

**UNITED STATES OF AMERICA**  
Before the  
**COMMODITY FUTURES TRADING COMMISSION**

-----X  
In the Matter of : CFTC Docket No. 01-07  
PAUL MEROLLA and PHILIP SELBY, :  
Respondents. :  
-----X

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c), 6(d) AND 8a(4) OF THE COMMODITY EXCHANGE ACT AND MAKING FINDINGS AND IMPOSING SANCTIONS**

**I.**

The Commodity Futures Trading Commission ("Commission") has reason to believe that the Respondents have violated Sections 4c(a)(A) and (B) and 4c(b) and 4g(a) of the Commodity Exchange Act, ("the Act"), 7 U.S.C. §§ 6c(a)(A) and (B) and 6c(b) and 6g(a), and Sections 1.35(d), 1.38 and 33.10 of the regulations promulgated thereunder ("the Regulations"), 17 C.F.R. §§ 1.35(d), 1.38 and 33.10, and aided and abetted violations of Section 4c(b) of the Act and Section 33.10 of the Regulations pursuant to Section 13(a) of the Act. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether the Respondents engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

**II.**

In anticipation of the institution of these administrative proceedings, Paul Merolla ("Merolla") and Philip Selby ("Selby") (collectively the "Respondents") have submitted offers of Settlement (the "Offers"), which the Commission has determined to accept. Without admitting or denying the findings herein, the Respondents acknowledge service of this Order Instituting Proceedings Pursuant to Sections 6(c), 6(d), and 8a(4) of the Act and Findings and Order Making Findings And Imposing Sanctions (the "Order"). The Respondents consent to the use of the findings contained in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.<sup>1</sup>

---

<sup>1</sup> The Respondents do not consent to the use of this Offer or the findings in this Order, consented to in their Offers, as the sole basis for any other proceeding brought by the Commission, other than a proceeding brought to enforce the terms of this Order. The Respondents also do not consent to the use of their Offers or the findings in the Order by any other person or entity in this or in any other proceeding. The findings made in the Order are not binding on any other person or entity named as a defendant or respondent in this or any other proceeding.

### III.

The Commission finds the following:

#### **A. SUMMARY**

From September 27, 1999 through October 5, 1999 ("the relevant period"), the Respondents executed fraudulent trades in the COMEX gold options ring of the Commodity Exchange, Inc. ("COMEX"), a Division of the New York Mercantile Exchange ("NYMEX"). The Respondents engaged in a total of fifteen instances of trading ahead of executable customer orders, in violation of Section 4c(b) of the Act and Section 33.10(a) and (c) of the Regulations, and a total of ten instances of illegal price changes on trades executed to fill their customers' orders, in violation of Sections 4c(a)(A), 4c(a)(B) and 4c(b) of the Act and Section 33.10(b) of the Regulations. Respondents also aided and abetted each other's price changes or other broker's price changes in violation of Section 4c(b) of the Act and Sections 33.10(a) and (c) of the Regulations, pursuant to Section 13(a) of the Act. The fraudulent price changes were executed noncompetitively in violation of Section 1.38 of the Regulations. Each of the Respondents benefited financially from trading ahead of executable customer orders and from aiding and abetting other brokers' price changes. The Respondents also violated the recordkeeping requirements of Section 4g of the Act and Section 1.35(d) of the Regulations between September 27 and October 8, 1999.

#### **B. SETTLING RESPONDENTS**

Paul Merolla, who resides at 335 Linwood Avenue, Ridgewood, New Jersey 07450, has been a member of COMEX since May 1980 and during the relevant period, was registered with the Commission as a floor broker. Merolla, a dual trader<sup>2</sup> in gold options, has been associated with FIC Commodities Corp. ("FIC").

Philip Selby, who resides at 314 Pennington Avenue, Passaic, New Jersey 07055, has been registered with the Commission as a floor broker since November 1995 and is a dual trading member of COMEX. Selby, a limited partner in Commodity Associates ("CA"), executed CA's gold options customer orders during the relevant period.

#### **C. FACTS**

From September 27, 1999 through October 8, 1999, gold trading volume and volatility increased on the COMEX. In particular, on September 28, 1999, gold futures and options contracts traded in record volume for both number of contracts and trades. The gold options market traded 81,317 contracts in 15,044, trades which was more than double the previous record volume of

---

<sup>2</sup> A dual trader is a floor broker who executes customer orders during any trading session in the same contract market which the floor broker executes trades for his own account. Section 4j(a)(2) of the Act, 17 U.S.C. § 6j(a)(2).

39,944 contracts and more than twelve times the normal number of trades executed.<sup>3</sup> The price of the December gold futures contract rose as much as \$45.20 per ounce from the previous days settlement price, and settled at \$310, \$26.20 above the previous days settlement price. The price of the December 1999 \$300 gold call option traded in the range of \$5 to \$29.<sup>4</sup> Consequently, on that day, gold options brokers received an unprecedented number of customer orders, mostly small-lot retail customer telephone and machine-generated orders.

## **1. Trading Ahead of Executable Customer Orders**

In a total of fifteen instances, the Respondents bought or sold gold call options for their personal accounts at better premiums than their customers paid or received while the Respondents held executable orders from those customers to buy or sell gold call options for the same contract month and strike price.<sup>5</sup> Specifically, Merolla traded ahead of customer orders in seven instances and Selby in eight instances.

During the relevant period, the Respondents executed trades for themselves in gold options ahead of executable customer orders in the same options. The evidence shows that the Respondents held substantial quantities of executable small-lot customer orders and that gold options floor clerks were rapidly receiving more orders that they were conveying to the Respondents in the pit. The Respondents held stacks of executable customer orders for the same options they were trading for their own account.

## **2. Changing Prices on Trades to Fill Customer Orders**

The Respondents changed prices on ten of their customers' trades. These price changes benefited the opposite Respondent's personal account or that of another COMEX member. Respondents also changed prices to benefit their personal accounts to the detriment of the opposite broker's customer. In all of the price changes the traders executed the trade at the same price and recorded it on their trading cards, and then changed it to a price that was less favorable to the customer. In most instances, the price was also changed on the floor order ticket. Merolla engaged in eight instances of illegal price changes and benefited financially from another member's illegal price change in one instance. Selby engaged in two instances of illegal price changes and benefited financially from another member's illegal price change in six instances.

---

<sup>3</sup> See Division of Economic Analysis permanent record data for gold options for the period of September 27, 1999 through October 27, 1999; See also Division of Trading & Markets ("T&M"), "A Review of Gold Options Trading on September 28, 1999," [www.cftc.gov/tm/gold\\_options\\_report031000.htm](http://www.cftc.gov/tm/gold_options_report031000.htm) ("T&M Report") at 2-4.

