

NATIONAL FUTURES ASSOCIATION
BEFORE THE HEARING PANEL

JUL - 9 2008

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)
)
STERLING INTERNATIONAL)
COMMODITIES, et. al.)
(Todd O. Marshall,)
NFA ID #284654),)
)
Respondents.)

NFA Case No. 07-BCC-021

DECISION

Having reviewed the Complaint issued by the Business Conduct Committee ("BCC") in the above-captioned case, and having considered the Offer of Settlement ("Offer") submitted by Sterling International Commodities ("Sterling") and Todd O. Marshall ("Marshall") and having accepted their Offer, this Panel hereby issues this Decision as to Sterling and Marshall.

I

ALLEGED VIOLATIONS OF NFA REQUIREMENTS

On June 28, 2007, the BCC issued a Complaint against Sterling, an introducing broker NFA Member located in Pompano Beach, Florida. Also named in the Complaint were Marshall, Sterling's president and owner, and three of the firm's associated persons ("APs"). The Complaint alleged that Sterling, Marshall, and the other respondent APs, violated NFA Compliance Rules 2-2(a) and 2-29(a)(1), by making misleading sales solicitations to customers that exaggerated the profit potential of trading options; cited well-known current events, which had already been factored into the market; minimized the risk of loss of trading options and spreads; misrepresented the performance of Sterling's and the APs' customers; misrepresented

that Sterling's commissions were normal and customary when, in fact, they were excessive; suggested that a customer's out-of-the-money unleaded gas options would move in tandem with the cash price of unleaded gas; and failed to disclose that the vast majority of Sterling's and the APs' customers lost money in the years immediately prior to the solicitations.

The Complaint also alleged that Sterling violated NFA Compliance Rule 2-10 and NFA Financial Requirements Section 5, by failing to keep current books and records and failing to properly calculate its adjusted net capital. Lastly, the Complaint alleged that Sterling and Marshall violated NFA Compliance Rules 2-29(a)(2), 2-4, and 2-9, by using high-pressure sales tactics, failing to uphold high standards of commercial honor and just and equitable principles of trade, and failing to supervise Sterling's sales force.

II

OFFER OF SETTLEMENT

Without admitting or denying the allegations of the Complaint, Sterling and Marshall submitted an Offer to this Panel in which they offered to settle the charges against them on the following terms:

- a) Sterling and Marshall stipulated that a Decision issued by this Panel accepting their Offer shall include findings that they committed the violations alleged against them in the Complaint;
- b) Sterling agreed to be permanently barred from NFA membership and associate membership and from acting as a principal of an NFA Member, effective on the date of a Decision of the Panel accepting its Offer;
- c) Marshall agreed not to apply for NFA membership or associate membership or act as a principal of an NFA Member for a period of three years, commencing on the date of a Decision of the Panel accepting his Offer. During the three-year membership bar, Marshall agreed not to act in any capacity requiring registration, nor act as a principal of an NFA Member;

- d) Marshall agreed that, if after the expiration of the three-year membership bar, described above, he is granted NFA membership or associate membership, or becomes a principal of an NFA Member, then in any such event, he shall pay a fine of \$50,000 to NFA, due and payable thirty days after he is granted NFA membership or associate membership, or becomes a principal of an NFA Member;
- e) Marshall agreed that, if and when he again becomes an NFA Member or Associate, he shall tape record, for a period of one year, all conversations between himself and existing or potential customers; retain these tapes for a period of one year from the date they are created; and make the tapes available to NFA upon request. The one-year taping requirement shall commence on the date that Marshall again becomes an NFA Member or Associate, and continue thereafter for a period of one year. However, for purposes of calculating the end date for the one-year taping requirement, only periods of time when Marshall is registered and actively soliciting customers on a full-time basis shall be counted. In other words, although Marshall is required to tape even during periods when he is only soliciting customers on a part-time basis, any taping done during these periods shall not be counted or credited to Marshall in calculating his one-year taping obligation; and
- f) Marshall agreed that, in the event that he becomes a principal of an NFA Member, he shall cause all APs of that firm – and any other firm of which he is a principal – to tape record, for a period of one year, all conversations that occur between them and existing or potential customers; retain these tapes for a period of one year from the date they are created; and make the tapes available to NFA upon request. The one-year taping requirement shall apply to each and every firm of which Marshall becomes a principal and commence on the date that he becomes a principal of each firm, respectively. In calculating the one-year taping period as to each firm, only periods of time when Marshall is a principal of that particular firm and that firm is actively soliciting customers shall be counted in such calculation. In any and all events, the taping requirements set forth in this paragraph shall expire on December 31, 2012.

