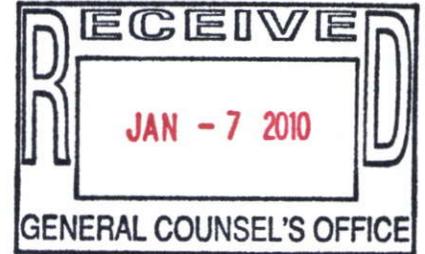


RESPONSE BY
BAIRD MONTGOMERY & MONTGOMERY COMMODITIES LLC.
TO THE NFA & ITS BUSINESS CONDUCT COMMITTEE
REF ALLEGATIONS IN
CASE # 09-BCC-050



After reading the NFA's craftily worded accusations I now understand what NFA stands for: New Fables and Allegations. Your report is rife with misrepresentations, strategic omissions, baseless assumptions and outright lies.

BACKGROUND

I have been a commodity broker for over twenty years. In that twenty year time span I was never audited by the NFA nor was I ever personally contacted by any NFA employee until January of 2009. Also in my twenty plus years as a commodity broker I was subject to annual in-house audits. I and the company I worked for received a clean record on each and every audit. In those twenty years, to the best of my recollection, I never received any customer complaint. Most commodity brokers will verify that is a rarity in our business.

ORIGIN OF ALLEGATION

It is believed that this audit was instigated by a disgruntled investor contacting the NFA. (The NFA refuses to acknowledge or deny this supposition.) Here is some background on the suspected complainant:

- a. He has a troublesome history with other investment firms.
- b. He provided false financial information to enter the fund.
- c. Upon the fund doing subpar in trading this individual thereupon called to inform me he was in financial straits and that the financial information he had provided was not exactly accurate.
- d. When this investor cashed out of the fund I personally gave this individual, out of the kindness of my heart, \$35,000. (This was a complete gift which your auditing comrades can verify. I'm sure this is one of the omissions which would not have played well in your allegations.)
- e. This individual mistook my kindness as a weakness and thereupon sought to blackmail me by saying "If you keep paying me \$10,000 in a timely manner I will not turn you in to the regulators". I immediately told this individual that all communication with him was at an end.
- f. In one of my telephone conversations with this individual I perceived that he may be recording the conversation. I asked the NFA if he provided them a recording. The NFA refused to answer. If this investigation was initiated by this individual with such an illegal recording and if the NFA has a recording or has heard such a recording the NFA may be an accessory to illegal wiretapping/recording and an accessory to blackmail. If this is true legal remedies may be sought.

REPLY TO COUNT # 2 (providing false and misleading information to the NFA)

The NFA has alleged two counts against me. I will address Count #2 first: the allegation of providing false and misleading information to the NFA.

In doing business for twenty years the most the NFA can come up with for this allegation is one verbal sentence! Incredible! Twenty years and you try to convict a broker with your agent's twisting of a plainly spoken reply to a question. It should be noted that the NFA does not deny the accuracy of the question I heard from the agent. From point #39 in your allegations "During its investigation, (the) NFA asked Montgomery if he used bunched orders and he represented that he

did not.” That is absolutely true. In fact I was not using bunched orders at the time nor had I for months. As an example, if someone asked if I smoked I would tell them no. However, I did smoke some cigarettes when I was in the fourth grade. No sane person would expect me to now answer in the affirmative just because I smoked some cigarettes years earlier. In like manner it would be untruthful to answer in the affirmative for actions months in the past (ref bunched orders). If your comrade (whom I believe was Reiff) had asked if I had ever used bunched orders the answer would have been “Yes”. You should be pummeling Reiff on the vagueness of his question, not on the correctness of my reply... of which it was correct. You state that my answer was “at best, misleading and, at worst, an outright lie...” (Throughout this audit your comrade Reiff seemed an especially loose cannon.) I gave a factual and accurate answer to his question and the NFA says it was “at best misleading”. Then the NFA pontificates that “at worst, an outright lie”. What bias! What arrogance! What baloney! What an outright assumption of guilt. If this is the NFA’s mindset then commodity brokers are truly working under the “fox is guarding the hen house” scenario. Essentially, the NFA is saying “facts don’t matter; the NFA’s interpretation is all that matters”. The NFA transferred my simple and truthful reply into “guilt” by mental legerdemain. This allegation is based upon a lie by your agents. If the NFA will proceed along such lines on this simple allegation then they certainly cannot be trusted in any other allegation.

I bring this incredible accusatory matter up first because it clearly paints the bias and distortion of facts under which the NFA is operating in my case.