<sup>4</sup> T&M Report at 1.

<sup>5</sup> A COMEX gold contract consists of 100 ounces and prices are reported in dollars and cents per ounce. A call option is an option to buy and a put option is an option to sell a COMEX gold futures contract and the price or premium is in dollars and cents per ounce. A fluctuation of \$1 is equivalent to \$100 per contract. Therefore, a call option to buy a COMEX gold contract at the \$280 strike for a premium of \$5.00 will cost the purchaser \$5.00 x 100oz. = \$500.

### 3. Recordkeeping Violations

Members of contract markets are required by the Act and the Regulations to prepare and retain certain records. In particular, Section 1.35(d) of the Regulations requires that members prepare a trading card or other record detailing the trades executed by them. This Regulation specifies that members record trades sequentially, without skipping lines and that the trading cards be properly identified and numbered.

The Respondents' trading cards for the relevant period lacked one or more of the following required items of information: (a) the member's name or identification, (b) the identity of the clearing member, and (c) the date and/or time of the transaction. In other numerous instances, the Respondents failed to cross out unused lines on their trading cards as required by Section 1.35(d) of the Regulations.

## D. LEGAL DISCUSSION

### 1. FRAUD IN CONNECTION WITH COMMODITY OPTION TRANSACTIONS

The Respondents cheated, defrauded and deceived their customers by trading ahead of executable customer orders and by making illegal price changes on executed transactions.

Section 4c(b) of the Act prohibits any person from offering to enter into, entering into, or confirming the execution of any transaction involving commodity options contrary to any regulation promulgated by the Commission.<sup>6</sup> Section 33.10 of the Regulations makes it illegal for any person to (a) cheat or defraud or attempt to cheat or defraud any other person; . . . or (c) deceive or attempt to deceive any other person by any means whatsoever in connection with an offer to enter into . . . any commodity option transaction.<sup>7</sup> Trading ahead and non-competitive trading practices constitute fraud in violation of Section 4c(b) of the Act and Section 33.10 of the Regulations. A broker has an obligation to act in the best interest of his customers,<sup>8</sup> which includes a duty to seek the best possible price for his customers.<sup>9</sup> A broker violates that duty when he chooses instead to act on behalf of himself (or someone other than his customer) to the disadvantage of his customer.<sup>10</sup>

Fraud under the Act and Regulations requires a showing of scienter.<sup>11</sup> Scienter is established when a respondent commits a wrongful act intentionally or with reckless disregard.<sup>12</sup>

---

<sup>6</sup> 7 U.S.C. § 6c(b).

<sup>7</sup> 17 C.F.R. § 33.10.

<sup>8</sup> *In re Murphy*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,798, at 31,351-52 (CFTC Sept. 25, 1985).

<sup>9</sup> *United States v. Ashman*, 979 F.2d 469, 478 (7th Cir. 1992); *United States v. Dial*, 757 F.2d 163, 168 (7th Cir. 1985).

<sup>10</sup> *In re Murphy*, ¶ 22,798 at 31,351-52.

<sup>11</sup> *In re Stryk*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,206, at 45,810 (CFTC Dec. 18, 1997). See also *Reddy v. CFTC*, 191 F.3d 109, 119 (2d Cir. 1999).

<sup>12</sup> *Hammond v. Smith Barney, Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659 (CFTC Mar. 1, 1990).

A reckless act is one where there is so little care that it is “very difficult to believe the [actor] was not aware of what he was doing.”<sup>13</sup> Scienter cannot be avoided by ignorance brought about by willfully or carelessly ignoring the truth.<sup>14</sup>

The Respondents had a duty to their clients to execute their orders in a manner where they would not personally profit at their customers' expense. The Respondents' knowing or reckless disregard of their obligations to their customers constitutes fraud.

### **A. Trading Ahead of Executable Customer Orders**

By recklessly trading ahead of their executable customer orders, the Respondents committed fraud.<sup>15</sup> Trading ahead occurs when a dual trading floor broker intentionally buys or sells for his own account while holding an executable customer order on the same side of the market.<sup>16</sup> The Division must prove that a dual trading floor broker held an executable customer order while executing trades for his account, and did so with scienter.

The evidence establishes that at the time that the Respondents traded for their personal accounts, they held executable customer orders in the same options in which they traded personally. Further, the Respondents acted with scienter because they recklessly disregarded the fact that they held executable orders at the times that they traded at better prices for themselves.

The Respondents knew that the market was particularly volatile and active during the relevant period, and particularly so on September 28, 1999, the day on which most of the trading ahead violations occurred. They also knew that this heightened level of activity was directly reflected in the stacks of orders that they held in their decks and were continuing to receive from clerks. Moreover, the Respondents were executing orders from customers at the same strike prices and in the same contract months they were trading for their own accounts. Based upon this information and other facts and circumstances, it was reckless for the Respondents, acting as dual traders, to disregard the likelihood that the orders that they held included executable orders in the same options in which they traded for themselves. The Respondents had an obligation to be cognizant of customer orders that they held prior to trading for themselves.

---

<sup>13</sup> *Do v. Lind-Waldock & Co.*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,516, at 43,321 (CFTC Sept. 27, 1995); *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748-49 (D.C. Cir. 1988).

<sup>14</sup> *See CFTC v. Savage*, 611 F.2d 270, 283 (9th Cir. 1979); *see also Do v. Lind-Waldock & Co.*, ¶ 26,516, at 43,321 (an employee acted recklessly by failing to ascertain the status of an order prior to advising the customer that it was too late to cancel).

<sup>15</sup> *United States v. Dial*, 757 F.2d at 168-170 (an associated person trading ahead of his customers committed fraud by depriving customers of profits they would have made except for the improper execution of their orders). The Commission and the COMEX's rules recognize the importance of prohibiting trading ahead. Section 155.2 of the Regulations requires that each contract market adopt rules prohibiting trading ahead. Pursuant to that Regulation, COMEX promulgated its Rule 4.31(a)(ii) concerning dual trading, which expressly prohibits trading ahead by providing that a floor member may not purchase or sell any futures call option or futures put option in a commodity, either directly or indirectly, for his own account while holding an order for another person in the same commodity which is executable at the market price or at the price at which such purchase can be either directly or indirectly for the member's own account.

<sup>16</sup> *See In re Rousso*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,133, at 45,309 (CFTC Aug. 20, 1997), *aff'd*, 1998 U.S. App. LEXIS 22590 (2d Cir. 1998).

Despite their knowledge and obligations, the Respondents continued to dual trade without taking any steps to ensure that they were satisfying their obligations to act in the best interests of their customers. The Respondents took advantage of the active market to trade for their personal benefit and deprive customers of the best possible price for their orders. By recklessly disregarding their duty to execute their orders in a manner where they would not personally profit at their customers' expense, the Respondents committed fraud in violation of Section 4c(b) of the Act and Section 33.10(a) and (c) of the Regulations.

