

NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

FILED

JUN 28 2007

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)
)
STERLING INTERNATIONAL COMMODITIES)
(NFA ID #312198),)
)
TODD O. MARSHALL)
(NFA ID #284654),)
)
RANDALL L. MCCULLOUGH)
(NFA ID #188948),)
)
STEPHEN R. MILES)
(NFA ID #295380),)
)
and)
)
JOSHUA P. SCOTT)
(NFA ID #316103),)
)
Respondents.)

NFA Case No. 07-BCC-021

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") issues this Complaint against Sterling International Commodities ("Sterling"), Todd O. Marshall ("Marshall"), Randall L. McCullough ("McCullough"), Stephen R. Miles ("Miles") and Joshua P. Scott ("Scott").

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, Sterling was an introducing broker ("IB") NFA Member located in Pompano Beach, Florida, with a branch office in Deerfield Beach, Florida. As an NFA Member, Sterling 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, Marshall was the president and sole owner of Sterling. Marshall was also an associated person ("AP") of the firm and an NFA Associate. As such, Marshall was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.
3. At all times relevant to this Complaint, McCullough was the manager of Sterling's Deerfield Beach branch office. He was also an AP of the firm and an NFA Associate. As such, McCullough was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.
4. Miles was an AP of Sterling from August 2001 through December 2002, and again from August 2006 through May 2007. Miles was a principal of Sterling from August 2001 through September 2002. From August 2006 (when Miles again started working at Sterling) to December 31, 2006, 66% (or 51/77) of Miles' customers lost money, suffering total losses of \$517,024.
5. Scott was an AP at Sterling from February 2002 through June 2006. Scott was also a principal of Sterling from November 2004 through January 2006. In 2005,

over 90% (or 30/33) of Scott's customers lost money, with total losses exceeding \$465,000. Miles worked at the firm's main office.

6. At all times relevant to this Complaint, Miles and Scott were also NFA Associates and, as such, they were and are required to comply with NFA Requirements and are subject to disciplinary proceedings for violations thereof.

BACKGROUND

7. Sterling has been registered as an IB since September 2001. At the time of NFA's most recent audit of Sterling, which commenced in February 2007, Sterling employed seven APs at its main office and nine APs at its branch office. Sterling's customer accounts were carried at Comtrust, Inc., a futures commission merchant NFA Member.
8. Sterling's president, Todd Marshall, has worked at a number of firms which have been expelled or suspended from NFA for sales fraud, including American Financial Trading Corp. ("AFTC"), Concorde Trading Group, Inc. ("Concorde"), Group One Financial Services Inc., and Barkley Financial Corp. ("Barkley").
9. Marshall, himself, was charged with sales fraud in a 1999 NFA disciplinary case against AFTC and a number of its brokers, including Marshall. Marshall settled that case by agreeing to pay a \$5,000 fine and tape record his conversations with customers for six months.
10. McCullough has also worked at a number of firms which have been disciplined for sales fraud, including Concorde, Barkley, FSG International, Inc., International Trading Group Ltd. and JCC, Inc.

11. Like Marshall, McCullough has, himself, been charged with sales fraud by NFA. McCullough was first charged with sales fraud in a 1992 disciplinary case against Concorde and again in 2002 in a disciplinary case against Barkley. McCullough settled the 1992 case by agreeing to pay a \$4,000 fine. He also settled the 2002 case by agreeing to pay an \$8,000 fine and be subject to enhanced supervisory procedures for one year.
12. Sterling primarily solicits unsophisticated investors to trade options on futures. It charges as high as \$240 for commissions and fees per option contract. Sterling made over \$2.5 million in commissions in 2006 and over \$800,000 in commissions in 2005. At the same time, most of Sterling's customers lost money. For example, in 2006, over 80% of Sterling's customers lost money, with total losses amounting to over \$3.75 million. In 2005, approximately 95% of Sterling's customers lost money, with total losses exceeding \$1.2 million.
13. Sterling typically recommends bull-call spreads or bear-put spreads to its customers. These spreads usually consist of purchasing an out-of-the-money call/put option and then selling an even further out-of-the-money call/put option in the same underlying futures contract. Engaging in these kinds of spread transactions enables Sterling to purchase additional positions for its customers at double the commission rate (i.e., commissions charged on the buy side and the sell side).
14. The combination of high commissions and deep out-of-the-money options result in a significant hurdle for customers to overcome in order to break even. For example, on September 15, 2006, Sterling customer William Coble ("Coble") put

on several bull call spreads. Coble purchased 2 February 07 Comex gold option contracts with a strike price of 650 and sold 2 February Comex gold option contracts with a strike price of 680. Each spread cost \$950 and included commissions of \$400. Given the amount of commissions, Coble would have had to experience a 72.7% return just to break even (without factoring in that an option is a wasting asset).

