he informed Levine that he had recently been in a car accident and that he was heavily medicated and unable to work at his sales job. Nevertheless, Levine continued to call Dull daily and ask him if and when he was going to receive a settlement from his car accident. Further, during the account opening process, Levine instructed Dull to change his income range from "25K-50K" to "50K-75K" on his account opening documents after Dull told her that he only made \$30,000. Levine told Dull not to worry about his income because he could get around it by just putting \$50,000 down for income and no one would notice. In addition, after Dull made an unsatisfactory answer to one of the new account compliance taping questions, the tape was stopped and Levine told Dull that he could not say what he did because UCC would not allow him to trade and he would not be able to make the money that Levine had promised him. Levine emphasized to Dull that he must answer all the questions affirmatively and that he must speak clearly and not slur his speech when answering the questions.

40. Safinya made misleading and deceptive statements during solicitations on behalf of UCC to customer Joseba Prieto ("Prieto") during 2006. For example, Safinya's solicitation of Prieto included the following deficiencies:
- While Safinya did tell Prieto said he could lose his initial investment, he assured him later that he could not lose because sugar was very cheap and ethanol was the alternative fuel source the U.S. had been looking for.
  - In or around late February 2006, about three weeks after Prieto's initial investment, Safinya told him that his account had doubled and urged him to invest more money. In response, Prieto invested an additional \$9,600 on February 23rd. In reality, Prieto's initial investment had dwindled to approximately half of its original value by the time Safinya represented to him that it had doubled.
  - In or around July 2006, after Prieto's account had suffered a loss, Safinya urged him to invest an additional \$100,000 and told Prieto that he could double his initial investment by October.
41. The statements set forth in paragraph 40 above, as well as Safinya's overall solicitation to Prieto, constituted cheating, fraud or deception or an attempt to cheat, defraud or deceive, in that it contained patent fabrications and gave a distorted and misleading impression of the profit potential and risk of loss associated with options and made it appear that large profits were easily attainable trading options through UCC.
42. By reason of the foregoing acts and omissions, UCC, Burstein, Gonzalez, Levine, Marchetto, Rautbord, S. Smith and Vecchio are alleged to have committed violations of NFA Compliance Rules 2-2(a) and 2-29(a)(1). UCC and Levine are further alleged to have committed violations of NFA Compliance Rule 2-30(a).

## COUNT II

### VIOLATION OF NFA COMPLIANCE RULES 2-29(b)(1) AND (b)(2): USE OF DECEPTIVE AND MISLEADING PROMOTIONAL MATERIAL.

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43. The allegations set forth in paragraphs 1, 4, 17 and 18 are realleged as paragraph 43.
44. In or about March 2005, Rautbord, while working at UCC's Fort Lauderdale branch, provided promotional material entitled "Got Gas?" to customer Seed.
45. The promotional piece, "Got Gas?," was deceptive and misleading in that it included a 15-year seasonal graph depicting the July Unleaded Gas future prices by month but failed to discuss the relationship between price movements in the futures and options markets. The graph was also deceptive and misleading in that it purports to support the statement, "the seasonal peak for gasoline consumption comes during July and August." This promotional piece goes on to explain that gasoline consumption increases during July and August due to improved driving conditions during the summer, creating a supply and demand scenario that will ensure a rise in gas and heating oil prices during the summer. However, the promotional piece failed to disclose that seasonal trends are already factored into the underlying market price and, instead, strongly implied that customers would be able to profit from these well-known seasonal trends.
46. By reason of the foregoing acts and omissions, UCC and Rautbord are alleged to have committed violations of NFA Compliance Rules 2-29(b)(1) and (b)(2).

### COUNT III

#### VIOLATION OF NFA BYLAW 301(b): ALLOWING AN UNREGISTERED INDIVIDUAL TO ACT IN A CAPACITY REQUIRING REGISTRATION AS AN AP.

47. The allegations contained in paragraphs 1, 3, 5, 6, 8 and 20 are realleged as paragraph 47.

48. UCC terminated Mehler's AP status with the firm in August 2006 and he has not been registered as an AP of UCC since that time. However, he remained the firm's sole owner and a listed principal and continued to conduct a variety of activities involving the supervision of UCC's APs after August 2006. For example:

- Mehler oversaw the monitoring of AP solicitations by UCC's BOMs and required them to provide him with copies of any records that they created in conjunction with their monitoring.
- Mehler required BOMs at UCC's Fort Lauderdale branch to provide him with write-ups that were created to document barge phone monitoring of solicitations by APs.
- Mehler also received write-ups regarding the monitoring of solicitations made by APs at UCC's Aventura branch.
- Mehler and an attorney created a detailed sales training manual covering solicitations by UCC APs to the public and provided those manuals to the branches. At first, only APs who had worked for Disciplined Firms were required to study the modules and take written quizzes regarding the material. Mehler later required all of UCC's APs and all of UCC's supervisors to use the manual.
- Mehler was involved in hiring UCC's APs in that he was sometimes present and active during interviews of prospective brokers. In addition, he had the authority to veto a hiring decision and to fire APs. Mehler also performed Online Registration System background checks on potential brokers before the Fort Lauderdale branch hired a new broker.
- Mehler dealt with some customers and the Better Business Bureau ("BBB") in dealing with complaints about UCC and its APs. For

example, in a letter on UCC letterhead dated December 8, 2006, Mehler identified himself to the BBB as UCC's "president and owner" in responding to a complaint filed by customer Dull. Further, Mehler stated in his letter to the BBB that it is his, "duty and responsibility to personally investigate any and all inquiries that a client may have in reference to their account or the performance of their account executive."