## **B. Price Changes**

The Respondents also committed fraud by changing the prices on trades executed to fill customer orders to the detriment of customers and to the benefit of other COMEX members trading for their personal accounts. Such execution of customer orders by a means other than open outcry is fraud.<sup>17</sup> By their actions, the Respondents removed their customers' orders from the competitive marketplace and forced customers to accept results selected by the Respondents.<sup>18</sup> The customers were thereby deprived of the competitive process and unwittingly purchased gold options contracts at higher prices or sold them at lower prices because of the Respondents' intentional misconduct. By noncompetitively changing prices on trades executed for customers, the Respondents engaged in fraud in violation of Section 4c(b) of the Act and Section 33.10(a) and (c) of the Regulations.

## **C. Aiding and Abetting Liability for Fraudulent Price Changes**

The Respondents willfully aided and abetted each other's fraudulent price changes. To establish aiding and abetting liability, the Division must establish that:

(1) the Act was violated (the case law often refers to the violation as the "unlawful venture" that the alleged aider and abettor knowingly joins), (2) the named respondent had knowledge of the wrongdoing underlying the violation, and (3) the named respondent intentionally assisted the primary wrongdoer.<sup>19</sup>

---

<sup>17</sup> See *In re Murphy*, ¶ 22,798, at 31,351-52 (noncompetitive executions of customer orders constitute cheating and defrauding of customers in violation of Section 4b of the Act); see also *In re Julian Marks*, 22 A.D. 761, 773 (1964) (customers "entitled to have the orders executed on their merits"). See *Refco, Inc. v. Troika Inv., Ltd.*, 702 F. Supp. 684, 687 n.9 (N.D. Ill. 1988); see also *Ashman*, 979 F.2d at 478 ("Our case law makes clear that even though the customers may not be entitled to any specific price, deliberate refusal to pursue the best price the broker could obtain can constitute a scheme to defraud.").

<sup>18</sup> *Ashman*, 979 F.2d at 477.

<sup>19</sup> *In re Nikkhah*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,129, at 49,888 n.28 (CFTC May 12, 2000), citing *In re R&W Technical Services, Ltd.*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582, at 47,746 (CFTC Mar. 16, 1999).

The Respondents, while trading for their own accounts, knowingly participated in the unlawful venture as something that they wished to bring about.<sup>20</sup> In each of these trades, the Respondents and the opposite member originally recorded the trade on their trading cards, and the member recorded the fill on the order. Thereafter, both traders changed the execution price to the benefit of the personal account of one of the other Respondents and to the detriment of the customer. Therefore, the broker trading opposite the Respondent who handled the customer order on which the price was changed aided and abetted the price change in violation of Section 4c(b) of the Act and Section 33.10(a) and (c) of the Regulations.

#### **D. False Reports**

By changing prices on their trading cards, the Respondents knowingly created false reports. Section 33.10(b) of the Regulations prohibits willfully creating written reports and statements that falsely represent the price at which a trade was executed.<sup>21</sup> Prices reported for noncompetitive trades violate Section 4c(b) of the Act and Section 33.10(b) of the Regulations, even if they accurately reflect the prices agreed to by the brokers.

### **2. OTHER TRADE PRACTICE VIOLATIONS**

#### **A. Noncompetitive Trading**

By failing to execute their trades openly and competitively, each of the Respondents violated Section 1.38 of the Regulations. Noncompetitive trades are generally transacted in accordance with expressed or implied agreements or understandings between the brokers and include illegal price changes. Trades can be noncompetitive even though they were executed in the pit.<sup>22</sup> By illegally changing the prices on transactions after the trades were executed in the pit, the Respondents engaged in noncompetitive trading in violation of Section 1.38 of the Regulations.

#### **B. Fictitious Sales**

Section 4c(a)(A) of the Act prohibits certain types of trading with regard to commodity contracts used for hedging, price discovery or trading in interstate commerce "if such transaction is...a fictitious sale."<sup>23</sup> Fictitious sales are a "class of wrongful trading techniques."<sup>24</sup> Generally, fictitious sales include transactions that appear to have been submitted to the open market while

---

<sup>20</sup> *Rouso*, ¶ 27,133, at 45,309 (citing *In re Richardson Securities, Inc.*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,145, at 24,643 (CFTC Jan. 27, 1981)); see also *In re Buckwalter*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,995, at 37,686 (CFTC Jan. 25, 1991).

<sup>21</sup> 17 C.F.R. § 33.10(b).

<sup>22</sup> *In re Buckwalter*, ¶ 24,995, at 37,683 (citing *Laiken v. U.S. Dep't of Agric.*, 345 F.2d 784, 785 (2d Cir. 1965)).

<sup>23</sup> 7 U.S.C. § 6c(a).

<sup>24</sup> *In re Three Eight Corp.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,749 at 40,444-45 (CFTC June 16, 1993).

negating the market risk or price competition inherent in competitive trading.<sup>25</sup> The category also includes such trading schemes even when they do not create the false impression.

As discussed above, the Respondents executed their customers' orders outside of the competitive marketplace, forcing them to accept results selected by the Respondents constituting "fictitious sales" prohibited by Section 4c(a)(A) of the Act.<sup>26</sup>

### **C. Non Bona Fide Prices**

The Respondents violated Section 4c(a)(B) of the Act, which makes it unlawful to confirm the execution of any commodity futures transaction "if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price."<sup>27</sup> Bona fide prices are only those prices that result from competitive trading. The Respondents executed trades noncompetitively, and thus the prices that were reported on their trading cards, to their customers and to COMEX were not bona fide. Accordingly, the Respondents violated Section 4c(a)(B) of the Act.

### **3. RECORDKEEPING VIOLATIONS**

Section 4g of the Act and Section 1.35(d) of the Regulations are violated by a member of a contract market who fails to record required information on their trading cards or similar records. Section 1.35(d) of the Regulations specifies that members of contract markets prepare trading cards or similar records documenting their trades. Section 1.35(d) of the Regulations requires, among other things, that for each transaction executed by the member, the trading card or other record state: (a) the member's name or identification, (b) the identity of the clearing member, and (c) the date and/or time of the transaction. Each of the Respondents failed to record required trade information in violation of Section 4g of the Act and Section 1.35(d) of the Regulations.

## **IV.** **OFFERS OF SETTLEMENT**

The Respondents have submitted Offers in which they, without admitting or denying the findings herein: (1) admit the jurisdiction of the Commission with respect to the matters set forth herein; (2) waive notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offer, all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63 (1996), and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2000), relating to or arising from this action, and any claim of Double Jeopardy based upon institution

---

<sup>25</sup> *Id.* See also *In re Mayer*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,259, at 46,134 (CFTC Feb. 3, 1998), *aff'd*, *Reddy v. CFTC*, 191 F.3d 109 (2d Cir. 1999).