15. Sterling customer Greg Walter ("Walter") faced a similar obstacle. Walter entered into a bull call spread on March 9, 2005 by purchasing 5 June 2005 unleaded gas calls with a strike price of 179.000 and selling 5 June 2005 unleaded gas calls with a strike price of 188.000. Each spread cost Walker \$988, which included commissions of \$400. Walter would have had to make a 68% return just to break even without considering the options' time decay. Like customer Coble, Walter also paid significantly higher commissions by entering into the spread transaction instead of purchasing the calls outright.
16. Even when Sterling's customers purchased options outright, instead of entering into spread transactions, they still were charged high commissions. This was illustrated by an option trade made by customer Michael Canalizo ("Canalizo"), who bought 200 March 07 corn calls with a strike price of 2.80 and paid \$1,115 for each option, including a \$240 commission charge. As a result, on this one transaction, alone, Canalizo paid commissions of \$48,000.
17. In addition to putting customers into questionable positions, apparently chosen solely to generate the most commissions for Sterling, Marshall, McCullough, Miles, and Scott also made misleading sales solicitations to customers that

exaggerated profit potential; cited well-known current events, which had already been factored into the market; and minimized the risk of loss of trading options and spreads – especially considering that the vast majority of Sterling's, as well as Marshall's, McCullough's, Miles', and Scott's, customers lost money in 2005 and 2006.

APPLICABLE RULES

18. 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.
19. 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.
20. 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.
21. NFA Compliance Rule 2-29(a)(2) provides that no Member or Associate shall make any communication with the public which employs or is part of a high-pressure approach.
22. NFA Compliance Rule 2-9 provides, in pertinent part, that each Member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member.
23. NFA Compliance Rule 2-10 provides, in pertinent part, that each Member shall maintain adequate books and records necessary and appropriate to conduct its business including, without limitation, the records required to be kept under

Commodity Futures Trading Commission ("CFTC") Regulations 1.18 and 1.32 through 1.37 for the period required under CFTC Regulation 1.31.

24. NFA Financial Requirements Section 5 provides, in pertinent part, that Member IBs of the size of Sterling must maintain ANC equal to or in excess of \$30,000.

COUNT I

VIOLATION OF NFA COMPLIANCE RULES 2-2(a), 2-29(a)(1), 2-4, AND 2-29(a)(2): MAKING MISLEADING SALES SOLICITATIONS; FAILING TO UPHOLD HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE; AND USING HIGH-PRESSURE SALES TACTICS.

25. The allegations contained in paragraphs 1 through 21, are realleged as paragraph 25.
26. Sterling customer, Michael Canalizo, had a trading account through Sterling from July 2006 to April 2007. Canalizo invested \$376,672 and lost \$328,774, of which \$239,744 was for commissions and fees.
27. In or about June 2006, Canalizo spoke to Sterling AP Randall McCullough, who solicited him to open a trading account through Sterling. McCullough recommended corn options to Canalizo. McCullough told Canalizo that as the demand for ethanol increased, the price of corn would go up and that the significant demand for ethanol in other countries would definitely cause corn futures prices to go up as well.
28. McCullough bragged to Canalizo that he had made a lot of money for his customers in the past and that his customers had made a lot of money with corn. McCullough claimed that Canalizo could make \$100,000 in four to six months. McCullough told Canalizo that he needed to "get in now" as this was a great opportunity.

29. McCullough told Canalizo that Sterling's commissions were normal and customary for the industry. Based on McCullough's solicitations, Canalizo decided to open an account through Sterling. Canalizo's account sustained significant losses after which McCullough convinced Canalizo to invest an additional \$140,000 by assuring Canalizo that he would be able to recoup his losses. McCullough told Canalizo that they had had a bad run and that there were new opportunities that would enable Canalizo to climb back to even at the very least.
30. McCullough's solicitations to Canalizo were false and misleading in that McCullough lied to Canalizo about the performance of Sterling's and McCullough's customers; failed to disclose to Canalizo that the vast majority of Sterling's and McCullough's customers lost money; and lied about Sterling's commissions suggesting that they were normal and customary in the industry when, in fact, they were excessive.
31. Sterling customer, Michael Smithwick ("Smithwick"), is a 52-year-old, self-employed contractor. Smithwick had an account through Sterling from May 2005 to January 2006. Smithwick invested \$41,700 and lost \$25,159. Smithwick also paid \$30,511 in commissions and fees.
32. In April 2005, Smithwick received a cold call from Sterling AP Scott. Scott solicited Smithwick to open an account through Sterling. Scott claimed Smithwick could double or triple his money with Sterling. Scott said he could double Smithwick's money in no time, as he knew of some hot deals.

