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NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

In the Matter of:	)	
	)	
CLASH FINANCIAL LLC	)	
(NFA ID #410478),	)	
	)	
and	)	NFA Case No. 10-BCC-030
	)	
PHIL A. OWENS	)	
(NFA ID #288544),	)	
	)	
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 ("Committee") issues this Complaint against Clash Financial LLC ("Clash") and Phil A. Owens ("Owens").

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, Clash was an introducing broker ("IB") NFA Member. As such, Clash 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, Owens was a principal and associated person ("AP") of Clash and an Associate Member of NFA. As such, Owens was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. Clash is liable for violations of NFA

Requirements committed by Owens during the course of his activities on behalf of Clash.

BACKGROUND

3. Clash, which is located in Lawrenceville, Georgia, has been an IB Member of NFA since July 6, 2009. Owens is the firm's only principal and AP.

4. Owens has been previously employed by two former NFA Members that are permanently barred from NFA membership based on their settlement of disciplinary actions that charged sales practice abuses. Most recently, Owens was employed as an AP and branch office manager at TGR Financial LLC ("TGR") at most times between April 2001 and June 2009. He formed Clash when TGR withdrew from NFA and agreed never to apply for membership in the future in settlement of a Complaint issued by the Committee in 2008. Among other alleged violations, that Complaint charged that TGR APs failed to uphold high standards of commercial honor and just and equitable principles of trade by routinely advising their customers to trade in bull call option spreads that required returns of 30% or more simply to break even on commissions and fees.

5. NFA began an on-site examination of Clash on March 29, 2010. Information gathered during NFA's investigation revealed that Owens provided recommendations to his customers that required substantial positive moves in the market in order to simply cover commissions and fees. In fact, Owens told NFA that he recommended trading bull call spreads to his customers because, due to his previous training, that was the only strategy that he knows.

6. Clash customers traded non-discretionary accounts. Most of them paid commissions of $75 per round turn. In general, Clash customers, acting on

Owens' advice, bought out of the money options with expiration dates as far out as December 2011.

7. NFA's analysis of trades in Clash customer accounts identified commission to equity ratios that were consistently higher than 20%. Owens generated more than $91,500 in commissions on invested equity of approximately $314,000 between July 1, 2009 and March 31, 2010. In 2009 alone, Clash customers lost more than $243,000 while paying almost $50,000 in commissions. Approximately 95% of Clash customers lost money during that year. More than 80% of the trades tested by NFA had to achieve positive returns of greater than 30% simply to overcome commissions and fees. In fact, break even points required to cover commissions and fees reached as high as 81%, 86% and even 97%.

APPLICABLE RULES

8. 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.

9. 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.

10. 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), 2-29(a)(1) AND 2-4: MAKING DECEPTIVE AND MISLEADING COMMUNICATIONS TO THE PUBLIC AND FAILING TO UPHOLD HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE.

11. The allegations contained in paragraphs 1 through 3, 5 and 6 through 10 are realleged as paragraph 11.

12. Clash customer Tibor Itskovich's ("Itskovich") TGR account was transferred from another broker to Owens when TGR was active and he transferred his account to Clash when TGR went out of business. His account was Clash and Owens' most actively traded account and Owens acknowledged that Itskovich traded based on recommendations made by Owens.

13. Itskovich transferred his account to Clash from TGR in July 2009 with some open positions and a cash balance of $59,260. He realized losses of $87,032 and paid $18,232 in commissions for the period from July 1st through December 31, 2009. He paid an additional $8,266 in commissions and fees from January through March 2010.

14. Itskovich's Clash introduced account traded an array of bull call long put spreads and option positions in differing commodities including Crude Oil, the Eurodollar and the Dow during the period from July 1, 2009 through March 31, 2010. For the months that trades were placed, commissions and fees accounted for approximately 25% of his total equity.

15. Fourteen of the seventeen spread trades made for Itskovich's account required returns of greater than 21% simply to recover commissions and fees. In fact, five of the spreads required returns ranging from 44% to 86% to break even. For

example, Itskovich's account traded a 16 lot bull call spread in December 2010 Crude Oil placed on February 23, 2010. He paid a net premium of $3,200 for the spread. He also paid $2,766 in commissions and fees. Therefore, Itskovich had to achieve an 86% rate of return before breaking even on commission and fees.

16. Further, Owens recommended six different bull call spreads in December 2010 Crude Oil that were placed in Itskovich's account at various times between November 16, 2009 and January 28, 2010. This series of trades made little financial sense other than to generate commissions and fees for Owens and Clash. Specifically, the break even points on these spreads ranged between 31% and 57%. Further, the additional bull call spreads and their subsequent commissions could have been avoided had Itskovich's existing position's short strike been adjusted upward, thus providing greater upside potential without incurring the additional commissions associated with the initiation of a new bull call spread.

17. Clash and Owens' conduct in recommending trades to Itskovich that maximized commissions for Clash and Owens without regard for the best interests of Itskovich constituted a gross breach of their obligation to uphold high standards of commercial honor and just and equitable principles of trade.

18. In addition, Clash and Owens' made deceptive and misleading communications to Itskovich in that they never explained to Itskovich how much a position had to move to cover the commissions and fees that he paid on any given trade or the impact of the commissions generated by their spread trading approach on the likelihood of Itskovich achieving profits.

19. By reason of the foregoing acts and omissions, Clash and Owens are charged with violations of NFA Compliance Rules 2-2(a), 2-29(a)(1) and 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
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 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 AP 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: 10-27-10

By: _____
Chairperson

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AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on October 27, 2010, I served a copy of the attached Complaint, by sending such copy in the United States mail, first-class delivery, and by overnight mail, in envelopes addressed as follows:

Clash Financial LLC
1628 Macy Lane
Lawrenceville, GA 30043
Attn: Phil Owens

Nancy Miskovich-Paschen

Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 27th day of October 2010.

Margaret A. Vandermyde

Notary Public

OFFICIAL SEAL
MARGARET A VANDERMYDE
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 03/15/2014