<sup>26</sup> *In re Glass*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,337 at 46,559 (CFTC Apr. 27, 1998), *aff'd sub nom. Guttman v. CFTC*, 197 F.3d 33 (2d Cir. 1999); *In re Gimbel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,213, at 35,003 (CFTC Apr. 14, 1988); see also *Ashman*, 979 F. 2d at 477.

<sup>27</sup> *In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993, at 37,653 (CFTC Jan. 25, 1991).

of this proceeding or the entry of any order imposing a civil monetary penalty or any other relief; (3) stipulate that the record basis on which the Order may be entered shall consist solely of the Order and findings in the Order consented to in their Offers; and (4) consent to the Commission's issuance of this Order, which makes findings as set forth below and: (a) orders the Respondents to cease and desist from violating the provisions of the Act and Regulations that they each have been found to have violated; (b) imposes civil monetary penalties; (c) assesses restitution; (d) suspends each of their registrations for six months; (e) restricts their registration for a two year period including the imposition of supervision requirements; and (f) orders the Settling Respondents to comply with their undertakings consented in their Offers.

## **V. FINDINGS OF VIOLATIONS**

Solely on the basis of the consent evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that the Settling Respondents violated Sections 4c(a)(A) and (B), 4c(b) and 4g of the Act, 7 U.S.C. §§ 6c(a)(A) and (B), 6c(b) and 6g, and Sections 1.35(d), 1.38 and 33.10 of the Regulations, 17 C.F.R. §§ 1.35(d), 1.38 and 33.10, and aided and abetted violations of Section 4c(b) of the Act and Sections 33.10(a) and (c) of the Regulations.

## **VI. ORDER**

Accordingly, it is hereby ordered that:

1. The Respondents shall cease and desist from further violations of Sections 4c(a)(A) and (B), 4c(b) and 4g(a) of the Act, 7 U.S.C. §§ 6c(a)(A) and (B), 4c(b) and 6g(a), and Sections 1.35(d), 1.38 and 33.10 of the Regulations, 17 C.F.R. §§ 1.35(d), 1.38 and 33.10.
2. The Respondents shall each pay civil monetary penalties in the amount of \$25,000 respectively. Merolla and Selby shall pay their civil monetary penalties within ten (10) days of the date of the Order;
3. Merolla and Selby shall pay restitution in the amounts of \$14,700 and \$5,200 respectively within ten (10) days of the date of the Order to the Monitor;<sup>28</sup>
4. The Respondents' registrations as floor brokers are suspended for a period of six months beginning on the third Monday after the entry of the Commission Order accepting this Offer (the "Suspension Date");
5. The Respondents are prohibited for a period of six months beginning on the Suspension Date, from trading on or subject to the rules of any contract market, and all contract markets shall refuse Respondents trading privileges thereon; provided, however, each of the Respondents is permitted to trade off the floor of

---

<sup>28</sup> The Respondents will deposit the restitution into an account with the Monitor, and the Monitor will distribute the specific amounts owed to each customer as determined by the Division.

any contract market for his own account beginning three months after the Suspension Date, with such orders being executed only by other duly authorized persons;

6. The Respondents are each prohibited for a period of twelve months, beginning six months after the Suspension Date (the "Initial Twelve-Month Period"), from acting as a dual trader on or subject to the rules of any contract market;
7. For a period of twenty-four months, beginning six months after the Suspension Date:
  - a. Each Respondent may not act as a floor broker or floor trader pursuant to Sections 4e and 4f of the Act, 7 U.S.C. §§ 6e and 6f, and as defined under Section 1.3(x) of the Regulations, 17 C.F.R. §1.3(x), unless his activities as a floor broker or floor trader are subject to a Supplemental Sponsor Certification Statement ("Certification Statement"), in either Form A or Form B, as applicable, executed and submitted to the Commission by a qualified sponsor ("Sponsor"), as defined in subparagraph b. below, and in accordance with Section 3.60(b)(2) of the Regulations, 17 C.F.R. §3.60(b)(2). Immediately upon the sponsor's ceasing to act as the Respondent's sponsor, the Respondent shall stop acting as a floor broker or floor trader, until he once again obtains a Certification Statement in the applicable form, executed and submitted to the Commission by a qualified sponsor, as defined below;
  - b. For the Initial Twelve-Month Period, a "qualified sponsor" shall be an officer of the floor trader's clearing member who has executed Form A, if such officer is a registrant or a principal of a registrant, unless the Respondent ceases executing orders for their own account and commences executing orders for customers, as provided by subparagraph c. below. During the Initial Twelve Month Period, if the Respondent is executing orders for customers, and after the Initial Twelve-Month Period, a "qualified sponsor" shall be the Respondent's employer or, if he has no employer, another floor broker who has executed Form B;
  - c. At the commencement of the Initial Twelve Month Period, each Respondent may only trade for his own account as a floor trader as defined in Section 4e of the Act, 7 U.S.C. § 6e, and as defined under Sections 1.3(x) of the Regulations, 17 C.F.R. § 1.3(x), in accordance with Section 3.60(b)(2) of the Regulations, 17 C.F.R. §3.60(b)(2); provided however that if during the Initial Twelve-Month Period, the Respondent ceases trading for his own account, he may then execute orders for customers pursuant to the terms set forth below. Prior to commencing to execute trades for customers, each time he commences to do so after trading for his own account, the Respondent shall (1) provide at least two weeks' advance written notice to the Director of the Commission's Division of Enforcement and to his current Sponsor; (2) provide the

required notice of termination of his current sponsorship, executed by the sponsor, and submit a new Certification Statement Form B executed by a qualified sponsor; and (3) notify his futures commission merchant (“FCM”) in writing that he has ceased trading for his own account and provide a copy of that notice to his new sponsor. To resume trading for his own account during the Initial Twelve-Month Period, the Respondent shall cease trading directly or indirectly for customers and shall (1) provide at least two weeks advance written notice to the Director of the Commission’s Division of Enforcement and to his current Sponsor; (2) provide the required notice of termination of his current sponsorship, executed by the sponsor, and submit a new Certification Statement Form A executed by a qualified sponsor; and (3) provide signed and dated letters or statements from his customers to his new sponsor evidencing that the Respondent has ceased executing trades for their accounts;