49. As evidenced by the foregoing activities, after August 2006, Mehler continued to act in the capacity of an AP of UCC and should have continued to be registered as such, instead of being terminated as an AP of UCC in August 2006.
50. By reason of the foregoing acts and omissions, UCC is charged with violations of NFA Compliance Bylaw 301(b).

#### **COUNT IV**

#### **VIOLATION OF NFA COMPLIANCE RULE 2-9(a): FAILING TO DILIGENTLY SUPERVISE EMPLOYEES AND AGENTS IN THE CONDUCT OF THEIR COMMODITY FUTURES ACTIVITIES.**

51. The allegations contained in paragraphs 1, 3, 4, 6, 8 and 15 are realleged as paragraph 51.
52. At all times relevant to this Complaint, UCC was responsible for the diligent supervision of its employees and agents.
53. Mehler has been the sole owner and president of UCC at all times relevant to this Complaint. In addition, he was an AP and an NFA Associate with supervisory duties sponsored by UCC from January 29, 2003 through August 15, 2006. Mehler was UCC's only AP/principal from January 2003 through February 16, 2006. Mehler was responsible as an NFA Associate who had supervisory duties for diligently exercising those duties on behalf of UCC.
54. Kaiser has been registered as an AP and NFA Associate sponsored by UCC since April 13, 2004 and was listed by UCC as a BOM at UCC's Aventura branch

office and as a listed principal of UCC on February 14, 2006 and February 16, 2006, respectively. As such, Kaiser was responsible for diligently exercising her supervisory responsibilities on behalf of UCC beginning, at least, as of February 14, 2006.

55. Santovito was registered as an AP and NFA Associate sponsored by UCC from January 12, 2004 through March 9, 2007 and was listed by UCC as a BOM at UCC's Fort Lauderdale branch office from March 17, 2006 through March 9, 2007. Gee was registered as an AP and NFA Associate sponsored by UCC from January 9, 2004 through November 5, 2007 and was listed by UCC as a BOM at UCC's Fort Lauderdale branch office from February 5, 2004 through November 5, 2007. As such, Santovito and Gee were responsible for diligently exercising *their supervisory responsibilities on behalf of UCC during their respective tenures as BOMs.*
56. The diligent supervision of employees and agents requires, in part, the diligent supervision of sales solicitations made by a Member's APs to detect and/or prevent the use of deceptive and misleading sales tactics and promotional material and to ensure good faith compliance with NFA Compliance Rule 2-30.
57. The solicitations to customers Jones, Dull and Prieto, which are described in paragraphs 34, 36, 39 and 40, were all conducted in whole or in part by APs at UCC's Aventura branch who were subject to Mehler's and Kaiser's supervision.
58. The solicitations to customers Brock, Clark, L. Smith, Seed, Watson and Scruggs, which are described in paragraphs 22, 24, 26, 28, 30, 32, 44 and 45, were conducted in whole or in part by APs at UCC's Fort Lauderdale branch office who were subject to Mehler's, Santovito's and Gee's supervision.

59. UCC, Mehler, Kaiser, Santovito and Gee failed to diligently supervise UCC's employees and agents in that they failed to take effective measures to detect and/or prevent the use of violative sales tactics and deceptive promotional material and to ensure good faith compliance with NFA Compliance Rule 2-30.
60. By reason of the foregoing acts and omissions, UCC, Mehler, Kaiser, Santovito and Gee are alleged to have committed violations of NFA Compliance Rule 2-9(a).

#### COUNT V

#### **VIOLATION OF NFA COMPLIANCE RULE 2-4: FAILURE TO UPHOLD HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE.**

61. The allegations set forth in paragraphs 1, 2, 3, 5 through 11 and 14 are realleged as paragraph 61.
62. Comtrust has no sales force of its own and generates business through the efforts of several independent IBs, including UCC.
63. Comtrust and UCC share a reception area and telephone system and Mehler's office at Comtrust is also identified by UCC as its main office.
64. All customers of UCC are also customers of Comtrust. UCC introduces all of the customer accounts that it opens to Comtrust. Comtrust receives a \$35 clearing fee on each contract that UCC's customers purchase and sell.
65. Mehler is a listed principal and director of Comtrust and owns 10% of that firm. In addition, he is entitled to 15% of Comtrust's profits. He has been an AP of Comtrust continuously since April 2005. Mehler reviews every account that Comtrust accepts, including all accounts introduced to Comtrust by UCC, for compliance with NFA Requirements. He also reviews all disclosure documents

and anti-money laundering documents and other disclosures that may be provided to a customer. In addition, Mehler communicates about compliance matters with the IBs whose customers clear trades through Comtrust, including UCC. Mehler also deals with complaints from customers of the various IBs whose trades clear through Comtrust, including UCC. For example, Mehler telephoned Dull to discuss Dull's complaint to the BBB and told Dull that he was calling him on behalf of Comtrust.

