



### III.

The Commission finds the following:

#### A. SUMMARY

During July and August 1998, Mock, while employed as an associated person of a registered introducing broker, executed trades in customer accounts, and transferred existing trades into customer accounts, without authorization from the customers, in violation of Section 4b(a)(i) and (iii) of the Act and Regulation 166.2.

#### B. RESPONDENT

**Dale Luther Mock.** From June 1997 to September 1998 Mock was registered with the Commission as an associated person of a registered introducing broker. He was also registered with the Commission from September 1984 to May 1990 as a principal and associated person of Diamond M Futures and Options Inc., an introducing broker. He is not currently registered with the Commission in any capacity.

#### C. FACTS

From June 1997 through September 4, 1998, Mock was employed as an associated person of an introducing broker at its Greeley, Colorado Branch Office. Mock did not have written power of attorney to execute trades in any of his customers' accounts, and he knew that he was not permitted to engage in discretionary trading in any customer account.

In July and August 1998 Mock executed nine trades in six of his customers' accounts without first obtaining their authorization to make those trades. In two instances in which his customers complained about unauthorized trades in their accounts, Mock arranged to transfer the trades to the accounts of other unsuspecting customers. On September 4, 1998, promptly upon discovery of Mock's unauthorized trading, the introducing broker's management terminated Mock as an associated person.<sup>2</sup>

#### D. LEGAL DISCUSSION

An associated person engages in fraudulent unauthorized trading in violation of Section 4b of the Act when he willfully "executes trades without the customer's permission or contrary to the customers' trading instructions." In re Interstate Securities Corp., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,295 at 38,955 (CFTC June 1, 1992), aff'd sub nom. Crothers v. CFTC, 33 F.3d 405 (4<sup>th</sup> Cir. 1994); Haltmier v. CFTC, 554 F.2d 556 (2d Cir. 1977). The required scienter element of a Section 4b violation is satisfied in the context of unauthorized trading where the respondent "acted deliberately, knowing that his acts were unauthorized and

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<sup>2</sup> After investigating Mock's unauthorized trading, the introducing broker reimbursed its customers for their losses attributable to the unauthorized trades, including the transferred trades, which totaled \$38,454.50. The introducing broker, in turn, was reimbursed by its insurance carrier under an insuring clause covering employee dishonesty.

contrary to instructions." *Id.* at 562. Proof of an evil motive is unnecessary, and a showing that the respondent acted with reckless disregard for his duties under the Act is sufficient for a finding of fraud. Hammond v. Smith Barney Harris Upham & Co., [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,617 at 36,659 (CFTC March 1, 1990).

Mock is a former principal of an introducing broker and an experienced associated person. As such, he was well aware of the legal limitations on his trading authority. His transfer of initially unauthorized trades into the accounts of other, unsuspecting customers is an aggravating factor that is highly probative of an intent to defraud. Thus, by effectuating unauthorized trades in his customers' accounts, and by transferring trades made for customers' accounts into other customers' accounts, Mock violated Section 4b(a)(i) and (iii) of the Act.

Regulation 166.2 makes it unlawful for an associated person to effect a transaction in a customer's commodity interest account unless (a) the customer has specifically authorized the transaction in advance, or (b) the customer has executed a written authorization (e.g., a "power of attorney") for the associated person to trade without the customer's specific authorization. A transaction cannot be "specifically authorized" within the meaning of Regulation 166.2(a) "unless the customer selects the type of transaction (purchase or sale), the commodity interest, and the exact amount of the commodity interest, in *advance* of the transaction." [Italics in original] In re Heitschmidt [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,263 at 42,204 (CFTC Nov. 9, 1994).

Because none of Mock's customers executed a written power of attorney authorizing him to trade their accounts on a discretionary basis, subsection (b) of Regulation 166.2 does not permit his trading. Mock did not have specific, oral authority to make the trades and transfer trades in question, and he therefore also cannot seek refuge in subsection (a). Even assuming that Mock were able to show that one or more of his customers orally granted him general authority to trade, such oral grants of general authority do not satisfy the specificity requirements of Regulation 166.2(b) and are void. *Id.* Accordingly, Mock effectuated each of the original trades and transfer trades in question in violation of the unauthorized trading prohibition of Regulation 166.2.

#### IV.

#### OFFER OF SETTLEMENT

Mock has submitted an Offer of Settlement in which, without admitting or denying the findings herein, he acknowledges service of the Complaint and receipt of this Order and admits the jurisdiction of the Commission with respect to the matters set forth in the Complaint and this Order; and waives: 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, any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, and all claims which he 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, and Part 148 of the

Commission Regulations, 17 C.F.R. §§ 148.1, et seq. (2000), relating to, or arising from this action.