- d. If, during the Initial Twelve-Month Period, any of the Respondents is trading for his own account, that Respondent shall clear all trades through the FCM at which his sponsor is an officer;
- e. Within three business days of opening an account for a customer or accepting an order for a new customer, each Respondent shall provide all of his customers, to the extent he is executing orders for customers, a statement notifying them of his restricted registration (the “notification statement”). Respondent shall also provide a copy of each of the signed notification statements to the sponsor within five business days from the date on which it is signed and the sponsor will periodically verify that the sponsor has received all such notification statements by reviewing Respondent's trading cards, records of customer accounts and customer orders, and any other necessary trading and customer-related records;
- f. Each Respondent shall not serve on any disciplinary committee, arbitration panel, oversight panel or governing board of any self-regulatory organization (“SRO”) registered or subject to regulation by the Commission;
- g. Each Respondent shall not directly or indirectly act as a principal, partner, officer, or branch office manager of any entity registered or required to be registered with the Commission; each Respondent shall not directly or indirectly act in any supervisory capacity over anyone registered or required to be registered with the Commission;
- h. The Certification Statement will become part of each Respondent’s registration file, and shall be a public document and may be made available to any SRO and state and federal governmental entities;
- i. Each Respondent shall send written notification to the Membership Department of all exchanges where he has floor trading privileges that his

registration is subject to conditions. Such written notification shall include a copy of the Order and the Certification Statement.

- j. If the Commission, NFA or any other SRO or a law enforcement agency or regulatory agency institutes a proceeding charging any of the Respondents with violation of the Act, the Regulations, the rules or requirements of NFA or any other SRO, the terms of the Order or a disciplinary offense as defined in Section 1.63(a)(6) of the Regulations, the Respondent shall notify Sponsor, and the Respondent and Sponsor shall immediately notify the Commission and NFA in writing of such action;
  - k. Each Respondent's registration shall be automatically suspended if, while registered with the Commission and subject to the Certification Statement, he is charged with a disciplinary offense as defined in Section 1.63(a)(6) of the Regulations, 17 C.F.R. § 1.63(a)(6), except that, as to offenses defined in Section 1.63(a)(6)(i)(C) of the Regulations, suspension shall occur if fines aggregating \$5,000 or more are imposed during the period of these restrictions rather than during a calendar year;
  - l. If a Respondent's registration is automatically suspended, the period of suspension shall terminate six months after the date of the suspension, unless the Commission files within that period a Notice of Intent to Suspend, Revoke or Restrict Registration pursuant to Section 3.60(a) of the Regulations, 17 C.F.R. § 3.60(a), pursuant to Section 6c or 6(c) of the Act, 7 U.S.C. §§ 13a-1 or 9. If such Notice or Complaint is filed within the six-month period, his registration shall be suspended, until a final order is entered resolving all issues arising under such Notice or Complaint;
  - m. Within five days after Sponsor notifies any of the Respondents in writing that he is terminating his sponsorship of that Respondent for any reason, the Respondent and Sponsor will each file with the Director of the Commission's Division of Trading and Markets, the NFA and the Membership Department of the exchange where Respondent has trading privileges, a written notice of such termination. Such written notice shall fully set out the reasons that caused the Sponsor to terminate the supervision; and
  - n. Each Respondent acknowledges that failure to comply with the Order shall constitute a violation of the Order and may subject him to administrative or injunctive proceedings, pursuant to the Act; and
8. The Respondents are directed to comply with their undertakings:
- a. neither the Respondents nor any of their agents or employees shall take any action or make any public statement denying, directly or indirectly,

any findings or conclusions in the Order, or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision affects the Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. The Respondents shall take all steps necessary to ensure that his agents or employees, if any, understand and comply with this undertaking.

- b. to cooperate fully with the Commission's Division of Enforcement in this proceeding and any investigation, civil litigation and administrative proceeding related to this proceeding by, among other things: (i) responding promptly, completely, and truthfully to any inquiries or requests for information; (ii) providing authentication of documents; (iii) testifying completely and truthfully; and (iv) not asserting privileges under the Fifth Amendment of the United States Constitution.

The provisions of this Order shall be effective on this date.

By the Commission

---

Jean A. Webb  
Secretary to the Commission  
Commodity Futures Trading  
Commission

Dated: January 10, 2001

[FORM A]

SUPPLEMENTAL SPONSOR CERTIFICATION STATEMENT  
FOR SUPERVISOR

Registrant: Philip Selby

1. I, \_\_\_\_\_, am \_\_\_\_\_ of \_\_\_\_\_,  
(name) (title) (FCM name)  
a futures commission merchant registered with the Commodity Futures Trading Commission (“Commission”). I am an officer of [name of FCM] and [am registered with the Commodity Futures Trading Commission as a [Registered Capacity] and/or am a principal of [FCM]
2. I agree to assume responsibility for supervising the activities of Philip Selby (“Selby” or the “Registrant”) while acting as a floor trader and for the Registrant’s compliance with the conditions and restrictions imposed on Selby’s registration as a floor broker by the Commission in *In re Merolla, et. al.*, CFTC Docket No. \_\_\_\_\_.
3. I will obtain a copy of the Commission’s Order placing restrictions on the Registrant’s registration as a floor broker (“the Commission’s Order”) in *In re Merolla, et. al.*, CFTC Docket No. \_\_\_\_\_ within on week of issuance of the Commission Order or by the time I execute this Supplemental Sponsor Certification Statement (“Certification Statement”).
4. Selby shall not directly or indirectly act as principal, partner, officer, director, or branch office manager of any entity registered or required to be registered under the Act or the Commission’s regulations promulgated thereunder (the “Regulations”).
5. Selby shall not directly or indirectly exercise supervisory authority over any person registered or required to be registered under the Act or the Regulations.
6. Selby shall not serve on any disciplinary committee, arbitration panel, oversight panel or governing board of the National Futures Association (“NFA”) or any other self-regulatory organization (“SRO”) subject to regulation by the Commission for such period as his registration is conditioned.
7. I will review Selby’s trading cards and other trading records at least on a weekly basis, and ensure that Selby has not, among other things, directly or indirectly traded on behalf of customers.
8. I will observe Selby’s trading on the floor at random times at least on a weekly basis.
9. I will keep a log of all reviews of trading records and observations of trading on the floor and make such logs available immediately upon request to any representative of the Commission, NFA or exchange where the Registrant has trading privileges, and I will immediately confer with Selby if I have any questions or concerns .

10. I will promptly investigate any act or failure to act by Selby which may violate the Act, the Regulations, the Commission's Orders, the rules of requirements of NFA or any other SRO, or exchange by-laws, rules, regulations, or resolutions, including, but not limited to, violations of trading practice and recordkeeping requirements.

11. I will bring to Selby's attention any act or failure to act by Selby which appears to violate the Act, the Regulations, the Commission's Orders, any rules or requirements of NFA or any SRO, or exchange by-laws, rules, regulations, or resolutions.