It is just this type of bias that permeates the whole perspective of the NFA complaint. How does the NFA react/respond when the NFA is suspected of gross negligence or of an outright cover-up of massive proportions? I’ll answer that later in this reply.

SUMMARY RESPONSE TO COUNT #2

THE ALLEGATION of “providing false and misleading information to the NFA” **HAS NO MERIT WHATSOEVER IN FACT OR FICTION. I COMPLETELY DENY ALL OF YOUR ALLEGATIONS AS PERTAINED IN COUNT 2.** I truthfully answered the question. The better allegation is that your agents provided false and misleading assumptions. I request that the agent’s bias be addressed by the NFA business conduct committee and that they be either reprimanded or removed from the employ of the NFA due to such unethical bias.

The answer to Count #2 was answered first to put in place the distortions, bias, and patently false allegations with which the NFA proceeded with such a simple-to-refute situation.

Before delving into the allegations as pertained in Count 1 some necessary preliminary background information is presented to frame the allegations in proper perspective.

BACKGROUND INFORMATION

HEALTH

In January of 2003 I was hit with a chronic and debilitating form of vertigo 24/7 for almost six years. My world, as one of my physicians described it, was turned “upside down”. One literally experiences a condition known as mental fog. After consulting a number of local doctors without a cure I went to Emory Medical University in Atlanta and Johns Hopkins in Baltimore. Neither of these top ranked facilities could help my medical condition. I was at the point of retiring from business due to the inability to focus or competently remember various events. After almost five and a half years of vertigo I decided in desperation to go to the Mayo Clinic for one last chance of recovery. The Mayo physician put me on an experimental medicine which had never been tried before on a vertigo patient. In the following weeks my condition improved to where I was essentially vertigo-

free for the first time in over five and a half years. Also for the first time I realized the depth to which my affliction had affected me. This medical information will prove important in events to follow.

FCM

During my approximately eight years with RJ O'Brien (RJO) I had an excellent relationship with various RJO corporate executives. Trade procedures, ticket allocations, and my communications with them were all commendable, as per their emails to me. My allocation procedures were within regulatory guidelines and were approved by RJO.

RJO even posted my cotton commentary on their research website which was posted for all of the RJO IB's throughout the nation. Not only was this daily research report enthusiastically received by the IB's but the corporate officers also enjoyed this report.

Around 2006 RJO hired a Jamal Oulhadj from the defunct Refco Commodities. Oulhadj was a "risk officer" at Refco. Whether his performance facilitated in Refco's downfall is not know on this end. Oulhadj's title at RJO is also "risk officer". Oulhadj told RJO corporate executives than one must be a registered CTA to provide research information. I attempted on numerous occasions to contact Oulhadj to read him the relevant regulations refuting his supposition. However, Oulhadj refused to answer phone calls or reply to emails. This situation continued for weeks (if not months). I called and emailed various RJO corporate officers to alert them to his incommunicado non-performance in regards to this matter. Out of frustration with this FCM for not performing its duties for this GIB I decided to move my commodity business to Cadent Financial. It should be noted that the NFA report states on item #23 and #26 that "RJO ceased guaranteeing MC". This is a misleading statement giving the allusion that RJO initiated this change. Montgomery Commodities is the one who *initiated* the change of guarantee from RJO to Cadent Financial.

BUSINESS PRACTICE

Montgomery Commodities' procedure with bunched orders has always been to contemporaneously write the accounts and their allocation on the tickets prior to entering the order. I am not aware of any ticket not having this allocation written on it. All bunched orders have always been written and allocated prior to order entry to the best of my knowledge. Additionally, bunched order allocation methodology has always been conducted in a fair, unbiased, and non-preferential manner.

The CFTC amendment, which the NFA adopted, states "The Commodity Futures Trading Commission (CFTC) has amended Regulation 1.35 (a-1)(5), which allows certain account managers to bunch customer orders for execution and to allocate them to individual accounts at the end of the day." "Certain portions of these interpretive notices were inconsistent with the CFTC's revisions... Therefore, (the) NFA issued a Notice to Members stating that NFA was in the process of revising those interpretive notices and, in the meantime, would not cite Members for non-compliance with those portions of the interpretive notices that were inconsistent with the new CFTC regulation."

"The amendments to CFTC Regulation 1.35(a-1)(5) make several significant changes. First and foremost, the amendments provide that certain account managers may use bunched orders for all futures customers, which affords retail customers the advantages previously only enjoyed by sophisticated customers. These advantages include better execution and pricing of their orders. Second, the amendments expand the category of eligible account managers. For example, in addition to registered CTAs and investment advisers who are currently eligible, account managers that are exempt or excluded from CFTC and SEC registration are now also eligible." "The amendments also eliminate the requirement that account managers file a certification with an FCM before bunching."

