

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

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In the Matter of :  
:  
HENRY CHANDLER :  
Freehold, New Jersey, :  
:  
ROBERT FERRAIOLI :  
Howell, New Jersey, :  
:  
MICHAEL HAMMER :  
Manalapan, New Jersey, :  
:  
ERNEST PENNY :  
South Amboy, New Jersey, : CFTC DOCKET NO. 03-02  
:  
TACHO SANDOVAL :  
Jersey City, New Jersey, :  
:  
STEPHEN SEELLENFREUND :  
North Bellmore, New York, :  
:  
WILLIAM WOSNACK :  
Amityville, New York, :  
:  
Respondents. :  
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**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 Respondents Henry Chandler (“Chandler”) and Ernest Penny (“Penny”) have violated Sections 4c(b), 4c(a)(A) and 4c(a)(B) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 6c(b), 6c(a)(A) and 6c(a)(B) (1994), and Sections 1.38, 33.10 (a), (b) and (c) of the Regulations promulgated thereunder (the “Regulations”), 17 C.F.R. §§ 1.38, 33.10 (a), (b) and (c) (2002), 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, 7 U.S.C. §13c(a) (1994) . In addition, the Commission has reason to believe that Respondents Robert Ferraioli (“Ferraioli”), Michael Hammer (“Hammer”),

Tacho Sandoval (“Sandoval”), Stephen Seelenfreund (“Seelenfreund”) and William Wosnack (“Wosnack”) have violated Sections 4c(a)(A) and 4c(a)(B) of the Act, 7 U.S.C. §§ 6c(a)(A) and 6c(a)(B) (1994) and Section 1.38 of the Regulations, 17 C.F.R. § 1.38 (2002). Finally, the Commission also has reason to believe that Sandoval violated Section 4g of the Act, 7 U.S.C. §6g (1994) and Sections 1.31(a) and 1.35(a) of the Regulations, 17 C.F.R. §§ 1.31(a), 1.35(a) (2002). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether these 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, Chandler, Ferraioli, Hammer, Penny, Sandoval, Seelenfreund and Wosnack (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 Remedial 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>

## III.

The Commission finds the following:

### **A. SUMMARY**

From September 27, 1999 through October 5, 1999 (the “relevant period”), Respondents Chandler and Penny fraudulently executed customer gold options trades on the Commodity Exchange, Inc. (“COMEX”), a division of the New York Mercantile Exchange (“NYMEX”), by various means: a) Penny traded ahead of executable customer orders; b) Chandler and Penny fraudulently changed prices on their customers’ executed gold options orders, thereby creating false reports as well as aided and abetted each other’s fraudulent price changes; and c) Penny illegally offset his customer orders. By engaging in fraudulently executed gold option transactions, Chandler and Penny also engaged in noncompetitive trading.

Separate and apart from Chandler’s and Penny’s fraudulent trades, respondents Hammer, Ferraioli, Sandoval, Seelenfreund and Wosnack noncompetitively executed trades during the relevant period. On September 27 and 28, 1999, Hammer noncompetitively executed fifty-nine and Ferraioli noncompetitively executed nineteen of their customers’ gold options orders by falsely recording their execution as having occurred during the one-minute closing period. In

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<sup>1</sup> The Respondents do not consent to the use of the Offers or this Order, or the findings consented to in the Offers as entered in this Order, as the sole basis for any other proceeding brought by the Commission other than a proceeding brought to enforce the terms of this order. Nor do the Respondents consent to the use of the Offers or this Order, or the findings consented to in the Offers as entered in this Order, by any other party in any other proceeding.

actuality, these transactions occurred after the close. Sandoval and Wosnack, trading for their personal accounts, took the opposite side of these seventy-eight noncompetitive trades.

On September 28, 1999, Seelenfreund noncompetitively executed twenty-five of his trades to fill customer orders. Those twenty-five trades were entered into COMEX's On Line Trade Entry System, or "OLTE," for clearing as if these customer trades had been competitively executed on September 27, 1999, but they were not executed until the following day.

Sandoval also failed to maintain and/or produce his September 28, 1999 trading records to the Commission, thereby violating the recordkeeping provisions of the Act and Regulations.

## **B. SETTLING RESPONDENTS**

Henry Chandler, of Freehold, New Jersey, is registered with the Commission as a floor broker and has been a dual trading member<sup>2</sup> of the COMEX since at least April 1983.

Robert Ferraioli, of Howell, New Jersey, is registered with the Commission as a floor broker and has been a dual trading member of the COMEX since October 1997.

Michael Hammer, of Manalapan, New Jersey, is registered with the Commission as a floor broker and has been a dual trading member of the COMEX since April 1984.

Ernest Penny, of South Amboy, New Jersey, is registered with the Commission as a floor broker and has been a dual trading member of the COMEX since October 1988.

Tacho Sandoval, of Jersey City, New Jersey, is registered with the Commission as a floor broker and has been a dual trading member of the COMEX since June 1996.