33. Scott discussed shortages of corn with Smithwick as well as how the hurricane season would affect the crude oil market. Scott claimed he had this "hot" deal, which might be one of only a few opportunities all year. Scott stressed that he could make Smithwick money.
34. Based on Scott's solicitations, Smithwick decided to open an account with an initial investment of \$10,000. Smithwick initially bought corn and cotton. Smithwick subsequently invested additional funds before closing his account at a loss in January 2006.
35. Scott's sales solicitations to Smithwick were misleading in that they exaggerated the profit potential of trading options, downplayed the substantial risk of loss, and failed to disclose that a large majority of Sterling's and Scott's customers lost money. Scott's solicitations were further misleading in that they emphasized well-known current events (e.g., corn shortages and hurricanes), suggesting that these events would move the market in one direction or another, when this information had already been factored into the market.
36. Sterling customer, Greg Walter, is 50 years old and owns an antique store. Walter had an account through Sterling for only a few weeks, from March 4, 2005 to March 29, 2005.
37. In early 2005, Walter received a phone message from a woman named Rachel at Sterling. When Walter called Rachel back, he was referred to Scott, who solicited Walter to open an account through Sterling.
38. Scott told Walter that his current clients were making a lot of money, and that Walter needed to get in quickly in order to profit in the unleaded gas market.

Scott repeatedly told Walter that all of his customers were making money, especially in the unleaded gas market. Scott told Walter that he would make Walter so much money with this investment that Walter would name his first-born son after Scott.

39. Scott also told Walter that for every penny the price of unleaded gas increased, Walter would make \$400 on a \$1,000 investment. Walter had a few questions when he was filling out the account opening paperwork, but Scott told him those details were not important and he should not worry about them but just worry about his profits. Scott said that seasonal tendencies and current world events would cause prices to rise.
40. After Walter made his initial investment, Scott transferred Walter to an "expert" in the unleaded gas market, whose name Walter does not remember. The "expert" tried to get Walter to send in additional money to invest in unleaded gas options. The "expert" told Walter that he was so sure Walter was going to make money, he was willing to loan Walter \$5,000 so he could purchase the options right away.
41. Walter became uneasy about the loan from Sterling and called Scott the next day to cancel the trades. Scott told Walter that Sterling had already placed the trades and he could not cancel them. Scott told Walter that he was going to send a Fed Ex courier to pick up a \$5,000 check from Walter, but no Fed Ex courier ever came to Walter's home. In a subsequent conversation, Scott told Walter that since he never sent in the \$5,000, the firm liquidated his positions. However, Sterling still charged Walter commissions for these trades.

42. Walter invested a total of \$3,000 with Sterling and lost \$2,946, of which \$3,261 was in commissions and fees.
43. Scott's sales solicitations to Walter were misleading in that they exaggerated the profit potential of trading options, downplayed risk, failed to disclose that Sterling's and Scott's customers lost money, suggested that Walter's out-of-the-money options would move in tandem with the cash price of unleaded gas, and emphasized well-known current events and seasonal tendencies suggesting that these events would move the markets in one direction or another, when this information had already been factored into the markets.
44. Sterling customer, William Coble, is 37 years old and owns a construction company. Coble had a corporate account through Sterling from September 14, 2006 to November 17, 2006. Coble invested \$51,350 and lost \$41,341, of which \$25,006 was attributable to commissions and fees.
45. In August 2006, Coble received a call from Marshall who solicited Coble to open an account through Sterling. Coble agreed to make an investment with Marshall. Marshall rushed Coble through the opening account paperwork, telling him he needed to "get going" and "just sign the papers." Marshall also told Coble to fax the paperwork back quickly, so he could get in as fast as he could as the markets were going up.
46. Coble subsequently spoke to Sterling AP Miles. During the initial compliance taping, Miles told Coble to say 'yes' to all of the firm's questions, even if they had not discussed the issue to which a particular question pertained. Miles told Coble that the compliance questions were just a procedural step and really did

not have anything to do with his account. Miles said that if Coble was serious about investing, he needed to take advantage of the market.

47. Miles told Coble that he should not even be talking to Coble with only a \$60,000 investment. Miles claimed that, instead, he should be talking with people who had double what Coble had. Miles told Coble that he was a strong man and not to wimp out on him. Miles claimed that he had inside information from his "buddies" on the floor. Miles told Coble to give him \$10,000, and Coble would get back \$100,000 when Miles was done.
48. Miles always mentioned profit potential to Coble whenever they talked, saying things like if the market got to 300, he could make "x" amount of dollars. However, Miles never talked to Coble about what would happen if the market went down. Miles also told Coble not to worry about paying commissions because everyone paid them.
49. After Coble opened his account, Miles tried to get him to invest additional funds. Miles told Coble, "you need to get in on this," "all my guys are doing it," and "it's a money maker."
50. At one point, Coble asked Miles to explain his account statements but Miles said that he did not understand them himself.
51. After Coble's account lost most of its value, Coble tried to talk to Marshall about his account, but Marshall swore at him and told him to never call back. When Coble called the firm back, they would put him on hold or hang up on him.
52. Miles' sales solicitations to Coble were misleading in that they overstated the profit potential of trading options, minimized the substantial risk of loss

associated with these investments, and failed to disclose that the vast majority of Sterling's and Miles' customers lost money.