12. I will keep a record of all communications to Selby under paragraphs 9 and 11 of this Certification Statement, and I will keep a detailed record of the time, place, and content of each such communication, including what was communicated, who received or witnessed the communication, and what Selby said and did in relation to such communication. I will, immediately upon request, make this record available to any representative of the Commission, the NFA or exchange where the Registrant has trading privileges.

13. I will fully cooperate with any investigation or inquiry relating to Selby conducted by the Commission, the NFA or exchange where Selby has trading privileges.

14. In the event that Selby seeks to resume trading for his own account after having traded directly or indirectly for customers at any time during the twelve month period, beginning six months after the third Monday after the entry of the Commission Order, I will ensure, prior to his resumption of trading for his own account, that Selby has provided me with signed and dated letters or statements from his customers evidencing that Selby has ceased executing trades for their accounts.

15. If the Commission, NFA or any other SRO, or a law enforcement agency or regulatory agency institutes a proceeding charging Selby with violating the Act, Commission regulations, the rules or requirements of NFA or any other SRO, the terms of the Order or a disciplinary offense as defined in Commission Regulation 1.63(a)(6), Selby shall notify me and I shall immediately notify the Commission and NFA in writing of such action.

16. I may cease acting as a Registrant's sponsor at any time by notifying the Registrant, Chief Operating Officer of the exchange where the Registrant has floor trading privileges, NFA and the Director of the Division of Trading and Markets of the Commission in writing, sent certified mail, postage prepaid. Such written communication that I will cease acting as the Registrant's supervisor shall fully set out the reasons which caused me to terminate such supervision. In any event, this agreement to supervise shall terminate no later than the date the Registrant becomes registered without restrictions or the date I am notified in writing by the Registrant that he has filed a superceding Certification Statement with the Commission.

17. I am not subject to a pending adjudicatory proceeding pursuant to Sections 6(c), 6(d), 6c, 6d, 8a, or 9 of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 9, 13b, 13a-1, 13a-2, 12a or 13 (1994).



[FORM B]

SUPPLEMENTAL SPONSOR CERTIFICATION STATEMENT  
FOR SUPERVISOR

Registrant: Philip Selby

1. I, \_\_\_\_\_, am \_\_\_\_\_ of \_\_\_\_\_,  
(name) (title) (name of employer or if the  
registrant is not employed, name of another floor broker) registered with the Commodity Futures  
Trading Commission ("Commission") as a \_\_\_\_\_.
2. I agree to assume responsibility for supervising the activities of Philip Selby ("Selby" or  
the "Registrant") while acting as a floor broker and for the Registrant's compliance with the  
conditions and restrictions imposed on Selby's registration as a floor broker by the Commission  
in *In re Merolla, et. al.*, CFTC Docket No. \_\_\_\_\_.
3. I will obtain a copy of the Commission's Order placing restrictions on the Registrant's  
registration as a floor broker and floor trader ("the Commission's Order") in *In re Merolla, et.  
al.*, CFTC Docket No. \_\_\_\_\_ within one week of issuance of the Commission Order or by  
the time I execute this Supplemental Sponsor Certification Statement ("Certification  
Statement").
4. Selby shall not directly or indirectly act as principal, partner, officer, director, or branch  
office manager of any entity registered or required to be registered under the Commodity  
Exchange Act, as amended, (the "Act") or the Commission's regulations promulgated thereunder  
(the "Regulations").
5. Selby shall not directly or indirectly exercise supervisory authority over any person  
registered or required to be registered under the Act or the Regulations.
6. Selby shall not serve on any disciplinary committee, arbitration panel, oversight panel or  
governing board of the National Future's Association ("NFA") or any other self-regulatory  
organization ("SRO") subject to regulation by the Commission for such period as his registration  
is conditioned.
7. Prior to Selby commencing to execute orders for customers, upon cessation of trading for  
his own account during the period of twelve months, beginning no sooner than six months after  
the third Monday after the entry of the Commission Order (the "Initial Twelve-Month Period"), I  
shall ensure that I have received from Selby a copy of the written notice he provided to his  
futures clearing merchant stating that he had ceased trading for his own account.
8. I will review Selby's trading cards and customer order tickets at least on a weekly basis,  
and if and while I am sponsor at any time during the Initial Twelve-Month Period, I will ensure  
that Selby is not trading directly or indirectly for his own account while executing orders for  
customers.

9. I will observe Selby's trading on the floor at random times at least on a weekly basis.
10. I will keep a log of all reviews of trading records and observations of trading on the floor and make such logs available immediately upon request to any representative of the Commission, NFA or exchange where the Registrant has trading privilege, and I will immediately confer with Selby if I have any questions or concerns.
11. I shall maintain a separate file of all correspondence and memoranda of telephone calls concerning problems, complaints, disputes or claims arising from or related to Selby's handling of customer trades and will make such file available for inspection by the Commission and NFA.
12. I shall discuss monthly with Selby any questions, problems, complaints, disputes or claims of which the Sponsor is aware arising from or related to Selby's handling of any customer trades.
13. I will promptly investigate any act or failure to act by Selby which may violate the Act, the Regulations, the Commission's Order, the rules or requirements of NFA or any other SRO, or exchange by-laws, rules, regulations, or resolutions, including, but not limited to, violations of trading practice and recordkeeping requirements.
14. I will bring to Selby's attention any act or failure to act by Selby which appears to violate the Act, the Regulations, the Commission's Order, any rules or requirements of NFA or any SRO or exchange by-laws, rules, regulations, or resolutions.
15. I will keep a record of all communications with Selby under paragraphs 10, 11, 12 and 14 of this Certification Statement, and I will keep a detailed record of the time, place, and content of each such communication, including what was communicated, who received or witnessed the communication, and what Selby said and did in relation to such communication. I will, immediately upon request, make this record available to any representative of the Commission, the NFA or exchange where the Registrant has trading privileges.
16. I will fully cooperate with any investigation or inquiry relating to Selby conducted by the Commission, the NFA or exchange where Selby has trading privileges.
17. I will obtain from Selby a copy of the statement sent to his customers notifying them of Selby's restricted registration (the "notification statement") as set forth in Appendix A of this Certification Statement. Selby shall send this statement via Registered Mail, Return Receipt Requested, to all customers. Selby shall be required to provide a copy of the Return Receipts from his customers to me within five business days from the date Selby receives them and I will periodically review Selby's trading cards, records of customer accounts and customer orders, and any other necessary trading and customer-related records to verify that I have received all Return Receipts.
18. If the Commission, NFA or any other SRO, or a law enforcement agency or regulatory agency institutes a proceeding charging Selby with violating the Act, Commission regulations, the rules or requirements of NFA or any other SRO, the terms of the Order or a disciplinary

offense as defined in Commission Regulation 1.63(a)(6), Selby shall notify me and I shall immediately notify the Commission and NFA in writing of such action.

