

FILED

NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

DEC - 8 2009

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)	
)	
MONTGOMERY COMMODITIES LLC)	
(NFA ID #291838),)	
)	
and)	NFA Case No. 09-BCC-050
)	
DAVID BAIRD MONTGOMERY)	
(NFA ID #212850),)	
)	
Respondents.)	

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 ("BCC") issues this Complaint against Montgomery Commodities LLC ("MC") and David Baird Montgomery ("Montgomery").

ALLEGATIONS

JURISDICTION

1. MC is a registered introducing broker ("IB") NFA Member located in Greenville, South Carolina.
2. Montgomery is the sole owner, listed principal and associated person ("AP") of MC and an NFA Associate.

APPLICABLE RULES

3. 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.
4. 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.
5. NFA Compliance Rule 2-2(f) provides that no Member or Associate shall willfully submit materially false or misleading information to NFA or its agents.

BACKGROUND

6. MC was guaranteed as an IB by futures commission merchants ("FCMs") RJ O'Brien ("RJO") from January 1999 through February 2007 and Cadent Financial Services LLC ("Cadent") from February 2007 through April 2009.
7. Montgomery operates a commodity pool called EPROFITS.COM Diversified Hard Asset Fund (the "Fund") for which it has claimed an exemption pursuant to Commodity Futures Trading Commission ("CFTC") Regulation 4.13(a)(2).
Montgomery is the general partner and operator of the Fund.
8. The Fund had five investors with a total of \$285,000 in contributions. On April 3, 2009, the Fund's account at Cadent was closed and slightly more than \$16,000 was returned to Montgomery.
9. On May 12, 2009, Montgomery opened an account in the name of the Fund at the FCM Interactive Brokers with \$15,000. As of October 31, 2009, the account was worth slightly less than \$8,000.

10. In addition to the Fund, MC also had, at any given time, between nine and 25 customer accounts. Additionally, MC had an account in the name of eProfits.com, Inc. ("eProfits"), which Montgomery represented to NFA was a personal trading account, and Montgomery had an individual account in his name.
11. NFA's review of the trading statements for Montgomery's individual account and the eProfits account revealed that between February 2003 through December 2007 Montgomery consistently profited from trading. Despite a beginning balance of less than \$400 in the eProfits' account and less than \$6,000 in his individual account, Montgomery was able to wire out more than \$166,000 from his eProfits' account and almost \$45,000 from his individual account while not making a single deposit into either account or having a single margin call during this period.
12. The eProfits account had 58 profitable months and only one losing month, in which the account lost approximately \$900. Additionally, Montgomery's individual account had 31 profitable months and five losing months. However, in the five losing months, the losses were minimal – the highest single month loss was approximately \$2,000 and the lowest was less than \$10.
13. NFA compared the performance in Montgomery's two personal accounts with the performance in the Fund's accounts and the performance in a customer account of MC, for which Montgomery had trading discretion.
14. From May 2006 through December 2008, the Fund's accounts had losses of nearly \$200,000. Over this same period, Montgomery's two personal accounts had profits of nearly \$60,000.

15. From December 2004 through February 2006, the customer's account for which Montgomery exercised trading discretion lost in excess of \$125,000. During this same period, Montgomery's two personal accounts profited in excess of \$65,000.
16. Overall, between December 2004 and December 2008, the Fund's accounts and the customer's discretionary account had total losses of approximately \$325,000 while Montgomery's two personal accounts had total profits of nearly \$130,000.
17. NFA asked Montgomery if he ever placed trades as bunched orders and then allocated trades among the Fund's, the customer's, and his personal accounts. Montgomery answered no to this question and represented that "all trades are placed individually."
18. NFA subsequently spoke with both Cadent and RJO and each indicated that Montgomery had in fact placed bunched orders on an almost daily basis at both firms, which were allocated post-execution.
19. Based on Montgomery's false statement to NFA regarding bunched orders and the fact that Montgomery had consistent gains in his two personal accounts, while the Fund's accounts and the customer account over which Montgomery exercised trading discretion had significant losses, NFA decided to review the allocation of bunched orders placed by Montgomery from 2005 to 2007.

COUNT I

VIOLATION OF NFA COMPLIANCE RULES 2-2(a) AND 2-4: DEFRAUDING CUSTOMERS THROUGH POST-EXECUTION ALLOCATIONS.

20. The allegations contained in paragraphs 1 through 4 and 6 through 19 are realleged as paragraph 20.

21. Montgomery allocated trades post-execution in two ways when his personal accounts and the accounts of the Fund and the customer, for which he exercised trading discretion, were carried at RJO.
22. The first method consisted of Montgomery placing orders through RJO's trading platform in a group account that identified the trades as belonging to MC. Montgomery would subsequently send an e-mail to RJO post-execution identifying which orders should be allocated to which accounts. These allocation e-mails contained directions to place trades in both non-discretionary and discretionary customer accounts as well as Montgomery's two personal accounts. The allocation e-mails were always sent after the orders were filled and in most cases several hours after an order had been filled.
23. RJO represented that Montgomery placed orders this way from June 2003 until February 2007 when RJO ceased guaranteeing MC.
24. The second allocation method Montgomery used while MC was guaranteed by RJO involved only contracts for cotton. Specifically, Montgomery called orders for cotton directly to an independent floor broker at the exchange and after the floor broker executed the orders he would submit them electronically to RJO.
25. Montgomery did not provide account numbers at the time he placed orders with the floor broker but rather would call or e-mail RJO later in the day directing which contracts were to be allocated to which accounts.
26. It appears that Montgomery made trades in this manner from at least January 2003 until RJO ceased guaranteeing MC in February 2007. Between March 3, 2003 and February 2, 2007, Montgomery allocated 276 cotton trades to his two personal accounts, of which 225 were profitable.