Stephen Seelenfreund, of North Bellmore, New York, is registered with the Commission as a floor broker and has been a dual trading member of the COMEX since February 1990.

William Wosnack of Amityville, New York is registered with the Commission as a floor broker and has been a dual trading member of the COMEX since January 1985.

## **C. FACTS**

During the relevant period, gold trading volume and volatility increased on the COMEX. In particular, on September 28, 1999, gold futures and options contracts traded in record volume in both the total number of contracts traded and total number of trades executed in the ring.<sup>3</sup>

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<sup>2</sup> Dual trading means the execution of customer orders by a floor broker during the same trading session in which the floor broker executes any trade in the same contract market or registered derivatives transaction execution facility for (1) an account of such floor broker; (2) an account for which such floor broker has trading discretion; or (3) an account controlled by a person with whom such floor broker has a relationship through membership in a broker association. *See* Section 4j(b) of the Act.

<sup>3</sup> For a complete discussion of the increase in volume in the gold futures and options markets during the relevant period, see Division of Trading & Markets ("T&M"), "A Review of Gold Options Trading on September 28, 1999,"

Respondents took advantage of this heightened activity to benefit themselves or others, through the improper trading activity described below.

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

Penny traded gold call options for his personal account, while holding executable customer orders to buy or sell gold call options for the same contract month and strike price, five times during the relevant period.<sup>4</sup> The evidence shows that at the time he placed these five trades, Penny held substantial quantities of executable small-lot customer orders for the same options he was trading for himself and the gold options floor clerks were rapidly receiving more orders that they were conveying to Penny. In those five instances, Penny received a better premium price than his customer received.

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

Chandler and Penny changed the premium prices on their customers' executed gold options orders in a total of six instances - two by Chandler and four by Penny - to the detriment of their customers and to the benefit of the broker trading opposite the customer order for his own account. Chandler and Penny each aided and abetted one of these price changes. 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.

### **Illegal Offsets**

On four separate occasions during the relevant period, Penny filled his customer orders by illegally offsetting<sup>5</sup> customer buy and sell orders opposite accommodating COMEX members trading for their personal accounts. On each of those occasions, he simultaneously held customer orders to buy and sell the same gold options contract. As evidenced by the sequencing of the trades on the trading cards and time and sales data, Penny illegally offset those orders by executing them noncompetitively with an accommodating broker enabling the accommodating broker to realize a profit and thereby depriving Penny's customer of the competitive execution of his order.

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[www.cftc.gov/tm/gold\\_options\\_report031000.htm](http://www.cftc.gov/tm/gold_options_report031000.htm). Also, See the Division of Economic Analysis permanent record data for gold options for the period of September 27, 1999 through October 27, 1999

<sup>4</sup> A COMEX gold futures 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 per option 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.

<sup>5</sup> An illegal offset can occur when a broker noncompetitively matches an equivalent or nearly equivalent quantities of customer buy and sell orders opposite an accommodating trader instead of executing the customer orders by open outcry. Unless executed pursuant to exchange rules, a broker's use of one customer's order to fill another order violates Section 4b(a)(iv) of the Act whether done directly or indirectly.

### **Non-competitive Trading**

During the relevant period, as detailed below, Ferraioli, Hammer, Sandoval, Wosnack and Seelenfreund engaged in non-competitive trading. Hammer noncompetitively executed fifty-nine and Ferraioli noncompetitively executed nineteen trades after the close of trading on September 27 and 28, 1999 opposite Sandoval and Wosnack. On September 28, 1999, Seelenfreund noncompetitively executed twenty-five of his customer orders opposite Hammer and Ferraioli and had them entered into the OLTE to falsely reflect that the transactions had been executed on September 27, 1999. As set forth above, Chandler and Penny engaged in fraudulent trades, which were noncompetitive.

### **Post Close Trading**

On September 27, and 28, 1999, Hammer noncompetitively executed fifty-nine trades after the close of trading of COMEX gold options. On September 27, 1999, Ferraioli noncompetitively executed nineteen trades. Sandoval and Wosnack were the opposite brokers on these seventy-eight trades, executing twenty-nine and forty-nine trades respectively, for their personal accounts opposite Hammer's and Ferraioli's customer orders.

These seventy-eight trades were purportedly executed to fill customer orders during the one-minute closing period on September 27 and 28. The evidence shows, however, that although the orders were received during COMEX trading hours, the trades were not executed until after the close of trading.

### **As-of Trades**

On September 27, 1999, Seelenfreund received twenty-five customer orders, which he should have competitively executed that day. On September 28, 1999, Seelenfreund had a clerk enter these trades into the OLTE as if the trades had been executed on September 27, 1999. Thus, Seelenfreund non-competitively executed his customers' orders by fictitiously claiming that these customer orders were executed on September 27, 1999.

### **Recordkeeping Failures**

Sandoval failed to retain and produce upon request the carbon plies of his trading cards for September 28, 1999.