19. I may cease acting as a Registrant's sponsor at any time by notifying the Registrant, Chief Operating Officer of the exchange where the Registrant has floor trading privileges, NFA and the Director of the Division of Trading and Markets of the Commission in writing, sent certified mail, postage prepaid. Such written communication that I will cease acting as the Registrant's supervisor shall fully set out the reasons which caused me to terminate such supervision. In any event, this agreement to supervise shall terminate no later than the date the Registrant becomes registered without restrictions or the date I am notified in writing by the Registrant that he has filed a superceding Certification Statement with the Commission.

20. I am not subject to a pending adjudicatory proceeding pursuant to Sections 6(c), 6(d), 6c, 6d, 8a, or 9 of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 9, 13b, 13a-1, 13a-2, 12a or 13 (1994).

21. I am not barred from service on self-regulatory organization governing boards or committees based on disciplinary history in accordance with Section 1.63 of the Regulations 17 C.F.R. §1.63.

22. I acknowledge that this Certification Statement shall be a public document and may be made available to, among others, all contract markets, the NFA, SROs, and state and federal governmental entities.

23. I acknowledge that my failure to fulfill my obligation to supervise the Registrant shall be deemed a violation of Section 3.60(1) of the Regulations, 17 C.F.R. §3.60(1).

\_\_\_\_\_  
(Signature)

(name): \_\_\_\_\_

NFA No.: \_\_\_\_\_

(Title name): \_\_\_\_\_

(Address): \_\_\_\_\_

\_\_\_\_\_  
(Phone #): \_\_\_\_\_

Dated: \_\_\_\_\_

State of New York County of \_\_\_\_\_

Signed and sworn to before me

This \_\_\_\_ day of \_\_\_\_\_, 2000

\_\_\_\_\_  
Notary Public

## APPENDIX A

This notice is given to you as a customer of Philip Selby ("Selby").

On \_\_\_\_\_, the Commodity Futures Trading Commission (the "Commission") filed an Order Accepting the Offer of Settlement of Selby (the "Order") in an administrative action (CFTC Docket No. 01-07). Without admitting or denying any of the allegations contained in that administrative action, Selby agreed to this Order.

The Order, attached hereto, requires the appointment of a sponsor, to supervise Selby in connection with his restricted registration. The current sponsor is \_\_\_\_\_. Any questions, comments or concerns pertaining to the Order may be addressed to \_\_\_\_\_.

Dated: \_\_\_\_\_

[FORM A]

SUPPLEMENTAL SPONSOR CERTIFICATION STATEMENT  
FOR SUPERVISOR

Registrant: Paul Merolla

1. I, \_\_\_\_\_, am \_\_\_\_\_ of \_\_\_\_\_,  
(name) (title) (FCM name)  
a futures commission merchant registered with the Commodity Futures Trading Commission (“Commission”). I am an officer of [name of FCM] and [am registered with the Commodity Futures Trading Commission as a [Registered Capacity] and/or am a principal of [FCM]
2. I agree to assume responsibility for supervising the activities of Paul Merolla (“Merolla” or the “Registrant”) while acting as a floor trader and for the Registrant’s compliance with the conditions and restrictions imposed on Merolla’s registration as a floor broker by the Commission in *In re Merolla, et. al.*, CFTC Docket No. \_\_\_\_\_.
3. I will obtain a copy of the Commission’s Order placing restrictions on the Registrant’s registration as a floor broker (“the Commission’s Order”) in *In re Merolla, et. al.*, CFTC Docket No. \_\_\_\_\_ within on week of issuance of the Commission Order or by the time I execute this Supplemental Sponsor Certification Statement (“Certification Statement”).
4. Merolla shall not directly or indirectly act as principal, partner, officer, director, or branch office manager of any entity registered or required to be registered under the Act or the Commission’s regulations promulgated thereunder (the “Regulations”).
6. Merolla shall not directly or indirectly exercise supervisory authority over any person registered or required to be registered under the Act or the Regulations.
6. Merolla shall not serve on any disciplinary committee, arbitration panel, oversight panel or governing board of the National Futures Association (“NFA”) or any other self-regulatory organization (“SRO”) subject to regulation by the Commission for such period as his registration is conditioned.
7. I will review Merolla’s trading cards and other trading records at least on a weekly basis, and ensure that Merolla has not, among other things, directly or indirectly traded on behalf of customers.
8. I will observe Merolla’s trading on the floor at random times at least on a weekly basis.
9. I will keep a log of all reviews of trading records and observations of trading on the floor and make such logs available immediately upon request to any representative of the Commission, NFA or exchange where the Registrant has trading privileges, and I will immediately confer with Merolla if I have any questions or concerns .

10. I will promptly investigate any act or failure to act by Merolla which may violate the Act, the Regulations, the Commission's Orders, the rules or requirements of NFA or any other SRO, or exchange by-laws, rules, regulations, or resolutions, including, but not limited to, violations of trading practice and recordkeeping requirements.

11. I will bring to Merolla's attention any act or failure to act by Merolla which appears to violate the Act, the Regulations, the Commission's Orders, any rules or requirements of NFA or any SRO, or exchange by-laws, rules, regulations, or resolutions.

12. I will keep a record of all communications to Merolla under paragraphs 9 and 11 of this Certification Statement, and I will keep a detailed record of the time, place, and content of each such communication, including what was communicated, who received or witnessed the communication, and what Merolla said and did in relation to such communication. I will, immediately upon request, make this record available to any representative of the Commission, the NFA or exchange where the Registrant has trading privileges.

13. I will fully cooperate with any investigation or inquiry relating to Merolla conducted by the Commission, the NFA or exchange where Merolla has trading privileges.

14. In the event that Merolla seeks to resume trading for his own account after having traded directly or indirectly for customers at any time during the twelve month period, beginning six months after the third Monday after the entry of the Commission Order, I will ensure, prior to his resumption of trading for his own account, that Merolla has provided me with signed and dated letters or statements from his customers evidencing that Merolla has ceased executing trades for their accounts.

15. If the Commission, NFA or any other SRO, or a law enforcement agency or regulatory agency institutes a proceeding charging Merolla with violating the Act, Commission regulations, the rules or requirements of NFA or any other SRO, the terms of the Order or a disciplinary offense as defined in Commission Regulation 1.63(a)(6), Merolla shall notify me and I shall immediately notify the Commission and NFA in writing of such action.

16. I may cease acting as a Registrant's sponsor at any time by notifying the Registrant, Chief Operating Officer of the exchange where the Registrant has floor trading privileges, NFA and the Director of the Division of Trading and Markets of the Commission in writing, sent certified mail, postage prepaid. Such written communication that I will cease acting as the Registrant's supervisor shall fully set out the reasons which caused me to terminate such supervision. In any event, this agreement to supervise shall terminate no later than the date the Registrant becomes registered without restrictions or the date I am notified in writing by the Registrant that he has filed a superceding Certification Statement with the Commission.