27. MC and Montgomery were required to have procedures for allocating bunched orders for multiple accounts in a fair and non-preferential manner ensuring that no account received consistently favorable or unfavorable treatment over time. However, as MC and Montgomery falsely claimed that they never placed bunched orders, they had no procedures for allocating bunched orders.
28. NFA reviewed in detail Montgomery's trading for the months of June 2005, August 2005, July 2006 and October 2006, when MC was guaranteed by RJO. This review revealed that Montgomery made almost \$31,000 from trades that were allocated post-execution.
29. It appears that after Montgomery placed a trade and observed that the trade was profitable, he would close out the trade that same day for a profit and allocate at least part of the trade to one of his personal accounts. Several times a month, Montgomery would then withdraw the profits allocated to his two personal trading accounts by wiring funds to his personal bank account.
30. Montgomery did not use this day trading strategy for his customers' accounts. Instead of closing out trades the same day they were placed, Montgomery would let the trades remain in customer's accounts and close them out later, often for a loss.
31. Montgomery did not participate in most of the trades he placed with RJO. During the four months of trading that NFA reviewed, Montgomery submitted 136 allocations to RJO after the execution of the trades. In only 28 of these instances did Montgomery allocate trades to himself and all but one of these allocations resulted in profits for Montgomery.

32. In 22 of these allocations, only Montgomery's personal accounts received trades, fifteen of which were allocated to a single personal account. However, post-execution allocation is not permitted when orders are placed for a single account.
33. After February 2007, MC was guaranteed by Cadent. At Cadent, Montgomery continued to allocate trades among his personal accounts, and the Fund's and his customers' accounts after orders were executed. The trades allocated to Montgomery's personal accounts continued to be overwhelmingly profitable.
34. NFA conducted a detailed review of trades placed by Montgomery in June and July 2007, for accounts at Cadent. During these two months, Montgomery submitted 58 allocations to Cadent after the execution of the trades.
35. Montgomery allocated trades to his personal accounts in only eleven instances and all but one of these trades was profitable (the one losing trade resulted in a loss of \$37).
36. By waiting to determine whether trades were profitable before allocating them among the various accounts, and then allocating profitable trades on a preferential basis to his personal accounts instead of the Fund's and customers' accounts, Montgomery defrauded his customers of potential profits that should have been theirs.
37. By reason of the foregoing acts and omissions, MC and Montgomery are charged with violations of NFA Compliance Rules 2-2(a) and 2-4.

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-2(f): PROVIDING FALSE AND MISLEADING INFORMATION TO NFA.

38. The allegations contained in paragraphs 1, 2 and 5 through 37 are realleged as paragraph 38.
39. During its investigation, NFA asked Montgomery if he used bunched orders and he represented that he did not. NFA found, however, that Montgomery's routine practice was to place bunched orders.
40. When NFA confronted Montgomery with this contradiction he responded that NFA had "asked if I used (present tense) group or bunched orders. When this question was presented to me I answered truthfully that I did not utilize group or bunched orders at that time or anytime in the months around that date. [NFA] did NOT ask if I had ever utilized group orders." Montgomery's answer was, at best, misleading and, at worst, an outright lie and in either case was intended to deceive NFA about Montgomery's use of bunched orders.
41. By reason of the foregoing acts and omissions, MC and Montgomery are charged with violations of NFA Compliance Rule 2-2(f).

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

E-Mail: Docketing@nfa.futures.org
Facsimile: 312-781-1672

Failure to file an Answer shall be deemed a waiver of hearing, and 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.

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.

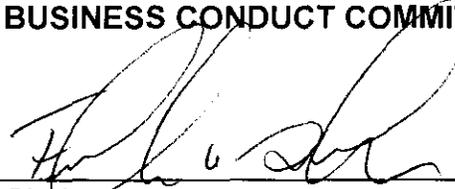
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Act. Respondents in this matter who

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 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: 12-8-09

By: 
Chairperson

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AFFIDAVIT OF SERVICE

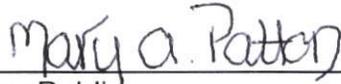
I, Nancy Miskovich-Paschen, on oath state that on December 8, 2009, I served a copy of the attached Complaint, by sending such copy by regular mail, first-class delivery, and by overnight mail, in envelopes addressed as follows:

Montgomery Commodities LLC
110 Spring Meadow Drive
Simpsonville, SC 29681
Attn: David B. Montgomery, President



Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 8th day of December 2009.



Notary Public

