

NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
BUSINESS CONDUCT COMMITTEE

FILED

JUN 30 2008

In the Matter of: )  
)  
FIRST CHOICE FUTURES AND )  
OPTIONS, INC. )  
(NFA ID #307428), )  
)  
MICHAEL M. GHAEMI )  
(NFA ID #255554), )  
)  
SHELDON C. FRANCE )  
(NFA ID #282138), )  
)  
and )  
)  
MARK D. ASHTON )  
(NFA ID #365524), )  
)  
)  
Respondents. )

NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

NFA Case No. 08-BCC-013

**COMPLAINT**

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having found 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" or "BCC") issues this Complaint against First Choice Futures and Options, Inc. ("First Choice"), Michael M. Ghaemi ("Ghaemi"), Sheldon C. France ("France"), and Mark D. Ashton ("Ashton"),

**ALLEGATIONS**

**JURISDICTION**

1. At all times relevant to this Complaint, First Choice was an introducing broker ("IB") NFA Member.

2. At all times relevant to this Complaint, Ghaemi, France, and Ashton were associated persons ("APs") of First Choice and NFA Associates. Ghaemi previously worked for Universal Financial Holding Corp., Universal Commodity Corporation, and Meridian Commodity Corporation, all of which have been charged in NFA disciplinary cases with sales fraud.

### **BACKGROUND**

3. At all times relevant to this Complaint, Gregory L. Marshall ("Marshall"), Alexander Valencia ("Valencia"), and Charles Pacheco ("Pacheco") were principals of First Choice. Marshall was previously employed by Chilmark Commodities Corp. and Concorde Trading Group, Inc., both of which were permanently barred from the futures industry for sales fraud. Marshall – as well as Valencia and Pacheco – were also previously employed by American Heritage Commodity Corporation ("American Heritage"), a firm that was barred from NFA membership for a period of ten years for sales fraud. In addition, Pacheco was individually charged in the American Heritage case with failure to supervise. Pacheco settled that charge by paying a fine of \$2,500.
4. NFA audited First Choice in January 2006, at which time the firm employed approximately 23 APs and introduced about 250 customer accounts. First Choice charged a commission rate of \$250 per option. In 2005 and 2006, the firm earned more than \$4.8 million in commissions. During this same period, over 90% of First Choice's customers lost money, with losses totaling about \$9.5 million.
5. In addition to NFA's 2006 audit of First Choice, NFA also conducted a sales practice investigation of the firm, due to the employment history of its principals.

NFA's investigation found that First Choice's sales force made misleading sales solicitations that used dramatic profit and price move projections, which exaggerated the profit potential of trading options; suggested well-known current events would move the market, when such information had already been factored into the market; and downplayed the risk of loss by, among other things, failing to disclose that over 90% of First Choice's customers had lost money in 2005 and 2006.

#### **APPLICABLE RULES**

6. 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.
7. 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.

#### **COUNT I**

#### **VIOLATION OF NFA COMPLIANCE RULES 2-2(a) AND 2-29(a)(1): MAKING DECEPTIVE AND MISLEADING SALES SOLICITATIONS.**

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8. The allegations contained in paragraphs 1 through 7 are realleged as paragraph 8.
9. Charles Colby ("Colby") opened an account through First Choice in December 2006. Without his wife's knowledge, Colby invested approximately \$150,000 – \$40,000 of which he had borrowed from his mother and the rest represented his entire life savings. When Colby's account closed in September 2007, Colby had lost approximately \$145,000, of which about \$26,000 was in commissions and fees.

10. Before Colby opened his account, he informed First Choice that he was retired and earned approximately \$40,000 per year, including Social Security. A First Choice representative told Colby he needed to "write bigger numbers to make bigger numbers" and instructed Colby to inflate information on the account opening documents relating to his gross annual income and net worth so he could open an account. In addition, the First Choice representative told Colby to indicate he had ten years' experience trading stocks, even though Colby told the First Choice representative that he had no prior experience trading stocks.
11. Ghaemi was Colby's primary broker. Ghaemi persuaded Colby to invest by making numerous profit projections, which led Colby to believe that trading with First Choice would be profitable. For example, Ghaemi claimed he could make Colby "a \$1/2 million to \$1 million" trading heating oil and said, "we're going to make a couple hundred thousand dollars" in orange juice. Ghaemi was so compelling that he convinced Colby that he could not lose money.
12. When losses occurred in Colby's account, Ghaemi told Colby that he could get his money back if he invested more. For example, in January 2007, Ghaemi told Colby that he should buy orange juice, that orange juice was what his portfolio needed to bring him "closer to the million dollars," and that they "needed the OJ NOW!"
13. In his dealings with Colby, Ghaemi's main goal seemed to be to generate commission income by getting Colby to invest as much money as he could. For example, within days of Colby opening his account with an initial deposit of \$10,000, Ghaemi recommended trades to Colby that generated \$3,500 in commissions and fees. One of those trades was a heating oil bull call spread