III

FINDINGS

Pursuant to the Offer, the Panel finds that Sterling and Marshall violated NFA Compliance Rules 2-2(a) and 2-29(a)(1), by making misleading sales solicitations to customers that exaggerated the profit potential of trading options; cited well-known

current events, which had already been factored into the market; minimized the risk of loss of trading options and spreads; misrepresented the performance of Sterling's and the APs' customers; misrepresented that Sterling's commissions were normal and customary when, in fact, they were excessive; suggested that a customer's out-of-the-money unleaded gas options would move in tandem with the cash price of unleaded gas; and failed to disclose that the vast majority of Sterling's and the APs' customers lost money in the years immediately prior to the solicitations.

The Panel also finds that Sterling violated NFA Compliance Rule 2-10 and NFA Financial Requirements Section 5, by failing to keep current books and records and by failing to properly calculate its adjusted net capital. Lastly, the Panel finds that Sterling and Marshall violated NFA Compliance Rules 2-29(a)(2), 2-4, and 2-9, by using high-pressure sales tactics, failing to uphold high standards of commercial honor and just and equitable principles of trade, and failing to supervise Sterling's sales force.

IV

PENALTY

Having considered the matter and having accepted the Offer submitted by Sterling and Marshall, the Panel orders as follows:

- a) Sterling is hereby permanently barred from NFA membership and associate membership and from acting as a principal of an NFA Member, effective on the date hereof;
- b) Marshall is hereby ordered not to apply for NFA membership or associate membership or act as a principal of an NFA Member for a period of three years, commencing on the date hereof. During the three-year membership bar, Marshall shall not act in any capacity requiring registration, nor act as a principal of an NFA Member;
- c) if after the expiration of the three-year membership bar, described above, Marshall is granted NFA membership or associate membership, or becomes a principal of an NFA Member, then in any such event, he is hereby ordered to pay a fine of \$50,000 to NFA, due and payable thirty

days after he is granted NFA membership or associate membership, or becomes a principal of an NFA Member;

- d) if and when Marshall again becomes an NFA Member or Associate, he is hereby ordered to tape record, for a period of one year, all conversations between himself and existing or potential customers; retain these tapes for a period of one year from the date they are created; and make the tapes available to NFA upon request. The one-year taping requirement shall commence on the date that Marshall again becomes an NFA Member or Associate, and continue thereafter for a period of one year. However, for purposes of calculating the end date for the one-year taping requirement, only periods of time when Marshall is registered and actively soliciting customers on a full time basis shall be counted. In other words, although Marshall is required to tape even during periods when he is only soliciting customers on a part-time basis, any taping done during these periods shall not be counted or credited to Marshall in calculating his one-year taping obligation; and
- e) in the event that Marshall becomes a principal of an NFA Member, he is hereby ordered to cause all APs of that firm – and any other firm of which he is a principal – to tape record, for a period of one year, all conversations that occur between them and existing or potential customers; retain these tapes for a period of one year from the date they are created; and make the tapes available to NFA upon request. The one-year taping requirement shall apply to each and every firm of which Marshall becomes a principal and commence on the date that he becomes a principal of each firm, respectively. In calculating the one-year taping period as to each firm, only periods of time when Marshall is a principal of that particular firm and that firm is actively soliciting customers shall be counted in such calculation. In any and all events, the taping requirements set forth in this paragraph shall expire on December 31, 2012.

This Decision, accepting Sterling and Marshall's Offer, shall operate to bar any future Member Responsibility Actions or BCC Complaints against Sterling and Marshall for any conduct occurring, of which NFA had corporate knowledge, up to the date of their Offer, and shall resolve and terminate all complaints, investigations and audits, relative to Sterling and Marshall, which were received or pending as of the date of their Offer. In addition, Sterling's and Marshall's Offer and this Decision accepting their Offer shall not be used as a sole basis for any other action or proceeding by NFA against Sterling and Marshall, including any registration matter, except their Offer and

this Decision accepting their Offer may be used in an action to enforce the terms thereof or in a subsequent disciplinary action or regulatory action, where they may be considered as disciplinary history and as evidence in aggravation on the issue of sanctions.

V

INELIGIBILITY

Pursuant to Commodity Futures Trading Commission ("CFTC") Regulation 1.63, this Decision renders Marshall ineligible, for a period of three years or until all of the sanctions and conditions imposed on him have been fulfilled, whichever is later, to serve on a disciplinary committee, arbitration panel, oversight panel or governing board of any self-regulatory organization, as defined in CFTC Regulation 1.63.

**NATIONAL FUTURES ASSOCIATION
HEARING PANEL**

Date:

07/09/08

By:



Chairperson

m/rvh/Sterling and Marshall Decision

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on July 9, 2008, I served copies of the attached Decision, by sending such copies in the United States Mail, postage prepaid, certified mail, return receipt requested, and by regular mail, in envelopes addressed as follows:

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Nancy Miskovich-Paschen

Subscribed and sworn to before
me on this 9th day of July 2008.



Notary Public