It should be noted in reference to bunched orders that even the NFA's Daniel Roth wrote: "With the explosive growth of the managed funds business and the increasing use of "give up" agreements, some CTAs now place block orders for

hundreds of accounts on markets around the world. Complying with technical requirements in an era of block orders for multiple accounts has become increasingly difficult and confusing.”

“Account managers must provide FCMs with allocation information in a timely fashion, as soon as practicable after the order is filled and no later than necessary for each exchange's clearing records to identify the ultimate customer.” “FCMs will continue to have responsibility to monitor accounts for unusual allocation activity. FCMs and members of contract markets that execute post execution allocation orders must maintain records that identify each order subject to post execution allocation and the accounts to which contracts executed for such orders are allocated.”

“Remind FCMs that they have certain basic duties to their customers in connection with these orders.”

Even though the CFTC and the NFA regulations allow for post allocation of bunched trades, it has always been the policy of Montgomery Commodities to write the allocations contemporaneously with the execution of the trade. Due to my documented medical disability I found it necessary to communicate that allocation as “soon as practicable” per the regulations and definitely in time for “each exchange’s clearing records to identify the ultimate customer”. Again, in complete accordance with the stated regulations.

REPLY TO COUNT # 1 (defrauding through post-allocation allegation)

The basic claims of the NFA as per count 1 claim that Montgomery Commodities post-allocated trades to his benefit and the detriment of his clients.

First, I restate that all tickets had a written allocation before or contemporaneously with order entry. There was no pattern of post allocation of trades. However, due to medical conditions there was a post communication of the contemporaneously written allocations. In many instances these

communications were made during trading hours. In other instances the communication of the contemporaneously written allocation(s) was made after trading hours. Records of hundreds, if not thousands, of tickets reviewed by the NFA auditors verify this fact.

The NFA auditors make the false and biased assumption in part 29 with the less-than-factual assumption "It appears". Your comrades make a defamatory assumption that I would observe a trade and place a profitable trade in my account. Based on the NFA's highly biased and unethical claims in Count #2 and my documentation that refutes that count, the same biased and unethical claims are now transferred to Count #1 when the NFA cavalierly states "It appears".

You state that I used a different trading strategy from my customers. My focus for both day trades and overnight trades was for the benefit of my clients. It was my desire that by often maintaining longer-term positions which seemingly held potential merit for my clients, the client would benefit accordingly. For my personal account I usually only held a position for the day. This was due to two reasons: 1) my trades were of a higher risk nature, and 2) I wanted to focus longer-term on the positions of my clients. It is often the case where the perceived low-risk trades have greater cumulative losses than many high-risk trades.

Were you aware that there was a two plus year period as an IB where many of my clients often had triple digit annual gains? And, around that same time frame my personal account experienced a loss in six figures. One can cut-and-paste whatever scenario one wants. The NFA has chosen to cut-and-paste on a micro-observed period of my twenty years in the industry where my clients experienced losses while utilizing a longer-term trading strategy.

Has the NFA never reviewed a more-than-unusual trading episode upon which you evidently gave a blind eye, if not your blessings? Let me refresh your memory...

Most people are aware of Hillary Rodham Clinton's trading record, where she turned \$1,000 into \$150,000. My sources tell me that Hillary did not experience one trading loss! On top of that, my sources also inform me that when Hillary Clinton closed her trading account she transferred \$10,000 into another trading account where she "parlayed" that \$10,000 into a further \$100,000. Again, according to my sources, all without a single losing trade! Questions: Did the NFA review those trades? If not, then the NFA evidently determined those 100% winning trades were not at the detriment of other accounts (Tyson, anyone?). Did you audit the IB reference those trades? What happened to the FCM that handled those trades? What happened to the floor broker? Did the NFA have a political incentive to look the other way? I haven't dodged any bullets in Tuzla, Bosnia like Hillary Clinton (we know she always tells the truth) but your reaction or lack thereof tells volumes about the biased and politicized nature of your Chicago enterprise.

The NFA claims that I "did not provide account numbers at the time he placed orders with the floor broker". 1) the floor broker is not allowed to take an order without a brokerage account, 2) I am not aware of ever placing an order without a controlling account, and 3) here is another sweeping false statement with which to paint a completely untrue and inaccurate picture. Again, the NFA cuts-and-pastes conjecture into a biased and false picture against the broker.