that was entered into on December 12, 2006 whereby Colby purchased 3 March 07 heating oil calls with a strike price of 190.000 and sold 3 March 2007 heating oil calls with a strike price of 202.000. Over the next two weeks, the underlying futures contract moved away from 190.000, so Ghaemi recommended that Colby purchase 3 March 07 heating oil calls with a strike price of 175.000 and sell 3 March 07 heating oil calls with a strike price of 190.000, which generated \$750 in commissions on each leg of the transaction, or \$1,500 in total commissions. However, because First Choice did not charge commissions on liquidating trades, Ghaemi could have established the same overall position in Colby's account for half the commissions if he had simply liquidated the 190.000 calls and bought 175.000 calls.

14. Ghaemi demonstrated his eagerness to earn commissions in other ways. For example, Ghaemi convinced Colby to place trades in his accounts even before Colby was able to send in additional funds. In fact, Colby was subject to a margin call for almost four weeks during January 2007 because of trades that were placed in his account before he sent sufficient funds to cover these trades.
15. In February, after Colby sold his heating oil options at a loss, Ghaemi told Colby that he "would have to get serious about the market" if he wanted to make his money back. Ghaemi persuaded Colby to buy 30 natural gas put options on February 15 and then another 30 natural gas puts on February 23, which required Colby to deposit over \$52,000 more into his account and allowed Ghaemi to generate an additional \$15,000 in commissions and fees.
16. Colby eventually lost his entire investment. When Colby complained to Ghaemi about his losses, Ghaemi simply responded, "oh well," and blamed the losses on

the market. Even after Colby lost all his money, Ghaemi still called and tried to get Colby to send more funds, telling Colby, "you got to put more money in to make the money back." At no time did Ghaemi ever disclose to Colby that over 90% of First Choice's customers lost money in 2005 and 2006.

17. Ghaemi's sales solicitations to Colby were misleading in that they utilized dramatic profit projections, which exaggerated the profit potential of trading options, and downplayed the substantial risk of loss by failing to disclose that over 90% of First Choice's customers lost money in 2005 and 2006.
18. Fred Loeb, Jr. ("Loeb") was 26 years old when he opened his account with First Choice in March 2007. Loeb is a self-employed sales representative who lives at home with his parents. Loeb's account was open for three months, during which time, Loeb invested over \$26,000 and paid more than \$6,000 in commissions and fees.
19. Loeb spoke with France for about a year before he decided to open an account with First Choice in March 2007 with funds from a \$30,000 inheritance from his mother.
20. France told Loeb that he was previously in charge of a Morgan Stanley branch office and had managed Merrill Lynch's entire commodities division. These representations were false, as neither Morgan Stanley nor Merrill Lynch ever employed France.
21. France also touted profit projections to Loeb without adequately explaining the risks inherent in futures trading. For example, France said he wanted to make Loeb a fortune and that Loeb would make at least a \$50,000 profit on his investment.

22. When Loeb agreed to open an account, France hurried Loeb through the account opening process, telling Loeb that he did not need to read the account opening documents, as they *did not matter* because Loeb was guaranteed to make money. France also told Loeb he needed to return the paperwork immediately because every day Loeb waited was another day of money lost.
23. In addition, France instructed Loeb to enter *incorrect information* on his account opening documents. For example, France told Loeb investors needed to have a minimum net worth of \$50,000. He instructed Loeb to inflate his net worth on the account opening documents and include the liquidating value of all of his belongings – including his socks and underwear. In addition, although Loeb told France that he made less than \$5,000 in 2006, France instructed Loeb to indicate that he made \$30,000 annually.
24. After Loeb opened his account, it began to lose money. France told Loeb not to worry as he still had the ability to make at least \$30,000. At no time did France ever disclose to Loeb that over 90% of First Choice's customers lost money in 2005 and 2006.
25. In his dealings with Loeb, France's primary interest appeared to be the generation of commissions for himself and the firm. For example, in the first eight days that Loeb's account was open, he invested approximately \$22,000 and was charged commissions and fees of over \$6,000.
26. There were other examples which demonstrated France's desire to generate commissions, no matter what. On March 30, 2007, France bought three August 07 crude oil calls for Loeb. However, these trades generated a margin call in Loeb's account, which remained for nearly two weeks until Loeb sent in

additional funds on April 10. The very same day that Loeb sent in the additional funds to meet the first margin call, France turned around and placed even more trades in Loeb's account, which caused Loeb's account to again be subject to a margin call which remained until May 21, 2007, almost six weeks later.