17. I am not subject to a pending adjudicatory proceeding pursuant to Sections 6(c), 6(d), 6c, 6d, 8a, or 9 of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 9, 13b, 13a-1, 13a-2, 12a or 13 (1994).

18. I am not barred from service on self-regulatory organization governing boards or committees based on disciplinary history in accordance with Section 1.63 of the Regulations 17 C.F.R. §1.63.

19. I acknowledge that this Certification Statement shall be a public document and may be made available to, among others, all contract markets, the NFA, SROs, and state and federal governmental entities.

20. I acknowledge that my failure to fulfill my obligation to supervise the Registrant shall be deemed a violation of Section 3.60(1) of the Regulations, 17 C.F.R. §3.60(1).

\_\_\_\_\_  
(Signature)  
(name): \_\_\_\_\_  
NFA No.: \_\_\_\_\_  
(FCM name): \_\_\_\_\_  
(FCM address): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(FCM phone #): \_\_\_\_\_

Dated:

State of New York  
County of \_\_\_\_\_

Signed and sworn to before me  
This \_\_\_\_ day of \_\_\_\_\_, 2000

\_\_\_\_\_  
Notary Public

[FORM B]

SUPPLEMENTAL SPONSOR CERTIFICATION STATEMENT  
FOR SUPERVISOR

Registrant: Paul Merolla

1. I, \_\_\_\_\_, am \_\_\_\_\_ of \_\_\_\_\_,  
(name) (title) (FCM name)

a futures commission merchant registered with the Commodity Futures Trading Commission ("Commission"). I am an officer of [name of FCM] and [am registered with the Commodity Futures Trading Commission as a [Registered Capacity] and/or am a principal of [FCM]

2. I agree to assume responsibility for supervising the activities of Paul Merolla ("Merolla" or the "Registrant") while acting as a floor trader and for the Registrant's compliance with the conditions and restrictions imposed on Merolla's registration as a floor broker by the Commission in *In re Merolla, et. al.*, CFTC Docket No. \_\_\_\_\_.

3. I will obtain a copy of the Commission's Order placing restrictions on the Registrant's registration as a floor broker ("the Commission's Order") in *In re Merolla, et. al.*, CFTC Docket No. \_\_\_\_\_ within on week of issuance of the Commission Order or by the time I execute this Supplemental Sponsor Certification Statement ("Certification Statement").

4. Merolla shall not directly or indirectly act as principal, partner, officer, director, or branch office manager of any entity registered or required to be registered under the Act or the Commission's regulations promulgated thereunder (the "Regulations").

7. Merolla shall not directly or indirectly exercise supervisory authority over any person registered or required to be registered under the Act or the Regulations.

8. Merolla shall not serve on any disciplinary committee, arbitration panel, oversight panel or governing board of the National Futures Association ("NFA") or any other self-regulatory organization ("SRO") subject to regulation by the Commission for such period as his registration is conditioned.

9. Prior to Merolla commencing to execute orders for customers, upon cessation of trading for his own account during the period of twelve months, beginning no sooner than six months after the third Monday after the entry of the Commission Order (the "Initial Twelve-Month Period"), I shall ensure that I have received from Merolla a copy of the written notice he provided to his futures clearing merchant stating that he had ceased trading for his own account.

8. I will review Merolla's trading cards and customer order tickets at least on a weekly basis, and if and while I am sponsor at any time during the Initial Twelve-Month Period, I will ensure that Merolla is not trading directly or indirectly for his own account while executing orders for customers.

9. I will observe Merolla's trading on the floor at random times at least on a weekly basis.

10. I will keep a log of all reviews of trading records and observations of trading on the floor and make such logs available immediately upon request to any representative of the Commission, NFA or exchange where the Registrant has trading privileges, and I will immediately confer with Merolla if I have any questions or concerns.
11. I shall maintain a separate file of all correspondence and memoranda of telephone calls concerning problems, complaints, disputes or claims arising from or related to Merolla's handling of customer trades and will make such file available for inspection by the Commission and NFA.
12. I shall discuss monthly with Merolla any questions, problems, complaints, disputes or claims of which the Sponsor is aware arising from or related to Merolla's handling of any customer trades.
13. I will promptly investigate any act or failure to act by Merolla which may violate the Act, the Regulations, the Commission's Orders, the rules of requirements of NFA or any other SRO, or exchange by-laws, rules, regulations, or resolutions, including, but not limited to, violations of trading practice and recordkeeping requirements.
14. I will bring to Merolla's attention any act or failure to act by Merolla which appears to violate the Act, the Regulations, the Commission's Orders, any rules or requirements of NFA or any SRO, or exchange by-laws, rules, regulations, or resolutions.
15. I will keep a record of all communications with Merolla under paragraphs 10, 11, 12 and 14 of this Certification Statement, and I will keep a detailed record of the time, place, and content of each such communication, including what was communicated, who received or witnessed the communication, and what Merolla said and did in relation to such communication. I will, immediately upon request, make this record available to any representative of the Commission, the NFA or exchange where the Registrant has trading privileges.
16. I will fully cooperate with any investigation or inquiry relating to Merolla conducted by the Commission, the NFA or exchange where Merolla has trading privileges.
17. I will obtain from Merolla a copy of the statement sent to his customers notifying them of Merolla's restricted registration (the "notification statement") as set forth in Appendix A of this Certification Statement. Merolla shall send this statement via Registered Mail, Return Receipt Requested to all customers, Merolla shall be required to provide a copy of the Return Receipts from his customers to me within five business days from the date Merolla receives them and I will periodically review Merolla's trading cards, records of customer accounts and customer orders, and any other necessary trading and customer-related records to verify that I have received all Return Receipts.
18. If the Commission, NFA or any other SRO, or a law enforcement agency or regulatory agency institutes a proceeding charging Merolla with violating the Act, Commission regulations, the rules or requirements of NFA or any other SRO, the terms of the Order or a disciplinary



## APPENDIX A

This notice is given to you as a customer of Paul Merolla ("Merolla").

On \_\_\_\_\_, the Commodity Futures Trading Commission (the "Commission") filed an Order Accepting the Offer of Settlement of Merolla (the "Order") in an administrative action (CFTC Docket No. 01-07). Without admitting or denying any of the allegations contained in that administrative action, Merolla agreed to this Order.

The Order, attached hereto, requires the appointment of a sponsor, to supervise Merolla in connection with his restricted registration. The current sponsor is \_\_\_\_\_. Any questions, comments or concerns pertaining to the Order may be addressed to \_\_\_\_\_.

Dated: \_\_\_\_\_