Mock stipulates that the record basis on which this Order is entered consists solely of the Complaint and the findings in this Order, the entry of which he has consented to in the Offer. He consents to the Commission's issuance of this Order, which makes findings, as set forth herein, and orders that: (1) Mock cease and desist from violating the provisions of the Act he has been found to have violated; (2) Mock be prohibited from trading on or subject to the rules of any contract market, and that all contract markets refuse him trading privileges, beginning the third Monday after the date of this Order and continuing for a period of two years, except that he is permitted to engage in bona fide hedging, as defined by Commission Regulation 1.3(z), in connection with a commercial enterprise that he owns or controls; (3) Mock pay a contingent civil monetary penalty of up to \$40,000 pursuant to a ten year payment plan as provided below; and (4) Mock comply with his undertakings as set forth in the Offer and incorporated in this Order: (a) never to apply for registration or seek exemption from registration with the Commission in any capacity, except as provided for in Regulation 4.14(a)(9), and never to engage in any activity requiring registration or exemption from registration, unless such exemption is pursuant to Regulation 4.14(a)(9), and (b) not to take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or finding or conclusion in this Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis.

## V.

### FINDING OF VIOLATIONS

Solely on the basis of Mock's consent, as evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Mock violated Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. § 6b (a)(i) and (iii) (1994), and Section 166.2 of the Commission's Regulations, 17 C.F.R. § 166.2 (2000).

## VI.

### ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Mock shall cease and desist from violating Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. § 6b (a)(i) and (iii) (1994), and Section 166.2 of the Commission's Regulations, 17 C.F.R. § 166.2 (2000).
- B. Mock be prohibited from trading on or subject to the rules of any contract market, and that all contract markets refuse him trading privileges, beginning the third Monday after the date of this Order and continuing for a period of two years, except that he is permitted

to engage in bona fide hedging, as defined by Commission Regulation 1.3(z), in connection with a commercial enterprise that he owns or controls.

C. Mock shall pay a contingent civil monetary penalty in the amount of up to forty thousand dollars (\$40,000) pursuant to a payment plan. Mock shall make an annual civil monetary penalty payment ("Annual CMP Payment") as directed by a monitor designated by the Commission ("the Monitor")<sup>3</sup> on or before July 31 of each calendar year, starting in calendar year ~~2002~~ and continuing for ten years (or until the civil monetary penalty is paid in full, if that happens first).<sup>4</sup> Mock shall make each such Annual CMP Payment by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and addressed to Dennese Posey, or her successor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, N.W., Washington D.C. 20581 under cover of a letter that identifies Mock and the name and the docket number of this proceeding. A copy of the cover letter and the form of payment shall be simultaneously transmitted to the Monitor, and to the Director, Division of Enforcement, Commodity Futures Trading Commission, at 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581.

*Should be  
2002  
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D. The amount of Mock's Annual CMP Payment shall consist of a portion of: (1) the adjusted gross income (as defined by the Internal Revenue Code) earned or received by Mock during the course of the preceding calendar year; plus (2) all other net cash receipts, net cash entitlements or net proceeds of non-cash assets received by Mock during the course of the preceding calendar year. The Annual CMP Payment will be determined as follows:

Where Adjusted Gross Income plus Net Cash is:	Percent of Total to be paid by Mock	Receipts Total:
Up to \$25,000	0%	
\$25,000 - \$50,000	20% of the amount above \$25,000	

<sup>3</sup> Mock agrees that the National Futures Association is hereby designated as the Monitor for a period of ten years commencing as of the date of the entry of the Order. Notice to the Monitor shall be made to Daniel A. Driscoll, Esq., Executive Vice President, Compliance, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, IL 60606.

<sup>4</sup> Mock's ten-year CMP period shall run from January 1, 2001 through December 31, 2010. Annual CMP payments for a calendar year shall take place by July 31 of the following year. Therefore, the final Annual CMP payment for the year 2010 will occur on or before July 31, 2011. For ten years, based on the information contained in Mock's sworn financial statements, Mock's tax returns and other financial statements and records provided to the Monitor, the Monitor shall calculate the total amount of the civil monetary penalty to be paid by Mock for that year. On or before June 30 of each year and starting in the calendar year 2002 and concluding in the calendar year 2011, the Monitor shall send written notice to Mock with instructions to pay by no later than July 31 of that year the amount of the civil monetary penalty pursuant to the payment instructions provided in subparagraph 2 above.

\$50,000- \$100,000	20% of the amount between \$25,000 and \$50,000 plus 30% of the amount between \$50,000 and \$100,000
Above-\$100,000	20% of the amount between \$25,000 and \$50,000 plus 30% of the amount between \$50,000 and \$100,000 plus 40% of the amount over \$100,000.