## **D. LEGAL DISCUSSION**

### **FRAUD IN CONNECTION WITH COMMODITY OPTION TRANSACTIONS**

Chandler and Penny cheated, defrauded and deceived their customers through a variety of means. Penny traded ahead of executable customer orders. Both Chandler and Penny illegally changed prices on their customers' executed gold options orders as well as aided and abetted each other in some of their price changes. Penny illegally offset his customer orders.

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 rule, regulation or order of the Commission prohibiting any such transaction.<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 noncompetitive trading practices constitute fraud in violation of Section 4c(b) of the Act and Section 33.10 of the Regulations. 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>8</sup>

Fraud under the Act and Regulations requires a showing of scienter.<sup>9</sup> Scienter is established when a respondent commits a wrongful act intentionally or with reckless disregard.<sup>10</sup> 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>11</sup> Scienter cannot be avoided by ignorance brought about by willfully or recklessly ignoring the truth.<sup>12</sup>

As discussed below, Chandler and Penny had a duty to their clients to execute their orders in a manner where they would not personally profit or benefit at their expense. Their knowing or reckless disregard of their obligations to their customers constitutes fraud.

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

By knowingly or recklessly trading ahead of executable customer orders, Penny committed fraud.<sup>13</sup> Trading ahead occurs when a dual trading floor broker intentionally buys or

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<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> *In re Staryk*, [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>10</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).

<sup>11</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>12</sup> *See 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>13</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). Section 155.2 of the Commission 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

sells for his own account while holding an executable customer order on the same side of the market.<sup>14</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.

Penny acted with scienter because he knew or recklessly disregarded the fact that he held executable orders at the times that he traded gold options at better prices for himself. In each instance charged, Penny traded for his personal account while holding executable customer orders in the same options in which he personally traded. All of the orders were executable when Penny traded for his personal account on the same side of the market as the customer order. Penny knowingly or recklessly traded for himself at better premium prices than his customers received.

Penny took advantage of the active market to trade for his own benefit and deprive his customers of the best possible execution of their orders. By knowingly or recklessly disregarding his duty to execute his orders in a manner where he would not personally profit at his customers' expense, Penny committed fraud in violation of Section 4c(b) of the Act and Section 33.10(a) and (c) of the Regulations.

### **Price Changes**

Execution of customer orders by a means other than open outcry, such as when prices are changed to the detriment of customers, is fraud.<sup>15</sup> Chandler and Penny committed fraud by changing the prices on trades executed to fill customer orders to the detriment of their customers and to the benefit of other COMEX members trading for their personal accounts opposite Penny and Chandler. By their actions, Chandler and Penny removed their customers' orders from the competitive marketplace and forced their customers to accept results selected by the brokers.<sup>16</sup> Thus, the customers were deprived of the competitive process and unwittingly purchased gold options contracts at higher prices or sold them at lower prices because of Chandler and Penny's intentional misconduct. By noncompetitively changing prices on trades executed for customers, Chandler and Penny engaged in fraud in violation of Section 4c(b) of the Act and Section 33.10(a) and (c) of the Regulations.

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put option in a commodity, either directly or indirectly, for his own account while holding an order for another person in the same commodity option which is executable at the market price or at the price at which such purchase can be either directly or indirectly executed for the member's own accounts.

<sup>14</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).

<sup>15</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 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>16</sup> *Ashman*, 979 F.2d at 477.

## Illegal Offset of Customer Orders

Filling an order by offset can occur when a broker noncompetitively matches an equivalent or nearly equivalent quantities of customer buy and sell orders opposite an accommodating trader instead of executing the customer orders by open outcry. Unless executed pursuant to exchange rules, a broker's use of one customer's order to fill another order violates Section 4b(a)(iv) of the Act whether done directly or indirectly.<sup>17</sup>

Penny knowingly offset four customer orders to buy and sell the same option opposite an accommodating COMEX member. By illegally offsetting his customer orders, Penny's customers were deprived of a competitive execution of their orders and suffered monetary harm. By illegally offsetting customer orders, Penny engaged in fraud in violation of Section 4c(b) of the Act and Section 33.10(a) and (c) of the Regulations.

## Aiding and Abetting Liability for Fraudulent Conduct

In two instances, Chandler and Penny willfully aided and abetted each other's illegal price changes. To establish aiding and abetting liability pursuant to Section 13(a) of the Act, 7 U.S.C. §13c(a) (1994), 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>18</sup>

By their combined efforts, Chandler and Penny knowingly participated in an unlawful venture to change the execution prices of trades for customers to prices which were less advantageous than the originally recorded execution price for the customer order.<sup>19</sup> In these two trades, Chandler, Penny and the opposite trader on each price change originally recorded the trade on their trading cards, and the opposite trader recorded the fill on the order. Thereafter, both traders changed the execution price to the benefit of the personal account of either Chandler or Penny and to the detriment of the other's customer. By their coordinated actions, Chandler and Penny removed their customers' orders from the competitive marketplace and forced customers to accept results selected by the brokers which were likely changed to ensure or enhance the profitability of Chandler's and Penny's personal trading.