27. On one occasion, when France could not reach Loeb to place trades, France convinced Loeb's father to pretend that he was his son during the taped trade confirmation call. France said this would really not be lying since Loeb and his father had the same name.
28. France also solicited Loeb's father to invest. France claimed he had a great investment opportunity and that Loeb's father "must get in." France also told Loeb's father that the world was running out of silver and he had to get into the market since the price was on the rise. On another occasion, France told Loeb's father that he must invest in oil because of a hostage situation involving British sailors.
29. France's solicitations to Loeb and his father were false and misleading in that they falsely portrayed France's background; used dramatic profit projections which exaggerated the profit potential of trading options; suggested that well-known current events would move the market, when such information had already been factored into the market; and downplayed the substantial risk of loss by failing to disclose that over 90% of First Choice's customers lost money in 2005 and 2006.
30. In March 2007, NFA staff member David Croom ("Croom") received an unsolicited telephone call from Ashton. Ashton solicited Croom – who used an assumed name – to invest with First Choice and in the course of the solicitation

made several misleading statements to Croom. For example, Ashton told Croom that ethanol use was driving up corn prices and he expected a significant price move. Although Ashton said he could not guarantee the move, all indicators were "looking up." Ashton said his firm was focusing on the September corn contract and expected a 10-25¢ move in the option premium during the next 60 to 90 days. Ashton also said a 10¢ increase in the price of corn would equal a 25% net return on Croom's investment, while a 25¢ movement would equal a 100% return.

31. Ashton also told Croom the average increase in wholesale corn prices for the last three years was 86¢. Although Ashton stated nobody expected that much of an increase that year, he said that he was anticipating a 10 to 25¢ move and that, "commodities have an unlimited upside."
32. Ashton said that there were several factors that were driving prices higher and creating opportunities – including the fact that four of the top five producers were experiencing drought or some shortfall and that China was becoming an importer.
33. Ashton only mentioned risk to Croom when he told Croom that futures contracts have margin calls and Croom could lose more than he invested, while his risk was limited to what he invested with options. Furthermore, Ashton never disclosed to Croom that over 90% of First Choice's customers lost money in 2005 and 2006.
34. Ashton's solicitations to Croom were misleading in that they used dramatic profit and price move projections, which exaggerated the profit potential of trading options; suggested well-known current events would move the market, when

such information had already been factored into the market; and downplayed the risk of loss by, among other things, failing to disclose that over 90% of First Choice's customers had lost money in 2005 and 2006.

## **PROCEDURAL REQUIREMENTS**

### **ANSWER**

You must file a written Answer to the Complaint with NFA within thirty 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.

The place for filing an Answer shall be:

National Futures Association  
300 South Riverside Plaza  
Suite 1800  
Chicago, Illinois 60606  
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, NFA may impose one or more of the following penalties:

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

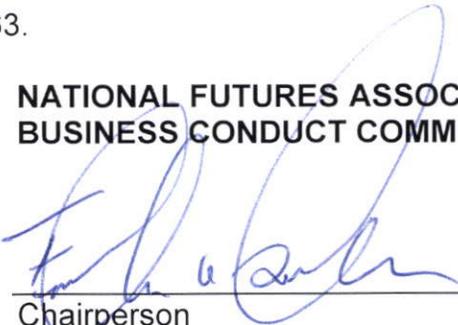
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$250,000 for each violation found; and
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

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 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: 06/30/08

By:   
Chairperson

/jac(Complaints\First Choice)

## AFFIDAVIT OF SERVICE

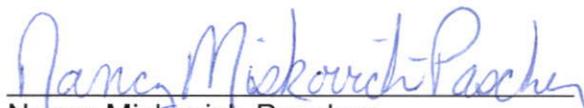
I, Nancy Miskovich-Paschen, on oath state that on June 30, 2008, I served copies of the attached Complaint, by sending such copies in the United States mail, first-class delivery, and by overnight mail, in envelopes addressed as follows:

First Choice Futures and Options, Inc.  
2634 SE 11th Street  
Pompano, FL 33062  
Attn: Dennis Rogers  
Compliance Consultant

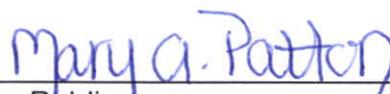
Michael M. Ghaemi  
1700 S. Bay Shore Lane  
Unit 3A  
Coconut Grove, FL 33133

Sheldon C. France  
13120 SW 92nd Avenue  
Apt. D62  
Miami, FL 33176

Mark D. Ashton  
211 S. Hollybrook Drive  
Apt. 304  
Pembroke Pines, FL 33025

  
Nancy Miskovich-Paschen

Subscribed and sworn to before me  
on this 30th day of June 2008.

  
Notary Public