66. Pursuant to NFA's Interpretive Notice entitled Compliance Rule 2-9: Enhanced Supervisory Requirement ("Interpretive Notice"), UCC had been required to undertake enhanced supervisory procedures, including taping conversations between its APs and all customers and prospective customers, from 1994 through 1996, at which time its enhanced supervisory obligations automatically terminated. Under the Interpretive Notice as it existed at the time, UCC could not become subject to the enhanced supervisory requirements in the future after it had fulfilled its two-year obligation. Mehler exploited that situation when he bought UCC for \$1 in 2003 and then hired as many APs as he wanted who had previously worked at one or more *Disciplined Firms*, without becoming subject to the taping provisions of the Interpretive Notice. In fact, every one of the eight APs who are alleged to have made false and misleading solicitations in Count I of this Complaint were previously employed by multiple *Disciplined Firms* before being hired by UCC and Mehler. Those eight APs mirrored the overall composition of UCC's sales force under Mehler in that 68 of the 82 APs (83%) that UCC has hired under Mehler's ownership were previously employed by *Disciplined Firms*.

67. Brock, Clark, L. Smith, Seed, Watson, Scruggs, Jones, Dull and Prieto were all customers of both UCC and Comtrust in that all of their accounts were solicited by UCC APs and were subsequently introduced by UCC to Comtrust which, in turn, cleared trades for the accounts and accepted clearing fees that were generated by trading in the accounts.
68. The allegations set forth in paragraphs 48 and 53 and paragraphs 56 through 59 are realleged as paragraph 68.
69. Comtrust had knowledge of UCC's fraudulent conduct and that of its APs in that Mehler, who is one of Comtrust's owners and an active executive of Comtrust, had knowledge of violations by UCC and its APs that led to the opening of customer accounts at Comtrust. In addition, Mehler and, therefore, Comtrust had knowledge of the questionable employment backgrounds of most of UCC's APs. Further, during the time periods when customers Brock, Clark, L. Smith, Seed, Watson, Scruggs, Jones, Dull and Prieto were solicited by UCC's APs, Mehler was an AP/principal of both Comtrust and UCC.
70. Comtrust failed to observe high standards of commercial honor and just and equitable principles of trade on behalf of its own customers in that it failed to either take appropriate remedial action (e.g., refer the matter to an appropriate regulator) based on Mehler's knowledge of UCC's sales practices and/or sever its clearing arrangement with UCC. Instead, it continued to clear trades for customers who were introduced to Comtrust by UCC and to accept clearing fees generated by trading in those accounts.
71. By reason of the foregoing acts and omissions, Comtrust is alleged to have committed violations of NFA Compliance Rule 2-4.

## **PROCEDURAL REQUIREMENTS**

### **ANSWER**

You must file a written *Answer to the Complaint* with NFA within thirty (30) days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information *may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.*

NFA staff is authorized to grant such reasonable extensions of time in which an Answer may be filed as it deems appropriate. The place for filing an Answer shall be:

National Futures Association  
200 West Madison Street  
Suite 1600  
Chicago, Illinois 60606-3447  
Attn: Legal Department-Docketing

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

### **POTENTIAL PENALTIES, DISQUALIFICATION AND INELIGIBILITY**

At the conclusion of the proceedings conducted as a result of or in connection with the issuance of this Complaint, the Committee may impose one or more of the following penalties:

- (a) expulsion or suspension for a specified period from NFA membership;

- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$250,000 for each violation found; and
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

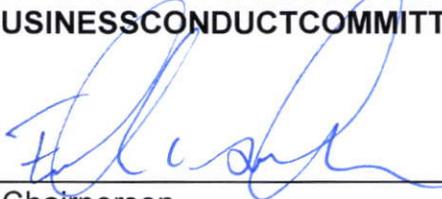
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act.

Respondents in this matter who apply for registration in any new capacity, including as an associated person with a new sponsor, may be denied registration based on the pendency of this proceeding.

Pursuant to the provisions of Commodity Futures Trading Commission ("CFTC") Regulation 1.63, penalties imposed in connection with this Complaint may temporarily or permanently render Respondents who are individuals ineligible to serve on disciplinary committees, arbitration panels and governing boards of a self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

**NATIONAL FUTURES ASSOCIATION  
BUSINESS CONDUCT COMMITTEE**

Dated: 12-5-07

By:   
Chairperson