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<sup>17</sup> See *In re Rousso*, [1996- 1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,133 at 45,300 (CFTC Aug. 20, 1997), *aff'd*, No. 97-4232 (2d Cir. Mar. 11, 1998).

<sup>18</sup> *In re Nikkah*, [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).

<sup>19</sup> *Rousso*, ¶ 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. 21, 1981); *see also In re Buckwalter*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,686 (CFTC Jan. 25, 1991).

Therefore, Chandler and Penny aided and abetted fraudulent price change in violation of Section 4c(b) of the Act and Section 33.10(a) and (c) of the Regulations pursuant to Section 13(a) of the Act, 7 U.S.C. §13c(a) (1994).

### **False Reports**

By altering gold option contract quantities and prices on their trading cards and causing their submission to the exchange, Chandler and Penny 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. Prices reported for noncompetitive trades inherently violate Section 4c(b) of the Act and Section 33.10(b) of the Regulations, even if they accurately reflect the noncompetitively executed prices agreed to by Chandler and Penny.<sup>20</sup>

## **OTHER TRADE PRACTICE VIOLATIONS**

### **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 and among the traders and include, but are not limited to, illegal price changes, fictitious sales and accommodation trades.<sup>21</sup> Trades can be noncompetitive even though they were executed in the pit.<sup>22</sup>

### **Fictitious Sales**

Section 4c(a)(A) of the Act prohibits fictitious sales, which include transactions that appear to have been submitted to the open market while eliminating the market risk or price competition inherent in competitive trading.<sup>23</sup> The category also includes "trading schemes that evade the competition of the open market" even if they do not create that false impression of having been submitted to the open market.<sup>24</sup>

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<sup>20</sup> *In re Gilchrist*, ¶ 24,993 at 37,653 n. 25

<sup>21</sup> Noncompetitive trading, bucketing, illegal offsets, fraudulent price changes, fictitious sales, wash sales and accommodation trading are all illegal, whatever the motive. *See In re Gilchrist*, [1990-1992 Transfer Binder] *Comm. Fut. L. Rep. (CCH) ¶ 24,993 at 37,652* (CFTC Jan. 25, 1991).

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

<sup>23</sup> *Id.* *See also In re Mayer*, [1998-1999 Transfer Binder] *Comm. Fut. L. Rep. (CCH) P 27,259 at 46,134* (CFTC Feb. 3, 1998), *aff'd*, No. 98-4070 (2d Cir. Sept. 3, 1999).

<sup>24</sup> *In re Collins*, [1996-1998 Transfer Binder] *Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,742-43* (CFTC Dec. 10, 1997).

As discussed above, the Respondents executed many of their customers' orders outside of the competitive marketplace, forcing the customers to accept results selected by the Respondents constituting "fictitious sales" prohibited by Section 4c(a)(A) of the Act.<sup>25</sup>

### **Non Bona Fide Prices**

Section 4c(a)(B) of the Act makes it unlawful to confirm the execution of any transaction involving any commodity "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>26</sup> Bona fide prices are only those prices that result from competitive trading. The Respondents executed a number of trades noncompetitively and, thus, the prices that were reported to their customers and to COMEX were not bona fide. Accordingly, the Respondents violated Section 4c(a)(B) of the Act.

### **RECORDKEEPING VIOLATIONS**

Sandoval failed to maintain and/or produce trading cards he was obligated to keep in violation of Section 4g of the Act and Sections 1.31(a) and 1.35(a) of the Regulations. Section 4g of the Act and Section 1.31(a) of the Regulations are violated when a member of a contract market fails to produce for inspection copies of the written records of the trades the broker made within the past five years such as trading cards. Section 1.35(a) requires a broker to retain these written records of trades for five years. Sandoval failed to provide the Division with copies of his original trading cards for September 28, 1999, in violation of Section 4g of the Act and Sections 1.31(a) and 1.35(a) 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 the filing and service of a Complaint and 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.* (2002), relating to or arising from this action, and any claim of Double Jeopardy based upon institution 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

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<sup>25</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>26</sup> *In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993 at 37,653 (CFTC Jan. 25, 1991).

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 against Chandler and Penny; (d) suspends the registrations of Chandler and Penny for six months (e) restricts Chandler's and Penny's registrations for a two year period including the imposition of supervision requirements; (f) restricts Ferraioli's, Hammers', Sandoval's, Seelenfreund's and Wosnack's registrations for a period of one year including the imposition of supervision requirements; and (g) orders the Respondents to comply with their undertakings consented to 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 Chandler and Penny violated Sections 4c(a)(A), 4c(a)(B) and 4c(b) of the Act, 7 U.S.C. §§ 6c(a)(A), 6c(a)(B), 6c(b) and Sections 1.38, 33.10 (a), (b) and (c) of the Regulations, 17 C.F.R. §§ 1.38, 33.10 (a), (b) and (c) 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. The Commission also finds Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack violated Sections 4c(a)(A), and 4c(a)(B) of the Act, 7 U.S.C. §§ 6c(a)(A) and 6c(a)(B) (1994), and Section 1.38 of the Regulations, 17 C.F.R. § 1.38 (2002); and Sandoval violated Section 4g of the Act, 7 U.S.C. § 6g (1994) and Sections 1.31(a), 1.35(a) of the Regulations, 17 C.F.R. §§ 1.31(a) and 1.35(a) (2002).