My question to the NFA after reviewing probably thousands of my tickets is... where is the body of evidence ref my tickets that you viewed that were without written allocations? Additionally, **all trade allocations were contemporaneously written with the order execution and the communication of that allocation was done in a timely manner according to the stated regulations above and the FCM approval.** It is a known fact and practice that many FCM's prefer and ask for post-allocation communications.

NFA CONDUCT AND REPUTATION

The NFA is well aware of the Sentinel Management Group saga. As a non-clearing FCM Sentinel was under the direct supervision of the NFA. Sentinel had evolved into a Ponzi scheme that lost over \$500 million on your watch. Major financial websites describe the situation as *"The National Futures Association, the alleged self-regulatory disorganization for the U. S. futures industry, appears to have perpetrated a blunder of potentially impressive consequences"*. There are also indications of "unusual" dealings with the FCM Alaron getting its \$69 million out literally days ahead of bankruptcy. Not only has the NFA sought to paper over its dereliction of duty, but the NFA, in a highly unusual move for such massive losses, quietly slid the Sentinel/NFA debacle into the BASIC section of your website and not on the News Releases.

Why is this brought up? When the NFA makes a half billion dollar blunder, then self-serving secrecy is the order of the day. When there are trading irregularities of a highly politicized nature, ignoring such deeds also seems the order of the day with the NFA.

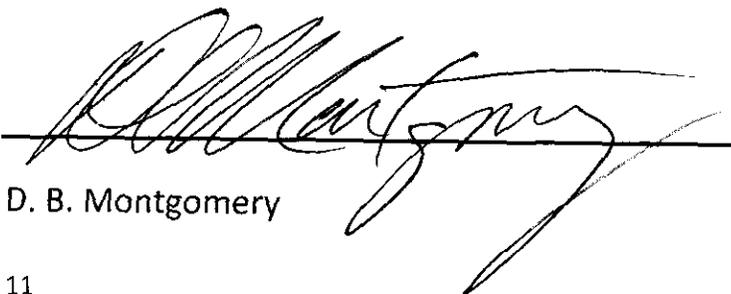
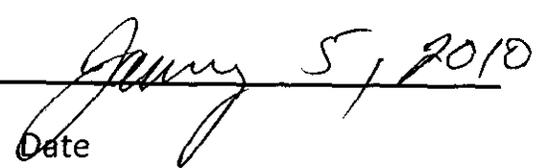
The NFA has made highly unreasonable requests. For example, the NFA demanded five years of banking statements within one day! The NFA requested joint bank statements of my wife and me going back five years. Though this was not required I did provide this information. The NFA has so far refused to refund the thousands of dollars in accumulated cost that were incurred due to their unreasonable time demands.

The NFA seems to be degenerating into a typical seedy, biased Chicago bureaucracy that cannot be trusted for fairness and objectivity. Only if one is a large, well-connected FCM do the rules seem not to apply. I recommend the NFA remove the log from their regulatory eye before seeking the splinters in IBs that seek to follow the ever-changing regulatory landscape.

SUMMARY RESPONSE TO COUNT 1

1. **All bunch trades were written and allocated contemporaneously with order execution.** The NFA has viewed hundreds (possibly thousands) of my tickets... all with the proper written allocation.
2. **All communications of the allocations were made in a timely manner and in accordance with CFTC/NFA regulations** “provide FCMs with allocation information in a timely fashion, as soon as practicable (the regulations do not say ‘as soon as possible’ but ‘as soon as practicable’).
3. **The allocation methodology was fair, moral, objective, and non-preferential.** There were a number of years when I as the IB consistently underperformed my clients. There were also years when the IB had more favorable trading results. Due to extreme medical conditions it was necessary for me to utilize a different, shorter-term trading strategy from many of my clients.
4. **All orders, bunched and otherwise, had a controlling account as requested by the FCM and in accordance with regulations.**
5. **The NFA has made sweeping false statements, allegations without facts, strategic omissions, and assumptions with extreme bias concerning its charges in both counts 1 & 2.**

YOUR ALLEGATION(S) AND COMPLAINT of “defrauding customers through post-execution allocations” **IS WITHOUT MERIT OR FACT. I COMPLETELY DENY ALL OF YOUR HIGHLY BIASED ALLEGATIONS IN BOTH COUNTS 1 AND 2.** The NFA’s biased and slanted complaint along with baseless innuendos (plus the cases mentioned in this response) causes me to question the very viability of your organization. This process has descended to the level of an attempted high-tech lynching.

 _____ 
D. B. Montgomery Date

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