E. In the event that Mock does not make payments as directed in paragraph C, above, the Commission may bring a proceeding or an action to enforce compliance with this Order and at its option may seek payment of the unpaid Annual CMP payment(s) or immediate payment of the entire amount of the civil monetary penalty required by paragraph B. The only issue Mock may raise in defense of such enforcement action is whether Mock has made the Annual CMP Payment(s) as directed by the Monitor. Any action or proceeding brought by the Commission compelling payment of the Annual CMP Payments, due and owing pursuant to paragraph C, above, or any portion thereof, or any acceptance by the Commission of partial payment of the Annual CMP Payments made by Mock, shall not be deemed a waiver of Mock's obligation to make further payments pursuant to the payment plan, or a waiver of the Commission's right to seek to compel payment of the remaining balance of the civil monetary penalty assessed against Mock.

F. The Commission notes that an order requiring immediate payment of the civil monetary penalty against Mock would be appropriate in this case, but does not impose it based upon Mock's financial condition. Mock acknowledges that the Commission's acceptance of the Offer is conditioned upon the accuracy and completeness of the sworn Financial Statement Mock has provided regarding his financial condition. Mock consents that if at any time following entry of this Order the Division of Enforcement ("Division") of the Commission obtains information indicating that Mock's representations concerning his financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect at the time they were made, the Division may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Mock provided accurate and complete financial information at the time such representations were made; (2) require immediate payment of the full amount of the civil monetary penalty required in paragraph B above; and (3) seek any additional remedies that the Commission would be authorized to impose in this proceeding if Mock's Offer had not been accepted. No other issues shall be considered in connection with this petition other than whether the financial information provided by Mock was fraudulent, misleading, inaccurate or incomplete in any material respect, and whether any additional remedies should be imposed. Mock may not, by way of defense to any such petition concerning the financial information provided by him, contest the validity of or, or the findings in, this Order, assert that payment of a civil monetary penalty should not be ordered, or contest the amount of the civil monetary penalty to be paid. If in such proceeding, the Division petitions for, and the Commission orders, immediate payment of less than the full amount

of the civil monetary penalty, such petition shall not be deemed a waiver of Mock's obligation to pay the remaining balance of the civil monetary penalty assessed against him, pursuant to the payment plan; and

G. Mock shall comply with the following undertakings as set forth in his Offer:

1. Reporting/Disclosure Requirements to be Reviewed by Monitor. Mock shall provide his sworn financial statement, CFTC Form 177, to the Monitor on June 30 and December 31 of each calendar year, starting on December 31, 2001, and continuing through and including ~~June 30, 2012~~. The financial statement shall provide:  
*Dec. 31, 2010*  
*DEM*
  - a. a true and complete itemization of all of Mock's rights, title and interest in (or claimed in) any asset, wherever, however and by whomever held;
  - b. an itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of Mock over the preceding six-month interval; and
  - c. a detailed description of the source and amount of all of Mock' income or earnings, however generated.

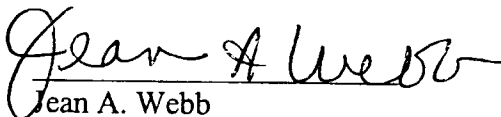
Mock shall also provide the Monitor with complete copies of his signed, individual or joint federal income tax return, including all schedules and attachments thereto (e.g., IRS Forms W-2 and Forms 1099), as well as any filings he is required to submit to any state tax or revenue authority, on or before June 30 of each calendar year or as soon thereafter as the same are filed. In the event Mock moves his residence at any time, he shall provide written notice of his new address to the Monitor and the Commission within ten (10) calendar days thereof.

2. Cooperation. Mock shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all aspects of his Annual Payment. He shall cooperate fully with the Monitor and the Commission, including providing sworn testimony, in explaining his financial income and earnings, status of assets, financial statements, asset transfers, tax returns, and shall provide any information concerning himself as may be required by the Commission. Furthermore, Mock shall provide such additional information and documents with respect thereto as may be requested by the Monitor or the Commission.
3. Fraudulent Transfers. Mock shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any member of the Mock family or any other person for the purpose of concealing such funds or property from the Monitor or the Commission.

4. Registration With The Commission. Mock shall never apply for registration or claim exemption from registration with the Commission in any capacity, and shall never engage in any activity requiring registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Commission Regulations, 17 C.F.R. § 4.14(a)(9); or act as a principal, agent or officer of any person registered, exempted from registration or required to be registered with the Commission, unless such exemption is pursuant to Section 4.14(a)(9) of the Commission Regulations, 17 C.F.R. § 4.14(a)(9); and Mock shall not, beginning on the date of the Order:
- a. 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; or
  - b. directly or indirectly act in any supervisory capacity over anyone registered or required to be registered with the Commission.
- H. Mock agrees that neither Mock nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or finding or conclusion in the Order or creating, or tending to create, the impression that the Complaint or the Order is without a factual basis; provided, however, that nothing in this provision affects Mock's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Mock will undertake all steps necessary to assure that all of his agents and employees under his authority or control understand and comply with this agreement.

Unless otherwise specified, the provisions of this Order shall be effective on this date.

By the Commission.



Jean A. Webb  
Secretary to the Commodity  
Futures Trading Commission

Date: October 10, 2001