## VI.

### **ORDER**

Accordingly, it is hereby ordered that:

1. Chandler and Penny shall cease and desist from further violation of Sections 4c(a)(A) and 4c(a)(B), 4c(b) of the Act, 7 U.S.C. §§ 6c(a)(A) and 6c(a)(B) and 6c(b) (1994) and Sections 1.38, 33.10 (a), (b) and (c) of the Regulations, 17 C.F.R. §§ 1.38, 33.10 (a), (b) and (c) (2002) and aiding and abetting violations of Section 4c(b) of the Act and Section 33.10 of the Regulations pursuant to Section 13(a) of the Act, 7 U.S.C. §13c(a) (1994); Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack shall cease and desist from violating Sections 4c(a)(A), and 4c(a)(B) of the Act, 7 U.S.C. §§ 6c(a)(A) and 6c(a)(B) (1994), and Section 1.38 of the Regulations, 17 C.F.R. § 1.38 (2002); Sandoval shall additionally cease and desist from violating Section 4g of the Act, 7 U.S.C. § 6g (1994) and Sections 1.31(a), 1.35(a) of the Regulations, 17 C.F.R. §§ 1.31(a) and 1.35(a) (2002);
2. Chandler, Penny and Sandoval shall each pay civil monetary penalties ("CMP") in the amount of \$20,000 respectively, while Ferraioli, Hammer, Seelenfreund and Wosnack will each pay civil monetary penalties in the amount of \$15,000 respectively; Penny, Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack shall pay their CMP within ten (10) days of the date of the Order; Chandler shall pay the first \$5,000 of his CMP which

is due within ten days of the signing of the Order. The balance of Chandler's CMP, fifteen thousand dollars (\$15,000), will be made by an annual civil monetary payment ("Annual CMP Payment") as directed by a monitor designated by the Commission (the "Monitor")<sup>27</sup> on or before July 31 of each calendar year, starting in calendar year 2003 and continuing for ten years (or until the CMP is paid in full, if that happens first); Respondents Chandler Penny, Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack shall pay their CMPs and Chandler shall make each subsequent Annual CMP Payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to Commodity Futures Trading Commission, and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, under cover letter that identifies each Respondent and the name and docket number of their proceeding; Copies of the cover letter and the form of payment shall be simultaneously transmitted to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, and to Stephen J. Obie, Regional Counsel, Commodity Futures Trading Commission, Division of Enforcement – Eastern Regional Office, 140 Broadway, New York, NY 10005. Chandler shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor;

3. Chandler and Penny shall pay restitution in the amounts of \$1,200 and \$7,060 respectively within ten (10) days of the date of the Order to a monitor designated by the Commission (the "Monitor").<sup>28</sup>
4. The amount of Chandler'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 Chandler 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 Chandler during the course of the preceding calendar year. The Annual Restitution or CMP Payment will be determined as follows:

Where Adjusted Gross Income plus Net Cash Receipts Total:	Percent of Total to be paid by Chandler is:
Up to \$25,000	0%

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<sup>27</sup> Chandler agrees that the National Futures Association is hereby designated as the Monitor for a period of eleven years commencing from the date of entry of the order. Notice to the Monitor shall be made to Daniel A. Driscoll, Esq., Executive Vice President, and Compliance Officer, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, IL 60606. For ten years, based on the information contained in Chandler's sworn financial statements, tax returns and the other financial statements and records provided to the Monitor, the Monitor shall calculate the total amount of civil monetary penalty to be paid by Chandler. On or before June 30 of each year and starting in calendar year 2003 and concluding in calendar year 2012, the Monitor shall also send written notice to Chandler with instructions to pay by no later than July 31 of the following year the amount of CMP to be paid in accordance with the payment instructions provided above.

<sup>28</sup> Chandler 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.

\$25,000 - \$50,000	20% of the amount above \$25,000
\$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;

5. In the event that Chandler does not make payments as directed in paragraph 4, 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 CMP payment(s) or immediate payment of the entire amount of the civil monetary penalty. The only issue Chandler may raise in defense of such enforcement action is whether Chandler 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 2 above, or any portion thereof, or any acceptance by the Commission of partial payment of the Annual CMP Payments made by Chandler, shall not be deemed a waiver of Chandler'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 Chandler.
  