53. Marshall's treatment of Coble (i.e., rushing Coble through the account opening documents and risk disclosures and verbally abusing Coble when Coble asked questions about the losses in his account) violated high standards of commercial honor and just and equitable principles of trade, and constituted high-pressure sales tactics.
54. By reason of the foregoing acts and omissions, Sterling, Marshall, McCullough, Miles and Scott are charged with violations of NFA Compliance Rules 2-2(a) and 2-29(a)(1). Sterling and Marshall are also charged with violations of NFA Compliance Rules 2-4 and 2-29(a)(2).

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-10 AND NFA FINANCIAL REQUIREMENTS SECTION 5: FAILURE TO MAINTAIN CURRENT BOOKS AND RECORDS; AND FAILURE TO PROPERLY CALCULATE ITS ADJUSTED NET CAPITAL.

55. The allegations contained in paragraphs 1, 23 and 24 are realleged as paragraph 55.
56. NFA's 2007 audit of Sterling found that Sterling failed to maintain current books and records. Specifically, Sterling failed to maintain monthly bank reconciliations, general ledgers, cash receipts/disbursement journals, vendor invoices, deposits slips, and wire advices. In addition, Sterling did not follow accrual accounting practices in calculating its adjusted net capital. Sterling also failed to file facsimile notice with NFA of its failure to maintain current books and records.

57. Sterling also failed to have procedures in place to ensure that the individuals and entities with which the firm does business are properly registered and/or NFA Members.
58. By reason of the foregoing acts and omissions, Sterling is charged with violations of NFA Compliance Rule 2-10 and NFA Financial Requirements Section 5.

COUNT III

VIOLATION OF NFA COMPLIANCE RULE 2-9: FAILURE TO SUPERVISE.

59. The allegations contained in paragraphs 1, 2, 7 through 17 and 22 are realleged as paragraph 59.
60. NFA Compliance Rule 2-9 obligates each Member and each Associate with supervisory responsibilities to diligently supervise the Member's employees in all aspects of their futures-related activities, including sales practices.
61. Marshall was responsible for supervising brokers at Sterling. However, Marshall made no real effort to properly supervise the sales practices at Sterling as evidenced by the following facts: he failed to detect or prevent improper sales practices at Sterling, including those cited in Count I; he, himself, made misleading sales solicitations to customers; he hand-picked McCullough to be the branch manager of Sterling's Deerfield Beach branch office, even though McCullough had twice before been charged with sales fraud by NFA; and he set the high commission rates at Sterling and authorized the types of products which Sterling marketed – option spreads and out-of-the-money options, which appear to have been selected primarily because they generated the most commissions for Sterling.

62. By reason of the foregoing acts and omissions, Sterling and Marshall are charged with violations of NFA Compliance Rule 2-9.

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
200 West Madison Street
Suite 1600
Chicago, Illinois 60606-3447
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.

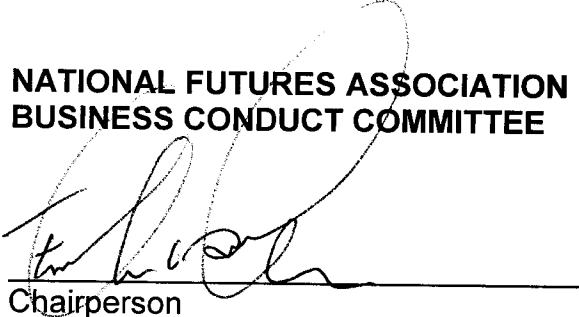
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act.

Respondents in this matter who apply for registration in any new capacity, including as an AP 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: 06-28-07

By: 

Chairperson

/jac(Complaints\DTG)

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on June 28, 2007, 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:

Sterling International Commodities
4699 N. Fed. Hwy.
Suite 204
Pompano Beach, FL 33064
Attn: Todd O. Marshall, President

Todd O. Marshall
719 Villa Portofino Circle
Deerfield Beach, FL 33442

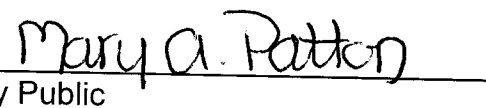
Randall L. McCullough
1310 SE 14th Court
Deerfield Beach, FL 33441

Stephen R. Miles
6672 Hwy. 92
Chase City, VA 23924

Joshua P. Scott
2932 NW 24th Way
Boca Raton, FL 33431


Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 28th day of June 2007.


Notary Public

/jac(Complaints\DTG)