6. The Commission notes that an order requiring immediate full payment of the civil monetary penalty against Chandler would be appropriate in this case, but does not impose it based upon Chandler's financial condition. Chandler acknowledges that the Commission's acceptance of the Offer is conditioned upon the accuracy and completeness of the sworn Financial Statement Chandler has provided regarding his financial condition. Chandler consents that if at any time following entry of this Order the Division of Enforcement ("Division") of the Commission obtains information indicating that Chandler'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 Chandler 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 paragraphs 2 above; and (3) seek any additional remedies that the Commission would be authorized to impose in this proceeding if Chandler'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 Chandler was fraudulent, misleading, inaccurate or incomplete in any material respect, and whether any additional remedies should be imposed. Chandler 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 Chandler's obligation to pay the remaining balance of the civil monetary penalty assessed against him, pursuant to the payment plan; and

7. Chandler shall comply with the following undertakings as set forth in his Offer:

A. Reporting/Disclosure Requirements to be Reviewed by Monitor

Chandler 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 30, 2002, and continuing through and including June 30, 2011. The financial statement shall provide:

1. a true and complete itemization of all of Chandler's rights, title and interest in (or claimed in) any asset, wherever, however and by whomever held;
2. an itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of Chandler over the preceding six-month interval; and
3. a detailed description of the source and amount of all of Chandler's income or earnings, however generated.

Chandler 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 Chandler 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.

If, during the same time period, Chandler elects to file a joint tax return, he shall provide all documents called for by this paragraph, including the signed and filed joint tax return, plus a draft individual tax return prepared on IRS Form 1040 containing a certification by a licensed certified public accountant that the "Income" section (currently lines 7-22 of Form 1040) truly, accurately and completely reflects all of Chandler's income, that the "Adjusted Gross Income" section truly, accurately and completely identifies all deductions that Chandler has a right to claim, and that the deductions contained in the "Adjusted Gross Income" section are equal to or less than 50% of the deductions that Chandler is entitled to claim on the joint tax return; provided however that Chandler may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely his. Such individual tax return shall include all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filing required to be submitted to any state tax or revenue authority.

8. Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack shall be barred for a period of twelve months beginning the day after the entry of the Order, from acting as a dual trader on or subject to the rules of any registered entity;
9. Chandler's and Penny's 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");
10. Chandler and Penny are prohibited for a period of six months beginning on the day after the entry of the Order, from trading on or subject to the rules of any registered entity, and all registered entities shall refuse Chandler and Penny privileges thereon; provided, however, Chandler and Penny are permitted to trade off the floor of any registered entity for each of their own accounts beginning three months after the Suspension Date, with such orders being executed only by other duly authorized persons;
11. Chandler and Penny are 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 registered entity;
12. For a period of twenty-four months, beginning six months after the Suspension Date:
  - a. Neither Chandler nor Penny may 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 Sections 1a(16) and 1a(17) of the Act, 7 U.S.C. §§ 1a(16) and 1a(17), unless each of their activities as a floor broker or floor trader are subject to a Supplemental Sponsor Certification Statement ("Certification Statement"), in either Form A, Form B-1 or Form B-2, 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) (2002). Immediately upon Chandler's or Penny's Sponsor ceasing to act as a sponsor, either Chandler or Penny shall stop acting as a floor broker or floor trader, until Chandler or Penny once again obtains a Certification Statement in the applicable form attached hereto, executed and submitted to the Commission by a sponsor, as defined below;
  - b. If Chandler or Penny is acting as a floor trader, a "qualified sponsor" shall be a registered floor broker who is a member of the same exchange or registered entity on which Chandler or Penny primarily trades and who has executed Form A, unless Chandler or Penny ceases executing trades for their respective personal accounts and commences executing orders for customers as provided by subparagraph c. below. If Chandler or Penny is executing orders for customers in accordance with subparagraph c., a qualified sponsor shall be Chandler's or Penny's employer or another floor broker who has executed Form B-1 or Form B-2 where applicable;

- c. At the commencement of the Initial Twelve-Month Period, Chandler and Penny may only trade for their own respective accounts as a floor trader as defined in Section 1a(17) of the Act, 7 U.S.C. § 1a(17); provided however that if during the Initial Twelve-Month Period, Chandler or Penny ceases trading for his own account, he may then execute orders for customers pursuant to the terms set forth below. Prior to commencing trades for customers, each time he begins to do so after trading for his own account, Chandler or Penny shall (1) provide at least two weeks advanced written notice to the Director, Division of Enforcement, Three Lafayette Centre, 1155 21<sup>st</sup> Street NW, Washington D.C. 20581 and to his current Sponsor; (2) provide the notice of termination of his current sponsorship, executed by the Sponsor, and submit a new Certification Statement, in either Form B-1 or Form B-2, where applicable, attached hereto and executed by his sponsor, to execute trades on behalf of customers; 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, where applicable; and (4) send to his customers via Registered Mail a statement notifying them of his restricted registration (the "notification statement") and receive the Return Receipt as described in subparagraph e. below. To resume trading for his own account during the Initial Twelve-Month Period, Chandler or Penny shall cease trading directly or indirectly for customers and shall (1) provide at least two weeks advanced written notice to the Director, Division of Enforcement, Three Lafayette Centre, 1155 21<sup>st</sup> Street NW, Washington D.C. 20581 and to his current Sponsor; (2) where applicable, provide the required notice of termination of his current sponsorship, executed by the Sponsor and submit a new Certification Statement, in the Form A attached hereto and executed by a qualified sponsor; and (3) provide signed and dated letters or statements from his customers to his new Sponsor evidencing that Chandler or Penny has ceased executing trades for their accounts;
- d. Within five days after the Sponsor notifies Chandler or Penny in writing that he is terminating his sponsorship of Chandler or Penny for any reason, Chandler or Penny and their Sponsor will each file with the Director of the Commission's Division of Clearing and Intermediary Oversight, the NFA and the Membership Department of the exchange or registered entity where Chandler or Penny 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;
- e. Chandler and Penny shall provide all their customers, to the extent Chandler or Penny is executing orders for customers, a notification statement, as set forth in Attachment B of this Offer. Chandler or Penny shall send this notification statement via Registered Mail, Return Receipt Requested. Chandler or Penny shall provide a copy of each of the signed Return Receipts from customers to the Sponsor within five business days from Chandler's or Penny's receipt thereof. The Sponsor will periodically review Chandler's or Penny's trading cards, records of customer accounts and customer orders, and any other necessary trading and

customer-related records to verify that the Sponsor has received all such Return Receipts;

- f. Neither Chandler nor Penny shall not serve on any disciplinary committee, arbitration panel, oversight panel or governing board of any self-regulatory organization registered or subject to regulation by the Commission;
- g. Neither Chandler nor Penny shall 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; neither Chandler nor Penny shall 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 Chandler's and Penny's respective registration files, and shall be a public document and may be made available to any self regulatory organization ("SRO") and state and federal governmental entities;
- i. Chandler and Penny shall send written notification to the Membership Department of all exchanges and registered entities where each has trading privileges that his registration is subject to conditions. Chandler and Penny will provide a copy of such written notification to Stephen J. Obie, Regional Counsel, Eastern Regional Office, 140 Broadway, New York, NY 10005. Such written notification shall include a copy of the Order and Certification Statement;
- j. If the NFA, or any other SRO, or a law enforcement agency or regulatory agency institutes a proceeding charging Chandler or Penny with a violation of 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 Regulations 1.63(a)(6), Chandler or Penny, where applicable, shall notify Sponsor, and Chandler or Penny and their respective Sponsors shall immediately notify the Commission and NFA in writing of such action;
- k. Chandler's or Penny's registrations shall be automatically suspended if Chandler or Penny is charged with violating the terms of a Commission order, violating the terms of a Federal Court order enjoining or finding violations of the Act or Regulations, or a disciplinary offense as defined in Regulation 1.63(a)(6), 17 C.F.R. §1.63(a)(6) (2002), except that as to offenses defined in Regulation 1.63(a)(6)(i)(c), 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 Chandler's or Penny's registration is automatically suspended, the period of suspension or cessation of activities shall terminate six months after the date of the suspension or cessation, unless the Commission files within that period a Notice of Intent to Suspend, Revoke or Restrict Registration pursuant to Regulation 3.60(a), 17 C.F.R. § 3.60(a) of a Complaint 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, Chandler's or Penny's registration shall be suspended, until a final order is entered resolving all issues arising under such Notice or Complaint; and

- m. Chandler and Penny each acknowledge that failure to comply with the Order shall constitute a violation of the Order and may subject each to administrative or injunctive proceedings, pursuant to the Act; and

13. for a twelve month period, beginning the day after the entry of the Order:

- a. Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack shall 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 (1994), and as defined under Sections 1a(16) and 1a(17) of the Act, 7 U.S.C. §§ 1a(16) and 1a(17) (1994), unless their individual activities as a floor broker or floor trader is subject to a Supplemental Sponsor Certification Statement ("Certification Statement"), in either Form A or Form B-1 or Form B-2, as applicable, executed and submitted to the Commission by a qualified sponsor ("Sponsor"), as defined in subparagraph b. below. Immediately upon the Sponsor's ceasing to act as Ferraioli's, Hammer's, Sandoval's, Seelenfreund's or Wosnack's sponsor, Ferraioli, Hammer, Sandoval, Seelenfreund or Wosnack shall stop acting as a floor broker or floor trader, until he once again obtains a Certification Statement in the applicable form attached hereto, executed and submitted to the Commission by a Sponsor, as defined below;
- b. If Ferraioli, Hammer, Sandoval, Seelenfreund or Wosnack is acting as a floor trader, a Sponsor shall be a registered floor broker who is a member of the same exchange or registered entity on which Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack primarily trade and who has executed Form A, unless Ferraioli, Hammer, Sandoval, Seelenfreund or Wosnack cease executing trades for his own account and commences executing orders for customers as provided by subparagraph c. below. If Ferraioli, Hammer, Sandoval, Seelenfreund or Wosnack is executing orders for customers in accordance with subparagraph c., a Sponsor shall be Ferraioli's, Hammer's, Sandoval's, Seelenfreund's or Wosnack's employer or another floor broker who has executed Form B-1 or Form B-2 where applicable;
- c. If Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack individually cease acting as a floor trader and seek to act as a floor broker, Ferraioli, Hammer, Sandoval, Seelenfreund or Wosnack individually may then execute orders for customers pursuant to the terms set forth below. Prior to commencing trades for customers, Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack shall (1) provide at least two weeks advanced written notice to Gregory Mocek, Director, Division of Enforcement, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington D.C. 20581 and to his current Sponsor; (2) provide the notice of termination of his current sponsorship, executed by the Sponsor, and submit a

new Certification Statement, in either Form B-1 or Form B-2, where applicable, attached hereto and executed by his Sponsor, to execute trades on behalf of customers; 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, where applicable; and (4) send to his customers, via Registered Mail, a statement notifying them of his restricted registration (the "notification statement") and receive the Return Receipt as described in subparagraph e. below. To resume trading as a floor trader during the twelve month period, Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack shall cease trading directly or indirectly for customers and shall (1) provide at least two weeks advanced written notice to the Director, Division of Enforcement, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington D.C. 20581 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 in the Form A attached hereto and executed by a Sponsor; and (3) provide signed and dated letters or statements from his customers to his new Sponsor evidencing that Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack has ceased executing trades for their accounts;

- d. Within five days after the Sponsor notifies Ferraioli, Hammer, Sandoval, Seelenfreund or Wosnack in writing that he is terminating his sponsorship of Ferraioli, Hammer, Sandoval, Seelenfreund or Wosnack for any reason, Ferraioli, Hammer, Sandoval, Seelenfreund or Wosnack and the Sponsor will each file with the Director of the Commission's Division Clearing and Intermediary Oversight, the NFA and the Membership Department of the exchange where Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack have 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;
- e. Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack shall provide all their customers, to the extent each is executing orders for customers, a notification statement, as set forth in Attachment B of their Offer. Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack shall send this notification statement via Registered Mail, Return Receipt Requested. Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack shall provide a copy of each of the signed Return Receipts from customers to the Sponsor within five business days from Ferraioli's, Hammer's, Sandoval's, Seelenfreund's and Wosnack's receipt thereof. The Sponsor will periodically review Ferraioli's, Hammer's, Sandoval's, Seelenfreund's and Wosnack's trading cards, records of customer accounts and customer orders, and any other necessary trading and customer-related records to verify that the Sponsor has received all such Return Receipts;
- f. Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack shall not serve on any disciplinary committee, arbitration panel, oversight panel or governing board of any self-regulatory organization registered or subject to regulation by the Commission;

- g. Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack 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; Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack shall not directly or indirectly act in any supervisory capacity over anyone registered or required to be registered with the Commission, except that Sandoval may supervise those junior floor traders of Berard Capital Management, L.L.C. (“Berard”) who trade exclusively on behalf of Berard, or Berard and themselves with funds of Berard, while Sandoval is acting as the sole functioning partner of Berard; in the event that Sandoval takes on additional partners in Berard or ceases to be the sole functioning partner of Berard, Sandoval must cease supervising the junior floor traders of Berard and may only examine the trading cards of such Berard floor traders
  - h. The Certification Statement will become part of Ferraioli’s, Hammer’s, Sandoval’s, Seelenfreund’s and Wosnack’s respective registration files and shall be a public document and may be made available to any self regulatory organization ("SRO"), state and federal governmental entity;
  - i. Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack shall each send written notification to the Membership Department of all exchanges or registered entities where each has floor trading privileges that his registration is subject to conditions. Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack will each provide a copy of such written notification to Stephen J. Obie, Regional Counsel, at the address listed in Paragraph 3 above. Such written notification shall include a copy of the Order and Certification Statement;
  - j. If an agency or regulatory agency institutes a proceeding charging Ferraioli, Hammer, Sandoval, Seelenfreund or Wosnack with a violation of the Act, the Regulations, the rules or requirements of NFA or any other SRO, the terms of the Order or any other order of the Commission or court order finding, and or enjoining, violations of the Act or Regulations or a disciplinary offense as defined in Commission Regulations 1.63(a)(6), Ferraioli, Hammer, Sandoval, Seelenfreund or Wosnack shall notify their Sponsor, and Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack and their Sponsor shall immediately notify the Commission and NFA in writing of such action;
  - k. Ferraioli, Hammer, Sandoval, Seelenfreund and Wosnack each acknowledges that failure to comply with the Order shall constitute a violation of the Order and may subject each to administrative or injunctive proceedings, pursuant to the Act; and
14. 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 statements 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 his 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

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

Dated: December 12, 2002